

**RULES
OF
TENNESSEE HOUSING DEVELOPMENT AGENCY**

RENTAL HOUSING LOAN PROGRAM

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0770—1—4—.01 MORTGAGE LOANS.

- (1) The Agency may make or participate in the making of mortgage loans as provided in Rule 0770—1—1—.04 of these Rules and Regulations to housing sponsors for the development, construction or rehabilitation and operation of non-owner occupied rental housing developments (“housing developments”). For purposes of 0770—1—4 of these Rules and Regulations housing developments shall include a housing development intended to be owned and operated on a cooperative basis.
- (2) Agency mortgage loans, as defined in Rule 0770—1—1—.01 (7) hereof, may be made for terms of up to forty (40) years, excluding the period of construction or rehabilitation of the housing development. The term of any such Agency mortgage loan, the date for the commencement of amortization of the principal amount thereof, the amortization period and other terms and conditions of such Agency mortgage loan and of the repayment thereof shall be set forth in the Agency Board’s Resolution authorizing such mortgage loan, or in the mortgage loan commitment issued on behalf of the Agency pursuant to Rule 0770—1—4—.03 (5).
- (3) An Agency mortgage loan under this Part may be made to public housing agencies, public and private not-for-profit corporations or other public or private non-profit entities and limited distribution entities as defined in T.C.A. §13—23—117 as amended by Chapter 320, Public Acts of 1975 which are determined by the Agency to be qualified sponsors. Such an Agency mortgage loan may be made to limited distribution entities (hereinafter referred to as “limited profits”) regulated by the Agency in an amount not to exceed ninety percent (90%) of the total project cost of the housing development, as determined by the Agency. Such an Agency mortgage loan may be made to not-for-profit housing sponsors in an amount not to exceed one hundred percent (100%) of the total project cost, as determined by the Agency. In all cases the Agency mortgage loan shall be “insured” as provided in Rule 0770—1—1—.01 (7) of these Regulations.
- (4) The estimated total development cost of a housing development and the initial principal amount of the Agency mortgage loan with respect thereto, together with terms and conditions applicable to the equity contribution by the housing sponsor, required assurances of successful completion and operational stability, and related matters, shall be set forth in the Agency Board’s Resolution authorizing such mortgage loan, or in the mortgage loan commitment issued on behalf of the Agency pursuant to Rule 0770—1—4—.03 (5).
- (5) The principal amount of an Agency mortgage loan and other terms and conditions thereof, may be amended or modified by the Agency prior to the loan closing, pursuant to a Resolution of the Agency Board modifying such mortgage loan commitment.
- (6) In addition, the Resolution of the Agency Board authorizing such mortgage loan and the mortgage loan commitment issued on behalf of the Agency may authorize the Executive Director to approve and authorize an increase in the principal amount of the Agency mortgage loan. Any increase authorized by the Executive Director may not exceed two percent (2%) of the initial principal amount of the mortgage loan, and may only be authorized when in the judgement of the Executive Director, such an increase is justified by an

(Rule 0770—1—4—.01, continued)

increase in development costs and is necessary or desirable to effect the successful construction and completion of the housing development. Any such increase in the principal amount of an Agency mortgage loan must be consistent with the requirement of Rule 0770—1—1—.07 (7) that loans be “insured”, and must not adversely affect the economic feasibility as determined pursuant to Rule 0770—1—4—.02 (3).

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.

0770—1—4—.02 DEVELOPMENT PROPOSAL AND FEASIBILITY PROCEDURE.

- (1) Sponsors interested in financing housing developments through the Agency are encouraged to arrange a preapplication conference with the Agency prior to preparing the preliminary proposal. A check list of items which should be prepared for the preapplication conference should be obtained when arranging the initial meeting with the Agency.
- (2) Each preliminary proposal shall include or indicate the following:
 - (a) Identification of the proposed site, including a map showing the location of the site and the racial composition of the neighborhood, sketch of site plan, dimensions, unusual site features, if any; (The site shall be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank backups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise, vibration, or vehicular traffic; rodent or vermin infestation; or fire hazards. The neighborhood must not be one which in the opinion of the Agency is seriously detrimental to family life or in which any sub-standard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions);
 - (b) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the sponsor’s effective control of the site;
 - (c) A description of the proposed housing development including number and type of structures, number of stories, structural system, exterior finish, heating and air-conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, and special amenities or features, if any; and design development plan;
 - (d) On forms supplied by the Agency the identity of the sponsor, developer, builder, and the architect (if known); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors (of developer or builder only) and other parties having substantial interest, and the prior participation of each in housing programs for low and moderate income citizens;
 - (e) Whether the proposed sponsor intends to provide management services or to contract with a managing agent. In the latter case, provide the identity of the managing agent, if known, and the other information as required in paragraph (d) of this section;
 - (f) Evidence (i) that the proposed construction is permissible under the applicable zoning, building, housing and other codes, ordinances or regulations, or a statement of the proposed action to make the construction permissible and that such action will be successfully completed prior to the architect’s certification required in Rule 0770—1—4—.02 (4) and (ii) of utility and availability;
 - (g) The monthly rental per unit, by size and structure type;
 - (h) The equipment to be included in the contract rent;

(Rule 0770—1—4—.02, continued)

- (i) A financial analysis of the proposed housing development, which shall establish the initial schedule of rents, a monthly budget for the initial year of operation of the housing development and a schedule of the use of the proceeds of the Agency mortgage loan;
 - (j) The utilities and services to be included in the monthly rental and those utilities and services not so included. For each utility and service not included in the rental, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type;
 - (k) Whether the proposed housing development will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status, and whether they are owners or renters), and shall show that there is a feasible plan for relocation and how necessary relocation payments, if any, will be funded;
 - (l) The anticipated time required for completion of the housing development after the loan commitment is made;
 - (m) A tenant selection plan (See Rule 0770—1—4—.08);
 - (n) The proposed organizational documents of the sponsor which the Agency will review in accordance with Rule 0770—1—4—.04;
 - (o) A cashier's check for an application fee in an amount determined from time to time by the Agency in its Rules of Practice. The fee may be refunded only on a case-by-case basis depending on the extent of processing incurred and reason for termination.
 - (p) Indication of type mortgage insurance, if any, proposed to be used. The Agency may request additional information from the sponsor where it deems necessary.
- (3) After receipt of an Agency mortgage loan application and the preliminary proposal provided in Rule 0770—1—4—.02 (2) and the preliminary processing thereof by the Agency staff in accordance with these Rules and Regulations, and the Agency's Rules of Practice, the Agency staff shall make recommendations to the Executive Director as to the feasibility of an Agency mortgage loan for the proposed housing development. If the proposed housing development is preliminarily determined to be feasible for financing with an Agency mortgage loan, the Executive Director will issue to the housing sponsor the Agency's Feasibility Letter. Such a Feasibility Letter may be issued for a term not to exceed ninety (90) days, subject to extension of such term by the Agency for good cause shown. Such a Feasibility Letter shall not constitute a commitment to loan on behalf of the Agency, but shall constitute a determination by the Agency staff that the proposed housing development is feasible for financing with an Agency mortgage loan on the basis of the preliminary review and analysis of the proposed site, market, legal requirements, community services, design, engineering, development costs, operating budget and the housing sponsor's qualifications, upon the terms and conditions contained in such Feasibility Letter.
- (4) In every instance the Feasibility Letter in Rule 0770—1—4—.02 (3) shall include as one of its terms and conditions the requirement for submission of working drawings and specifications for the proposed housing development. The working drawings and specifications shall be accompanied by a certification by a licensed architect that in his judgement (a) said drawings and specifications are consistent with the descriptions and sketches submitted in the preliminary proposal pursuant to Rule 0770—1—4—.02 (2) (c) and (b) said housing development satisfies the requirement of Rule 0770—1—4—.02 (2)(f). Where mortgage insurance is required, the Feasibility Letter shall also include as one of its terms and conditions the requirements of evidence of qualification for conditional or firm commitment for mortgage insurance.
- (5) Upon payment of the commitment fee established by the Agency's Rules of Practice and satisfaction of the terms and conditions contained in a Feasibility Letter, satisfactory completion of the processing of such

(Rule 0770—1—4—.02, continued)

application by the Agency staff, and approval of the application by the Executive Director, the Agency staff will present its analysis and recommendation regarding the mortgage loan application for the proposed housing development to the Agency Board for action on authorizing a commitment for an Agency mortgage loan.

Authority: *T.C.A. §§13—23—115 (18). Administrative History: Original rule filed September 19, 1975, effective October 19, 1975.*

0770—1—4—.03 MORTGAGE LOAN COMMITMENT PROCEDURE.

- (1) The Agency Board shall review each such analysis and recommendation, and if it determines that the application meets the requirements of the Act and these Rules and Regulations, and is consistent with the Agency's Rules of Practice, design standards and evaluation factors, it may authorize a commitment for an Agency mortgage loan to the housing sponsor with respect to the proposed housing development. An Agency mortgage loan commitment may be issued for a term not to exceed ninety (90) days, subject to extension of such term by the Agency for good cause shown.
- (2) An Agency mortgage loan shall not be authorized unless the Agency Board by Resolution shall find that:
 - (a) there exists within the general housing market area to be served by the proposed housing development, a shortage of decent, safe and sanitary housing at rental rates which persons and families of low and moderate income can afford,
 - (b) private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals which persons or families of low and moderate income can afford and that in accordance with T.C.A. §§13—23—116 and 13—23—117 qualified lenders are unable or unwilling to provide sufficient mortgage financing for residential housing for occupancy by such persons or families,
 - (c) the housing sponsor undertaking the proposed housing development in the State of Tennessee will supply well-planned, well-designed housing of which at least twenty percent (20%) of the dwelling units will be for persons or families of low and moderate income and that such housing sponsor is financially responsible,
 - (d) the proposed housing development will be of public use and benefit, and
 - (e) the proposed housing development will be undertaken within the authority conferred by the Act upon the Agency and the housing sponsor.
- (3) As provided in *T.C.A. §§13—23—116 and 13—23—117*, as amended, the Resolution of the Agency Board approving an Agency mortgage loan to a limited profit housing sponsor shall establish the total project costs, the equity contribution of the limited profit sponsor and the maximum permissible annual percentage distribution, retirement, or stock redemption by the limited profit sponsor. The Agency Board may upon proper request made by the limited profit sponsor later amend the maximum permissible annual percentage distribution to allow up to the statutory limitations if initially set less than the statutory maximum. Loans that the Agency makes or participates to limited profits pursuant to *T.C.A. §§13—23—116 and 13—23—117*, as amended by Chapter 320 of the Public Acts of 1975, the cost included in "total project costs" for a specific housing developments shall be established in the financial analysis attached to the Commitment Resolution as provided in rule 0770—1—4—.03 (5) of these regulations. The categories of costs allowable for inclusion in "total project costs" for such loan will be more particularly described in the Agency's Rules of Practice for the Rental Housing Loan Program, established pursuant to rule 0770—1—1—.02 of these regulations.
- (4) Any payment to a person or entity who is a principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return" to such person or entity if the funds with which such payment is made are funds paid or contributed to such limited profit housing

(Rule 0770—1—4—.03, continued)

sponsor by persons or entities purchasing a beneficial interest in such limited profit housing sponsor. All funds paid or contributed to a limited profit housing sponsor by persons or entities purchasing a beneficial interest in such sponsor shall be held by the Agency in a completion assurance escrow and distributed to the holder of a beneficial interest in such sponsor only in accordance with the Agency's building and loan agreement. In the event of a proposed retirement of any capital investment in, or redemption of any stock of, such limited profit housing sponsor, as a result of a proposed sale or assignment of the capital investment or stock of a principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor, or of a proposed sale or assignment of such housing developments, the terms and conditions of such proposed retirement or redemption as aforesaid shall be reviewed by the Executive Director to assure compliance with the second sentence of the second paragraph of T.C.A. §13—23—117. Such transferee shall assume the responsibilities, duties and obligations of the transferor pursuant to the Regulatory, Completion Assurance, and Working Capital Agreements with the Agency. Such review and approval shall be for the purpose of ensuring the continuing capitalization and stability of such limited profit housing sponsor and evaluating the impact of such proposed transaction on the economic stability of such housing developments and on the rents to be charged to the occupants thereof. Approval by the Executive Director shall not be withheld unreasonably, and shall not be withheld solely because the proposed retirement or redemption results in a return to a principal stockholder or holder of a beneficial interest in such limited profit housing sponsor in excess of the maximum annual rate otherwise applicable to the making of distributions or the receipt of return, if such excess arises by reason of: (a) reduction of the principal amount of the Agency mortgage loan by amortization or similar causes, or (b) the sale or disposition of any assets of the limited profit housing sponsor, to the extent that such excess can be attributed to any increase in market value of any real property or tangible personal property accruing during the period the assets were owned and held by the limited profit housing sponsor.

- (5) The Resolution authorizing the Agency mortgage loan commitment, or the Agency mortgage loan commitment issued by the Executive Director pursuant to a Resolution, shall include such conditions as the Agency considers appropriate with respect to the commencement of construction of the proposed housing development, the marketing and occupancy of such housing development, a schedule of the use and disbursement, and repayment of the Agency mortgage loan authorized, and all other matters related to the development, construction and operation of the proposed housing development. Each loan commitment shall contain a condition that the general contractor deliver at the initial loan closing in form and substance acceptable to the Executive Director, a labor and material bond in favor of the housing sponsor as well as a performance bond with corporate surety in favor of the housing sponsor and the Agency as dual obligees. The amount of each of the foregoing bonds shall be in amount established by the Agency Resolution. In lieu of the foregoing bonds, the Agency may determine to accept a completion assurance agreement, together with an unconditional, irrevocable Letter of Credit issued in favor of the Agency by a commercial bank acceptable to the Agency. Such Resolution or Agency mortgage loan commitment may include a financial analysis of the proposed housing development, which establishes the initial schedule of rents and the approved initial budget for operation of the housing development.

Authority: T.C.A. §§13—23—115 (18) and 13—23—117. **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975. Amendment filed March 6, 1984; effective June 12, 1984. Amendment filed March 12, 1990; effective April 26, 1990.

0770—1—4—.04 REGULATION OF HOUSING SPONSORS.

- (1) (a) The proposed articles of incorporation, partnership agreement, joint venture agreement, trust agreement or other documents of basic organization of an applicant, and any proposed amendments thereto, shall be submitted to the Executive Director, together with a request for the Agency's approval of such documents as being in compliance with the provisions of the Act.

(Rule 0770—1—4—.04, continued)

- (b) The Agency staff shall review such organizational documents and other information requested pursuant to the Rules of Practice to determine the qualification of the applicant as a housing sponsor and the compliance of such documents with the requirements of the Agency. If it is determined that the documents comply, the Executive Director, or other member of the Agency staff authorized by Resolution of the Agency Board, shall issue its approval with respect to the organizational documents.
- (2) As a condition precedent to the initial closing of an Agency mortgage loan, the housing sponsor shall execute a Regulatory Agreement with the Agency which shall authorize the Agency to regulate such aspects of the development, construction or rehabilitation, and operations of the proposed housing developments and of the operations of the housing sponsor as the Executive Director shall determine to be necessary or appropriate to protect the interest of the Agency and to permit fulfillment of the Agency's duties and responsibilities under the Act and these Rules and Regulations.
- (3) To assure the operational stability of housing developments financed by Agency mortgage loans, the Agency may establish requirements for the retention of an equity position by a housing sponsor, the requirements for the operation of a housing development, and the requirement of a housing sponsor's working capital escrow.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.

0770—1—4—.05 ANCILLARY FACILITIES. To the extent economically feasible and appropriate to the proposed housing development and the neighborhood or market area in which it is to be located, the Agency will encourage the coordinated planning and development of administrative, community recreational, commercial, and other non-housing facilities in conjunction with housing developments it finances. However, the Agency's notes and bonds are required to be issued primarily for housing purposes, and the Agency staff and Agency Board will exercise reasonable judgement in reviewing and approving applications for proposed housing developments in which such ancillary facilities constitute a portion.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.

0770—1—4—.06 DESIGN AND OCCUPANCY STANDARDS.

- (1) Rules of Practice for design standards, other physical standards, site selection, and development for housing developments financed by Agency mortgage loans may be established, modified, amended and promulgated from time to time pursuant to Rule 0770—1—1—.02 of these Rules and Regulations.
- (2) The Agency may also establish Rules of Practice setting forth standards regarding the number of persons permitted to live in a dwelling unit and other standards relating to occupancy and maintenance of dwelling units.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.

0770—1—4—.07 RENTAL CHARGES. In establishing or approving rent structures the Agency will provide for rents, which together with other monies legally available to the Agency or the housing sponsor with respect to the housing development, will be sufficient to meet the debt service, maintenance and operational requirements of the housing development and in circumstances appropriate for limited profits a return on equity. Only rents established or approved by the Agency from time to time may be charged for dwelling units in housing developments financed by an Agency mortgage loan.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.

0770—1—4—.08 TENANT SELECTION PLAN.

- (1) The proposed tenant selection plan submitted with the preliminary proposal as required by Rule 0770—1—4—.02 (2)(m) shall include, among other information that may be required from time to time, the following:
 - (a) The proposed rent structure of the proposed housing development, including any rent levels made possible by subsidies or other assistance from the Federal government, including Section 8 Housing Assistance Payments Contracts, or other sources;
 - (b) The proposed income levels of tenants in accordance with the provisions of Rule 0770—1—1—.01 (18) of these Regulations, with a view to applying a combination of assistance available under programs of the Federal government, the Agency and other sources so as to provide an economic mix within the housing development and to provide an adequate number of family dwelling units;
 - (c) Any arrangements contemplated by the housing sponsors for occupant referrals or relocations from local redevelopment and housing authorities, Federal, State or local government agencies or community organizations; and
 - (d) The proposed marketing plan to be employed with respect to the proposed housing development, including Affirmative Fair Housing Marketing Plan. The sponsor shall commence marketing no later than ninety (90) days prior to estimated completion of the project.
- (2) Initial occupancy in dwelling units financed under Part IV of these Rules and Regulations, and which receive rental assistance for one hundred percent (100%) of the dwelling units through the Federal Section 8 Rental Assistance Program, shall be primarily for “Persons and Families of Lower and Moderate Income” determined in accordance with Rule 0770—1—1—.01 (18) of the Regulations; provided that in order to obtain operational and economic stability of, and economic integration within a housing development, a sponsor may permit, upon Agency approval, initial occupancy of up to 35% of tenants not found to be Persons and Families of Lower and Moderate Income, as herein defined.
- (3) Of the occupants in dwelling units financed under Part IV of these Rules and Regulations but which do not receive rental assistance for one hundred percent (100%) of the units, at least twenty percent (20%) shall be persons or families whose incomes are eighty percent (80%) or less of the area median income.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975. Amendment filed March 6, 1984; effective June 12, 1984.

0770—1—4—.09 COMPLIANCE WITH OTHER REGULATIONS. Where a housing development financed by an Agency mortgage loan is federally insured or otherwise assisted, or aided by the Federal government, the Agency will adhere to applicable Federal Regulations, as provided in Rule 0770—1—1—.05 of these Regulations.

Authority: T.C.A. §13—23—115 (18). **Administrative History:** Original rule filed September 19, 1975, effective October 19, 1975.