

## **5122:3-1-05 Requirements for project approval.**

Each application for state funds shall contain documentation demonstrating compliance or assurances of compliance with all applicable requirements of this rule. State funding participation in a project shall be disapproved for failure to provide necessary assurances or documentation. State funding participation already approved for a project may be withdrawn for failure to comply with the applicable assurances or requirements stated in this rule.

(A) Estate in real property: the applicant must assure that it, or the approved tax credit owner for which it is the approved tax credit manager, has or will have fee simple title to, and that applicant or the approved tax credit owner for which it is the approved tax credit manager will, prior to the state funding of any project costs, be in lawful possession of the property on which the project is to be located, including necessary easements and/or rights of way.

(B) The applicant shall secure and submit to the chief an appropriate resolution from the applicable board(s) stating approval of the project by the board(s) and its or their intent to support and monitor the program(s).

(C) The applicant must assure that:

(1) Sufficient funds will be available to meet its share of project costs from project initiation through project completion.

(2) Sufficient funds and/or income from sources made known to the department will be available as of the proposed opening date to operate the facility in accordance with the approved program(s).

(3) Applicant will execute the project in compliance with the guidelines.

(4) The department, and other state or federal agencies, or their agents or designees, as appropriate, shall have access to the project at any time while under construction and before final acceptance.

(5) Applicant will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of an individual project, and permit departmental audit of such records and accounts at any reasonable time.

(6) All buildings and their contents shall be kept appropriately insured against loss by fire and acts of God for such amounts which will assure sufficient funds to restore or replace the buildings and contents. Such insurance shall include the department as an additional insured to the extent of state participation and shall provide that the department, through the chief, be promptly notified by the insurer of any delinquency in insurance premium payments or cancellation of the policy.

(D) The applicant agrees to use and maintain the project for a period of years designated herein for the purposes stated in the application unless otherwise agreed to in writing by the department ("project period"). If the project is not so used for the entire project period the applicant: shall pay to the department at a minimum, an amount equal to the total of any state funds reimbursed to the applicant pursuant to approval of the project as stated in the application times a fraction where the numerator is the number of months that the project has operated as approved and the denominator is the total number of months in the project period; or, shall permit the department to operate or transfer the operation of the project, including the assignment of any contracts or other interests, to another approved organization for the balance of the project period. Such agreements shall be documented on such security instruments, contracts, and other legal instruments as deemed necessary by the department to secure state funds reimbursed by the department to the applicant for approved project costs. The project period shall be thirty years.

(E) Nonprofit corporation; articles of incorporation

(1) A nonprofit corporation applicant, including an approved tax credit manager must meet the requirements set forth below.

(2) The articles of incorporation must contain the following provisions in addition to those otherwise required by law:

(a) A specific statement of purpose that the corporation will provide a mental health or addiction service which will serve a public purpose;

(b) A provision that upon dissolution of the corporation, if such dissolution occurs within the thirty-year project period, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the participation agreement which originally set forth disbursement of funds to the corporation;

(3) The code of regulations or bylaws, as applicable, shall contain the following provisions in addition to those specifically provided by law:

(a) A provision limiting the number of terms and length of term of office for trustees/directors and officers and prohibiting an employee or officer of the corporation from being a trustee/director except that in a general hospital or other facility where the mental health or addiction service program is not the major function of the facility, an employee of the corporation may be a trustee/director but shall abstain from any vote of the board of trustees/directors directly affecting the service program;

(b) A provision stating that the board of trustees/directors shall include representatives of the geographic community to be served;

(c) A provision that no persons related by consanguinity or marriage (to a degree of first cousin) shall constitute a majority of the board of trustees/directors; and

(d) A provision to require the abstention of a trustee/director in a vote on a matter affecting persons employed or to be employed by the corporation and related to the trustee by consanguinity or marriage.

(e) A nondiscrimination provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, religion, disability, genetic information, military status, sexual orientation, or, unless programmatically justifiable, age or sex; and

(f) A provision stating that the corporation will not discriminate or otherwise decide any matter regarding employment on the basis of race, color, national origin, religion, disability, genetic information, military status, sexual orientation, age, or gender.

(F) If applicant is an approved tax credit manager, required additional submissions include:

(1) Appropriate documentation of the limited partnership (partnership agreement) or limited liability company (articles of incorporation; operating agreement) and the role that the approved tax credit manager plays in the development and operation of the project.

(2) The documentation must contain the following provisions:

(a) A provision that upon dissolution of the limited partnership or limited liability company, if such dissolution occurs within the thirty-year project period and another entity satisfactory to the department has not assumed the obligations under the mortgage to the department, the partnership agreement or operating agreement will provide that all proceeds on dissolution be used to pay creditors of the limited partnership or limited liability company, including any payment of amounts from the sale of the project to pay the obligations secured by any mortgage to the department, prior to distribution to any member or partner thereof.

(b) A provision that, if the approved tax credit manager should default in any term of the partnership or operating agreement, upon notice to the applicant and the department, the applicant and the department shall have a sixty-day period to cure such default. Additionally, at the option of the department, and in the case where the department determines that the applicant has failed to provide the services as set forth in the application, unless otherwise agreed to in writing by the department, the department may cause the management and operation of

the facility to be assigned to a party eligible to be an applicant or to the department, provided such assignment is agreeable to the approved tax credit owner, which agreement shall not be unreasonably withheld. Any such successor manager or operator of the facility shall assume all of applicant's obligations under the contract and note and shall comply with all federal or state obligations and restrictions applicable to the facility.

(3) Appropriate documentation that the limited partnership or limited liability company is eligible to participate in the Ohio housing finance agency's housing tax credit program.

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