



May 1, 2018

VHDA Multifamily Loan Program Updates

VHDA Program Changes - Construction Loan Documents

VHDA is pleased to announce the following Rental Housing program changes related to its construction loan documentation. These changes are for loan Commitments and construction documents issued after May 1, 2018.

1. Completion Assurance Letters of Credit

Current Rule: VHDA requires assurance of completion of construction of the Development by the General Contractor in the form of a Completion Assurance Agreement and an unconditional, irrevocable letter of credit in an amount equal to ten percent (10%) of the Total Contract Sum. If VHDA will be asked to disburse for materials and equipment not incorporated in the Work, but delivered to and suitably stored at the site, the letter of credit amount increases to fifteen percent (15%). Payment and performance bonds are not accepted in lieu of a letter of credit.

Program Revisions: The amount of the required completion assurance letter of credit is being reduced to seven and one half percent (7.5%) of the Total Contract Sum. The amount of the completion assurance letter of credit required to be posted if VHDA will disburse for on-site stored materials will now be twelve and one half percent (12.5%). However, the current rule prohibiting the use of payment and performance bonds in lieu of letters of credit remains unchanged.

Explanation of Change: VHDA has found that the letters of credit are a valuable tool to ensure that the Developments are completed in a timely manner and in accordance with the contract documents. The letters of credit also provide a needed source of funds when there is a default under the contract documents. The letters of credit can be drawn on sight and are generally paid within 24 hours of presentment. The Payment and Performance bonds were not viewed as adequate substitutes, largely because of the likelihood of bringing suit to enforce. However, VHDA is sensitive to the impact that posting letters of credit can have on working capital. As a result, the amount of the completion assurance letter of credit is being reduced.

Please note that the requirement that a latent defect letter of credit be held for one year after Final Closing is unchanged and remains at two and one half percent (2.5%).

2. Retainage

Current Rule: In calculating the amount of a construction draw, the VHDA Construction Contract provides for a holdback (retainage) of ten percent (10%) of the value of the applicable Work being funded. The retainage held by VHDA is reduced to five percent (5%) at such time as VHDA determines that construction of the Development is ninety percent (90%) or more complete. The balance of the retainage is released at Final Closing.

Program Revisions: The ten percent (10%) retainage will be withheld on draws until VHDA determines that construction of the Development is fifty percent (50%) or more

complete. The Contractor can then petition VHDA to cease withholding additional retainage. All retainage is released at Final Closing.

Explanation of Change: The change is intended to benefit the General Contractor (and subcontractors) by increasing loan proceeds disbursed after 50% completion, while still providing VHDA with leverage to ensure the Development is completed in a timely manner and in accordance with the contract documents.

VHDA will update its Commitment and construction documents accordingly for Commitments and loan packages issued after May 1, 2018.

We hope that you find these changes helpful. Feel free to contact Dale Wittie or Bennett Atwill if you have any questions.

Dale Wittie: (804) 343-5876, dale.wittie@vhda.com

Bennett Atwill: (804) 343-5768, bennett.atwill@vhda.com

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