

**From:** Jeff\_Strole [[mailto:Jeff\\_Strole@aspensquare.com](mailto:Jeff_Strole@aspensquare.com)]

**Sent:** Wednesday, March 7, 2018 10:56 AM

**To:** Marisa Button <[Marisa.Button@floridahousing.org](mailto:Marisa.Button@floridahousing.org)>; Trey Price <[Trey.Price@floridahousing.org](mailto:Trey.Price@floridahousing.org)>

**Subject:** Public Comment "Bona Fide Contract"

Dear Mr. Price & Ms. Button – I am writing to provide a follow-up comment to the FHFC Rule Making session of late February. Specifically, Aspen Square Management is very concerned about the lack of definition of “bona fide contract” as it relates to properties potentially coming out of the compliance period. As it currently stands, there is no objective definition of “bona fide” and this leaves much room for debate and uncertainty. Aspen Square would advocate for a definition of bona fide that requires any such offer to be binding upon the offeror. In other words, an option to purchase a property, though submitted in the form of a purchase and sale agreement, should not be deemed bona fide.

To be deemed bona fide, an offer should be required to contain a non-refundable & substantial earnest money deposit. Typically in multifamily transactions, deposits range from a low of 2% of the purchase price in transactions exceeding \$20 million to 5%. These levels should be required by the FHFC. Further, the deposit should be non-refundable except in the event of seller default. In order to allow buyers comfort in posting a non-refundable deposit, I know Aspen Square and many of our colleagues in the multifamily community would be willing to enter into access agreements granting the potential purchaser time to investigate/perform due diligence on the property at issue prior to entering into a purchase and sale agreement and posting the non-refundable deposit. Failing to require a non-refundable deposit allows anyone, serious buyer or not, the opportunity to submit an offer, get the property out of the compliance period, and then walk away from the transaction without penalty. Thus, there is no way to ensure the potential buyer was a legitimate or bona fide buyer.

Thank you for the opportunity to be heard on this critical issue. Please do not hesitate to contact me should you have questions or wish to discuss.

Sincerely,

Jeff Strole

Aspen Square Management, Inc.

380 Union Street, Suite 300

West Springfield, MA 01089

413.439.6344