

Housing Options for Texas Communities

A Guide for Local Engagement on Affordable Housing Development



Wildflower Terrace in Austin, Texas

About Us

The Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”) is the state agency responsible for promoting and preserving homeownership, financing the development and ensuring the long-term stability of affordable rental housing, supporting community and energy assistance programs, and administering and overseeing colonia programs.

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the Learn about Fair Housing in Texas page.

WHY TDHCA HAS DEVELOPED THIS GUIDE

Texans are an engaged lot. They want to know what is going on in their communities and to have a voice, helping to ensure that their communities are strong and vibrant and that they are great places to live and work. The Texas Legislature has enacted laws to encourage local

government to engage with affordable housing developers and local constituents to ensure meaningful opportunities for input and dialogue, and it has created statutory elements which increase the value and importance of local input. Local government resolutions regarding proposed affordable housing developments are now a significant scoring item.

Whether you are new to affordable multifamily housing or you have participated in evaluating affordable multifamily housing development proposals in the past, the purpose of this guide is to help you understand your role, navigate the process of evaluating proposals, and learn how to provide useful information about the Housing Tax Credits (“HTCs”) Program to your constituents and obtain their input.

TDHCA has developed easy-to-understand and simple-to-use materials to help you through the process. We are also here to help you over the phone, via email, or online.

We cannot provide legal advice, so you must rely on your own attorneys for legal advice. You should also look to your staff to provide the information you need to make well-informed decisions.

YOUR ROLE

Because of amendments to the laws regarding the low income housing tax credits, local governments now have an important role in evaluating proposed developments, assessing community input, and making well-grounded decisions on resolutions regarding proposed affordable housing. It is tremendously valuable for you and your constituents to understand affordable housing, what it is and what it is not.

In This Guide

About Us.....	2	How the HTC Application Process Works.....	5
Why TDHCA has Developed this Guide.....	2	Local Government Resolutions.....	6
Your Role.....	1	Unique Features of the HTC Program.....	6
HTC-Assisted Housing Characteristics.....	2	Beneficiaries.....	7
About Housing Tax Credits.....	2	Fair Housing.....	7
Purpose.....	3	How Rents Are Determined.....	7
Background.....	3	Compliance.....	7
Program Administration.....	3	HTC Properties vs Market Rate Properties.....	8
Funding Source.....	3	Evaluating Needs and Supporting Developments.....	8
Set Asides and Regional Allocation.....	3	FAQ.....	12

HTC-ASSISTED HOUSING CHARACTERISTICS

The term “affordable housing” conjures up a lot of images, many stereotypical and not entirely positive. A major challenge is to understand what affordable housing has become – particularly affordable housing developed with HTCs.

HTC-assisted properties are:

- Designed to be real assets to their communities, incorporating high quality interior and exterior design, attractive landscaping, and amenities. Visually they compare very favorably with high quality market rate developments. HTC properties increasingly incorporate the mixed income approach, offer a mixture of rent restricted and market rate units, and compete successfully for market rate tenants.
- Subject to rigorous extended oversight by TDHCA, including regular onsite inspections to ensure that they are being well-maintained.
- Required to provide services that benefit tenants.
- Home to individuals and households who:
 - pay their rent and meet tenant screening criteria (including background checks).
 - live on fixed incomes, such as retirees, injured veterans, and persons receiving assistance for disabilities.
 - people who work hard to fill important jobs in our communities like teaching assistants, EMS and health care workers, and the many other types of workers that keep our vibrant economy strong and growing.

HTC-assisted properties are not:

- Dreary, high-density, or ill-maintained developments that convey an image of neglect and poverty.
- Buildings fallen into disrepair and deteriorating grounds

About Housing Tax Credits

Affordable housing development that will utilize housing tax credits typically begins with a private sector owner of real property that will have the required zoning and other features necessary to construct and operate a multifamily rental property. For most multifamily developers of market rate properties, any opportunity for public input is largely confined to zoning and permitting processes. Developers of HTC properties are required to engage with the communities where they plan to build, so that neighbors and local governments have an opportunity to participate in planning.

The Housing Tax Credit (“HTC”) program was created by Congress in 1986 and is the largest funding source for affordable housing in the United States today. Unlike traditional Section 8 and Public Housing programs, the HTC Program provides private market developers and equity providers with an incentive to invest in affordable rental housing. When tax credits are awarded by TDHCA to a developer, the developer sells the credits to an equity provider in exchange for capital to build a high quality rental housing development. This capital and the reduction in borrowed debt allow developers to offer high quality rental housing at affordable, restricted rents. Investors in the tax credit program benefit by receiving dollar-for-dollar credit against their Federal tax liability each year over a period of 10 years in exchange for their investment and communities benefit from quality developments that will operate as rent-restricted housing for up to 30 years or more.

TDHCA receives applications for credit awards for two types of tax credit developments:

- 4% HTCs, which pay for about 30% of a development and require additional financing partners; and
- 9% HTCs, which pay for about 70% of a development and are highly competitive based on their value to developers and equity providers.



Tuscany Park at Buda in Buda, Texas.



Oak Creek Townhomes in Marble Falls, Texas.



Spring Terrace Apartments in Austin, Texas.

PURPOSE

The HTC Program is designed to:

- Provide a source of equity financing for the development of affordable housing;
- Maximize the number of affordable units added to the state’s housing supply;
- Ensure that the state’s affordable housing supply is well maintained and operated;
- Serve as a credit to the communities in which affordable housing is constructed and operated; and
- Prevent losses in the state’s supply of affordable housing.

BACKGROUND

The HTC Program was created during the Reagan Administration through the Tax Reform Act of 1986.

- Section 42 of the Internal Revenue Code, as amended (“the Code”), is the federal law that governs the HTC Program.
- Section 42 authorizes 9% HTCs in the amount of \$2.35 per capita for each state as adjusted for inflation.
- There is no limit on the amount of 4% HTCs the state may allocate.
- TDHCA is the only entity in the state of Texas with the authority to allocate HTCs under the HTC Program.

PROGRAM ADMINISTRATION

Pursuant to Section 42 of the Code, the Department must develop a plan for the selection of eligible developments; this plan is known as the Qualified Allocation Plan and Rules (“QAP”).

- The QAP defines a series of point-based selection criteria for the 9% HTC Program to ensure that the housing proposed in the applications is consistent with the program’s and state’s goals.

- The QAP is revised annually and is formalized and added to the *Texas Register* once signed by the Governor.
- The QAP’s revision process includes the hosting of roundtables to solicit feedback, a public comment period, and Board review and approval.
- The Uniform Multifamily Rules include eligibility and threshold criteria for all TDHCA developments.

FUNDING SOURCE

The HTC Program is authorized by the U.S. Treasury Department and is overseen by the Internal Revenue Service.

SET ASIDES AND REGIONAL ALLOCATION

HTCs are allocated in accordance with Section 2306.111 of the Texas Government Code, which requires that credits be allocated with certain percentages set aside for specific types of developments, and the balance distributed across the 13 regional state service regions, which are further divided into Rural and Urban areas that are able to receive a pre-determined amount of tax credits each year.

Set Asides

The Department sets aside the following credit allocations each year:

- 15% for affordable housing developments with expiring rental subsidies or contracts.
 - The Department calls these developments “At Risk” and prioritizes their preservation.
 - One third of this set aside is prioritized for U.S. Department of Agriculture (“USDA”) developments proposing rehabilitation.
- 10% for qualified nonprofit organizations
- 20% for development in rural areas, which may be layered with the other set asides



Retama Village in McAllen, Texas.



Sunflower Estates in La Feria, Texas.



Arbor Cove in Donna, Texas.

HOW THE HTC APPLICATION PROCESS WORKS

The HTC application process is governed by Code, the QAP, and the TDHCA rules.

Developers begin the application process between January and March of each year, as set out in the QAP, for the 9% (Competitive) HTC Program and may apply at any time to take part in the 4% (Non-Competitive) HTC Program.

Whether submitting a 4% or 9% application, developers are required to notify the following persons or entities of their application for credits:

- Neighborhood Organizations on record with the state or county whose boundaries include the proposed development site;
- The Superintendent and presiding officer of the board of trustees of the school district in which the development site is located;
- The Mayor of the municipality (if the development site is within a municipality or its extraterritorial jurisdiction);
- All elected members of the governing body of the municipality (if the development site is within a municipality or its extraterritorial jurisdiction);
- The presiding officer and all elected members of the governing body of the county in which the development site is located; and
- The State Senator and State Representative of the districts whose boundaries include the proposed development site.

The receipt of notifications by local officials often increases interest about the development process and represents an opportunity to engage the community on the topic of affordable housing.

Summarized 9% HTC Calendar

Below is a sample summarized calendar of the HTC application deadlines for the competitive 9% HTC application cycle. Specific required submission dates for each year will be listed in the QAP, along with all scoring incentives and point values.

<u>Month</u>	<u>Activity</u>
January	Pre-Application acceptance period
Early March	Full application period
Mid-May	Final application scores issued
Mid-June	Deadline for public comment to be included in a summary to the Board at a posted meeting.
Late June	Release of eligible applications for consideration for award in July
July	Final 9% HTC awards are made
Mid-August	HTC commitments are issued



Amber Stone in Beeville, Texas.



Corban Townhomes in Corpus Christi, Texas.



The Heights at Corral in Kingsville, Texas.

LOCAL GOVERNMENT RESOLUTIONS

The top scoring criteria for 9% low income housing tax credits are laid out in statute, and local government resolutions are significant scoring items.

To help support goals of the local community and encourage engagement in the development process, and in accordance with state law, TDHCA awards a large number of points to 9% applications which are able to acquire a resolution voted on and adopted by governing bodies of a municipality or county. Highest points are awarded for resolutions in support of a development and second highest points are awarded for resolutions stating no objection to the development. Applications received under the non-competitive 4% program must also receive resolutions showing “no objection” to the proposed development to demonstrate alignment with local community goals and support. During the time applications are being prepared for submission, local governments will be approached by developers seeking these resolutions and, in many cases, local funding or fee waivers to ensure a competitive application score.

Municipalities and counties should consult their own staff and legal counsel regarding whether reasons for any unsupportive action regarding such resolutions are consistent with Fair Housing laws, goals identified in the community’s current Analysis of Impediments to Fair Housing Choice or any current plans such as one year action plans or five year consolidated plans for U.S. Department of Housing and Urban Development (“HUD”) block grant funds, such as HOME or Community Development Block Grant (“CDBG”) funds. TDHCA produces a variety of tools for use in discussing affordable housing development with your constituents. These tools include videos, brochures, and links to relevant external sites and information. To access these tools or find more information about how to engage the public on this important topic, please visit the TDHCA website at

<http://www.tdhca.state.tx.us/multifamily/communities.htm> or call us toll free at 800-525-0657 or 512-475-3800 and ask to speak with the Director of Multifamily Finance or the Housing Tax Credit Administrator.

UNIQUE FEATURES OF THE HTC PROGRAM

In addition to the fact that the HTC Program represents a unique public, private partnership that builds affordable housing without a direct government subsidy, the program also cultivates good design and quality construction through its competitive scoring process.

Application Incentives

In addition to community and local government support, the HTC application process incentivizes the following:

- Local funding partnerships;
- Green and LEED certified building;
- Construction by responsible and experienced Developers;
- Energy efficient buildings and appliances;
- High opportunity development site selection;
- Tenant services such as after school and daycare programs, community health programs, and financial planning courses;
- Community revitalization planning;
- Financial feasibility;
- Leveraged funds;
- Proximity to community assets;
- High quality amenities such as swimming pools, sports courts, playgrounds, and computer centers; and
- Quality interior and exterior unit features such as covered entries and balconies, high speed Internet service, nine foot ceilings, walk in closets, 30 year shingle or metal roofing, garages, and masonry exteriors.

Not all properties will have all of these features, but awarding applications on the basis of a point scoring program means that developers have to consider how to make their applications as competitive as possible and work within the state’s goals to maximize credit allocations, build quality construction developments that will serve the community for a long time, and make housing available for all Texans.

Long Term Use Restrictions

After it is constructed, the HTC property will retain a Land Use Restriction Agreement (“LURA”) that will restrict its use as an affordable housing property.

- HTC rents are not based on a percentage of income like public housing authority or Section 8 properties; instead, properties receive an annual maximum rent they are allowed to charge based on HUD’s annual median income limits.
- Property units will be offered based on a set rent amount and tenants are accepted to the property based on meeting the property’s independent screening criteria and income limits.
- All properties are allowed to screen for credit and criminal history.

- Most properties will house a high percentage of working families and individuals who can benefit from restricted rents in a growing Texas economy that is witnessing trends of increased costs of living and limited available housing in many areas.

BENEFICIARIES

- Tenants earning up to 60% of the area median family income (“AMFI”) for the area for their household size and who meet the screening and eligibility restrictions of the property may qualify for a reduced rent unit.
- Typical tenants include: school teachers; police officers; firefighters; mechanics; single parents who are balancing career and family while attending night school; city employees; sales clerks; and retirees.
- Some units may be available for lower income tenants, like households that receive social security benefits

FAIR HOUSING

After the property is developed, the owner will affirmatively market the property in the surrounding community. They will use tenant selection criteria that complies with all fair housing laws, and will provide notices to all tenants regarding their rights.

HOW RENTS ARE DETERMINED

- HTC property tenants must pay their rents in full. Thus, the tenants are most likely working Texans or retirees seeking an affordable place to live.
 - HTC properties are also required by law to accept tenants and households with federal rental vouchers.
- The rent limits for HTC units are based on household income level and the number of bedrooms in the unit.
 - These rent and income limits are generated by the U.S. Department of Housing and Urban Development (“HUD”) each year.
 - The Maximum Income and Rent Limits are available under the Featured Items drop menu on TDHCA’s home page at www.tdhca.state.tx.us.
- While rental rates are restricted, they are not subsidized by the HTC Program.

COMPLIANCE

- TDHCA monitors and physically inspects all properties which have received HTCs and/or multifamily funds from any TDHCA program.
- The Department follows very specific requirements for monitoring, inspecting, and reporting.
- The Department monitors properties on a routine schedule depending on their funding source.
- All properties are inspected within their first year. Properties that receive HTCs are generally monitored on site once every three years; additional inspections may be done as a result of complaints or to rectify serious compliance violations.
- In Texas, property owners who don’t follow their proposed plans for development during the building process, who let their properties fall into disrepair, or who do not follow the program rules may be subject to enforcement designed to encourage compliance. If not promptly addressed, failure to comply with requirements may lead to other more serious actions such as the assessment of administrative penalties or, in some instances, debarment from TDHCA’s programs.
- Housing tax credit benefits are lost if a development fails to meet state and federal standards every year for each of the 15 years of the compliance period. Properties are then monitored for an additional 15 years to maintain affordability.

HTC PROPERTIES VS MARKET RATE PROPERTIES

- Properties that receive HTCs must compete with nearby market rate developments for tenants.
- Like market rate properties, HTC properties are generally safe, secure, and well maintained.
- HTC properties often have amenities that are similar to or more attractive than market rate apartment complexes.



Amberwood Place in Longview, Texas.



Pinnacle at North Chase in Tyler, Texas.



Silver Spring at Forney in Forney, Texas.

Evaluating Needs and Supporting Developments

Learning how the state evaluates community needs and reviews development applications may help you decide how to discuss new developments with your community and assess whether to give your support to a development. TDHCA reviews many applications and its review will include evaluating the following factors:

- 1) Is the application proposing a development in an area that needs more affordable housing and is the development economically feasible?
- 2) Is the developer proposing the housing an experienced developer who can provide a quality product?
- 3) Does the application include support from the local community and State Representative?

1: NEED ASSESSMENT AND FEASIBILITY

Needs and feasibility assessments will help to determine whether or not the proposed property has the potential to be a successful affordable multifamily housing application and if the site is feasible for such a development.

Suggested Needs and Feasibility Checklist

- Is there a need for additional affordable housing in the area? How many rent burdened households at or below 60% of Area Median Family Income (“AMFI”) are in need of affordable housing?
- Will the market support a demand for this development? What is your community already doing and what are your neighbors doing? What will your community look like in two years, five years, 10 years based on current growth projections?
- Is the site zoned for this type of housing and, if not, will it be able to obtain that zoning? Do your zoning laws still reflect your community’s priorities? Are your laws consistent with other growth plans and needs assessments?
- Are there adequate local services and utilities available to support this development?
- Is this affordable multifamily housing proposal for a single development or will it be part of a larger economic development plan or project that assists the community in meeting planned goals?
- Will the affordable multifamily housing property serve special populations who, without this housing, will have less options for suitable housing in the community?

Tools that may help your community in assessing housing needs locally could include:

- Reviewing the market study completed for each HTC application;
- Conducting a local needs analysis for affordable housing in your community;
- Using a local needs analysis to identify housing needs and to set goals for the number and type of units the community should actively pursue;
- Drafting a robust housing component in your municipal or town plan;
- Creating a vision for development and ensuring other laws and plans reflect that vision;
- Participating in regional planning conversations to find out what neighboring areas are doing;
- Identifying important land parcels in your community and opportunities for housing development and redevelopment;
- Donating or selling municipal land for housing development;
- Creating a housing team or focus group that can provide continual feedback on housing development proposals and issues; and/or
- Helping to ensure the community is able to visualize future growth concerns and the effects of population density.



Pine Club Apartments in Beaumont, Texas.



Heritage Crossing in Santa Fe, Texas.



Magnolia Trails Senior Living in Magnolia, Texas.

2: DEVELOPER AND TEAM ASSESSMENT

Does the developer and the associated development team have the experience, knowledge, and financial capacity to provide your community with a quality housing development that it can depend on for years to come?

The success of HTC-supported affordable housing developments is greatly impacted by a developer's past experience and future vision. Local governments should ask developers to provide their past experiences and their goals for the development. Officials can also inquire about a developer's compliance status with the TDHCA. It is equally important to ask the developers about their team members, including any consultants, architects, builders, and investors. Developers should be able to provide histories of these team members. The following is a brief checklist offered for this aspect of the evaluation.

Suggested Developer and Team Assessment Checklist

- Is the developer asking for a competitive (9%) HTC award or a non-competitive (4%) HTC award?
- Has the developer done outreach with the community, assisted in educating people about the proposal, and solicited input?
- Does the developer have a track record in affordable housing? Are they in compliance with TDHCA's rules and expectations? Can they provide pictures of other developments they have constructed and explain how their development will meet the community's needs?
- Are there significant unanswered questions?
- Has the developer been listening to and responding to local input?

Tools that may help your community in assessing development teams could include:

- Asking the developer to attend community meetings where development needs will be discussed;
- Asking to see pictures from a developer's portfolio;
- Asking the developer to provide a development resume sharing the kinds of developments they have constructed previously (including styles, types, and services those developments offer);
- Hosting community forums where the public will be able to ask and answer development questions about affordable housing;
- Asking to see development site plans;
- Asking TDHCA to share the developer's compliance history;
- Asking a developer about their elected unit and common area amenities; and/or
- Considering ways the municipality might more easily attract quality developers (e.g. reductions in permitting costs, "on the record" reviews that reduce appeals costs, setting proactive meetings with developers who have demonstrated a positive development track records, or inviting developers to engage in conversations about how to remove obstacles to creating affordable housing in the community).



TownParc at Amarillo Apartments in Amarillo, Texas.



Mariposa Apartment Homes in Amarillo, Texas.



Tylor Grand in Abilene, Texas.

3: SOLICITING AND EVALUATING COMMUNITY FEEDBACK

Local governments — city councils and county commissioners' courts — have an important role in the affordable housing process. They serve as a focal point for public input that will affect which affordable multifamily housing applications will receive HTC awards and move forward. Public attitudes toward the development of affordable housing are wide-ranging and fervently held. Some communities embrace it and advocate for it, and others have concerns and questions.

You, as an elected official, will gather and incorporate community input into your decision-making about whether to support proposed developments. This will involve soliciting community feedback to ensure that any concerns or questions raised are answered prior to taking action on any requested resolution.

Suggested Community Feedback Checklist

- Have I or has the developer engaged in educating the public about affordable housing?
- Does my community understand the differences in affordable housing models?
- Has a housing needs assessment or market analysis been shared and discussed with the community?
- Does my local government receive federal funds (e.g., Community Development Block Grant) and have we adopted a plan to affirmatively further fair housing?
- Is this proposed development consistent with that plan?
- Are reasons given to decline support founded in ideas that may be inconsistent with Fair Housing law?
- Will my response to opposition help to counter NIMBYism (“Not In My Back Yard”) sentiments or support them and will increasing population density and community needs change how I will respond to this type of opposition?



Britain Way in Irving, Texas.



Residences at Eastland in Fort Worth, Texas.



Country Lane Seniors in Waxahachie, Texas.

Take the Affordable Multifamily Housing Quiz!

Today, thanks to the high standards set by the Texas Legislature and TDHCA, you can't tell the difference between a new affordable multifamily rental housing property and a market rate development.

Of the two photos below, which is the affordable multifamily property?



ANSWER:

*Both properties are affordable multifamily rental properties funded in part through TDHCA!
(L) Heritage Pointe in Austin. (R) South Acres Ranch in Houston.*

FAQ

Q: Why did this developer choose this particular site to build affordable housing?

A: First and foremost, affordable housing is real estate. Developers look to develop where they perceive there is a need. They look for property that has the characteristics that are appropriate to their particular development. They want to develop in a location where they will be a valued part of the community. Both the 9% and 4% HTC Programs are governed by rules (both the federal and state) that incentivize development of affordable housing in particular census tracts. Often communities want affordable housing in areas that may differ from the areas selected by applicants. This is generally a result of the scoring incentives TDHCA has created to ensure affordable housing is constructed in areas with concerted community revitalization or in areas that are rich in opportunities for prospective tenants and households. One point in scoring a 9% application can be the difference between a competitive and non-competitive application. Asking a developer to explain why they chose a particular site is a good way to begin understanding how your local community can best support housing development and identify appropriate sites.

Please visit this web site for more information about the HTC Program, including the Qualified Allocation Plan (“QAP”) (Title 10 Texas Administrative Code, Chapter 11) and the Uniform Multifamily Rules (Title 10 Texas Administrative Code, Chapter 10): [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

Q: What happens if we do not give a developer a resolution of support?

A: By law, 4% HTC transactions cannot move forward without a resolution or “no objection”. Nine percent (9%) HTC applications that do not obtain a resolution of local support will likely be at a competitive disadvantage. TDHCA provides template forms for resolutions and communities are encouraged to use them. By state law, resolutions are required to contain very specific statements and sometimes communities inadvertently omit required language or use language that doesn’t comply with specific legal requirements.

Q: If we choose to support this development, in what ways can we do so effectively?

A: While there are many ways to be supportive of an affordable housing development, there are three specific ways you can support an application. First, you can provide a resolution of “no objection” to a 4% HTC development or a resolution of support to a 9% HTC development. Second, you can facilitate meetings between the development team and the local community so they can obtain the support, input, approvals, and other items they need to move ahead. Third, you can support the development through a commitment of financial support, which can take many forms such as fee waivers, project-based vouchers, tax abatements, grants, or loans. Local governments should seek legal advice regarding the eligibility and structure of any financial incentive. Rules that govern these matters and related scoring criteria may be found in the QAP at 10 TAC §11.9(d)(2): [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=11&rl](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=11&rl)

For more information, contact us:



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Auxiliary aids and services are available upon request to individuals with disabilities.
 Relay Texas: 800-735-2989 (TTY/TDD) and 711 (Voice).

TDHCA is an Equal Housing Opportunity entity. All TDHCA programs are administered on a fair and equal basis regardless of race, color, national origin, religion, sex, disability, or familial status.

The TDHCA is not in the position to provide legal advice or counsel.
Local governmental bodies and officials should consult their own qualified legal counsel.