



# **Architect's Guide**

*April 2019*



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## Table of Contents

<b>Chapter 1 – Overview .....</b>	<b>1</b>
<b>Chapter 2 – Architecture Services .....</b>	<b>3</b>
2.01 Purpose.....	3
2.02 Requirements .....	3
<b>Chapter 3 – Architecture Compensation .....</b>	<b>5</b>
3.01 Purpose.....	5
3.02 Requirements .....	5
<b>Chapter 4 – Insurance Requirements .....</b>	<b>8</b>
<b>Chapter 5 – Owner-Architect Agreement .....</b>	<b>9</b>
5.01 Purpose.....	9
5.02 Requirements .....	9
<b>Chapter 6 – Overview of Architect’s Role .....</b>	<b>11</b>
<b>Chapter 7 – Formal Application.....</b>	<b>12</b>
7.01 Architect of Record’s Role with Required Submittals.....	12
7.02 Acceptance for Processing .....	13
<b>Chapter 8 – Project Launch Meeting .....</b>	<b>14</b>
8.01 Purpose.....	14
8.02 Architect of Record’s Role .....	14
<b>Chapter 9 – Determining Feasibility .....</b>	<b>16</b>
9.01 Purpose.....	16
9.02 Architect of Record’s Role .....	16
<b>Chapter 10 – Loan Commitment.....</b>	<b>19</b>
10.01 Purpose.....	19
10.02 Architect of Record’s Role .....	19
10.03 Contract Document Submittals.....	19
<b>SD = Schematic Design &amp; CD = Contract Documents.....</b>	<b>20</b>
<b>Chapter 11 – Loan Closing.....</b>	<b>21</b>
11.01 Purpose.....	21
11.02 Architect of Record’s Role Leading up to Loan Closing .....	21
<b>Chapter 12 – Construction Phase .....</b>	<b>23</b>
12.01 Purpose.....	23
12.02 Architect of Record’s Role .....	23
<b>Chapter 13 – End of Construction.....</b>	<b>25</b>
13.01 Purpose.....	25
13.02 Architect of Record’s Role .....	25
<b>Chapter 14 – Warranty Period.....</b>	<b>27</b>
14.01 Purpose.....	27

14.02	<i>Architect of Record's Role</i> .....	27
<b>Chapter 15 – Fair Housing Policy</b> .....		<b>28</b>
<b>Chapter 16 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting</b> .....		<b>29</b>
16.01	<i>Fraud</i> .....	29
16.02	<i>Misuse of Funds</i> .....	29
16.03	<i>Conflict of Interest</i> .....	29
16.04	<i>Suspension</i> .....	30
16.05	<i>Disclosure and Reporting</i> .....	30

**NOTE:** Many of the Minnesota Housing forms referenced in this document are in the list of [Post Selection Materials for Owners and Developers](#) and can be found on Minnesota Housing’s website at [www.mnhousing.gov](http://www.mnhousing.gov).

## Chapter 1 – Overview

Site improvements receiving Minnesota Housing Finance Agency (Minnesota Housing) funding often require architecture services. The Architect’s Guide provides assistance to architects and Owners in understanding when architecture services are required and outlines the role architects have in the Minnesota Housing development process.

### Definitions:

- **Architect of Record:** The professional entity contracted with the Owner/applicant/developer/borrower to provide architecture services. It is also the entity responsible for signing (sealing) documents per Minnesota State Statutes.
- **Qualified Rehab Specialist:** Is a non-licensed professional (or entity) with at least five years of experience providing physical needs assessments and preparing project work scopes for multifamily housing rehab projects.
- **Owner:** Also referred to as applicant/developer/borrower and is considered to be the same entity for the purpose of reference in this guide. The Owner represents the party with whom the Architect of Record enters a contract.

The Minnesota Housing development process generally follows that adopted by the American Institute of Architects (AIA) set forth in the *AIA Architect’s Handbook of Professional Practice*. The development process consists of the following phases:

1. Formal Application
2. Selection
3. Project Launch Meeting
4. Determining Feasibility
5. Loan Commitment
6. Loan Closing
7. Construction Phase
8. End of Construction
9. Warranty Period

Factors that may have an impact on the development process include:

1. Minnesota Housing construction loan vs. end loan
2. Minnesota Housing acting as non-lead lender vs. lead-lender

In addition, this guide contains information regarding compensation for professional services and describes requirements associated with architecture services, professional liability insurance and the Owner-Architect Agreement.

If architecture services are required to complete proposed site improvements, the Architect of Record and Owner must become familiar with all of the information contained and/or referenced in this guide

prior to submitting a formal request for funding application or executing an Owner-Architect Agreement.

Any submittals sent or delivered to Minnesota Housing must be accompanied with a transmittal letter indicating name of development, date, enclosed materials and action requested. All submittals must be sent to the attention of the Minnesota Housing’s housing development officer (HDO) and/or processing agent assigned to the development.

## Chapter 2 – Architecture Services

Identifying architecture services essential to the success of the project should be an early task in the development process. Most projects will require a set of basic services typically provided by architects. These include preliminary design (concept/schematic design), design development, preparation of construction contract documents, assistance in the bidding or negotiation process, construction phase administration of the agreement between the Owner and contractor, and post construction evaluation. Basic services are mortgageable expenses.

### 2.01 Purpose

The purpose is to capture and convey the complex expectations, relationships, responsibilities and rules that tie together the parties when designing and constructing.

### 2.02 Requirements

1. Minnesota Housing requires the Owner to hire an architect and/or professional engineer to provide professional services if any of the following conditions apply:
  - a. Required by Minnesota statutes
  - b. New construction
  - c. Rehabilitation where the scope of work involves any of the following, unless otherwise waived by Minnesota Housing:
    - i. Changes to load-bearing walls
    - ii. Conversions (change of use/occupancy)
    - iii. Reconfigurations
    - iv. Adaptive reuse of vacant buildings
    - v. Siding replacement (>7 dwelling units)
    - vi. Roof replacement (>10,000 sq. ft. of roofing area)
    - vii. Determined necessary by Minnesota Housing
2. If architecture services are required, they must include basic services as listed above. If additional design consultants (civil, structural, mechanical, electrical, or where appropriate, a landscape architect) are needed to perform architecture services in order to complete the project, these consultants must act as sub-consultants to the Architect of Record. The Architect of Record must be responsible to the developer for all of their professional services.
3. All professional services listed above must be performed by professionals registered in Minnesota in their respective fields, and they must be independent of the Owner and contractor(s) engaged in the development unless rehabilitation is limited to simply replacing worn components/equipment with similar new components/equipment. No design-build unless prior approval by Minnesota Housing.
4. If the Owner desires additional services beyond the basic services, the Owner must consult with Minnesota Housing to determine whether or not they will be considered as mortgageable expenses.

5. If an architect and/or professional engineer is/are not required per item one listed above, the services of a Qualified Rehab Specialist may be required to perform the duties noted in this Architect’s Guide.
6. If there is an identity of interest between Owner and architect and/or general contractor and architect, Minnesota Housing will require the Owner to commission a third-party architect to observe construction administration. The third-party architect must attend regular draw meetings, review change orders (not sign) for cost reasonableness, attend all punch list inspections and ensure all deficiencies are noted on the punch list.



## Chapter 3 – Architecture Compensation

At time of funding selection, Minnesota Housing must determine if proposed architectural/engineering services and fees are reasonable for the proposed project scope and whether or not they are comparable to similar developments. To determine if proposed fees are reasonable, Minnesota Housing has developed a compensation schedule (Table 3.02 A&E Percentage Rate Fee Schedule) for new construction projects applicable to townhouses and/or apartment buildings (with three or fewer stories, without underground parking, and with limited common space) used for general occupancy rental housing.

Minnesota Housing realizes the importance of architects receiving adequate compensation for professional services. In addition, Minnesota Housing realizes not every project is the same and that there are often projects types that are inherently complicated and characterized by uncertainties. Therefore, the compensation schedule **is not** intended to be used for projects involving buildings more than three stories, rehabilitation, adaptive reuse, conversions or projects with a mix of building types and/or building with multiple uses. Architectural fees for these types of projects **must be negotiated between the Architect of Record and the Owner** and then approved by Minnesota Housing prior to executing the Owner-Architect Agreement.

### 3.01 Purpose

The purpose is to provide reasonable compensation to architects performing professional services so they have the means to deliver the appropriate level of service.

### 3.02 Requirements

1. The architecture compensation must be a stipulated sum (fixed fee). All reference to the percentage rate is for the purpose of establishing the fixed amount.
2. To determine total architecture and engineering (A&E) fee reasonableness based upon construction costs, the following (Table 3.02) Total A&E Percentage Rate Fee Schedule must apply to **new construction projects** as described above:

**Table 3.02: Total A&E Percentage Rate Fee Schedule (for projects meeting the definition above)**

Construction Cost	Maximum Total % Fee	Design %	Const. Admin %
\$300,000	8.700	6.175	2.525
\$500,000	8.000	6.000	2.000
\$1,000,000	6.700	5.025	1.675
\$2,000,000	6.000	4.500	1.500
\$3,000,000	5.300	3.975	1.325
\$4,000,000	4.700	3.525	1.175
\$5,000,000	4.300	3.225	1.075
\$6,000,000	3.900	2.925	0.975
\$7,000,000	3.600	2.700	0.900
\$8,000,000	3.300	2.475	0.825
\$9,000,000	3.100	2.325	0.775
\$10,000,000	2.900	2.175	0.725

>= \$12,000,000	2.800	2.100	0.700
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3. Total A&E Percentage Rate Fee Schedule:

- a. Design phase must include all pre-development services, schematic design, design development, contract documents (plans and specs), and bidding/negotiation. The design phase must be no more than 75 percent of the total A&E fee.
  - b. Construction administration phase must include construction administration and construction close-out. The construction administration phase must be at least 25 percent of the total A&E fee.
  - c. Maximum allowances for design and construction administration are calculated on a gross construction cost. Gross construction cost **does not** include bond fees, permit fees or construction contingency.
  - d. Fee calculation **does not** include reasonable allowances for reimbursable expenses like bid documents reproduction or travel.
  - e. Total A&E fee calculation includes all phases, all Architect of Record services, and all consultants such as design architect, civil engineering, landscape architect, structural engineering, mechanical/plumbing engineering and electrical engineering.
  - f. The cost of third party energy modeling and energy raters must not be included in this basic architect’s fee. Additional consultant fees for energy modeling/raters must be itemized separately if included in the Owner-Architect Agreement.
  - g. If the construction cost is between construction cost thresholds, the cost should be rounded up or down accordingly to determine fee percentage.
    - i. Example, if the construction cost is \$8,499,000, the fee percentage would 3.3% (based upon an \$8,000,000 construction cost).
    - ii. Example, if the construction cost is \$8,500,000, the fee percentage would be 3.1% (based upon a \$9,000,000 construction cost).
  - h. The **actual fee percentage must be negotiated** between the Owner and Architect of Record and is subject to approval by Minnesota Housing.
    - i. The fee allowance for the design phase (maximum 75 percent) is normally available at time of loan closing upon completion and Minnesota Housing approval of final contract documents. Any budgeted reimbursable expenses incurred to date may also be drawn down at this time.
    - j. The fee allowance for construction administration (no less than 25 percent) is provided in monthly payments at a rate equal to completion of the work plus any budgeted reimbursable expenses incurred to date. Architect and engineering fees must be submitted during the regular monthly construction pay draw schedule. Final payment for architect and engineering fees will be withheld until final payment to the contractor or satisfaction that the professional services are 100 percent complete.
4. Additional compensation after a Minnesota Housing approved executed Owner-Architect Agreement is not allowed without preapproval by Minnesota Housing. Additional compensation is not allowed due to construction cost escalation. Additional compensation may only be considered if the architect’s scope of work changes due to extra services, extra time, extra sub-consultant

fees, or other approved additional costs. If approved, additional fees must be included via an amendment to the agreement.

## Chapter 4 – Insurance Requirements

Please visit [Insurance Requirements](#) on Minnesota Housing’s website.

## Chapter 5 – Owner-Architect Agreement

Once the Owner, Architect of Record and Minnesota Housing agree upon the architecture services and associated fees to complete the entire project, an agreement is normally executed between the Owner and architect.

### 5.01 Purpose

The Owner-Architect Agreement must reflect the goals and needs of the Owner and Architect of Record. It identifies or describes initial information, responsibilities of the parties, terms and conditions, scope of services, special conditions and compensation.

### 5.02 Requirements

1. The Owner-Architect Agreement may be one of the following standard forms of agreement published by the American Institute of Architects (AIA):
  - a. AIA Document B101-2017 Owner-Architect Agreement.
  - b. AIA Document B102-2017 and B201-2017, Owner-Architect Agreement
  - c. AIA Document B103-2017, Owner-Architect Agreement
  - d. AIA Document B108-2009, Standard Form of Agreement Between Owner-Architect for a Federally Funded or Federally Insured Project
  - e. AIA Document B109-2010 Owner-Architect Agreement for a Multi-family Residential or Mixed Use Residential Project
  - f. Another industry standard form of agreement approved by Minnesota Housing
  - g. Regardless of which form of agreement is used, the following conditions must be met:
    - i. Compliance with Minnesota Housing’s Sustainable Housing Standards as identified in Chapter 8 of the Rental Housing Design/Construction Standards must be included in the Basic Services.
    - ii. Civil Engineering must be included as a consultant retained under the Architect’s Basic Services. The AIA Document A201- 2007 or 2017 General Conditions of the Contract for Construction must accompany the Owner-Architect Agreement. This may be done by reference. Any modifications or extension of the general conditions must be via supplementary conditions.
2. The Architect of Record must be required to provide basic services and maintain full responsibility for work performed by all professional design consultants, unless otherwise approved by Minnesota Housing. Refer to Architecture Services within this Architect’s Guide for additional requirements regarding architecture services.
3. The Owner-Architect Agreement must include all pre-development services and any other known professional services expected to be paid out of project proceeds.
4. The Owner-Architect Agreement must stipulate a basis for compensation and comply with Minnesota Housing architecture compensation requirements.

5. Any optional provisions that may be appropriate to adapt the standard agreement must be conducted through amendment and receive Minnesota Housing approval prior to executing.
6. Prior to executing the Owner-Architect Agreement, a draft copy of the agreement must be forwarded to Minnesota Housing for review and approval.
7. If the project is federally funded, the Owner-Architect Agreement may be subject [to Section 3 and Minority or Women Owned Business Compliance](#) (MBE/WBE).
8. If Minnesota Housing is the lead lender and loan proceeds will be used as a construction loan, the Architect of Record must familiarize him or herself with the Minnesota Housing Assignment of Architect’s Contract. This document must be executed at, or prior to, loan closing.

## Chapter 6 – Overview of Architect’s Role

The Architect’s Guide provides assistance to Owners and Architects of Record in understanding the Architect of Record’s role in the Minnesota Housing development process. In general, the development process follows that adopted by the American Institute of Architects (AIA) set forth in the *AIA Architect’s Handbook of Professional Practice* including the schematic design phase, design development phase, and construction phase. Each of these phases relates to a broader phase within the Minnesota Housing development process.

The Minnesota Housing development process is divided into the following stages (chapters):

1. Formal Application – Chapter 7
2. Project Launch Meeting – Chapter 8
3. Determining Feasibility – Chapter 9
4. Loan Commitment – Chapter 10
5. Loan Closing – Chapter 11
6. Construction Phase – Chapter 12
7. End of Construction – Chapter 13
8. Warranty Period – Chapter 14

**NOTE:** All architectural submissions listed for a particular processing stage must be received and approved by Minnesota Housing prior to proceeding to the next processing stage.

## Chapter 7 – Formal Application

Minnesota Housing’s Multifamily Division currently offers two processes for Owners to request funding: the Consolidated Request for Proposals (RFP) and year round funding. Refer to [Minnesota Housing’s website](#) for more information regarding applying for multifamily resources.

The Architect of Record (or Qualified Rehab Specialist) will likely assist the applicant in preparing materials necessary for formal application. The formal application provides information to evaluate proposals and determine if program funding resources are eligible for the proposed use.

### 7.01 Architect of Record’s Role with Required Submittals

The Architect of Record’s role during this stage generally consists of:

1. Conducting site visits and being familiar with any physical, cultural and/or regulatory factors that may impact intended improvements.
2. Providing the Owner with total fee requirements for performing all architecture services as needed to execute the project in accordance with this guide and Minnesota Housing’s *Rental Housing Design/Construction Standards*.
3. Providing the Owner with a preliminary estimate of costs for proposed improvements. This cost estimate can be contractor generated.
4. Completing the Qualifications of Architect form (Minnesota Housing form).
5. Completing Housing Tax Credit Design Standards/Review Process Certification, if applicable.
6. Assisting the Owner with completing Minnesota Housing Multifamily Application forms.
7. For rehabilitation projects, acquisition or an addition to an existing building, provide a Property Needs Assessment Template and 20-Year Capital Expenditure Template (PNA) or a Capital Needs Assessment (CNA). Refer to Chapter 3 of the *Rental Housing Design/Construction Standards*.
8. Assisting the Owner in completing Minnesota Housing’s Intended Methods Worksheet. Refer to the Minnesota Housing Sustainable Housing Standards for more information.
9. Providing a schematic design concept and/or preliminary work scope for rehabilitation projects, which complies with all applicable Minnesota Housing’s *Rental Housing Design/Construction Standards* and policies.
10. If new construction, the schematic design concept must be a “to scale” electronic PDF formatted drawing document of the following:
  - a. Site plan
  - b. Building plans
  - c. Typical dwelling unit plans
  - d. Building elevations
  - e. Building sections



## **7.02 Acceptance for Processing**

Once the development has been selected for processing, the applicant will be notified, and a project launch meeting will be scheduled.

## Chapter 8 – Project Launch Meeting

Based upon the Owner receiving notification of a Minnesota Housing funding award, the Minnesota housing development officer (HDO) or loan processor schedules a project launch meeting shortly after the development has been selected for funding. Members of the development team, including the architect, are normally required to be present. This meeting corresponds with the schematic design review phase.

Any new updated schematic design concept drawings must be submitted in advance of the project launch meeting.

### 8.01 Purpose

The purpose of the project launch meeting is to allow the development team to present its specific proposal to Minnesota Housing, exchange ideas, identify shared goals and allow Minnesota Housing staff to explain requirements and policies pertaining to the particular development. Topics of discussion will include: Minnesota Housing’s underwriting process, characteristics of the site, site control, zoning issues, alternative design concepts, improvement costs, maintenance and operating expenses, market concerns, unit mix, affirmative action, equal employment requirements, characteristics of the loan, characteristics and capacity of the development team, Minnesota Housing design review process, procurement of construction, any unique aspects and next steps.

### 8.02 Architect of Record’s Role

The Architect of Record’s role at this time generally consists of the following:

1. If rehabilitation, provide a current work scope with enough detail to communicate scale and scope of improvements.
2. If new construction, provide an up-to-date schematic design, and include the following. **NOTE:** It is desired that the proposed work scope and/or plans be submitted in electronic PDF format at least four days prior to any scheduled meeting.
  - a. Schematic site plans showing:
    - i. Property lines, dimensions and contours
    - ii. Existing trees and buildings on the site
    - iii. General location of proposed building(s)
    - iv. Vehicular access, circulation, and parking
    - v. Available utilities
    - vi. Unusual site characteristics
    - vii. Site amenity development
    - viii. Proposed site drainage
    - ix. Structures, roads, etc., on property and within 50-feet of property
  - b. Schematic building plans showing:
    - i. All residential and non-residential space at a minimum scale of 1/8”

- ii. Dwelling unit plans at scale of 1/4” showing inside dimensions of all rooms and furniture layout
  - iii. Sketch elevations or perspective showing massing and materials proposed
3. Provide an updated estimate of improvement costs. Maintaining costs must be a design objective.
4. Review this guide and Minnesota Housing’s *Contractor’s Guide* and *Rental Housing Design/Construction Standards*, and prepare to discuss items regarding:
  - a. Architecture services
  - b. Architect’s role in the development process
  - c. Architecture compensation
  - d. Professional liability insurance
  - e. Owner-Architect Agreement
  - f. Schematic Design review and associated Minnesota Housing design standards
  - g. Minnesota Housing mandated modifications vs. recommendations, suggestions and questions needing clarification
  - h. Development budget and preliminary cost estimate for proposed improvements
  - i. Specific site and/or zoning issues having an impact on design, construction and/or improvement costs
  - j. Developer’s anticipated schedule
  - k. Any additional analysis/assessment resulting from the Phase I or Phase II Environmental Assessment, geotechnical exploration, and energy audit, if applicable
  - l. Construction loan vs. end loan
  - m. Minnesota Housing *Assignment of Architect’s Contract* (required if construction loan)
  - n. Approach to procuring construction, which must include: contractor qualifications, contractor compensation, construction bidding and negotiation, contractor surety, contractor insurance, Owner-Contractor Agreement, contract compliance and Equal Employment Opportunity (EEO) Requirements, Section 3 (if applicable), Minority Business Enterprise and Women Business Enterprise (MBE/WBE), pulling the applicable Davis-Bacon wage decision (if applicable), Contractor’s Cost Certification (if HUD Risk-share or Identity of Interest), Minnesota Housing *Assignment of Construction Contract* and Minnesota Housing *Supplement to General Conditions of Agreement Between Owner and Contractor* (both typically required if construction loan)
  - o. Physical Needs Assessment, 20 Year Capital Expenditures, or Capital Needs Assessment (if required)

During the schematic design review phase, revisions and modifications may be necessary to arrive at the schematic design that meets the requirements and shared goals of Minnesota Housing and the development team. Additional working sessions involving the development team and Minnesota Housing Staff may be required.

## Chapter 9 – Determining Feasibility

Based on the approved schematic design documents and any authorized adjustments, the Architect of Record must prepare for approval design development documents. Design development documents must consist of drawings and other documents to fix and describe the size and character of the project as to architectural, civil, structural, mechanical, and electrical systems and such other elements as may be appropriate.

### 9.01 Purpose

The purpose is to determine if the development is viable and can move toward loan commitment.

### 9.02 Architect of Record’s Role

The Architect of Record’s role during the determining feasibility phase generally consists of:

1. If rehabilitation, refining work scope and incorporating any comments resulting from Minnesota Housing site inspection/review, if applicable.
2. If new construction, preparing design development documents that include the following information. **NOTE:** All design development plans must be a “to scale” electronic PDF formatted document and contain the following:
  - a. **Cover and Title Sheet** containing:
    - i. Name and location of proposed development
    - ii. Developer’s name and/or entity
    - iii. Architectural firm of record and all consultants
    - iv. Date of submission
    - v. Building code analysis
    - vi. Tabular schedule containing:
      1. Lot area in square feet and acres
        - a. Building coverage in square feet and percentage of total site
        - b. Drive and parking coverage in square feet and percentage of total site
        - c. Number of parking spaces (accessible and non-accessible)
      2. Gross building area
      3. Type of construction, number of stories, and height
      4. Number and net rentable area of all dwelling unit types
      5. Area of non-living unit spaces such as community rooms, support services, leasing office, common laundry, etc.
  - b. **Site Plan** containing:
    - i. Property lines and dimensions
    - ii. Existing contours

- iii. Existing utilities and their sizes
  - iv. Building setbacks and zoning ordinances
  - v. Conditions at adjacent streets, lakes, buildings and other significant features
  - vi. Easements, if any
  - vii. On-site drive-lanes, driveways, sidewalks and parking with total number of cars
  - viii. Service drives and trash pick-up lanes
  - ix. Outdoor areas to be developed such as terraces, tot lots, play areas, pools or activity areas
  - x. Outlines of proposed building(s) with dimensions, heights and location from property lines
  - xi. Landscaping, existing and proposed
  - xii. Site drainage
  - c. **Ground Floor Plan** – Scale: 1/8" = 1'-0"
  - d. **Typical Floor Plan** – Scale: 1/8" = 1'-0"
  - e. **Other Floor Plans** – Scale: 1/8" = 1'-0"
  - f. **Unit Plans** – Scale: 1/4" = 1'-0"
  - g. **Handicap Unit Plans** – Scale: 1/4" = 1'-0"
  - h. **Building Elevations** – Scale: 1/8" = 1'-0"
  - i. **Typical Wall Sections** – Scale: 3/4" = 1'-0"
  - j. **Furniture Layout and Floor Finish Transition Plan** – Scale: 1/16", 1/8", or 1/4"
  - k. **Outline Specifications** providing a general description of the work and major systems and materials choices for the project
3. Review the following information (normally provided by the Owner), if applicable, and incorporate any relevant information into design development documents:
    - a. Geotechnical Exploration Report
    - b. Environmental assessment(s)
    - c. Energy audit (If requested by Minnesota Housing)
    - d. Boundary and topographic survey
  4. Forward all design development documents to the housing development officer (HDO) or loan processor assigned to the development. The HDO will forward necessary documents to the appropriate staff architect assigned to the development.
  5. Advise the Owner and Minnesota Housing of any adjustments to the preliminary estimate of construction cost. Maintaining costs must be a design objective.
  6. Furnish to Minnesota Housing for review and approval the following items:
    - a. Draft copy of the Owner-Architect Agreement
    - b. Evidence of insurance
    - c. Executed copy of the approved Owner-Architect Agreement

Once Minnesota Housing completes its review of the design development documents, the Architect of Record will be contacted confirming any design review comments. This may be done either by phone, email or letter. All Minnesota Housing mandated modifications, recommendations and/or questions needing clarification must be formally addressed. Again, additional working sessions involving the development team and revisions and modifications may be necessary to arrive at a design/work scope that meets the requirements and mutual goals of Minnesota Housing and the development team.

Once formal approval of design development documents is made, the Architect of Record will be given authorization to proceed with preparation of contract documents.

## Chapter 10 – Loan Commitment

The Architect of Record, based upon approval of design development, completes the contract documents. Throughout the loan commitment phase, major features of the proposal will begin to be finalized, including architectural drawings and specifications. In addition, the construction process begins with bidding or negotiating contracts with those who will build the site improvements.

### 10.01 Purpose

The loan commitment establishes the legal requirements and other conditions for the loan closing.

### 10.02 Architect of Record’s Role

The Architect of Record’s role leading up to loan commitment is as follows:

1. Prepare for approval contract documents consisting of drawings and specifications setting forth in detail the requirements of the project. These documents must:
  - a. Conform to all governing codes and regulations and applicable Minnesota Housing *Rental Housing Design and Construction Standards*
  - b. Conform to contractual requirements and AIA *Architectural Handbook of Professional Practice*
  - c. Clearly fix the scope of work
  - d. Define and describe the materials to be used
  - e. Contain all necessary information for bidding and constructing the project, including the applicable wage decision, HUD 4010, Equal Employment Opportunity Policy Statement and Section 3 Guide and all attachments, if federally funded and applicable
2. Advise the development team of any adjustments to previous estimates of site improvement costs, if applicable.

### 10.03 Contract Document Submittals

1. All contract document submittals must include an electronic PDF formatted copy of plans and project manual.
2. Submit to Minnesota Housing a set of **50-60% complete** contract documents for review and approval. Emphasis during this review is placed primarily on details of building materials and how they are joined together, as well as mechanical and electrical systems.
3. Incorporate any revisions required as a result of Minnesota Housing’s 50-60% architectural review of contract documents, and provide a formal response, if applicable.
4. Assist the Owner in the preparation of the necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the Owner and contractor.
5. Submit to Minnesota Housing a set of **90% complete** contract documents for review and approval.
6. Finalize and distribute completed contract documents for bidding purposes.
7. Provide construction related services associated with bidding and/or negotiating contracts with those who will build the site improvements.

8. Provide an updated Intended Methods Worksheet.
9. For federally funded projects, complete and submit to Minnesota Housing *Section 3 and Women or Minority Owned Business Compliance (MBE/WBE)* requirements.
10. A cover and title sheet must be included with the 50%, 90%, and 100% set of contract documents and must contain:
  - a. Name and location of proposed development
  - b. Developer’s name and/or entity
  - c. Architectural firm of record and all consultants
  - d. Date of submission
  - e. Building code analysis
  - f. Tabular schedule containing:
    - i. Lot area in square feet and acres
      1. Building coverage in square feet and percentage of total site
      2. Drive and parking coverage in square feet and percentage of total site
      3. Number of parking spaces (accessible and non-accessible)
    - ii. Gross building area
    - iii. Type of construction, number of stories, and height
    - iv. Number and net rentable area of all dwelling unit types
    - v. Area of nonliving unit spaces such as community rooms, support services, leasing office, common laundry, etc.

**Table 10.03: Plan Review Submittals**

Include:	Plan Review Submittal Phases				
	Application	Intake/ SD	50% CD	90% CD	100% CD
Scope of work/budget	Yes	Yes			
Plans			Yes	Yes	Yes
Specifications			Preferred	Yes	Yes
Environmental Assessments & Geotechnical Reports			Preferred	Yes	Yes
Addenda					Yes
Current Intended Methods Worksheet	Yes		Preferred	Yes	Yes

SD = Schematic Design & CD = Contract Documents



## Chapter 11 – Loan Closing

The loan closing is the process by which loan documents and/or other legal documents are executed by the Owner, contractor, Minnesota Housing and possibly other lenders. The loan closing occurs before any loan proceeds are disbursed and typically before any work is started. It is based upon approval of loan documents, legal documents, 100% contract documents, and award of a construction contract to the single prime general contractor.

At the time of the loan closing, Minnesota Housing secures a favorable opinion of counsel for the borrower as to the requirements of the Minnesota Housing loan commitment and building loan agreement, and, upon recording of the loan documents, the title insurance policy insuring Minnesota Housing’s interest as mortgagee. In addition, all development financing must be in place prior to or concurrent with the loan closing.

If loan disbursement is needed during the construction phase (construction loan), the general partner(s) (owner), Owner’s attorney, general contractor, architect, surety representative, title insurance representative, and processing agent (if applicable), may attend the loan closing. Typically the Borrower and title insurance representative will be required to attend, as confirmed by the loan closer.

If loan disbursement is not needed until after construction is completed (end loan), the loan closing typically occurs after all site improvements are completed. The architect is normally not required to attend the end loan closing.

If Minnesota Housing is the lead lender, loan closing will normally take place at Minnesota Housing. Following loan closing, funds are disbursed in accordance with the Building Loan Agreement and Master Disbursement Agreement, which are executed at loan closing.

### 11.01 Purpose

The loan closing typically places funding needed for new construction and/or rehabilitation in effect so draw disbursements can be made during the construction phase or after construction is completed.

### 11.02 Architect of Record’s Role Leading up to Loan Closing

The Architect of Record’s role leading up to and at loan closing will vary depending on whether the loan is a construction loan or an end loan. The architect’s role leading up to loan closing typically is as follows:

1. Furnish to Minnesota Housing for review and approval the following items:
  - a. Provide one complete hard copy set of approved, signed and certified, 100% contract documents and project manual (specifications) with signed certification page, addenda and any other contract change materials (Contract Documents).
  - b. An electronic PDF formatted copy of the 100% set Contract Documents must be provided for electronic archiving, in addition to the hard copy.
  - c. An electronic PDF formatted copy of the Architect of Record’s opinion letter (Minnesota Housing form)
  - d. Architect’s invoices for payment (if applicable)

- e. Conformed sets of plans, (plans with addenda revisions incorporated) may only be used for loan closing and/or construction if they are added to the project through an architect supplemental instruction, change order or other approved contract change document.
2. Provide guidance to the Owner in preparing the construction agreement and conditions.
3. Provide project manual (specifications) and drawing index exhibits for enumeration into the construction agreement.
4. If construction loan:
  - a. Become familiar with Minnesota Housing’s *Assignment of Architects Contract* document
  - b. Approve and certify contractor’s application for payment, if applicable
5. If end loan:
  - a. Perform normal contract administration services
  - b. Upon completion of construction, provide required Minnesota Housing Construction Closeout Submittals per Chapter 13 of this guide:
6. For federally funded projects, complete and submit to Minnesota Housing *Section 3 and Minority or Women Owned Business Compliance* requirements.

The Architect of Record’s role at loan closing typically is as follows:

1. If construction loan:
  - a. Attend loan closing, if requested
  - b. Execute Minnesota Housing’s *Assignment of Architects Contract*
  - c. Initial the final contract documents, including plans and specifications, as requested by Minnesota Housing
  - d. Participate in a pre-construction meeting (typically held at time of loan closing) to discuss the construction draw schedule and procedures
2. If end loan, Architect of Record’s participation is normally not required

## Chapter 12 – Construction Phase

Once funding has been secured to pay for work as required by the contract documents, and a Notice to Proceed has been issued by the Owner, construction work may commence. During the construction phase, the Architect of Record is responsible for assisting in administering the agreement (construction contract) between the Owner and contractor.

If loan disbursement is needed during the construction phase (construction loan) or if loan disbursement is not needed until after construction is completed (end loan), it is essential that the project be constructed in accordance with the approved contract documents. The Architect of Record must remain in close communication with both the Owner and the contractor and strive to secure their faithful performance.

Minnesota Housing’s *Supplement to General Conditions of the Agreement between Owner and Contractor*, as executed by the Owner and contractor whenever Minnesota Housing is acting as the coordinating lender and loan disbursement entity, is needed during the construction phase and gives Minnesota Housing the right to enter the site and inspect the work. If at any time during the construction of the project Minnesota Housing determines the contractor has failed to perform the work in accordance with the contract documents, or if Minnesota Housing determines the contractor has failed to utilize materials in accordance with the contract documents, Minnesota Housing, without the approval of the Owner, may issue a “Correction Order” to the contractor for correction of such items.

If a construction loan, a brief pre-construction meeting is normally held during or immediately following the loan closing.

### 12.01 Purpose

The construction phase brings the bid documents and previous stages of Minnesota Housing’s development process to realization as site improvements are completed in accordance with the contract documents.

### 12.02 Architect of Record’s Role

The Architect of Record’s role during the construction phase generally consists of the following:

1. Attend the pre-construction meeting. The purpose of the pre-construction meeting is to establish procedures to be followed during the construction phase of the development. The Owner, Architect of Record, contractor, the Minnesota Housing staff architect and the Labor Standards Officer (if applicable) must attend. Topics normally discussed include:
  - a. Monthly draw meeting schedule
  - b. Construction draw procedure
  - c. Handling requests for changes to the work
  - d. Providing design of temporary project sign, if applicable

2. Attend bi-weekly, or at a minimum, monthly on-site construction meetings. The Architect of Record must prepare and distribute construction meeting minutes, or, if minutes are prepared by the general contractor, the architect must review and approve the minutes.
3. Process the contractor’s shop drawings, product data and samples.
4. Review the results of construction tests and inspections.
5. Attend monthly on-site pay draw meetings to evaluate and certify for payment the Contractor’s Application and Certificate for Payment (AIA Documents G702 and G703).
6. Respond to contractor’s requests for information (RFIs).
7. Interpret contract documents and facilitate changes in the work.
8. Prepare change orders. When significant design or material modifications occur that affect the construction cost, and/or when extension of the contract time is justified, the Architect of Record must prepare a change order (AIA document G701). All change orders must include a detailed material and labor quantity and cost itemization showing how adjustments to the contract sum were determined. Change orders must be approved by the Owner, contractor, architect and Minnesota Housing.
9. Address and resolve claims brought by the Owner or contractor.
10. Prepare and issue regular field reports.
11. Inspect work for substantial completion.
12. Perform any additional duties associated with providing full contract administration services as required by the Owner-Architect Agreement.
13. All work noted above must be included in the lump sum fee agreed to in the Owner-Architect Agreement and per Chapter 3 – Architecture Compensation of this guide.

Once the Architect of Record inspects the work and judges the work is substantially complete, the end of construction stage begins.

## Chapter 13 – End of Construction

Once the Architect of Record has determined the work is substantially complete, the Architect of Record prepares a Certificate of Substantial Completion (AIA document G704) for approval and acceptance of the contractor and the Owner. If there are items remaining to be completed or corrected, a comprehensive list (punch list) must be appended to this document. The Minnesota Housing staff architect will typically visit the site to inspect the work around this time as well.

Regardless if a loan is a construction loan or an end loan, it is important that all site improvements are constructed in accordance with the approved contract documents. The Architect of Record must not issue the final certificate for payment until he/she is satisfied the contractor has fulfilled all contractual obligations, including all punch list items and any correction orders issued by Minnesota Housing.

If portions of the work cannot be completed for some time after the work is determined substantially complete, and the project status cannot remain open, Minnesota Housing may approve disbursement of funds for uncompleted work (normally 1.5 times the estimated value) into an escrow account governed by terms of an agreed upon escrow agreement. Funds must be withheld until all work is complete and all terms of the escrow agreement are satisfied.

### 13.01 Purpose

Completion of the project is often referred to as “project close-out” and typically involves payment of the contractor and taking the project from the point of substantial completion to final completion.

### 13.02 Architect of Record’s Role

The Architect of Record’s role during the end of construction processing stage generally consists of the following:

1. Issue the Certificate of Substantial Completion after determining the work is substantially complete, and once a Certificate of Occupancy (if applicable) has been issued by the local municipality, the Architect of Record must also be responsible for the following:
  - a. Secure a comprehensive list (punch list) of items to be completed or corrected, and append it to the Certificate of Substantial Completion
  - b. Make an independent estimate of the costs of completing items on the punch list
  - c. Recommend adjustment of retainage as provided in the Owner-Contractor Agreement
2. Issue contractor’s final certificate for payment after making a final check to ascertain that:
  - a. The contract work has been completed
  - b. The contractor has executed compliance certification and documentation as per Minnesota Housing’s *Rental Housing Design/Construction Standards*, Chapter 8 – Sustainable Housing requirements
  - c. The Owner’s interests have been protected with respect to the filing of liens as required by the general conditions and applicable mechanics lien laws

- d. The accounts between the Owner and contractor have been adjusted, including original contract sum, additions and deductions as included in change orders and unit prices, cash allowances, and deduction for uncorrected work
  - e. Written warranties and guarantees, operation and maintenance manuals, certificates of inspection, and record documents have been delivered to the Owner by the contractor. Minnesota Housing requires evidence, via transmittal to the Owner, that the Architect of Record has reviewed and approved such items and has forwarded them to the Owner.
  - f. Contractor has provided the Owner with proper orientation and training of the building and its equipment
  - g. All other conditions of the contract have been met
3. Perform any other duties associated with administering the project close-out process as required by the Owner-Architect Agreement and other required submittals noted on Minnesota Housing’s Construction Close-out Checklist

The end of construction phase typically occurs once the Architect of Record issues the contractor’s final certificate for payment. At approximately eleven months following the date of substantial completion, a warranty inspection may be required involving the Architect of Record. Refer to the warranty period phase of the development process.

## **Chapter 14 – Warranty Period**

The warranty period includes the requirements associated with the AIA General Conditions of the Contract for Construction. The contractor is required to correct defective work within one year after the date of substantial completion, statutory warranties providing protection mechanisms against faulty workmanship and defective materials beyond the one-year correction period and any manufacturer warranties. The warranty period generally starts on the date of substantial completion for those portions of the work covered by the Certificate of Substantial Completion and remains in effect until all warranties expire.

### **14.01 Purpose**

The purpose is to ensure building elements perform at expected levels during the warranty period.

### **14.02 Architect of Record’s Role**

The Architect of Record’s role during the warranty period generally consists of the following:

1. Before the correction period expires and when retained by the Owner to do so, perform an “eleventh month” review to determine if there are any problems associated with performance of specified materials, systems and equipment. Secure any needed repairs or replacements as follows:
  - a. If any problem has resulted from failure in a material or system required by the construction documents, record observed problems and assist the Owner in preparing instructions to the contractor for correction of the noted defect or deficiency.
  - b. If any problem has resulted from improper operation or maintenance of equipment, observe and advise the Owner on proper operations and maintenance measures.
2. After the correction period expires and if retained by the Owner to do so, assist the Owner with assessing any ongoing defect. Determine if it were due to noncompliance with building standards as stated by statutory warranties.
3. Perform other duties associated with administering the project’s warranty period as required by the Owner-Architect Agreement.

## Chapter 15 – Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- discriminate in the selection/acceptance of applicants in the rental of housing units;
- discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- represent a dwelling is not available when it is in fact available;
- deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.



## **Chapter 16 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **16.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 16.05.

### **16.02 Misuse of Funds**

A loan or grant agreement is a legal contract between Minnesota Housing and the borrower or grantee. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 16.05.

### **16.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one’s judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party’s objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties

- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party’s responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party’s participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 16.05.

A contracting party should review its contract agreement and request for proposals (RFP) material, if applicable, for further requirements.

#### **16.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Refer to Minnesota Housing’s website for a list of [suspended individuals and organizations](#).

#### **16.05 Disclosure and Reporting**

Activities required to be reported under this chapter may be made in any of the following ways:

- Minnesota Housing’s Chief Risk Officer
- Any member of Minnesota Housing’s [Senior Leadership Team](#)
- The Minnesota Housing hotline reporting service vendor, EthicsPoint, by calling toll-free 866.886.1274 to speak with a live operator or by visiting the EthicsPoint reporting [webpage](#)