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To: Clients and Friends

From: David F. Dulock

Subject: Mortgage Credit Certificate Program:

In the November 28, 2008 issue of the *Texas Register* (Volume 33, Number 48), the Texas Department of Housing and Community Affairs published notice of its Mortgage Credit Certificate Program. For those clients who qualify and are interested in participating in this program, the Notice published in the *Texas Register* is reprinted below.

“Notice to Public and to All Interested Mortgage Lenders: Mortgage Credit Certificate Program

“The Texas Department of Housing and Community Affairs (the “Department”) intends to implement a Mortgage Credit Certificate Program (the “Program”) to assist eligible very low, low and moderate income first-time homebuyers purchase a residence located within the State of Texas.

“Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed \$2,000. In order to qualify to receive a credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

“The credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that credit certificates remain available under the Program. No credit certificates will be issued prior to ninety (90) days from the date of publication of this notice nor after the date that all of the credit certificate amount has been allocated to homebuyers and in no event later than the date permitted by federal tax law.

“In order to satisfy the eligibility requirements for a certificate under the Program, (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under

applicable provisions of the Internal Revenue Code); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Internal Revenue Code). Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. Pursuant to the Housing and Economic Recovery Act of 2008, areas declared by the President as disaster areas are not subject to the three-year requirement and are treated as targeted area residences for some purposes. To obtain additional information on the Program, including the boundaries of current targeted areas and federal disaster areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277.

“The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.”

The above program is similar to the Qualified Mortgage Credit Certificate Program implemented by the Texas State Affordable Housing Corporation, notice of which was published in the August 29, 2008 issue of the *Texas Register* (Volume 33, Number 35), and which was the subject of a September 3, 2008 memorandum issued to our clients.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult legal counsel regarding the application of the information discussed in this Memorandum to your specific case or circumstances.