

IS YOUR LANDLORD TELLING YOU TO LEAVE YOUR APARTMENT BECAUSE YOU'RE "OVER INCOME?"

WHAT YOU NEED TO KNOW ABOUT LOW INCOME HOUSING TAX CREDITS

What are Low Income Housing Tax Credits:

Low Income Housing Tax Credits (LIHTC) are federal tax credits to encourage the construction or upgrade of low cost apartments. Ninety percent of all new low income rental units built after 1990 were financed with LIHTC. Each state receives tax credits based on population. New York State runs its program through the New York State Housing and Community Renewal agency (HCR). The New York State Housing Finance Agency (HFA) has a "Qualified Allocation Plan" which sets forth the rules by which the tax credits are allocated. Recipients of LIHTC must enter into a regulatory agreement with the NYS HFA. The regulatory agreement has certain terms and conditions governing the premises including tenant rights and protections.

Determining if LIHTC applies to building:

Most LIHTC projects can be located on this website: <http://lihtc.huduser.org/>. However, some properties receive tax credits through their local Industrial Development Agencies (IDA). You can send a Freedom of Information Law form to the IDA for a listing of LIHTC projects funded by them.



Implications:

The Internal Revenue Service monitors landlords' compliance with the LIHTC laws, rules and regulations.

Under New York State regulations located at 20 NYCRR §2040.5(a) "the regulatory agreement shall be ready for public inspection at the rental office of the owner and credited in all marketing materials."

The landlord must keep the building as low-income housing for at least 30 years. During the first fifteen years of the regulatory agreement, the landlord must certify its compliance with rules and regulations every year to the agency that is supposed to watch the compliance of the Qualified Allocation Plan (Homes and Community Renewal in New York State). The last fifteen years is an extended use period and does not have the same rules to certify compliance.

The landlord must attach the needed Low-Income Housing Credit Regulatory Agreement Summary of Tenant Rights and Obligations to all LIHTC leases.

The rent to be charged to the tenant must be disclosed before the lease is signed.

Landlords must certify tenant's income every year by requesting a copy of the tenant's federal tax return, W-2 tax form, or a third party proof from the tenant's employer or a government agency.

Tenants' rights:

A landlord may not evict a tenant except for good cause and a landlord may not refuse to renew a lease except for good cause. (The landlord is treated as a "state actor" and so tenants are entitled to due process in any effort by the landlord to evict or not renew lease.)

A landlord may not try to get revenge against a tenant who notifies New York State Housing and Community Renewal of an alleged violation of the regulatory agreement.

The landlord may not refuse to rent to a Section 8 Housing Choice Voucher holder based upon their status as a voucher holder.

There is no federal restriction against renting to persons that are in the United States without the needed paperwork (although persons running the company may set up its own policy).

Rent Structure: Am I Being Overcharged?

The tenant's monthly housing costs, including an allowance for electric, gas and telephone, may not exceed the LIHTC rent limit. These limits are based on a percentage of area median income (AMI).

Maximum rents allowed: These vary depending on the number of people allowed to live there by landlord, either the so-called "20-50" arrangement or the "40-60" arrangement. Under the 20-50 arrangement, at least 20 percent of the building's units must be "rent restricted" and occupied by households with incomes at or below 50 percent of the area median income (AMI). Under the 40-60 arrangement, at least 40 percent of the building's units must be "rent restricted" and occupied by households with income at or below 60 percent of the AMI.

Utility allowance: Like the Section 8 Housing Choice Voucher rules, utility costs paid by the tenant are subtracted from the highest rent allowed.

Westchester County AMI, Income Limits, Rent limits, Utility Allowance Schedule are located in PDF form at <http://homes.westchestergov.com/images/stories/pdfs/incomesalesrentlimits.pdf>

For other geographic areas, see Novogradac Income and Rent Limits Calculator located at <http://www.novoco.com/products/rentincome.php>

Additional Resources:

Empire Justice Center website: Index to locating housing, appropriate regulations, guidebooks <http://www.empirejustice.org/housing-hud-pages/guidebooks-and-related.html>

IRS LIHTC Compliance guide – See Chapter 26 for rent restrictions and no evictions unless based upon good cause:

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Guide-for-Completing-Form-8823,-Low-Income-Housing-Credit-Agencies-Report-of-Noncompliance-or-Building-Disposition>

This brief resource is intended to highlight some helpful general information. This resource is not intended to detail all rights an individual may have and is not legal advice. You can only obtain legal advice from a lawyer. If you need further assistance, you should contact your local legal aid or legal services organization.