

Building No Longer Participating in the Low-Income Housing Program

When a building is no longer in compliance nor participating in the Low-Income Housing Credit Program, state agencies need to address two issues, as discussed below.

Extended Low-Income Housing Commitment

IRC §42(h)(6)(D) requires a property owner to commit to the low-income housing program for a minimum of 30 years. The commitment is documented as a restrictive covenant against the property and is recorded against the property as a deed restriction governed by state law. Commonly known as “extended use agreements”, these covenants are agreements *between the owner and state agency*. Consideration should be given to enforcing the agreement through a civil court proceeding. However, when a building or project is removed from the program, state agencies have discretionary authority to release the extended use agreement and remove the deed restriction.

Protection of Tenants Rights

Under IRC §42(h)(6)(E)(ii), there are two requirements that must be met when an extended use agreement is terminated:

1. No eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit before the close of the 3-year period following the termination of the extended use agreement, and
2. No increase in the gross rent of any unit occupied by an existing tenant before the close of the 3-year period following the termination of the extended use agreement, not otherwise permitted under IRC §42. In other words, units occupied by income-qualified tenants continue to be rent restricted for three years, or until the tenants vacate the units.