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Free Webinar: Tenants' Rights in the California Low-Income Housing Tax Credit (LIHTC) Program

Webinar Transcript
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Patti Prunhuber: Good morning. This is the webinar on Tenants Rights in the Low-Income Housing Tax Credit Program in California. We'll get started in just a minute or actually 30 seconds. Good morning and welcome to this morning's webinar on Tenants Rights in the Low-Income Housing Tax Credit Program in California. My name is Patti Prunhuber. I'm the Director of Housing Advocacy at Justice in Aging. The Low-Income Housing Tax Credit or LIHTC, is one of the primary sources of housing for low-income individuals and families, and many low-income seniors in California live in LIHTC properties. Yet many of the rules surrounding the financing of LIHTC properties who is eligible to live in it, how rent is calculated, accessibility for tenants with disabilities, eviction protections are not well known. Understanding these substantive rules and procedural rights governing LIHTC tenants is essential to advocating for their rights. And we will begin to unpack this complex area today assisted by two experts. I'd like to introduce Marcos Segura. He is a staff attorney at the National Housing Law Program who focuses on the LIHTC program both federally and in California.

And Lucie Hollingsworth, who is a senior attorney at Legal Aid of Marin, she has focused on housing and homelessness, working extensively with local LIHTC tenants in Marin County. Okay, here we go. A few housekeeping details. The materials from these trainings, the slides recording and written resource list on LIHTC will be available on the Justice in Aging website under resources, and also we will be providing links to those in the chat. We will be keeping all of the audio on mute. You can use the questions function, not chat, but the questions function for substantive questions and technical concerns. If you're having any problems getting on the webinar, you can send an email to trainings justiceinaging.org. You can also find the materials for this training and past trainings by searching our resource library. And the link is there. The recording of this webinar will be posted at the end of the presentation, and here is the video link. And finally, you can enable closed captioning by selecting CC on the toolbar from the Zoom control panel.

For those of you who don't know us, Justice in Aging is a national organization. We use the power of law to fight senior poverty by securing access to affordable healthcare, housing, economic security, and the courts for older adults with limited resources focusing on those who have been marginalized and excluded from justice. And Justice in Aging has a commitment to advancing equity in all of its programs and internally, to achieve Justice in Aging, we must advance equity for low-income older adults in economic security, healthcare, housing, and elder justice initiatives. We must address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.

And we are committed to recruiting, supporting, and retaining diverse staff and board. So, I wanted to begin with just a map showing all of the LIHTC properties in California. There are 388,000 LIHTC units, that's apartments or housing in California that are available providing below market and sometimes truly affordable housing to low-income individuals and families. This amount of property is so much greater than the number of federally subsidized or public housing units, and it is a primary source of affordable housing for low-income families and individuals. We are providing you links to the map showing the LIHTC properties in your area that's in your resource list that will be provided in the chat and on our Trainings' Resource page. And you can then hover on one of those dots and find out the information about a particular property. And with that, I'm going to turn this over to Marcos.

Marcos Segura: Thank you, Patti. As Patti mentioned, I'm a staff attorney with the National Housing Law Project and the majority of what I focus on is tenant's rights in the LIHTC program and preservation issues. And today we're going to sort of cover the basics and get into a little bit of tenant's rights, preservation issues is a topic for a whole separate session. But hopefully today we'll cover the basics and you have a pretty decent understanding of how the program works, its importance, and how do we advocate for those basic protections that currently don't exist in the program. So, just a quick overview. We're going to give an overview of the program that includes program structure and we'll go over sort of the convoluted sometimes confusing aspects of eligibility and rent rules. We're going to cover briefly eviction defense. We're going to talk about Good Cause and we're going to talk about a couple of common eviction situations, specifically over income situations and nonpayment of rent situations. And at that point, I'll turn it over to, Lucie was going to talk about LIHTC advocacy on the ground. Next slide please.

So, start off with a brief intro. The LIHTC program does not involve any type of direct government expenditure in contrast to other federal housing programs. Instead, the program offers significant tax benefits, mostly in the form of tax credits and other generally available real estate tax deductions as a way to incentivize private investment in affordable housing. As of 2018, the federal investment in the program is just under 11 billion per year, federal tax legislation that's anticipated this year, although I have my doubts of whether about whether anything's going to move forward, but if it does, the likelihood is that that particular piece of legislation is going to significantly expand the program. So, increased federal investment in the program is a likely scenario moving forward. The value of these credits along with reduced investment in other federal housing programs has made the tax credit program the primary vehicle for the construction and rehabilitation of affordable housing in the country.

Next slide please. So, again, the LIHTC program doesn't involve rental assistance or any other type of direct government expenditure. Instead, the US Treasury Department allocates tax credits to every single state based on population, states through their state housing agency then award those credits to developers and other housing providers through a competitive application process. Developers and housing providers then sell these credits in the open market to private investors, and the capital that is raised is used to either construct or rehab in existing affordable housing project. For those that are curious, the primary investors in the credit program are financial institutions with billions of dollars or hundreds of millions of dollars in tax liability. So, we're talking banks, insurance companies, those types of entities. So, in exchange for the credits and the financing that they produce, project units must be leased to income qualified individuals at restricted rent levels for a minimum of 30 years.

This period of affordability or restriction is known as the extended use period and the 30-year period is a federal minimum. Some states have a longer extended use period, for example, since the early or mid 2000, California has required a 51-year extended use period. Next slide please. So, it's important to know that even though projects must be or must remain in the program for at least 30 years, the credits are actually claimed over the course of the first 10 years and those credits are subject to recapture for an additional five years. And so this 15 year period is called the compliance period. So, once the credits are claimed and safe and recapture owners no longer have tax related incentives to ensure compliance or incentivize compliance, and this creates a risk of non-compliance. And we're starting to see this across the country. We're starting to see some owners fail to adhere to Good Cause protections and rent limitations, even though they're within their extended use, some fail to maintain the property in a habitable condition, which is another program requirement.

The treasury department, which administers the program at the federal level and state housing agencies still have an obligation to enforce program requirements, but they rarely do so. They rarely intercede. So, at this point, it's mostly up to the tenants to enforce program requirements either under the applicable regulatory agreement, which I'm going to talk about in a couple of slides. And that's assuming they have a right to sue under the agreement or potentially they can sue under general state or federal law. Next slide please.

This is just a graphic illustrating what I talked about in terms of the program structure. Again, treasury department allocates credits to state agencies or through the state agencies award those credits to developers and housing providers, developers and housing providers then sell those credits to financial institutions or investors. And the capital that is raised is used to finance at least part of the cost of construction or rehab of an affordable housing project. Next slide please.

So, the LIHTC program has a lot of issues and we'll cover some of them during this presentation, but I have to admit that it does a decent job of reaching some vulnerable populations. For example, 47% of LIHTC households are considered extremely low-income. Those are households with incomes at or below 30% of the area median income or AMI. 18% of LIHTC tenants are African American, 39% are Hispanic. 13% of LIHTC households report having at least one member with a disability. 32% of LIHTC households have children and approximately 40% of LIHTC households have at least one member 62 years of age or older. So, go back one Patti just so I can make a really sort of basic point, but I think it's an important point is that just because someone has housing under the program, it doesn't mean that their unit is truly affordable or completely accessible. So, I just want to make that point. And again, we're going to sort of refer to those issues and some of that stuff in some of the upcoming slides. Next slide please.

Now let's talk about sort of beyond the structure and get into the details starting with eligibility. So, eligibility in the program is determined by what's called the applicable minimum set aside and the applicable minimum minimum set aside test is something that an owner selects at the very beginning of a project and that election cannot be changed at any point in the future. And there are three set aside tests to choose from. You have the 20-50 test under which the owner must rent at least 20% of its units to individuals with incomes at or below 50% of the area median income or a AMI.

You have the 40-60 test under which the owner must rent at least 40% of its units to individuals with incomes at or below 60% of AMI. And since 2018, you have this very convoluted average income test under which the owner must rent at least 40% of its units to individuals with incomes between 20% and 80% of AMI. And the average income limitation for those units must be no more than 60% of AMI. I also want to note that an owner must select a minimum set aside test even where a project is a hundred percent LIHTC, meaning that all of the units are set aside for LIHTC purposes. And that's because you need that formula in order to calculate both eligibility and rents. The applicable percentage of AMI, which is basically the income limitation, is often referred to as the income limitation. It is calculated annually by HUD. AMI depends on household size. However, for LIHTC purposes, household size is based on the size of the unit, not the actual size of the household. So, more specifically for LIHTC purposes, household size is equal to 1.5 times the number of bedrooms in a particular unit.

And we have a little example applying that. So, no need to kind of wrap your head around it right now. And for LIHTC purposes, very important household income is actually calculated in accordance with section eight, with HUD section eight rules. That's a common question that comes up all the time about when someone is deemed or determined to be over income, they sort of struggle to understand how they came up with that and what counts as income. Again, those rules are outlined in the HUD section eight rules. Next slide please. So, let's apply those eligibility rules to an example. Assume that a person applies to rent a three-bedroom LIHTC unit at a property subject to the 20-50 set aside test. Here, the applicant's income cannot exceed 50% of the AMI for a household size of four and a half. And again, we get four and a half or a household size of four and a half by multiplying 1.5 times the three bedrooms in this particular unit.

Now assume that under HUD's calculations, 50% of the AMI or of AMI for a household size of four and a half for this fictitious jurisdiction is $37,750 per year. So, the applicant's annual income in this case cannot exceed that amount, $37,750 per year to be eligible to occupy this particular LIHTC unit. Next slide please. Now let's talk about rents. As most of you probably already know, but it's worth mentioning, unlike other federal housing programs, LIHTC rent is not based on tenant income. Instead, rent is based on a max rent formula that limits rent to 30% of the applicable income limitation. So, it's 30% of some percentage of AMI. Aside from this, there are no other restrictions on rent under federal rules. So, there's no limit on rent increase amount or frequency. If a tenant pays utilities, a utility allowance must be subtracted from the max rent calculation. And there are several ways to calculate the utility allowance.

For example, the local public housing authorities, utility schedule, utility company estimates and engineering reports commissioned by the owner are some examples of how you can determine the utility and it's up to the owner to choose whatever method. So, here we have a really simple example applying the rent rules. So, again, going back to our eligibility example, the income limitation for a three-bedroom LIHTC unit at a property subject to the 20-50 set aside test was $37,700 per year. So, in this case, the owner cannot charge more than 30% of that amount, which comes out to $11,325 per year, or $943 and 75 cents per month. Next slide please. So, even though there are no federal protections beyond the max rent limit, there may be other rent protections for LIHTC tenants. For example, LIHTC rent may still be subject to state and local rent increase protections. For example, in California you have civil code section 827, which requires a 90-day notice for any rent increase above 10%. This applies to all properties including LIHTC projects. In contrast, LIHTC projects are exempted from California statewide rent control law or the Tenant Protection Act.

The subject lease may also provide some protection by locking in rent for the entire term of the lease, whether it's a year, six months, whatever the case might be. However, keep in mind that LIHTC owners frequently use what are called escalator clauses, which is just a lease provision that allows them to raise the rent during the middle of the lease term, and it's usually triggered by an increase in the area median income. Also, keep in mind that some owners sometimes agree to deeper rent restrictions for some or all of the project's units, and this is generally done in order to gain a competitive advantage during the very competitive credit application process. And so these deeper restrictions will be reflected in the subject regulatory agreement. Again, I'm going to sort of talk a little bit about that towards the end of this portion of the presentation.

So, in terms of rent, obviously it takes a little time to sort of wrap your head around how to calculate rent and eligibility and so forth. But the big takeaway about rent is that because rent is based on AMI rather than tenant income, many LIHTC units, particularly in expensive rental markets, are unaffordable to very low-income and extremely low-income tenants. At a minimum, these tenants are severely rent burden, meaning that they can pay beyond 50% of their income toward rent. Thus, it's not accurate to say that the program creates affordable housing, at least that's not generally the case. It's more accurate to say that it creates below market housing, which may or may not be affordable to the program's intended beneficiaries, low-income tenants. Next slide please.

So, how do you get the info you need to determine or make sure that your eligibility and your rent is being calculated accurately? So, hopefully you've gathered that you need this applicable income limitation, some very basic information about the property. However, this information is not typically included in the lease and not otherwise readily available. But there are several ways that an advocate or a tenant can obtain that information. One is by reviewing this regulatory agreement, that's an agreement between the owner and the state housing agency. Every single LIHTC project has to have this regulatory agreement and it has to be recorded against the property. So, you can find a copy of that document at your local recorder's office. Yeah, another way of obtaining information is to use your state's public request Act. So, in California it's a public request, the PRA process, and you can use that filer with [inaudible 00:22:52], the state agency that administers the program in California to request some information that just you know don't have.

And then some state tax credit agencies also provide basic information on their website. So, you may want to sort of start there and then determine what it is that you need to ask for. So, now let's talk about evictions. So, this can be a very expansive topic, it can be its own presentation and it could last anywhere from an hour to two hours. But I'm just going to sort of give you the highlights. And I'll start with Good Cause. So, Good Cause is required to evict a LIHTC tenant from a LIHTC property. However, the federal rules do not define Good Cause, right? There is some IRS guidance to the effect that Good Cause is determined by applicable state and local law, but that is very broad, very general, very unhelpful. California State Agency attempts to define the term through its compliance manual. So, again, non-binding authority, but that document provides that Good Cause includes serious or repeated violations of a material term of the lease as that definition is applied with respect to federal public housing.

And it may include non-payment of rent, violations of lease or rental of the lease or rental agreement, interference with other tenants or property damage, using property for an unlawful purpose, destruction or damage to the property. So, it's admirable that the state agency is trying to further define Good Cause. However, this definition doesn't address situations or eviction situations that are unique to the LIHTC program. For example, over income situations, which I'm going to discuss in a little more detail, a failure to re-certify, which is an issue that folks reach out to me pretty commonly. And it doesn't address this question of what happens at the end of the lease and lease non-renewals. Next slide please. So, let's talk about over income situations. So, where a tenant's income or where a tenant's income qualified, excuse me, at move in. If that person's income increases up to 140% of the applicable income limitation, that unit must continue to be treated as a low-income unit.

And what that means is that the tenant can continue paying to subsidize rent and the owner can continue claiming their tax credit and there's no need for either the tenant or the owner to do anything more. The same is true if a tenant's income goes above 140% of the applicable income limitation provided the owner follows what's called the next available unit rule. The next available unit rule says that an over income unit can continue to be treated as a low-income unit if the owner leases the next available unit in a project of comparable size to an income qualified individual.

The important thing to note is that the rules do not expressly prohibit an owner from evicting an over income tenant. This means that the owner could choose to evict an over income tenant rather than apply the next available unit rule. A more specific definition of Good Cause could potentially clarify that the next available unit rule is mandatory and not permissive, and that way resolve a lot of sort of eviction situations. I've handled several of those and I've tried to argue the next available unit rule and I found that it's really difficult to explain to a judge and it's really hard for them to comprehend that you can actually go above the income limitation for a federal housing program and still be allowed to stay in the unit at the subsidized rent. But that's exactly what the rules allow. Next slide please.

Another common situation or eviction situation is non-payment of rent. And in most non-payment or most non-payment situations start with a tenant's failure to pay a nominal fee, a parking fee, a laundry room fee, something along those lines. When this happens in portion of the rent paid for the following month is applied to the unpaid fee, which means that the tenant is actually short on the rent for that month. The month after that, a portion of the rent that's paid is applied to the pass due rent plus a late fee is assessed and now the tenant is short on the rent again and this time by an even greater amount. And this happens month after month until the tenant owes hundreds, sometimes thousands of dollars in background that the person cannot realistically pay. Next slide, please. In these situations, it's important to note that the LIHTC program prohibits an owner from charging a tenant for services and amenities whose construction or rehabilitation was financed with tax credit financing. So, for example, the laundry room, storage room, parking, garage, et cetera, parking stalls.

So, based on this rule, it's possible that the fee that led to the tenant's crushing debt was unlawful to begin with, which means that the tenant doesn't actually owe all the rent that's piled up as a result. Next slide please. So, one of the other big takeaways about the program is that the program lacks the basic protections that are common in every other federal housing program despite the billion dollar federal investment in the program, despite the fact that it's designed to serve low-income tenants and these basic protections are essential for both affordability and housing stability, which is the dual sort of purpose of affordable housing policy. And so that's the gist of my job. That's the majority of what I do, is trying to advocate for stronger tenant protections that will provide for true affordability in housing stability. And so I think it's just important to kind of touch on this topics so folks know that there is sort of a way forward out there in terms of policy change. So, who can change policy?

The LIHTC program is administered by the Treasury Department, but it's actually implemented, as I alluded to earlier, it's implemented on the ground by state agencies in accordance with what's called a Qualified Allocation Plan. So, this plan sort of sets out not just the rules for developers when they apply for credits, it also has potentially could include other program regulations including tenant protections. So, there's an opportunity for reforms at both the federal and the state level. Even local governments can influence the way that the LIHTC program operates on the ground. Next slide please. So, starting with federal advocacy, congressional legislative action would be the most effective way to establish these necessary basic tenant protections. This is because protections in this context would apply nationwide and they would apply to both existing and future projects. So, you avoid having this hodgepodge of state rules and you avoid treating LIHTC tenants differently based on whether they live in a new LIHTC project or an old LIHTC project. And the other benefit of congressional action is that those reforms, those policies would not be subject to any serious legal challenge.

Basic protections can also be enacted administratively. In that case it would be by the IRS, which is the federal agency in charge of the LIHTC program. Next slide, please. However, federal reform is very difficult. Legislatively substantive policy is just very rare in Congress. Most everything is done through appropriations or this budgetary vehicle, which is a poor vehicle to enact substantive policy change. And really one of the biggest factor, perhaps the biggest factor is that at the moment, industry stakeholders, people that represent investors and developers and the cottage industry that sort of serves them, those stakeholders are currently driving the narrative about the program.

So, federal policy is very much tilted in favor of program expansion and against program reform like enacting basic tenant protections. Administratively, the Treasury Department is reluctant to act without specific congressional authorization. And that's because of this question of whether they have the authority to do or to enact some of these very specific tenant protections. Our perspective is that the LIHTC programs, the programs silence on key issues and the broad policy goals of the program leave a lot of room for administrative action.

So, the treasury shouldn't worry about sort of a legal challenge down the road, but we have to convince them of that. And so far we've been unsuccessful in doing that. Next slide, please. State policy reform is a little bit more promising. So, at the state level you have two options to pursue policy change. You have the state housing agencies and you also have the state legislature. State housing agencies have absolute authority to enact reforms and apply them to future projects as part of their credit allocation process. However, their authority to apply the same reforms to existing projects depends on several factors. And some of those are listed on the slide. State agency, or excuse me, state legislatures on the other half have a much clearer path to enacting necessary reforms because they don't have to worry about whether they have the authority or some of these other factors that are listed on the slide. They just have to worry about the traditional challenges that landlords or property owners or real estate interests might assert to challenge a statute. But we're confident that every single one of those can be easily overcome.

Next slide please. So, as I mentioned, there's also room for reform at the local level. So, local governments have authority to issue what are called public activity bonds. These are bonds that are used for not just like affordable housing, but a lot of public works projects, a number of different things. And one of the uses, one of the common uses are that they are paired with tax credits mostly to fund LIHTC rehab projects. These are more commonly known as 4% credits. So, indeed, these public activity bonds have effectively become a requirement in 4% LIHTC credit projects. So, the point of this slide is just to say that this gives local governments the opportunity to impose certain requirements on LIHTC projects funded in part with their private activity bonds. These include rent restrictions and other basic tenant protections. San Francisco is a city that is doing this pretty consistently, although in my opinion, they can go much further in terms of what they're willing to get owners or developers to concede. And so that does it for my portion on LIHTC basics and I'll turn it over to Lucie.

Lucie Hollingsworth: Thank you Marcos. Hi everyone. It's a pleasure to be here and get a chance to talk about what can be done at the local level and in particular about the low-income senior tenants that I had the privilege to work with and still do on these LIHTC issues. And so we are in Marin County, population about 262,000. The AMI a whopping 131,000, and the average home value of 1.2 million, we sit just north of San Francisco across from the Golden Gate Bridge and known for the natural beauty and biodiversity, redwood forests, ranchers, beaches. And apparently it is the birthplace of mountain biking, although I cannot confirm that. Next slide please.

And it's also a place of extreme contrast. And so what you see on the surface belies the reality. So, as I said, it has the highest AMI in California. It's also the most racially disparate county in California as of 2019. I think the latest report we might have dropped down to number two. Our senior population has increased 43% since 2010, and we have the highest median age in California. We've also built the lowest number of units within the nine Bay Area counties. Next slide please. And so this is the Villas of Hamilton and it is located in our second-largest city, which is the northern part of Marin. It's a city of 50,000 called Nevada. And this was a former Navy base. It's actually a beautiful building right close to the bay within walking distance. And it was purchased in I believe 2008 by through the LIHTC program, by a real estate investment trust.

I think because of Marin's high AMI this issue with rents and LIHTC and LIHTC affordability really hit Marin first and hardest. And so the tenant that came to me from Villas of Hamilton, the first thing he said to me was, we're poor enough to qualify, but we're too poor to stay. And so that was intriguing to me and he is the leader of the tenants union still at Villas At Hamilton. Next slide, please. And so Villas At Hamilton is the 40-60 test. So, 40% of the 128 units must be affordable to a tenant earning less than 60% of the area median income. And so I put this table together when we started our advocacy to show that how AMI changed year to year in comparison with the cost of living for seniors. And as you can see, there was some significant jumps, especially since 2015. Oddly enough that it actually dropped a little bit in 2013 and 2014. However, tenants still got rent increases that year. Marin is what's called a Hira special jurisdiction. And so even if the AMI drops that rent increases are still allowed.

Next slide. Thank you. So, all these rent increases were unfortunately legal. And so what do we do when we can't rely on the law to protect tenants? And the first thing that I had to do was educate myself. Marcos and his colleagues were critical and extremely patient in this process. They spent hours with me going through the tax regulations and how to read a regulatory agreement and I cannot thank them enough. I also sought education from our local city planners and their staff as well as contractors that they worked with to see how locally the process had been working, who was negotiating these regulatory agreements, how developers were chosen and were winning bids and how they were monitored throughout the program. And then once, you can never, or at least I could never hope to get the whole LIHTC program down like Marco, but I felt like I had a good enough handle on it that I could start helping to organize the tenants and tell them about what the possibilities were.

And with that though, I needed help. And thankfully in Marin we have Marin Organizing Committee, and Marin Organizing Committee is an affiliate of the Industrial Areas Foundation, which is one of the oldest and largest leadership development and organizing networks I think in the country. And we had a really strong group here in Marin and they were critical in helping us with the ground game and teaching us about who to talk to and with electeds and staff and how to get the attention of these owners. And so we had our first meeting with the tenants union and the tenants identified issues apart from these rent increases they were receiving yearly, they also had complaints about services and fees. So, for example, while they needed services to come on site such as a food bank, our nonprofit senior services, the onsite management would set up things like every Tuesday morning boot camp, which was not appropriate for the residents at Hamilton.

So, we put together a platform of what our [inaudible 00:42:38] were going to be. The tenants filled out questionnaires and those questionnaires were how much rent they were paying, what their income was, and if they were section eight or, questions like that, that could really start telling the story of what they were facing. And then the next job was to find and contact the owners. This was a lot harder than I expected it to be. This is, again, it's a REIT, a Real Estate Investment Trust and they don't make it easy to find their investors or any sort of contact information. Ultimately, I did find them AHA, Affordable Housing Access and most of the employees there were Wall Street type finance people. But we did eventually find them. We sent them a demand letter that included lowering the rents, stopping rent increases, and also looking at the tenants also had a problem with really high Cs. So, we wanted those eliminated and as well as the issues with the direct service staff.

And so these next three slides was part of a one pager that we put together to really tell a story quickly, succinctly, and to hand out whether it was meetings with electeds or with city staff and county staff, anyone that would really listen median. So, this first one was the leader of the tenants union that came to me first, he had a really good career as a sound engineer and lost his hearing overnight and lost his job and got a divorce and found himself with no income. And man, he felt like he was very lucky to be able to get one of these one bedroom apartments in what he thought was affordable housing. And the very first year he was there and subsequent years he got these rent increases. So, ultimately he had to find a job as a bus boy to supplement his income. And as you see, these stories are common.

Their rent is so high, they're not able to pay for food, for medicine and even their service animals. So, again, the other part of this flyer was educating our electeds and the media and the community on what Nevada's senior population is looking like. They were increasing faster than the national average. We had 6.3% of not Nevada's seniors living in poverty. It's much higher now even three years later. And in Nevada, more than half of low and very low-income households spent over 50% of their income on housing. And so then this was again, to try and have a visual so that our electeds could really understand that LIHTC was not affordable. And so we wanted to show what percentage of the income many of the tenants were paying towards their supposedly affordable housing.

Next slide please. And so then who are these LIHTC owners? There is the difference between the 4% non-competitive LIHTC part of the program that these are owners that we were dealing with in this case. And then there's the 9% which is more competitive. And usually those developers are for the most part in the business of housing vulnerable populations. For our purposes, the 4% non-competitive they tend not to be, they have investors to answer for. In 2019, this affordable housing access average a 4.75 rate of return for investors. So, they don't care who they house, all they care about is answering to their investors.

They pay no property taxes to our city or county. And as Marcos said, no requirement to be permanently affordable. And I think that's built into their financial model is that in 15 to 30 years or 30 years, they can turn it into market rate and reap even more money for their investors. Now if you go to their website, of course, as you see, their mission is to create and preserve quality affordable housing. And they have these beautiful pictures of families and seniors that are really happy. But that's a good PR campaign. And so with huge help from an organizing committee, when I first sent a demand letter to Affordable Housing Access, they ignored me. So, we went the public shaming route and we served with a press release.

This is the quaint little downtown civic center in Nevada. And the Villas at Hamilton Tenants Union all came out. We were able to get media to come out and report on this. And miraculously that's what brought Affordable Access to the table to come talk to us. And so the results, we did have a couple of meetings with both the owners and the onsite managers as well as the city. And so we were able to get monthly tenant meetings with the management. The hope was the direct management and the tenants really didn't trust each other anymore. They weren't getting along at all. We also, the management also agreed to take trauma-informed training as well as how to work with senior populations. All the supplemental fees were reduced or eliminated. The rent increases were postponed, and part of that was the pandemic.

However, when AHA, Affordable Housing Access plan to start resume rent increases last year, they actually contacted me first and gave me that warning, which is kind of a win, not really, they still went through with the rent increase, but at least it showed that they were somewhat scared of us. So, that was something. And the services that the tenants needed were brought on site and the tenants were able to be part of that process of choosing who they wanted to see and who they needed access to as opposed to the management, the direct services' management, choosing randomly inappropriate activities. And so these are just some possible solutions until we get this law changed. It seems like based on everything Marcos told us and that this is a tax law and these LIHTC developers are sort of the darlings of all the electeds and the banks. And so they're building all of our affordable housing and we need them to keep doing that. But as it worked here with the public shaming, it helps to appeal to the owner's public reputation. It does matter.

They want to be able to build again, so they will do anything in the community to keep a good reputation. And for example, this isn't the only LIHTC building that I've worked with. When we had another property that was up for bid for a LIHTC development, there was one developer that we thought was a pretty bad actor in Marin. And so we were very vocal about making sure that they did not get that property. Also, these regulatory agreements really important. So, with what we learned, we were able to talk to our local planning staff and electeds and really educate them on how this program is not working and what they could do to help us. And so a number of them promised that going forward that when they did these regulatory agreements that they would make sure to put in rent caps as well as other tenant protections in those regulatory agreements. And then I think just in other parts of California, and we're in Marin here, we are really advocating for stronger just cause laws and rent stabilization.

And so we make sure that that LIHTC is covered in these new rent stabilization and just cause local ordinances. And then right now there is proposed state legislation to cap rent increases on LIHTC properties. And Patti has put the link in there for us, thankfully. And it's funny because back in when we were working with the Villas in 2019, that was also part of our strategy. And we first walked into then Assembly [inaudible 00:53:53] Office in San Francisco who was our housing champion back then, the author of 1482. The first thing that he said to us, which was he's got a sense of humor, what are a bunch of white, rich people from Marin doing in my office?

But he did listen and he was very supportive. But he did send us back to Marin to go talk to our representative in the Senate, Senator McGuire. And after a number of meetings with Senator McGuire, it was looking pretty promising. He definitely seemed to understand the problem, but he did say, okay, let me go talk to the banks now and see what they think. And of course we were completely ghosted after that. And so I'm really thankful, I believe it's Western Center for Law and Poverty that has taken this on. So, I asked, it'd be great to follow along on this legislation and support it when you can. And so is there any questions?

Patti Prunhuber: I have several questions that have come in and I'm going to see if I can send them to the person who they belong to. The first, and we just have a few minutes, but I do want to make sure we get to some of these questions and we'll try to answer some of them after. The first one is about something that came up involving if you have a person who is applying for housing. You mentioned that there's this 20-50 rule or whichever rule applies. Is there a minimum income requirement and does that minimum income requirement continue to apply after you've already been admitted into the housing?

Marcos Segura: So, there is no minimum income requirement as far as federal law is concerned. However, LIHTC owners and landlords can have their own sort of financial threshold requirements like a minimum credit score or minimum income. So, that should only apply at move-in. So, moving forward or after that no requirement that the person make a minimum amount of money that that's it just, it's ridiculous to have sort of requirement because it's intended to benefit low-income tenants. So, the lower the income, the better.

Patti Prunhuber: You alluded to this, I think Marcos before, but the common problem of being terminated from your low-income or LIHTC unit for failure to timely re-certify. And what are some of the defenses you can do, particularly if there's a disability or language issue that made failure to re-certify more difficult?

Marcos Segura: So, what I was referring to are, if the tenant is living in a 100% LIHTC unit or project, excuse me, they only need to re-certify once or certify their income once when they move in and once after that. And federal law does not require an annual recertification. But we often get cases where the owner is requiring certification well after the second time. And so the question is there a good cause to evict the tenant who fails to participate in the recertification process that's not required under the federal LIHTC program, but is required under the lease or some occupancy rules or policy. And again, this goes back to the very lack of a definition for Good Cause the answer to that question is up in the air. There's arguments for and against evicting a person for that particular violation. In terms of when someone is unable to complete their recertification on account of a disability, there's no defense specific to the program. Those would just be defenses specific or based on the ADA for Housing Act, that sort of stuff, both federal and state.

Patti Prunhuber: And just to clarify, those are affirmative defenses that can be brought in LIHTC cases.

Marcos Segura: Yes, absolutely.

Patti Prunhuber: I'm just going to give Lucie a question because we are running out of time, but I think this perhaps applies to the Villas at Hamilton, but it's what are good ways to get a LIHTC property to comply with the federal guidelines after the 15 years after the tax credit compliance period?

Lucie Hollingsworth: I think that, again, since they don't have to yet it's best to start educating the electeds and planning staff that this is coming up. And it really is up to them to put pressure on and start doing those negotiations. I know that we had another LIHTC property that was forced to refinance during the pandemic. And so that was a way because they needed the county's approval to refinance their loan and they were going to be expiring in the next couple of years. And the county was able to say, well, we'll help you with your refinance, but you have to remain affordable for a lot longer. And so that kind of leverage at this point, it's all we have, but it's actually locally a lot of leverage.

Patti Prunhuber: So, it sounds like we have both the tenant compliance aspect of tenants really coming together to try to enforce some of these rules, but also getting your local jurisdiction involved. I'm going to try to squeeze in one last question. When a complex converts to a hundred percent, can they evict a longtime resident who is over income to qualify for that unit?

Marcos Segura: Sorry, I tried to answer this question in the chat, but briefly again, there's this next available unit rule which shields, which sort of explains or gives guidance on exactly what should happen here. And that is just continue to treat that unit as a low-income unit. Tenant continues to pay rent at the subsidized rate, owner continues to claim its credits, everyone's happy. And so there's no policy reason, there's no financial liability reason to the landlord for evicting that person. But again, the next available unit rule does not expressly prohibit any eviction. And there are some policy arguments in favor of evicting that person. Mainly that these are units designed to or intended to serve people very low-income people or people below the income limitation.

And this person is occupying this unit and taking it away or denying access to a lower income tenant even though they make 200% above the income limitation. And so really what happens is you go to court and I've done this and you just sort of make the policy arguments and hope that the judge understands what you're saying and agrees with you. But if you lose that case, you're going to have a really hard time appealing that decision because there's no answer, there's no guidance in the rules.

Patti Prunhuber: Well, I want to thank Marcos and Lucie for giving us sort of a treasure trove of information. As you can tell, this is just scratching the surface, but I think it's really an excellent introduction to this important topic. I have put here our email addresses and we will try to get to the many questions that we couldn't get to. We will try to answer some of them in follow up. And for those of you who are claiming CLE credit, be sure to fill out the evaluation form that you receive at the end of this training.

And at the bottom of that evaluation form, there's a place to put your name, email, and your bar number if you are claiming CLE credit. And the final thing I want to mention is that Justice in Aging is, and the National Center for Law and Elder Rights is excited to share an opportunity for legal services programs who are interested in advancing equity for older clients. And we have a new cohort that we are starting, it's our second cohort and the application is due on May 19th. And there's information in the chat about how to get more information or sign up. I want to thank you all and that is the end of our presentation. And thanks again to Lucie and Marcos for such an excellent presentation.

Lucie Hollingsworth: Thank you.