

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

California Low Income Housing Tax Credit (LIHTC) Programs: Legal Authority and Resources

Federal Statute:

- [26 U.S.C. § 42](#)

Federal Regulations:

- U.S. Treasury regulations at [26 C.F.R. §1.42 et seq.](#)

Federal Sub Regulatory Guidance:

- IRS Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. (“8823 Guide”)
- [IRS Revenue Ruling: 2004-82](#)
- [HUD annual AMI figures for 2022](#). Choose “California”, then “county”
- LIHTC property owners must also enter into an “extended low-income housing commitment,” i.e., a regulatory agreement, with the state housing agency that must be recorded with deed.
- Regulatory agreement must give tenants a private right of action to enforce rent restrictions and good cause protections for as long as the project remains in the LIHTC program.

California State law and guidance:

- Tax Credit Allocation Committee (TCAC) Qualified Allocation Plan (QAP), at: [CCR Title 4, Div. 17, Ch. 1](#).
- [CTAC Compliance manual](#) (guidance only) – See LIHTC evictions in CA, (V. below) for definition of what constitutes “good cause” reasons to evict LIHTC tenants.
- CTAC [LIHTC Rent Requirement: FAQ](#)
- Advance Notice requirements to tenants and relevant agencies when LIHTC income and rent restrictions are set to expire: Cal. Gov. Code § [65863.10\(a\)\(3\)\(E\)](#). (<https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing>).

LIHTC Evictions in CA:

- a) Good Cause is required to evict, but term is not defined. 26 U.S.C. §42(h)(6) (E)(ii)(I); Rev. Rul. 2004-82, Q&A#5.

- CA TCAC compliance manual provides that “[g]enerally, “good cause” is defined as “the serious or repeated violations of a material term of the lease”, as that definition is applied with respect to federal public housing.” See, [CTCAC Compliance Manual](#), at p. 12.
 - IRS guidance explains that good cause is determined by applicable state and local law, and may include nonpayment of rent; violations of the lease or rental agreement; destruction or damage to the property; interference with other tenants or creating a nuisance; or using the property for an unlawful purpose. Rev. Rul. 2004-82, Q&A#5.
 - CA LIHTC project residents have the right to enforce this good cause provision in State court.
- b) Common good cause reasons for eviction:
- Over-Income:
 - When a tenant’s income increases up to 140% of the applicable income limitation, the rules are clear that the tenant can remain in the unit at the subsidized rent and the owner can continue to claim its credits, provided the person was income-qualified at move-in.
 - When a tenant’s income increases above 140% of the applicable income limitation, the Next Available Unit Rule (NAUR) applies. Under the NAUR, the over-income unit continues to be treated as a low-income unit, provided the next available unit of comparable size is leased to an income-qualified individual. 26 C.F.R. § 1.42-15(c).
 - Federal rules do not expressly prohibit an owner from evicting an over-income tenant. Thus, the owner could argue that the program was intended to serve the lowest-income tenants possible and for policy reasons the unit should not be occupied by someone making more than the applicable income limitation.
 - Nonpayment of rent resulting from unpaid fees:
 - Nonpayment of rent claims often begin with a failure to pay a fee. The following month, a portion of rent paid is often applied toward the unpaid fee, resulting in a tenant owing partial rent, plus any late fees. When the tenant pays rent the following month, payment is again applied to rent and late fees owed, causing the tenant to owe even more rent, with late fees charged once again. This continues month after month until the tenant owes large amounts and faces eviction for nonpayment.
 - Fees LIHTC Housing Providers CANNOT charge:
 - LIHTC program rules prohibit an owner from charging a tenant for facilities and amenities whose construction or rehabilitation was financed with tax credits, e.g., laundry room, storage room, parking, etc. (26 U.S.C. § 42(d)(4)(B))
 - Advocates should review owner ledgers to ensure that past due rent is not the result of unpaid fees the tenant is not responsible for paying under the rule above.

Sources of Information on LIHTC properties

- CA Tax Credit Allocation Committee (TCAC): [Map of CA LIHTC projects](#). Hover over each dot on the map to get detailed info on the property. Here is the List of [CA LIHTC Projects](#) as of 2022.
- The CA Housing Partnership: Affordable Housing Data Dashboard: <https://affordablehomes.chpc.net/?view=37.431251,-119.26758,6&rural=&funding=lihtc>.
- The [National Housing Preservation database](#) – Able to sort by state, by type of affordable housing (Section 8, LIHTC, HUD multi-family, etc.), the names of the management and owners of each property.