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# UNDERSTANDING LOW INCOME HOUSING TAX CREDIT (LIHTC) AFFORDABLE HOUSING

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*Presented October 14, 2017*

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# TOPICS FOR DISCUSSION

- Quick Facts
  - What is LIHTC?
  - Why was it created?
  - How does it work?
- Where does LIHTC fit in among other Affordable Housing in LA?
  - How is LIHTC related to Section 8?
- Application and Eligibility
  - Vacancies, How to Apply
  - Income and household requirements
    - Special rules for Students
    - No citizenship requirement
- Living in an LIHTC Unit
  - How is rent calculated?
  - Annual recertification
  - Tenants over income
- Eviction
  - Good Cause Only (What does that mean?)
  - Expiration of Tax Credits
- Existing Federal and State Tenant Protections for LIHTC Tenants
- Other Protections for California Tenants Under Law
- How to Protect your Tenant Rights
  - CTAC Compliance
  - Discrimination Complaints
  - Habitability Issues
  - Eviction Assistance in L.A.
- Questions and Discussion

# What is LIHTC and Why Was it Created?

- LIHTC stands for Low Income Housing Tax Credit
- A Tax Credit allows the person receiving the credit to reduce their tax bill
- Housing developers like tax credits, because building affordable housing is expensive
- LIHTC was created by Congress in 1986 as a way to encourage private investment in affordable rental housing
- Credits are given to states, and states decided how to allocate the credits to developers, based on local need.
- California has also created an additional LIHTC funding source with state tax credits.

LIHTC accounts for approximately 90% of all affordable rental housing created in the United States today.

In California, over 4,000 properties (over 350,000 units of housing) receive LIHTC assistance.

# How Does LIHTC Work?

- The California Tax Credit Allocation Committee evaluates applications for credits – it's competitive!
- If a developer is awarded tax credits, the owner must enter into a Land Use Restriction Agreement ("LURA") that requires the property to maintain affordability restrictions for a period of years (typically 30-55).
- If the building breaks its promise, the IRS can take back its tax credits, the California Tax Credit Allocation Committee can impose fines, and the State and tenants have a right to sue for enforcement of the LURA. ([see 4 Cal. Rev. & Tax Code § 12206\(i\)\(2\)](#)).



# Where does LIHTC fit among other Affordable Housing in LA?



- 10.02 million people in Los Angeles County
- 3.8 million people in City of Los Angeles
- LA is the least affordable rental market in the U.S. (Harvard University Joint Center for Housing Studies)
- 1 in 4 households spend at least 50% of income on housing
- Vacancy rates are low, 2.7% as of November 2015
- Rent continues to increase
- More than 1,100 properties in Los Angeles County receive LIHTC assistance

# How is LIHTC related to Section 8?

- Many properties that receive LIHTC assistance may have other subsidies that help to keep rents affordable
- The most common is **Project-Based Section 8**, a federal affordable housing subsidy program through the US Department of Housing and Urban Development (HUD)
  - Different than the Section 8 Housing Choice Voucher
  - Subsidy is attached to the property or unit, not a mobile voucher for the tenant
- How does this affect tenants?
  - Recertification requirements
  - Potential rehabilitation of property
  - Additional tenant protections (ex. enhanced vouchers)



# How is LIHTC related to Section 8?



- **Section 8 Voucher Holders may rent at LIHTC properties**
- Owners may not refuse to rent to voucher holders because of their status as voucher holders. 26 U.S.C.A. § 42(h)(6)(B)(iv) (West Supp. 2015); 26 C.F.R. § 1.42-5(c)(1)(xi) (2015).
  - At least so long as the rents are determined "reasonable" by the PHA.

# Application and Eligibility: Vacancies

Applications must be available to the public without discrimination.

You can find out about vacancies in LIHTC buildings at:

<https://affordablehousingonline.com/housing-search/California>

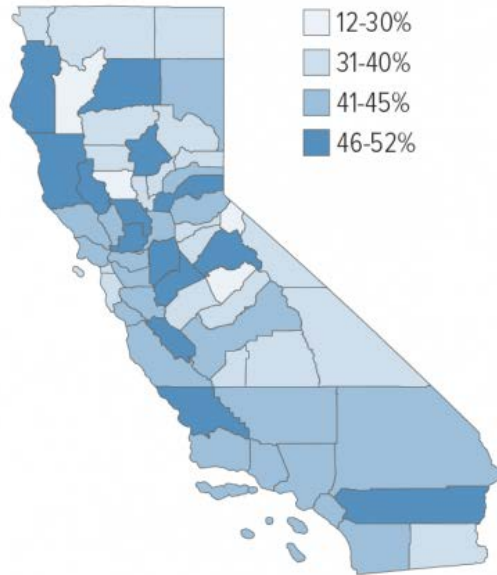
LIHTC rental applications tend to be longer than Section 8 applications. It will be several pages long and ask about your household size, income, assets, employment status, student status, and residential history, among other things.

Although the application may ask for a Social Security number, it is not required. Unlike other federal affordable housing programs like Section 8, LIHTC is open to persons without a social security number.



## Large Share of Low-Income Californians in Nearly Every County Struggle to Pay Rent

Share of low-income renters paying more than half their income for housing



Note: "Low-income" households are families whose incomes do not exceed 80 percent of the median family income for the area. This map excludes households with missing housing cost data.

Source: CBPP tabulations of the Department of Housing and Urban Development's 2008-2012 Comprehensive Housing Affordability Strategy data.

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# Application and Eligibility: Income and Household Requirements

- Non-Transient Residents Only
  - No household can be comprised entirely of full-time students
  - Initial leases must be for more than 6 months
- Tenants are subject to Income Limits which vary depending:
  - When project was placed into service
  - How many persons will be living in the home
  - What type of LIHTC restriction is in place
  - The Area Gross Median Income (AGMI)
- AGMI for Los Angeles was **\$64,300** in 2017.

# Living in an LIHTC Unit: How is Rent Calculated?

In addition to Income Restrictions, LIHTC units also have Rent Restrictions.

Generally, gross rent (including utilities) must be less than 30% of AGMI (based on 1.5 persons per bedroom).

The rent calculation may vary depending on when the property first started receiving LIHTC assistance.

Gross rents are not based on individual tenant income.

Rents can increase upward with changes in AGMI.



# Living in an LIHTC Unit: Annual Certification & Tenants Over Income

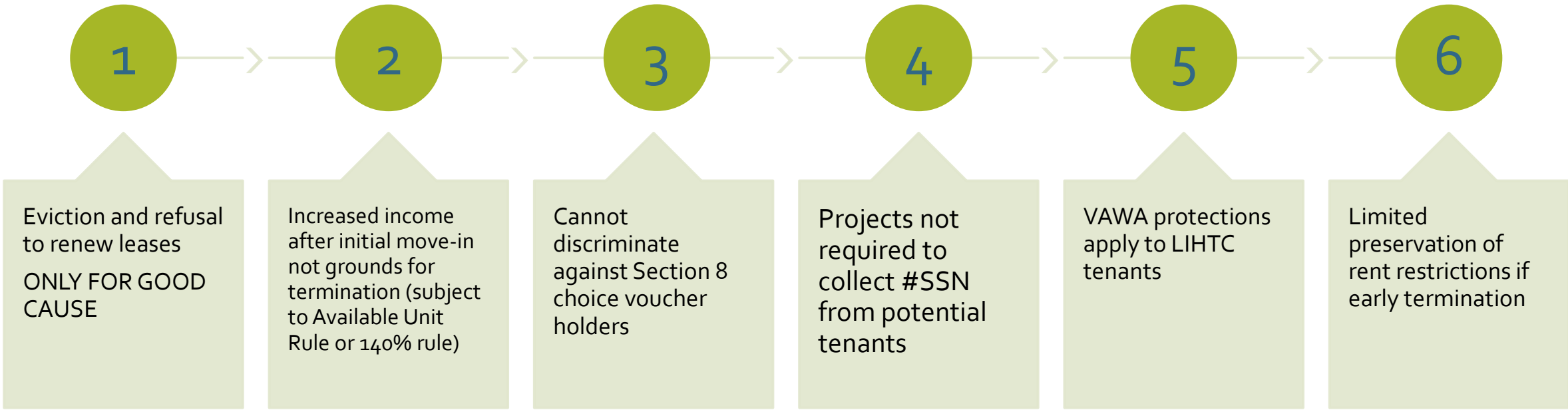


- Tenants must be re-certified every year, to make sure they remain eligible.
  - Exception for 100% rent-restricted buildings
- Failure to cooperate with recertification can be good cause for eviction.
- If tenant's income increases more than 140% above the rent ceiling, they are no longer considered "low-income" and can be asked to pay market rent, but cannot be evicted on that basis.
- Management must make the next available unit available to a qualifying low-income tenant.

# Grounds for Eviction

- Only for Good Cause!
  - Serious or repeated violations of the lease
    - Examples: failure to pay rent, failure to cooperate with recertification
  - Violations of federal, state or local law
    - Examples: engaging in illegal activity on the premises
  - Notice must be written and must include specific basis for eviction
  - If tenant contests eviction, landlord must prove good cause to a judge
- Tenants can also be evicted when Tax Credits Expire
  - Depending on when your LIHTC building went into service, tax credits may expire
  - AB 1521: 6 and 12 month notices; requires owners to accept purchase offers from qualified entities that will keep the property affordable
  - Limited protections in cases of early termination

# Federal LIHTC Protections for Tenants



# Additional Protections for California LIHTC



- Low-income units must have substantially similar equipment and amenities as other units
- Units must not be geographically segregated within building
- Special preference rules for units with accessibility features
- Tenants can enforce regulatory agreement
- Additional protections if building received bond subsidies.



# Other Tenant Protections Under Law

- **Tenant protections under California law apply to all tenants living in LIHTC units.**
- Quiet enjoyment
- Habitable, safe, healthy premises
- Retaliation/harassment
- Discrimination (race, color, national origin, religion, disability, sex, etc.)
  - Reasonable accommodations
- Notice rights and potential purchase rights where covenants/restrictions are expiring



# How to Protect Your Tenant Rights in LIHTC Housing

- **General Non-Compliance with LIHTC Program Rules**
  - California Tax Allocation Committee Compliance Division
  - Biu Wong, Compliance Program Manager, [bwong@treasurer.ca.gov](mailto:bwong@treasurer.ca.gov)
- **Discrimination Complaints**
  - California Department of Fair Employment and Housing (“DFEH”):  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)
  - HUD Fair Housing and Equal Opportunity (“FHEO”) Office:
    - 1-800-669-9777

# How to Protect Your Tenant Rights in LIHTC Housing

- **Eviction Assistance**

- Eviction Assistance Center at Stanley Mosk Courthouse (111 N. Hill Street, Room 115)
- Legal Aid Foundation of Los Angeles 800-399-4529

- **Habitability Issues**

- Los Angeles Dept. of Public Health (888) 700-9995
- Los Angeles Housing Department (866) 557-7368

# Questions and Discussion



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