



Low-Income Housing Tax Credit (LIHTC) Rent Requirement: Frequently Asked Questions (FAQ)

The South Carolina State Housing Finance & Development Authority (SC Housing) provides support in administering the federal Low-Income Housing Tax Credit (LIHTC) and the South Carolina Housing Tax Credit (STC) programs. SC Housing allocates federal and state tax credits to for-profit and nonprofit qualifying developers with an incentive to create and maintain affordable housing. SC Housing monitors low income housing properties to ensure compliance with applicable laws, rules, regulations and policies that govern the properties. Procedures for monitoring low income housing properties have been established to conform to all currently applicable statutes and regulations.

Program Requirements and SC Housing Responsibilities

Q: What is the Low-Income Housing Tax Credit (LIHTC) program?

A: Established under the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code, the Low-Income Housing Tax Credit Program (LIHTC) was created by Congress to promote the development of affordable housing for low-income individuals and families. It replaced other federal tax incentives for the production of affordable rental housing. Rather than a direct federally-appropriated subsidy, low-income housing credits encourage investment of private capital by providing a tax credit to reduce an investor's federal tax liability. These federal income tax credits provide the private housing development community with incentive to develop affordable housing by offsetting development acquisition, new construction, or substantial rehabilitation costs. The amount of tax credit received is based on the costs of the development and the number of qualified low-income units.

Q: What is SC Housing's monitoring role for the LIHTC program?

A: SC Housing inspects and monitors properties that received LIHTC funding to ensure they are in compliance with the Internal Revenue Service (IRS) rules of the LIHTC program, state regulations, and SC Housing policy. Monitoring includes verifying properties are renting to income-eligible households, rents are restricted at or below the maximum allowed by the program, and that the property units are maintained in safe, sanitary, and good condition. Each property is inspected every one to three years, for 30 or 35 years, depending on when they originally received

credits. Owners must certify every year that they are meeting the program requirements including charging appropriate rents.

Rent Calculations and Limits

Q: How are rents determined?

A: The LIHTC program is administered by the Internal Revenue Service (IRS). Pursuant to an IRS revenue ruling, participating properties base their rents on the income limits that HUD is mandated to publish. Participating property owners are not required by HUD or IRS to raise rents based on updated income limit calculations. To the extent that owners increase rents, given the purpose of the LIHTC is to keep units affordable, HUD encourages owners to increase them no more than what is needed to keep pace with rising costs and recognize that to promote housing stability, incremental increases are easier for tenants to absorb than sudden significant increases. The rents are based on the federally published Area Median Income (AMI) for the city or county the property is located in. This is different than subsidy-based programs such as Section 8 or Housing Choice Vouchers where the tenant paid portion of the rent is based directly on tenant's income.

Q: Is there a maximum amount or maximum percentage on a rental increase that an owner can charge?

A: The federal LIHTC program does not limit the rent increase amount an owner can impose as long as the gross rents are at or below the maximum allowed by the program. With the publication of the SC Housing 2020 Qualified Allocation Plan (QAP), owners of developments with Low-Income Housing Tax Credits awarded 2020 and later cannot increase rent levels without approval from SC Housing for those properties, and rent increases in excess of 5% annually may not be approved.

The South Carolina Residential Landlord and Tenant Act does not restrict the amount rents can be increased, but does require owners to provide reasonable notice to the tenants before increasing rent.

Q: How is “gross rent” calculated?

A: In order to demonstrate that a program unit is acceptably rent-restricted, the total sum of the net tenant contribution, plus any fees which are ongoing, non-optional and non-refundable, plus the utility allowance (an estimate of the monthly cost of utilities paid by the resident) cannot exceed the applicable Gross Rent Limit.

Other Fees and Mid-lease Changes

Q: Can the owner/property manager charge fees in addition to rent?

A: Generally, fees for services that are charged to the resident must be included in the gross rent calculation if the fee is non-refundable or the service is not optional (i.e. a condition of occupancy). For the purposes of the LIHTC Program, a service is considered optional when it is not a condition of occupancy and a reasonable alternative exists.

Q: Is it a violation if rents are increased during a lease term or more than once a year?

A: No. The federal LIHTC program does not limit the rent increase amount an owner can impose as long as the gross rents are at or below the maximum allowed by the program. Except for limited cases such as fair housing violations or retaliation, South Carolina currently has no legislation that limits the rent increase amount nor frequency. When updated rent and income limits are released by HUD, it is common to see changes to align with the updated limits. Utility allowance estimates are usually updated annually, and may also impact rents. It is not a violation for the LIHTC program if either situation occurs mid-lease cycle, as long as reasonable notice is provided to the tenant of an increase.

Non-payment of Rent and Evictions

Q: Can a tenant withhold rent due to the open maintenance issues?

A: No. The South Carolina Residential Landlord and Tenant Act requires that tenants comply with the terms of the lease.

Q: Can a tenant be evicted for non-payment of rent?

A: Yes. Per IRS Section 42(h)(6)(E)(ii)(I) of the Code the owner cannot evict or terminate tenancy (other than for “good cause”) of an existing tenant of any low-income unit. “Good cause” is determined by the appropriate judicial process and may include, but is not limited to, nonpayment of rent, lease violations, and other infractions during residency.

Q: Can SC Housing assist a tenant who has received an eviction notice?

A: No. SC Housing cannot assist in tenant-landlord disputes involving eviction. Proper judicial process must be followed.

Other Resources and Assistance

South Carolina Residential Landlord and Tenant Act: [Code of Laws - Title 27 - Chapter 40 - Residential Landlord And Tenant Act \(scstatehouse.gov\)](#)

South Carolina Human Affairs Commission (for fair housing issues): [Home | Human Affairs Commission](#)

South Carolina Fair Housing Center Complaint Intake Line: 1 (855) 665-8549

South Carolina Legal Services: [Home - South Carolina Legal Services \(sclegal.org\)](#)

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