Tribal Housing Department
LIHTC Compliance Training

OUR OWNERSHIP

- Wilbur Red Tomahawk, Owner (Standing Rock Sioux)
- 100% Native American owned small business
- Tribally Chartered / TERO Certified

OUR SERVICES

- Housing Development Finance
- Compliance / Asset Management
- Training / Technical Assistance

- RTHawk Housing Alliance LLC (RTHawk), was established to provide professional consulting services for Tribes and Tribal Housing Authorities

- We are a relationship-driven firm with a unique approach & understanding of our Indian Country clients and projects

- Our staff specializes in utilizing the Low-Income Housing Tax Credit (LIHTC) program as the primary funding source for acquisition/rehab and new construction projects

Robin Thorne

Vice President -Training & Asset Management

"Robin works directly with Tribal housing authority staff to ensure compliance with LIHTC, NAHASDA, AHP and other affordable housing program requirements."

- Working with Tribal clients in developing and managing their Affordable Housing Projects since 2003.
- With the National American Indian Housing Council (NAIHC), Robin created the NAHASDA & Tax Credit Compliance Professional (NTCCP) curriculum and national certification program, which designates professional experience and expertise in continuing operational compliance under the two programs.
- Certified as:
  - National Compliance Professional Executive (NCPE) and a member of the NCP
  - Housing Credit Certified Professional (HCCP), Designated by the National Association of Home Builders (NAHB)
- She serves on the Advisory Board for the Housing Credit College and is a member of the HCCP Board of Governors

Meet the RTHawk - Executive Leadership Team

(center) Wilbur Red Tomahawk – President/CEO & Founder

(right) Lorna Fogg – Vice President, Finance & Development

(left) Robin Thorne - Vice President, Training & Asset Management

The Low Income Housing Tax Credit Program

LIHTC

- Developed by Congress in 1986 to finance the development of affordable rental housing for low-income households
- Administered by the Treasury Department (IRS)
- Section 42 of the Internal Revenue Code (IRC) defines the LIHTC Program

The Low Income Housing Tax Credit Program

- The LIHTC program generates tax credits for investors

  credit = dollar for dollar reduction in tax liability

  – Not a tax deduction...

  (i.e. a reduction of income to arrive at taxable income)

- The credits offset an investor's taxes on a dollar for dollar basis for a 10-year period

What Can Be Built With Housing Tax Credits?

- New construction /rehabilitation
- Single family duplexes/apts.
- Scattered site/subdivision
- Community facilities family/elderly

Who Can Be Served With Housing Tax Credits?

- ☑ Homeowners/renters
- ☑ Low income/extremely low income
- ☑ Disabled and other special needs
- ☑ Tribal members/ workforce/students

How Does the Low Income Housing Tax Credit Program Work?

Developers "sell" tax credits to investors to raise capital, thereby reducing their contribution to the project

=

This allows developers to offer affordable rents to low-income families

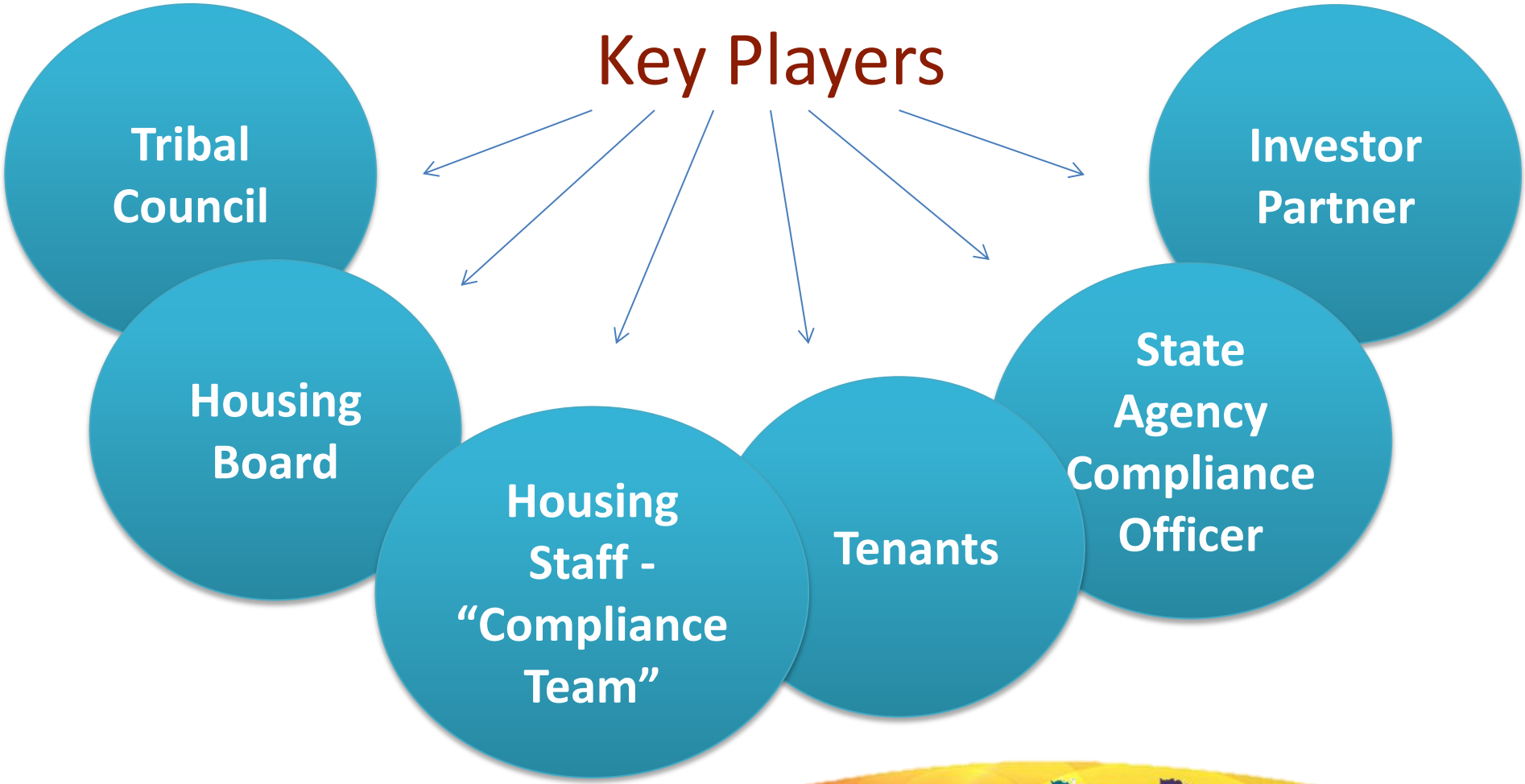
***Must compete for LIHTC allocations

States may hold one or two competitive application rounds per year

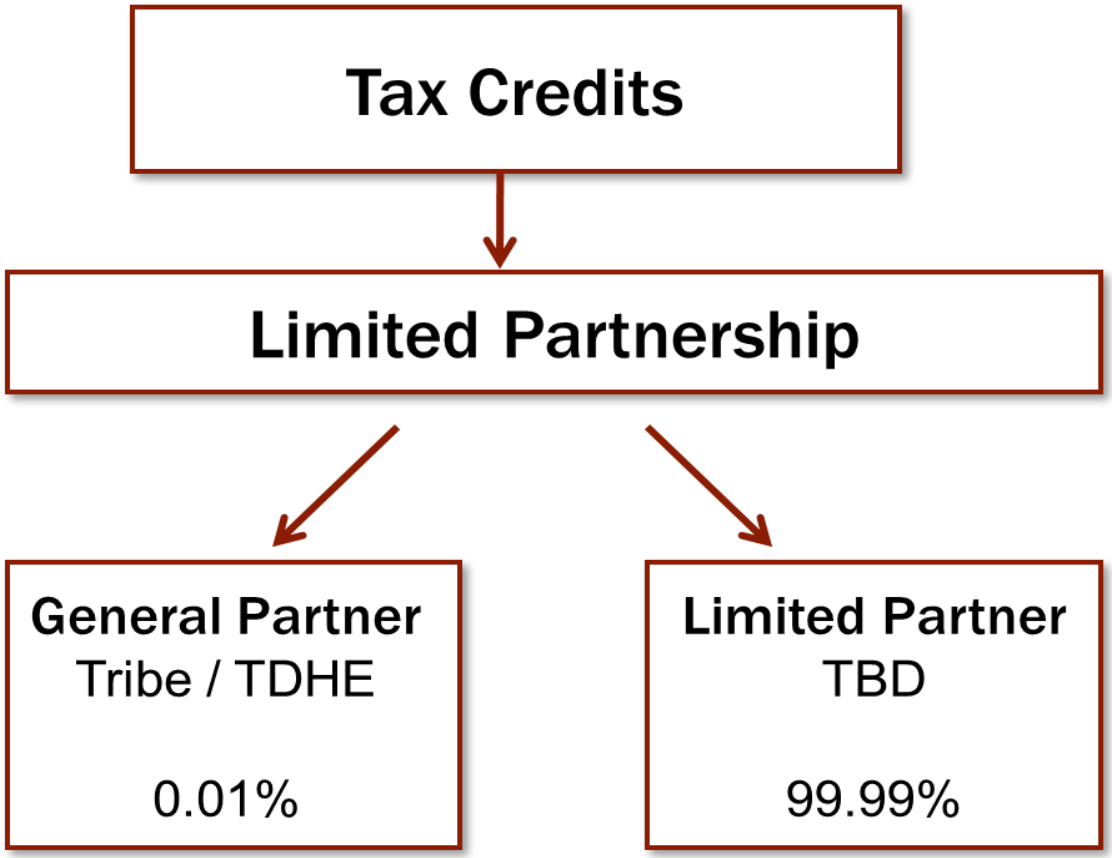
Key Players

- **General Partner**
- **Limited Partner / Investor**
- **Internal Revenue Service**
- **State Housing Agency**

Key Players


Tribal Council
Investor Partner
Housing Board
State Agency Compliance Officer
Housing Staff - "Compliance Team"
Tenants

LIHTC Structure



LIHTC Program Terms

- ❑ BIN
- ❑ Building
- ❑ Form 8609
- ❑ Placed-In-Service
- ❑ Minimum Set-Asides
- ❑ Project
- ❑ Unit
- ❑ Rent-Up Period
- ❑ Credit Period
- ❑ Compliance Period

Finance Area

The Tax Credit Limited Partnership (“LP”) must be treated as a separate business for accounting purposes

It should have the following:

- ✓ Separate checking account
- ✓ Separate account for security deposits
- ✓ Ability to track income and expenses related specifically to the tax credit project

Finance Area

- ✓ Contracts should be made in the LP's name
- ✓ The LP must be able to provide quarterly and annual financial statements and tax returns
- ✓ If Housing Authority/Tribe pays an expense on behalf of the LP - expenses are reimbursed

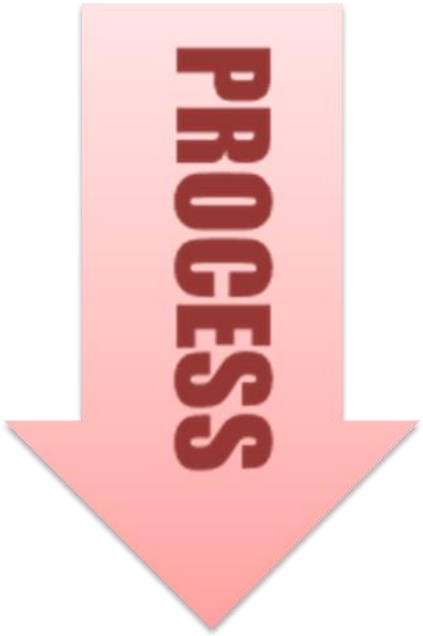
Finance Area

- ✓ An experienced, independent tax credit accountant will need to be engaged on an annual basis to prepare the partnership tax return and the annual audit

***The investors require that these items are completed by an independent third party accountant in a timely manner*

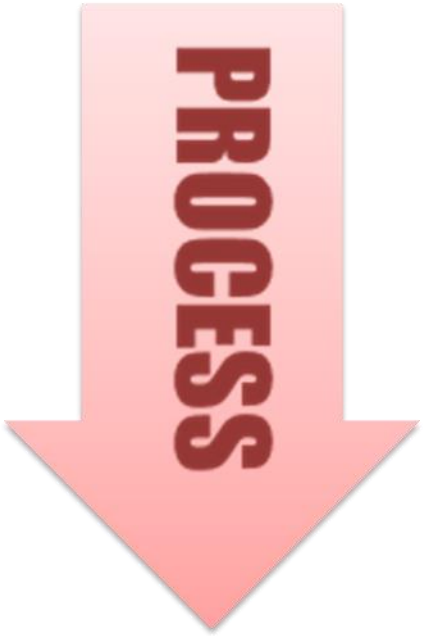
Tenant Relations Area – **Occupancy Specialist**

- Occupancy Specialist process, including:
  - Procedures for intake
  - Procedures for processing paperwork
  - Procedures for maintaining tenant files

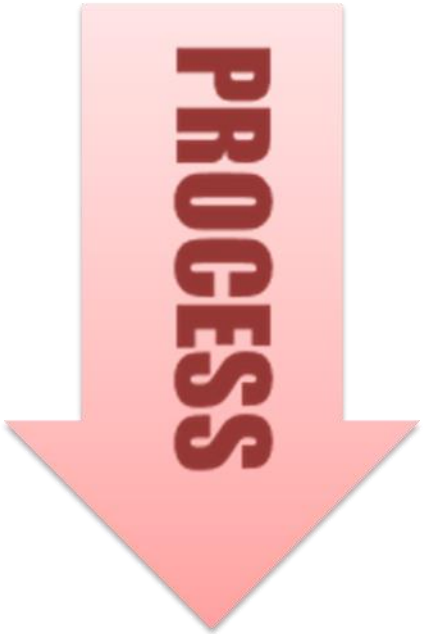


Tenant Relations Area – **Resident Services**

- Resident Services Specialist process, including:
  - Procedures for inspections
  - Procedures for notification of tenant issues
  - Procedures for ensuring unit repairs completed



Maintenance Area



- Maintenance process, including:
  - Procedures for routine maintenance
  - Procedures for preventative
  - Procedures for emergencies
- Maintenance staff
- Work order system
- Warehouse (if applicable)

Tenant Orientations

The TDHE should require that applicants for the tax credit homes complete an orientation prior to move-in

- Orientation should explain:
  - TDHE/Tribal and LIHTC Program policies and procedures
  - Review of lease requirements
  - How to perform proper home maintenance

***Other optional training could be applied at this time

(i.e. budgeting family expenses so that rent is paid and preparing tenant for eventual homeownership)

Tenant Selections

What is the Criteria?

- Pre-screening procedures
- Criminal background check
- Credit check
- Drug Screening
- Rental history and performance

Required Documentation

Items to Get Started...

- ❑ Copy of the Tax Credit Application
- ❑ Copy of all other Financing Sources
  - ☐ HOME ☐ Bond ☐ RD 515 ☐ etc...
- ❑ Copy of current Policy & Procedure Manual

Required Documentation

Items to Get Started (cont'd)…

- Copy of Land Use Restriction Agreement
- All Rental Forms:
  - Current Year Income & Rent Limits
  - Household Application
  - Verification Forms
  - Tenant Income Certification ("TIC")
  - Lease

Additional Program Rules

- Available Unit Rule
- Vacant Unit Rule
- General Public Use Rule
  - HERA clarification

Waiting Lists

- Use of TDHE waiting lists
- TDHE determines preference order
- Preference can be based upon:
  - ❑ Tribal enrollment
  - ❑ Application date
  - ❑ Ability to pay rent
  - ❑ Rental history
  - ❑ Current living conditions to name a few

Qualifying LIHTC Households

- Income Limits
- Income Minimums
- Handicapped Units & other set-asides
- Contact Information for State Agency
- Current Utility Allowances & supporting documentation

***NOTE: Utility Allowances must be updated on an annual basis

Household Composition

Special Rules for Certain Household Types:

- Section 8 Recipients
- Zero Income
- Full-Time Students
- Live-In Attendants

Household Composition

Treatment of Special Household Members:

- Excluded Members
- Foster Children/Adults (Change 4 – HUD Handbook)
- Live-In Attendants
- Absent Members
- Unborn Children

Household Composition

Absent Household Members

Is absence permanent or temporary?

- Permanently absent – **not** counted
- Temporarily absent – **must** be counted

Examples of Permanently Absent:

- Divorce / Legal Separation
- Adult child moves from home
- Permanently confined to nursing home/hospital

Household Composition

Examples of Temporarily Absent

- Military duty
- Working out of town
- Incarceration

Full-Time Students

Requirements

and

Exceptions

Full-Time Students

Rental to full-time students has certain restrictions...

*****NOTE: Only applies to households where everyone is a full-time student**

- Eligibility Requirements/Exceptions:
  - Married Filing a Joint Return
  - Receiving TANF/AFDC
  - In a program similar to Job Training Partnership Act (JTPA)
  - Single parent claiming all children on tax return
  - One member of the household was previously a foster child

Full-Time Students

- Full-time student household must meet an exception allowing eligibility EACH year

- Household must complete Annual Student Certification form every year

*****Remember**

– this rule only applies to full-time student households

Applications / Verifications / Recertifications

- ☑ Interview applicant
- ☑ Complete initial application
- ☑ Verify all information (income/assets)
- ☑ Determine total household income
- ☑ Complete the TIC and lease

Staff must know the specific state LIHTC requirements and must use state required LIHTC forms

Verifications

Three Types Of Verifications:

- Third-Party: sent directly to source and returned to HA
- Second-Party: Check stubs, award letters, etc. provided by Applicant
- First-Party: Self Affidavits

***Third Party Verifications should be used whenever possible

Verifications

- Verifications are good for 120 days

- After 120 days pass...

  - verification process must be started over

- Must follow up on any information on verification that is not clear

***Third Party Verifications should be used whenever possible

Tenant Annual Recertifications

***MUST be completed <u>within</u> 12 months of move in date (i.e. date of TIC/Lease)

- **<u>Late Recertifications are Noncompliance</u>**
- Need to make sure that household changes have not created a New Household
- Need to check Student Status

Determining Annual Household Income

- **Income**
  - Inclusions
  - Exclusions
  - Examples
- **Assets**
  - Types
  - Exclusions
  - Income from Assets
  - Imputed Asset Income

Annual Household Income

- Must follow guidelines in HUD Handbook,
  - Section 4350.3, Chapter 5 *(as amended)*
- Must use GROSS income *(not net income)*
- Must annualize over 12 months *(even if lease term is shorter)*
  - Household Income = Income + Asset Income
  - Income = Regular, Periodic *(wages, SSI, TANF, etc)*
  - Asset = Lump Sum, Accessible

    (Bank Accounts, Savings, Real Estate, Annuities, etc.)

Examples of Included Income

- ❑ Employment Income
- ❑ Social Security
- ❑ TANF
- ❑ Alimony & Child Support
- ❑ Recurring Gifts
- ❑ Public Assistance

- ❑ Payment in lieu of earnings
  - Unemployment benefits
  - workers compensation
  - severance pay
- ❑ Per Cap from gaming activities

Examples of Excluded Income

- Food Stamps
- Section 8 Assistance
- Payment for foster care
- Hostile fire pay to military members
- First $2,000 of per cap income from **Tribal Trust Land** activities
- Earnings in excess of $480 of adult dependent full-time students
- Student Financial Assistance

Assets

- Savings Accounts, Checking Accounts, Money Market, etc.
- IRA, 401K, etc.
- Real Estate ownership
- Whole Life Insurance
- Pension & Retirement Plans

Examples of Excluded Assets

- Personal Property
  - (vehicle that is used on a regular basis, jewelry, furniture, etc.)
- Assets that are not owned or accessible to the client
- Interest in Indian Trust Land
- Assets lost in divorce, foreclosure or bankruptcy
- Term Life Insurance
- Assets disposed of for fair market value

Asset Income

- Asset income equals the greater of:
  - Actual asset income vs. Imputed asset income
- Imputed asset income is ONLY calculated if the cash value of the asset is $5,000.00 or more.
- Asset income is determined using the interest rate, dividends, etc.
  - If the asset does not earn income (i.e. a non-interest bearing checking account) then there is no income for that asset
- Imputed asset income is calculated using the HUD Passbook rate of 0.06%.

Asset Income (cont'd)

- Must count assets and asset income from all assets, including assets of minors

- Under $5,000 Asset Certification form required for all tenant files where household assets total less than $5,000

LIHTC Tenant Paid Rent / Max Rents

Key Terms:

- Gross Rent
- Tenant Paid Rent
- Utility Allowances
- Non-Optional Charges
- Max Rent Limits

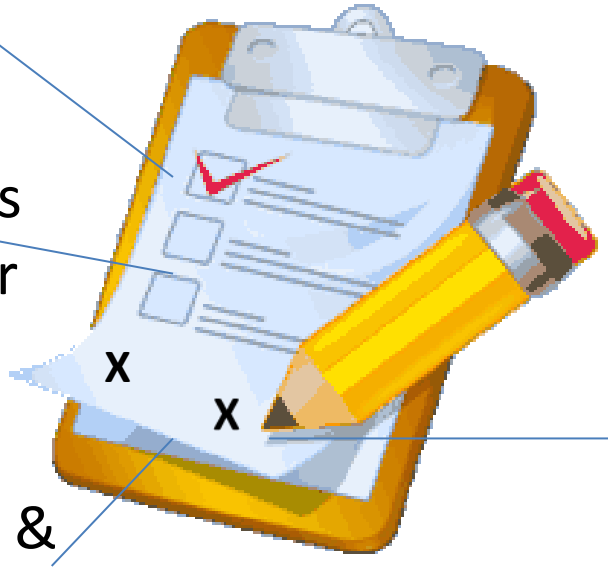
Tenant Income Certifications

- TIC summarizes household's eligibility

***USE STATE REQUIRED / APPROVED TIC FORM

Make it legible

Show income calculations on separate worksheet or labeled calculator tape



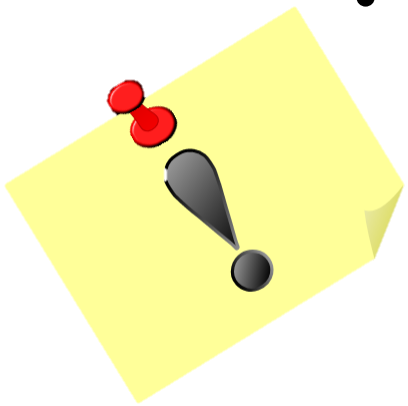
Signature date on TIC & Lease must be the same

TIC must be signed by all adults in household and manager

Lease

*****DO NOT PRE-SIGN LEASE**

– *sign lease same day keys are given for the rental property*

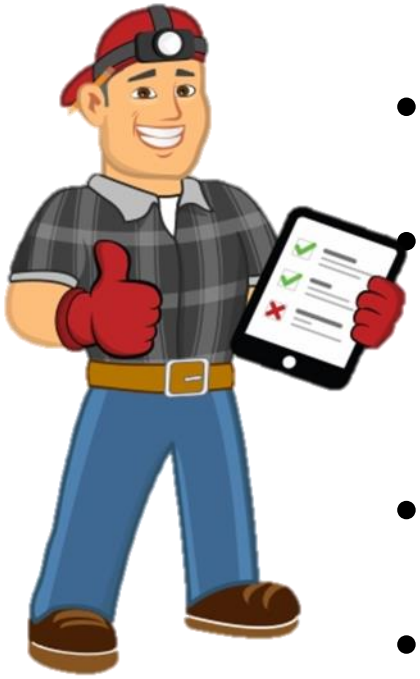


- Initial Lease Term must be at least 6 months
- Move-in date and signature date on lease and TIC should all be the same
- Lease must contain language identifying the LIHTC program requirements

Lease Provisions - Terminations

- Steps Leading Up To Lease Termination
  - Policy And Procedures
- Actual Eviction Process
- Tenants Rights

Inspections



- TDHE & Tenant Expectations
- Tenant Files
- Physical Inspection of Units
  - Five Inspectable Areas Defined by UPCS
- Consequences
- Remedies

Inspections

- Project will be inspected by both the State Compliance Office and the Tax Credit Investor
- Leasing units and tenant files will both be inspected
- Sufficient notice from inspector should be given prior to the inspection being scheduled

- Tenants must receive written notice of the time & date of inspection
  - Notice should contain language advising the tenant that their unit will be inspected even if they are not home

- Maintenance and occupancy staff should have a plan to prepare for inspections

Inspections (cont'd)

- Housing staff must inspect units on a regular basis
  - provide written reports for the tenant files
  - issue work orders and follow up on all findings

- Most inspectors utilize the Uniform Physical Conditions Standards ("UPCS") protocol
- Physical inspections will include both the interior and exterior of the unit as well as any common areas
- All inspections should be performed with a representative of the maintenance staff present

Inspections (cont'd)

- Maintenance staff should have all necessary items to complete quick repairs at time of inspection

  These items include:

- ✓ Batteries for smoke detectors
- ✓ Replacement smoke detectors
- ✓ Sink/tub stoppers
- ✓ Ladders, washers, screws, light bulbs

- Maintenance staff person should check smoke detectors, stove fans and burners, pilot lights for inspector when inside the unit

Tenant Files

- Should be neat and organized
- File set up should be consistent from file to file

Tenant Files must include:

Application
Verifications
Clarification records
TIC
Lease & Addendums

- Have a duplicate set of files
- Should have a file for each unit and each household that lived in the unit

IRS Form 8823

- Who issues it?
- What is it?
- When is it issued?
- Where is it filed?
- Why is it issued?
- How is it corrected or prevented?

IRS Form 8823

- Issued by State HA to show:
  - Corrected/Uncorrected Compliance Findings

- Filed with IRS
- Failure to correct may result in recapture/ loss of tax credits
- Only the IRS can recapture tax credits

Satisfying Program Requirements

State, Federal, and Investor

What are they looking for?

- Well defined management structure
- Current audited financial statements and tax returns
- Detailed financial policy and procedures *(including but not limited to)*
  - ✓ Rent collection
  - ✓ Tenant accounts receivable
  - ✓ Accounts payable
  - ✓ Work order/maintenance expense tracking

Satisfying Program Requirements

State, Federal, and Investor

What are they looking for?

- Detailed housing policy and procedures (including but not limited to)

  - ✓ Waiting list policies
  - ✓ Eviction policies
  - ✓ Drug and alcohol policies
  - ✓ Pet policies

- Structure of the housing organization

State Requirements

- Minimum 15-Year Compliance Period
- States may have different reporting requirements but all expect submission at least annually
- Onsite inspections of units and tenant files
- Noncompliance reported by state agency to IRS on Form 8823

Other Requirements

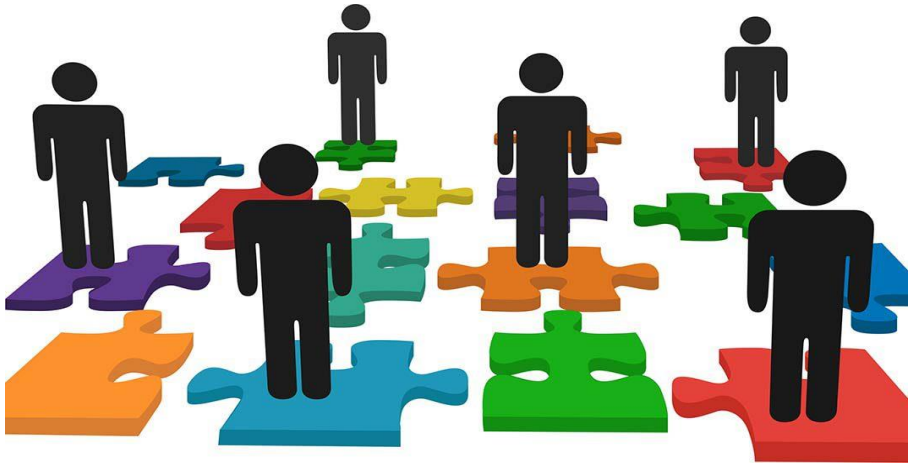
- **INVESTOR REPORTS**
  - ☑ Quarterly Financials
  - ☑ Occupancy Reports
  - ☑ Certificates or statements confirming that the partnership remains in compliance
  - ☑ Other reports the investor deems necessary to evaluate the partnership (e.g. Business Report)

&

- **ANNUAL REPORTS**
  - ☑ Tax Return & Audit
  - ☑ Operating Budget
  - ☑ Utility expense changes
  - ☑ Insurance Renewal

Managing your LIHTC Tenants

- Effective tenant selection
- Tenant orientation
- Tenant eligibility



- Strict enforcement of lease provisions

ANY QUESTIONS???
comments...

Thank You

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