

NOTICE

To: DCA Tax Credit Property Owners

From: The Georgia Department of Community Affairs
Office of Affordable Housing

Re: 2004-082 and 2005-037 (Good Cause Eviction)

Date: August 1, 2005

The Internal Revenue Service issued Revenue Ruling 2004-82 in August 2004. It mandates, in Q&A-5, that all regulatory agreements, including Land Use Restrictive Covenants (LURC), require a prohibition against evicting or terminating the tenancy of low income tenants without good cause. If it is determined by the end of a taxable year that a taxpayer's extended low-income housing commitment for a building does not meet this requirement, the low-income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year.

Therefore, the Georgia Department of Community Affairs ("DCA") has examined its current model LURC for compliance with this ruling. As a result of the review, DCA has amended the model LURC to meet the requirements of the Revenue Ruling. Specifically, the LURC now states that the Owner is prohibited against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (no-cause eviction protection) and (2) any increase in the gross rent with respect to the unit not otherwise permitted under §42. (Section 3(m)).

In addition, DCA LURC section 4d(ii) has been amended. Prior to July 1, 2005, it read:

Upon re-examination of a Low-Income Tenant's income, if the tenant's income is more than 140% of the allowable household income, the tenant will be considered "over-income," and Section 42(g)(2)(D) will apply with respect to Owner's treatment of the tenant and the Low-Income Unit; *provided, however, if the tenant is "over-income" for two (2) successive years, Owner shall not renew that tenant's lease for the next year* (emphasis added).

DCA believes that the italicized portion of this section may violate the good cause eviction requirement of Revenue Ruling 2004-82. **Therefore, this provision of the LURC has been eliminated effective July 1, 2005. As a result, owners will no longer be required to evict over income tenants in this situation due to the Rev. Ruling.**

In addition, Revenue Procedure 2005-37, released by the IRS on Tuesday, June 21, provides a safe harbor for complying with the good cause eviction interpretation provided in Revenue Ruling 2004-82. Specifically, it describes how state agencies and project owners can meet the requirements of Section 42(h)(6)(B)(i) of the Code as described in Q&A-5. The safe harbor in Rev. Proc. 2005-37 allows the following:

1. Existing Agreements: Agreements entered into before the end of 2005 that contain general language requiring Owners to comply with the requirements of §42 (“catch all” language) do not have to be amended. Instead, Owners have to be notified (this notice) that you cannot evict a tenant except for good cause. In addition, the owner will have to certify annually that they have not evicted or raised rent (except as allowed) in the previous year. If the Owner fails to make certification or DCA learns that tenants have been evicted other than for good cause, DCA will report the Owner to the IRS using Form 8823
2. Existing Agreements without Catch All Language: These agreements must be modified by December 31, 2005.
3. New Commitments: Starting January 1, 2006, each LURC contain specific language regarding good cause evictions.

This letter serves as notice to meet requirement #1 above. In addition, DCA will contact those Owners whose existing LURCs do not contain the catch all language in #2 to modify these LURCs before the end of the year. Lastly, all LURCs entered into starting in 2006 will contain the necessary language to satisfy #3 above.

If you have any questions, please contact DCA at rentalhousing@dca.state.ga.us.