

## MEMORANDUM

To: Brian Hudson, Executive Director PHFA  
From: Cindy Daley  
Date: December 10, 2004  
Re: Implementation of IRS Rev. Rul. 2004-82

On behalf of the Pennsylvania Legal Services community, we are writing to express our interest in working with PHFA to implement the IRS Revenue Ruling 2004-82 ("the Ruling"), which clarifies the requirement for good cause in evictions from Low Income Housing Tax Credit ("LIHTC") developments. The purpose of the LIHTC is to create housing affordable to lower income persons. Congress and the IRS have both indicated in various ways that the residents of LIHTC housing should not lose such housing without good cause. We want to make certain that whatever process PHFA chooses to implement the Ruling ensures that tenants are adequately notified of the good cause eviction protection so they can enforce their rights under the law.

### 1. Good Cause Eviction is Current Law

The Ruling states that LIHTC owners will not be entitled to tax credits for the year 2004 if their restrictive covenants do not include good cause eviction language by December 31, 2005. However, the Ruling reflects the IRS's interpretation of *current law*. Owners and tenants need to be notified immediately that the good cause provision is current law and is enforceable. We request that PHFA notify all owners of the Ruling, the enforceability of the provision, and require owners to amend tenant leases as soon as possible.

### 2. Enforcement

The Ruling requires PHFA to review all restrictive covenants and notify owners where amendments are required to bring the document into compliance with the Ruling. However, in order to give meaning and effect to the Ruling, we are requesting PHFA to take two additional steps.

First, all tenant leases not already containing good cause eviction provisions need to be modified. PHFA should require all owners to insert into their leases the language suggested below, as soon as possible. Second, compliance monitoring by PHFA must include a review of tenant leases to ensure that the provision is, in fact, included. We consider the lease modifications to be essential to enforcement of tenant rights.

### 3. Lease Language

We propose the following lease language, which is already used in LIHTC developments with HOME funding:

This lease is for a Low-Income Housing Tax Credit unit. The owner may not terminate the tenancy or refuse to renew the lease of a tenant of a Low-Income Housing unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action pursuant to the notice provisions of this lease and to state and federal law.

For lease modifications, a proposed Lease Addendum is attached.

We look forward to working with you to implement Rev. Ruling 2004-82 in a manner which benefits the residents of the LIHTC units. Please contact me if you wish to discuss this matter.

Copy: Rebecca Peace  
Mark Schwartz

## Required Lease Addendum

The following supercedes any language in the Lease dated [*insert date of most recent Lease*] between Owner and Tenant purporting to permit terminations of tenancy without cause:

'The owner may not terminate the tenancy or refuse to renew the lease of a tenant of a Low-Income Housing unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action pursuant to the notice provision of this lease and to state and federal law.'

Owner: \_\_\_\_\_

Date: \_\_\_\_\_

Tenant: \_\_\_\_\_

Date: \_\_\_\_\_