

NAHB Resolution

Title: Enforcement of Three-Year Provision for LIHTC Properties  
Original Sponsor: Housing Credit Group

WHEREAS, recipients of low-income housing tax credits (LIHTCs) must sign an extended use agreement with the housing credit agency, which provides that a designated number of units in the project will be reserved for qualified low-income tenants for the next 30 years;

WHEREAS, Section 42 does not permit eviction or termination of tenancy of an existing low-income tenant other than for good cause or an increase in the gross rent not otherwise permitted under the regulations for the three-year period following the end of the project's extended use period, also known as the "three-year rule;"

WHEREAS, the Internal Revenue Service (IRS) released Revenue Ruling 2004-82 stating that provisions in the three-year rule, including the inability to evict without good cause, apply to the entire extended use period of the project and not only the three years after the extended use period ends;

WHEREAS, any project without this language in its extended use agreement is noncompliant with the regulations and the agreement must be amended (and the amendment recorded) within one year to avoid recapture;

WHEREAS, housing credit agencies and owners administered the LIHTC program to allow for termination of a lease at its expiration with proper notice;

WHEREAS, application of the IRS Ruling to the entire extended use period goes well beyond state and local tenant laws; and

WHEREAS, this causes an administrative requirement not defined in state or local law, creating inconsistent administration of the LIHTC program across the country;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders urge the Internal Revenue Service to revise Revenue Ruling 2004-82 to apply the three-year rule provisions to only the period after the end of the extended use agreement and not the entire affordability period of a low-income housing tax credit project, and

BE IT FURTHER RESOLVED that if the Internal Revenue Service does not apply the three-year rule provisions to only the period after the extended use agreement ends, the National Association of Home Builders urge Congress to enact legislation to make this revision.

Board of Directors Action:	<b>Approved</b>
Joint Executive/Resolutions Committee Action:	Recommends Approval
Resolutions Committee Action:	Recommends Approval
Federal Government Affairs Committee Action:	Recommends Approval
Housing Finance Committee Action:	Recommends Approval
Multifamily Trustees Action:	Recommends Approval
Multifamily Finance Subcommittee Action:	Recommends Approval
Affordable Housing Subcommittee Action:	Recommends Approval
Taxation Subcommittee Action:	Recommends Approval