



Housing Protections for Survivors in Low Income Housing Tax Credit Units

Part of the Webinar Series:

What Survivor Advocates Should Know about the Low-Income Housing Tax Credit Program

November 18, 2020

Presented by:

- Jenna Collins, [Community Legal Services](#) (Philadelphia, PA)
- Amanda Lee-Gross, [US Housing Consultants](#)
- Karlo Ng, [National Alliance for Safe Housing](#)



National Alliance for Safe Housing (NASH)

NASH's mission is to ensure that survivors of domestic and sexual violence have a full range of safe housing options, through improved access, increased resources, and innovative solutions, ultimately catalyzing a safe housing movement.

Our vision is to create a world where safe housing is a human right shared by everyone.



N A S H

NATIONAL ALLIANCE FOR
SAFE HOUSING

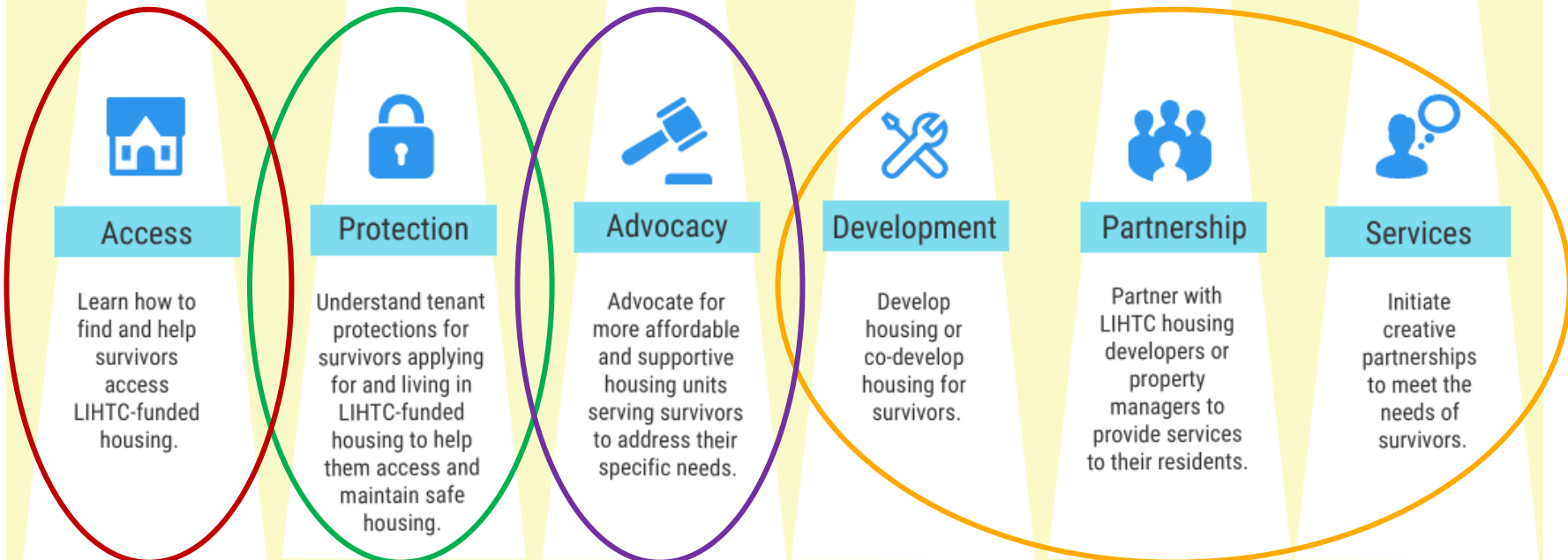
nashta.org



Low-Income Housing Tax Credits

Opening doors for agencies serving survivors.

The Low-Income Housing Tax Credit (LIHTC) is one of the largest sources of funding for affordable housing in the United States. Understanding its role in your community can help you better serve survivors and increase access to affordable housing units for survivors. There are many ways to get involved!



Evictions & Domestic Violence in LIHTC Units



Scenario: Jane

Jane Smith has lived in an LIHTC property since 2017. Her initial lease was a yearly lease, but at the end of the first year, it renews month-to-month. On August 15, 2020, Jane received a notice of lease termination for disturbances, criminal activity, damage to the unit, and end of the lease term. Jane's husband, John, is also on the lease. Jane believes the notice of termination is based on a physical altercation with John on August 1, 2020. The police were called to the unit, after John broke the door down. The police took John into custody and found drugs on him.



Domestic Violence Eviction Defenses in LIHTC

1. Eviction Moratoriums
2. Good Cause
3. Anti-Discrimination Laws
 - Federal, state, and local fair housing laws
 - Violence Against Women Act
4. State and Local Landlord-Tenant Laws



Eviction Moratoriums

On **August 15, 2020**, Jane received a notice of lease termination for disturbances, criminal activity, damage to the unit, and end of the lease term.

- Sometime in March or April, most states instituted eviction moratoriums.
- The CARES Act: The CARES Act has put in place an eviction moratorium for nonpayment of rent or fees until July 25, 2020 for SOME properties. This included LIHTC properties. Currently, requires 30-day notice for any new evictions.
- The CDC Eviction Moratorium stops lockouts in some cases through December 31, 2020.



CDC Eviction Moratorium

You can stop your eviction for non-payment of rent, if you:

- Lost income due to COVID-19,
- Expect to earn less than \$99,000 in 2020 (as an individual),
- Tried to get rental assistance or other financial help,
- Are trying to pay as much of your rent as you can, given your expenses,
- And would likely become homeless or have to double up if you are evicted.

You must fill out and give to your landlord a copy of the **CDC Declaration**.

HUD and advocacy groups have provided translations.



COVID-19 Tenant Resources

- CDC, CDC Declaration Form in English - <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>
- HUD, CDC Declaration Form translated into additional languages - https://www.hud.gov/program_offices/public_indian_housing/covid_19_resources/resident_declaration_form-other_languages
- National Low Income Housing Coalition, CDC Declaration Form translated into even more languages - <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>



COVID-19 Tenant Resources

- Eviction Lab, State and Local COVID-19 Eviction Moratoriums - <https://evictionlab.org/covid-eviction-policies/>
- National Low Income Housing Coalition, COVID-19 Emergency State and Local Rental Assistance Programs - <https://nlihc.org/rental-assistance>
- NASH & National Housing Law Project, Housing Q&A for Survivors of Domestic and Sexual Violence during COVID-19 (Nov. 2020), https://drive.google.com/file/d/1viLCuOpAlJoJ2mN_nYJo4zCdZR_ie7V0/view?usp=sharing



Good Cause Protections

WHAT DO WE MEAN WHEN WE SAY GOOD CAUSE?

Landlords in LIHTC can only evict tenants when the lease term is coming to an end if there is “good cause.”

WHAT COUNTS AS GOOD CAUSE?

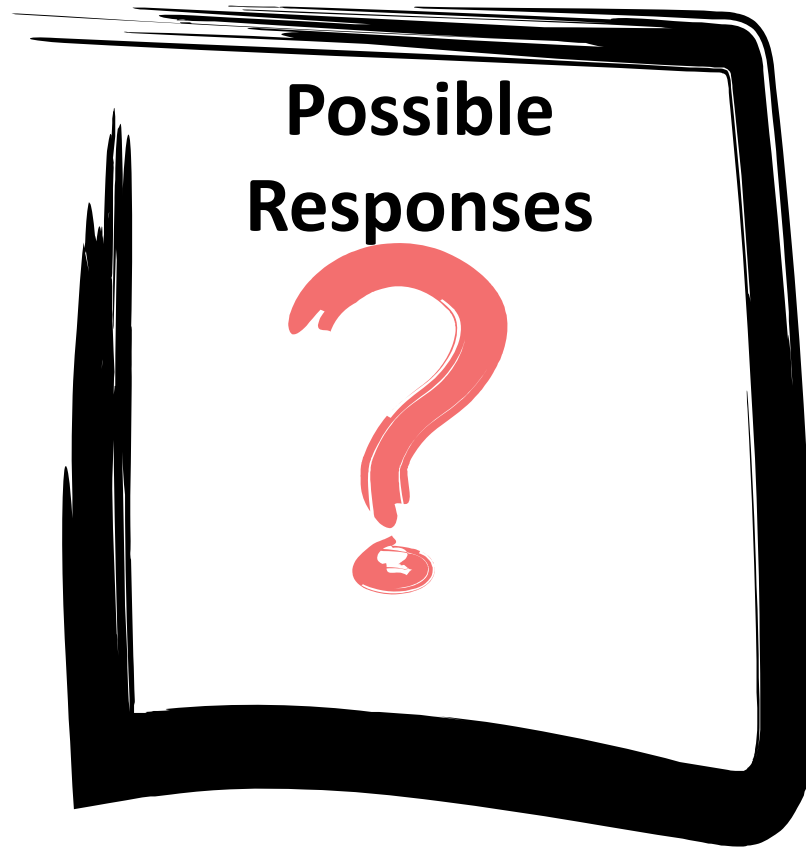
- Any serious, repeated breach of the lease.
- Habitual non-payment of rent
- Unauthorized occupants
- Failure to recertify or report income
- Criminal activity on the property
- Disturbances
- Damage to the property



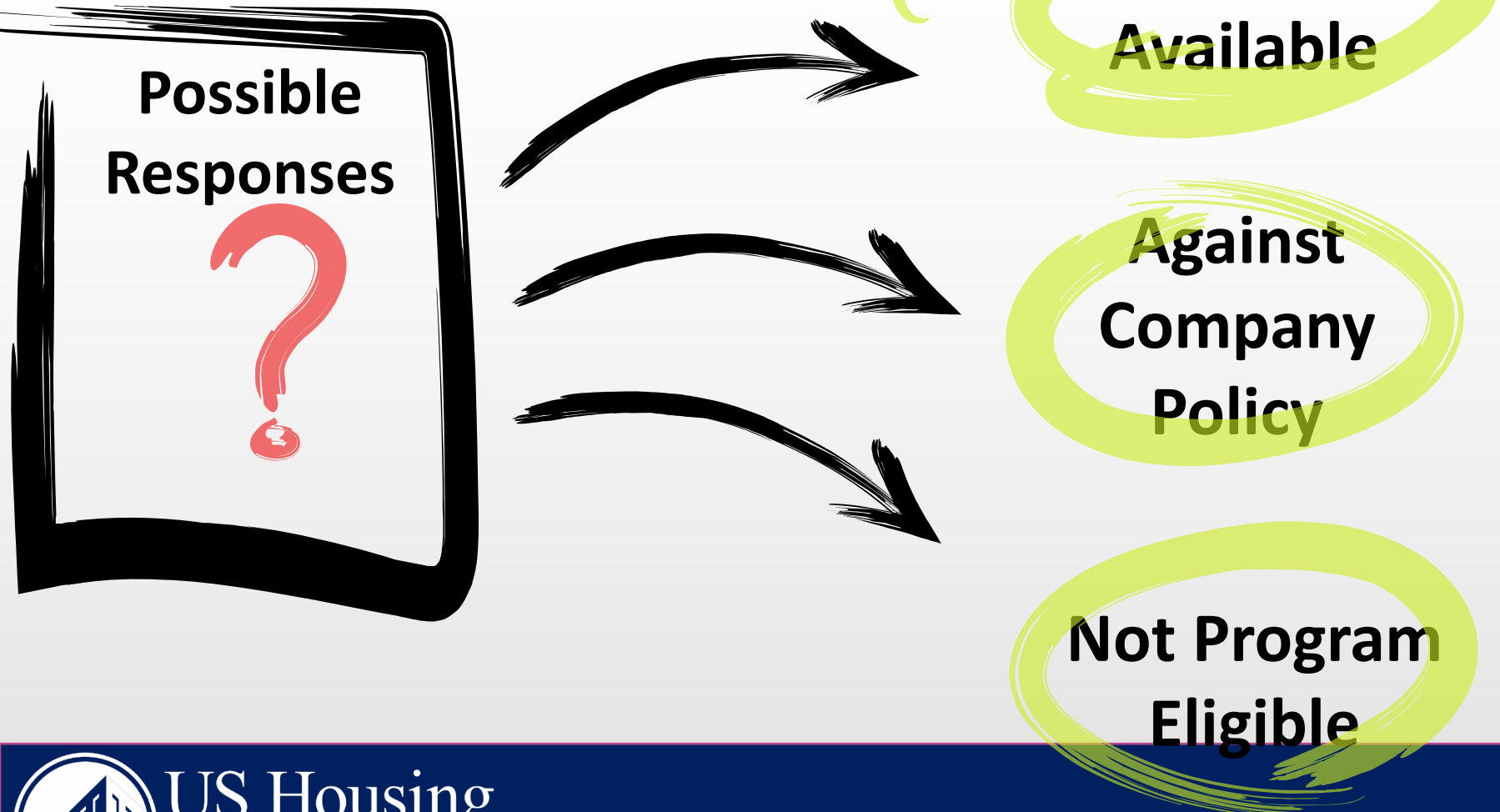
Anti-Discrimination Protections

- **Violence Against Women Act (VAWA)**
 - Covers DV, SA, stalking & dating violence
 - Cannot use DV, SA, stalking & dating violence as a basis for evictions
 - Allows for the option of bifurcating the lease
 - VAWA Notice of Occupancy Rights and VAWA Self-certification Form must be provided with notice of eviction or termination of assistance.
- **Federal Fair Housing Act**
 - Provides protections against discrimination against certain protected classes, for example:
 - Gender, race, religion, disability status
 - DV disproportionately affects women - so it is seen as Fair Housing Protection (see HUD memo in Resources)
- **State and Local Landlord-Tenant Laws**
 - Most jurisdictions at least have a process in place before someone can be locked out
 - Tenants do not need to move immediately on the expiration of the lease termination notice
 - Nuisance Laws (see HUD guidance in Resources)
- **State and Local Fair Housing Protections**
 - Many states and localities have their own Fair Housing laws





Requesting Emergency Transfers - LIHTC



No Units Available – Ask...



**...To be placed on internal
transfer waiting list**



**...If there are units available at
other properties
owned/managed by the HP**

Against Company Policy - Inform them...



**...That the LIHTC is a
covered housing
program under VAWA**



**...The Housing Finance Agency
will be notified if Emergency
Transfer is not considered**

Not Program Eligible To Transfer - Ask ...



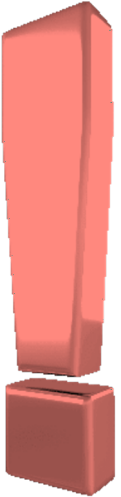
...Is the unit available in the same Building (BIN), if Yes, inform them that a household may transfer within same BIN without having to requalify



Is the unit in a different BIN...

LIHTC Transfer Basics

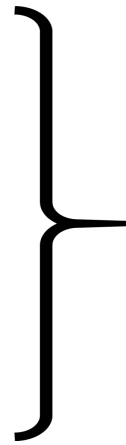
A household can always transfer units within the SAME Building (BIN) without requalifying. (i.e, even if a household is over-income they can still transfer to a different unit within the same building)



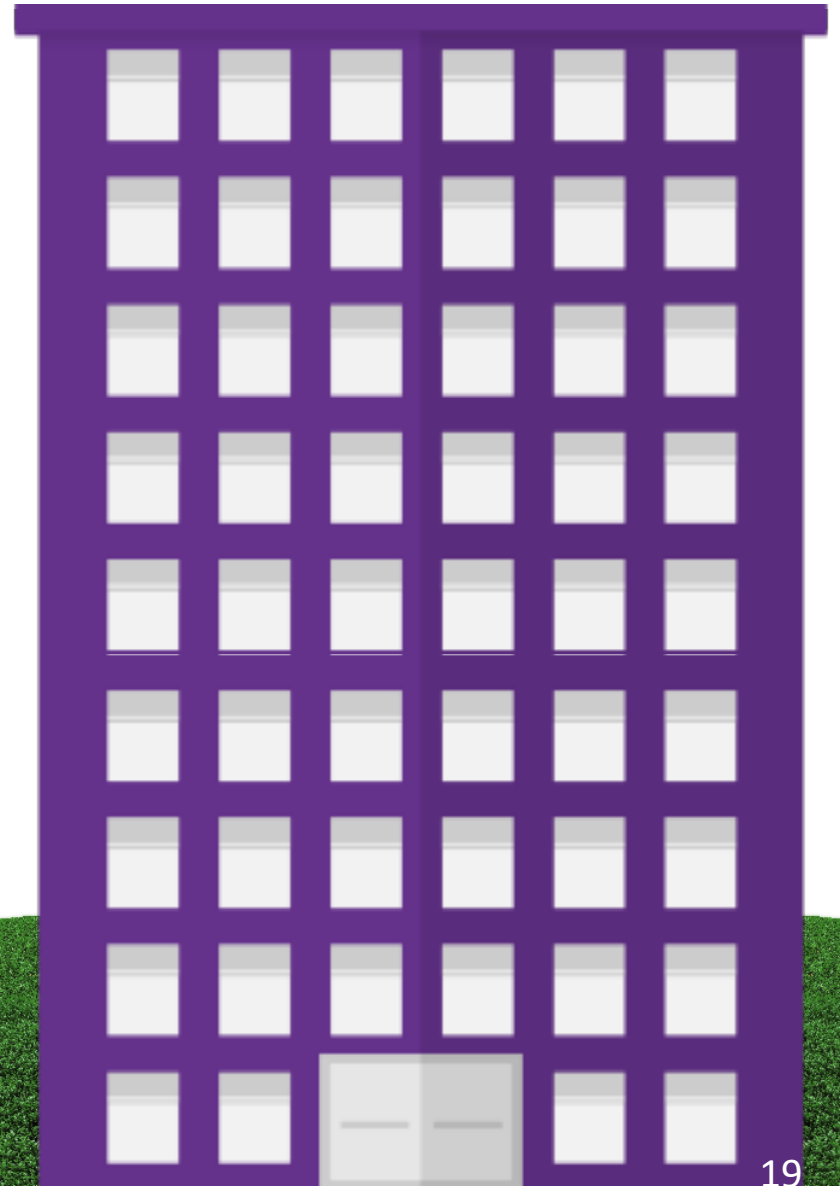
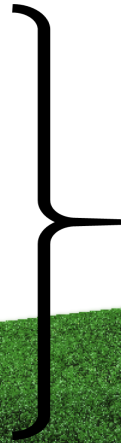
What Does BIN mean? BIN stands for Building Identification Number and are how buildings are defined for tax purposes. This means that what appears to be one building structurally, could be defined as two buildings for tax purposes.



Building (BIN) 1



Building (BIN) 2



Scenario: Miranda

Miranda lives in Unit 101 at Mountain View Apartments, which is a single building (BIN) LIHTC Housing Project. Miranda requests an emergency unit transfer under VAWA. Unit 302 is available for occupancy. The housing provider can transfer Miranda from Unit 101 to unit 302, without Miranda having to re-income qualify.

LIHTC Transfer Basics

When a LIHTC Housing Project has more than one building (BIN), transfers get a little trickier.

An Owner of a LIHTC Housing Project may choose to treat each building as its own separate Project for Tax Purposes.

In such cases, a household would need to meet the current income limitations for the Housing Project to be able to accommodate the transfer.

Scenario: Meredith

Meredith lives in Unit 315, in building (BIN) B at Mountain View Apartments. The owner of Mountain View Apartments has elected to treat each of the three buildings as separate projects.

Meredith requests an emergency unit transfer under VAWA. Unit 254 in building (BIN) C is available for occupancy.

In order for Meredith to be able to transfer from Unit 315 in building (BIN) B to Unit 254 in building (BIN) C, her household would need to complete a new tenant income certification and the household's annual income would need to be at or below the income limit applicable to Unit 254.

The applicable income limit for Unit 254 is \$35,000. The housing provider conducts a new income certification and determines that Meredith's household income is \$42,000.

Since Meredith's household income exceeds the applicable income limit, she cannot transfer to Unit 254. However, if a unit become available in building (BIN) B, Meredith can transfer to such unit regardless of her household income.

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

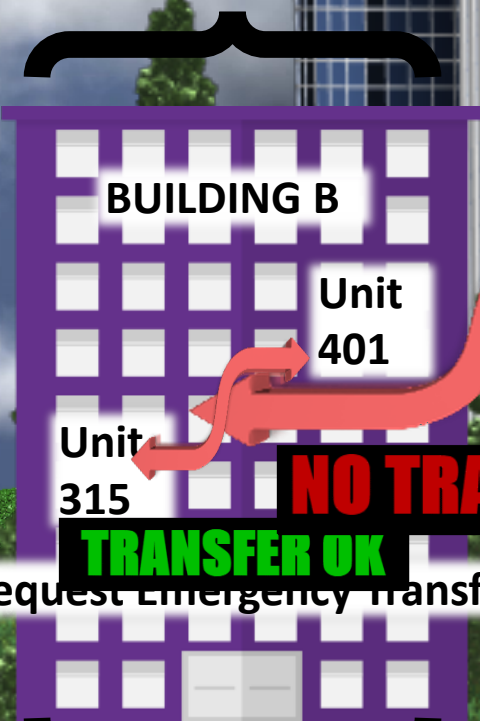
Yes

No

ONE PROJECT

ONE PROJECT

ONE PROJECT



NO TRANSFER

TRANSFER OK

Request Emergency transfer

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

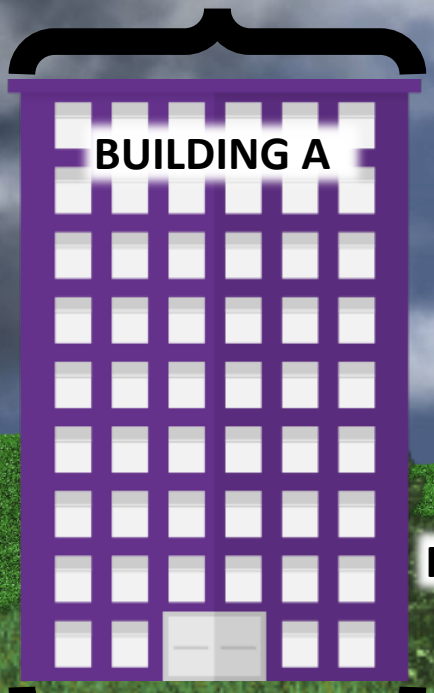
Yes

No

ONE PROJECT

ONE PROJECT

ONE PROJECT



NO TRANSFER

TRANSFER OK

Request Emergency transfer

LIHTC Transfer Basics

Conversely, an Owner of LIHTC Housing Project may choose to treat more than building or all buildings as ONE “project”.

In such cases, a household may transfer from a unit in one building (BIN) to a unit in another building (BIN) within the same “project” if the household’s income is at or below 140% of the applicable income limit.

60% Income Limit: \$35,000

140% Limit: $\$35,000 \times 140\% =$
 $\$49,000$

Scenario: Christina

Christina lives in Unit 202, in building (BIN) A at Valley View Apartments. The owner of Valley View Apartments has elected to treat each of the three buildings as ONE single project.

Christina requests an emergency unit transfer under VAWA. Unit 541 in building (BIN) B is available for occupancy.

In order for Christina to be able to transfer from Unit 202 in building (BIN) A to unit 541 in Building (BIN) B, her household's annual income would need to be at or below 140% the income limit applicable to Unit 541.

The applicable income limit for Unit 541 is \$35,000. 140% of \$35,000 is \$49,000.

Based on Christina's last annual recertification (completed 6 months prior) her household income was \$50,000.

Since Christina's household income exceeds 140% of applicable income limit, she cannot transfer to Unit 541. However, if a unit becomes available in building (BIN) A, Christina can transfer to such unit regardless of her household income.

NOTE: If Christina's household income has decreased since the last recertification, she can request a new tenant income certification to be completed to determine if her household income has decreased to an amount equal to or less than 140% of the applicable income limit.

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

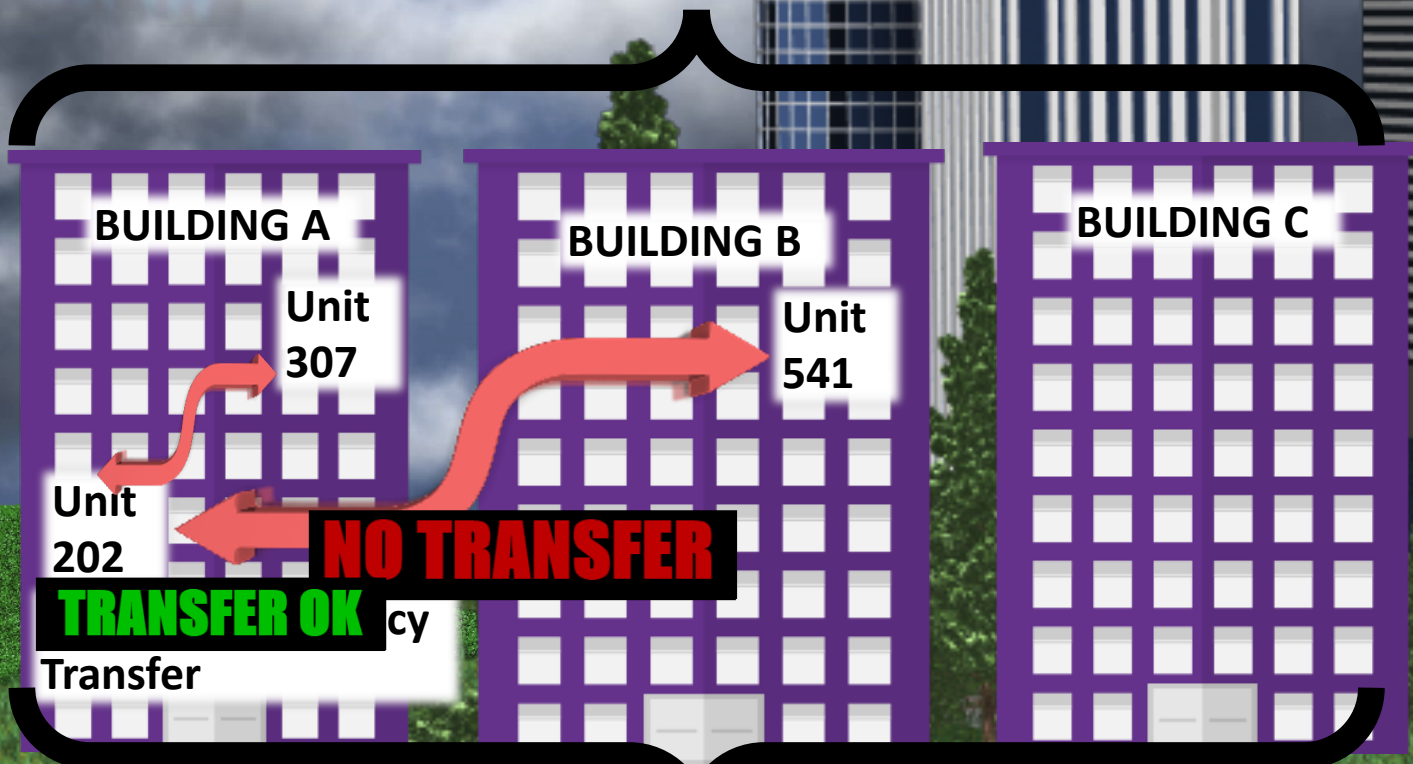


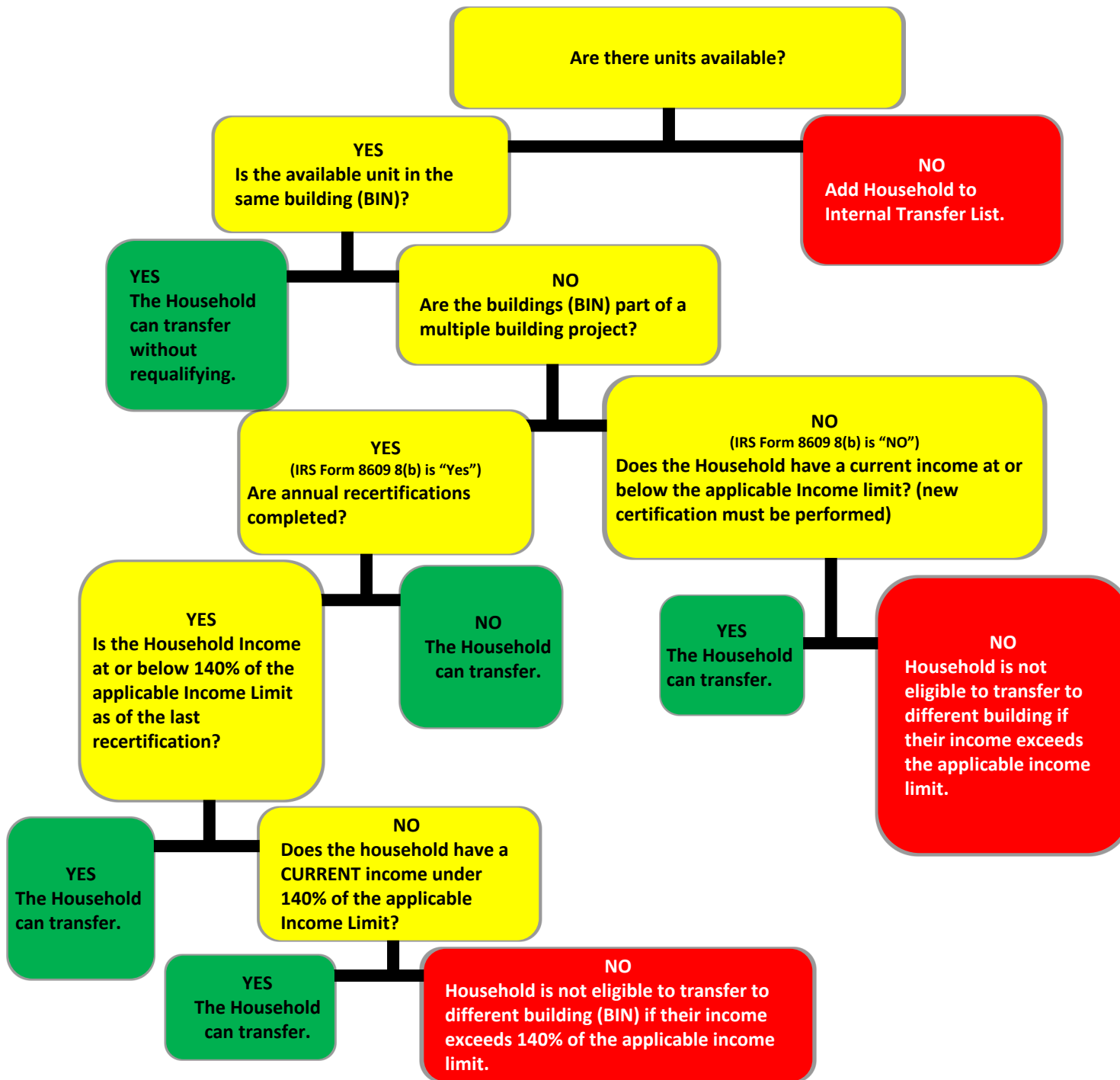
Yes

No



ONE PROJECT





LIHTC Transfer Basics

1. Make the request in writing.
2. Make sure the request specifies that the transfer request is being made under VAWA.
3. Include completed VAWA certification form (HUD Form 5382).
4. Ask the Housing Project to respond in writing.
5. Request a copy of the Housing Project's VAWA Emergency Transfer Plan.

Admission Denials



Admission Denials

- What are examples of scenarios?
- What barriers do survivors face?
 - Lack of affordable housing
 - No credit history or negative credit history
 - Center for Survivor Agency and Justice's (CSAJ) **webinar**: *Enhancing Individual Advocacy: Addressing Credit-related Barriers to Housing* - <https://csaj.org/consumertoolkit-housing>
 - Family Violence Appellate Project's **template letters** to dispute incorrect/incomplete credit report info and request fraud alert due to identity theft - <https://fvaplav.org/housing-tools-resources-for-survivors/>
 - Eviction or criminal record
 - Family Violence Appellate Project's (FVAP) **template letters** to request that landlords reconsider application or stop discrimination because the applicant is a survivor - <https://fvaplav.org/housing-tools-resources-for-survivors/>



Admission Denials

- What protections apply?
 - Violence Against Women Act
 - Prohibits discrimination against survivors
 - VAWA Notice of Occupancy Rights and VAWA Self-certification Form must be provided, if admission has been denied
 - Federal and state fair housing laws
 - Other state and local laws
- What can we do to help survivors?
 - Be persistent!
 - Work with and educate landlords
 - Use template letters
 - Contact legal aid or DV/SA organizations with legal counsel



Lease Bifurcations



Lease Bifurcations

- What are lease bifurcations?
- What protections or laws apply?
 - Violence Against Women Act
 - State and local laws
- What barriers do survivors face?
- What are challenges that landlords face?
- What can you do to help survivors?
 - Be persistent!
 - Work with and educate landlords
 - Contact legal aid or DV/SA organizations with legal counsel



Resources



HUD Forms and Guidance

- HUD Self-certification Form 5382 (in 15 languages)
<https://www.hud.gov/sites/documents/5382.docx>
https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a
- HUD Notice of Occupancy Rights Form 5380 (in 15 languages)
<https://www.hud.gov/sites/documents/5380.docx>
https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a
- HUD, Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sep. 13, 2016) -
<https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>
- HUD memo, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA) (Feb. 9, 2011) -
<https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>



Additional Resources

- NASH & NHLP, *Community Based Advocate Toolkit: How to Make Sure Your Clients Have Safe Housing* (May 2019) - https://www.nationalallianceforsafehousing.org/wp-content/uploads/2019/05/Survivor-Housing-Protections_NonLegalAdvocateToolkit-Final-5-14-19.pdf
- NHLP, *VAWA Know Your Rights Brochure* (English and Spanish) (Sep. 2018) - <https://www.nhlp.org/wp-content/uploads/VAWA-Brochure-English-and-Spanish-combined.pdf>
- NHLP, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2017) - <https://www.nhlp.org/wp-content/uploads/2018/07/2017-DV-State-and-Local-Housing-Laws-Compendium.pdf>



Contacts

Jenna Collins

Supervising Attorney

Community Legal Services (Philadelphia, PA)

jcollins@clsphila.org

Amanda Lee-Gross

Vice President of Training and Compliance Policy

US Housing Consultants

agross@us-hc.com

Karlo Ng

Director of Legal Initiatives

National Alliance for Safe Housing

kng@nashta.org



Next LIHTC Webinar

Using the Qualified Allocation Plan Process to Influence Low Income Housing Tax Credit Priorities

Wednesday, December 9, 2020

10-11am PT/12-1 CT/1-2 ET

To register:

https://us02web.zoom.us/webinar/register/WN_pbhCXxwMQ62m0kld6Ol5SQ



Questions

