

Unlocking the Legal Mysteries of Public Housing

2025 IAHA M&M Clinic
April 3, 2025



Unlocking Legal Mysteries

Topics:

- First Amendment Auditors
- FOIA
- Open Meetings
- Grievance Hearings
- Evictions (Termination Notices)
- Illinois Housing Authorities Act
- Not-for-Profits
- Asset Repositioning
- Housing Development (LIHTC)
- Other?



First Amendment Auditors



First Amendment Auditors

NON-PUBLIC AREA

PUBLIC ACCESS IS PROHIBITED BEYOND THIS POINT

EMPLOYEES AND AUTHORIZED PERSONNEL ONLY

**VIDEO AND AUDIO RECORDING IS PROHIBITED IN ALL OFFICES AND
IN ALL AREAS BEYOND THIS POINT.**

Thank-you for your cooperation.



Freedom of Information Act



Freedom of Information Act (FOIA)

Purpose:

Provide public access to government documents and records.

“Each public body shall make available to any person for inspecting or copying all public records, except as otherwise provided in Section 7 of this Act.”



Freedom of Information Act (FOIA)

Does FOIA apply to PHAs?

Yes!

PHA is a unit of local government
(with public documents and records)



Freedom of Information Act (FOIA)

"Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.



Freedom of Information Act (FOIA)

Does a FOIA request need to be submitted on a form?

No -

PHA **cannot** require a requester to complete a specific FOIA form



Freedom of Information Act (FOIA)

PHA receives a FOIA request, now what?

PHA response due within 5 business days

- Consider what, if any, exemptions apply
- Do NOT create new records
- PHA can notify requester of automatic 5 business day extension



Freedom of Information Act (FOIA)

PHA receives a FOIA request, now what?

PHA response due within 5 business days

- If request is denied or records are redacted, must cite exemption
- If denied, advise requester of right to appeal



Freedom of Information Act (FOIA)

Common Exemptions (5 ILCS 140/7)

- Invasion of personal privacy
- Real estate documents (prior to closing)
- Contract negotiations
- Drafts of documents

Examples:

- List of Housing Choice Voucher (HCV) participants?
- List of PHA employee salaries? Discipline records?
- Police reports?



Freedom of Information Act (FOIA)

Inspection vs. Copying

What is the difference?

Copy costs – PHA needs a written policy

- First 50 pages are free
- Reasonable cost after 50 pages
(10 – 15 cents)



Freedom of Information Act (FOIA)

Commercial Requests under FOIA

- Response within 21 business days



Freedom of Information Act (FOIA)

A couple general rules:

- Posting of FOIA materials at office
- Appoint FOIA officer for PHA
- Training – Commissioners and FOIA officer

Newly appointed commissioners should complete online FOIA and OMA training on Illinois AG website within 90 days.



Open Meetings Act



Open Meetings Act

Definition:

All meetings of public bodies shall be open to the public unless they fall within an exception.



Open Meetings Act

Does OMA apply to PHAs?

Yes!

PHA is a unit of local government
(public body)



Open Meetings Act

A couple general rules:

- Meetings must be “convenient and open” to the public
- Agendas must be posted at least 48 hours in advance

Cannot take action on items not on the agenda.



Open Meetings Act

Email / Text Messages

Do these violate the Open Meetings Act?

Maybe – is there a contemporaneous discussion of public business?



Open Meetings Act

Agenda Requirements

Posted at least 48 hours prior to meeting

Where?

Media?

Website?

Action Items

General subject matter of resolutions – included on agenda



Open Meetings Act

A couple more general rules:

- Must allow for public comment
 - Cannot require public to provide address
 - Can limit time
 - NOT Q & A session
- May only enter into closed session under certain exceptions



Open Meetings Act

Closed Session - Common Examples:

- Litigation (pending and potential)
- Employment / personnel
- Land acquisition



Open Meetings Act

Closed Session - Rules:

Majority vote at an open meeting
(not required to be listed on agenda)

Minutes - someone must take them

Do NOT vote in closed session!



Open Meetings Act

Closed Session - Rules:

- Review of minutes (at least every 6 months) - release or not?
- Recording of closed session (tape recorder or digital)



Open Meetings Act

Remote Meetings

- Standard OMA remote attendance rules
 - Physical quorum present
 - Acceptable reasons for remote attendance (work, illness, emergency)
- COVID Rules – new legislation
 - Disaster declaration
 - Post remote attendance for public access



Open Meetings Act

Roll Call vote – when?

- All Resolutions
- Expenditure of funds – if it involves money, roll call



Open Meetings Act

Does OMA apply to PHA's Not-For-Profit Entity?

Generally No; unless majority of commissioners are discussing PHA business

- Board Composition?
- Keep the Board operations separate
 - Separate Board meetings/agendas
 - Separate tapes – meeting minutes



Grievance Hearings



Hearings

Grievance Hearing

vs.

Informal Hearing

What is the difference?

- Grievance Hearing (Public Housing)
- Informal Hearing (Section 8)



“Grievance”

Any **dispute** which a **resident** may have with respect to housing agency action or failure to act, involving:

- The resident’s lease with the PHA; or
- PHA regulations

which adversely affect the resident’s

- Rights
- Duties
- Welfare
- Status



Grievance Procedures

Ineligible Disputes:

- disputes between tenants – not involving the PHA
- “class” grievances
- policy changes by the PHA Board



Grievance Procedures

Who can file a grievance?

- Residents only
- Not for others
(i.e. guests, applicants, family members)



Grievance Procedures

HUD regulations require each PHA to adopt and implement a public housing grievance procedure affording each resident an **opportunity** for a hearing on an eligible grievance within a reasonable time.

- Key word: opportunity
- It is up to the resident to file a grievance.



Grievance Procedures

Three (3) categories of Grievances that can be excluded from the grievance procedure and go directly to court (Zero Tolerance violations):

- #1 Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA.

occurring on premises



Grievance Procedures

- #2 Any violent or drug-related criminal activity on or off the premises.

3 components:

- a. violent activity or
- b. drug-related activity
- c. on or off the premises

- #3 Any criminal activity that resulted in a felony conviction of a household member.

occurring on or off premises?



Grievance Procedures

Do the HUD regulations relating to grievance procedures apply to PHA affiliates, instrumentalities or third-party management companies?

- Not directly addressed by HUD regulations, but if these entities act as an agent for PHA, then bound by the regulations applicable to the PHA



Grievance Process

Step 1: Informal Settlement Conference

(not the same as an informal hearing under Section 8)

- discuss informally – without a hearing

Step 2: Grievance Hearing

- formal hearing



Grievance Process

Step 1: Informal Settlement Conference



Informal Settlement Conference

Who should represent the PHA at the Informal Settlement Conference?

- No HUD regulation
- Someone who can dispose of matter (i.e. CEO, ED, Site Manager/Supervisor)
- Not the person who made the decision – cannot review own decision.

inadequate review



Informal Settlement Conference

What does PHA representative do at the Informal Settlement Conference?

- Listen to complainant – open ears!
- Consider any testimony, documents or other evidence offered by Complainant
- Determine whether the initial decision was:
 - Based on sufficient facts
 - Violated the lease, PHA regulations, rules, etc.
 - Complies with state or federal law



Informal Settlement Conference

Summary of the Informal Settlement Conference

- PHA must provide Complainant with a summary of the conference
- Prepared in a reasonable time (10 days?)
- Include:
 - Names of all participants
 - Date of conference
 - Disposition of complaint (specific reasons)
 - Procedures for requesting a hearing
 - (provide a copy of the grievance policy)



Informal Settlement Conference

Specific reasons for the disposition:

- Who – family member of guest that did wrong
- What facts – specific actions that violated lease, rules, etc.
- What violations – cite the specific lease provisions or rules, regulations that were violated
- When – provide the month, day, year and time (if possible)
- Where – provide the exact location and relationship to the premises



Grievance Process

Step 2: Grievance Hearing



Grievance Hearing

- Formal hearing – conducted by a hearing officer or a hearing panel
- Hearing officer – no personal or professional conflict
- Initiated by resident's written request – within a reasonable time after receipt of summary (10 days?)



Grievance Hearing

Complainant Fails to Timely Request Hearing

What happens?

- Initial decision stands
- PHA can waive for “good cause”



Grievance Hearing

What constitutes “good cause”?

- Serious unexpected medical illness – tenant, immediate family, extended family
- Unexpected mandatory travel plans
- Unexpected work obligation
- Incarceration?



Grievance Hearing

Scheduling a grievance hearing

- Following written request, hearing must be scheduled promptly (10 days?)
- Time and place must be “reasonably convenient” to both Complainant and PHA
- Written notice of time, place and procedures “shall be delivered” to Complainant and PHA official

provide a copy of grievance procedure



Grievance Hearing

What if Complainant is a “no-show”?

Hearing officer has the discretion to:

- Postpone hearing (not to exceed 5 business days); or
- Determine that Complainant waived right to a hearing

Must notify all parties of determination



Section 8 Procedures



Section 8 Procedures

Applicants vs. Participants

- Applicants – opportunity for an informal review of decision to deny assistance ONLY
no right to request a hearing
- Participants – opportunity for review of decision:
 - Informal Review
 - Informal Hearing



Section 8 Procedures

Section 8 Applicants

Informal Review Only



Section 8 Procedures

No Right to Review for Applicants

- General policy issues or class grievances
- Discretionary administrative decisions by PHA
 - Determination of family unit size under subsidy standards
 - Determination not to approve an extension or suspension of voucher
 - Determination not to approve tenancy (based upon unit)
 - Determination that the unit does not comply with HQS
 - Denials based upon citizenship status – application not verified



Section 8 Procedures

Informal Review

- Informal process similar to Informal Settlement Conference (Public Housing Grievance Procedure)
- Review conducted by PHA representative
- Cannot be the person who made or approved the decision under review



Section 8 Procedures

Informal Review

- Applicant given an opportunity to present written or oral objections to the decision
 - no face to face meeting required under HUD regulations*
- PHA must notify applicant of the final decision, including a brief statement of the reasons for the decision
- No further administrative review for applicants



Section 8 Procedures

Section 8 Participants

- Step 1: Informal Review
- Step 2: Informal Hearing



Section 8 Procedures

No Right to Review for Participants

- General policy issues or class grievances
- Discretionary administrative decisions by PHA
 - Establishing utility allowance schedule
 - Determination not to approve an extension or suspension of voucher
 - Determination that the unit does not comply with HQS



Section 8 Procedures

Step 1: Informal Review

- Informal process similar to Informal Settlement Conference (Public Housing Grievance Procedure)
- Review conducted by PHA representative
- Cannot be the person who made or approved the decision under review



Section 8 Procedures

Step 1: Informal Review

- Applicant given an opportunity to present written or oral objections to the decision
 - no face to face meeting required under HUD regulations*
- PHA must notify applicant of the final decision, including a brief statement of the reasons for the decision



Section 8 Procedures

Step 2: Informal Hearing (for Participants only)

- Misnomer – really a “formal” process
- Formal hearing – essentially a grievance hearing conducted by a hearing officer or a hearing panel
- Hearing officer – no personal or professional conflict
- Initiated by resident’s written request – within a reasonable time after decision (10 days?)



Notices



Notices

Public Housing leases – all notices between PHA and tenant must be in writing

Properly addressed notices

- Correct spelling of names
- Suffixes? (Jr., Sr., etc.)

Delivery of notices

- Hand-delivery (residence, work, “tag”)
- First-class mail



Notices

Delivery of notices

- Notices may be delivered to any adult member of the household residing in the unit.
 - Adult (age 18+)
 - Household member

Accessible notices

- Visually impaired tenants have a right to have notices in an accessible format
 - DOJ website provides information on accommodations



Notices

Other tips:

- Notices should quote verbatim the provisions of the lease, addenda, rules, etc. that have been violated

- Attach review procedures to the Notice
 - Not required, but shows goodwill to the court
 - Right to review file and copy file



Complainant's Hearing Rights



Complainant's Rights

Complainant always has the right to file lawsuit.

- 2 paths:
 1. Grievance / Informal Review Process
 2. Litigation / Court



Complainant's Rights

- Right to examine any relevant PHA documents before the hearing.
 - Includes records and regulations

- Right to copy any documents at tenant's expense.
 - PHA can determine copying manner and cost. (is it in the PHA policy?)



Complainant's Rights

- PHA's Failure to provide in advance of hearing

- Penalty: Cannot use the documents at hearing
 - Opportunity to review and copy documents
 - Notice of hearing **MUST** include language!
 - Rule should apply to both parties



Complainant's Rights

- Right to arrange in advance and at tenant's own expense a transcript of the hearing
 - PHA has same right.
 - Court reporter? Tape recorder?

- If disabled, right to reasonable accommodation to participate in hearing
 - Includes: sign language interpreters, readers, accessible locations, etc.



Complainant's Rights

- Right to be represented at the hearing by counsel or other person chosen on tenant's behalf
 - Attorney
 - Family member
 - Friend
 - Advocate

- Representative can speak on tenant's behalf
 - Pose questions, make objections, raise arguments
 - Cannot "testify" for tenant



Complainant's Rights

- Right to a closed, private hearing – unless Complainant requests an open hearing
- Right to present evidence and argument in support of complaint
- Right to confront and cross-examine all witnesses upon whose testimony or information the PHA relies
- Right to a decision based solely and exclusively upon the facts presented at the hearing



The Hearing Officer



Hearing Officer

- Oversees the Hearing (Grievance or Informal)
- Writes the Final Decision
- Must be:
 - Impartial person
 - Appointed by PHA (within the purview of E.D.)
 - Someone other than person who made or approved the PHA action under review



Hearing Officer

PHA Employee vs. Outsider

- HUD regulations permit appointment of persons who are officers or employees of the PHA

Is it a good idea?

- Advantages and Disadvantages



The Hearing (Grievance / Informal)



The Hearing

- Hearing Decorum
 - Everyone participating should conduct themselves in an orderly fashion
- Discuss with parties and witnesses prior to hearing:
 - Follow HO's direction
 - Exhibit respect for persons speaking – wait your turn
 - No arguing and no raising voices
 - Advise HO if you need a break
 - Turn off cell phones and other electronic devices
 - No inappropriate gestures or expressions



The Hearing

- Checklist:
 - Introductions
 - Explain hearing decorum and process
 - Confirm there are no conflicts
 - Explain the procedure
 - Order of presentations
 - Hearsay
 - Presentation of evidence
(Note: evidence may be admitted without regard to legal admissibility)
 - Advise as to the expected decision date following hearing



The Hearing

- Procedure
 - Complainant goes first (presentation of evidence)
 - Can offer testimony
 - Can offer documents
 - Can use charts, tables, etc. – demonstrative evidence
 - All evidence must be “pertinent to the facts and issues raised in the complaint”
 - Complainant must make a showing that he/she is entitled to relief



The Hearing

- Procedure (continued)
 - PHA goes second (presentation of evidence)
 - Can offer testimony
 - Can offer documents
 - Can use charts, tables, etc. – demonstrative evidence
 - All evidence must be “pertinent to the facts and issues raised in the complaint”
 - PHA must sustain the burden of justifying its action or failure to act



Decision

- HO must prepare a written decision
 - Within a reasonable time (10 days?)
 - Flexibility – HO may need more time
 - Should include:
 - Names of those present at hearing
 - Date, time and place of hearing
 - Background
 - Summary of evidence
 - Findings of fact
 - Conclusions
 - Order – PHA decision is upheld or overturned



Decision

Hearing Officer's Decision is binding on all parties

- Complainant may seek court review; PHA may not

Disregarding the Decision

- PHA can disregard the decision if the dispute did not address a proper "grievance"
- Decision is contrary to:
 - Applicable federal, state or local law
 - HUD regulations
 - ACC requirements



Evictions



Evictions

Lease

- When was it last reviewed and amended?
- Recent changes – approved by Board of Commissioners?
 - Proper public notice and comment period prior to approval
 - Submit to HUD



Evictions

Breach of the Lease?

- Non-payment
- Criminal activity or Drug-related criminal activity
- Unauthorized guests
- Other



Evictions

Criminal Activity

- Criminal activity vs. drug-related criminal activity
 - Criminal activity – must affect health, safety and/or peaceful enjoyment by other tenants, guests, PHA staff
 - Drug-related criminal activity – anywhere
- HUD Notice – cannot evict based solely on arrest report
 - Need evidence (i.e. witness testimony) to prove the case



Evictions

Termination Notices

- Proper spelling of names
- Suffixes (Jr., Sr., etc.)
- Correct address
- Include on the notice:
 - Any individual who has executed the lease; and
 - "Any and all unknown occupants"



Evictions

Termination Notices

Proper notice period

- Rent – 30 days to pay (Demand for Rent)
- Criminal / Drug activity – 10 days or 3 days
- Other Breach – 30 days



Evictions

Termination Notices

Include details to support termination:

- Lease provisions violated by tenant
- Description of the violations
 - including names, dates, etc. (Be specific)

An arrest should not be the basis of termination!

Instead – the violation should describe the actions that led to the arrest.



Evictions

Termination Notices

- Posting notices – No!
 - Not unless the tenant has vacated the unit
- Under Illinois law, a termination notice or demand for rent may be served upon a tenant by the following methods:
 - (1) personal service;
 - (2) service upon a person age 13 or older residing at the unit;
 - (3) sending a copy of the notice to the tenant by certified or registered mail, with a return receipt from the addressee; and
 - (4) by posting the notice on the premises, if no one is in actual possession.
- Age - 13 or 18?



Evictions

Termination Notices

- Does accepting rent payment waive the eviction?
- Rent cases vs. Breach cases
 - Rent: PHA **must** accept rent **during** the 30 day notice period
 - Rent: Can PHA accept partial payment?
 - **After** 30 days (rent) and in **all** breach cases – DO NOT ACCEPT RENT (acceptance of rent = waiver of eviction rights)



Illinois Housing Authorities Act



Illinois Housing Authorities Act

Housing Authorities Act

Illinois Statute: 310 ILCS 10/1 et seq.

Statutory Law and Case Law



Illinois Housing Authorities Act

Statutory Law vs. Case Law

Statutory Law: legislature creates laws

Case Law: judicial decisions interpret laws



Illinois Housing Authorities Act

Section 2: Legislative Intent

(310 ILCS 10/2)

- “decent, safe and sanitary dwellings”
- Case law: this does not require a PHA to provide protection from criminal activities on property; applies to the physical condition of the property. (Pippin case)



Illinois Housing Authorities Act

Section 3: Creation of Housing Authorities (310 ILCS 10/3)

- Commissioner appointment: certificate of appointment must be filed with the County Recorder of Deeds
- Resident of Housing Authority jurisdiction
- Public officers may serve on the Board (no more than 2)



Illinois Housing Authorities Act

Section 4: Removal of Commissioners (310 ILCS 10/4)

- "incompetent, or guilty of neglect of duty or malfeasance"
- Case law: examples (Scott case)
- Commissioner is entitled to a hearing (due process)
- Include similar provision in PHA By-Laws?



Illinois Housing Authorities Act

Section 5: Conflict of Interest (310 ILCS 10/5)

- Commissioner or Employee cannot have an interest (direct or indirect) in any project, property, or contract for materials or services
- Examples



Illinois Housing Authorities Act

Section 6: Officers / Rules and Regulations (310 ILCS 10/6)

- Select Chairman, Vice-Chairman and adopt by-laws
- Quorum: 5 member board – need 3 commissioners present
- Quorum: 7 member board – need 4 commissioners present



Illinois Housing Authorities Act

Section 7: Compensation / Expenses (310 ILCS 10/7)

- Generally – no compensation paid to commissioners
- Exceptions:
 - PHA – city over 500,000 population: Chairman salary
 - PHA – county or city over 25,000 population: county or city can establish per diem payments (paid by county or city; not PHA)
 - PHA – county or city over 25,000 population: PHA can reimburse travel expenses



Illinois Housing Authorities Act

Section 8: Municipal Corporation (310 ILCS 10/8)

- Municipal corporation
- A body both corporate and politic
(confusion by banks, IHDA and others)
- PHA powers set forth in 8.1 through 8.8
 - Eminent domain
 - Authority to issue municipal bonds



Not-For-Profit Overview



Not-For-Profit Overview

What is a not-for-profit corporation? (a/k/a “non-profit”)

- corporate, legal entity
- board of directors
- by-laws, corporate documents
- mission-oriented (i.e. charitable purpose)



Not-For-Profit Overview

What is a not-for-profit corporation? (a/k/a “non-profit”)

- does not mean losing \$\$
- does not mean suffering financially
- corporation **CAN** (and should) make a profit
(what do you do with the \$\$?)



Not-For-Profit Considerations



Not-For-Profit Considerations

Why create a not-for-profit corporation?

- shields PHA from risks
- threat of reduced HUD funding
- obtain new sources of funding
- profitable enterprises



Not-For-Profit Considerations

Not-for-profit vs. 501(c)(3)

- not necessarily the same
- 501(c)(3) – special IRS designation
- restrictions and reporting requirements



Not-For-Profit Considerations

Why establish a 501(c)(3) ?

- exempt from income tax
- accept tax-deductible donations
- LIHTC projects (QAP points)
- grant applications



Not-For-Profit Considerations

Restrictions - 501(c)(3)

- profits cannot benefit directors or officers
- can pay salaries, but no distribution of profits
- dissolution of corporation
- Form 990



DO NOT pay exorbitant salaries!



Not-For-Profit Considerations

HUD Guidance

Instrumentality vs. Affiliate

- Instrumentality:

PHA has effective and legal **control** over assets, operations and management



Not-For-Profit Considerations

HUD Guidance

Instrumentality vs. Affiliate

- Affiliate:

PHA has a financial or ownership interest or **some control** over organization, administration or program activities – but not to the level of an instrumentality



Not-For-Profit Considerations

HUD Guidance

Procurement issues

- PHA can select its **instrumentality** without a procurement process (an arm of the PHA)
- PHA must go through a procurement process in order to select an **affiliate**



Not-For-Profit Considerations

HUD Guidance

PHA resources

- PH funds may be used for development, including the formation of entities, if public housing units will be incorporated in the development



use non-federal funds to form not-for-profits



Not-For-Profit Considerations

HUD Guidance

PHA resources

- staff, facilities, equipment, or other resources shared between a PHA and NFP
- costs must be allocated to NFP

 keep track of staff hours or flat fee services



Not-For-Profit Considerations

Let's create a not-for-profit!

Cost? (in Illinois)

- NFP: \$1,000 - \$1,500
(corp. formation, filing fees, EIN, by-laws)
- 501(c)(3): \$3,000 - \$4,000
(NFP docs above, preparation of IRS application and IRS fees)



Not-For-Profit Considerations

Let's create a not-for-profit!

Timing?

- NFP formed within a week (expedited – 1 day)
- 501(c)(3) approval (2 months)



Not-For-Profit Considerations

Let's create a not-for-profit!

Name?

- Secretary of State corporation website
(check for similar names)



Not-For-Profit Considerations

Let's create a not-for-profit!

Board of Directors?

- Mirror PHA Board (instrumentality)
- Three-member board – 2 commissioners and ED (instrumentality)
- Non-PHA board members (affiliate)

 **DO NOT** let the not-for-profit run amok!



Not-For-Profit Considerations

Let's create a not-for-profit!

Meetings

- Separate from PHA Meeting (minutes, tapes, break)

 **DO NOT** commingle business during meetings



Not-For-Profit Considerations

Do you want to be a CHDO?

(Community Housing Development Organization)

Benefits:

- HOME funds set-aside
- HOME grants for operations
- HOME grants for pre-development costs



Not-For-Profit Considerations

Do you want to be a CHDO?

(Community Housing Development Organization)

Requirements:

- NFP with 501(c)(3) designation
- 1 year of experience serving community
- Not “controlled” by PHA
- Restrictions on Board Members



Asset Repositioning



Asset Repositioning

What is “repositioning”?

- Transfer of subsidy

Public
Housing
Units



Housing
Choice
Voucher

Removing PH subsidy (and DOT) and replacing it with a “voucher” subsidy



Asset Repositioning

How did we get here?

- Public Housing Nationwide:
PHA Capital Needs exceed \$50 billion,
increasing by \$3.4 billion annually
- HUD pushing hard for PHAs to explore repositioning



Asset Repositioning

Why should PHAs consider “repositioning”?

- Provides a more stable funding platform
- Leverage assets to secure funding for improvements
- Reduces administrative burden - eliminates:
 - Limitations on fund use – capital and operating funds
 - PHAS scores
 - LOCCS
 - Annual and 5-year plans
 - Executive compensation reporting



Asset Repositioning

Options for repositioning PH units:

- RAD
- Demolition/Disposition (Section 18)
- Voluntary Conversion (Section 22)



All of them have pros and cons!



Asset Repositioning

RAD – Rental Assistance Demonstration

- Overview
- Conversion of PH subsidy to RAD voucher subsidy

Pros:

- Flexible:
 - Project based subsidy (PBV or PBRA)
 - Units can remain with PHA or be transferred to PHA NFP
 - Subsidy can be transferred to other homes
- Declaration of Trust is released



Asset Repositioning

RAD – Rental Assistance Demonstration

Cons:

- RAD vouchers are limited by RAD rents
 - RAD rent is less than FMR (fair market rents)
 - RAD rent = PH Cap fund + PH Op fund + PH Tenant rent
- Generally sufficient to finance rehab projects
 - but not new construction projects



Asset Repositioning

Demo/Dispo (Section 18)

- Demolition – functionally obsolete or not cost-effective to maintain the PH units
- Disposition – retention of the PH units is not in the best interest of residents
 - Transfer property to another entity (including PHA NFP):
 - Sale at fair market value
 - Sale at discounted price
 - Donation
 - Lease or Deed



Asset Repositioning

Demo/Dispo (Section 18)

Pros:

- Eligible for TPV (Tenant Protection Vouchers)
- HCV rents = fair market rents (unlike RAD)
- Can project-base the vouchers
- Flexible transfer options
- Qualify for Asset Repositioning Fees
(continued PH subsidy for 3 years – 75/50/25)
- Declaration of Trust is released



Asset Repositioning

Demo/Dispo (Section 18)

Cons:

- TPV (Tenant Protection Vouchers) are limited to occupied units (24 month “look back”)
- TPVs are not guaranteed – subject to HUD funding
- Still limited by cap on PBV (based on total # of vouchers)



Asset Repositioning

Voluntary Conversion (Section 22)

- Allows conversion of PH units to HCV subsidy when:
 - It is more expensive than continuing as PH units
 - Has no adverse effect on affordable housing in community
 - Benefits residents, PHA and community

Pros:

- HCV rents = fair market rents (unlike RAD)
- Can project-base the vouchers
- Can transfer property (including to PHA NFP)
- Declaration of Trust is released
- Streamlined conversion option



Asset Repositioning

Voluntary Conversion (Section 22)

Cons:

- Must offer residents tenant-based assistance (regular HCVs)
- Can project-base the assistance ONLY with tenants' informed consent
- Loss of reserves (if converting all PH units)



Spend reserves before voluntary conversion!



Housing Development (LIHTC)



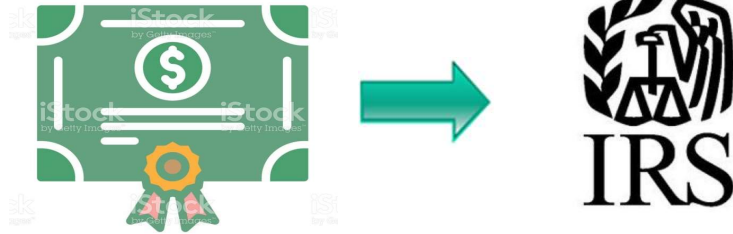
Affordable Housing Development

Low-Income Housing Tax Credits
LIHTCs



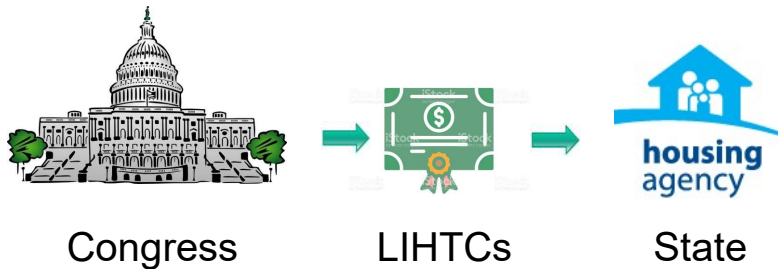
Affordable Housing Development

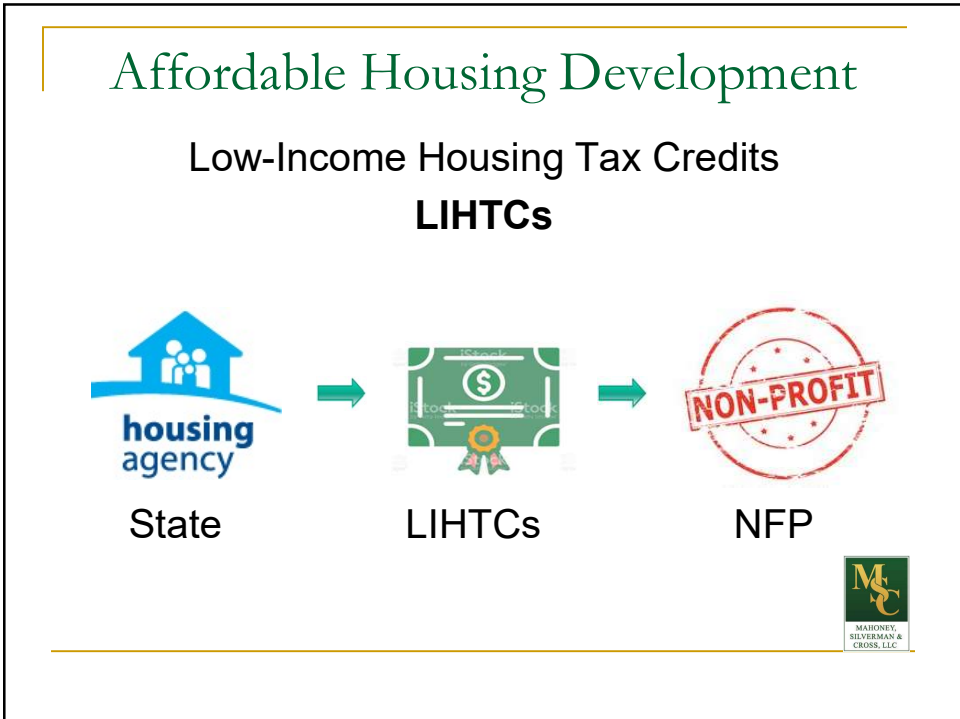
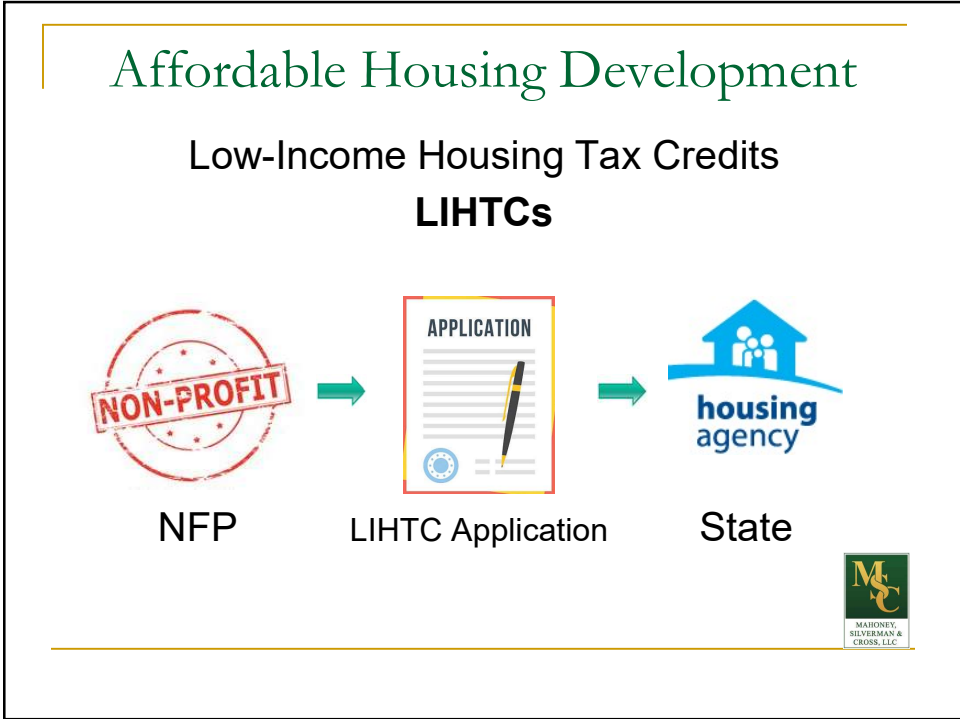
Low-Income Housing Tax Credits
LIHTCs



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Low-Income Housing Tax Credits
LIHTCs





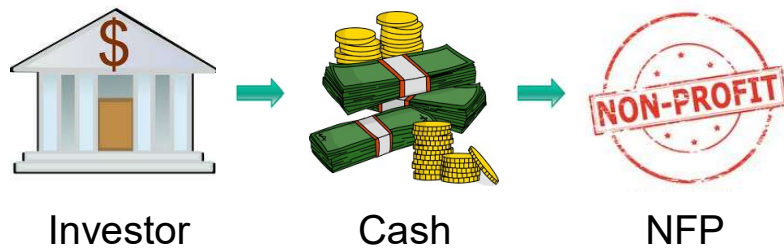
Affordable Housing Development

Low-Income Housing Tax Credits LIHTCs



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Low-Income Housing Tax Credits LIHTCs



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Low-Income Housing Tax Credits
LIHTCs



NFP



Cash



Construction



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Low-Income Housing Tax Credits
LIHTCs



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Low-Income Housing Tax Credits
LIHTCs



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Low-Income Housing Tax Credits
LIHTCs



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LIHTC Ownership Structure

Generic Housing Authority (GHA)



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LIHTC Ownership Structure

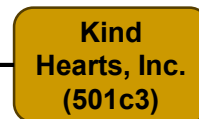
GHA creates NFP



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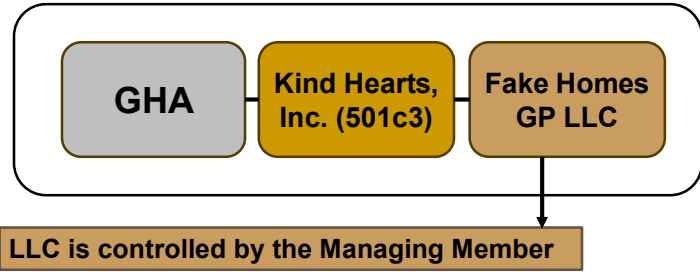
LIHTC Ownership Structure

Majority of 501c3 Board of Directors are GHA Commissioners, giving GHA effective control over the 501c3



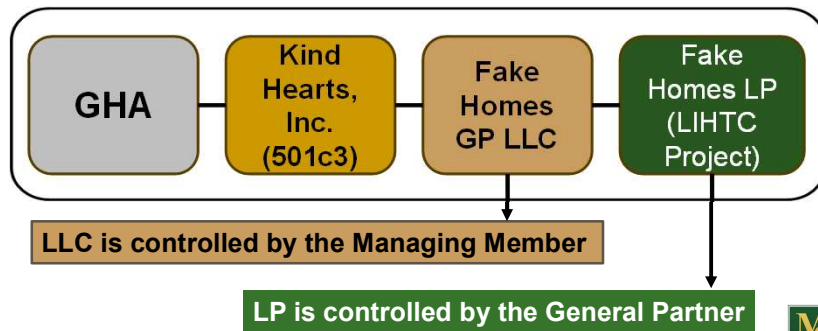
Affordable Housing Development

LIHTC Ownership Structure



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LIHTC Ownership Structure



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How do GHA and Kind Hearts, Inc. generate revenue?

As Developer = Developer Fees

As Property Manager =
Management Fees



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Low-Income Housing Tax Credits
LIHTCs



Construction



Developer Fees



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Developer Fees

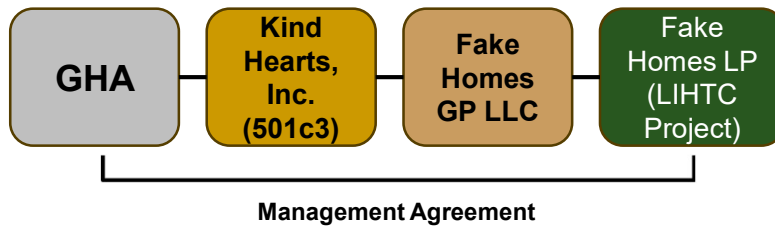
Part of Development budget
Estimate ~10% of TDC

Paid as Development meets certain milestones
Deferred & Non-Deferred



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LIHTC Ownership Structure



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Management Fees

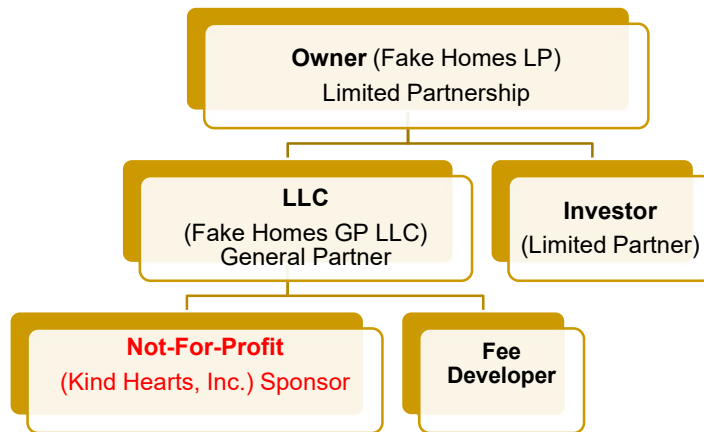
Paid to Property Manager for managing LIHTC property

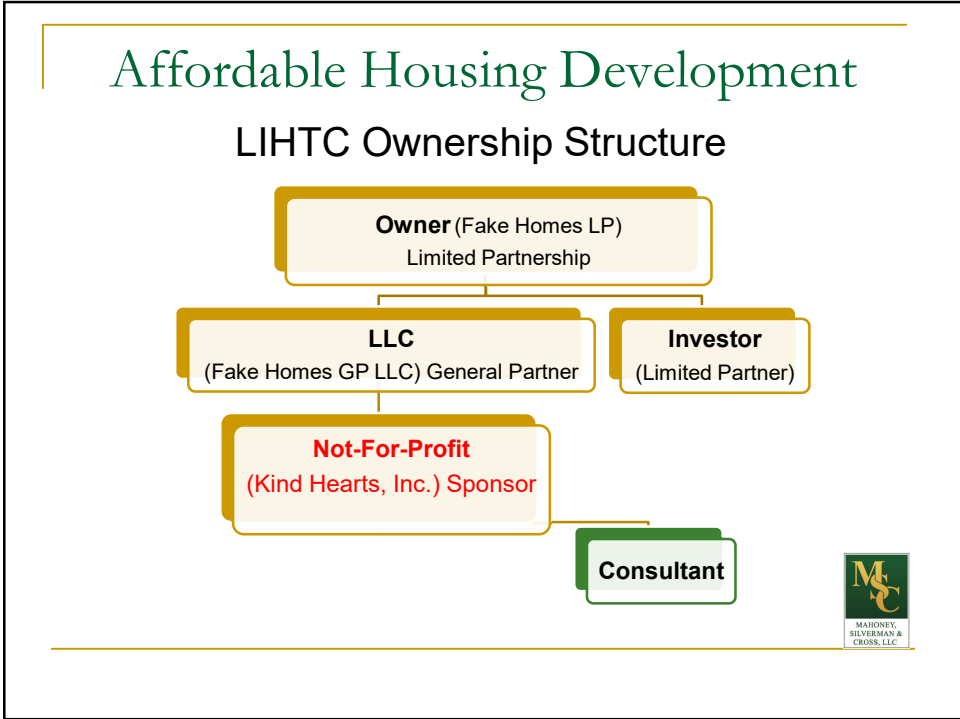
- ~5%-7% of gross collections of tenant charges (rent, late fees, maintenance fees, etc.)
- Covers Central Office Overhead, Executive Staff, Bookkeeping, Compliance Management, Profit
- Does NOT cover direct leasing and maintenance activity



Affordable Housing Development

LIHTC Ownership Structure





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Limited Partnership (LP) owns the project

Sponsor/Developer – General Partner(s)

- 0.01% ownership

Investor – Limited Partner

- 99.99% ownership
- Claims depreciation losses



* After 15-year initial compliance period, Limited Partner may transfer its 99.99% interest to Sponsor



Affordable Housing Development

LIHTC – a deeper look

9% vs. 4% - what's the difference?

“qualified basis” – what is it?



Affordable Housing Development

LIHTC – a deeper look

9% vs 4% LIHTC - what's the difference?

- 9% - typically used for new construction
- 90% of “qualified basis”
(9% annually for 10 years)
- awarded once per year under a
competitive scoring process



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LIHTC – a deeper look

9% vs 4% LIHTC - what's the difference?

- 4% - typically used for rehabilitation
- 40% of “qualified basis”
(4% annually for 10 years)
- rolling application and award
(non-competitive)



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LIHTC – a deeper look

9% funding example

- Total Project cost: \$11,000,000
- Qualified Basis: \$10,000,000
- LIHTC award (9%): \$ 900,000
- Multiplied by 10 years: \$ 9,000,000



Affordable Housing Development

LIHTC – a deeper look

9% funding example (cont'd)

- LIHTC award (9%): \$ 900,000
- Multiplied by 10 years: \$ 9,000,000

- Sell to Investor (\$0.90): \$ 8,100,000



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LIHTC – a deeper look

9% funding example (cont'd)

Total Project cost: \$11,000,000

\$ 8,100,000 in cash equity

\$ 2,900,000 gap

- loan (debt service paid by cash flow)
- grants (AHP, HOME funds, etc.)



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QCT (qualified census tract) – 30% boost

Projects in low Income areas (defined in the U.S. Census report) can qualify for additional tax credits.

Qualified Basis: \$10,000,000

LIHTC awarded (9%): \$ 900,000

Boost (30%): \$ 270,000

Sale to investor (\$0.90): \$ 1,053,000

Total cash equity = **\$10,530,000**



Unlocking Legal Mysteries

Questions?



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