

# NASLEF 2010

## Resident Relocation Issues

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# Residents' Rights

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- Depending on local landlord and tenant law, the original funding sources for the project, and the funding sources involved when the project is refinanced using LIHTC equity, existing residents may have rights protecting them from being involuntarily displaced when the owner rehabilitates the project and certifies the existing residents for the LIHTC program
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# Landlord & Tenant Law

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- Local landlord and tenant law may:
    - Protect the residents from being involuntarily displaced
    - Allow the residents right of first refusal to purchase the project before another sale can be approved
    - Require the owner provide the residents payments if they are temporarily or permanently displaced
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# Landlord & Tenant Law cont'd

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- The local protections provided for a resident may depend on
    - The length of their current lease
    - The length of their original lease
    - The terms and conditions agreed to by the previous landlord and resident in the lease agreement
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# Funding Sources

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- ❑ An owner must sign a regulatory agreement when receiving funding for a project through most federal, state, or local governmental programs
  - ❑ A regulatory agreement may prohibit an owner from involuntarily displacing a resident or require the owner provide a resident with a payment if they are going to be temporarily or permanently displaced
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# Uniform Relocation Act

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- ❑ Establishes minimum standards for federally funded programs and projects that require the acquisition of real property or displaces persons from their homes, businesses, or farms
  - ❑ Applies to the acquisition, rehabilitation, or demolition of real property for a federal agency or a federally funded project
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# Uniform Relocation Act cont'd

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- Programs that are covered by the URA include but are no limited to:
    - HOME
    - CDBG
    - Section 108 Loan Guarantees
    - HOPWA
    - Emergency Shelter Grants
    - Shelter Plus Care
    - 202/811 PRAC
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# Uniform Relocation Act cont'd

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- For more information on the URA, go to:
    - 49 CFR Part 24 for URA regulations; and
    - HUD Handbook 1378 for guidance on implementing the URA regulations
  
  - Each HUD regional office has a staff person designated as a Relocation Specialist
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# Relocating a Resident within the Same Project

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- ❑ An owner may need to relocate an existing resident within the same project for the rehab
  - ❑ When relocating within the same project, the resident may take their TIC to their new unit
  - ❑ The resident stops producing a credit in their old unit and starts producing a credit in their new unit
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# Relocating a Resident within the Same Project cont'd

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- ❑ Remember that an owner defines what buildings are included in the same project on Line 8b of a building's 8609 form
  - ❑ When relocating a resident within the first year of the credit period, the owner must track in what months they produced a tax credit in their first unit and in what months they produced a tax credit in their second unit
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# Relocating a Resident within the Same Project cont'd

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- ❑ The resident's first unit stops producing a tax credit and cannot be included in the A/F again until occupied by an LIHTC-qualified resident
  - ❑ If the unit is not occupied by a qualified resident again by the end of year one, it can be included in the applicable fraction for the months the first resident lived in it but not in the first year A/F calculated as of 12/31
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# Clarification from October 2009 8823 Audit Guide

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- From Page 4-29 of the 8823 Audit Guide –
    - *During September, unit 7 was rehabilitated and the tenant from unit 8 moved in; therefore, unit 8 is \*now considered a vacant market-rate unit.\**
  - Footnote 45 says:
    - *\*In the January 2007 revision of the Guide, Unit 8 was considered a low-income unit. The IRS will not challenge a taxpayer's reliance on the January 2007 explanation for determining the status of a unit before January 1, 2010. \**
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# Clarification from October 2009

## 8823 Audit Guide cont'd

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- The IRS clarified that when a qualified resident moves to another unit in the same project, and qualifies that unit for the LIHTC program, the unit they vacate stops producing a tax credit
  - The vacated unit starts producing a tax credit again when occupied by a LIHTC-qualified family
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# Relocating a Resident within the Same Project Example

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- ❑ An owner closes on a 3-bldg project 2/1/10 and certifies the existing residents within 120 days
  - ❑ The Greens occupy Unit A in Building A until June 30, 2010 when they transfer to Unit B in Building B and live there the rest of the year
  - ❑ The Greens produce a tax credit for Unit A in Building A February – June 2010 and for Unit B in Building B July – December 2010
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# Relocating a Resident within the Same Project Example cont'd

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- ❑ Unit A went out of service for its rehab July 1, 2010, was PIS October 30, 2010 and was occupied by a LIHTC family January 2, 2011
  - ❑ Unit A can be included in the monthly A/F for February – June for the first year averaging convention
  - ❑ Unit A cannot be included in the year-end A/F because it was not occupied again by 12/31/10
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# Relocating a Resident within the Same Project Example cont'd

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- Unit B was vacant on 2/1/2010, went immediately out of service for its rehab, was PIS on June 30, 2010, and was occupied by the Green family July 1, 2010
  - Unit B can be included in the monthly A/F for July - December for the first year averaging convention and can be included in the year-end A/F because it was occupied by 12/31/2010
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# Relocating a Resident to a Different Project

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- ❑ When relocating a resident to a building in a different project, the owner must requalify the resident for the LIHTC program
  - ❑ Remember that a building located next door that shares the same parking lot is a different project unless the owner made it part of the same project on Line 8b of both building's 8609 forms
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# Relocating a Resident to a Different Project cont'd

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- The October 2009 version of the 8823 Audit Guide clarified the difference between a unit unoccupied because of a transfer and a unit vacated because the previous resident moved to another project
  - A vacated unit maintains the status associated with its last resident under the LIHTC vacant unit rule
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# Relocating a Resident to a Different Project Example

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- ❑ An owner buys 2 buildings on 2/1/10, elects to operate them as separate projects, and certifies the residents within 120 days
  - ❑ Unit B in Building B is vacant and remains out of service for its rehab until 6/3/2010
  - ❑ After requalifying the Greens, the owner moves them from Unit A in Building A to Unit B in Building B on 7/1/2010
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# Relocating a Resident to a Different Project Example cont'd

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- When the Greens vacate Unit A in Building A, it continues to produce a tax credit under the vacant unit rule, except for the period of time it is out of service for its rehab
  - Unit A in Building A is included in the monthly A/F for the first year averaging convention Feb – June and Nov – December and is included in the year-end A/F calculated on 12/31/10
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# Relocating a Resident to a Different Project Example cont'd

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- Unit B in Building B starts producing a tax credit when occupied by the Green family July 2010
  - Unit B in Building B is included in the monthly A/F for the first year averaging convention July – December and is included in the year-end A/F calculated on 12/31/10
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# Relocation to a Building with a Different PIS Date

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- ❑ In most projects, each building has its own PIS date
  - ❑ Buildings can be PIS in different years and begin their credit periods in different years
  - ❑ For ac/rehab projects, the owner cannot begin a building's credit period until the year they place its rehab in service
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# Relocation to a Building with a Different PIS Date

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- ❑ A qualified resident can transfer to different buildings included in the same project
  - ❑ If a qualified resident transfers to a building that will not be PIS until the following year, they will not produce a tax credit in the current year for the months they live in building they transfer into
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# Relocation to a Building with a Different PIS Date Example

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- ❑ The Greens live in Unit A in Building A when the owner buys their 3 building project on 5/1/2010
  - ❑ The Greens live in Unit A in Building A until the owner takes it out of service for its rehab September 30, 2010
  - ❑ The Greens live in Unit B in Building B for the rest of 2010
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# Relocation to a Building with a Different PIS Date Example cont'd

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- ❑ The owner does not place the rehab in service for Unit A in Building A until Feb 2011
  - ❑ Unit A in Building A will not produce a tax credit for May – September 2010 because the owner did not place its rehab in service until 2011
  - ❑ The Greens will produce a tax credit for Unit B in Building B Oct – December 2010
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# Relocation When an Owner Elects to Deep Rent Skew

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- Every owner must commit to one of two minimum set asides
    - 20% @ 50% - The owner must rent 20 percent of the units at a project to residents with income no greater than 50 percent of the AMI
    - 40% @ 60% - The owner must rent 40 percent of the units at a project to residents with income no greater than 60 percent of the AMI
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# Relocation When an Owner Elects to Deep Rent Skew cont'd

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- An owner in NYC may commit to renting 25 percent of the units at a project to residents with income not above 60 percent of the AMI
  - When an owner commits to deep rent skew, they elect a minimum set aside and make the extra promise to rent 15 percent of the low income units to residents with income no greater than 40 percent of the AMI
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# Relocation When an Owner Elects to Deep Rent Skew cont'd

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- ❑ Most properties where the owner elects to deep rent skew are mixed-income including both low income and market units
  - ❑ Unlike other mixed-income projects, when an owner elects to deep rent skew, the low income units are fixed
  - ❑ The same units produce tax credits for the entire 15-year compliance period
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# Relocation When an Owner Elects to Deep Rent Skew cont'd

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- ❑ As a resident relocates around a project where the owner elects to deep rent skew, they can only produce a tax credit for the months they occupy one of the fixed low income units
  - ❑ If a qualified resident occupies a non-low income unit, they cannot produce a tax credit
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# Relocation When an Owner Elects to Deep Rent Skew Example

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- ❑ The Green family occupies Unit A when the owner buys their building on 2/1/2010
  - ❑ The owner certifies the Greens for the LIHTC program and their unit becomes one of the fixed LIHTC units at the project
  - ❑ The owner takes Unit A out of service for its rehab on 6/30/10 and the Greens transfer to Unit B
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# Relocation When an Owner Elects to Deep Rent Skew Example cont'd

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- ❑ Unit B is not one of the fixed LIHTC units
  - ❑ The Greens transfer back to Unit A on 11/1/2010
  - ❑ The Greens will produce a tax credit for Unit A Feb – June and Nov – December 2010
  - ❑ The Greens do not produce a tax credit July – Oct 2010 because Unit B is not an LIHTC unit
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# Relocating Residents Off the Project

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- ❑ An owner may need to temporarily relocate a resident off the project to rehabilitate their unit
  - ❑ A resident may temporarily leave the project and return without requalifying
  - ❑ The IRS has not established a limit for how long a resident can be off a project and return to the project based on their initial TIC so an owner should confer with their HFA and CPA
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# Resident Tracking

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- Because of the need to know which resident occupied which unit during each month during a project's rehabilitation, and particularly during the first year of a building's credit period, an owner must have a mechanism that tracks and certifies resident relocation activities for their CPA to prepare their first tax return
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# Resident Tracking cont'd

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- For every resident, the owner must track:
    - The effective date of their initial TIC
    - Their original unit and date of occupancy
    - Any unit the resident relocated to and the date of their move
    - The months during the first year of the credit period the resident generated a tax credit and in what unit
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# Resident Tracking cont'd

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- Remember that if a resident moves to a building not included in the same project on Line 8b of its 8609 form, it is not a transfer
  - The resident must be certified again for the LIHTC program for their new unit to produce a tax credit as of their date of occupancy
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# Questions?

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