

## **Florida Housing Finance Corporation Guidance for Compliance-Related Issues**

Following are questions and corresponding answers (the latter provided by Florida Housing Finance Corporation (FHFC or Florida Housing)) in connection with various compliance-related issues. Owners may use the following Q & A's as guidance in dealing with such issues. Please note that the answers posted on this website reflect Florida Housing's application of current IRS regulations. These answers are subject to change due to changes in Internal Revenue Service (IRS) regulations or policies. Any such changes will be published by Florida Housing at this website. Owners should take caution that changes in these answers may negatively affect a development's operations from that originally projected. Such changes will not relieve the owner of its responsibility for complying with new regulations or policies implemented by the IRS. Owners having questions regarding general or specific application of the following should contact their monitoring agent or FHFC. Where applicable, general questions will be posted to this website for all owners' reference.

### **Redecorating Fees**

1. Q: *Can redecorating fees or other similar fees be charged to a tenant without being included in the calculation of gross rent for purposes of section 42(g)?*

A: Because of IRS Regulation 1.42-11 (see below), redecorating fees and any other type of fee (regardless of name or characterization) which are charged to the tenant for services required as a condition of occupancy, must be included in the calculation of gross rent. Such fees may be charged to a tenant so long as they do not cause the gross rent to exceed the maximum tax credit rent limits. Accordingly, FHFC is required to notify the IRS of any such fees charged to tenants in circumstances when those fees cause the gross rent to exceed the maximum tax credit rent limits. Under such circumstances, non-optional redecorating fees charged to tenants are required to be refunded or credited to the tenant.

Reasoning:

IRS Regulation 1.42-11, Provision of services, provides in pertinent part:

(a) General rule. The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. *However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g). (emphasis added)*

...

(b)(3) Required services--(i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

Accordingly, redecorating fees, recertification fees, and any other type of fees (regardless of name or characterization) that are charged to the tenant for services required as a condition of occupancy, may be charged, but must be included in the calculation of gross rent.

2. Q: *The IRS has issued a draft version of the 8823 guidebook that indicates that redecorating fees are not considered in the calculation of gross rent. Can you explain?*

A: Florida Housing is aware of the guidebook's characterization of redecorating fees. However, IRS representatives have advised Florida Housing, that this characterization was based on their understanding that redecorating fees were refundable; similar to a Security Deposit. Accordingly, the IRS has advised Florida Housing that non-refundable redecorating fees must be included in the calculation of gross rent.

Additionally, the 8823 guidebook is a draft document and is currently in the comment period. It should not be used for guidance until the final version is released by the IRS. Individuals may continue to submit comments to the IRS regarding the draft guidebook. However, until otherwise notified by the IRS, Florida Housing will continue to include fees for non-optional services, such as redecorating services, in the calculation of gross rent for purposes of Section 42(g).

3. Q: *May I charge a redecorating fee if it is refundable to the tenant (similar to a security deposit)?*

A: Yes. If an owner wants to increase the security deposit to an amount which would include a redecorating fee, this is permissible. However, security deposits are required to be administered in accordance with Section 83.49 of the Florida Residential Landlord and Tenant Act, Florida Statutes.

4. Q: *The market is soft and we are giving rental concessions at move-in. Can we charge a non-refundable redecorating fee?*

A: That depends. The gross rent cannot exceed the tax credit limit for the month. However, if the sum of the rent charged and the redecorating fee, less any move-in concession, does not exceed the tax credit limit for that month, a non-refundable redecorating fee is permissible.

5. Q: *I manage a mixed income community. Can I charge redecorating fees to market rent tenants?*

A: Yes. Market rate units are not rent restricted. Therefore, a tenant residing in a market rate unit can be charged a redecorating fee.