

Alert | State & Local Tax (SALT)



August 2023

Guidance Published on Florida’s Live Local Act Property Tax Exemption for Middle Market Multifamily Projects

This past legislative session, the Florida legislature passed the Live Local Act, a comprehensive affordable housing law incentivizing private developers to build multifamily residential projects and to rent apartments at rates affordable to middle income families. *See April 2023 GT Alert.* One of these incentives is a property tax exemption for the value of apartments leased to middle income families at affordable rates. This program is administered by the Florida Housing Finance Corporation (Florida Housing), and this agency has issued a *series of FAQs* to explain the details of the property tax exemption.

Summary of Multifamily Middle Market Affordable Housing Exemption

This incentive allows a property tax exemption for the value of the units in a project dedicated to affordable housing for middle market tenants (not all units have to be dedicated to affordable housing; the threshold requirement is more than 70 units). The amount of the exemption depends on the tenant’s percentile of the median annual adjusted gross income (“median income”) for the metropolitan statistical area where the project is located (or the county if the project is not located in a metropolitan statistical area): (1) a 100% exemption for the value of the unit if the tenant’s income is 80% or less of median income; and (2) a 75% exemption of the value of the unit if the tenant’s income is more than 80% but not greater than 120% of median income. Here are the requirements that must be satisfied to obtain the certificate required to obtain the benefit of this incentive:

- The Project must have more than 70 units dedicated as affordable units (it should be noted that this threshold is less restrictive than the 40% affordable unit requirement for purposes of the Live Local Act's preemption of local zoning laws for approvals of affordable projects).
- The Project must be newly constructed – meaning construction must have been completed within five years of the filing of the application for the exemption application or certification request (if earlier).
- The owner must file an application for approval with Florida Housing.
- In its exemption application, the owner must agree to rent more than 70 units to persons with annual household income of 120% or less of median income for a period of at least three years.
- The rental amount for the affordable units must be no greater than the lower of: (1) the amount posted by the **Florida Housing Finance Corporation**; or (2) 90% of fair market rental value. (The posted rental amount varies by county, and depends on the tenant's percentage of median income and the number of bedrooms. The fair market value rent is determined by an independent certified general appraiser.)
- The owner must submit the following to Florida Housing: (i) a rental market study prepared by an independent **certified general appraiser**; (ii) a list of the affordable units for which an exemption is being requested; (iii) the amount of rent received for each affordable unit; and (iv) a sworn statement restricting rentals of the unit only to persons who meet the income limitations for exemption.
- The owner must receive a certification of eligibility from Florida Housing and submit this certification with their annual exemption application to the county property appraiser's office by March 1 of each tax year.

New Guidance From Florida Housing Finance Corporation

Florida Housing has published FAQs to give more details about the program, including the following:

- The application for certification for the 2024 tax year must be applied for no later than Jan. 1, 2024. Florida Housing will begin reviewing applications, and between Jan. 1 and Jan. 15, 2024, the project's owner must confirm that the rents being charged for units dedicated to affordable housing have been adjusted to required maximum rental amounts and that the affordable units are occupied by middle income tenants (80% - 120% of median income). This means the tenants must be in place as of Jan. 1 for the unit to be eligible for the exemption. If there are any outstanding compliance issues, the owner will have until Jan. 31, 2024, to correct and resubmit the request to receive a certification. This will be a tight timeline, and it assumes Florida Housing will have adequate staff to review what may be a flood of applications.
- Florida Housing will send the required certification to the owner no later than Feb. 15, 2024. This will allow the owner a short timeframe to file the exemption application with the county property appraiser, which exemption application must be filed no later than March 1, 2024. The Department of Revenue will publish the exemption application form. The existing exemption application for affordable housing projects (Form DR-504-AFH) has not yet been updated for the Live Local Act middle market exemption.
- The certification from Florida Housing must be renewed every year (and the application for exemption with the county property appraiser must likewise be renewed every year).
- Florida Housing will provide a form for the owner to certify that the units set aside as affordable units will be dedicated to affordable housing (will be rented at the lower of the restricted published rates or 90% of the fair rental value) for at least three years.

- The application for certification must include a list of the specific units, and Florida Housing will provide a template to submit the unit information.
- Units receiving the alternative Live Local Act exemption, which allows counties to enact their own affordable housing exemption, are not also eligible to receive this multifamily middle market exemption. It should be noted that the local county affordable housing exemption is not as favorable as this multifamily middle market exemption, so this should not be a significant issue.
- If units in the project are already restricted under an agreement with Florida Housing, such units are not eligible for this exemption; however, such units may be counted toward the more than 70 units dedicated to affordable housing required for this exemption.
- If units are subject to a land use restriction agreement with Florida Housing, such units are not eligible for this exemption, but other units in the project not subject to such land use restrictions may be eligible (however, it does not appear that the land use restricted units count toward the more than 70 affordable units requirement).
- Affordable units must be occupied by tenants in the 120% or less median income percentile as of Jan. 1, 2024, for the unit to be eligible for the exemption, and rents must be adjusted to the applicable rental threshold (lesser of the posted rate for the tenant's percentile income or 90% of fair rental value).
- Any charge, fee, or tax the tenant must pay as a condition of occupancy must be included as rent in calculating the maximum rent that can be charged to the tenant.
- The county property appraiser – not Florida Housing – will determine the level of the exemption (75% or 100%) based on the tenant's annual income.
- The fair market rental studies will have to be renewed every three years (the rental study submitted when requesting a renewal of the certification must have been completed within the past three years).
- A fair market value rental study should include the following:
 - a statement from the certified general appraiser confirming independence from the owner;
 - date rental market study was performed;
 - description of subject property (site and improvements);
 - photographs of the subject property;
 - definition and description of subject's market area (as determined by appraiser) and map;
 - inspection of the exterior, common areas, and interior of units of the subject property;
 - comparable apartment rental activity in the subject's immediate market and competing location;
 - inspection of the exterior of each comparable property;
 - map of rent comparables;
 - description and photograph of rent comparables;
 - Rent Comparability Grid;
 - estimate of the market rents for all unit types.

Caveat: Potential for Court Challenges

In reviewing property tax exemptions in the past, Florida courts have looked to reconcile the statutorily created exemptions with those exemptions expressly permitted by the Florida constitution. Developers and investors contemplating an investment in a middle market multifamily project who find this exemption an attractive inducement should be aware of the potential risk of court challenges, and the impact to the project if a challenge results in an unfavorable outcome.

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