

**Effective 1/1/2023**

**59-2-301.3 Definitions -- Assessment of real property subject to a low-income housing covenant.**

(1) As used in this section:

- (a) "Lease up period" means the period that begins the day on which residential housing located on real property subject to a low-income housing covenant is available for occupancy and ends the day on which the residential housing achieves 90% occupancy for a continuous three-month period.
- (b) "Low-income housing covenant" means an agreement:
  - (i) between:
    - (A) the Utah Housing Corporation or a government entity; and
    - (B) an owner of real property upon which residential rental housing is located;
  - (ii) in which the owner described in Subsection (1)(b)(i)(B) agrees to limit the amount of rent that a renter may be charged for the residential rental housing; and
  - (iii) that is filed with the county recorder in the county in which the real property is located.
- (c) "Residential rental housing" means housing that:
  - (i) is used:
    - (A) for residential purposes; and
    - (B) as a primary residence; and
  - (ii) is rental property.

(2)

- (a) A county assessor shall, in determining the fair market value of real property subject to a low-income housing covenant:
  - (i) use the income capitalization approach, if the county assessor finds that the income capitalization approach is a valid indicator of the property's fair market value;
  - (ii) in using the income capitalization approach:
    - (A) calculate the property's net operating income using the reduced rent amounts that result from the low-income housing covenant; and
    - (B) during the lease up period, account for rent loss due to vacancy and lease up costs; and
  - (iii) take into account all other relevant factors that affect the fair market value of the property, including the information provided in accordance with Subsection (3).
- (b)
  - (i) Subject to Subsection (2)(b)(ii), Subsection (2)(a) applies regardless of whether the property is complete or under construction.
  - (ii) For a property under construction, when determining fair market value under this section, the county assessor shall take into account the impact of the low-income housing covenant on the fair market value of the property.

(3)

- (a) On or before April 30 of each year, an owner of real property subject to a low-income housing covenant shall provide to the county assessor the following on a form approved by the commission:
  - (i) a signed statement from the property owner that the project continues to meet the requirements of the low-income housing covenant;
  - (ii) a certified financial operating statement for the property for the prior year;
  - (iii) rent rolls for the property for the prior year;
  - (iv) federal and commercial financing terms and agreements for the property; and
  - (v) for a property under construction, actual construction costs incurred as of the lien date.

- (b) If the April 30 described in Subsection (3)(a) occurs before occupancy of the property or before the end of the lease up period, the property owner shall provide estimates of the information required by Subsections (3)(a)(ii) and (iii).
  - (c) On or before March 31 each year, the county assessor shall send a copy of the form described in Subsection (3)(a) to each owner of real property subject to a low-income housing covenant located in the county.
- (4) If an owner of real property subject to a low-income housing covenant fails to meet the requirements of Subsection (3):
- (a) the assessor shall:
    - (i) make a record of the failure to meet the requirements of Subsection (3); and
    - (ii) make an estimate of the fair market value of the property in accordance with Subsection (2) based on information available to the assessor; and
  - (b) subject to Subsection (5), the owner shall pay a penalty equal to the greater of:
    - (i) \$250; or
    - (ii) 5% of the tax due on the property for that year.
- (5)
- (a) Only one penalty per year may be imposed per housing project subject to a low-income housing covenant.
  - (b) Upon making a record of the action, and upon reasonable cause shown, an assessor may waive, reduce, or compromise the penalty imposed under Subsection (4)(b).
  - (c) An owner is not subject to a penalty under Subsection (4) for a year in which the county assessor failed to timely comply with Subsection (3)(c).

Amended by Chapter 267, 2022 General Session