

MEMO

TO: Virginia Housing Portfolio
FROM: Rental Compliance & Asset Management
DATE: June 2023
RE: Fees as a Condition of Occupancy for Tax Credit properties

Under [Treasury Regulation 1.42-11](#), the cost of services, utilities, and non-optional fees required as a condition of occupancy must be included in the monthly gross rent calculation. All mandatory or non-refundable fees must be included in the gross rent calculation. See the [Virginia Residential Landlord and Tenant Act](#) for additional guidance.

Fees charged for optional services are not included in the gross rent if there is a reasonable alternative. When charging a fee, consider whether the service is optional or a required condition of occupancy.

Fees **may not** be charged for property areas included in the Eligible Basis. Eligible Basis includes all areas of the property included in the cost of acquiring and rehabbing or constructing a Low-Income Housing Tax Credit building.

Property areas usually included in the Eligible Basis include the following:

- Parking lot
- In-unit washer/dryer connections
- Community laundry room
- Pool
- Recreational spaces (e.g., gym, community room, etc.)
- Storage space attached to the unit

Mandatory or Non-Optional Fees

Fees or charges affecting gross rent include all non-optional, non-refundable, mandatory, or required charges. For example:

Utility Allowances: Utility allowance estimates must be included in the gross rent under the Tax Credit program and annually updated by the owner.

Sub-metering Utility Fees: The owner may charge up to \$5 monthly for the administrative costs of sub-metered utilities. Administrative fees over \$5 must be included in the gross rent.

Application Fee: A one-time application fee to cover the actual out-of-pocket costs of processing the tenant application is permitted under state and federal law. Any charges above the out-of-pocket costs may be considered a non-optional fee and must be included in the gross rent.

Non-Refundable Deposits or Non-optional Charges: All non-refundable or non-optional tenant charges must be included in the gross rent.

- Non-Refundable Deposit or Holding Fee
- Surety Bond for Deposit
- Washer/Dryer Connection
- Fees for Guests to Use Amenities
- Attached Unit Storage
- Co-Signer or Guarantor Services

Renter's Insurance: Owners requiring renter's insurance must confirm the tenant's out-of-pocket payment schedule before the lease starts. Payments must be counted in the **month the tenant pays out of pocket**, even if paid directly to the insurance company.

Administrative Fees: Owners cannot charge tenants for the costs incurred for standard property operations. Administrative charges include mandatory or required non-refundable deposits for reviewing tenant documents, payroll, staffing, call center, or property marketing.

Move-Out or Redecorating Fees: Fees to cover the cost to make the unit ready for the next tenant is not permissible under the Tax Credit program. Only documented and itemized costs beyond the normal wear and tear may be charged against the security deposit. Owners are responsible for the costs incurred for basic cleaning and repairs to make a unit ready for occupancy.

Fees for Property Amenities: Fees may not be charged for property amenities included in the Eligible Basis. Areas usually included in the Eligible Basis include the pool, community room, recreational spaces, laundry facilities, and equipment. Fees may be charged for optional property amenities not included in the Eligible Basis.

Parking: Fees **must not** be charged for parking lot areas included in the Eligible Basis.

Optional Fees

Examples of optional fees that may be charged to tenants include the following:

- **Credit/debit card payment fees** if the tenant has payment options without a fee.
- **Garage or parking in covered parking spaces** not included in Eligible Basis.
- **Storage** that is not attached to the unit.
- **Late fees and premature lease termination fee** policies in the lease agreement are permitted under state and federal law.
- **Unit transfer fees** may be permitted unless related to the Violence Against Women Act or a Reasonable Accommodation request.
- **Pet fees** may be permitted unless related to a support or service animal.

The property must maintain detailed recordkeeping and clearly written policies for all charges. Compliance monitoring includes the review of the property records and considers whether the fees charged for services are optional or a condition of occupancy.

Contact your assigned Compliance Officer or email questions about fees to Compliance-AssetManagement@VirginiaHousing.com. Include your property name and details about the inquiry in the subject line of the email.