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No. 39596-1-III

Case #: 1036108

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

**FILED**

NOV 15 2024

HEIDI COOPER,  
*Petitioner,*

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

vs.

EAGLE POINTE ICG, LLC, and  
SECURITY PROPERTIES RESIDENTIAL, LLC,  
*Respondents.*

PETITION FOR REVIEW

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### **A. IDENTITY OF PETITIONER**

Petitioner Heidi Cooper asks this Court to accept review of the Division III Court of Appeals’ decision designated in Part B herein.

### **B. COURT OF APPEALS DECISION**

Ms. Cooper asks this Court to review the Division III Court of Appeals’ unpublished Opinion, *Cooper v. Eagle Pointe ICG, LLC*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856 (Ct. App. Sep. 17, 2024), ruling that landlords who set higher rental rates for “Section 8” Housing Choice Voucher participants than other tenants for the same rental unit does not constitute an unlawful “distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property” in violation of the Source-of-Income-Based (SOID) discrimination provisions of Washington’s Residential Landlord-Tenant Act (RLTA) under RCW 59.18.255.

It is undisputed in this case that Ms. Cooper’s landlords set higher rental rates for current and prospective tenants who are “Section 8” housing assistance participants than it sets for other tenants seeking or renting identical rental units. *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*1-2; CP 135 (landlords’ written confirmation that the rental rates for a particular apartment “are \$943 with out [sic] voucher and with [Section 8] voucher is \$1190.”); *also* CP 58-61; SN 17, 2:13-14, 2:19-20).<sup>1</sup>

Acknowledging this distinction between rental rates set for “Section 8” tenants and those for other tenants – in this case those who qualified Ms. Cooper’s landlords for certain tax benefits – the Division III Court of Appeals ruled that it was not Ms. Cooper who was being charged a different rate than other tenants, but other tenants who were being charged a different

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<sup>1</sup> The lower court erroneously states that the evidence cited herein is not in the record below. *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*17, \*18, \*19.

different rate than her. *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18 (“... it is the tenants in the Tax Credit Program that pay a different rate, not Ms. Cooper.”). In so ruling, the lower court afforded special deference to the business interests of Ms. Cooper’s landlords, noting that “[b]y complying with the regulations from each [federal] program, Security Properties is able to sustain its business model while continuing to provide options for low-income tenants.” *Id.* The court below also imputed an “unreasonable rent” standard into its RCW 59.18.255 analysis, finding that “[h]ere, there is no evidence or allegation that the rent Security Properties charges Ms. Cooper is not reasonable according to the method established by the [federal] regulations.” *Id.* at \*19. No such burden of proof appears anywhere under the plain language of RCW 59.18.255.

In its ruling, Division III does not appear to consider fundamental principles that guide the interpretation and application of the RLTA. Specifically, as a remedial statute,

be strictly construed by courts “in favor of the tenant,” and liberally construed “to accomplish the purpose for which it was enacted.” *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 548, 484 P.3d 1251, 1257 (2021) (citing cases); *State v. Douty*, 92 Wn.2d 930, 936, 603 P.2d 373 (1979); *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677 (2019). The absence of these considerations in a ruling that narrows the application of the RLTA’s anti-discrimination provisions necessitates some clarification and/or confirmation as to how the provisions of RCW 59.18.255 might apply to similar fact patterns and circumstances.

Because the lower court’s decision presents issues of first impression affecting hundreds of thousands of Washington tenants who participate in housing assistance programs, and because the decision introduces apparent inconsistencies and conflicts with the state’s existing RLTA jurisprudence, Ms. Cooper petitions this Court for review.

A copy of the appellate court's unpublished Opinion is in Appendix A herein.

### **C. ISSUES PRESENTED FOR REVIEW**

1. Does setting a rental rate for current or prospective “Section 8” Housing Voucher Program recipients that is higher than the rate set for other tenants for the same rental unit constitute an unlawful “distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property” in violation of Washington’s Residential Landlord-Tenant Act, RCW 59.18.255?
2. May landlords set higher rates for “Section 8” tenants than they set for other tenants for the same rental unit if landlords can capitalize from federal tax benefits by doing so?
3. Must tenants who are subjected to higher rental rates based on their source of income also demonstrate that the



higher rate is “unreasonable” to vindicate a claim under RCW 59.18.255?

#### **D. STATEMENT OF THE CASE**

Ms. Cooper, on behalf of herself and a putative class of residential tenants, sued her landlords, Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, for setting higher rental rates for current and prospective tenants participating in “Section 8” housing voucher programs under 42 USC § 1437f (also 24 CFR § 982) than the rental rates they set for other current and prospective tenants for the same rental unit in violation of Washington’s Residential Landlord-Tenant Act (RLTA), RCW 59.18, *et seq.*

More specifically, the RLTA prohibits landlords from engaging in source-of-income based discrimination (SOID) by making “any distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property or in the furnishing of any facilities

or services in connection with the rental, lease, or occupancy of real property,” RCW 59.18.255(1)(c), among other actions, “based on the source of income of an otherwise eligible prospective tenant or current tenant.” RCW 59.18.255(1). The statute defines “source of income” to include “benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity.” As this Court has consistently affirmed throughout the RLTA’s long tenure, “[t]he RLTA is a remedial statute that must be ‘construed liberally in order to accomplish the purpose for which it is enacted.’” *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 548, 484 P.3d 1251, 1257 (2021) (citing cases); *see also Gebreseralse v. Columbia Debt Recovery*, 24 Wn. App. 2d 650, 658, 521 P.3d 221 (2022) (The RLTA must be strictly construed by courts “in favor of the tenant,” and liberally

construed “to accomplish the purpose for which it was enacted.”).

In this case, it is undisputed that Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, intentionally and systematically set a higher rental rate, for the same rental unit, for current and prospective tenants participating in “Section 8” housing assistance programs than the rental rate it offered to tenants who are not “Section 8” participants.<sup>2</sup> *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*1-2. Ms. Cooper’s landlords set these higher rental rates for Section 8 participants for no other reason than their participation in that particular housing assistance program. (CP 58-61; SN 17, 2:13-

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<sup>2</sup> In her briefing to the Court of Appeals, Ms. Cooper offered undisputed evidence that the disparities in rental rates were adverse to Section 8 tenants, noting her own landlords’ written confirmation that the rental rates for a particular apartment “are \$943 with out [sic] voucher and with [Section 8] voucher is \$1190.” CP 135. Throughout the course of this litigation, Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, have consistently and repeatedly acknowledged the same. (CP 58-61; SN 17, 2:13-14, 2:19-20).

14, 2:19-20). Ms. Cooper alleges that this practice violates the RLTA's anti-discrimination provisions under RCW 59.18.255.

The court below disagreed, essentially finding that Ms. Cooper's landlords weren't setting **higher** rates for Section 8 tenants, as much as they were setting **lower** rates for non-Section 8 tenants. *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18. ("The two programs at issue here presume that the tenants in the Voucher Program will pay [higher] rent at or near market rates, while tenants in the Tax Credit Program will pay a reduced rent."). In making such a finding, the lower court was especially concerned about preserving landlords' preferred business models, noting that, because federal laws permitted setting unequal rates based on tenants' sources of income, "by complying with the regulations from each program, Security Properties is able to sustain its business model while continuing to provide options for low-income tenants," *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18.

Division III also found that setting higher rental rates based on tenants' participation in Section 8 was not prohibited discrimination under the RLTA, because Ms. Cooper's landlords were just setting **lower** rates for non- "Section 8" tenancies so they could take advantage of certain tax credits, which were ultimately a financial benefit to the landlords, "not a source of income for any of the tenants at properties managed by Security Properties." *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*19-20. The lower court did not address how this interpretation of otherwise plain statutory language ensured that the RLTA's anti-discrimination section was strictly construed "in favor of the tenant" and liberally construed "to accomplish the purpose for which it was enacted." *Gebreseralse*, 24 Wn. App. 2d at 658, 521 P.3d at 221; *Silver*, 197 Wn.2d at 548, 484 P.3d at 1257.

After Division III filed its unpublished decision on September 17, 2024, Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, moved for publication, which the

Court of Appeals subsequently denied. Ms. Cooper thereafter timely filed her Petition for Review herein.

The issues presented to this Court for review appear to be issues of first impression.

### **E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

This Court may accept a petition for review of a Court of Appeals decision if the decision conflicts with other decisions of this Court or the Court of Appeals. RAP 13.4(b)(1)-(2).

This Court may also accept review if the petition involves an issue of substantial public interest that should be determined by the Supreme Court, RAP 13.4(b)(4). This Court should accept review for both of these reasons.

#### **1. Division III's Decision Contradicts Longstanding Principles Established by Both the Supreme Court and Appellate Courts.**

The statute at issue in this case plainly states:

“A landlord may not, based on the source of income of an otherwise eligible prospective tenant or current tenant ...

Make any distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of real property...”

RCW 59.18.255(1)(c)

It is undisputed in this case that Ms. Cooper’s landlords intentionally and systematically set higher rental rates for her and literally thousands of other tenants throughout Washington, for the same rental unit, because she participates in “Section 8” housing assistance programs. *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*1-2 (Ct. App. Sep. 17, 2024). The same landlords set lower rates for other tenants, who do not participate in “Section 8” housing assistance programs, for exactly the same rental unit. *Id.*

Over decades, Washington courts have repeatedly made clear that the RLTA is a remedial statute, which calls for both strict and liberal construction. It must be strictly construed by courts “in favor of the tenant,” and liberally construed “to

accomplish the purpose for which it was enacted.” *Silver*, 197 Wn.2d 535 at 548, 484 P.3d at 1257 (citing cases); *State v. Douty*, 92 Wn.2d 930, 936, 603 P.2d 373 (1979); *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677 (2019).

The lower court did not address how its interpretation of plain statutory language under RCW 59.18.255 incorporated these principles, instead narrowing the application of the statute’s anti-discrimination provisions with deference toward the business interests of landlords:

By complying with the regulations from each program, Security Properties is able to sustain its business model while continuing to provide options for low-income tenants.

*Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18.

The lower court also introduced an “unreasonable rent” standard a tenant must overcome, which does not appear anywhere in the statute, to vindicate a claim of income-based discrimination:



Here, there is no evidence or allegation that the rent Security Properties charges Ms. Cooper is not reasonable according to the method established by the [federal] regulations.

*Id.* at \*19.

Applying this standard to Ms. Cooper, the lower court erroneously stated that Ms. Cooper “fails to produce any evidence that she is charged more rent because she receives a [Section 8] voucher,” notwithstanding her landlord’s uncontested, written affirmation that the rental rates for her apartment “are \$943 with out [sic] voucher and with [Section 8] voucher is \$1190,” CP 135, as well as their open-court admission that “the crux of this, is that we charge different amounts of rent to Section 42 people than we do to Section 8 people, that’s true.” CP 1000. Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, further (and incorrectly) claimed that the only reason they made such a distinction in rental rates is because state and federal law required them to set different rates *based on tenants’ participation or non-*

*participation in different housing assistance programs.* RP 47-51.<sup>3</sup>

While the fact that Ms. Cooper's landlords set higher rental rates for "Section 8" tenants than it sets for other tenants is repeatedly acknowledged by both parties and has never been disputed, the court below stated that Ms. Cooper "does not provide any authority or reasoning to support this position" that "she is the one paying a different rate." *Cooper*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18. The lower court explained this by distinguishing the different rental rates by finding that it was non- "Section 8" tenants who paid a different (lower) rate than Ms. Cooper, not Ms. Cooper paying a different (higher) rate than them. *Id.* ("... it is the tenants in the Tax Credit Program that pay a different rate, not Ms. Cooper.").

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<sup>3</sup> The notion that Ms. Cooper's landlords were forced to set unequal rental rates was debunked by the trial court and acknowledged as such by Division III's analysis. *Cooper, LLC*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*9-12.

Both parties supplied evidence that the basis for Eagle Pointe ICG, LLC, and Security Properties Residential, LLC, setting higher rental rates for “Section 8” tenants was based on their participation in that particular housing assistance program independent of any prospective or imputed “reasonable rent” standard under RCW 59.18.255. Applying such a standard was never a factor in these proceedings and should not now be imputed into RCW 59.18.255’s otherwise broad protections against discrimination based on tenants’ source of income.

Virtually all of the lower court’s substantive analysis and reasoning is focused on federal regulations pertaining to maximum rates allowed by different federal housing assistance programs, not Washington’s anti-discrimination provisions under RCW 59.18.255 and the body of law that has developed over more than 50 years since the RLTA was first enacted in 1973.

The result of this is an unpublished decision, on a widespread issue of profound concern for Washington’s

residential tenants, which is based not on longstanding principles of the state's landlord-tenant jurisprudence, but rather the application of federal regulations to the business operations of residential landlords. In this context, the lower court's ruling sets the stage for discord, confusion, and inconsistency among lower courts across the state. It falls to this Court to clarify and confirm how the RLTA's anti-discrimination provisions apply to discriminatory practices in residential housing for countless Washington tenants.

**2. Division III's Decision Will Profoundly Affect the Rights and Interests of Residential Tenants Throughout Washington.**

The protections afforded to residential tenants based on their source of income is an issue of widespread public interest throughout Washington. According to the US Census Bureau's most recent estimates, as of July 1, 2023, more than one-third of Washington residents lived in non owner-occupied housing. The University of Washington's Washington Center for Real Estate Research (WCRER) estimates that there are at least

516,978 residential housing units in the state with an average monthly rent of \$1,592. (App. B: University of Washington, Washington Center for Real Estate Research, *Washington Apartment Market Q3 2024* at 5; <https://wcrer.be.uw.edu/housing-market-data-toolkit/apartment-market-reports/>). WCRER estimates that at least 155,000 of these units are occupied by persons who participate in state and/or federal housing assistance programs. (App. C: University of Washington, Washington Center for Real Estate Research, *Subsidized Rental Housing Inventory 2023* at 2; <https://wcrer.be.uw.edu/housing-market-data-toolkit/subsidized-rental-housing-profile/>). Because these figures reflect the number of housing *units*, not the number of *occupants* who live within, the total number of tenants directly affected by the RLTA's anti-discrimination provisions is undoubtedly much higher. In these respects, the lower courts' decision to narrow the applicability of RCW 59.18.255 in favor of landlords' preferred business models affects the rights and

protections for hundreds of thousands of Washington's most vulnerable and insecure tenants, as evidenced by their participation in "Section 8" and other public housing programs.

In addition to setting higher or lower rental rates depending on whether or not a person participates in a particular housing assistance program, the practice of discriminatory rent setting also impacts the limited funds available to the programs and entities tasked with delivering assistance to eligible tenants. Charging more from "Section 8" participants than other tenants for exactly the same unit doesn't just affect the higher-paying tenant, but also the higher-paying assistance program, inevitably reducing the availability of assistance to people who need it.

As Washington courts, including Division III, have previously acknowledged, "[t]he RLTA represents a series of compromises" between landlords and tenants. *Lian v. Stalik*, 106 Wn. App. 811, 819 (2001). The RTLA maintains this balance by ensuring that a "tenant benefits from the imposition

of specific affirmative duties imposed upon the landlord,” while a “landlord benefits because while the RLTA imposes a lengthy list of specific duties, it also limits the remedies available to the tenant for breach of those duties.” *Id.* As a remedial statute, the RLTA should be construed liberally in favor of the remedies it provides. *See, e.g., Naches Valley Sch. Dist. No. JT3 v. Cruzen*, 54 Wn. App. 388, 399 (1989) (“remedial statute should be liberally construed to effect its purpose”). Applying the RLTA in a manner that limits tenants’ statutory rights and protections against specific types of discrimination is anathema to the fundamental purposes the RLTA.

The lower court’s published opinion therefore involves an issue of widespread economic and social interest, not only for residential tenants themselves, but also for the programs and entities that support statewide housing assistance programs. This court should accept review of Ms. Cooper’s case to provide clarity, consistency, and reliability for countless tenants

and housing assistance programs that are directly affected by Division III's ruling.


**4. Ms. Cooper is Entitled to an Award of Costs and Fees.**

Pursuant to RCW 59.18.255(4), Ms. Cooper is entitled to recovery of her costs and fees if she is determined to be the prevailing party in this action. Pursuant to RAP 18.1, she requests that this Court make such an award as warranted.

**F. CONCLUSION**

Based upon the authorities and arguments herein, Ms. Cooper petitions this Court to accept final review of this matter.

The undersigned certifies that the foregoing content consists of 4,004 words, not including caption, introductory tables, signature block, or appendices. DATED this 15th day of November, 2024, and respectfully submitted,


  
\_\_\_\_\_  
Brian G. Cameron, WSBA #44905  
Shayne Sutherland, WSBA #44593  
*Attorneys for Petitioner*



## CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 15th day of November, 2024, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

Andrew Mitchell MITCHELL & MITCHELL PLLC 1710 N. Washington St. Ste. 200 Spokane WA 99205 <i>Attorney for Respondent</i>	<input checked="" type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input checked="" type="checkbox"/> VIA E-MAIL DELIVERY <a href="mailto:amitchell@mitchell-lp.com">amitchell@mitchell-lp.com</a> <a href="mailto:themitchellgroup@mitchell-lp.com">themitchellgroup@mitchell-lp.com</a> <input type="checkbox"/> VIA COURT SERVICE
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BRIAN G. CAMERON, WSBA #44905  
SHAYNE SUTHERLAND, WSBA #44593

## **APPENDICES**

### **APPENDIX A**

*Cooper v. Eagle Pointe ICG, LLC*, No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18 (Ct. App. Sep. 17, 2024) ..... A-1

### **APPENDIX B**

University of Washington,  
Washington Center for Real Estate Research,  
*Washington Apartment Market Q3 2024* ..... B-1  
<https://wcrer.be.uw.edu/housing-market-data-toolkit/apartment-market-reports/>

### **APPENDIX C**

University of Washington,  
Washington Center for Real Estate Research,  
*Subsidized Rental Housing Inventory 2023* ..... C-1  
<https://wcrer.be.uw.edu/housing-market-data-toolkit/subsidized-rental-housing-profile/>

# APPENDIX A

*Cooper v. Eagle Pointe ICG, LLC*,  
No. 39596-1-III, 2024 Wn. App. LEXIS 1856, at \*18  
(Ct. App. Sep. 17, 2024)

## Cooper v. Eagle Pointe ICG, LLC

Court of Appeals of Washington, Division Three

April 24, 2024, Oral Argument; September 17, 2024, Filed

No. 39596-1-III

### Reporter

2024 Wash. App. LEXIS 1856 \*; 2024 WL 4231745

HEIDI COOPER, *on Behalf of Herself and all Others*  
*Similarly Situated, Appellant*, v. EAGLE POINTE ICG, LLC,  
ET AL., *Respondents*.

**Notice:** RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

**Subsequent History:** Reported at Cooper v. Eagle Pointe ICG, LLC, 2024 Wash. App. LEXIS 1963 (Wash. Ct. App., Sept. 17, 2024)

**Prior History:** [\*1] Appeal from Spokane Superior Court. Docket No: 20-2-02131-2. Judge signing: Honorable John O. Cooney. Judgment or order under review. Date filed: 03/10/2023.

### Core Terms

rent, tenants, voucher, tax credit, Properties, housing, public housing, low-income, source of income, Apartments, landlords, programs, regulations, housing authority, rental rate, percent, qualify, rental, summary judgment, reasonable rent, participating, eligible, attorney's fees, federal program, different rate, a landlord, undisputed, landowner, subsidy, household income

**Counsel:** For Appellant: Brian Cameron, Attorney at Law, Spokane, WA; Shayne Sutherland, Cameron Sutherland, PLLC, Spokane, WA.

For Respondent: Andrew Mitchell, Mitchell & Mitchell, PLLC, Spokane, WA; Vicki L. Mitchell, Mitchell & Mitchell Law Practice, PLLC, Spokane, WA.

**Judges:** Authored by Tracy Staab. Concurring: George Fearing, Robert Lawrence-Berrey.

**Opinion by:** Tracy Staab

### Opinion

¶1 STAAB, J. — Security Properties Residential, LLC, owns Eagle Pointe Apartments, which rents solely to low-income tenants under two low income rental assistance programs. Under the first program, Security Properties rents to tenants who qualify for the Housing Choice “Voucher Program,” also called “Section 8” housing. These tenants receive a voucher to subsidize a portion of their rent. Security Properties also rents to tenants under the Low-Income Housing “Tax Credit Program,” a program authorized by “Section 42” of the Internal Revenue Code of 1986. This program provides an income tax credit to the owners of real property who rent residential units to qualified tenants at a reduced rental rate. It is undisputed that Eagle Pointe charges [\*2] different rental rates to tenants through the two programs.

¶2 Heidi Cooper is a tenant at Eagle Pointe who receives rental assistance through the Voucher Program. When she discovered that Security Properties charges different rental rates to tenants in the Tax Credit Program, she sued claiming source of income discrimination in violation of the Residential Landlord Tenant Act (RLTA), RCW 59.18.255. As a putative class action representative, she sought statutory damages and attorney fees. The trial court dismissed her claims on summary judgment and Ms. Cooper appeals.

¶3 Under different circumstances, evidence that tenants in the Voucher Program are charged a different rate of rent than eligible tenants whose source of income is not protected might be enough to raise a genuine issue of material fact concerning source of income discrimination. But in this case, it is undisputed that all of the non-voucher tenants at Eagle Pointe Apartments

participate in the Low-Income Housing Tax Credit Program, which sets their reduced rent. While the Voucher Program qualifies as Ms. Cooper's source of income, the Tax Credit Program does not qualify as a source of income to the tenants in that program.

¶4 Security Properties [\*3] produced evidence that it sets each tenant's rent according to the rules and regulations of the program in which the tenant participates. Ms. Cooper counters that the rules of each program do not prevent landlords from lowering the rent charged to tenants in the Voucher Program so that it equals the lower rents paid by tenants in the Tax Credit Program. While Ms. Cooper is correct, her argument misses the point.

¶5 The RLTA does not require all rents to be equal. Instead, it prohibits a unfavorable distinction in rent against a tenant based on that tenant's source of income. Here, Ms. Cooper's rent was set at or below fair market value according to the rules and regulations of the Voucher Program. Security Properties charged the tenants in the Tax Credit Program a lower rent because it received a tax credit for doing so. In other words, the difference in rent is based on tax credits to Security Properties, it is not based on Ms. Cooper's participation in the Voucher Program. This distinction is not prohibited by RCW 59.18.255. Therefore, the trial court did not err in granting summary judgment and dismissing Ms. Cooper's complaint.

## BACKGROUND

¶6 Security Properties has owned Eagle Pointe Apartments in [\*4] Spokane since 2017. All of the apartments at Eagle Pointe are rented to low-income tenants who qualify for one of two federal programs: the Low-Income Housing Tax Credit Program under Section 42 of the Internal Revenue Code, or the Section 8 housing. It is undisputed that tenants in the Tax Credit Program are charged a lower rental rate than tenants in the Voucher Program. Regardless of the program, all rental rates at Eagle Pointe are below fair market value.

¶7 Ms. Cooper has been a tenant at Eagle Pointe since approximately August 2014. For the entirety of her tenancy Ms. Cooper has participated in the Voucher Program. This program is administered by the Spokane Housing Authority.

¶8 In September 2018, Ms. Cooper sent an email to the Housing Authority inquiring into a notice she received from Eagle Pointe about an increase in her rent that had been authorized by the Housing Authority. She asked, "I

guess I am curious if I can be charged more simply because I have financial help (section 8)." Clerk's Papers (CP) at 1009. The Housing Authority responded that it was its policy to require landlords "to submit a request for a rent increase in writing to [its] inspection team no later than 60 days before it takes effect." CP at 1007.

¶9 Five months [\*5] later, Ms. Cooper sent another email to the Housing Authority asking whether they had any procedure to correct the higher amount of rent that she was charged for participating in the voucher program as opposed to tenants who did not participate in the program. The Housing Authority directed her to contact the Tenants Union of Washington State to assist her in looking into the issue.

¶10 Ms. Cooper also sent an email to Eagle Pointe stating her concern. She worried that, as her income increased, she would eventually be required to pay the full rent rate under the Voucher Program, which was higher than the rent charged to non-voucher tenants. Other than the conversation Ms. Cooper's email references with an Eagle Pointe property manager, the record does not show that Eagle Pointe responded to Ms. Cooper's concerns.

¶11 On January 30, 2020, Ms. Cooper emailed Eagle Pointe property management inquiring on behalf of a friend about the rent rate for a prospective tenant with and without the Voucher Program. Eagle Pointe property management responded with two different rates: for a two-bedroom apartment the rental rate was \$874 per month with a voucher and \$834 per month without a voucher. For a three-bedroom [\*6] apartment, the rent was \$1,190 per month with a voucher, and \$943 per month without a voucher. The property manager further explained that the Housing Authority calculated the tenant's portion of the rent, and that it varied with every tenant based on their household income. In February 2020, Ms. Cooper informed Eagle Pointe that she intended to report them to the local housing authorities due to the higher rent charged to tenants with a voucher, such as herself.

¶12 In August 2020, Ms. Cooper filed a class action lawsuit, on behalf of herself and others similarly situated, against Security Properties Residential, LLC, and Eagle Pointe ICG, LLC for discriminating against tenants based on their source of income, in violation of Washington's RLTA, specifically RCW 59.18.255(1)(c). Ms. Cooper alleged Security Properties quoted and charged higher rental rates to tenants participating in

certain low-income housing programs than to those participating in other low-income programs or no program at all.

¶13 The trial court granted Security Properties' motion for summary judgment and dismissed Ms. Cooper's complaint. The court determined that, as a matter of law, Security Properties did not discriminate against its tenants [\*7] or prospective tenants based on the housing program they participated in, "especially in light of the Eagle Pointe Apartments only offering housing to those who participate in low-income housing programs." CP at 1036. Further, it concluded Ms. Cooper failed to present evidence that Security Properties discriminated against similarly situated tenants or prospective tenants.

¶14 Ms. Cooper now appeals.

#### BACKGROUND ON RENTAL ASSISTANCE PROGRAMS

¶15 Before considering the specific issues raised in this case, it is important to understand the two rental assistance programs that benefit tenants at Eagle Pointe Apartments.

##### A. Low-Income Tax Credit Program: 26 U.S.C. § 42

¶16 The Section 42 housing is a property based tax benefit program that incentivizes private landlords to provide low-income housing. 26 U.S.C. § 42; see CP at 92. The statute "provides substantial federal income tax credits as an incentive for developers to construct and operate housing for low-income families." *In re Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 644, 576 S.E.2d 316 (2003).

¶17 Under the tax credit program, a property must meet one of the two federal standards to receive a benefit: at least 40 percent of the units must be rented to tenants with a household income of 60 percent or less of the area's median income, or 20 percent of the units [\*8] must be rented to tenants with a household income of 50 percent or less of the area's median income. 26 U.S.C. § 42. Landlords agree to charge lower rent for tax credit units in exchange for tax credits. *Id.* "Generally, a resident's rent plus the utilities s/he pays for his or her unit must not exceed approximately 30% of Household income." CP at 90.

¶18 The program is not a source of income to the tenant. Instead, tenants who qualify for the program are third-party beneficiaries of the tax credit provided to

property owners. A tenant is eligible to rent a tax credit unit only if their household income is 60 percent or below the area's median income. 26 U.S.C. § 42.

¶19 "Public agencies within each state administer the program and allocate the available federal and state tax credits." *Greens of Pine Glen*, 356 N.C. at 644. Per the declaration provided by Security Properties' Regional Manager, the Washington State Housing Finance Commission (WSHFC) administers the program in Washington. See CP at 91-93. The income limits and maximum rent that landlords can charge each year for tax credit tenants are set by the federal program and published by WSHFC.

The total rent payable by the tenant is calculated by taking the gross rent amount that is provided to us, subtracting [\*9] the utility allowance which is set by HUD and which the tenant pays directly to the utility provider, and then the different [sic] is the maximum chargeable rent that we can charge for a unit under the 24 Section 42 requirements.

CP at 92.

¶20 Although landlords cannot set rents higher than the maximum allowed under the federal program in order to receive the tax credits, Security Properties concedes they have discretion to charge less than the maximum rent set by the federal program if the market will not support the maximum rent rate and they cannot fill all of their apartments. To determine what the market in Spokane County can and cannot support, Security Properties compares rent rates and occupancy levels at other low-income and conventional rental properties in the area. Based on the reports, Security Properties can set rent for tax credit units at less than the maximum rent rate set by the federal program. In 2019 and 2020, it continued to charge the 2018 rate plus a \$25 increase based on the local economy.

##### B. Housing Choice Voucher Program: 42 U.S.C. § 1437f

¶21 The Housing Choice Voucher Program, commonly known as Section 8, provides tenant-based rental assistance to low-income households in the form of vouchers. [\*10] 42 U.S.C. § 1437f; 24 C.F.R. § 982.1. "Congress created the Housing Choice Voucher Program to 'aid [ ] low-income families in obtaining a decent place to live' and to 'promot[e] economically mixed housing.'" *Austin Apt. Ass'n v. City of Austin*, 89 F. Supp. 3d 886, 889 (W.D. Tex. Feb. 27, 2015) (quoting 42 U.S.C. § 1437f (a)). The program is

administered by state or local agencies called public housing agencies, which must comply with federal guidelines concerning housing quality standards and rent limitations. 24 C.F.R. §§ 982.1, 982.52; see CP at 73. The United States Department of Housing and Urban Development (HUD) provides funds for housing and funds to administer the program directly to the public housing agencies “so eligible families can afford decent, safe, and sanitary housing.” 24 C.F.R. § 982.1(a)(1).

¶22 Unlike a tax credit, the voucher subsidy is a benefit to the individual tenant rather than the unit or property. 24 C.F.R. § 982.1(b)(1). The public housing agencies determine whether individuals are eligible to receive a voucher. *Id.* at § 982.201. Once approved, tenants in the voucher program can choose any privately owned housing that meets certain program requirements and provides rent within specified limits. *Id.* at §§ 982.302(a), 982.1(b)(2). When a tenant finds a qualifying unit, the public housing agency negotiates with the landlord to determine a reasonable rent, and enters into a contract specifying the maximum [\*11] monthly rent the landlord may charge. 42 U.S.C. § 1437f(c); see 24 C.F.R. §§ 982.1(a)(2), 982.507(a). Further, the public housing agency must approve and deem the rent reasonable any time a landowner wishes to increase rent. “At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the [public housing agency].” 24 C.F.R. § 982.507(a)(4).

*i. Housing Choice Voucher rent reasonableness in tax credit covered units*

¶23 Reasonable rent is defined as a rent rate to the landowner “that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.” 24 C.F.R. § 982.4. The public housing agency’s reasonableness calculation for tenants with vouchers looking to rent units that are also covered by tax credit is governed by 24 C.F.R. § 982.507(c). Under this regulation, a rent comparison is not required if the voucher rent does not exceed the rent for the tax credit units not occupied by the voucher program participants. 24 C.F.R. § 982.507(c)(1). If the rent for voucher recipients exceeds the tax credit rent, the maximum reasonable rent that can be charged a voucher participant is based on a comparability study and cannot exceed the lesser of the “(i) Reasonable rent as determined [\*12] pursuant to a rent comparability study;

and (ii) The payment standard established by the [public housing agency] for the unit size involved.” 24 C.F.R. § 982.507(c)(2).

¶24 Here, because all of the Eagle Pointe apartments are also covered by the tax credit program, the maximum rent that can be charged to a voucher participant is either the same rate as tax credit units or, if greater than a tax credit unit, the lesser of the reasonable rate of comparable units based on a comparability study or established by the public housing agency for the unit size involved.

*ii. Housing Choice Voucher tenant proportionate rent*

¶25 Once a contract between the public housing agency and the landowner is formed, the public housing agency will make payments to the landowner on behalf of the tenant. 42 U.S.C. § 1437f(c). A tenant may not pay a landowner more than the rent amount charged minus the public housing agency subsidy payment to the landowner. 24 C.F.R. § 982.451(b)(4). “The amount of the monthly housing assistance payment by the [public housing agency] to the owner is determined by the [public housing agency] in accordance with HUD regulations and other requirements.” *Id.* at § 982.451(b)(1). The calculation of the subsidy that the public housing agency must pay on behalf of a participating [\*13] tenant is laid out in an extensive set of statutes and regulations. See 42 U.S.C. § 1437f(o); 24 C.F.R. § 982.501-.521.

¶26 Every year, HUD releases the fair market rents for different geographic regions. 24 C.F.R. § 982.503. The fair market rents are determined by the area’s rental market conditions, and are relied on to determine the subsidy amount provided to each voucher program participant. 24 C.F.R. § 982.503. The public housing agency uses the fair market rent to establish local “payment standard” for the geographical areas within its jurisdiction. 24 C.F.R. § 982.503(c)(1). The payment standard is the maximum monthly subsidy amount a public housing agency will pay for a specific type of apartment within the area. 24 C.F.R. §§ 982.503(b), 982.505(a). The payment standard is generally set between 90 percent and 110 percent of the fair market rent for that area. 42 U.S.C. § 1437f(o)(1)(B), 24 C.F.R. § 982.503(a)(1)(i).

¶27 Tenants under the program generally must contribute 30 percent of their monthly income, unless an exception applies allowing them to pay less. 42 U.S.C. §

1437f(o)(2)(A). Depending on the situation of the tenant, they may be exempt from paying the general minimum rent of 30 percent of their adjusted monthly income, and may be eligible to pay a minimum rent between \$0.00 and \$50.00. 24 C.F.R. § 5.630; see CP at 76-77. However, if an apartment costs more than the payment standard, tenants are required [\*14] to make a larger contribution. “Such tenants must *also* pay any amount by which their rent exceeds the established payment standard.” *Nozzi v. Hous. Auth. of the City of Los Angeles*, 806 F.3d 1178, 1184-85 (9th Cir. 2015).

### iii. Ms. Cooper's rent

¶28 According to Security Properties and undisputed by the parties, the Spokane Housing Authority is the local public housing agency that administers the federally funded voucher program and determines the reasonable rent rate for each voucher participant within Spokane.

¶29 Since she began renting at Eagle Pointe, Ms. Cooper's total rent has varied. In 2014, her rent was set at \$820 per month. In 2020, at the time she filed this lawsuit, her total rent was set at \$1,007 per month. Ms. Cooper's personal responsibility for rent beyond the voucher is based on her income, not on the total rent charged. During that same period of time, the portion of rent that Ms. Cooper was personally required to pay in addition to the voucher ranged from \$0.00 to \$640.00 per month.

¶30 Ms. Cooper admits that she could qualify for a reduced rent under the Section 42 tax credit program, and that if she were to chose this option her personal share of rent would actually increase. Wash. Ct. of Appeals oral argument, *Cooper v. Eagle Pointe ICG, LLC*, No. 39596-1-III (Apr. 24, 2024), at 9 min., 54 sec. through 9 min., 55 sec. (On file with court).

### ANALYSIS

¶31 We review de novo the superior [\*15] court's order dismissing Ms. Cooper's complaint on summary judgment. *Lockett v. Saturno*, 21 Wn. App. 2d 216, 221, 505 P.3d 157 (2022). “Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Id.*

¶32 In order to determine if Ms. Cooper has raised a genuine issue of material fact sufficient to survive summary judgment, we must interpret the statute. Our goal in interpreting this statute is to ascertain the

legislative intent. *In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). We do this by first looking to the plain language of the statute. *Id.* “When the plain language [of a statute] is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise.” *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 696, 335 P.3d 416 (2014) (quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). If this inquiry leads to more than one reasonable interpretation, the statute is ambiguous. *State v. Dennis*, 191 Wn.2d 169, 172-73, 421 P.3d 944 (2018). When a statute is ambiguous, it is appropriate for this court to refer to the legislative history and other aids of statutory construction. *Anthis v. Copland*, 173 Wn.2d 752, 756, 270 P.3d 574 (2012).

¶33 RCW 59.18.255(5) was passed in 2018 as part of the RLTA. See LAWS OF 2018, ch. 66, § 1. It was enacted to create remedies for tenants by providing protection for tenant interests vulnerable to a landlord's upper hand, “especially during times of housing shortages.” [\*16] *Lockett*, 21 Wn. App. 2d at 221. The purpose of the amendment was to “ensur[e] housing options.” *Id.* (alteration in original) (quoting LAWS OF 2018, ch. 66, § 1).

¶34 The relevant portions of RCW 59.18.255 provide:

(1) A landlord may not, based on the source of income of an otherwise eligible ... current tenant:

...

(c) Make any distinction, discrimination, or restriction against a ... current tenant in the price ... relating to the rental ... of real property.

“Source of income” includes “benefits or subsidy programs including housing assistance, public assistance ... and other programs administered by any federal, state, local, or nonprofit entity.” RCW 59.18.255(5).

¶35 To date, no court has developed the elements of a cause of action under this statute, and the parties here do not make any attempt to do so. Nor do the parties offer or suggest a framework for applying the facts to the law. Still, we must decide the preliminary question of whether Ms. Cooper has produced evidence to raise a material issue on whether she is charged a different rate of rent based on her source of income.

¶36 RCW 59.18.255(1) does not require a landlord to charge the same rent to all tenants. And it does not



prevent a landlord from charging different rents when the difference is based on a legal reason [\*17] apart from where a tenant obtains their income. Importantly, RCW 59.18.255(1) does not prohibit a landlord from reducing rent based on a tax credit to the landlord. Instead, the statute prohibits a landlord from making any discrimination or distinction in rent against a current tenant “based on” the source of the tenant’s income, i.e., where the tenant gets their income. In other words, Ms. Cooper has to show not only that she is charged more rent than other eligible tenants, but that the reason she is charged more rent is because she receives a voucher to supplement her income.

¶37 Ms. Cooper fails to produce any evidence that she is charged more rent because she receives a voucher that is used to augment her income. The undisputed evidence is that Ms. Cooper’s rent is set at or below market rate and subject to approval by the housing authority. While it is true that the rental rate charged to participants in the Tax Credit Program is different than the rent charged to Ms. Cooper, there is no evidence that this distinction is based on Ms. Cooper’s source of income. Instead, it is based on a program that provides tax credits to the landlord; tax credits that do not qualify as a source of income to the [\*18] tenants in that program.

¶38 Nevertheless, Ms. Cooper contends that as between her and the Section 42 tenants, she is the one paying a different rate. She does not provide any authority or reasoning to support this position. Given the circumstances of this case, we disagree. The two programs at issue here presume that the tenants in the Voucher Program will pay rent at or near market rates, while tenants in the Tax Credit Program will pay a reduced rent. Thus, according to the regulations for each program, it is the tenants in the Tax Credit Program that pay a different rate, not Ms. Cooper.

¶39 Moreover, the difference between the two programs is not simply theoretical. By complying with the regulations from each program, Security Properties is able to sustain its business model while continuing to provide options for low-income tenants. While we do not decide the question of federal pre-emption, we note that the different rent rates charged by Security Properties are not only allowed by the two federal programs but encouraged. Indeed, there is a specific regulation that sets different rental rates when a landlord rents to tenants in both the Voucher Program as well as the Tax Credit Program. When the [\*19] rent charged to a tenant in the Voucher Program is higher than the rent

charged to a tenant in the Tax Credit Program, the regulations provide a specific method for determining the reasonable rent that can be charged to the tenant in the Voucher program. See 24 C.F.R. § 982.507(c)(2). Here, there is no evidence or allegation that the rent Security Properties charges Ms. Cooper is not reasonable according to the method established by the regulations. Allowing Security Properties to set different rents based on the rules and regulations of the two programs ensures that low-income tenants have increased housing options.

¶40 The parties disagree on whether the antidiscrimination provision in RCW 59.18.255(1) is preempted by federal law. However, we do not need to decide this question because it presumes a defense to a statutory violation and there is no evidence of a violation here.

¶41 We hold that Ms. Cooper has failed to meet her burden on summary judgment of producing evidence that creates a genuine issue of material fact. Instead, the undisputed evidence is that Security Properties charges a different rate to Section 42 tenants based on the tax credit Security Properties receives for doing so. This tax credit is not a source of income for [\*20] any of the tenants at properties managed by Security Properties.

#### ATTORNEY FEES ON APPEAL

¶42 Both parties request attorney fees on appeal. Ms. Cooper requests costs be awarded on appeal and the issue of attorney fees preserved on remand, without providing any justification other than her claim that Security Properties discriminated against Ms. Cooper and others similarly situated. Because she does not prevail, we deny her request for attorney fees on appeal.

¶43 Security Properties requests fees pursuant to RAP 18.9(a) for a frivolous appeal. This rule provides:

The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

RAP 18.9. Security Properties bases their argument on its assertion that federal law pre-empts the state statute. We do not find Ms. Cooper's appeal to be frivolous and exercise our discretion to deny attorney fees [\*21] under this rule.

¶44 Affirmed.

¶45 A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

LAWRENCE-BERREY, C.J., and FEARING, J., concur.

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# APPENDIX B

University of Washington,  
Washington Center for Real Estate Research,  
*Washington Apartment Market Q3 2024*

<https://wcrer.be.uw.edu/housing-market-data-toolkit/apartment-market-reports/>

UNIVERSITY of WASHINGTON

# WASHINGTON STATE APARTMENT MARKET REPORT

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WASHINGTON CENTER FOR REAL ESTATE RESEARCH  
RUNSTAD DEPARTMENT OF REAL ESTATE  
COLLEGE OF BUILT ENVIRONMENTS

3rd Quarter 2024

***BE BOUNDLESS***



## EXECUTIVE SUMMARY

This report provides a summary of rent and vacancy rate trends for the state, the Puget Sound region, and the rest of the state, as well as detailed rent and vacancy rate statistics for those counties for which data are available. This is a change from our reports for the Q4 2023 and earlier, which included data for only a selected set of counties. This report also provides a summary of statewide affordability trends.

Apartment rents decreased across the state during Q3 2024, with the quarterly rate of growth at -0.87%. Average rents changed by -0.96% in the Puget Sound region and -0.28% in the rest of the state. Vacancy rates remained stable in the Puget Sound region and grew slightly in the rest of the state. They averaged 5.2% statewide, 5.3% in the Puget Sound region, and 4.9% elsewhere in the state.

The average apartment rent statewide across all bedroom types was \$1,833, representing a -0.87% decrease from the prior quarter and a 2.86% increase over a year earlier. For the individual counties reported on, the average rent across all bedroom types was \$1,828, a 2.2% increase over a year earlier. Of those counties, King and Snohomish continued to have the highest apartment rent levels (\$2,076 and \$1,944 respectively), while Columbia and Pend Oreille counties continued to have the lowest levels (\$591 and \$656). Annual rent growth has been highest in Clallam County (12%) and lowest in Clark County (0.6%).

Vacancy rates are highest in Whitman County (8.9%) and lowest in Lewis County (2.1%). Vacancy rates declined year-over-year in 15 counties, with the largest year-over-year decline seen in Kitsap (-1.5%). Vacancy rates increased in 19 counties, with the largest increase in Pend Oreille County (3.9%).

Affordability improved somewhat during Q3 2024, reflecting declines in rents and increases in household incomes.

## MARKET ANALYSIS

### RENT TRENDS

Apartment rents decreased in the 3<sup>rd</sup> quarter 2024 (see Figure 1). Rents decreased by 0.87% on average across the state, 0.96% in the Puget Sound region, and 0.28% in the rest of the state.

The current statewide annual rate of rent growth is 2.86%; this means that average rent levels for the 3<sup>rd</sup> quarter 2024 were 2.86% higher than those for the 3<sup>rd</sup> quarter 2023. The annual growth rate for the Puget Sound region was 2.83%, while that for the rest of the state was 3.23%.

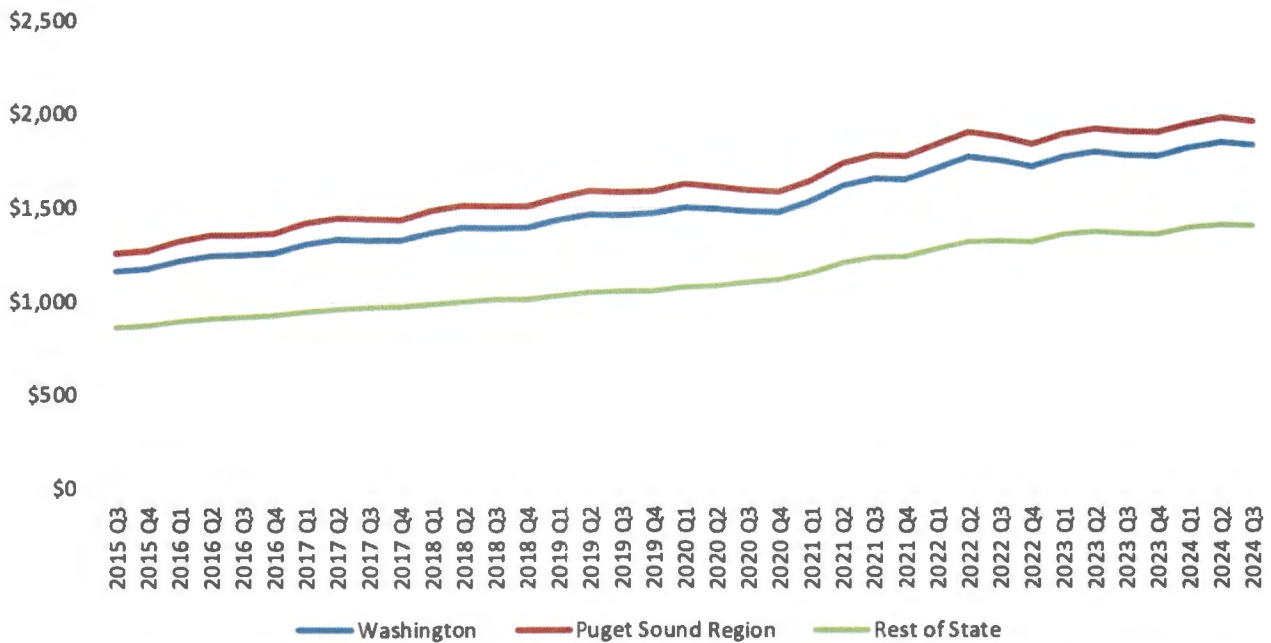
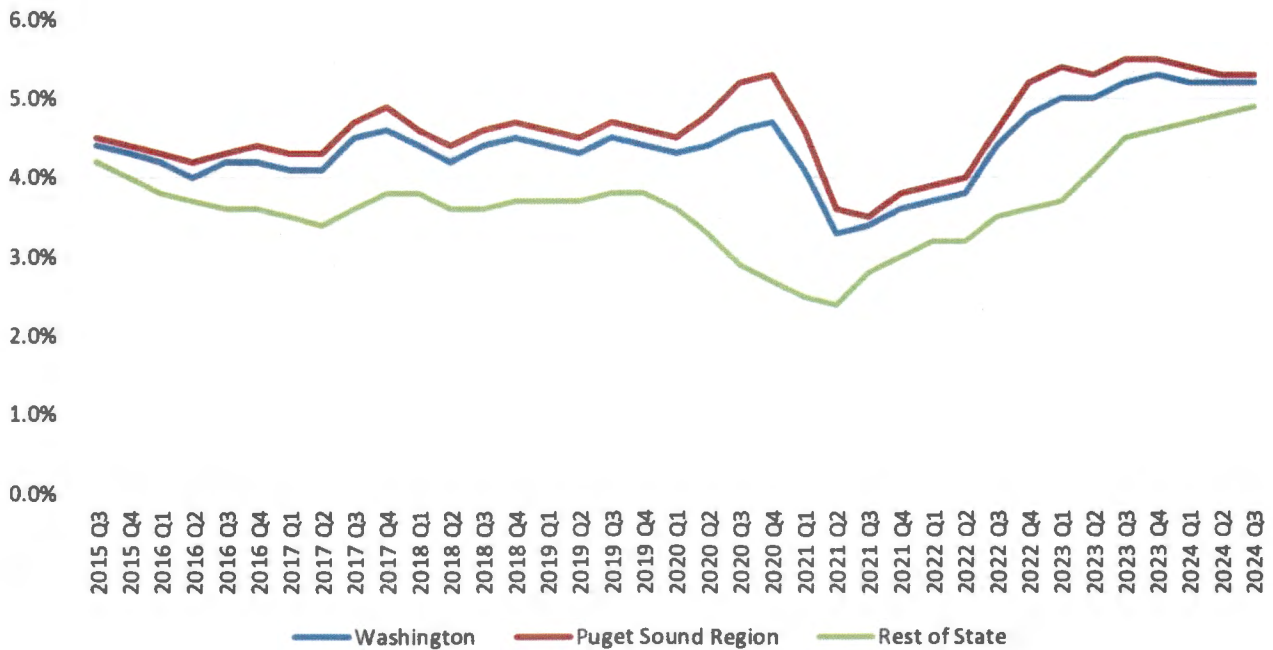


Figure 1. Historical Apartment Rents

## VACANCY RATE TRENDS

Figure 2 shows that vacancy rates were virtually unchanged during Q3 2024 statewide and in the Puget Sound region, but increased slightly elsewhere in the state. The current statewide vacancy rate is 5.2%, which is 0.2% higher than vacancy rates a year earlier and unchanged relative to the previous quarter. The gap between the average vacancy rates in the Puget Sound region and the rest of the state has decreased slightly; those regions currently have vacancy rates of 5.3% and 4.9%, respectively. For all the periods shown, vacancy rates in the Puget Sound region have been higher than elsewhere in the state. Year-over-year, vacancy rates were unchanged in the Puget Sound region and increased 0.7 percentage points elsewhere in the state.



**Figure 2. Historical Apartment Vacancy Rates**



### APARTMENT AFFORDABILITY TRENDS

Figure 3 shows two housing affordability indexes (HAIs), both based on average rents for apartments across the state. One index assumes a moderate-income household with median income, while the other assumes a low-income household with income at 70% of the median. In both cases, it is assumed that a household can afford to spend no more than 30% of income on rent. Affordability improved somewhat during Q3 2024, due to drops in rent levels and increases in household incomes.

As the graphs indicate, an apartment with average rent has consistently been affordable for a household with median income. Such an apartment has generally not been affordable for a household with 70% of the median, although the income gap has not been large for that group. Moreover, the lower-income group can afford somewhat less expensive apartments. The relatively consistent affordability levels over time are evidently due to growth in the supply of apartments combined with growth in household incomes.

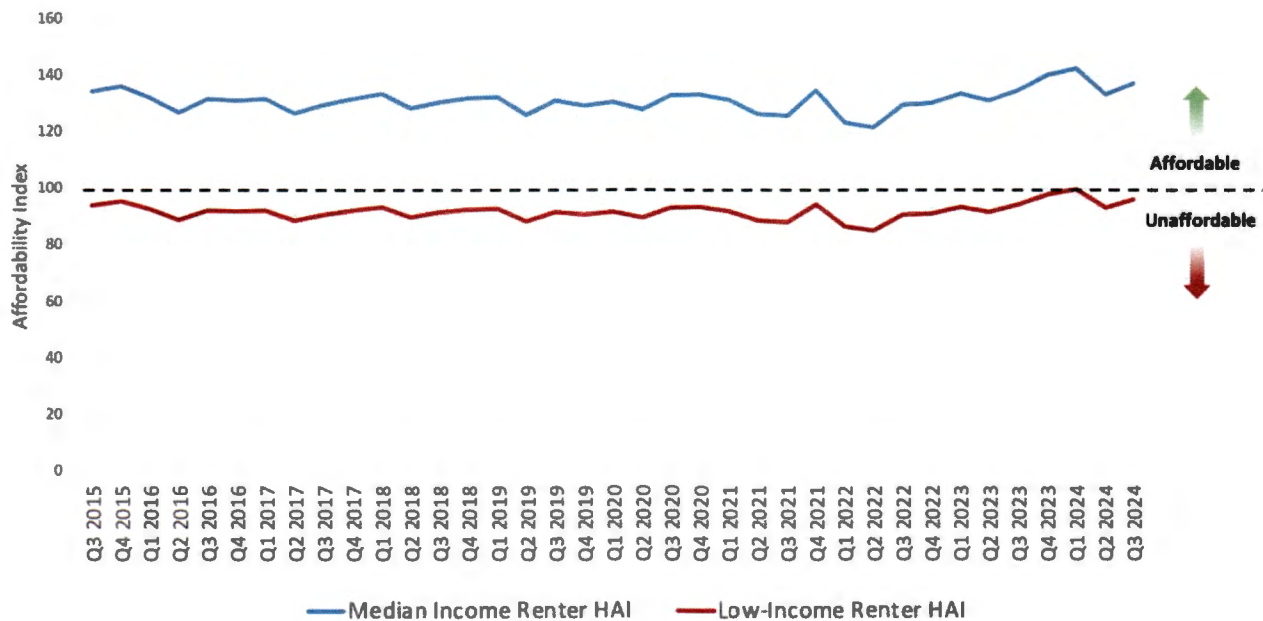


Figure 3. Historical Apartment Affordability Index



## STATISTICS BY UNIT TYPE AND COUNTY

Rents across all apartment types averaged \$1,828, ranging from a low of \$591 in Columbia County to a high of \$2,076 in King County (see Table 1). Annual rent growth rates averaged 2.2%, with a low of 0.6% in Clark County and a high of 12% in Clallam County. The lowest rents per square foot are in Columbia and Stevens counties (\$0.58/SF and \$0.85/SF respectively), while the highest rents per square foot are in King and Snohomish counties (\$2.68/SF and \$2.18/SF respectively).

**Table 1. Statistics for All Types of Units**

County	Number of Units	Average SF	Average Rent	Rent Per SF	Rent Growth/Year	Vacancy Units	Vacancy Percent	Vacancy Growth/Year
Adams	-	-	-	-	-	-	-	-
Asotin	312	847	\$1,246	\$1.47	5.9%	10	3.3%	2.6%
Benton	12,396	887	\$1,406	\$1.59	4.1%	503	4.1%	-0.9%
Chelan	1,957	793	\$1,625	\$2.00	1.8%	103	5.3%	-0.6%
Clallam	511	878	\$946	\$1.11	12.0%	15	3.0%	0.2%
Clark	35,242	917	\$1,618	\$1.76	0.6%	1,728	4.9%	0.2%
Columbia	26	1,011	\$591	\$0.58	1.6%	2	6.4%	-0.6%
Cowlitz	2,222	795	\$1,280	\$1.57	1.4%	70	3.2%	0.9%
Douglas	561	1,010	\$1,602	\$1.59	3.6%	13	2.6%	-1.5%
Ferry	-	-	-	-	-	-	-	-
Franklin	2,431	953	\$1,338	\$1.41	5.1%	128	5.3%	1.1%
Garfield	-	-	-	-	-	-	-	-
Grant	2,427	919	\$1,192	\$1.30	3.1%	119	4.9%	0.9%
Grays Harbor	914	797	\$947	\$1.15	0.8%	44	4.8%	0.0%
Island	756	774	\$1,112	\$1.46	2.0%	20	2.6%	0.4%
Jefferson	186	785	\$1,039	\$1.53	1.6%	7	4.0%	-0.1%
King	256,834	775	\$2,076	\$2.68	2.3%	13,570	5.3%	-0.1%
Kitsap	11,085	848	\$1,713	\$2.02	4.6%	457	4.1%	-1.5%
Kittitas	1,678	891	\$1,261	\$1.41	5.0%	80	4.8%	-0.1%
Klickitat	134	802	\$782	\$0.97	1.4%	9	6.4%	-0.9%
Lewis	1,162	876	\$1,020	\$1.17	1.6%	24	2.1%	0.2%
Lincoln	-	-	-	-	-	-	-	-
Mason	288	696	\$815	\$1.31	2.5%	9	3.1%	0.1%
Okanogan	291	838	\$785	\$0.98	1.9%	18	6.2%	0.1%
Pacific	152	916	\$843	\$0.92	1.6%	6	3.9%	0.1%
Pend Oreille	105	827	\$656	\$0.87	1.3%	9	8.5%	3.9%
Pierce	59,078	847	\$1,631	\$1.93	1.6%	3,271	5.5%	-0.6%
San Juan	91	924	\$1,261	\$1.23	1.6%	4	4.8%	-0.2%
Skagit	2,567	850	\$1,482	\$1.75	5.8%	78	3.0%	-0.3%
Skamania	72	792	\$885	\$1.18	1.1%	6	8.6%	-0.4%
Snohomish	50,178	898	\$1,944	\$2.18	2.6%	2,722	5.4%	-0.1%
Spokane	36,560	904	\$1,307	\$1.44	2.2%	2,117	5.8%	0.7%
Stevens	48	833	\$712	\$0.85	1.6%	3	5.5%	1.5%
Thurston	16,940	877	\$1,611	\$1.84	1.0%	855	5.0%	0.5%
Wahkiakum	-	-	-	-	-	-	-	-
Walla Walla	1,175	712	\$1,235	\$1.74	1.8%	72	6.2%	-1.2%
Whatcom	9,821	802	\$1,545	\$1.93	2.3%	359	3.7%	0.3%
Whitman	3,003	781	\$1,065	\$1.37	2.0%	267	8.9%	2.0%
Yakima	5,775	856	\$962	\$1.13	2.9%	142	2.5%	0.3%
<b>Total</b>	<b>516,978</b>	<b>826</b>	<b>\$1,828</b>	<b>\$2.24</b>	<b>2.2%</b>	<b>26,840</b>	<b>5.2%</b>	<b>-0.1%</b>

Vacancy rates across these markets averaged 5.2%, ranging from 2.1% in Lewis County to 8.9% in Whitman County. Changes in vacancy rates from a year earlier averaged -0.1 percentage points, ranging from -1.5 percentage points in Douglas and Kitsap counties to 3.9 percentage points in Pend Oreille County.

Geographical patterns of rents for one- and two-bedroom units are quite similar to those for all bedroom types as a group (see Tables 2 and 3). More rural counties with smaller populations consistently have the lowest average rents, while King County has the highest rents.

Annual rent growth rates were lowest in Okanogan County and highest in Asotin County for one-bedroom units (-2.8% and 14.5%, respectively). Annual rent growth rates for two-bedroom units were lowest in Walla Walla County (-0.5%) but were highest in Clallam County (12.3%). Vacancy rates for one-bedroom units were lowest in Lewis County (1.4%) and highest in Pend Oreille County (10.2%). For two-bedroom units, vacancy rates were lowest in Lewis County (1.9%) and highest in Whitman County (8.9%). Annual changes in vacancy rates for one-bedroom units were lowest in Kitsap County (-1.7 percentage points) and highest in Pend Oreille County (5.6 percentage points). Two-bedroom units saw the lowest annual changes in vacancy rates in Douglas County (-1.5 percentage points) and the highest in Pend Oreille County (2.9 percentage points).

**Table 2. Statistics for One-Bedroom Units**

County	Number of Units	Average SF	Average Rent	Rent Per SF	Rent Growth/Year	Vacancy Units	Vacancy Percent	Vacancy Growth/Year
Adams	-	-	-	-	-	-	-	-
Asotin	55	679	\$1,240	\$1.82	14.5%	2	3.3%	2.6%
Benton	4,304	694	\$1,203	\$1.75	4.2%	152	3.6%	-0.9%
Chelan	692	691	\$1,503	\$2.17	-0.4%	37	5.4%	-0.6%
Clallam	118	601	\$816	\$1.40	10.8%	4	3.2%	0.4%
Clark	10,214	702	\$1,430	\$2.04	0.1%	490	4.8%	0.0%
Columbia	-	-	-	-	-	-	-	-
Cowlitz	541	608	\$1,063	\$1.57	0.7%	13	2.5%	1.0%
Douglas	45	589	\$1,271	\$2.16	0.9%	1	3.2%	-0.3%
Ferry	-	-	-	-	-	-	-	-
Franklin	638	716	\$1,230	\$1.68	3.2%	33	5.2%	0.4%
Garfield	-	-	-	-	-	-	-	-
Grant	635	705	\$1,253	\$1.75	1.2%	40	6.3%	1.9%
Grays Harbor	137	677	\$901	\$1.33	1.4%	8	5.6%	-0.2%
Island	279	624	\$1,082	\$1.82	1.1%	7	2.4%	0.5%
Jefferson	51	569	\$1,198	\$2.10	1.6%	1	2.8%	0.1%
King	113,324	682	\$1,965	\$2.88	2.0%	5,900	5.2%	-0.2%
Kitsap	3,830	664	\$1,526	\$2.33	3.7%	152	4.0%	-1.7%
Kittitas	528	604	\$899	\$1.52	4.0%	27	5.1%	0.5%
Klickitat	38	577	\$790	\$1.37	1.7%	2	4.0%	-0.1%
Lewis	320	689	\$791	\$1.25	1.6%	5	1.4%	0.2%
Lincoln	-	-	-	-	-	-	-	-
Mason	133	694	\$899	\$1.51	3.2%	5	3.9%	0.1%
Okanogan	75	597	\$748	\$1.35	-2.8%	6	8.4%	0.4%
Pacific	56	651	\$654	\$1.01	1.6%	2	4.0%	0.2%
Pend Oreille	33	739	\$598	\$0.81	1.5%	3	10.2%	5.6%
Pierce	21,904	668	\$1,420	\$2.12	2.0%	1,201	5.5%	-0.3%
San Juan	-	-	-	-	-	-	-	-
Skagit	766	628	\$1,381	\$2.25	8.0%	23	3.0%	-0.7%
Skamania	26	646	\$637	\$1.18	1.1%	2	7.5%	-0.5%
Snohomish	17,268	692	\$1,696	\$2.45	2.1%	950	5.5%	-0.1%
Spokane	11,631	688	\$1,133	\$1.64	2.1%	716	6.2%	0.5%
Stevens	13	700	\$670	\$0.96	1.6%	1	5.5%	1.5%
Thurston	5,486	679	\$1,434	\$2.12	1.6%	286	5.2%	0.5%
Wahkiakum	-	-	-	-	-	-	-	-
Walla Walla	351	636	\$1,216	\$1.91	1.4%	20	5.6%	-1.4%
Whatcom	3,224	621	\$1,354	\$2.20	1.0%	118	3.7%	0.5%
Whitman	999	587	\$892	\$1.52	2.6%	84	8.4%	1.1%
Yakima	1,960	683	\$862	\$1.26	2.1%	49	2.5%	0.3%
Total	199,674	680	\$1,718	\$2.52	2.0%	10,340	5.2%	-0.1%

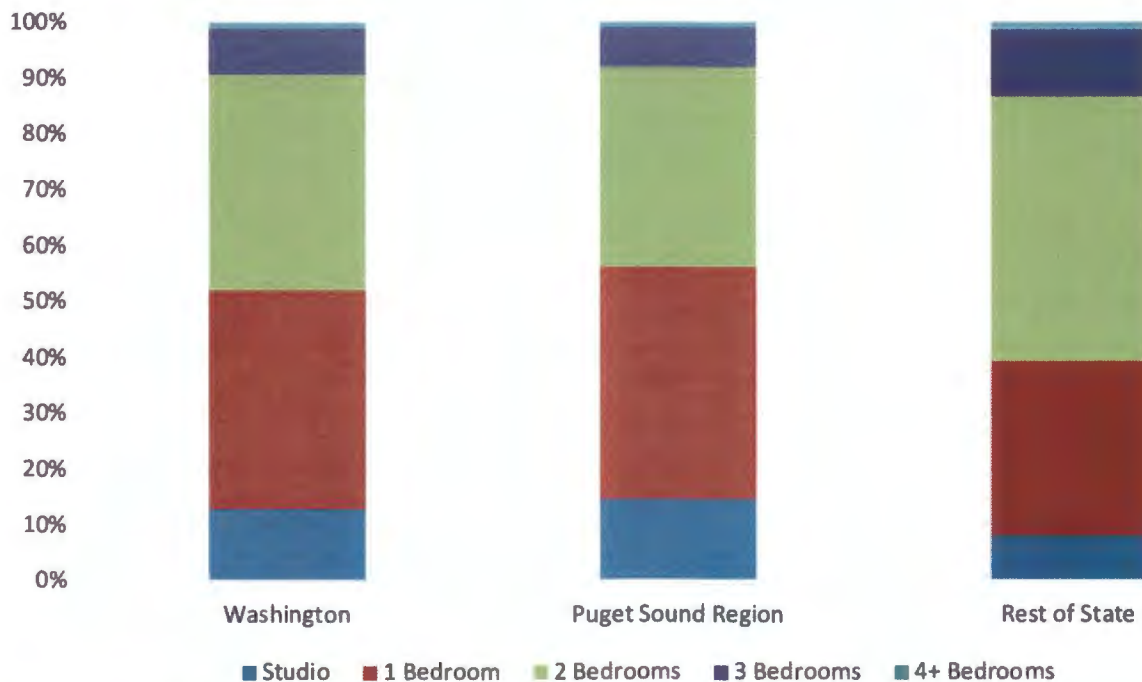
**Table 3. Statistics for Two-Bedroom Units**

County	Number of Units	Average SF	Average Rent	Rent Per SF	Rent Growth/Year	Vacancy Units	Vacancy Percent	Vacancy Growth/Year
Adams								
Asotin	219	834	\$1,256	\$1.51	3.8%	4	2.0%	1.2%
Benton	5,959	969	\$1,491	\$1.54	4.1%	246	4.2%	-0.8%
Chelan	808	946	\$1,801	\$1.90	1.9%	51	6.3%	-0.7%
Clallam	248	928	\$976	\$1.07	12.3%	8	3.4%	0.1%
Clark	19,296	976	\$1,645	\$1.68	0.1%	958	5.0%	0.2%
Columbia	9	807	\$424	\$0.53	1.6%	1	6.4%	-0.6%
Cowlitz	1,180	886	\$1,457	\$1.66	1.6%	38	3.2%	1.0%
Douglas	368	1,020	\$1,585	\$1.54	3.6%	10	2.9%	-1.5%
Ferry								
Franklin	1,176	1,032	\$1,418	\$1.41	5.4%	66	5.6%	1.6%
Garfield								
Grant	1,009	947	\$1,321	\$1.39	3.9%	52	5.2%	1.0%
Grays Harbor	335	916	\$990	\$1.08	0.0%	13	3.9%	0.1%
Island	280	814	\$1,134	\$1.43	2.0%	9	3.1%	0.4%
Jefferson	113	820	\$793	\$0.95	1.7%	4	3.7%	-0.2%
King	81,669	984	\$2,394	\$2.43	2.6%	4,235	5.2%	-0.2%
Kitsap	5,340	911	\$1,746	\$1.92	4.9%	225	4.2%	-1.1%
Kittitas	706	876	\$1,163	\$1.31	2.4%	32	4.6%	-0.4%
Klickitat	66	877	\$853	\$0.97	1.5%	4	5.4%	-1.2%
Lewis	482	861	\$1,065	\$1.26	1.6%	8	1.9%	0.1%
Lincoln								
Mason	64	850	\$697	\$0.89	1.6%	2	2.8%	0.0%
Okanogan	103	820	\$829	\$1.05	4.4%	6	6.0%	0.1%
Pacific	77	932	\$868	\$0.93	1.6%	2	2.5%	0.1%
Pend Oreille	29	950	\$813	\$0.85	1.1%	2	7.4%	2.9%
Pierce	27,233	953	\$1,747	\$1.83	1.3%	1,408	5.2%	-0.7%
San Juan	16	885	\$1,157	\$1.39	1.6%	1	3.8%	-0.1%
Skagit	1,128	891	\$1,468	\$1.65	6.3%	39	3.5%	0.0%
Skamania	34	878	\$908	\$1.18	1.1%	2	6.0%	-0.4%
Snohomish	23,915	964	\$2,009	\$2.09	2.7%	1,290	5.4%	-0.2%
Spokane	18,246	976	\$1,339	\$1.37	2.2%	1,018	5.6%	0.7%
Stevens	16	900	\$735	\$0.82	1.6%	1	5.5%	1.5%
Thurston	8,127	954	\$1,672	\$1.75	0.5%	423	5.2%	0.6%
Wahkiakum								
Walla Walla	453	876	\$1,377	\$1.57	-0.5%	34	7.5%	-1.0%
Whatcom	4,089	902	\$1,660	\$1.84	2.5%	149	3.7%	0.4%
Whitman	1,501	816	\$1,102	\$1.35	2.6%	134	8.9%	2.5%
Yakima	1,891	921	\$1,041	\$1.12	3.4%	42	2.2%	0.3%
<b>Total</b>	<b>206,185</b>	<b>966</b>	<b>\$1,947</b>	<b>\$2.01</b>	<b>2.2%</b>	<b>10,517</b>	<b>5.1%</b>	<b>-0.1%</b>

## DATA AND METHODS

This report includes data on apartments in multi-family projects with at least 20 units that were constructed at least two years prior to the survey (to avoid issues related to the timing of take-up of new units). The same restriction also applies to the statewide, Puget Sound, and rest-of-state data shown and discussed in the report for Figures 1 and 2. However, Figure 4 (below), has no restriction on building construction date to reflect the most accurate unit mix in the market as of the end of the quarter being reported. The numbers of units surveyed in each county are listed in Tables 1 through 3. Note that Table 1 refers to units of all sizes, ranging from studios to four or more bedrooms. Counties for which no statistics are provided had no units meeting our criteria.

This report focuses on one and two-bedroom apartments, which make up the majority of the units across the state, as well as all apartment sizes considered as a group. One and two-bedroom units comprise 77.5% of apartments in the Puget Sound counties (King, Kitsap, Pierce, Snohomish, and Thurston) and 78.8% elsewhere in the state (see Figure 4). The percentage is lower in the Puget Sound region due to the greater proportion of studio apartments.



**Figure 4. Distribution of Units by Number of Bedrooms**

The underlying data analyzed here are sourced from CoStar, a recognized international provider of commercial property data. CoStar's verified data is sourced through primary research, data provided by market participants, public records, and data feeds. Among these is CoStar's Apartments.com network, the largest online multi-family marketplace. This multi-faceted, comprehensive approach provides the most robust and current rental market data available. Because this is a modified approach to data collection and analysis, the statistics presented here cannot be compared directly with statistics in reports published by WCRER prior to the 3<sup>rd</sup> quarter 2022.

The median household incomes used to calculate the affordability indexes in Figure 3 are based on data from the Washington State Office of Financial Management and the U.S. Bureau of Labor Statistics. The median incomes are revised as more accurate data become available, meaning that the affordability index numbers can change when they are updated.

Note that, except for the number of units and the number of vacant units, which are sums, the totals in Tables 1 through 3 are weighted averages, with the weights being the number of units in the survey for each county. The rent growth per year represents a percentage change (i.e., the change in rent levels as a percentage of the rent level a year earlier), while the vacancy growth per year is a percentage *point* change (i.e., the current vacancy rate *minus* the rate a year earlier).

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# APPENDIX C

University of Washington,  
Washington Center for Real Estate Research,  
*Subsidized Rental Housing Inventory 2023*

<https://wcrer.be.uw.edu/housing-market-data-toolkit/subsidized-rental-housing-profile/>

### **Subsidized Rental Housing Inventory, 2023**

#### **Data notes:**

1. These data are provided for all counties and cities with populations of at least 10,000. We intend to update this inventory annually and expand the range of information provided, including details regarding the populations served by the subsidized housing (for example, Area Median Income limits).
2. For each data source, multiple listings for the same address were either combined or deleted depending on whether they represented the same or different units at that address. Listings that referred to multiple addresses or scattered site units were identified and deduplicated using the project name rather than the street address. Units in projects listed as being located in multiple counties are identified as such in the County Inventory.
3. Market rate units, temporary shelter housing, group homes, and units not currently in service were deleted to the extent that these could be identified in the data.
4. The numbers of units in column K represent deduplicated totals based on the maximum number of units funded at each location (street address or project name) across the nine sources listed in columns B through J. This may result in undercounting in some cases if different units at a location are funded by different programs.
5. To aid in deduplication, street addresses were standardized using a commercial address verification service.
6. Data on bedroom sizes is frequently not provided or missing from the sources. In some cases, the distribution by bedroom size includes market rate units, not just subsidized units. The distribution by bedroom size is included in the figures shown when the sum for the different sizes equals either the total number of subsidized units or the total plus one unit (presumably for the property manager).
7. Some data sources provide a more or less detailed breakout by bedroom size than shown here. For example, the HUD PHA dataset provides only three categories of bedroom size: one, two, and three or more bedrooms. In this case, studios are classified as one-bedroom units and four or more bedroom units are classified as three-bedroom units.
8. Both sources of data for Public Housing Authority units (PHA and PHAHUD) are incomplete and the combined data are also incomplete. Many PHAs did not respond to the Berk survey (the source for the PHA dataset) and the PHAHUD dataset also does not include all units. We intend to explore ways to improve these data for future inventories.
9. The MFTE data are also incomplete, excluding units for which the Department of Commerce does not have property-level data as well as units approved prior to 2020.
10. The data sources are in all cases the most recent available at the time of the analysis.
11. These data are provided under contract with the Washington Department of Commerce as required by RCW 36.70A.610.
12. By using these data, the user agrees that the Washington Center for Real Estate Research (WCER) and the University of Washington shall not be liable for any activity involving these data with regard to lost profits or any other consequential damages; or the fitness for use of the data for a particular purpose; or the installation of the data, its use, or the results obtained.

#### **Data sources:**

WSHFC: Dwelling units funded by programs managed by the Washington State Housing Finance Commission (WSHFC), including those funded with Low Income Housing Tax Credits (source: WSHFC).

WSHFCM: Units monitored by the WSHFC, including housing funded by the cities of Bellingham, Seattle, Spokane, and Tacoma, and King and Snohomish counties; units that were separately listed in the WSHFC and HTF datasets were deleted from this dataset.

HTF: Units funded by the Washington Department of Commerce, including units funded by the Housing Trust Fund (source: Washington Department of Commerce).

RHS515: Units funded by the US Department of Agriculture's Rural Housing Service (RHS) Section 514 and 515 programs (source: RHS).

RHS538: Units funded by the USDA's RHS Section 538 program (source: RHS).

HUD: Units funded by the US Department of Housing and Urban Development's (HUD's) project-based Section 8 and other multi-family programs (source: HUD).

PHA: Public Housing Authority units reported in response to a survey conducted on behalf of the Washington Department of Commerce (source: Berk Consulting).

PHAHUD: Public Housing Authority units reported by HUD (source: HUD).

MFTE: Multifamily Tax Exemption Program affordable units put into service from 2020 through 2022 (source: Washington Department of Commerce).

For additional information, please contact the Washington Center for Real Estate Research at [wcrer@uw.edu](mailto:wcrer@uw.edu).



County	Number of Units by Data Source (see Notes for explanations)									Deduplicated Total Number of Units	Number of Bedrooms					
	WSHFC	WSHFCM	HTF	RHS616	RHS638	HUD	PHA	PHAHUD	MFTE		Studio	One Bedroom	Two Bedrooms	Three Bedrooms	Four or More Bedrooms	Unknown
Adams	212	-	229	163	-	52	155	55	-	572	-	76	222	138	41	95
Asotin	80	-	55	-	-	47	-	140	-	275	-	40	18	18	12	189
Benton	2,843	-	525	78	-	760	200	190	-	3,726	12	540	522	374	78	2,202
Chelan	373	-	410	378	53	299	366	-	-	1,206	11	345	164	95	24	567
Clallam	950	-	599	398	-	106	408	-	-	1,803	42	828	498	173	38	430
Clark	4,891	-	2,054	191	-	1,158	1,958	189	127	7,126	520	1,887	1,342	450	71	2,856
Columbia	25	-	8	24	-	-	-	-	-	55	-	22	10	12	8	5
Cowlitz	877	-	452	151	-	199	-	118	-	1,294	-	363	282	118	19	532
Douglas	207	-	133	79	-	18	59	-	-	328	-	44	94	108	43	39
Ferry	33	-	18	28	-	17	-	-	-	83	-	12	14	18	6	35
Franklin	729	-	295	86	-	121	-	280	-	1,337	-	112	158	100	36	931
Garfield	-	-	2	-	-	-	-	-	-	2	-	-	-	-	-	2
Grant	1,117	-	721	504	23	311	47	218	-	2,290	-	372	441	458	158	861
Grays Harbor	747	-	238	162	-	222	-	-	-	1,013	71	355	177	104	26	280
Island	440	-	140	328	248	78	-	110	-	803	-	173	252	128	-	250
Jefferson	282	-	119	186	-	93	-	-	-	491	1	166	121	29	-	174
King	40,826	18,189	17,727	242	35	4,810	-	7,806	2,356	65,806	8,367	12,573	5,376	1,855	282	39,353
Kitsap	2,873	-	893	429	81	772	-	343	12	4,080	63	1,012	544	129	15	2,317
Kittitas	766	-	177	182	44	233	-	-	-	1,179	-	201	87	13	-	878
Klickitat	48	-	46	164	-	72	-	-	-	330	-	65	82	60	6	117
Lewis	890	-	303	255	-	331	-	-	-	1,163	-	213	215	192	58	485
Lincoln	15	-	58	38	-	35	-	-	-	78	-	45	8	-	-	25
Mason	82	-	79	179	119	120	-	-	-	384	-	158	58	21	4	143
Multiple	-	-	1,549	-	-	-	-	-	-	1,549	-	-	-	-	-	1,549
Okanogan	424	-	311	419	-	85	25	-	-	935	-	229	211	146	41	308
Pacific	165	-	95	176	-	27	-	-	-	301	-	139	54	11	-	97
Pend Oreille	31	-	43	83	-	22	-	-	-	148	-	31	27	25	-	85
Pierce	7,937	254	2,649	120	-	1,767	-	129	177	11,046	246	1,633	1,155	429	49	7,534
San Juan	197	-	91	152	-	-	-	-	-	302	-	80	72	20	6	124
Skagit	1,549	-	758	528	60	183	-	191	-	2,604	21	708	378	324	18	1,055
Skamania	23	-	68	96	-	36	-	-	-	164	-	32	50	14	-	68
Snohomish	12,618	1,972	2,007	962	91	1,147	-	196	120	16,365	457	2,940	2,350	746	142	9,730
Spokane	6,804	395	2,855	208	-	2,582	752	-	126	10,895	328	1,728	2,060	728	59	5,982
Stevens	179	-	104	181	-	83	-	-	-	395	-	126	64	62	19	124
Thurston	2,726	-	798	233	20	472	-	70	192	3,953	159	510	493	137	2	2,652
Wahkiakum	-	-	19	-	-	-	-	-	-	19	-	-	-	-	-	19
Walla Walla	517	-	595	-	-	174	213	-	24	1,228	-	237	190	171	54	576
Whetcom	2,529	507	1,020	158	30	256	-	587	-	4,302	319	1,056	612	445	112	1,758
Whitman	283	-	190	-	-	148	-	-	-	564	-	8	102	133	45	276
Yakima	2,611	-	1,491	957	212	838	325	140	-	5,064	107	990	1,028	993	314	1,832