

I. Introduction

A. Major Housing Programs

1. Public Housing

- Family public housing
- Public housing for seniors and people with disabilities

2. Voucher Programs (Tenant Based Voucher)

- Housing Choice Voucher Program (Section 8 vouchers)
- HOME Tenant-Based Rental Assistance

3. Special Section 8 Voucher Programs

- Section 8 Mainstream Program for People with Disabilities
- Section 8 Family Unification Program
- Section 8 Family Self-Sufficiency Program (FSS)
- Section 8 Welfare-to-Work (Job-Link) Program
- Section 8 Homeownership Option
- Section 8 Project-Based Voucher Program (PBV)
- Section 8 Veterans Affairs Supported Housing Program (VASH)
- Section 8 for Victims of Domestic Violence
- Section 8 Housing Options Programs (HOP)
- Enhanced Vouchers

4. Multifamily Housing Programs

- Section 221(d) Family Housing
- Section 236 Family Housing
- Rent Supplement

- Section 236 Rental Assistance Program (RAP)
- Section 8 Project-Based Assistance
(New Construction, Substantial Rehabilitation, State Set-Aside, Loan-Management Set-Aside, Property Disposition Programs)
- Section 202 Supportive Housing for Seniors
- Section 811 Supportive Housing for People with Disabilities
- Section 515 Rural Housing Services (RHS)
- Section 8 Moderate Rehabilitation Program
- HOME Program (Other Than Tenant-Based Rental Assistance)

5. Tax-Related Housing Programs

- Low Income Housing Tax Credit

6. Special Housing Programs

- Shelter Plus Care
- Housing Opportunities for Persons with AIDS (HOPWA)
- Section 8 Moderate Rehab for Single Room Occupancy
- Supportive Transitional Housing
- Supportive Permanent Housing

II. Evictions from Project-Based Section 8 Properties

A. Grounds for Eviction.

Owners that accept a subsidy for tenant rent under this program must base evictions on causes that are articulated in a HUD approved lease. (See Attachment-Model Lease Project Based Section 8) The lease allows for eviction under the following conditions:

1. criminal activity that threatens health, safety, or right to peaceful enjoyment of the premises by other tenants; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or any drug-related criminal activity **on or near** such premises, engaged in by the tenant, any member of the tenant's household, or any guest or other person under the tenant's control. (42 U.S.C. A. § 1437f(d); 42 U.S.C.A. § 13662).
2. a Project Based Section 8 landlord may not terminate any tenancy except for (1) material noncompliance with the rental agreement; (2) material failure to carry out obligations under any state landlord and tenant act; (3) criminal activity by the tenant, a household member, guest, or other person under the tenant's control that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, including property management staff residing on the premises; (4) criminal activity by the tenant, a household member, guest, or other person under the tenant's control that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; (5) drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control; (6) illegal use of a drug by a household member or a pattern of illegal drug use that interferes with the

health, safety, or right to peaceful enjoyment of the premises by other residents; (7) alcohol abuse by the tenant or a household member; (8) violation by the tenant of a condition of probation or parole imposed under federal or state law; (9) fleeing by the tenant to avoid prosecution or confinement after conviction of a felony; and (10) other good cause (24 C.F.R. § 247.3(a); § 5.858 - § 5.861).

If the lease provides for an eviction without cause even at the end of the lease term, that lease provision is invalid.

a. Material Noncompliance.

Material noncompliance is defined in 24 CFR 247.3 as including one or more substantial violations of the rental agreement; repeated minor lease violations that disrupt the livability of the apartment complex, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the apartments, or have an adverse financial effect on the apartments; nonpayment of rent or other financial obligations under the lease; failure to timely supply information necessary for annual and interim recertifications of the family's income and family composition; and knowingly providing incomplete or inaccurate information required by the landlord to verify tenant income and family composition.

Repeated minor violations is activity that disrupts the livability of the apartments, or adversely affects the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, or interferes with the management of the apartments, or has an adverse financial effect on the apartment complex.

b. Other Good Cause

Although HUD and Congress gave extensive descriptions for most terms in the lease,

they failed to define the phrase *other good cause*. The application of this provision has no standard answer, but the general thinking is that since it is not defined, the landlord should be required to give the tenant prior notice that the conduct constitutes a basis for termination of the tenancy.

Notice of Lease Termination.

Contents of the Notice.

The Notice to Vacate for this type of housing requires the notice to state the following:

It must state the date the tenancy is terminated; state the reasons for the eviction with sufficient specificity to enable the tenant to prepare a defense; advise the tenant that if he or she remains in the apartment on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; (24 C.F.R. § 247.4) advise the tenant that he has ten days in which to discuss the proposed termination of tenancy with the landlord; (HUD Handbook 4350.3) and advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process. (HUD Handbook 4350.3) In addition, the landlord must also comply with all requirements of state law. (24 C.F.R. § 247.6(c))

Thirty Day Notice Required for Good Cause.

A thirty-day notice of termination is required for termination based on good cause. In evictions for criminal activity, alcohol abuse, material noncompliance, or material failure to carry out obligations under a state landlord and tenant act, the notice period is determined by the lease agreement and state law. The landlord may not rely on any grounds in court which are different from the reasons set forth in the termination notice, except those grounds of which the landlord had no knowledge at the time the termination notice was sent. (24 C.F.R. § 880.607(c)(3))

Right to Meet to Discuss Proposed Eviction.

The tenant has ten days in which to discuss the proposed eviction with the landlord. This is not a formal grievance hearing as is available in public housing evictions based on non-criminal conduct, it simply grants the tenant an opportunity to talk with management.

Nonpayment of Rent Evictions.

Evictions Following Subsidy Terminations by Owner.

If a tenant fails to comply with the annual recertification requirement, the owner may raise the rent to the fair market rent. HUD requires the owners to follow specific notice procedures.

Handbook 4350.3.

Evictions for Fraud or Failure to Report Income Changes.

Fraud is an intentional deception resulting in payment of Section 8 funds in violation of program rules. (*Handbook 4350.3*)

When the owner discovers that the tenant has failed to report a change in income or inaccurately reported information, the owner is required to notify the tenant in writing and give the tenant ten days to meet with the owner to discuss the allegations.

Evictions Premised on Criminal Activity or Drug-Related Criminal Activity.

III. Evictions from Tax Credit Apartments.

Tax credit landlords may evict tenants and refuse to renew the lease at the end of the lease term only for good cause. (26 U.S.C. A. § 42 (h)(6)(E)(ii)(I)) The IRS which has oversight responsibility for the program and enforced by the Texas Department of Housing and Community Affairs (TDHCA) for the state of Texas issued a revenue ruling in July 2004, notifying state tax credit agencies that tax credit landlords may evict tenants only for good cause, both during the lease term and at the end of the lease term.

IV. Evictions of Section 8 Housing Choice Voucher Program Tenants.

Grounds for Eviction.

Evictions of Section 8 housing choice voucher tenants are the responsibility of the owner and not the public housing authority (“PHA”) administering the program. A landlord may evict during the initial lease term and any extension only on the following grounds: (1) serious or repeated violation of the terms and conditions of the lease; (2) violation of federal, state, or local law which imposes obligations on the tenant in connection with the occupancy of the unit; (3) criminal activity by the tenant, household member, guest, or other person under the tenant’s control that threatens the health, safety, or peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; (4) violent criminal activity on or near the premises; (5) drug-related criminal activity on or near the premises; (6) alcohol abuse by the tenant or a household member that threatens the health, safety, or right to peaceful enjoyment of the premises by residents; (7) violation by the tenant or a household member of a condition of probation or parole imposed under federal or state law; (8) fleeing by the tenant to avoid prosecution or confinement after conviction of a felony; and (9) other good cause.

During the first year of the lease term, the owner may not terminate the tenancy for *other good cause* unless the termination is based on lease violations. This, during the first year of the lease term, an owner may not terminate the tenancy on the grounds that the owner desires to use the unit for personal or family use, for a purpose other than as residential rental unit, or for a business or economic reason such as a sale of the property, renovation of the unit, or a desire to rent the unit at a higher rental. At the end of the lease term, however, an owner may terminate the tenancy or non-renew the lease without cause.

If the parties wish to continue the tenancy, it is not necessary that the landlord and the PHA sign a new housing assistance payments contract unless the landlord is changing lease terms governing payment for utilities or appliances or changing the lease provisions governing the term of the lease, or the family is moving to a new unit.

A. Notice of Lease Termination and Right to Continued Participation in Section 8 Housing Voucher Program.

The owner must give the tenant written notice specifying the grounds for eviction. The tenancy does not terminate before the owner gives the notice, and the notice must be given at or before commencement of the eviction in court. The notice giving the grounds for the eviction may be included in or combined with the notice to vacate or the court pleading filed to commence the eviction lawsuit. The requisite notice period is determined by the lease and the Texas Property Code since the regulations do not address the issue. The housing authority plays no role in the eviction process, although the owner must give the housing authority a copy of the notice to vacate or court complaint. Because the housing authority is not involved in the eviction procedure, no state or government action is present.

Nonpayment by the housing authority is not grounds for termination of the tenancy by the landlord, and the owner may not terminate the tenancy during the term of the lease for nonpayment by the housing authority.

V. Public Housing Evictions.

The actions of a housing authority constitute government action within the meaning of the fourteenth amendment, and the due process and equal protection clauses of the fourteenth amendment apply to the action of the housing authority. Therefore, when a housing authority acts arbitrarily, discriminates in its treatment of applicants or tenants, or deprives an applicant or tenant of a property right without notice or an opportunity for a hearing, potential due process and

equal protections claims arise.

A. Property Interest in Public Housing Apartment.

A tenant has a property interest in a public housing unit and may not be evicted except for serious or repeated violations of material terms of the lease or for other good cause. Congress has codified the good cause protection by legislation that provides that housing authority may evict only for (1) serious or repeated violation of the terms or conditions of the lease; (2) other good cause; (3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; (4) drug-related criminal activity on or off the premises on the part of the tenant, any member of the household, or a guest or other person under the tenant's control; (5) violation by the tenant of a condition of probation or parole; (6) the tenant's action in fleeing to avoid prosecution or confinement after conviction for a felony; or (7) alcohol abuse use that interferes with the health, safety, or the right to peaceful enjoyment of the premises by other tenants or illegal drug use.