



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
KANSAS CITY MULTIFAMILY HUB
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HUD Home Page: www.hud.gov

Iowa, Kansas, Missouri,
Nebraska and Oklahoma

Memorandum To: Kansas City Multifamily HUB Owners, Managers, Contract Administrators and HUD Staff

Memorandum For:

Owners and Agents of Kansas City HUB Multifamily Projects Assisted under: Section 8 Project Based Assistance, Rent Supplement, PRAC, PAC, Section 236, Section 221d (3) BMIR, Section 202 (with or without assistance) or Section 811

From: Brenda L. Waters, Acting Director, Kansas City Multifamily HUB, 7AHM

Subject: Local Application of Handbook Policy on Fees, Charges other than Rent, Deposits, House Rules, and Tenant Selection Plans

This memorandum is for all owners and agents of HUD Multifamily properties listed above. HUD Handbook 4350.3, REV-1 Chapter 6, Section 3 discusses charges which may be eligible, in addition to rent. Local HUD Office approval is required for all fees in addition to rent as evidenced in Paragraph 6-21 and Section 6-25 F, unless otherwise noted in Section 3.

The policies outlined in this memo supersede any other local policy decisions. **These policies will be implemented effective August 1, 2009.**

The following is a discussion of the Kansas City HUB's policy on typically requested fee charges:

A. The following charges do not require approval:

- **Pet Waste Removal:** Per HUD Handbook 4350.1 REV-1, Paragraph 32-14d, the maximum allowed amount is \$5 per occurrence
- **Key Replacement:** This fee may not exceed the actual cost to produce the key. Stating "actual cost" is acceptable in lieu of stating a dollar amount. The inclusion of project labor costs is not considered part of the actual cost. The Kansas City HUB will not require approval as long as the actual cost is charged.

- **Late Rent:** Normally the amount which may be approved is the amount stated in the most recent version of the OMB Approved HUD Model Lease for Subsidized Programs, located in Appendix 4 of HUD Handbook 4350.3 REV-1. However, Section 6-23 allows HUD or the Contract Administrator to approve a higher initial late fee if specific criteria are met. Paragraph 6-23 does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for late payment of rent. If an owner wants to reiterate the lease provisions in the house rules, no changes may be made to HUD requirements.

B. The following charges do require approval:

- **Lock-out Fee:**
 - During regular business hours, a lock-out fee is generally not acceptable. The on-site manager and/or key-holder should be providing lock-out services as a regular cost of doing business for no extra fee. A locksmith charge is generally not acceptable, because an owner is expected to have a spare set of keys on-site.
 - For after-hours or weekend lock-outs, a keyholder or other site staff should typically provide the service at no cost to the tenant. A keyholder expense may be included in the project budget as a regular line item. A Section 8 keyholder can receive a stipend (but not a rent concession) up to \$200 a month. If there is a paid keyholder or manager on site, lockouts would be part of the job requirement, and not subject to be paid on a per lock-out basis.
 - The Kansas City HUB will only approve lock-out fees if a property can provide justification for not having an on-site manager for regular office hours and/or keyholder or other on-site staff for after regular office hours. If the property does not have an on-site manager or a key-holder, a lockout fee may be approved by a HUD Project Manager, in an amount not to exceed the actual cost of providing the service. In this case, only fees in excess of \$25 will require submission of documentation with a breakdown of the cost.
 - “Nuisance” Fees for excessive lock-outs may not be charged in excess of the actual expense, as outlined above.
- **Insufficient Funds (NSF) Fee:** The resident may not be charged more than the actual documented bank charge. The Kansas City HUB will not require the submission of documentation for fees in the amount of \$25 or less. Stating “actual cost” is acceptable in lieu of stating a dollar amount, provided the actual cost is limited to the bank charge. Although HUD Handbook 4350.3 REV-1, Paragraph 6-25B.2 has a provision for an additional fee for the owner in addition to the bank charge for the second NSF check as approved by HUD, this HUB will not approve an additional fee for the second NSF check. Instead, an owner should require any resident with an NSF to make future payments via secured funds (i.e. money order, etc.)

- Note: NSF fees cannot be applied to the following programs: 202/8, 202 PAC, 202 PRAC, and section 811 PRAC projects.
- **Cable fees:** Regulation of cable contracts is detailed in the HUD Management Agent Handbook 4381.5, REV 2, and HUD Notice 96-19. All cable contracts require prior HUD approval. Any fee charged to residents for the provision of cable services may not be required as a condition of tenancy and may not be included in the rent calculation. However, the Kansas City HUB has given a blanket waiver approval of the Notice requirement for tenants to pay the cable charge to the cable provider directly. We will not require an annual review of the cable charge to tenants. However, an owner must ensure that project funds are not used to pay for cable expenses and that residents are not paying more than they would in the market area. Residents must still be able to select another cable company should they choose to. It is recommended that an account separate from the project's operating account is established for the deposit of the cable charges. The cable expenses would also be paid from this account ensuring project funds are not used to support the cable service.
- **Optional Unit Transfer (Tenant Requested):** Owners may charge up to \$100 for voluntary, resident-requested transfers to cover costs related to unit turnover, moving-related wear and tear on the hallways, and inconvenience in updating resident records. Please note, this expense is not intended to cover normal wear and tear to the initial unit or delayed unit turnover due to aged unit interiors. Those expenses should be addressed by a replacement schedule, regardless of the occupancy turnover. It is recommended that the owner close out the security deposit on the first unit, deducting any eligible amounts for damage, and start a new account for the new unit. The owner may not charge for required transfers and will generally be required to pay for moving costs for the residents for reasonable accommodations. (See HUD Handbook 4350.3 REV-1, Paragraph 4-4C, 5 and Paragraph 7-16B.)
- **Parking:** Parking fees may be approved only if the project rents were not developed with the parking included in the rent. For insured or formerly insured HUD projects, the original form HUD 2264 will indicate if parking was to be included in the rents. Projects subject to a comparable rent cap must have any parking fee reflected consistently in the rent comparability study.

C. The following charges cannot be approved:

- **Lease Violation or "Bad Behavior" Fines:** A fee will not be approved for any action which should more appropriately be dealt with as a lease violation. A ten-day notice to comply or vacate, not a fine, should deal with all lease or house rule violations. This also includes:
 - **Foul Language, Noise, and Failure to Supervise Children:** See HUD Handbook 4350.3 REV-1, Paragraph 6-25D.3.

- **Litter/trash fee:** The house rules should note littering or improperly disposing of trash as a lease violation, with a ten day notice, as opposed to implementing a fine. However, residents may be charged the actual cost of disposal of item discarded improperly in accordance with applicable fees for damage caused by carelessness, misuse, or neglect (4350.3 REV-1, Paragraph 6-25C.1). This may be applicable mostly for large items which do not fit in trash bins or items requiring hazardous waste disposal.
- **Fee for Rescheduled Pest Control Services:** The resident should instead be issued a ten-day comply or vacate notice for not allowing entry with proper notification. If there are extenuating circumstances, a fee would still not be appropriate.
- **Pet Fee:** No fees may be charged for pets on projects subject to 24 CFR Part 243 (elderly or disabled projects). However, a pet deposit for these projects may be paid, not to exceed \$300 per dwelling (with the initial deposit at the time the pet is brought onto the premises not exceeding \$50 and \$10 a month until paid in full, per HUD Handbook 4350.3 REV-1, Paragraph 6-24 and Figure 6-7.) Pet deposits must also comply with state laws. Kansas State law Section 58-2550 Security deposits; amounts; return; damages for noncompliance states: "...if the rental agreement permits the tenant to keep or maintain pets in the dwelling unit, the landlord may demand and receive an additional security deposit not to exceed one-half (1/2) of one month's rent." The pet deposit may only be applied to cats and dogs and may not be applied to service animals.
- **Charge for lawn mowing, lawn trimming and weeding, garden tool and equipment replacement, etc.:** Lawn care is typically not a resident responsibility. HUD approval is required for any exceptions.
- **Refundable Key Deposit for additional keys:** Residents should only be charged the actual cost of replacing a key if lost or stolen. HUD Handbook 4350.3 REV-1 Paragraph 6-21 does not allow for deposits other than pet and security deposits. The number of keys provided at move-in should accommodate all household members, within reason. If the lock needs to be rekeyed or replaced, the charge may not exceed the actual cost. For buildings with locked building entrances, owners may want to consider obtaining bids for a card key entrance since the individual card keys can be cancelled if they are lost or not returned.
- **Refundable Key Deposit for Non-Residents:** If a non-resident (such as a son or daughter of an elderly parent) is provided a building key (after resident authorization), they may be charged a refundable key deposit for the actual key cost.
- **Required Unit Transfer Fees:** Unit Transfer fees or moving costs may not be approved for required transfers or reasonable accommodations (See HUD Handbook 4350.3 REV-1 Paragraph 4-4 C.5.)
- **Smoke Detector Upkeep Charges or Fines:** Residents may not be charged for routine smoke detector upkeep and batteries. If residents are found removing smoke detector batteries, this is more appropriately addressed under a lease or house rule violation.

- **Move-Out Related Cleaning Fees for Normal Wear-and-Tear:** Owners may not charge residents for normal wear and tear. The HUD Model Lease for Subsidized Programs, as located in Appendix 4 of HUD Handbook 4350.3 REV-1 states that the security deposit may only be used for damage above normal wear-and-tear. Per HUD Handbook 4350.3 6-29 D.3, “HUD does not provide move-out inspection criteria. It is at the owner’s discretion to develop criteria to distinguish between wear-and-tear and damage. If an owner determines that the unit is damaged as a result of tenant abuse or neglect, he/she may use the security deposit to recover repair costs.” Additionally, State Landlord Tenant Acts generally require only that the unit be left in the same condition it was rented in and in some cases, prohibit cleaning charges as well. Fees for all residents, regardless of the move-out condition of the unit, such as carpet cleaning fees, non-refundable cleaning fees charged at move-in or requirements for the residents to procure their own professional cleaning for drapes, carpets, etc. will not be approved.
- **Painting:** Extra Painting Charges for “touch-up” within two years of initial occupancy or pro-ration of painting costs to the resident based on the number of months occupied: Normal wear-and-tear of units, including minor painting touch-up, may not be charged back to the residents. Non-routine resident damage due should be addressed pursuant to the damage provisions of the lease.
- **Community Rooms:** Per the HUD Management Agent Handbook, 4381.5 REV.2, “in projects subject to budget-based rent reviews, owners/agents may not charge residents for the use of such rooms.” For all other projects, owners may not charge residents or resident organizations a fee if a fee is not typically charged for these facilities. Since the Handbook has not been revised since MAHRA, this restriction is interpreted to apply to all projects where the original HUD Loan Regulatory Agreement stipulated budget-based rents (i.e. Sections 236, 202, 811, 221d3, including Preservation projects and projects formerly insured under these Sections and/or Loan Management Set-Aside (LMSA) Section 8.) However, a refundable cleaning deposit may be approved.

D. Other:

- Many owners like to provide residents with a list of how much different items cost to replace, if damaged. Residents may only be charged damage on the pro-rated amount of an item, per the remaining useful life. These are not considered fees requiring approval. Owners may only charge actual costs. Management Agents are reminded to ensure that the actual costs are in compliance with the comparative pricing requirements detailed in Section 4 of the Management Certification, Form HUD-9839.

E. House Rules:

- HUD Handbook 4350.3, Section 6-9, addresses House Rules. A decision to develop house rules for a property is the responsibility of an ownership. House rules benefit both an ownership and the residents. The house rules identify both allowable and prohibited activities, provide a structure for treating residents equitably, and keep the property safe and clean. The review or approval of house

rules by HUD, or the Contract Administrator, is not required. House rules are listed in a lease as an attachment.

- House rules must be consistent with HUD requirements for operating HUD subsidized projects. The effect of house rules may not create a disparate impact on residents based on race, color, national origin, religion, sex, disability, or familial status. Reasonable house rules are within the bounds of common sense. They are not excessive or extreme, and most importantly, house rules must be fair. House rules must comply with state, local, and federal requirements.
- Under regulations of the Federal Communication Commission, codified at Section 1.4000 of Title 47 of the Code of Federal Regulations, landlords are prohibited from restricting the ability of residents to install: antennas for local television reception and video and radio antennas that are less than one meter in diameter on their exclusive use areas (e.g., balconies or patios). Thus, residents have the right to install satellite systems, such as Direct TV or Dish Network, on their balconies or patios. House rules should comply with the FCC laws. If HUD or the Contract Administrator staff become aware (through routine monitoring, site inspections, resident complaints, etc.) that house rules circumvent or conflict with HUD requirements (including civil rights and Fair Housing), the owner will be required to modify the rules in order to conform with HUD requirements.

F. Tenant Selection Plans

- Owners must develop and make public their tenant selection plan. Detailed instructions are contained in Chapter 4 of the 4350.3. HUD does not approve tenant selection plans unless the owner wants to establish local or residency preferences. If HUD staff becomes aware that the plan fails to comply with applicable requirements, the owner must modify the plan accordingly. Figure 4-2 (page 4-4 of the 4350.3) provides a detailed listing of what is required to be included in the tenant selection plan and what is recommended to be in the plan.

G. Unit Conversions

- The following assisted and/or insured projects must request HUD approval to convert efficiencies into one-bedroom units: Section 202 Direct Loan with or without Rental Assistance, Section 202 Capital Advance with Project Rental Assistance Contracts or Project Assistance Contracts (PRAC or PAC), Section 811 Capital Advance with Project Rental Assistance Contracts (PRAC), Section 236 insured and non-insured with or without Rental Assistance, Section 221(d)(3) Below Market Interest Rate (BMIR) with or without Rental Assistance, Section 8 Project-Based Rental Assistance with or without FHA Insurance, Rental Assistance Payment (RAP), Rent Supplement, and Properties subject to a HUD Use Agreement or Deed Restriction. HUD staff will provide specific requirements based on program specific type. Any owner submission for conversion must meet the following programmatic requirements:
 1. The Owner must be in compliance with all business agreements with the Department. In the event of non-compliance that the Owner believes will be cured through a conversion, description of how and when the compliance will be achieved must be submitted. The Hub must concur that

the conversion will cure any outstanding non-compliance. Any non-compliance that will limit the ability of HUD to analyze a conversion request must be cured prior to submission. For example, the required financial analysis cannot be completed if financial statements are not filed.

2. The proposed conversion must be warranted by local demands for affordable housing. The Owner must provide evidence of all efforts to market the units proposed for conversion and must provide evidence of demand within the geographic market area for the proposed post-conversion unit type.
3. The average vacancy in the efficiency units was at least 25 percent for at least 24 months of the preceding 36 month period.
4. Upon completion of the unit conversion, the project debt service coverage ratio must be 1.1 or greater.
5. The proposed conversion must only involved units of the same subsidy type. For example, a Section 236 project with Section 8 contract covering 50% of the units may only convert Section 8 units to Section 8 units and 236 units to 236 units.
6. For any proposed conversion of units assisted by project-based rental assistance contract, the proposal must establish that the conversion will not result in an increase in the amount of the existing budget authority available to the project.
7. The proposed conversion must not result in any violation of Section 504 of the Rehabilitation Act of 1973 or HUD's implementing regulations at 24 CFR Part 8, including 24 CFR 8.23 (Alterations of Existing Housing Facilities).

Note: For the purpose of applying 24 CFR 8.23 (b), conversion of two efficiencies into a one bedroom apartment constitutes an "alteration of a dwelling unit." For further guidance regarding Section 504 applicability and requirements, please refer to HUD Handbook 4350.3, REV-1.