

LOW-RENT HOUSING
LEASED HOUSING HANDBOOK

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CHAPTER 3 - PROJECT OPERATIONS

SECTION 1. LEASING

1. SURVEYS, LISTINGS AND INSPECTIONS

- a. Public Notice. As soon as an Annual Contributions Contract for a Leased Housing Program has been executed, the Local Authority is required to conduct a continuing survey and listing of available dwellings within the community which are, or may be, suitable for use as low-rent housing. From time to time, on the basis of its programming, the Local Authority shall make known to the public its anticipated need for such dwelling units and invite owners to make them available for the housing of low-income families under Section 23.
- b. Inspection and Recording. As the availability of dwellings is reported an appropriate record is to be maintained, and if units are then being leased by the Local Authority, they are to be inspected to determine compliance with minimum standards, and the amount of rent at which they may be leased ascertained. Units that are suitable and the rents of which are within the reach of low-income families considering the financial assistance available are to be listed by the Local Authority among those units that are being considered for leasing. If repairs or improvements are needed, owners should be advised of the nature and extent of the work required for the units to be so listed. For units leased, it is important to note in the record whether they were previously in substandard condition and rehabilitated.
- c. Rejection of Listings. Local Authority files should also include documentation as to the rent and condition of all units rejected and a notation as to the reason for rejection.

2. ACTIONS TO SECURE LISTINGS. Under the Annual Contributions Contact the Local Authority is obligated to proceed expeditiously with the leasing of the total number of dwelling units authorized by the contract. In order to adhere to this requirement the Local Authority will be expected to exert its best effort in the development of the program and actively promote owner and public interest in it. This, of course, must be done without jeopardizing the financial stability of the program. Within the latter limitation, following are some of the things to be considered:

- a. Employ qualified staff personnel with a thorough knowledge of the local rental market and practices.

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- b. Develop a working relationship with local realtors and their association.
- c. Publicize the program in such ways as to reach the maximum number of owners and realtors. Notices that are distributed with utility or tax bills have been effective in some localities. Newspaper advertising may be used.
- d. Establish contact with civic, charitable, neighborhood and other organizations that have an interest in housing for low-income families. The possibility of enlisting volunteer help or utilizing the services of personnel available through programs such as those designed to promote summer employment in order to assist in locating units to be leased should be investigated.
- e. Adopt and publicize among all applicants and other low-income families operating techniques that will secure for the Local Authority their assistance and cooperation. Following are examples:
 - (1) Leasing of standard units already occupied by low-income families or elderly individuals who will continue to reside in the dwelling.
 - (2) Invite eligible applicants to locate standard dwellings meeting their housing requirements that they could afford with the assistance available under the program.
- f. Examine the classified "for rent" listings in the newspapers daily and place telephone calls in answer to those that seem promising.
- g. Review lists of available FHA and VA owned properties.
- h. If necessary, and where justifiable with reference to local real estate practice, qualified real estate brokers may be employed thru written agreements on the basis of a fixed fee per unit to locate dwellings available for the program. Any such fee must be reasonable and should be payable only for those units actually leased. In no event should a payment of this type be made to a real estate broker who in any way represents the owner of the dwelling. When feasible a program for employment of subprofessional workers from among tenants shall be developed in connection with this effort.

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3. LEASE NEGOTIATIONS

- a. Rents. Properties for a leasing program are to be rented by a Local Authority at an amount not higher than their fair rental value. In conducting negotiations, rents should not be offered that exceed amounts that individual lessees are paying for similar properties in the locality, although, of course, differences in facilities or services that may be provided to the Local Authority, and not furnished to others, may be taken into account. An inquiry should be made as to the price at which the property was previously rented. When rents are paid that are higher than those prevailing in the locality for similar properties, or when the rent negotiated is higher than the amount at which the property was previously leased by the owner, documentation in the Local Authority files should indicate the reason. In general, when all other things are equal, the Local Authority should expect to obtain properties at rents somewhat below amounts that others are paying because of its status as a responsible public agency that can offer guaranteed occupancy over a relatively long period of time usually with no risk of collection loss.
- b. Inapplicability of Eminent Domain Proceedings. All arrangements with property owners for the use of dwellings to house low-income families must be developed by negotiation. Eminent domain or the threat of eminent domain or other public action may not be used to induce an owner to lease dwellings to the Local Authority.

4. LEASING OCCUPIED UNITS

- a. General. In the operation of leased housing, occupied dwellings generally are not to be leased by Local Authorities and in no case shall families be forced to move in order to make units available for use under leasing programs.
- b. Standard dwellings that are occupied by low-income families who are eligible for immediate occupancy, in accordance with the applicable Local Authority admission policies and who will continue to reside in the dwelling may be placed under lease. Where a family is to be assisted in the payment of its rent in this manner a Local Authority determination must be made, pursuant to regulations to be established by the Authority, that continued occupancy of the dwellings in the absence of such assistance would require the occupant to sacrifice other necessities in order to pay

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rent charged. Authority files shall include documentation as to the basis upon which each such determination is made.

- c. "Finders - Keepers" Policy. Where a Local Authority follows a plan of operations under which standard dwellings occupied by low-income families are placed under lease, the Local Authority shall also advise all eligible applicants on its waiting lists that if any applicant finds a suitable standard dwelling that will be made available for the leasing program by the owner, providing that a fair rent is being charged and that the rent is within the range that the program can afford, the dwelling will be leased and assigned to the applicant.

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SECTION 2. LEASES

1. FORMAT. The content of the document, obviously, must be such as to effectuate the agreement between the parties involved. It may be in the form of a lease between the owner and the Local Authority or in the form of a contract between the two parties. In the case of the owner of a large number of dwellings, a Local Authority might enter into a single overall agreement which would be activated for any specific dwelling by a simple document fixing the rent and term. If the owner has a large number of dwellings of similar nature, as might be found in a housing project or large apartment house, such overall agreement might contain a schedule of rents for dwellings of different sizes and types. It may be drawn in accordance with normal practices in the locality involved, taking into consideration provisions as discussed below.

2. RECORDING. The decision as to whether executed leases or similar contracts should be recorded will depend on the circumstances, statutes, and other considerations involved in each particular case. Contracts granting the Local Authority and/or the tenant an option to purchase should be carefully considered in this respect. The Local Authority should consult its attorney and the Regional Office for guidance in this area.

3. MANDATORY PROVISIONS

a. Tenant Eligibility. Leases must reflect the fact that Section 23(d)(1) and (3) of the United States Housing Act and Item F of the Special Provisions for Leased Housing of the Annual

Contributions Contract provide that the Local Authority shall reserve the sole right to determine the eligibility of families for admission and continued occupancy and to give notice to vacate. Section 23(d)(3) of the legislation, however, provides that the owner shall have the right to make representation to the Local Authority for the termination of any tenancy.

b. Discrimination. Item F of the Annual Contributions Contract, Special Provisions for Leased Housing, provides that the agreement with the owner shall include an assurance that he " * * " shall not, in the selection or approval of tenants or provision of services, or in any other manner, discriminate against any person on the ground of race, color, creed, or national origin." All terms in the above statement must be included in the lease.

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c. Conflict of Interest. Section 515(b) of the Annual Contributions Contract states that the Local Authority shall insert into all contracts which it enters into, in connection with any project or any property included or planned to be included in any project, the following provision: "No member, officer, or employee of the Local Authority, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Local Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

Many State housing laws contain relations concerning conflicts of interest; therefore, individual State laws should be reviewed for additional requirements on this subject.

d. Term of Lease. Section 23(d)(5) of the United States Housing Act provides that Section 23 lease terms shall be for not less than twelve months nor more than sixty months and shall be renewable at the expiration of such term. Item K of the Special Provisions for Leased Housing of the Annual Contributions Contract further provides that the annual contributions commitment generally will not extend beyond 10 years from the date of the contract, or the latest amendment thereof increasing the number of units covered. Local Authorities are authorized to negotiate lease terms with owners within these limitations. In those special instances where it appears desirable for a Local Authority to enter into a lease for a term which will involve a binding commitment, including any option to renew, beyond the 10-year period mentioned above, prior authorization

of the Regional Office must be obtained.

e. Code Violation. Section 23(a)(3) of the United States Housing Act and Item E of the Annual Contributions Contract, Special Provisions for Leased Housing, require that dwellings to be leased provide decent, safe and sanitary accommodations. The lease with the owner shall include, therefore, a warranty that the dwelling complies with local building and housing codes, regulations and laws.

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4. RECOMMENDED PROVISIONS. In addition to coverage of the above mandatory items, among other points, it is recommended that in the preparation of leases attention be given to the following:

a. Selection of Tenants. Although the Local Authority must retain the right to determine the eligibility of tenants, the actual tenant selection process can be negotiated and agreed to by the Local Authority and the owner. Thus, depending on the desires of the participants, leases can provide for:

- (1) Selection by the owner subject to approval by the Local Authority in accordance with its admission and eligibility policies, or
- (2) Selection by the owner from a list supplied by the Local Authority of a specified number of eligible applicants, or
- (3) Selection by the Local Authority, subject to the approval of the owner, or
- (4) Selection by the Local Authority, if the owner prefers such an arrangement.

If the owner is to select tenants, the Local Authority should be relieved of any responsibility to pay rent while the unit is vacant. If the owner is to select from a list supplied by the Local Authority or if the owner is to approve tenants, the Local Authority should be relieved of any responsibility to pay rent following disapproval of a tenant and the Local Authority should have the right to cancel the lease in the event of a specified number of disapprovals.

b. Options

- (1) The lease can contain a provision for renewal at the sole option of the Local Authority, a provision for automatic renewal in the absence of notice by the Local Authority or owner, or, within the limitations as to

the term of the lease discussed above, a provision for renewal at the sole option of the owner.

- (2) Under the policy of HUD to encourage tenant responsibility and economic improvement, it is recommended that, if the owner is willing, the lease contain an option giving the tenant the right to take over the

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lease covering his unit in the event an increase in his income causes him to become ineligible for further assistance.

- (3) Any option in favor of the Housing Authority or the tenant to purchase the property should be expressed.

c. Rents

- (1) The lease should state the actual amount of rent for each unit to be paid per month, and provision for proration should be made in case the lease commences or terminates on some day other than the first of the month.
- (2) Consideration should be given to the abatement of rents if there is such damage to the property that it is rendered partially or totally uninhabitable. The point at which the damage becomes so great that the Local Authority should be able to terminate the lease should be set.
- (3) There are several ways that the actual payment of rent can be arranged and the lease should reflect the plan contemplated.
 - (a) The owner and the Local Authority can agree that both the tenant and the Local Authority will pay their respective shares directly to the owner.
 - (b) The parties can agree that the Local Authority will pay the complete rent to the owner and be responsible for collection from the tenant.
- (4) In the event that dwellings are leased that include furniture that goes beyond the basic dwelling equipment, it will be desirable that the lease specify the amount allocable to the rental of furniture. If, as is normally the case, the Local Authority schedule

of rents payable by tenants is based upon a rent-income ratio established for unfurnished units, the amount of the rent payable to the owner that is allocable to furniture will have to be added to the tenant's rent, or separate arrangements for payment of the furniture charge should be made.

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d. Warranties

- (1) The agreement between the owner and the Local Authority should, at some place, contain warranties by the lessor that all equipment is in good, serviceable, and operable condition; that all plumbing fixtures, electrical fixtures, closets, kitchen cupboards and the exterior of the unit (roof, etc.), are in good repair; and that there are no outstanding liens or encumbrances that will interfere with the Local Authority's possession of the premises in accordance with the terms of the lease.
- (2) The lease should describe what redress is open to the Local Authority if the owner does not have the right to enter into the lease or if the property is not as warranted. These could include authorization for the Local Authority, itself, to have the remedial work done and deduct the costs from the rent, or termination of the lease.
- (3) If it is felt that a warranty that there are no code violations is not strong enough to protect the Local Authority, a statement such as the following could be placed in the lease: "This agreement shall not take effect until the Engineering Department and Inspection Department of the City of _____, or other governmental agency having jurisdiction, shall make certification to the Authority, after inspection of the premises, that the dwelling units and the premises in which they are located meet all legal requirements."
- (4) To protect against the deterioration of the property once the lease has been entered into, the Local Authority may wish to place in the lease a statement such as the following: "If by reason of any cause, other than the wrongful act or negligence of the Authority or its sub-lessee, the premises are rendered unfit for occupancy or should fail or cease to comply with the City of _____ building and housing code regulations, or fail or cease to be decent, safe and sanitary housing as contemplated by

the Housing Authority Law of the State of _____, this lease may be terminated by the Authority, whereupon the Authority shall pay to the lessor only such proportionate part of the rent for said premises as has accrued to the date of such termination."

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- (5) The lease should contain some statement as to what type of notice of change of ownership is necessary before the change becomes binding on the Local Authority.

e. Covenants

- (1) The agreement between the Local Authority and the owner should describe the individual responsibilities of the participants as to the management, maintenance and custodial care of the property. Following are some of the points to be considered:
 - Janitorial work, interior and exterior
 - Exterminating
 - Structural repairs
 - Plumbing, electrical and heating system repairs and replacements
 - Exterior and interior painting
 - Repair and replacement of ranges and refrigerators
 - Public area maintenance, grounds maintenance, and snow removal
 - Measures to secure the property while vacant

It is recommended, unless there are compelling reasons to the contrary, that responsibility for repairs and maintenance, except that resulting willful damage or negligence of the tenant, be delegated to the owner.

- (2) The lease should specify who is obligated to pay for each utility and for utilities serving any public area.

- (3) The Local Authority's obligations should be described. These may include its obligation to notify the owner of any defect appearing on the premises and to repair any damage caused to the premises by the Local Authority or the tenant beyond normal usage. If this latter item is provided for, there should be a statement as to who would make the final decision on whether the damage was caused

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by these parties and went beyond normal use. The rights of the parties as to removal of fixtures, appliances and other personal property might be covered.

- (4) The lease should state the fact that the Local Authority and its sub-lessee shall have peaceful possession of the premises and describe the conditions, times, and provisions required for the owner to enter the dwelling.
 - (5) Whenever possible the lease should include a clause to protect the financial position of the program in the event of a termination of the demand for low-rent. This might be in the form of a provision giving the Local Authority the right to terminate the lease after reasonable notice, or perhaps an agreement by the owner that upon Local Authority notice he will actively seek non-low-income tenants for the dwelling and will accept a lease with a non-low-income family that will enable the Local Authority to eliminate its damages in the event of vacancy. A provision of this kind is particularly desirable if there is to be a renewal at the option of the owner. In the event that a Local Authority leases a unit already occupied by a low-income family, it is recommended that the Authority obtain an option for termination of the lease immediately in the event the occupant moves.
- f. Insurance. The responsibilities of the parties as to the procurement of insurance requires attention in the lease. It is assumed that fire and extended coverage insurance will normally be purchased by the owner, and this should be so stated. On liability insurance some investigation as to the comparative cost of providing coverage through direct purchase or through the owner might be useful. If liability coverage is to be purchased by the Local Authority, the Authority will, of course, be the named insured. If the

Authority already has liability insurance coverage, the existing policy can be endorsed to cover leased properties as they are acquired. Should it be considered desirable for the owner to provide liability coverage rather than the Local Authority, then the following stipulations should be incorporated in the lease:

- (1) The owner should be required to carry insurance in an amount and form that satisfies HUD requirements and to certify to the Local Authority that he is doing so.

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- (2) The owner and his insurer should waive in writing their right of subrogation as regards the tenant and the Local Authority.
- (3) In the event of any change in coverage or cancellation, the Local Authority should receive at least 30 days notice in writing.
- (4) There should be an agreement saving the Local Authority harmless in the event of a claim or judgment for injury or death and for the cost of defense of any suit or claim regardless of negligence.
- (5) In the event the owner does not comply with the insurance requirements the Local Authority should reserve the right to purchase its own insurance and deduct the cost from the rent payments.

It is recommended that the following clause be inserted into the lease:

"If there should be asserted against the Housing Authority any claim on account of any damage alleged to have been sustained by any person by reason of the failure of the Lessor to maintain the premises as required in Section _____, the Housing Authority shall notify the Lessor and the Lessor shall defend at his own expense any suit based on such claim and, if any judgment or claims against the Housing Authority shall be allowed, the Lessor shall pay all costs and expense in connection therewith."

- g. Parole Evidence. The lease should conclude with a statement to the effect that the lease constitutes the entire agreement of the parties in respect to the premises, and there are no oral agreements between the parties. It should provide that no changes in the lease shall be allowed except in writing

and signed by both the lessor and the Local Authority.

5. PROGRAM AUTHORIZATION. Prior to executing leases, agreements to lease, or other binding commitments, a Local Authority must consider the status of its program authorization and the effect that prior commitments have had upon that authorization.

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SECTION 3. PROGRAM REVISION

1. REALLOCATION OF UNITS.

a. Local Authority Discretion. Annual Contributions Contracts authorize local agencies to increase the number of units of any size to be leased by as much as twenty-five percent, providing that the total number of units or the fixed annual contribution is not increased. Changes beyond this are to be approved by HUD.

b. HUD Approval. Proposals for changes in the distribution of units that exceed the above limitation may be submitted to the Regional Office in letter form. They should be supported by a justification indicating:

- (1) Why the change is needed
- (2) That the availability of units to be leased supports the change
- (3) That there is a market for units of the sizes to be leased
- (4) That the changes will not have an inflationary effect on the private market
- (5) The computations upon which it is determined that the project, as revised, will be financially feasible, and
- (6) The specific amount of the revised maximum contribution.

2. PROGRAM INCREASES. Approval for increases in the size of leased programs is to be obtained through submission of Form HUD-52470, Application for a Low-Rent Housing Program. In the preparation of a second or subsequent Application, experience gained in the operation of leased housing to date is of significance, particularly in Section B (Housing Expected to be Available to the Local Authority) of Form HUD-52470B. Expense estimates, especially the estimates of rents to be paid to owners, and

utilities, required in Section C, D, and E should take into consideration actual costs. Where there are significant differences in the estimates as compared with cost experience, an explanation would be in order. In view

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of the procedure under which all leased housing of a Local Authority will generally be operated as a single project, Financial Feasibility Demonstrations of Applications involving expansion of an existing program must be based upon estimates for operation of the program as a whole with annual contributions derived through computation of a weighted average.

3. PROGRAM DECREASES. It shall be the primary responsibility of the Local Authority to recognize delays in its leasing program and initiate action to release dwelling units which the Authority is unable to bring under lease in accordance with its schedule commitments. This may be accomplished by letter to the Regional Office explaining why the action is proposed.

4. DOCUMENTATION. Program revisions approved by HUD will be covered by an Amendment of the Annual Contributions Contract.

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