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# CHAPTER 15 TERMINATIONS OF ASSISTANCE AND HAP CONTRACTS

#### 15.1 CHAPTER OVERVIEW

To preserve the integrity of the housing choice voucher program, it is important that families abide by their family obligations and lease agreements. It is also essential that owners comply with their obligations under the terms of the HAP contract. This chapter discusses PHA, owner, and family responsibilities in terminations of tenancy, terminations of assistance, and terminations of the HAP contract under the housing choice voucher program.

#### 15.2 TERMINATION OF TENANCY

### **Termination of Tenancy by the Family**

The family may terminate tenancy after the initial term of the lease. Terminations during the initial term may be allowed if the owner agrees to release the family from the lease or if the lease provides for such termination (usually with notice).

The family must give the owner notice of termination in accordance with the lease and must give the PHA a copy of this notice. In addition to informing the PHA of its intention to terminate the lease, the family must notify the PHA whether or not the family desires assistance in another location.

# Termination of Tenancy by the Owner

#### Overview

The owner must only terminate the lease in accordance with the provisions of the lease and HUD requirements. During the term of the lease, including the initial term and any extensions, the owner may only terminate tenancy for the following four reasons:

- Serious or repeated violations of the terms and conditions of the lease. A serious or repeated violation includes failure to pay rent or other amounts due under the lease;
- Violations of federal, state, or local law that directly relate to the occupancy or use of the unit or premises;
- Criminal activity or alcohol abuse; or
- Other good cause.

The owner may not terminate tenancy if the PHA fails to pay the housing assistance payment or pays it late. PHA failure to make the housing assistance payment is not a violation of the lease between the family and the owner.

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. For example, the following are NOT grounds for termination of tenancy during the initial lease term:

- Failure by family to accept offer of new lease or lease revision;
- Owner desire to use unit for personal or other use; or
- Business or economic reason.

Termination for Criminal Activity and Drug and Alcohol Abuse

The owner may terminate the tenancy any time during the lease term if any member of the family, guest, or other person under the family's control commits any of the following types of criminal activity:

- Criminal activity that threatens the health, safety, or peaceful enjoyment of the premises by other residents, including property management staff;
- Criminal activity that threatens the health, safety, or peaceful enjoyment of the premises by people residing in the immediate vicinity; or
- Violent criminal activity on or near the premises; or
- Drug-related criminal activity on or near the premises.

The tenancy addendum that is part of the HAP contract also includes the following as grounds for owner terminations of tenancy:

- Abuse of alcohol by any household member that threatens the health, safety, or right to peaceful enjoyment of the premises by residents;
- Fleeing by any household member to avoid prosecution, or custody or confinement after conviction for a felony or attempt to commit a felony;
- Violation by any household member of a condition of probation or parole under federal or state law.

The owner may terminate tenancy for criminal activity by any household member, regardless of whether the household member has been arrested or convicted for such activity.

Terminations for Other Good Cause

During the initial lease term and any extension of the term, other good cause may include:

Disturbing neighbors;

- Destroying property or engaging in other activities that result in damage to the unit or premises; and
- Carrying out living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, other good cause may also include:

- Family not accepting an offer of a new lease or revision;
- Owner desire to use the unit for personal or other use; and
- Business or economic reasons, such as the sale of the property, renovation, or the request for a rent higher than the PHA can approve.

During the initial lease term, the owner may terminate for other good cause only because of something the family did or failed to do. For example, the owner may terminate tenancy for housekeeping habits resulting in damage to the unit but not for the owner's personal use of the unit.

## Notification Requirements

To terminate tenancy the owner must give the family written notice of the owner's intent to terminate the tenancy and the reasons for the termination. The tenancy does not terminate before such notice is given. The notice must be given to the tenant before any eviction process starts or as part of any eviction notice required by state or local law.

Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under state or local law. The owner may only evict the tenant from the unit through a court action, and the owner must give the PHA a copy of any owner eviction notice to the tenant.

#### 15.3 HAP CONTRACT TERMINATIONS

#### **Automatic Termination**

A HAP contract terminates automatically when:

- The family moves from the unit;
- The PHA terminates program assistance for the family;
- The owner or family terminates the lease;
- The owner evicts the family; or

• One hundred and eighty (180) calendar days elapses since the last housing assistance payment to the owner.

The PHA must make housing assistance payments to the owner as long as the tenant remains a program participant and remains in the unit, even if the owner has started the eviction process. The PHA must continue to pay the housing assistance payment to the owner until the family moves or the court judgment allows the owner to evict.

#### **PHA Terminations of HAP Contract**

The PHA may terminate the HAP contract if:

- The PHA determines that the contract unit does not meet HQS space requirements because of an increase in family size or a change in family composition. In this case, the PHA issues the family a voucher to look for more suitable housing. If an acceptable unit is found, the PHA must notify the family and owner of the termination and must terminate the HAP contract. The HAP contract terminates on the last day of the month following the month in which the PHA provided the owner with the notice.
- The family breaks up unless the PHA, in conformance with its policy, has decided to continue to make housing assistance payments on behalf of those family members that remain in the unit.
- The unit does not meet all HQS requirements.
- The PHA determines that the owner has otherwise breached the HAP contract. Owner breach of contract includes the following:
  - Drug-trafficking and violent criminal activity;
  - Fraud or bribery or other corrupt or criminal act in connection with federal housing programs;
  - Violations under any other HAP contract; or
  - Failure to comply with mortgage insurance/loan program regulations, or bribery or other corrupt or criminal act in connection with the program. (Only for projects with mortgages insured or loans made from HUD.)
- The PHA has insufficient funds under the consolidated ACC to continue assistance.

If the PHA terminates the contract, the PHA must give the owner and family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no HAP payments may be made, and the PHA will not earn an administrative fee for the unit.

#### 15.4 PHA TERMINATION OF ASSISTANCE FOR FAMILY

# When the PHA Is Required to Terminate Assistance

Housing choice voucher program rules require the PHA to terminate assistance to a participating family if:

- Any family member fails to sign and submit consent forms required for obtaining information on family status as part of any reexamination conducted by the PHA;
- Any family member fails to declare citizenship or provide documentation of eligible noncitizen status within the prescribed timeframes and extensions (see Chapter 5 for more details on these special requirements); or
- The family is evicted from housing assisted under the program for a serious or repeated violation of the lease.

Termination for Family Action or Failure to Act

The PHA may terminate assistance because of the participating family's action or failure to act. The PHA's policies regarding actions or inactions that may lead to the termination of assistance must be described in the PHA administrative plan.

The PHA may terminate assistance by refusing to enter into a HAP contract or approve a request for tenancy, terminating housing assistance payments under an outstanding HAP contract, or refusing to process or provide assistance under portability procedures.

The PHA may terminate assistance for the following reasons:

- The family violates any family obligations under the housing choice voucher program (see Chapter 8);
- Any member of the family commits fraud, bribery, or other corrupt or criminal act related to any federal housing program;
- Family currently owes monies to the PHA or another PHA for amounts in connection with the housing choice voucher program or public housing program;
- Family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owned by the family under the lease;
- Family is in breach of a repayment agreement with any PHA;
- Family violates the PHA's policy on absence from a unit. The PHA administrative plan must include a policy limiting the number of consecutive days a family may be absent from the assisted unit to a maximum of 180 days. The PHA may choose to establish a lesser period of

absence. The family must provide information to the PHA related to absence from the unit, such as the notification of absence or documentation of residency as required by the PHA's policy. The PHA may verify family occupancy or absence through visits, calls, and conversations with owners and neighbors;

- Any member of the family has been evicted from federal assisted housing in the last five years;
- A PHA has ever terminated assistance under the program for any member of the family;
- Family has engaged in or threatened abusive or violent behavior to PHA personnel;
- FSS family fails to comply with the contract of participation without good cause; and
- Welfare-to-work family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

Prior to terminating assistance, however, the PHA must give the family the opportunity to request a hearing. In making termination decisions due to family action or failure to act, the PHA has the discretion to consider the seriousness of the issue, the level of involvement of family members, mitigating circumstances related to the disability of a family member, and the effects of termination on non-involved family members.

In appropriate cases, the PHA may permit some members of the family to continue receiving assistance while imposing a condition that the family member or members who engaged in wrongful activity will not reside with the assisted family. If the family includes a person with disabilities, the PHA decision is subject to consideration of reasonable accommodation.

Termination for Criminal Activity and Alcohol Abuse

The PHA must adopt standards that allow the PHA to terminate assistance for a participating family if it determines that any household member has engaged in drug-related criminal activity or violent criminal activity.

The PHA must immediately terminate assistance if it determines that a member of a participating household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine (speed) on the premises of federally assisted housing.

The PHA's policies must permit the PHA to terminate assistance for a family if a member of the household is fleeing to avoid prosecution, custody, or confinement after conviction, for a crime or an attempt to commit a crime that is a felony. (In New Jersey, the term for a felony is "high misdemeanor".) PHA policies must also permit the termination of assistance when a family member is violating a condition of probation or parole imposed under federal or state law.

PHA policies must allow termination of assistance if a household member has engaged in abuse of alcohol or a pattern of abusing alcohol that threatens the health, safety, or the right to peaceful enjoyment of the premises by other residents.

The PHA may deny admission or terminate assistance for criminal activity if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted. If the PHA proposes to terminate assistance for criminal activity and possesses a copy of the relevant criminal record, the PHA must provide the family with a copy of the criminal record before the PHA hearing, and the family must be given the opportunity to dispute the accuracy and relevance of the record.

In determining whether to terminate assistance for illegal drug use or alcohol abuse by a household member who is no longer using drugs or abusing alcohol, the PHA may consider whether that individual is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been successfully rehabilitated. The PHA may require the household member to submit evidence of current participation in, or successful completion of, a supervised rehabilitation program as a condition of continued assistance.

When appropriate, the PHA may require that the family member who engaged in the drug use or alcohol abuse may not reside in the unit as a condition of continued assistance for the remaining members of the household.

#### ACHIEVING SUCCESSFUL TERMINATIONS

- If the PHA learns of lease violations, a warning letter to the tenant and owner may help to change behavior and avoid possible termination. Should the violations continue, the warning letter provides documentation that the family was aware of the problem and given an opportunity to correct it.
- Written documentation is essential if the tenant is to be terminated for serious or repeated lease violations or drug related criminal activity.
- Even anonymous calls can be logged with dates and times of the call to document patterns of behavior.
- Always provide the family and owner with sufficient notice of any proposed termination action and advise the family of the right to request a hearing.

#### *Notification Requirements*

Upon making a decision to terminate assistance, the PHA must give both the owner and the family written notice of termination that states:

- Reason for the termination;
- Effective date of the termination; and

• Family's right to request a hearing.

There are additional notification requirements for terminating assistance based on failure to claim or document eligible immigration status (see Chapter 5). Termination of assistance affects the housing choice voucher family's right to the unit since the lease automatically terminates when the HAP contract terminates. An owner has the right, however, to offer the tenant a separate, unassisted lease.

*Information to be Provided to the Family* 

Upon admission into the program, the PHA must give the family a written description of the following:

- Family obligations under the housing choice voucher program;
- Grounds on which the PHA may terminate assistance because of family action or failure to act; and
- PHA informal hearing procedures.

#### **EXHIBIT 15-1**

#### SAMPLE NOTICE OF CONTRACT TERMINATION

Rodney Loftin ABC Management Company 391 California Way Anywhere, VA 20000

RE: Housing Assistance Contract Termination

Tenant Name: Alexis Jones

Address: 8959 Howard Ave.

Anywhere, VA 20000

Dear Mr. Loftin:

Due to [REASON, I.E. FAILURE TO MAINTAIN UNIT IN COMPLIANCE WITH HOUSING QUALITY STANDARDS], the Anywhere Housing Authority will terminate the Housing Assistance Payments contract entered into on behalf of the above-mentioned tenant effective [EFFECTIVE DATE].

Specifically, [SPECIFIC REASON, I.E. AFTER TWO PHA INSPECTIONS, YOU HAVE FAILED TO MAKE THE NECESSARY REPAIRS TO THE UNIT].

Anywhere Housing Authority will not make any HAP payments to you after [TERMINATION DATE]. Should the tenant choose to remain in the unit after that date, the tenant will be responsible for the full contract rent.

Should you have any questions or concerns, please contact me at (909) 555-1212.

Sincerely,

Jessica Brown Housing Program Specialist

cc: Alexis Jones, Tenant

#### **EXHIBIT 15-2**

#### SAMPLE NOTICE OF TERMINATION OF ASSISTANCE

Paula Matthews 123 Del Mar Road #357 Anywhere, VA 20000

RE: Termination of Assistance

Dear Ms. Matthews:

This letter is to advise you that a review of your tenant file indicates that you have not complied with the requirements of the housing choice voucher program. Specifically, [REASON, I.E., YOU FAILED TO COMPLETE YOUR ANNUAL REEXAMINATION AND ALLOW YOUR UNIT TO BE INSPECTED].

As a result of your failure to comply with the above stated requirement(s), your assistance is terminated effective [DATE OF TERMINATION]. If you wish to appeal this decision, you have the right to an informal hearing. The request must be submitted to this agency in writing within [NUMBER CONSISTENT WITH PHA POLICY] working days from the date of this letter. Your request should be directed to me.

If your request is not received within the time period indicated above, you will waive your right to a hearing and our decision to terminate your assistance will become final. This does not, however, constitute a waiver of your rights to appropriate judicial proceedings.

Should you choose to remain in occupancy after the effective date of your termination, you will be responsible for paying the full amount of rent to the owner.

Sincerely,

Michael Jackson Housing Program Specialist

cc: Rodney Loftin, Owner