U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing

Special Attention of:	NOTICE PIH 2001-8 (HA)
Under the Jurisdiction of the United States Court of Appeals for the Ninth Circuit: Selected Public Housing Agencies, Public Housing Directors; State/Area Coordinators; Public Housing Resident Management Corporations; Assistant General Counsel; Chief Counsel; Chief Attorneys	Issued: March 13, 2001 Expires: March 31, 2002

SUBJECT: Termination of Tenancy for Criminal Activity

Applicability: All Public Housing Agencies (PHAs) administering public housing within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Applicable States and Possessions: California, Washington, Montana, Oregon, Idaho, Nevada, Arizona, Hawaii, Alaska and Northern Mariana Islands and Guam.

Policy: This notice is to advise PHAs of the effect of *Rucker v. Davis* on their ability to evict households from public housing on the basis of criminal activity committed by certain persons other than the public housing leaseholder (*i.e.*, the lease signatory). This decision by the United States Court of Appeals for the Ninth Circuit interpreted Section 6(1)(6) of the U.S. Housing Act of 1937, as amended, in a way that is contrary to HUD's interpretation, which applied to all PHAs nationwide.

In promulgating the regulation at 24 CFR 966.4(f)(12), HUD determined that because Section 6(1) requires every lease signed by the tenant of a public housing unit to contain a provision authorizing his or her PHA to consider certain "criminal activity ... engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control" to be "cause for termination of tenancy", the lease provision authorizes the termination of the leasehold and thus eviction of all members of a household whenever such criminal activity is committed by any member of the household or by any household guest. 56 *Fed. Reg.* 51560, 51562-51563, 51566-51567 (October 11, 1991).

In a 7 to 4 decision, 237 F.3d 1113 (9th Cir. 2001), the Ninth Circuit rejected that interpretation. The majority opinion concluded that Congress could not have intended that, when the criminal activity is committed by a household member or guest, a leasehold could be terminated without a showing of particularized leaseholder fault. The Court thus, in our

opinion,[1] read into the statute the following additional terms that would bar such a termination for criminal activity committed:

(a) **outside** the leaseholder's unit, absent PHA proof that the leaseholder failed to take "reasonable steps to prevent drug activity from occurring" in circumstances in which the leaseholder "knew or should have known of the criminal activity" and could "realistically exercise control over the conduct of [the] household member or guest"; and

(b) **inside** the leaseholder's unit, if the leaseholder introduces evidence sufficient to overcome the legal "presumption" that because the unit is an area over which the leaseholder has control and with respect to which the leaseholder can grant or deny access, the leaseholder must have failed to take all requisite steps to prevent criminal activity from occurring there.

Because the decision is binding precedent within the Ninth Circuit, PHAs within the Ninth Circuit are instructed to disregard HUD's interpretation of Section 6(1)(6) and follow the Ninth Circuit interpretation of the statute.

____/s/_____
Gloria J. Cousar
Acting General Deputy Assistant
Secretary for Public and Indian
Housing

[1] This is only HUD's understanding of the Ninth Circuit opinion. Each PHA should independently review the decision.