

Chapter 9

REQUEST FOR APPROVAL OF TENANCY AND CONTRACT EXECUTION

[24 CFR 982.302]

INTRODUCTION [24 CFR 982.305(a)]

The PHA's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have been budgeted. The PHA's objectives include maximizing HUD funds by providing assistance to as many eligible families and for as many eligible units as the budget will allow.

After families are issued a voucher, they may search for a unit anywhere within the jurisdiction of the PHA, or outside of the PHA's jurisdiction if they qualify for portability. The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payments Contract with the PHA. This Chapter defines the types of eligible housing, the PHA's policies which pertain to initial inspections, lease requirements, owner disapproval, and the processing of Requests For Approval of Tenancy (RFAT).

A. REQUEST FOR APPROVAL OF TENANCY [24 CFR 982.302, 982.305(b)]

The Request for Approval of Tenancy (RFAT) and a copy of the proposed Lease, including the HUD prescribed tenancy addendum, must be submitted by the family during the term of the voucher. The family must submit the Request for Approval of Tenancy in the form and manner required by the PHA.

The Request for Approval of Tenancy must be signed by both the owner and Voucher holder.

The PHA will not permit the family to submit more than one RFAT at a time.

The PHA will review the proposed lease and the Request for Approval of Tenancy documents to determine whether or not they are approvable. The Request will be approved if:

The unit is an eligible type of housing

The unit meets HUD's Housing Quality Standards (and any additional criteria as identified in this Administrative Plan)

The rent is reasonable

The Security Deposit is approvable in accordance with any limitations in this plan.

The proposed lease complies with HUD and PHA requirements (See "Lease Review" section below).

The owner is approvable, and there are no conflicts of interest (See "Owner Disapproval" section below). In addition to the above, at the time a family initially receives assistance (new admissions and moves), the family share of rent may not exceed 40 percent of the family monthly adjusted income (See "Owner Rents, Rent Reasonableness and Payment Standards" chapter of this Administrative Plan).

In order to lease a unit for the 1st of the month the RFAT must be submitted between the 1st and 15th of the prior month.

In order to lease a unit for the 15th of the month the RFAT must be submitted between the 16th and end of the prior month.

Disapproval of RFAT

If the PHA determines that the Request cannot be approved for any reason, the landlord and the family will be notified in writing. The PHA will instruct the owner and family of the steps that are necessary to approve the Request.

The owner will be given 10 calendar days to submit an approvable RFAT from the date of disapproval.

When, for any reason, an RFAT is not approved, the PHA will furnish another RFAT form to the family along with the notice of disapproval so that the family can continue to search for eligible housing.

B. ELIGIBLE TYPES OF HOUSING [24 CFR 982.353]

The PHA will approve any of the following types of housing in the Voucher program:

All structure types can be utilized.

Manufactured homes where the tenant leases the mobile home and the pad.

Congregate facilities (only the shelter rent is assisted)

Units owned (but not subsidized) by the PHA (following HUD-prescribed requirements).

A family can own a rental unit but cannot reside in it while being assisted, except in the case when the tenant owns the mobile home and leases the pad. A family may lease in and have an interest in a cooperative housing development.

The PHA may not permit a Voucher holder to lease a unit which is receiving Project-Based Section 8 assistance or any duplicative rental subsidies.

C. LEASE REVIEW [24 CFR 982.308]

The PHA will review the lease for optional charges and if requested by the tenant for obvious issues of noncompliance with regulations and state and local law. The tenant also must have legal capacity to enter a lease under state and local law. Responsibility for utilities, appliances and optional services must correspond to those provided on the on the Request For Tenancy Approval.

The family and owner must submit a standard form of lease used in the locality by the owner and that is generally used for other unassisted tenants in the premises. The terms and conditions of the lease must be consistent with state and local law.

The lease must specify:

The names of the owner and tenant, and

The address of the unit rented (including apartment number, if any), and

The amount of the monthly rent to owner, and

The utilities and appliances to be supplied by the owner, and

The utilities and appliances to be supplied by the family.

The HUD prescribed tenancy addendum must be included in the lease word-for-word before the lease is executed.

Effective September 15, 2000, the owner's lease must include the Lead Warning Statement and disclosure information required by 24 CFR 35.92(b).

The lease must provide that drug-related criminal activity engaged in by the tenant, any household member, or any guest on or near the premises, or any person under the tenant's control on the premises is grounds to terminate tenancy.

The lease must also provide that owner may evict family when the owner determines that:

Any household member is illegally using a drug; or

A pattern of illegal use of drug by any household member interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.

The lease must provide that the following types of criminal activity by a "covered person" are grounds to terminate tenancy:

Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

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 violent criminal activity on or near the premises by a tenant, household member, or guest; or

Any violent criminal activity on the premises by any other person under the tenant's control.

The lease must provide that the owner may terminate tenancy if a tenant is:

Fleeing to avoid prosecution or custody or confinement after conviction for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees (high misdemeanor in NJ); or

Violating a condition of probation or parole imposed under Federal or State law.

Actions Before Lease Term

All of the following must always be completed before the beginning of the initial term of the lease for a unit:

The PHA has inspected the unit and has determined that the unit satisfies the HQS;

The PHA has determined that the rent charged by the owner is reasonable;

The landlord and the tenant have executed the lease, including the HUD-prescribed tenancy addendum;

The PHA has approved leasing of the unit in accordance with program requirements;

When the gross rent exceeds the applicable payment standard for the family, the PHA must determine that the family share (total family contribution) will not be more than 40% of the family's monthly adjusted income.

D. SEPARATE AGREEMENTS

Separate agreements are not necessarily illegal side agreements. Families and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted families, or for items not shown on the approved lease.

The family is not liable under the lease for unpaid charges for items covered by separate agreements and nonpayment of these agreements cannot be cause for eviction.

Owners and families may execute separate agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease if the agreement is in writing

and approved by the PHA.

Any appliances, services or other items which are routinely provided to unassisted families as part of the lease (such as air conditioning, dishwasher or garage) or are permanently installed in the unit, cannot be put under separate agreement and must be included in the lease. For there to be a separate agreement, the family must have the option of not utilizing the service, appliance or other item.

If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed.

All agreements for special items or services must be attached to the lease approved by the PHA. If agreements are entered into at a later date, they must be approved by the PHA and attached to the lease.

The PHA will not approve separate agreements for modifications to the unit for persons with disabilities. The modifications are usually within the dwelling and are critical to the use of the dwelling.

E. INITIAL INSPECTIONS [24 CFR 982.305(a) & (b)]

See "Housing Quality Standards and Inspections" chapter of this Administrative Plan.

F. RENT LIMITATIONS [24 CFR 982.507]

The PHA will make a determination as to the reasonableness of the proposed rent in relation to comparable units available for lease on the private unassisted market, and the rent charged by the owner for a comparable unassisted unit in the building or premises.

By accepting each monthly house assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner is required to provide the PHA with information requested on rents charged by the owner on the premises or elsewhere.

At all times during the tenancy, the rent to owner may not be more than the most current reasonable rent determined by the PHA.

G. DISAPPROVAL OF PROPOSED RENT [24 CFR 982.502]

In any of the programs, if the proposed Gross Rent is not reasonable, at the family's request, the PHA will negotiate with the owner to reduce the rent to a reasonable rent.

At the family's request, the PHA will negotiate with the owner to reduce the rent or include some or all of the utilities in the rent to owner.

If the rent can be approved after negotiations with the owner , the PHA will continue processing the Request for Approval of Tenancy and Lease. If the revised rent involves a change in the provision of utilities, a new Request for Approval of Tenancy must be submitted by the owner.

If the owner does not agree on the Rent to Owner after the PHA has tried and failed to negotiate a revised rent, the PHA will inform the family and owner that the lease is disapproved.

H. INFORMATION TO OWNERS [24 CFR 982.307(b), 982.54(d)(7)]

In accordance with HUD requirements, the PHA will furnish prospective owners who request the family's address information in writing from the PHA with the family's current address as shown in the PHA's records and, if known to the PHA, the name and address of the landlord at the family's current and prior address.

The PHA will make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

The PHA will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, payment of utility bills, eviction history, respecting the rights of other residents, damage to units, drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

A statement of the PHA's policy on release of information to prospective landlords will be included in the briefing packet which is provided to the family.

The PHA will provide documented information regarding tenancy history for the past 5 years to prospective landlords upon written request from the landlord.

The PHA will furnish prospective owners with information about the family's rental history, or any history of drug trafficking.

The PHA will provide the following information, based on documentation in its possession:

- Eviction history

- Damage to rental units

- Drug Trafficking by family members

The information will be provided for the last 5 years.

The information will be provided in writing.

Only the administrative staff may provide this information. The PHA's policy on providing information to owners is included in the briefing packet and will apply uniformly to all families and owners.

I. OWNER DISAPPROVAL [24 CFR 982.306]

See Chapter on "Owner Disapproval and Restriction."

J. CHANGE IN TOTAL TENANT PAYMENT (TTP) PRIOR TO HAP EFFECTIVE DATE

When the family reports changes in factors that will affect the Total Family Share prior to the effective date of the HAP contract at admission, the information will be verified and the Total Family Share will be recalculated. If the family does not report any change, the PHA need not obtain new verifications before signing the HAP Contract, even if verifications are more than 60 days old.

K. CONTRACT EXECUTION PROCESS [24 CFR 982.305(c)]

The PHA prepares the Housing Assistance Contract and lease for execution. The family and the owner will execute the Lease agreement, and the owner and the PHA will execute the HAP Contract. Copies of the documents will be furnished to the parties who signed the respective documents. The PHA will retain a copy of all signed documents..

The PHA makes every effort to execute the HAP Contract before the commencement of the lease term. The HAP Contract may not be executed more than 60 days after commencement of the lease term and no payments will be made until the contract is executed.

The following PHA representative(s) is/are authorized to execute a contract on behalf of the PHA: Management of Section 8 Coordinator.

Owners must provide an Employer Identification Number or Social Security Number.

Owners must also submit proof of ownership of the property, such as a Grant Deed or Tax Bill, and a copy of the Management Agreement if the property is managed by a management agent.

The owner must provide a home telephone number and business number if applicable.

Unless their lease was effective prior to June 17, 1998, a family may not lease properties owned by a parent, child, grandparent, grandchild, sister or brother of any family member. The PHA will waive this restriction as a reasonable accommodation for a family member who is a person with a disability.

L. CHANGE IN OWNERSHIP

See "Owner Disapproval and Restriction" chapter.