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**Defending Evictions and Subsidy Terminations in Public and Subsidized Housing**

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# Resources

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Chapter 11, Eviction and Subsidy Terminations, in HUD HOUSING PROGRAMS:  
TENANTS' RIGHTS (National Housing Law Project, 6th ed. 2024) (The Green Book)

National Housing Law Project (NHLP) Site - <https://www.nhlp.org/products/green-book/>

Subscribe from the National Consumer Law Center (NCLC) - <https://library.nclc.org/GB/subscribe>

[L. McDonough, F. Fuchs & M. McCreight, Defending Evictions in Public and Subsidized Housing \(2015, revised 2024\)](#)

[L. McDonough, L. Wood, J. Hearne, & D. Brooks, Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth \(2024\), to be presented at the Housing Justice Network Conference on September 5, 2024](#)

[L. McDonough, L. Wood, J. Hearne, & D. Zakim, Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth \(2022\)](#)

[24 CFR - Housing and Urban Development](#)

[7 CFR Part 3560 - Direct Multi-Family Housing Loans and Grants](#)

[HUD's Client Information Policy Systems \(HUDCLIPS\)](#)

HUD Handbooks, Letters, Guidebooks, Notices, Acts, Bulletins, and Regulations

## Legal Services Attorneys and Others Can Help in Almost All Cases

### [45 C.F.R. § 1633.3 Prohibition.](#)

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

- (a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and
- (b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

# Get Involved

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This of what is not covered by this limitation:

- Non-LSC-funded attorneys
- No eviction proceeding
- Not public housing
- Client is not a person convicted of or charged
- No illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance
- No intent to sell or distribute
- Basis for eviction is not that the activity threatens the health or safety of
  - other tenants residing in the public housing project or
  - employees of the public housing agency

This leaves a lot we can do!

## Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024

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Part of the Act remains in effect. [15 U.S.C.A. § 9058\(c\)](#).

A lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' notice that may not be given until after the moratorium period.

This provision is not expressly limited to nonpayment of rent.

The courts differ on whether applies to breach of lease cases.

The provision has no expiration date.

# CARES Act § 4024

## Covered Properties:

Section 8 Housing Choice Voucher (“HCV”) or VASH (HUD-Veterans Affairs) voucher

Section 8 Project-Based Voucher (PBV) units

Public housing units

HOME (HOME Investment Partnership) units

HOPWA (Housing Opportunities for Persons with AIDS) units

Permanent Supportive Housing (PSH) units

Tenants that use a PSH or Shelter Plus Care voucher

Federal Low Income Housing Tax Credit (LIHTC or “tax credit”) units

Property receives a project-based subsidy through HUD

Property receive a project-based subsidy through the U.S. Department of Agriculture

Property participated in the Section 542 Rural Housing Voucher program

Property has any tenant who uses a Rural Housing Voucher

Property a federally backed mortgage loan or a federally backed multifamily mortgage loan

## HUD 30-Day Notice

Separate from the CARES Act, HUD issued an interim rule on October 7, 2021, that allows the HUD Secretary to require PHAs, federally subsidized landlords, and Rural Rental Housing landlords with Section 8 set-aside contracts to provide tenants facing *eviction for nonpayment of rent* with notification of and information about the opportunity to secure emergency funding and additional time to obtain such funding prior to eviction. [86 Fed Reg. 55693-01 \(Oct. 7, 2021\)](#); [Notice PIH 2021-29; H 2021-06 \(issued Oct. 7, 2021\)](#) (effective until amended, superseded, or rescinded).

The Notice does not apply to the Housing Choice Voucher Program or to Project-based vouchers. But the CARES Act thirty-day notice to vacate clearly applies since both these programs are covered programs.



## HUD 30-Day Notice

On December 1, 2023, HUD published a proposed regulation to codify and clarify the interim rule. See [30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed. Reg. 83877 \(Dec. 1, 2023\)](#).

The proposed regulation makes clear that the 30 days' notice must be provided before commencing an eviction proceeding. It requires that "the 30-day notice include instructions on how tenants can cure lease violations for nonpayment of rent."

It also states that "[t]he 30-day notice must be provided in accessible formats to ensure effective communication for individuals with disabilities, and in a form to allow meaningful access for persons who are limited English proficient (LEP)." The notice requirement must be incorporated into tenant leases.

## Combining CARES Act and HUD 30-Day Notice to Program Notice Requirements

The CARES Act increases the notice time to 30 days for rent and lease violation cases in covered properties.

The HUD 30-Day Notice increases the notice time to 30 days for rent cases and adds content, except Housing Choice Voucher Program or to Project-based vouchers.

Program laws, regulations, and handbooks require the content of the notice.

## Notice of VAWA Rights

Each termination notice must include the VAWA Notice of Occupancy Rights under the Violence Against Women Act (Form HUD 5380) and a certification form (Form HUD 5382) to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault, or stalking. [24 C.F.R. § 5.2003](#) (defining covered housing program); [§ 5.2005 \(a\)\(2\)\(iii\)](#).

This requirement is not limited to evictions in which the owner suspects there may be possible domestic violence. It is required in every case. *Id.*

In *DHI Cherry Glen Associates, L.P. v. Gutierrez*, in this eviction from project-based Section 8 housing, the court held that the landlord must include a notice of occupancy rights under VAWA with the notice to vacate. The appellate court reversed the trial court judgment of eviction because the landlord did not include the VAWA notice with the notice of lease termination. 259 Cal. Rptr. 3d 410, 415-17 (Calif. App. Div. 2019).

# Public Housing

Public Housing Authorities (PHAs) may evict only for

- Serious or repeated violation of the terms or conditions of the lease
- Over income
- Other good cause
- False statement in application or recertification
- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants
- Drug-related criminal activity on or off the premises on the part of the tenant, any member of the tenant's household, or a guest, and any such activity engaged in on the premises by any other person under the tenant's control
- Violation by the tenant of a condition of probation or parole
- The tenant's action in fleeing to avoid prosecution or confinement after conviction for a felony
- Alcohol abuse use that interferes with the health, safety, or the right to peaceful enjoyment of the premises by other tenants or illegal drug use.

[24 C.F.R. § 966.4.](#)

## Termination and eviction process:

- PHA notice with content requirements - [24 C.F.R. § 966.4](#)
- Bypass of the grievance process - [24 C.F.R. §§ 966.51, 966.53](#)
- Tenant requests informal conference - [24 C.F.R. § 966.54](#)
- Informal conference - *Id.*
- PHA written summary of informal conference - *Id.*
- Tenant requests formal hearing - [24 C.F.R. § 966.56](#)
- Formal hearing - *Id.*
- PHA written decision - [24 C.F.R. § 966.57](#)
- State court eviction court case (de novo) - *Id.*

## Nonpayment Eviction Defenses include:

- The PHA did not give proper notice, including the VAWA notice.
- The PHA incorrectly calculated the tenant's rent and may be overcharging the tenant.
- The PHA included income not actually received by the family.
- The tenant suffered a loss of earned income, disability benefits, child support, or other income and be entitled to a rent reduction.
- The PHA illegally assessed the tenant for repair charges that the PHA should pay or may have failed to provide an adequate utility allowance.
- The PHA included maintenance charges as part of the rent payment, demanded payment of all or none, and then sued claiming nonpayment of rent.
- The PHA's failure to give the tenant the earned income disregard.

- The PHA's failure to offer the tenant the choice between the flat rent and an income-based rent, resulting in the payment by the tenant of higher rent than the tenant would have paid with a flat rent.
- The PHA's failure to offer the family the opportunity to switch from a flat rent to an income-based rent because of a financial hardship.
- The PHA's failure to give a minimum rent tenant a hardship exemption from payment of the minimum rent.
- The PHA did not affirmatively notify a family of the hardship exemption from the minimum rent requirement.
- The PHAs did not promptly notify tenants of any adverse findings made on the basis of information they obtain through the EIV system and independently verify.
- The PHA failed to properly maintain the property.
- Defenses under state law
- A Chapter 13 bankruptcy may be appropriate as a legal measure to prevent the tenant's eviction for nonpayment of rent.

Breach of lease defenses include:

- The PHA did not give proper notice, including the VAWA notice.
- The PHA violated the grievance process.
- No serious or repeated violations of material terms of the lease or other good cause for eviction.
- VAWA defenses
- The PHA failed to reasonably accommodate a disability.
- Alleged criminal activity defenses.
- Defenses under state law



## Section 8 Housing Choice Voucher Program

Evictions of Section 8 housing choice voucher tenants are the responsibility of the owner and not the public housing authority (PHA) administering the program. [24 C.F.R. § 982.310.](#)

A landlord may evict during the initial lease term and any extension only on the following grounds:

- Serious or repeated violation of the terms and conditions of the lease
- Violation of federal, state, or local which imposes obligations on the tenant in connection with the occupancy of the unit
- Other good cause

## Section 8 Housing Choice Voucher Program

- Criminal activity by the tenant, household member, guest, or other person under the tenant's control that threatens the health, safety, or peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity
- Violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control
- Drug-related criminal activity engaged in on or near the premises by any tenant, household member or guest, or such activity engaged in on the premises by any other person under the tenant's control
- When the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Alcohol abuse by the tenant or a household member that threatens the health, safety, or right to peaceful enjoyment of the premises by residents
- Violation by the tenant or a household member of a condition of probation or parole imposed under federal or state law
- Fleeing by the tenant to avoid prosecution or confinement after conviction of a felony

## Section 8 Housing Choice Voucher Program

The landlord is not required to evict when the tenant has violated the lease; the regulations give the landlord the right to consider all the circumstances.

During the first year of the lease term, the owner may not terminate the tenancy for other good cause unless the termination is based on something the family did or failed to do.

At the end of the initial lease term, however, an owner may terminate the tenancy or non-renew the lease without cause.

## Section 8 Housing Choice Voucher Program

The notice giving the grounds for the eviction may be included in or combined with the notice to vacate or the court pleading filed to commence the eviction lawsuit. The notice period is determined by the lease and state law, because the regulations do not address the issue.

The PHA plays no role in the eviction process, although the owner must give the PHA a copy of the notice to vacate or court complaint. Failure of the landlord to provide a copy of the notice to the PHA is grounds for dismissal of the eviction suit.

The regulations are clear that nonpayment by the PHA is not grounds for termination of the tenancy by the landlord, and the owner may not terminate the tenancy during the term of the lease for nonpayment by the PHA.

Defenses: similar to public housing

# Section 8 Housing Choice Voucher Program

Subsidy Termination: [24 C.F.R. § 982.551 et seq.](#)

- Section 8 participants have a property right in continued participation in the Section 8 Voucher Program.
- When the tenant is evicted for a serious violation of the lease, however, the PHA must propose termination of the family's participation in the Section 8 voucher program.
- The regulations permit the PHA to consider all the circumstances in deciding whether to terminate the family's assistance.

Termination process:

- Notice with content requirements
- Tenant requests informal hearing
- PHA issues decision
- Tenant appeals to appellate court or sues in Federal or state district court

# Project-Based Voucher Program

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Eviction grounds and process: similar to Section 8 Housing Choice Voucher Program. [24 C.F.R. § 983.2](#).

# HUD Multi-Family Subsidized Apartments

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## [HUD Handbook 4350.3, Ch. 1](#)

- Section 221(d)(3) Below-Market Interest Rate (Section 221(d)(3) BMIR)
- Section 236
- Rental Assistance Payment (RAP)
- Rent Supplement
- Section 8 Project-Based Assistance
- Section 8 New Construction
- State Agency Financed (generally are New Construction or Substantial Rehabilitation projects)
- Section 8 Substantial Rehabilitation
- Section 202 Projects with Section 8 Assistance (Section 202/8)
- Rural Housing Section 515 Projects with Section 8 Assistance (RHS Section 515/8)
- Loan Management Set-Aside (LMSA)
- Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance – Project Assistance Contracts (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

# HUD Multi-Family Subsidized Apartments

Eviction grounds: [HUD Handbook 4350.3, Ch. 8](#)

- Material noncompliance with the rental agreement
- Material failure to carry out obligations under any state landlord and tenant act
- Other good cause
- Even at the end of the lease term, the subsidized housing landlord may terminate the tenancy only for cause
- One or more substantial violations of the rental agreement
- Repeated minor lease violations: a pattern of repeated minor violations, not isolated incidents.
- Failure to timely supply information necessary for annual and interim recertification reviews of the family's income and family composition
- Knowingly providing incomplete or inaccurate information required by the landlord to verify tenant income and family composition
- The late payment of rent after the due date but within the grace period



# HUD Multi-Family Subsidized Apartments

- Criminal activity by the tenant, a household member, guest, or other person under the tenant's control that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, including property management staff residing on the premises, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises
- Drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control
- Illegal use of a drug by a household member or a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Alcohol abuse by the tenant or a household member
- Violation by the tenant of a condition of probation or parole imposed under federal or state law
- Fleeing by the tenant to avoid prosecution or confinement after conviction of a felony.

# HUD Multi-Family Subsidized Apartments

## Termination and eviction process:

- Landlord notice with content and service requirements: Subsidized landlords frequently fail to give adequate notice of termination. Many have both subsidized and non-subsidized properties and frequent turnover in staff without adequate training.
- Tenant that he has ten days in which to discuss the proposed termination of tenancy with the landlord
- State court eviction court case
- Defenses: similar to public housing

# Rental Assistance Demonstration (RAD) Program

With the enactment of RAD, Congress mandated that tenants shall retain all rights provided under sections 6 and 9 of the United States Housing Act of 1937. [Public L. No. 112-55, 125 Stat. 673 \(Nov. 18, 2011\).](#)

These rights include the public housing grievance procedure and notice requirements. [Rental Assistance Demonstration – Final Implementation, Revision 4, PIH-2019-23 \(HA\) at 64-65, 83-85 \(Sep. 5, 2019\).](#)

In housing converted to project-based section 8, the owner must use the HUD model lease and must include in its house rules the tenant's right to access the grievance procedure. [HUD Handbook 4350.3](#) applies to project-based section 8 program and mandates use of the HUD model lease.

If the PHA converts its housing to project-based vouchers, it may use a lease of its choice, but it must include a [Tenancy Addendum, Form HUD 52530.](#)

# Rental Assistance Demonstration (RAD) Program

Under the RAD Program, the project-based voucher owner must give notice of lease termination of (1) 14 days for nonpayment of rent; (2) a reasonable period of time, not to exceed 30 days for drug-related or violent criminal activity or any felony convictions, and if the health or safety of other tenants, or the project owner, employees, or persons residing in the immediate vicinity of the premises is threatened; and (3) not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, the shorter period “shall apply.” The policies on notice requirements and right to access the grievance procedure must be incorporated into the PHA’s Section 8 Administrative Plan and the lease. [Notice H-2019-09 PIH 2019-23 \(HA\), at § 1.6-C-6 \(on pp. 64-65\).](#)

## Section 8 Moderate Rehabilitation Program

Similar grounds for eviction: [24 C.F.R. § 882.511](#)

Termination and eviction process:

- Landlord notice with content and requirements
- State court eviction court case
- Defenses: similar to public housing

# HOME Investment Partnerships Program

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## 24 C.F.R. § 92.253

Owners may not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. An additional ground is for termination the completion of the tenancy period for transitional housing.

Termination and eviction process:

- Landlord notice with content and requirements
- State court eviction court case
- Defenses: similar to public housing

# Shelter Plus Care and Other Supportive Housing Programs

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Shelter Plus Care Housing Program - [24 C.F.R. § 582.320\(b\)](#).

Supportive Housing Program - [24 C.F.R. § 583.300\(i\)](#).

Continuum of Care Program - [24 C.F.R. § 578.91](#).

Housing Funded through Housing Opportunities for Persons with AIDS (HOPWA) - [24 C.F.R. §§ 574.310\(e\)\(2\)\(ii\)](#).

# Shelter Plus Care and Other Supportive Housing Programs

Shelter Plus Care recipients may terminate assistance to participants who violate program requirements or conditions of occupancy. But, the landlord must “exercise judgment and examine all extenuating circumstances” to ensure that assistance is terminated only in the most severe cases.

Supportive Housing recipients may terminate assistance to participants who violate program requirements. But, they are required to terminate assistance “only in the most severe cases.”

The Continuum of Care Program regulations require the provider to “exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant’s assistance is terminated only in the most severe cases.”

HOPWA recipients may terminate assistance to participants who violate program requirements or conditions of occupancy. But, the grantee “must ensure that supportive services are provided, so that a participant’s assistance is terminated only in the most severe cases.”



# Shelter Plus Care and Other Supportive Housing Programs

Termination and eviction process:

- Landlord notice with content and requirements
- Tenant appeal
- Landlord decision
- State court eviction court case
- Defenses: similar to public housing

26 U.S.C. A. § 42 (h)(6)(E)(ii)(I)

Rev. Rul. 2004-82, at A-5, 2004-35 I.R.B.350

Tax credit landlords may evict tenants and refuse to renew the lease at the end of the lease term only for good cause.

Since good cause is required, it is implicit that the notice of lease termination state specific grounds for the termination or lease non-renewal. The lease and state law will determine the required notice period, because neither the tax credit statute nor IRS regulations address this issue.

## Section 515 Rural Rental Housing Program

### 7 C.F.R. § 3560.159.

This program is regulated by the Rural Housing Service of the Department of Agriculture.

Owners may terminate the lease for criminal activity, alcohol abuse, material noncompliance with the lease or occupancy rules, and other good cause.

Material noncompliance is defined as including substantial or repeated violations of lease provisions or occupancy rules; nonpayment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or admission by the tenant or conviction for use attempted use, possession, manufacture, selling, or distribution of an illegal drug when such activity occurs on the apartment complex premises by the tenant, household member, the tenant's guest, or any other person under the tenant's control at the time of the activity.

## Section 515 Rural Rental Housing Program

Good cause is defined as including actions prohibited by state and local laws; actions by the tenant or household member resulting in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or actions by the tenant or household member which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities

Expiration of the lease term is not sufficient ground for lease termination and eviction.

## Section 515 Rural Rental Housing Program

Termination and eviction process:

- Landlord violation notice with content requirements
- Tenant time to cure
- Landlord termination notice with content requirements
- State court eviction court case
- Defenses: similar to public housing

# Criminal Activity Terminations and Evictions

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## Questions and Consultations

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