



Resources: Landlord Tenant Process

Essentials for Low Income Clients

VAP Pro Bono Collaborative ECHO – 11/30/23

1. Primary Types of HUD-Subsidized Housing:

- a. Public Housing
 - o 42 U.S.C. 1437; 24 CFR Parts 960, 965 & 966
 - o Public Housing Authority (PHA) owns and manages the housing unit, rent is based on tenant's income.
- b. Housing Choice Voucher (HCV) Program (Section 8)
 - o 42 U.S.C. 1437f; 24 CFR Part 982
 - o PHA issues rent voucher to resident, which resident uses to rent a unit owned and managed by a private landlord.
 - o Voucher follows the resident. With approval of PHA, resident may move to different unit owned by same or different landlord.
- c. HUD-subsidized multifamily programs
 - o Subsidies to multifamily housing complex owned and operated by private landlord or, sometimes, a PHA.
 - o Subsidy stays with housing complex – not portable
 - o Several different HUD programs (e.g., project-based section 8, project-based voucher, section 202 (elderly), section 811 (disabled)).
 - o In NM, mostly administered by MFA (exc. PBV).

2. Features Common to These Kinds of Subsidized Housing:

- a. Tenant's portion of rent is generally 30% of adjusted monthly income (the "Brooke Amendment")
- b. NO LATE FEES ON NON-RENT ITEMS
- c. Tenant must timely report changes to income or household composition, which could result in change to rent subsidy or unit size
- d. Annual inspections of unit
- e. Annual recertification of income and household composition

- f. Periodic criminal record checks
- g. No asset limitations.
- h. No eviction w/o cause (except m2m HCV Section 8)

3. Low-Income Housing Tax Credit (LIHTC):

- a. IRS grants tax credit to developer
- b. Developer sells credits to investors and uses proceeds to build or rehab a building
- c. In return, developer agrees to reserve a certain number of units to low income tenants.
- d. 15 to 30 year compliance period
- e. Key protections for tenants:
 - i. No eviction without cause, IRS Rev. Ruling 2004-82.
 - ii. Cannot discriminate against section 8 voucher holders
- f. Annual recertification
- g. Reduced rent, not based on individual tenant's income

4. USDA/RD Housing:

- a. 42 U.S.C. §1485 and 7 CFR 3560.1 *et seq.*
- b. Generally works like HUD multifamily

5. Supportive Housing Programs:

- a. Continuum of Care: HUD funded vouchers and additional supportive services through local nonprofits for chronically homeless individuals; governed by 24 CFR 578.51
- b. Community Connections: Bernalillo County Section 8 vouchers targeted at chronically homeless individuals with criminal records
- c. HOME Tenant-Based Rental Assistance (TBRA): rental assistance similar to a Section 8 voucher; governed by 24 CFR 92.209; requires 30 day notice for all violations

6. Determining the Type of Housing Subsidy:

- a. <http://www.preservationdatabase.org/>
- b. Lease
- c. Websites
- d. NM Mortgage Finance Authority (MFA)
- e. HUD
- f. USDA/RD office

7. Sources of Law:

- a. HUD- United States Housing Act, 42 U.S.C. 1437 et seq. & 24 CFR
- b. LIHTC
- c. Internal Revenue Code, 26 U.S.C. § 42 and regulations at 26 CFR 1.42
- d. Revenue Ruling 2004-82
- e. Recorded deeds and covenants
- f. USDA housing: 42 U.S.C. §1485 and 7 CFR 3560.1 et seq.
- g. HUD notices, handbooks and guidebooks (portal.hud.gov)
- h. Public Housing Occupancy Guidebook (2003)
- i. Housing Choice Voucher Program Guidebook 7420.10G (2001)
- j. HUD Handbook 4350.3 (Occupancy Requirements of Subsidized Multifamily Housing Programs) (2009)
- k. Violence Against Women Act (VAWA) 42 U.S.C. 1437c-1(a)(2) & (d)(13); 42 U.S.C. 1437d(c)(3), (l)(5) & (u); 42 U.S.C. 1437f(c)(9)(A)&(B). (d)(B)(ii), (f)(8)-(10) & (o)(7)(C) and 42 U.S.C. 13925
- l. PHA Plans
- m. Admissions and Continued Occupancy Plan (ACOP) -mostly governs public housing
- n. Administrative Plan - mostly governs section 8
- o. Uniform Owner Resident Relations Act (UORRA), NMSA 47-8-1 *et seq.*
- p. Mobile Home Park Act (MHPA), NMSA 47-10-1 *et seq.*
- q. Case law (state & federal)
- r. Housing Assistance Payment (HAP) Contract
- s. PHA's agreement with owner, contains a "Tenancy Addendum" that is enforceable by resident
- t. In case of conflict w/ lease, HAP contract controls
- u. Rental Agreement (Lease)
- v. Agency Rules

8. Additional Resources:

- a. National Housing Law Project, www.nhlp.org
- b. NHLP Treatise: HUD Housing Programs: Tenant's Rights (5th ed.) (the green book)
- c. <http://www.preservationdatabase.org/>
- d. Housing authority websites
- e. Housing Justice Network listserve
- f. HUD at <http://portal.hud.gov>