

# Lease Requirements

## Contents

1	Chapter Overview .....	4
2	Fair Housing and Accessibility.....	4
2.1	General Accessibility .....	4
2.2	Alcohol and Substance Abuse.....	6
3	Public Housing Lease Requirements.....	6
3.1	Parties, Dwelling Unit and Term.....	7
3.1.1	Relationship to State and Local Laws.....	7
3.1.2	Lease Renewal .....	8
3.1.3	Household Composition Changes.....	9
3.2	Signature Clause.....	9
3.3	Payments Due Under the Lease.....	9
3.3.1	Rent.....	10
3.3.2	Utilities .....	10
3.3.3	Security Deposit .....	10
3.3.4	Other Charges .....	10
3.4	Grievance Procedures.....	11
4	Redetermination of Rent and Family Composition.....	12
5	Tenant Rights to Use and Occupancy.....	12
5.1	Tenant Rights to Occupancy.....	13
5.2	Guest Policies.....	13
5.2.1	Unauthorized Occupants .....	13
5.3	Legal Profit-Making Activities .....	14
5.4	Pet Ownership Requirements.....	14

6	PHA Obligations.....	14
7	Tenant Obligations.....	16
8	Tenant Maintenance.....	17
9	Defects Hazardous to Life, Health, or Safety.....	17
10	Pre-Occupancy and Move-Out Inspections.....	18
11	Entry of Dwelling Unit During Tenancy.....	19
12	Notice Procedures.....	19
13	Termination of Tenancy and Eviction.....	19
13.1	Grounds for Termination.....	20
13.2	Considerations for Evictions for Criminal Activity or Alcohol Abuse.....	22
13.3	Lease Termination Notice.....	23
14	Prohibited Provisions.....	25
15	Lead-based Paint Provisions.....	26
15.1	Lead Disclosure Rule.....	27
15.2	Lead Safe Housing Rule.....	28
16	Optional Provisions: Reasonableness Test.....	28
17	Public Posting of Policies and Rules.....	29
18	Lease Modifications and Tenant Comment Requirements.....	30
	Sample PHA Practices.....	31

The Coronavirus Aid, Relief and Economic Security (CARES) Act (Public Law 116-136) provides the US Department of Housing and Urban Development (HUD) with broad authority to waive or establish alternative requirements for numerous statutory and regulatory requirements for the Public Housing program. Through [Public and Indian Housing \(PIH\) Notices](#), HUD established temporary waivers and alternative requirements to be used at the discretion of the PHA and which may provide for flexibilities from some of the statutory and regulatory requirements described in this document. HUD strongly encourages PHAs to utilize any and all waivers and alternative requirements as necessary to keep Public Housing programs operational to the extent practicable during the COVID-19 pandemic.

Please visit [https://www.hud.gov/coronavirus/public\\_housing\\_agencies](https://www.hud.gov/coronavirus/public_housing_agencies) for the latest COVID-19-related resources, including relevant PIH Notices.

# 1 Chapter Overview

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This chapter outlines the U.S. Department of Housing and Urban Development's (HUD) requirements for establishing a lease for families in the Public Housing program and provides guidance to Public Housing Authorities (PHAs) for initial and renewal terms, occupancy, and enforcement. The Public Housing lease establishes the legal relationship between the PHA and tenant(s). HUD stipulates required and prohibited provisions for public housing leases. In addition, PHAs are permitted to add other provisions that are reasonable and in accordance with state and federal law. It is important to ensure that the occupancy policies and dwelling leases are consistent. The PHA admission and continued occupancy policies (ACOP) define and establish policies related to annual income, rents, the waiting list, reexaminations, occupancy standards, transfers, rent adjustments, utilities, and other provisions that are enforced through the lease.

The Public Housing landlord-tenant relationship is governed by state and federal statute, common law, federal regulation, and the individual lease. The requirements for Public Housing leases are specified in 24 CFR Part 966 Subpart A: Dwelling Leases, Procedures, and Requirements.

## 2 Fair Housing and Accessibility

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Persons with disabilities must have access to Public Housing programs, services, or activities. PHAs have an obligation to meet applicable reasonable accommodations, effective communication, and accessibility requirements. Programs run by PHAs must operate in a manner that does not discriminate on the basis of race, color, national origin, religion, sex, familial status, age, or disability.

### 2.1 General Accessibility

For all aspects, a person with a disability must be provided reasonable accommodation to the extent necessary to provide the person with a disability with an equal opportunity to use and occupy a unit.<sup>1</sup> PHAs may not require persons with disabilities to pay extra fees or deposits or place any other special conditions or requirements as a condition of receiving a reasonable accommodation. A request for a reasonable accommodation may not be unreasonably denied or conditioned on payment of a fee or deposit or other terms and conditions, and a response may not be unreasonably delayed. Reasonable accommodations can include modifications of the rules, policies, practices, procedures, or physical modifications.

Generally, PHAs must provide the same lease terms, conditions and privileges to all tenants regardless of disability, except where an accommodation is necessary to ensure the family with a disability has full and equal enjoyment of the housing.<sup>2</sup> For example, a PHA cannot assume that all tenants with mobility impairments require modified lease provisions regarding the location where regular reexaminations are conducted. However, the PHA must modify provisions of a particular tenant's lease upon request, when the modifications are reasonable to accommodate his or her disability.<sup>3</sup> Further, the PHA must notify tenants that

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<sup>1</sup> 24 CFR § 966.7(a)

<sup>2</sup> 24 CFR § 8.33; 42 U.S.C. § 3604(f); 24 CFR § 100.65

<sup>3</sup> 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement 5/17/04

they may, at any time during their tenancy, request a reasonable accommodation for a household member with a disability to enable the tenant or household member to comply with the lease.<sup>4</sup> Additionally, PHA offices must be accessible to participants in accordance with federal civil rights laws and a PHA must make individually tailored arrangements for persons who are unable to come to the PHA's offices because of a disability.<sup>5</sup>

PHAs must ensure effective communication with persons with disabilities in all notifications and communications. Section 504 of the Rehabilitation Act and Americans with Disabilities Act (ADA) regulations require the PHA to ensure effective communication with applicants, participants, and members of the public and to furnish appropriate auxiliary aids and services where necessary to afford individuals with hearing and vision impairments an equal opportunity to access and participate in the program. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters. PHAs must provide, at their expense, auxiliary aids, and services for effective communication with their residents and applicants, as well as employees.

PHAs must also take reasonable steps to ensure meaningful access to their programs and activities to individuals with limited English proficiency (LEP). In addition, PHAs may never require the applicant to provide, or pay for, his/her own interpreter. Rather, it is always the PHA's responsibility to provide a qualified interpreter. However, the PHA's responsibility to provide a qualified interpreter does not preclude an individual's right to have a friend, relative, or advocate accompany him or her when communicating with the PHA. The PHA must not rely on an accompanying adult to facilitate communication unless it is an emergency, or where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. PHAs must not rely on minor children to interpret or facilitate communication.<sup>6</sup>

*Reasonable Accommodations: Lease Compliance*

*PHAs are required to provide reasonable accommodations to the extent necessary in order to enable a tenant with a disability to have full and equal opportunity to benefit from and participate in PHA housing programs and activities and to remain lease compliant. Another way to think about this requirement is to consider whether some reasonable accommodation, such as an exception to a rule or lease requirement, would make it possible for a tenant with a disability to be lease compliant when issues of lease violations arise. For example, a PHA requires tenants to keep a certain percentage of their units covered in carpet so as to not disturb their neighbors below them. A tenant with asthma or a tenant who uses a walker cannot have carpet because it may be a trip hazard or exacerbate their asthma. The PHA may be required to exempt these tenants from the lease requirement and allow them to have floors without carpet.*

<sup>4</sup> 24 CFR § 966.7(b)

<sup>5</sup> 24 CFR § 8.24(a); 28 CFR § 35.150(a)

<sup>6</sup> See HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) (72 FR 2732). LEP guidance and LEP information is available on HUD's website at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/promotingfh/lep-faq](https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/lep-faq).

## 2.2 Alcohol and Substance Abuse

A history of alcohol addiction is a covered disability. However, federal disability rights laws do not protect individuals whose current use of alcohol would constitute a direct threat to property or the safety of others. A PHA must engage in an individualized analysis to determine if it must provide a reasonable accommodation to an individual with a disability who allegedly is in violation of the PHA's criminal record policies, rules, or lease. The PHA may consider termination of tenancy for a person with any disability whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, unless the threat can be eliminated or significantly reduced with a reasonable accommodation.<sup>7</sup>

If a provider has knowledge of the individual's disability either because the individual has informed the provider or because the disability is obvious, the provider must engage in an individualized analysis of whether an accommodation to a criminal record policy must be provided. The PHA must grant the accommodation if it is reasonable, unless it would result in a fundamental alteration of the PHAs' programs or activities, is an undue financial and administrative burden, or the individual poses a direct threat.<sup>8</sup>

Federal disability rights laws likewise provide protections for individuals with substance addiction, while excluding from coverage individuals who have an addiction and who are currently engaged in the use of illegal drugs. Protections for an individual with an addiction to illegal drugs includes one who (1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated and is no longer engaging in such use; (2) is currently participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) is not a current user.<sup>9</sup> Thus, while individuals recovering from illegal drug use may need to be provided a reasonable accommodation, PHAs in accordance with aforementioned federal laws, must not provide current users of illegal drugs with a reasonable accommodation because of current drug use.

Individuals with a history of substance abuse may have criminal records related to their disability. A PHA must engage in an individualized analysis to determine if it must provide a reasonable accommodation to or exclude protections for an individual with a history of substance abuse who allegedly is in violation of the PHA's criminal record policies, rules, or lease. The PHA must grant the accommodation if it is reasonable, unless it would result in a fundamental alteration of the PHAs' programs or activities, is an undue financial and administrative burden, or the individual poses a direct threat.

## 3 Public Housing Lease Requirements

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The U.S. Housing Act of 1937 and HUD's implementing regulations at 24 CFR 966 require PHAs to utilize leases which outline the provisions applying to public housing tenancy.<sup>10</sup> This section of the guidebook outlines specific mandatory provisions.

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<sup>7</sup> 42 U.S.C. § 3604(f)(9)

<sup>8</sup> HUD Notice PIH 2011-31; 24 CFR § 966.7; 24 CFR part 100, 24 CFR part 8, 28 CFR part 35; HUD/DOJ Joint Statement 5/17/04

<sup>9</sup> See 24 CFR 100.201(a)(2) ("The term "physical or mental impairment" includes, but is not limited to drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism."); 42 U.S.C. § 12210; 29 U.S.C. § 794(d)

<sup>10</sup> 42 U.S.C. § 1437d(l); 24 CFR § 966.4

### 3.1 Parties, Dwelling Unit and Term

The PHA must execute a lease with each tenant.<sup>11</sup> The lease must identify the following:

- Name of the PHA (the landlord) and name of the head or co-heads who will be the tenant, consistent with state law.<sup>12</sup>
- Specific address of the unit leased, and any other information needed to identify the dwelling unit.<sup>13</sup> Many PHAs also indicate the unit's number and the tenant's account number in this section of the lease.
- The term of the initial lease and renewal.<sup>14</sup>
- A statement of what utilities, services, and equipment are to be supplied by the PHA without additional cost and which utilities and appliances are to be paid for by the tenant.<sup>15</sup>
- Smoke free rules.<sup>16</sup>
- Composition of the household as approved by the PHA. The lease must state that it is the responsibility of the tenant to promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The lease must also state that tenants must first obtain PHA approval to add any other family member as an occupant of the unit.<sup>17</sup>

The lease must reflect PHA policies on adding live-in aides and foster children as new household members to the unit.<sup>18</sup> PHA policies must state the circumstances that determine whether the PHA will accept or deny the request.<sup>19</sup> These circumstances may include some of the same circumstances used to determine whether to accept other proposed household members. For example, live-in aides can be subject to a criminal history check if the PHA performs criminal history checks on all other adult applicants. No provision of such policy may annul the obligation of the PHA to provide a reasonable accommodation, including with respect to the approval of live-in aides subject to the results of the PHA's screening process.<sup>20</sup> A PHA cannot cause an unreasonable delay in the approval of a live-in aide or the disruption to the level of service an individual with a disability needs in their home.

#### 3.1.1 Relationship to State and Local Laws

In addition to HUD's required lease provisions, PHAs are governed by state and local landlord-tenant laws. Lease provisions must satisfy HUD requirements and conform to the requirements of state and local laws. Although a number of states have based their landlord-tenant laws on either the Uniform Residential Landlord Tenant Act (URLTA)<sup>21</sup> or the Model Residential Landlord-Tenant Code, statutes can vary among states. Additionally, beyond the public housing program requirements, federal regulations prohibit discriminatory

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<sup>11</sup> 24 CFR § 966.4(a)(3)

<sup>12</sup> 24 CFR § 966.4(a)(1)(i)

<sup>13</sup> 24 CFR § 966.4(a)(1)(ii)

<sup>14</sup> 24 CFR § 966.4(a)(1)(iii)

<sup>15</sup> 24 CFR § 966.4(a)(1)(iv)

<sup>16</sup> 24 CFR § 965.655

<sup>17</sup> 24 CFR § 966.4(a)(1)(v)

<sup>18</sup> 24 CFR § 966.4(d)(3)(i)

<sup>19</sup> 24 CFR § 966.4(d)(3)(i)

<sup>20</sup> HUD Notice PIH 2011-31; 24 CFR § 966.4(d)(3); 24 CFR § 966.7; 24 CFR § 8.33

<sup>21</sup> Parts, if not all, of the model law adopted by many states that governs landlord and tenant interactions; created in 1972.

language and requirements, and some leases may contain further court-ordered wording to provide corrective action based on previous court settlements.<sup>22</sup>

Local or state laws may also determine how the PHA structures other aspects of the lease. For example, PHAs establish which household member(s) must sign the lease. Many PHAs require all adult members of the family accepted as occupants to execute the lease, because, in some states, lease enforcement actions may only be brought against individuals who have signed the lease.

### 3.1.2 Lease Renewal

Lease, admission, and occupancy policies must outline the initial and renewal terms for PHA tenants. Leases must be executed between the PHA and tenant(s) and allow for automatic renewals of the lease.<sup>23</sup>

#### 3.1.2.1 Renewal Lease Term

The initial lease term must be 12-months, and is automatically renewable for subsequent 12-month terms, except in instances where the family has not fulfilled the requirements for the community service and self-sufficiency requirement.<sup>24</sup> Month-to-month leases and month-to-month renewals are not permitted. In establishing the initial term, a PHA may extend the period a few days beyond 12-months to make the lease term extend to the end of a month.<sup>25</sup>

#### 3.1.2.2 Community Service and Self-Sufficiency Requirement

The public housing lease and ACOP must outline provisions for the community service and self-sufficiency requirement (CSSR).<sup>26</sup> PHAs must also establish policies and procedures on how the CSSR is implemented.<sup>27</sup> PHAs must review the family's compliance with the requirement and must verify such compliance annually at least 30 days prior to the end of the 12-month lease term.<sup>28</sup>

PHAs may not terminate the tenancy of a family within the term of the 12-month lease for noncompliance with the CSSR and PHAs must not reduce a lease term as a result of noncompliance.<sup>29</sup> Noncompliance is grounds for non-renewal of the lease and termination of tenancy only at the end of the 12-month lease.<sup>30</sup> If after the 12-month period, the PHA initiates termination of tenancy for a resident due to noncompliance of the requirement, PHAs must advise tenants of their right to request a grievance hearing.<sup>31</sup> If the PHA has failed to provide the policies and procedures that enact the service requirement, the PHA would not be able to enforce this particular lease provision.

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<sup>22</sup> 42 U.S.C. 3601 (also known as Title VIII of the Civil Rights Act of 1968); Discriminatory Conduct Under the Fair Housing Act, 24 CFR Part 100 et seq.

<sup>23</sup> 24 CFR § 966.4(a)(2)

<sup>24</sup> 24 CFR § 966.4(a)(2)(ii); 24 CFR part 960, subpart F

<sup>25</sup> 65 FR 16692, 16713

<sup>26</sup> 24 CFR part 960, subpart F

<sup>27</sup> 24 CFR § 960.605

<sup>28</sup> 24 CFR § 960.605(c)(3)

<sup>29</sup> 24 CFR § 960.603(b)

<sup>30</sup> 24 CFR § 960.603(b)

<sup>31</sup> 24 CFR § 960.607(b)(2)(iii)



### 3.1.3 Household Composition Changes

Tenants are required to wait for a PHA's approval before allowing additional persons, other than those entering the family by birth, adoption, or court-awarded custody, to move into the unit. Failure on the part of the tenant to comply with the household composition provision is a violation of the terms of the lease, for which a PHA may terminate the lease.<sup>32</sup>

It is recommended that PHAs have a reasonably prompt process to determine whether to allow occupancy of additional household members. The lease may also establish circumstances under which tenants can temporarily house proposed household members while requests are pending. However, guest policies cannot be established that circumvent eligibility requirements.

When making a determination regarding the occupancy of additional household members, PHAs must comply with civil rights laws including the obligation to make reasonable accommodations such as permitting live-in aides. PHAs cannot discriminate based on a protected status, such as race, color, sex, familial status, disability, or national origin. PHAs also must not deny a request solely because the proposed household member has been a victim of domestic violence, dating violence, sexual assault, or stalking.<sup>33</sup> Tenants have the right to a grievance hearing if a request for additional household members is denied.<sup>34</sup>

Examples of reasonable policies to determine whether to allow additional household members may include a process to evaluate whether the potential occupant:<sup>35</sup>

- Passes the PHA's screening criteria;
- Would contribute to family reunification (such as the return of a father who is an ex-offender);
- Would make a transfer to a larger sized unit necessary, and whether such units are available<sup>36</sup>; or
- Would be added in order to make a reasonable accommodation for an individual with a disability (e.g., in the case of a live-in aide).

## 3.2 Signature Clause

The lease must provide a signature clause for execution by the PHA and the tenant(s).<sup>37</sup> This is typically included at the end of the lease. PHAs may require all adult household members to execute the lease based on state or local laws.

## 3.3 Payments Due Under the Lease

The lease must include information about tenant rent, security deposits, payment due date, late fees, and utilities as applicable, as well as any other allowable PHA charges.<sup>38</sup>

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<sup>32</sup> 24 CFR § 966.4(l)(2)(i)(B)

<sup>33</sup> 24 CFR § 5.2005(b). Victims are not limited to women and this protection extends to victims of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation. 24 CFR § 5.2005(b)

<sup>34</sup> 24 CFR § 966.51(a)(1); 24 CFR § 966.53(a)

<sup>35</sup> 24 CFR § 966.4(d)(3)(i)

<sup>36</sup> 24 CFR § 966.4(d)(3)(i)

<sup>37</sup> 24 CFR § 966.4(p)

<sup>38</sup> 24 CFR § 966.4(b)

### 3.3.1 Rent

The lease must specify the amount of rent due, both for a full month and the pro-rated amount for the initial or final partial month (if applicable). The PHA must also include a statement that the amount of the tenant rent is subject to change in accordance with HUD requirements.<sup>39</sup> The PHA may indicate in the lease whether a tenant has opted to pay a flat rent, an income-based rent, or an alternative rent. Tenants have the right to choose the rent type they prefer annually.<sup>40</sup>

### 3.3.2 Utilities

The lease must also specify what utilities, services, and equipment the PHA will provide at no cost to the tenant, and what utilities and appliances are to be paid for by the tenant.<sup>41</sup> For tenants paying an income-based rent, if the tenant pays the PHA for individually-metered utilities or pays his or her utilities directly to the utility supplier, the PHA must subtract a utility allowance from the Total Tenant Payment (TTP) to determine the amount of tenant rent. The PHA must note the amount of the allowance in the lease.<sup>42</sup> Finally, if the tenant's income-based rent is less than the utility allowance, the lease must list the amount of the utility reimbursement.<sup>43</sup> Please refer to the Utilities Chapter for more detailed information on this topic.

### 3.3.3 Security Deposit

PHAs may choose whether to require a security deposit. This deposit cannot exceed one month's rent, or a reasonable fixed amount set by the PHA. If the PHA requires a security deposit, it must be listed in the lease. PHAs may enact policies to allow tenants to gradually accumulate security deposits. Lastly, subject to local and state law, the interest earned on security deposits must be returned to tenants when they vacate the unit or, if there is money owed by the tenant to the PHA, may be used for tenant services or activities.<sup>44</sup>

### 3.3.4 Other Charges

All other optional PHA charges must be listed in the lease. Allowable charges include:

- Penalties for late payments.<sup>45</sup>
- Charges for excess consumption of PHA-furnished utilities. These charges are only allowable if the excess consumption can be determined by an individual utility meter or result from the use of major tenant-supplied appliances. The lease must state how these charges will be determined and the amounts that will be charged.<sup>46</sup>
- Charges for maintenance and repair beyond normal wear and tear. The lease must state how these charges will be determined. These charges may include those for damage to units, common areas, or grounds caused by tenant action or neglect. Typically, common maintenance charges (e.g., broken windows, lock replacements) are listed on a schedule of charges in addition to rent. If this is done, the

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<sup>39</sup> 24 CFR § 966.4(b)(1)(ii)

<sup>40</sup> 24 CFR § 960.253

<sup>41</sup> 24 CFR § 966.4(a)(1)(iv)

<sup>42</sup> 24 CFR § 965.502(c)

<sup>43</sup> 24 CFR § 960.253(b)(4); 24 CFR § 960.253(c)(3); Tenants paying flat rents do not receive utility reimbursements. Rather, a PHA must take into account any tenant-paid utilities in establishing the amount of the flat rent.

<sup>44</sup> 24 CFR § 966.4(b)(5)

<sup>45</sup> 24 CFR § 966.4(b)(3)

<sup>46</sup> 24 CFR § 965.506; 24 CFR § 966.4(b)(2)

schedule of charges must be referenced in the lease or added to the lease as an addendum.<sup>47</sup> A schedule of repair charges may include a statement that work not covered on the schedule will be charged to the tenant, based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

PHAs cannot charge individuals with disabilities for any damage caused by the disability-related use of their assistive devices. For example, an individual cannot be required to put down a larger security deposit because their wheelchair may cause additional damage to walls, or a person cannot be charged a pet deposit or fee for an assistance animal.

The lease must specify that such charges are not due until two weeks after the PHA gives written notice of the charges.<sup>48</sup> The notice of these charges is an adverse action; therefore, the written notice provided must meet the regulatory notification requirements including stating the specific grounds for the adverse action and stating that the tenant has a right to request a grievance hearing.<sup>49</sup>

### 3.3.4.1 Delinquent Charges

PHAs may not write their leases in such a way that if delinquent non-rent charges (such as charges for late fees, charges for repairs due to tenant-caused damage, or other fees) are not paid on time, they are deemed delinquent rent. These charges must not be classified as rent because they would result in the family rent payment exceeding the income-based percentage allowed by statute.<sup>50</sup> For this reason, if non-rent charges are called delinquent rent, they cannot legally be collected.

As notice requirements are generally shorter for nonpayment of rent (14 days) than for other forms of lease termination, PHAs must ensure that they provide the proper amount of notice (not to exceed 30 days) if they intend to terminate a family based on delinquent charges other than rent.<sup>51</sup>

In addition, many state statutes draw a distinction between lease termination and eviction actions for nonpayment of rent and lease termination actions for other good cause. When evicting for failure to pay non-rent charges, PHAs must follow state laws (if any) that apply to eviction for good cause.<sup>52</sup>

## 3.4 Grievance Procedures

The lease must include, or incorporate by reference, the PHA's grievance procedure. The lease must state that any disputes between the PHA and the tenant about the obligations of the tenant or the PHA must be resolved in accordance with the PHA's grievance procedure. The grievance procedure must conform to HUD requirements.<sup>53</sup>

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<sup>47</sup> 24 CFR § 966.4(b)(2)

<sup>48</sup> 24 CFR § 966.4(b)(4)

<sup>49</sup> 24 CFR § 966.4(e)(8); 24 CFR § 966.4(b)(4)

<sup>50</sup> 42 U.S.C. Section 1437a

<sup>51</sup> 24 CFR § 966.4(l)(3)

<sup>52</sup> 24 CFR § 966.4(l)(3)(i)(C)

<sup>53</sup> 24 CFR § 966.52(b)

## 4 Redetermination of Rent and Family Composition

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This section of the lease describes the PHA's policy on annual and interim reexaminations of rent and family composition.<sup>54</sup> Rent redetermination policies in the lease must align with those established in the PHA's ACOP and may include statements about:

- When and how often regular rental reexaminations will occur;
- The basis for determining income-based rent and the choice of rent (flat or income-based);<sup>55</sup>
- When tenants are required to report changes in income and the impact on tenant rents between regular reexaminations.

Additionally, the lease must clearly state:

- That the tenant agrees to provide timely and accurate information about his/her income and family composition during and in between reexaminations;<sup>56</sup> and
- That the tenant agrees to transfer to an appropriately sized unit based on family composition upon appropriate notice by the PHA.<sup>57</sup>

The PHA's ACOP and lease may specify that families may be transferred to an appropriately sized unit between annual reexaminations, or that transfers will coincide with annual reexamination dates. PHAs are obligated to prioritize offers of designated sensory and mobility units to individuals with disabilities who need such features.<sup>58</sup> In order to ensure individuals with disabilities are matched with designated accessible units, PHAs' leases may include provisions to ensure accessible units are offered to individuals who need the features as soon as they become available. To ensure individuals with disabilities are matched with the limited number of designated accessible mobility and sensory units, PHAs are obligated to follow the procedures found in 24 CFR § 8.27.

Finally, this section of the lease must also note that the family is entitled to an explanation of the PHA's determination of rent or the family's obligation to transfer, and that the tenant may request a hearing under the PHA's grievance procedure if he or she disagrees with the PHA's determination or proposed course of action. The tenant has a right to request a grievance hearing regardless of whether the tenant's rent is decreased or increased.<sup>59</sup>

## 5 Tenant Rights to Use and Occupancy

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This section of the lease includes required and discretionary policies about the following:

- The tenant's right to occupancy

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<sup>54</sup> 24 CFR § 966.4(c)

<sup>55</sup> 24 CFR §§966.4(b)(1); 24 CFR § 5.628; 24 CFR § 960.253; A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents.

<sup>56</sup> 24 CFR § 966.4(c)(2); 24 CFR § 960.257(b)

<sup>57</sup> 24 CFR § 966.4(c)(3)

<sup>58</sup> 24 CFR § 8.27(a)

<sup>59</sup> 24 CFR § 966.4(c)(4)

- Guest policies
- Legal profit-making activity policies
- Pet ownership

## 5.1 Tenant Rights to Occupancy

The lease must state that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit, including reasonable visits by their guests.<sup>60</sup> The term “guest” means a person temporarily staying in the leased unit with the consent of the tenant or other member of the household with authority to consent on behalf of the tenant.<sup>61</sup>

## 5.2 Guest Policies

PHAs may establish reasonable lease provisions pertaining to guests<sup>62</sup>, such as:

- The number of guests permitted at one time;
- The maximum number of times a guest may visit during the year;
- The length of time a guest is permitted to stay in the unit; and
- The procedure tenants are to use if they want a guest to stay longer than what is normally permitted under the lease.

PHAs are encouraged to adopt reasonable provisions regarding guests as part of their leases based on local experience and practice. It is important to coordinate guest policies with policies regarding changes to family composition and removal of unauthorized occupants. PHAs must also provide modifications to guest policies as reasonable accommodations where necessary to ensure families with disabilities have full and equal opportunity to use and enjoy their dwelling.<sup>63</sup>

### 5.2.1 Unauthorized Occupants

A person residing in a unit who is not included on the lease in the composition of the household as approved by the PHA, or who is not a guest, is considered an unauthorized occupant.<sup>64</sup> Some examples of unauthorized occupants include:

- Persons who have joined the household without undergoing screening or whom the PHA did not approve.
- Persons who stay in the unit beyond the authorized period established by the PHA for guests.
- A person who came to the unit as an extended guest because the resident needed support, for example, after a medical procedure, but continued to stay in the unit beyond the time needed to assist the non-disabled resident. If the family member is considered disabled, they may qualify for reasonable accommodations including the authorized admittance of a live-in-aide upon request.

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<sup>60</sup> 24 CFR § 966.4(d)(1)

<sup>61</sup> 24 CFR § 5.100

<sup>62</sup> 24 CFR § 5.100

<sup>63</sup> 24 CFR § 966.4(d)(1)

<sup>64</sup> 24 CFR § 966.4(a)(1)(v)

PHAs may also exercise discretion by permitting longer term stays than usual for guests. For example, if a tenant has a family member in the military who is stationed outside of the United States and is no longer on the lease, the tenant may request and the PHA may grant permission for the family member to visit longer than usual.

### 5.3 Legal Profit-Making Activities

This section of the lease must state whether and how the PHA allows tenants to carry out legal profit-making activities in their units. Regulations permit legal profit-making activities that are incidental to the primary use of the unit as a residence with PHA consent.<sup>65</sup> PHAs are encouraged to ensure the lease incorporates the PHA's policies on obtaining permission for these activities and states where tenants may review the PHA's policy on the subject.

### 5.4 Pet Ownership Requirements

The lease terms relating to rights of use and occupancy must be consistent with regulations and PHA policies concerning pets. PHAs must enact pet ownership rules for developments designated for occupancy by the elderly or persons with disabilities and pet ownership policies for general occupancy developments consistent with the requirements set forth in the Pet Ownership chapter. It is also prudent to ensure the lease supports enforcement of those requirements.<sup>66</sup> If the PHA has established pet ownership rules in public housing designated for the elderly and/or disabled, the lease must include the following specific pet provisions:

- PHA established pet rules are incorporated into the lease;
- Tenants are permitted to keep common household pets in their dwelling units, subject to pet rules;
- The tenant must agree to comply with the PHA's pet rules; and
- A violation of the PHA's pet rules may be grounds for removal of the pet, or termination of the pet owner's tenancy, or both.<sup>67</sup>

If a PHA has not established pet rules, leases of tenants in public housing designated for the elderly and/or disabled must not prohibit owning or keeping common household pets, and must state that keeping or owning pets will be subject to state and local laws and the other PHA and tenant obligations covered under the lease.<sup>68</sup> PHAs may not apply or enforce any pet ownership rules against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities.<sup>69</sup>

## 6 PHA Obligations

The lease must state the PHA's responsibilities, confirming its commitment to provide housing that is decent, safe, and sanitary. At minimum, the PHA is obligated to:<sup>70</sup>

- Maintain the dwelling unit and the property in decent, safe, and sanitary condition;

<sup>65</sup> 24 CFR § 966.4(d)(2)

<sup>66</sup> 24 CFR § 5.315(b)

<sup>67</sup> 24 CFR § 5.321

<sup>68</sup> 24 CFR § 5.321

<sup>69</sup> 24 CFR § 5.303; See Notice FHEO-2020-01 (The Assistance Animals Notice).

<sup>70</sup> 24 CFR § 966.4(a) and (e)

- Comply with the requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety<sup>71</sup> and to make necessary repairs to the dwelling unit;
- Keep the project building, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;
- Maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities, and appliances, including elevators, supplied or required to be supplied by the PHA;
- Provide and maintain appropriate receptacles and facilities (except for an individual tenant's or family's container for their exclusive use) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant;
- Supply running water and reasonable amounts of hot water and a reasonable amount of heat at appropriate times of the year (according to local custom and usage) except where the building that includes the dwelling unit is not required by law to be equipped for supplying the aforementioned water or heat or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection;
- Ensure that the lease, lease addendum, or tenant addendum describes specific protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking. This includes incorporating appropriate regulatory definitions, provisions regarding documenting Violence Against Women Act (VAWA) status, and describing the remedies available to victims of domestic violence, dating violence, sexual assault, or stalking as applicable to the Public Housing program, including emergency transfers; and
- Notify the tenants of the specific grounds for any proposed adverse action by the PHA. Adverse actions include but are not limited to a proposed lease termination, transfer of the tenant to another unit, change in the amount of rent, or imposition of charges for maintenance and repair, or for excess consumption of utilities.
  - When an adverse action is proposed, the notice of the proposed adverse action must inform the tenant of his/her right to request a grievance hearing according to the PHA's grievance procedures.
  - In the case of a lease termination, HUD considers a notice of lease termination that complies with HUD regulations<sup>72</sup> to be an adequate notice of proposed adverse action.
  - In the case of a proposed adverse action other than a proposed lease termination, the PHA must not take the proposed action until the time to request a grievance hearing has expired, or (if the hearing was timely requested) the grievance process has been completed.
  - In the case of lease bifurcations as a result of domestic violence, dating violence, sexual assault, or stalking, the PHA must implement this according to the procedures prescribed by federal, state, or local law for termination of leases. In compliance with HUD's final rule implementing VAWA, where the individual who was evicted or whom assistance was terminated was the lease holder, the PHA must provide any remaining tenant or tenants reasonable time to establish eligibility for the same covered housing program, or find alternative housing. PHAs may not initiate eviction procedures until 30 days after the lease bifurcation.<sup>73</sup>

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<sup>71</sup> This includes the use of carbon monoxide detectors as required by state or local law. See Notice PIH 2019-06: *Carbon Monoxide Detectors in HUD-Assisted Housing*.

<sup>72</sup> 24 CFR § 966.4(l)(3)

<sup>73</sup> 24 CFR § 5.2009. Lease bifurcation is a means by which the PHA may remove a household member or lawful occupant from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such a member of the lease who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual without evicting or penalizing the victim of such violence who is a tenant or lawful occupant. See also 24 CFR § 5.506, which provides certain requirements for mixed-status families.

- The PHA is obligated to fill accessible units with individuals who need accessible features. If the applicant or resident is in an accessible unit and the applicant or resident does not have a disability requiring the accessibility features of the unit, the PHA may require the applicant via a lease term, to move to a non-accessible unit when one becomes available.

## 7 Tenant Obligations

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The lease must also state the tenant's responsibilities. At a minimum, tenants:<sup>74</sup>

- Are prohibited from assigning the lease or subletting the dwelling unit;
- Are prohibited from providing accommodation to boarders or lodgers, for example through short-term rentals. Boarders and lodgers are not to be confused with guests and are not permitted to occupy a unit or move in with any family occupying a unit;
- Must use the dwelling unit solely as a private dwelling for the tenant and the tenant's household, as identified in the lease, and not to use or permit its use for any other purpose (engaging in legal profit making activities in a unit in accordance with PHA policy would not violate this tenant obligation);
- Must abide by necessary and reasonable regulations established by the PHA for the benefit and well-being of the housing project and tenants (these regulations shall be posted in a conspicuous manner in the project office and incorporated by reference in the residential lease);
- Must comply with the requirements of applicable state and local building or housing codes imposed on tenants that materially affect health and safety;
- Must keep the dwelling unit and other such areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;
- Must dispose of all ashes, garbage, trash, and other waste from the dwelling unit in a sanitary and safe manner;
- Must use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appurtenances, including elevators;
- Are prohibited from destroying, defacing, damaging, or removing any part of the dwelling unit or project. This prohibition also applies to all household members and guests of the tenant;
- Must pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, project buildings, facilities, or common areas caused by the tenant, household members, or guests;
- Must act and cause household members or guests to act, in a manner that will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the PHA's projects in a decent, safe, and sanitary condition;
- Must ensure that no tenant, member of the tenant's household, or guest engages in:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; or
  - Any drug-related criminal activity on or off the premises; or
  - Any smoking of prohibited tobacco products in restricted areas or in other outdoor areas designated as smoke-free by the PHA.
- Must ensure that no member of the household engages in abuse or pattern of abuse of alcohol that affects the health, safety, or the right to peaceful enjoyment of the premises by other residents.

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<sup>74</sup> 24 CFR § 966.4(f)



## 8 Tenant Maintenance

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The lease may provide that tenants must perform seasonal maintenance or other maintenance tasks that are customary for dwelling units of a similar design and construction, provided that such provision is included in the lease in good faith. PHAs are required to exempt tenants who are unable to perform such tasks because of age or disability and are required to identify and provide services to ensure such maintenance occurs.<sup>75</sup> The lease must state which, if any, maintenance tasks are to be performed by the tenant. These tasks must be required of tenants because they are customary, and not for the purpose of evading PHA obligations or shifting PHA maintenance responsibilities.<sup>76</sup> Further, PHAs may not construe this option as authorization to charge tenants for lawn care or other maintenance related work as maintenance fees (except those beyond normal wear and tear) are generally not an allowable charge.<sup>77</sup>

The exception for basic maintenance fees may pertain to tenants of scattered site properties. If PHAs have established a lease provision requiring non-disabled tenants at scattered sites to perform seasonal maintenance tasks (such as mowing the lawn of their single family dwelling) and a tenant is unwilling or unable to perform the task, PHAs can charge non-disabled tenants a reasonable fee for the PHA to perform the task. The PHA must make clear in the lease that this fee is separate and apart from rent, and tenants who are exempt because of age or disability must not be charged.

PHAs cannot shift their maintenance responsibilities to tenants; rather PHAs are allowed to require tenants to perform tasks (e.g., raking leaves, mowing lawn, shoveling snow), only if it is customary for dwellings of similar design and construction to perform these tasks. PHAs cannot require tenants to perform maintenance if the tenant is a person with a disability that prevents the person from performing such tasks. The PHA must make a reasonable accommodation to exempt the tenant from the requirement or provide the maintenance service to the tenant and identify other ways of providing such maintenance. For example, it may be customary in the area for renters of garden-style apartments to rake leaves, but not renters of a mid-size multifamily apartment building. In this case, public housing tenants of garden-style apartments, but not those of mid-size multifamily apartment buildings could be required to rake leaves. As another example, if it is customary for only landlords and managers to salt walkways in a specific area, public housing tenants in the area would not be required to salt walkways.

## 9 Defects Hazardous to Life, Health, or Safety

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The lease must include the rights and obligations of the tenant and PHA if the dwelling unit is damaged, to the extent that the conditions created are hazardous to the life, health, or safety of the occupants.<sup>78</sup> Specifically, the lease must indicate that in these situations:<sup>79</sup>

- The tenant must immediately notify PHA management of the damage;
- The PHA must repair these conditions within a reasonable time (if the tenant caused the defect, the tenant may be charged for the cost of the repairs);

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<sup>75</sup> 24 CFR § 966.4(g)

<sup>76</sup> 24 CFR § 966.4(g)

<sup>77</sup> 24 CFR § 966.4(b)

<sup>78</sup> 24 CFR § 966.4(h)

<sup>79</sup> 24 CFR § 966.4(h)

- If repairs cannot be made within a reasonable time (for example, because a part needs to be ordered), the PHA must offer standard alternative accommodations,<sup>80</sup> if available [Note that even if the tenant caused the damage and termination is pending as a result, he or she must be offered replacement housing if necessary until termination and a chance to dispute the termination]; and
- If the PHA can neither repair the damage in a reasonable time nor offer alternative housing, the PHA must abate the rent for the unit in proportion to the seriousness of the damage and loss in value as a dwelling. The PHA must not offer rent abatement if the tenant has refused alternative housing or the damage was caused by the tenant, household, or guests. PHAs are advised to be aware of state or local law abatement remedies that may apply in these situations.<sup>81</sup>
- If the dwelling unit damage creates conditions that might expose the residents to lead-based paint hazards, PHAs must take additional steps to ensure their safety while repairs are being made. For example, residents must be barred from the worksite and temporarily relocated in some situations. Residents' personal belongings must also be protected, and the worksite must be specially cleaned after the work is complete.<sup>82</sup>
- Additionally, if a PHA relocates the family due to any type of damage (including non-lead-based paint hazards), and lead-based paint hazards were being controlled in the family's unit prior to the damage, the temporary unit must be free of lead-based paint hazards.<sup>83</sup>

## 10 Pre-Occupancy and Move-Out Inspections

The lease must provide that the PHA will inspect a unit prior to move-in and at move-out. First, the PHA and the tenant or tenant's representative must inspect the dwelling unit prior to the tenant's occupancy.<sup>84</sup> Many PHAs conduct the preoccupancy inspection using HUD's Uniform Physical Condition Standards (UPCS). PHAs may develop their own form to document the condition of the dwelling unit prior to leasing, using this standard as a guide. It is recommended that any defects discovered during the move-in inspection be corrected within 30 days of move-in. Applicants may refuse a unit that does not meet the UPCS definition of decent, safe, and sanitary<sup>85</sup> (e.g., the unit is not ready for occupancy due to deficiencies), which means they do not lose their position on the waiting list.

After the pre-occupancy inspection is completed, the PHA must give the tenant a written statement (e.g., a completed inspection form) of the condition of the dwelling unit and its equipment. The applicant must review and, if accepted, sign the statement, and a copy must be placed in the tenant file.<sup>86</sup> Assuming the unit is accepted by the applicant, the pre-occupancy inspection form provides a written record to compare the unit's condition at the beginning of occupancy, during occupancy, and at the end of tenancy.

When the tenant vacates the unit, the PHA must inspect the unit again. The tenant must be permitted to participate in the move-out inspection if he or she wishes unless the tenant has already moved out without notifying the PHA. PHAs are encouraged to provide notification of the move-out inspection in writing. The difference between the condition of the unit at move-in and at move-out establishes the basis for any charges

<sup>80</sup> 24 CFR § 966.4(h)(3)

<sup>81</sup> 24 CFR § 966.4(h)(4)

<sup>82</sup> 24 CFR § 35.1345(a)(1); 24 CFR § 35.1345(a)(2); 24 CFR § 35.1345(a)(3) and 24 CFR § 35.1340

<sup>83</sup> 24 CFR § 35.1345(a)(2)

<sup>84</sup> 24 CFR § 966.4(i)

<sup>85</sup> 24 CFR § 920.21

<sup>86</sup> 24 CFR § 966.4(i)

against the security deposit if the work needed exceeds that of normal wear and tear. The PHA must give the tenant a statement of these charges if any repairs are made.<sup>87</sup>

## 11 Entry of Dwelling Unit During Tenancy

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The lease specifies the circumstances under which PHAs may enter a dwelling unit during a tenant's occupancy. Except for emergencies, PHAs must also give tenants a notice specifying the purpose for requesting entry into a unit at least two days prior. After giving notice, PHAs are expressly permitted to enter tenants' units to:

- Perform routine inspections and maintenance (this includes inspections conducted by HUD staff, HUD contract inspectors and PHA staff);
- Make improvements or repairs; and
- Show the unit for re-leasing.<sup>88</sup>

If no adult members of a tenant's household are at home when the PHA staff enters a unit, staff must leave a notification for the tenant about the date, time, and purpose of the entry prior to leaving the unit.<sup>89</sup>

The PHA may enter a unit at any time without notice if there is reasonable cause to believe an emergency exists, such as, if the unit smells of gas or there is water running out from under the door. It is important to note that this section of the lease does not authorize PHAs or police departments to enter units for security purposes unless for example, the police department has a search warrant or has other legal authority to enter absent tenant's consent.

## 12 Notice Procedures

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The lease must specify the methods to be used for PHA and tenant communications. Typically, mail sent prepaid by first class is acceptable, although many PHAs use certified mail for certain communications in order to have a receipt to demonstrate proof of attempted service. In addition, if permitted under State law, PHAs may post notices on tenants' front doors, or deliver written notices in person to an adult household member.<sup>90</sup>

## 13 Termination of Tenancy and Eviction

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The lease must describe the grounds for termination, as well as the procedures used by the PHA and the tenant to terminate tenancy.<sup>91</sup> While HUD regulations do not specify a tenant's obligations upon early lease termination by the tenant, state and local landlord-tenant laws apply and, generally, are incorporated into the lease. Depending on the reason for the tenant terminating the lease, some form of damages (i.e., early

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<sup>87</sup> 24 CFR § 966.4(i)

<sup>88</sup> 24 CFR § 966.4(j)(1)

<sup>89</sup> 24 CFR § 966.4(j)(3)

<sup>90</sup> 24 CFR § 966.4(k)

<sup>91</sup> 24 CFR § 966.4(l)(1)

termination fees) may be applicable as defined in the lease. Some states may require landlords to re-rent the unit as soon as possible rather than hold the tenant to the terms of the lease and collect rent from them while the unit passively sits vacant through the end of the lease term. The PHA may not have a general policy of holding tenants liable for rent through the remainder of the lease term if the tenant terminates before the end of the lease term and provides notice as required under the lease.

## 13.1 Grounds for Termination

The lease must indicate that PHAs may terminate tenancy only for:

- Serious or repeated violations of material terms of the lease, such as the following:
  - Failure to make payments due under the lease;<sup>92</sup> or
  - Failure to fulfill household obligations, as described in tenant obligations.<sup>93</sup>
- Being over the income limits for the program:<sup>94</sup>
  - Based on PHA policy, families exceeding the over-income limit for 24 consecutive months will be subject to either paying an alternative rent or termination of tenancy from Public Housing.
  - If the family is subject to termination, the PHA has up to six months after the 24-month over-income period to terminate tenancy.
- Other good cause, which includes but is not limited to the following:
  - Discovery after admission of facts that make the tenant ineligible;<sup>95</sup>
  - Discovery of material, false statements, or fraud by the tenant in connection with an application for assistance or with re-examination of income;<sup>96</sup>
- Failure to accept the PHA's offer of a lease revision to an existing lease. In this situation, the revision must be on a form adopted by the PHA in accordance with HUD regulation, the PHA must provide written notice of the offer of lease revision at least 60 calendar days before the revision is scheduled to take effect, and the offer must specify a reasonable time limit within that period for the family to accept the revision;<sup>97</sup>
- Criminal activity or alcohol abuse:
  - The PHA must immediately initiate the lease termination process to terminate tenancy if the PHA determines that any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing.<sup>98</sup>
  - The lease must state that drug-related criminal activity engaged in, on or off the premises by any tenant, member of the tenant's household, or current guest is grounds for the PHA to take action to terminate tenancy. The lease must also state that drug-related criminal activity engaged in on the premises by any other person under the tenant's control is grounds for the PHA to terminate tenancy.<sup>99</sup>
  - Terminations of tenancy/evictions required by PHAs as a result of criminal activity or alcohol abuse must not be based solely on arrest records. The lease must state that the PHA may evict a family when the PHA determines that a household member is illegally using a drug or when a

<sup>92</sup> 24 CFR § 966.4(l)(2)(i)(A)

<sup>93</sup> 24 CFR § 966.4(l)(2)(i)(B)

<sup>94</sup> 24 CFR § 966.4(l)(2)(ii); 24 CFR §960.261; Notice PIH 2019-11 (HA)

<sup>95</sup> 24 CFR § 966.4(l)(2)(iii)(B)

<sup>96</sup> 24 CFR § 966.4(l)(2)(iii)(C)

<sup>97</sup> 24 CFR § 966.4(l)(2)(iii)(E)

<sup>98</sup> 24 CFR § 966.4(l)(5)(i)(A)

<sup>99</sup> 66 FR 28776, 28781 (May 24, 2001); 24 CFR § 966.4(l)(5)(i)(B)

- pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.<sup>100</sup>
- The lease must state that criminal activity by a tenant, household member, current 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 PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy pursuant to Federal statute and regulations .<sup>101</sup>
  - The PHA may terminate the lease if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a felony or attempted felony (or, in New Jersey, a high misdemeanor) or violating a condition of probation or parole imposed under state or federal law.<sup>102</sup>
  - PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has:
    - Engaged in alcohol abuse or a pattern of alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.
    - Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.<sup>103</sup>
  - Required lifetime participation in a state sex offender registration program:
    - If an individual/applicant was subject to a lifetime sex offender registration requirement, but received housing assistance in error under the Public Housing program, the PHA must take immediate action to terminate the tenancy of the sex offender, as the individual/applicant is ineligible and would not have been provided assistance but for an oversight by the PHA or false representation by the applicant.<sup>104</sup>
      - When initiating the process for termination of tenancy for individuals who commit sexual crimes, note that current HUD regulations at 24 CFR §960.204(a)(4) only require that persons subject to lifetime registration requirements under a state sex offender registration program be banned from admission; not be terminated from tenancy.
      - A PHA may pursue termination of a sex offender (lifetime or otherwise) under current Public Housing regulations which allow for terminations based on violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

Lease provisions regarding grounds for termination must also address the circumstances of domestic violence, including:

- Prohibiting construing incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking to be a serious or repeated violation of the lease or good cause for termination of the tenancy, occupancy rights of, or assistance to the victim or the threatened victim of domestic violence, dating violence, sexual assault, or stalking;<sup>105</sup> and

<sup>100</sup> 24 CFR § 966.4(l)(5)(i)(B)

<sup>101</sup> 24 CFR § 966.4(l)(5)(ii)(A); 66 FR 28776 (May 24, 2001)

<sup>102</sup> 24 CFR § 966.4(l)(5)(ii)(B)

<sup>103</sup> 24 CFR § 966.4(l)(5)(vi)

<sup>104</sup> 24 CFR § 966.4(l)(2)(iii)(B); Notice PIH 2012-28; 42 U.S.C. § 13663(a)

<sup>105</sup> 24 CFR § 5.2005(c)(1)

- Prohibiting termination or denial of tenancy, occupancy rights, or assistance to the victim because of criminal activities directly related to domestic violence, dating violence, sexual assault, or stalking engaged in by a member of the tenant’s household, or any guest, or other person under the tenant’s control, if the tenant or affiliated individual of the tenant is the victim or threatened victim.<sup>106</sup>

An applicant or tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.<sup>107</sup>

## 13.2 Considerations for Evictions for Criminal Activity or Alcohol Abuse

Additional discretionary policies and requirements PHAs must consider when evicting persons for criminal activity or alcohol abuse are listed below.

- When deciding if a family will be evicted for criminal activity (except for in the case of the manufacture or production of methamphetamine on federally assisted housing, which requires taking immediate action to terminate tenancy),<sup>108</sup> PHAs may consider all the circumstances of a case, including the seriousness of the offense, whether family members knew<sup>109</sup> or participated in the offense, the effect the eviction will have on family members not involved in criminal activity, and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.<sup>110</sup>
- The PHA has the discretion to require a tenant to exclude a household member as a condition of continuing to remain in the unit, if that member has participated in or is responsible for an action or failure to act that warrants a termination.<sup>111</sup>
- A tenant may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if the criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.<sup>112</sup>
- The PHA may require a member who faces termination for illegal drug use or alcohol abuse to demonstrate that he or she has been rehabilitated. The PHA may require the tenant to submit evidence of the person’s current participation in or successful completion of a supervised drug or alcohol rehabilitation program or evidence of otherwise having been successfully rehabilitated.<sup>113</sup>
- Marijuana—whether medical or otherwise—is a controlled substance and subject to federal restrictions in public housing.

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<sup>106</sup> 24 CFR § 5.2005(b)(2)

<sup>107</sup> 24 CFR § 5.2005(b)

<sup>108</sup> 24 CFR § 966.4(l)(5)(i)(A)

<sup>109</sup> In the case, Department of Housing and Urban Development v. Rucker et al., the Supreme Court of the United States held that 42 U.S.C. § 1437d(l)(6) “unambiguously requires lease terms that give local PHAs the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug related activity, regardless of whether the resident knew or should have known of the drug-related activity.” 535 U.S. 125 (2002)

<sup>110</sup> 24 CFR § 966.4 (l)(5)(vii)(B)

<sup>111</sup> 24 CFR § 966.4(l)(5)(vii)(C)

<sup>112</sup> 24 CFR § 5.2005(b)(2)

<sup>113</sup> 24 CFR § 966.4(l)(5)(vii)(D)

- If a PHA is relying on a criminal record to terminate tenancy for criminal activity, the PHA must notify the tenant of the proposed action and must provide the tenant and the subject of the record with a copy of the criminal record (at no cost) before a PHA grievance hearing or court trial. The tenant must be given the opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.<sup>114</sup> The PHA may not pass along the cost of a criminal records check to the tenant.<sup>115</sup>
- If a PHA evicts an individual or family from public housing for criminal activity, the PHA must notify the local post office that the person or family is no longer residing in the unit.<sup>116</sup> The purpose of this provision is to avoid giving an evicted family a reason to return to the property.
- If a statute requires the PHA to prohibit the admission of persons for a prescribed period of time after the disqualifying behavior or event, the PHA may establish a policy to apply the prohibition for a longer period of time.<sup>117</sup>

As always, PHA eviction actions must be consistent with HUD fair housing and equal opportunity provisions.<sup>118</sup>

### 13.3 Lease Termination Notice<sup>119</sup>

The lease must include the notice procedures to be followed when the tenancy is terminated.<sup>120</sup> PHAs must consult with counsel to ensure that their notice procedures are compliant with state and local law.<sup>121</sup> Aside from these requirements, the state's landlord-tenant law may include additional requirements for a Lease Termination Notice or Notice to Vacate.

When PHAs initiate the lease termination process, PHAs must give a written notice of lease termination of:<sup>122</sup>

- 14 days in the case of failure to pay rent;
- A reasonable time, considering the seriousness of the situation (but not to exceed 30 days), if:
  - The health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened;
  - Any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or
  - Any member of the household has been convicted of a felony.
- 30 days in any other case, except that if state or local law allows for a shorter notice period, the shorter period must apply. This notice requirement would apply to lease termination for other violations, such as failure to comply with reexamination requirements, refusal to accept a mandatory transfer, or failure to pay charges in addition to rent.

<sup>114</sup> 24 CFR § 966.4(l)(5)(iv)

<sup>115</sup> 24 CFR § 966.4(l)(5)(v)

<sup>116</sup> 24 CFR § 966.4(l)(5)(iii)(B)

<sup>117</sup> 24 CFR § 966.4(l)(5)(vii)(E)

<sup>118</sup> 24 CFR § 966.4 (l)(5)(vii)(F); 24 CFR 5.105

<sup>119</sup> 42 U.S.C. 13604 requires housing providers participating in federally assisted housing programs to give any individual or family applying for occupancy the option to provide additional contact information as part of their application. This information can be used to facilitate contact by the housing provider with the person or organization identified to assist in providing any delivery of services or special care to the tenant and to assist with resolving any tenancy issues arising during their tenancy.

<sup>120</sup> 24 CFR § 966.4(l)(3)

<sup>121</sup> 65 FR 16692, 16713 (March 29, 2000)

<sup>122</sup> 24 CFR § 966.4(l)(3)

The PHA's notice of lease termination must inform the tenant of the specific grounds for lease termination.<sup>123</sup> This includes citing the specific lease provision violated and how the tenant violated it. Further, the notice must inform the tenant of their right to respond to the lease termination notice, and to examine any documents directly relevant to the lease termination or eviction relied on by the PHA.<sup>124</sup> When issuing a lease termination notice, PHAs must comply with notice requirements for people with limited English proficiency and people with visual impairments as well as any reasonable accommodation requests until eviction has occurred or any accommodation that could take away the threat of eviction if they are entitled to it.<sup>125</sup> All notifications and communications must ensure effective communication for persons with disabilities. The PHA may never require the applicant to provide, or pay for, his/her own language interpreter or other auxiliary aid or service. Rather, it is always the PHA's responsibility to provide, upon request, a qualified interpreter, or auxiliary aid or service that would facilitate effective communication. Additionally, if a notice to vacate is required under state or local law, it may be combined with or run concurrently with the lease termination notice.<sup>126</sup>

The lease termination notice must also state whether the tenant has the right to request a grievance hearing under the PHA's grievance procedures.<sup>127</sup> If the tenant is permitted to request a grievance hearing, the PHA may not terminate the lease until the time period to request such a hearing has expired, or, if the grievance hearing is requested in a timely manner, until the grievance process has been completed.<sup>128</sup> This rule holds even if any notice to vacate under state or local law has expired.<sup>129</sup>

In some termination cases, a tenant may not be eligible for a grievance hearing under PHA grievance procedures. For example, in a state with due process requirements where such matters must be settled before a judge, a PHA may exclude hearing requests related to lease terminations for certain kinds of criminal activity from the grievance procedure.<sup>130</sup> If the tenant is not eligible for a grievance hearing (in a due process state where the PHA has elected to exclude hearing requests from the grievance procedure), the lease termination notice must state that the tenant is not entitled to a grievance hearing, specify the judicial eviction procedure the PHA will use, state that HUD has determined that this judicial procedure complies with the basic elements of due process,<sup>131</sup> and state the grounds for lease termination under which the grievance process is denied (i.e., for specified criminal activity).<sup>132</sup>

The lease termination notice must also inform the tenant that he or she has the right, at any time, to review and copy (at his or her expense) any documents or regulations upon which the PHA has in its possession and that are directly relevant to the lease termination or eviction.<sup>133</sup> If the lease termination is based on a criminal record, the PHA must provide the tenant and the subject of the record with a copy at no cost.<sup>134</sup> The PHA must provide the tenant a reasonable opportunity to examine these documents, at the tenant's request, before the PHA grievance hearing or court trial. If the PHA does not make these documents available upon

<sup>123</sup> 24 CFR § 966.4(l)(3)(c)(ii)

<sup>124</sup> 24 CFR § 966.4(l)(3)(c)(ii); 24 CFR § 966.4(m)

<sup>125</sup> 24 CFR § 966.4(k); 24 CFR § 966.7(b); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. *Federal Register*. Vol. 72, No. 13. (2007)

<sup>126</sup> 24 CFR § 966.4(l)(3)(c)(iii)

<sup>127</sup> 24 CFR § 966.4(l)(3)(c)(ii)

<sup>128</sup> 24 CFR § 966.4(l)(3)(c)(iv)

<sup>129</sup> 24 CFR § 966.4(l)(3)(c)(iv)

<sup>130</sup> 24 CFR § 966.51(a)(2)

<sup>131</sup> 24 CFR § 966.53(c)

<sup>132</sup> 24 CFR § 966.4(l)(3)(c)(v)

<sup>133</sup> 24 CFR § 966.4(m)

<sup>134</sup> 24 CFR § 966.4(l)(5)(v)



the tenant's request, the PHA must not proceed with the eviction.<sup>135</sup> If the PHA also has information that may clear or vindicate a household member, this must be provided to the tenant as well.

The lease must specify the procedures the PHA will use to initiate eviction proceedings against a tenant. A PHA may evict a tenant from the unit either by:

- Bringing a court action;<sup>136</sup> or
- Bringing an administrative action, if the jurisdiction's law permits eviction by administrative action, after a due process administrative hearing. The PHA must provide the tenant with an opportunity for a pre-eviction hearing in accordance with the PHA's grievance procedure.<sup>137</sup>

PHAs may evict tenants by judicial action for criminal activity in accordance with regulations if the PHA determines that the tenant, household member, current guest, or other person under the tenant's control has engaged in criminal activity, regardless of whether the person has been arrested or convicted for the criminal activity and without satisfying the standard of proof used for criminal convictions.<sup>138</sup>

## 14 Prohibited Provisions

Prohibited provisions are lease clauses that must not be included in new leases between a PHA and a tenant, and are required to be deleted from existing leases, either by amendment or execution of a new lease. This section is not all-inclusive, but illustrative of prohibited practices that are severe or unfair in nature. The specific prohibited lease provisions include:<sup>139</sup>

- Confession of judgment. HUD prohibits clauses that allow tenants to give prior consent to any lawsuit the PHA may bring against him/her in connection with the lease and to a judgment in favor of the PHA.
- Distrain for rent or other charges. HUD prohibits clauses in which the tenant agrees that the PHA is authorized to take tenant property and hold it as a pledge until the tenant performs the obligation that the PHA has determined the tenant has failed to perform.
- Exculpatory clauses. HUD prohibits clauses in which the tenant agrees not to hold the PHA or a representative of the PHA liable for any acts or omissions, whether intentional or negligent on the part of the PHA or the PHA's authorized representatives or agents.
- Waiver of legal notice by tenant prior to actions for eviction or money judgments. HUD prohibits clauses in which the tenant agrees that the PHA may institute a suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending himself or herself against the lawsuit.
- Waiver of legal proceedings. HUD prohibits clauses that authorize the PHA to evict the tenant or hold or sell the tenant's possessions if the PHA determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.
- Waiver of jury trial. HUD prohibits clauses that authorize the PHA's lawyer to appear in court for the tenant and waive the right to a trial by jury.

<sup>135</sup> 24 CFR § 966.4(m)

<sup>136</sup> 24 CFR § 966.4(l)(4)(i)

<sup>137</sup> 24 CFR § 966.4(l)(4)(ii)

<sup>138</sup> 24 CFR § 966.4(l)(5)(iii)(A)

<sup>139</sup> 24 CFR § 966.6

- Waiver of right to appeal judicial error in legal proceeding. HUD prohibits clauses that authorize the PHA's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.
- Charging a tenant the costs of legal actions regardless of outcome. HUD prohibits clauses in which the tenant agrees to pay attorney's fees or other legal costs whenever the PHA decides to take action against the tenant even if the tenant prevails in court. This prohibition does not negate a tenant's obligation to reimburse the PHA for attorney fees or other costs as ordered by a judge if they do not prevail in court.

Note: Most states prohibit unlawful removal or exclusion (lockout) from the unit. For example, if a PHA locks out a tenant without a court order, the tenant may be able to recover possession or terminate the rental agreement. The tenant may also be able to recover damages and attorney fees depending on state laws.

Beyond the prohibited provisions established by HUD, state and local landlord (PHA)-tenant statutes may establish additional prohibited provisions. These often include but are not limited to:

- Separation of the right to collect rent from the PHA's obligations regarding the property and its maintenance and operations (PHAs cannot forgo making repairs because the rent is late/unpaid);
- Provisions designed to limit the liability of the PHA, including waivers of liability;
- Any agreement to recover attorney's fees in an amount greater than that allowed by the state or local law ;
- The PHA's collection of a security deposit (including all other deposits) greater than one month's rent;
- The PHA's retention of a security deposit longer than 14 days after termination of the rental agreement, without appropriate justification;
- Provisions denying the PHA the right to reasonable access to dwelling units;
- Lease clauses allowing retaliatory evictions;
- Turning off utilities for the purpose of recovering possession of the unit; or
- Provisions waiving protections of federal and state civil rights laws.

Because illegal clauses are unenforceable, they must be deleted from contractual agreements to avoid giving tenants a misleading impression of their responsibilities. If a PHA or manager deliberately uses a rental agreement containing provisions that are known to be prohibited, the tenant may in many cases go to court to recover damages and attorney's fees.

## 15 Lead-based Paint Provisions

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The two HUD rules related to lead-based paint that affect public housing leases are the Lead Disclosure Rule [https://www.hud.gov/program\\_offices/healthy\\_homes/enforcement/disclosure](https://www.hud.gov/program_offices/healthy_homes/enforcement/disclosure) and the Lead Safe Housing Rule.<sup>140</sup> These rules apply to all target housing, housing that was constructed prior to 1978, except housing for the elderly, persons with disabilities, or any zero-bedroom dwelling (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly, persons with disabilities, or zero-bedroom dwelling).<sup>141</sup>

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<sup>140</sup> 24 CFR Part 35

<sup>141</sup> 24 CFR § 35.86 and 35.110

## 15.1 Lead Disclosure Rule

Under the HUD-Environmental Protection Agency (EPA) Lead Disclosure Rule, the PHA must inform the family about the risk of lead-based paint and lead-based paint hazards and provide copies of all lead-based paint records and reports. Unless the housing development is exempt<sup>142</sup>, the PHA must complete the following at lease initiation:

- Disclose the presence of any known lead-based paint and/or lead-based paint hazards;<sup>143</sup>
- Provide the family with an EPA-approved lead hazard information pamphlet to inform the family of the dangers of exposure to lead-based paint hazards<sup>144</sup> *Protect Your Family from Lead in Your Home* <https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>; and
- Provide any available records and reports related to the lead-based paint and/or lead-based paint hazards at the property (in units, common areas and exterior).<sup>145</sup> Records and reports may include evaluation reports, reduction activity reports, clearance reports, and any additional information, such as the location of the lead-based paint or hazard or the condition of painted surfaces.

Housing exempt from lead-based paint requirements is limited to housing that:<sup>146</sup>

- Has been certified as lead-based paint free;
- Was constructed after January 1, 1978;
- Is solely for the elderly or residential property designated exclusively for persons with disabilities (This housing is not exempt if a child or children under 6 live or are expected to live in the housing. Note that under Fair Housing rules, PHAs cannot refuse to rent to households with children in order to avoid triggering lead-based paint regulations.); or
- Is a zero-bedroom dwelling unit (This housing is also not exempt if a child or children under 6 live or are expected to live in the housing).

Additionally, the lease must include a Lead Disclosure Addendum<sup>147</sup> that:

- Contains the required Lead Warning Statement;<sup>148</sup>
- Discloses the presence of known lead-based paint and lead-based paint hazards;
- Discloses whether the PHA has records or reports that are being provided or that there are no records or reports to disclose;
- Documents the receipt by the tenant of the EPA pamphlet and of records and reports on lead-based paint and lead-based paint hazards; and
- Includes a statement that acknowledges that the tenant received the lead disclosure statement, including any records or reports, and the pamphlet and certifies the accuracy of these statements. This must be signed and dated by the PHA, any leasing agent of the PHA, and the tenant(s).

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<sup>142</sup> 24 CFR § 35.82

<sup>143</sup> 24 CFR § 35.88(a)(2)

<sup>144</sup> 24 CFR § 35.88(a)(1)

<sup>145</sup> 24 CFR § 35.88(a)(4)

<sup>146</sup> 24 CFR § 35.115

<sup>147</sup> 24 CFR § 35.92(b)

<sup>148</sup> 24 CFR § 35.92(b)(1)

The disclosure of lead knowledge and records and reports must be acknowledged by the lessor (PHA) by initials. The receipt of the lessor's disclosures (knowledge and records/reports) and of the EPA pamphlet must be acknowledged by the tenant(s) by initials. The lead disclosure form must be signed and dated by both parties. For lease renewals or rent increases, disclosure is required if there is new information, e.g., new lead knowledge or records or reports generated since the last disclosure.

Lead disclosure is required regardless of the presence of children in the family. Also, if the PHA is taking steps to improve access to persons with limited English proficiency, it is recommended that these efforts include lead-safety education and information pertaining to the Lead Disclosure Addendum. The Lead Hazard Information Pamphlet is available in English, Spanish, Russian, Arabic, Somali, and Vietnamese. More information can be found at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/enforcement/disclosure](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/disclosure) or by calling the National Lead Information Clearinghouse at 1-800-424-LEAD.

## 15.2 Lead Safe Housing Rule

The HUD Lead Safe Housing Rule addresses the conditions that cause lead-based paint hazards for children and residents in public housing and other federally assisted housing.<sup>149</sup> Under the 1999 rule, PHAs were required to perform lead-based paint inspections and abate all identified lead-based paint. If the PHA did not complete the lead-based paint inspection, they were required to perform lead-based paint risk assessments, interim controls of identified lead-based paint hazards, and periodic re-evaluations for hazards that may re-occur. PHAs that performed risk assessments and interim controls are expected to complete lead-based paint abatement as part of modernization. As of the date of publication of this guidance, PHAs should have either completed all lead-based paint abatement or have included it in regular capital needs planning. Additional information about responses to children with elevated blood lead levels, requirements for lead evaluations, and EPA's Renovation, Repair and Painting Rule is within HUD Notices PIH 2011-44 and PIH 2017-13.

## 16 Optional Provisions: Reasonableness Test<sup>150</sup>

PHAs have the option to adopt other reasonable lease provisions.<sup>151</sup> Some optional provisions in PHA leases relate to a wide range of topics, such as:

- Late payments and security deposits. It is important to note that HUD considers these provisions to be optional, rather than required lease provisions, however, if tenants will incur these charges, they must be in the lease.<sup>152</sup> Also, state and local laws may place limitations on their collection. More information can be found under the *Payments Due Under the Lease* subheading in Section 5.3.;
- Specific responsibilities for tenant maintenance of a unit or yard;
- Permissible tenant-initiated improvements to premises;
- Rules about littering and trash disposal;
- Permissible noise level;
- Security and fire safety rules;

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<sup>149</sup> 24 CFR 35, Subparts B-R

<sup>150</sup> This standard should not necessarily be applied to reasonable accommodations. See HUD/DOJ Joint Statement 5/17/04 for standards that should be applied when evaluating reasonable accommodation requests.

<sup>151</sup> 42 U.S.C. § 1437d(l)(2)

<sup>152</sup> 24 CFR § 966.4(b)(3); 24 CFR § 966.4(b)(5)

- Lobby and common area rules; and
- Rules regarding where tenant-owned vehicles may and may not be parked.

It is important that lease provisions are reasonable according to their plain meaning. Reasonable rules are fair and practical rather than excessive or extreme. Because the PHA or PHA's agent drafts and establishes the lease document, the terms are always subject to the reasonableness test. The table below provides examples of provisions that are considered reasonable and unreasonable.

Reasonable Provisions	Unreasonable Provisions
Requesting that visitors sign in when entering a large building with a main desk or security office.	Not allowing visitors in a tenant's apartment during nighttime.
Asking tenants to be respectful of neighbors and abide by local noise ordinances.	Asking tenants to turn the lights, radio, and all televisions off after a certain time at night.
Asking that children under 12 be accompanied by an adult when using certain building facilities that may pose a health or safety risk without supervision.	Asking all children under the age of 12 to be accompanied by an adult resident at all times in the building.

Lease terms are subject to court review when an action proceeds to court, such as in a lease termination. It is important to remember that courts have perceived landlords to have a greater bargaining strength than tenants have, and therefore are subject to a higher standard for errors and misinterpretations of the lease because they draft the document. If a lease provision is found to be unfair, then that provision will not be binding on the party to whom it applies.

## 17 Public Posting of Policies and Rules

In addition to incorporating the below documents into the lease, the following schedules and reference documents must be publicly posted in a conspicuous place in each development's office and provided to applicants and tenants upon their request.<sup>153</sup>

- Grievance procedure;<sup>154</sup>
- Regulations (if any) adopted and implemented by the PHA;<sup>155</sup>
- Schedules of utilities, if used to determine charges to tenants (e.g., utility allowances, excess utility charges);<sup>156</sup>
- Schedules of repairs, if used to determine charges to tenants (e.g., maintenance charges);<sup>157</sup>
- Schedules of maintenance service charges, if used to determine charges to tenants (e.g., lockout charges); and;<sup>158</sup>
- Pet rules (if any) must be incorporated in leases for projects designated for elderly or disabled households.<sup>159</sup>

<sup>153</sup> 24 CFR § 966.5

<sup>154</sup> 24 CFR § 966.52(b)

<sup>155</sup> 24 CFR § 966.4(f)(4)

<sup>156</sup> 24 CFR § 966.4(b)(2)

<sup>157</sup> 24 CFR § 966.4(b)(2)

<sup>158</sup> 24 CFR § 966.4(b)(2)

<sup>159</sup> 24 CFR § 5.321(a)(1)(ii)

PHAs may also wish to include other documents by reference, such as flat rent schedules. Some PHAs, as a general practice, provide these schedules and reference documents to each tenant at move-in.

## 18 Lease Modifications and Tenant Comment Requirements

The lease must state that modifications to the lease require a written rider signed by the PHA and the tenant, except for changes due to redetermination of rent or family composition and revisions to PHA documents incorporated into the lease by reference.<sup>160</sup> Any lease provisions for a particular tenant can be modified (for example, because of a needed reasonable accommodation) at any time through a written agreement, also known as a rider or addendum, by the PHA and the tenant.<sup>161</sup>

PHAs may also make changes to their standard lease forms and to documents that are incorporated into the lease by reference, such as schedules, rules, and regulations. Whenever leases, schedules, or other reference documents are revised, they must be provided to tenants and tenant organizations for comment at least 30 days before the PHA adopts them. PHAs must provide a written notice to each affected tenant that describes the revision, explains the reason for it, and provides tenants an opportunity to make written comments. All comments submitted must be considered by the PHA before changes are made.<sup>162</sup>

PHAs may provide notice of changes to leases and incorporated documents by either of the following methods:

- Delivering or mailing a notice to each tenant, or
- Posting notices in at least three conspicuous places in each structure or building where affected dwelling units are located, as well as a conspicuous place in the development's office. If there is no project office, PHAs must post the notice in a similar central business location within each development.

Mailing notices to individuals, rather than posting them, is a more prudent practice when possible. Whether mailing or posting notices, they must also be made accessible to persons with limited English proficiency or visual impairments, as applicable.<sup>163</sup> All notifications and communications must ensure effective communication for persons with disabilities.

After the 30-day notice and comment period, lease modifications and revisions must be drafted on a form adopted by the PHA. While tenants may generally be terminated for failure to accept revisions to an existing lease, this situation will not be grounds for termination unless the PHA provides written notice of the offer of lease revision at least 60 calendar days before the revision is scheduled to take effect, and the offer specifies a reasonable time limit for the family to accept the revision.<sup>164</sup>

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<sup>160</sup> 24 CFR § 966.4(o)

<sup>161</sup> 24 CFR § 966.4(a)(3)

<sup>162</sup> 24 CFR § 966.5; 24 CFR § 966.3

<sup>163</sup> 24 CFR § 966.4(k); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. *Federal Register*. Vol. 72, No. 13. (2007)

<sup>164</sup> 24 CFR § 966.4(l)(2)(iii)(E)

## Sample PHA Practices

### Sample PHA Policies and Practices

- PHAs may establish policies that allow them to run criminal background checks annually for participants in the Public Housing program. However, they must obtain consent for all adult household members (18 and over only) to authorize the background check and provide a copy of the record to the head of household (HOH) (if not the subject of the record) in accordance with 24 CFR § 5.903(b).
- PHAs should avoid terminating assistance for families based on whether an individual is on probation or parole. Terminating assistance when a PHA discovers persons with a criminal history who may currently be on probation or parole can result in possible re-incarceration as individuals often must comply with a set of probation/parole conditions that typically require attaining and maintaining housing and employment.
- PHAs are encouraged to work with supportive service providers to establish discretionary termination and eviction policies best suited to the communities served and to develop partnerships that can implement effective eviction prevention strategies.
- Consistent with the application of eviction standards, PHAs may consider all circumstances relevant to an eviction case, such as:
  - The seriousness of the offending action;
  - The effect on the community of denial or the failure of the responsible entity to take such action;
  - The extent of participation by the leaseholder in the offending action;
  - The effect of denial of admission on household members not involved in the offending action;
  - The demand for assisted housing by families who will adhere to lease responsibilities;
  - The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and
  - The effect of the responsible entity's action on the integrity of the program.
- Additionally, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct, including:
  - The age of the applicant at the time of the occurrence of the conduct or criminal offense;
  - Evidence of a good tenant or employment history before or after the conviction or conduct;
  - Evidence of rehabilitation efforts;
  - Substance abuse treatment;
  - Successful completion of a therapy directed at correcting the behavior that lead to the lease violation;
  - Participation in social services;
  - Adequate or suitable employment;
  - A support network; and
  - Recommendations on behalf of the applicant or tenant by a probation officer, case worker, counselor, family member, clergy, employer, community leader, or other involved individuals.