

NAHP Update

When Is It Time to Terminate? | BY JENNIFER JONES

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One of the many responsibilities of a property manager is enforcing the property rules, and being prepared to enact the penalties called for when the rules are violated. Sometimes, those violations call for the renter's subsidy or the lease to be terminated altogether.

"For new folks, they are sometimes confused about the two. They think if we are terminating a tenant's subsidy that they have to get out," said Bonnie Wilpon, who provided a conference call learning session on the subject for SAHMA members and is owner of PAWA House of Florida, which provides training and consulting to people who manage Department of Housing and Urban Development (HUD)'s Multifamily project-based subsidy programs. "Also, sometimes there is confusion as to when someone does something whether you can evict them or just cancel the subsidy."

Before any action is taken, it is important to know what



procedures HUD requires to do either, and to ensure those procedures are followed to prevent a judge from overturning management's actions in court, should a renter appeal management's decision. Chapter 8 in the HUD Occupancy Handbook 4350.3 addresses termination. Wilpon also said it is equally important to consult with your property's legal counsel to ensure proper federal, state and local procedure is being followed to help safeguard the actions are upheld in court.

According to the handbook, "Under program regulations and leases, termination of assistance occurs when a tenant is no longer eligible for subsidy or to enforce HUD program requirements. It results in the loss of subsidy to the tenant. Tenants whose assistance is terminated may remain in the unit, but they must pay the market rent, full contract rent, or 110 percent of BMIR [below market interest rate] rent. Owners are authorized to terminate assistance only in limited cir-



NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION (NAHMA)—Protecting the Interests of Affordable Housing Property Managers and Owners

cumstances and after following required procedures to ensure that tenants have received proper notice and an opportunity to respond.”

In basic terms, according to Wilpon, management can terminate a renter’s subsidy when the renter is considered no longer eligible because of a change in income. If management does terminate the subsidy, the renter does not necessarily

circumstances as prescribed by HUD regulations and the lease and must follow HUD and state/local procedures.”

The handbook states owners are permitted to evict residents for material noncompliance, which is described as substantial lease violations, fraud, repeated minor violations, nonpayment of rent, failure to disclose and provide verification of Social Security number(s), failure to sign and submit consent forms. Additionally, other allowable cir-

HUD provides HUD Model Lease for Subsidized Programs, Form HUD-90105-a on its website. The model lease includes language that states the renter agrees to obey the house rules and includes sections on the removal of the subsidy and termination of tenancy.

Additionally, Wilpon said it is just as important that property managers follow through with the prescribed penalties equally and fairly. “If the rules don’t have any teeth, people will notice that,” Wilpon said. “Management has to deal with a violation immediately otherwise it might not be upheld in court. And, other residents see that and think they don’t have to follow the rules because nothing happens.”

She said, it can be tough following through with the penalties, especially in senior housing, because management becomes emotionally invested with their renters and may not want to be the so-called “bad guy” or be “too hard” on the renters. However, she said, failure to take immediate action sets a precedent in the eyes of residents and the courts.

If the subsidy is terminated because the renter opted not to recertify, but then changes his mind, as long as fraud was not involved and a unit is still available, the renter can go back on subsidies, said Wilpon. The renter will be required to pay at least one month’s market-rate rent and

have to vacate the property.

“Some people’s subsidy is low enough that the loss of the subsidy does not mean they can’t afford the rent,” Wilpon said.

According to the handbook, “Termination of tenancy is the first step in the eviction process and is often used interchangeably with the term eviction. When terminating tenancy, the owner gives the tenant notice to vacate the unit because of a lease violation(s). A tenant who fails to vacate the unit after receiving notice from the owner may face judicial action initiated by the owner to evict the tenant. The owner may only terminate tenancy in limited

circumstances for eviction include drug abuse and other criminal activity, material failure to carry out obligations under a State Landlord and Tenant Act and “other good cause.”

Wilpon said renter eviction happens when the lease is broken in a substantive way such as failure to pay rent or as a penalty of repeated house rules violations. The house rules, Wilpon said, should spell out the violation procedures and ensuing penalties. Eviction should be a last resort, she said.

As a practical matter, the house rules should be attached to the lease as a way to reinforce the importance of the rules, suggested Lisa Tunick, principal, Tunick Law LLC.

BEFORE ANY ACTION IS TAKEN, it is important to know what procedures HUD requires to do either, and to ensure those procedures are followed to prevent a judge from overturning management’s actions in court, should a renter appeal management’s decision.

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after filing the required special form, the renter begins a different annual certification cycle because he essentially becomes like a new move in.

Terminating a subsidy or evicting a resident are legal procedures that have similar steps that must be followed, including providing notice in a form that is accessible if the renter has a disability.

For subsidy termination, the handbook states, "Written notice should include: the specific date the assistance will terminate; the reason(s) for terminating assistance; the amount of rent the tenant will be required to pay; notification that if the tenant fails to pay the increased rent, the owner may terminate tenancy and seek to enforce the termination in court; and the tenant has a right to request,

within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance."

Additionally, the notice should be delivered both by first class mail and in person, by either giving a copy of the notice to an adult in the unit or affixing it to or placing it under the unit's door. The date the letter is mailed and delivered in person should be recorded, among other requirements spelled out in the handbook.

The handbook also provides minimum standards required by HUD to terminate tenancy, but cautions, "most state and/or local laws are more restrictive than HUD's minimum requirements; therefore, an owner should be aware of state and local laws

governing terminations."

HUD's basic standards require an owner to establish the reason for the eviction is consistent with HUD-required lease provisions and applicable state and local laws, and that written notice is provided in a manner similar to the notice requirements for subsidy termination, among other requirements.

"Follow the process of serving the notice and do it properly. If the notice isn't served by the book, a judge could say the notice is voided and it won't be upheld," Wilpon said. "Issue the eviction notice as soon as you know about the violation. If you wait too long, a judge will ask why you waited so long." **NU**

Jennifer Jones is manager of communications and public relations for NAHMA.



Grappling With an Aging America

As the U.S. population ages, the country can expect significant challenges for the affordability, availability and accessibility of senior housing. In September, NAHMA released a *NAHMA Analysis* that discusses trends in senior demographics over the next several decades, as well as the accompanying challenges and solutions for the future of affordable senior housing. To read the analysis in its entirety, visit the Members Only section of nahma.org.

According to current demographics, this generation of housing providers continues to grapple with an aging America. At 29.9 million, senior households currently represent one-fourth of America's households, 21 percent of which are renter households.

During 2015, approximately 15 million seniors were considered low income based on Area Median Income (AMI), and 1.85 million elderly renters had "worst case housing needs," defined as households that pay more than 50 percent of their monthly income on rent or live in substandard conditions, which represents a sharp increase over 2013 levels. Meanwhile, studies show an upward trend for senior homelessness.

According to Harvard's Joint Center for Housing Studies (JCHS), over the next 20 years, the population of adults aged 65 and over will likely increase by more than 30 million, or 60 percent, to

reach approximately 80 million seniors, dramatically shifting the overall age distribution to a one-in-five senior population. In addition to the general expansion of the elderly population, the number of "older seniors"—aged 80-and-up—is expected to double within the next two decades, aided by an aging baby boomer generation.

Not only is the elderly portion of the population expected to expand sharply, but also seniors will likely continue

both living longer and overwhelmingly choosing to age in place, causing an upsurge in senior households.

Compounding this trend is the expected rise in the low-income elderly population. While household income disparities and low-wealth households are generally becoming more common, the number of low-income older adults is expected to grow significantly, resulting from a combination of factors such as income, debt and wealth distribution; retirement, labor market and economic factors; and housing and health costs.

The projected demographics for the U.S. population lend urgency to NAHMA's ongoing efforts in support of elderly housing. These include prioritizing full funding lev-

els to renew contracts and support new developments; protecting the LIHTC and endorsing congressional efforts to strengthen it; calling for an extension of the Rental Assistance Demonstration to project rental assistance contracts (RAD for PRACs); supporting interagency efforts to alleviate homelessness, income disparities and housing cost burdens; and advocating for community investment incentives.

The dynamic needs of older

proportion of low-income, older Americans relative to the population as a whole. Continuing challenges of housing availability, affordability and accessibility are expected to accompany this population shift.

In addition, a number of fiscal indicators have emerged from congressional lawmakers and the president in 2017: With many housing programs vulnerable to cuts during the current budget-capped environment, senior housing, specifically the

ACCORDING TO HARVARD'S JOINT CENTER for Housing Studies (JCHS), over the next 20 years, the population of adults aged 65 and over will likely increase by more than 30 million, or 60 percent, to reach approximately 80 million seniors, dramatically shifting the overall age distribution to a one-in-five senior population.

adults continue to require innovative approaches in serving low-income elderly communities. The immense impact of housing policy on health policy and vice versa, has led to joint senior health and housing approaches, in which housing is enriched with service coordination to streamline services and save costs; similarly, strategies to implement age-friendly home and community planning, as well as alternative living arrangements, can postpone institutionalization, combat isolation and ease cost-burdens on individuals and communities.

Over the next two decades, communities across the U.S. will likely experience dramatic changes in age distribution resulting from significant expansions in the elderly population, senior headship rates and the

Department of Housing and Urban Development (HUD)'s Section 202 Supportive Housing for the Elderly, and the accompanying Service Coordinator grants, emerged as a front-runner for appropriated funding during the fiscal year 2017 budget deal. Although far from enough to meet the growing need of elderly communities, Section 202 received the largest increase among all HUD programs, even in a Congress under strict spending caps and immense pressure from the administration to trim the entire agency budget by 15 percent.

With the fiscal deadline looming and senior housing, as with all housing assistance, sure to suffer under anything other than full-year fiscal year 2018 funding, NAHMA member advocacy is as important as ever. **NU**

Welcome New Certificants!

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Best Practice: Annually Update the TSP

Even though the Department of Housing and Urban Development (HUD) has not issued any updates regarding the Student Rule since September 2016, now is a good time to make sure your tenant selection plan is up to date. An updated tenant selection plan is required according to the HUD Occupancy Handbook 4350.3 and Management and Occupancy Reviews (MORs).

or a ward of the court at any time from age 13 or older;

c) Is, or was immediately before the age of majority, an emancipated minor or in legal guardianship as determined by a court;

d) Is a veteran of the United States military or on active duty for other than training purposes;

e) Is a graduate or professional student;

f) Is married;

g) Has legal dependents

receive assistance and their education.

The notice said many vulnerable youth are no longer connected to their parents or caregivers and therefore were unable to obtain the information necessary to show they qualified as independent students.

The change allows the student to provide his tax returns, instead of his parents', for verification. It also says that someone under

AN UPDATED TENANT SELECTION plan is required according to the HUD Occupancy Handbook 4350.3 and Management and Occupancy Reviews (MORs).

The 2016 HUD notice published in the *Federal Register* updated the definition of an independent student to bring it more in line with the Department of Education and the Higher Education Act definition.

“You have to revise your tenant selection plan to incorporate the updated definition of an independent student or you’ll get written up in MORs,” said Gwen Volk, president of Gwen Volk Infocus Inc.

Under the HUD notice, the revised definition of an independent student is an individual who:

- a) Is age 24 or older by Dec. 31 of the award year;
- b) Is an orphan, in foster care or a ward of the court or was an orphan, in foster care

other than a spouse;

h) Has been verified during the school year either as an unaccompanied youth who is homeless or at risk of homelessness and is self-supporting; or

i) Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

In addition, in the same 2016 notice, HUD amended the verification requirements for an independent student, said Volk. According to the notice, HUD made the changes to remove any “barriers” for youth, especially what it describes as vulnerable youth—unaccompanied homeless youth and those who have aged out of foster care—to be able to continue to

the age of 24 who meets the expanded definition requirements as spelled out in paragraphs B, C or H, as described above, is automatically considered a vulnerable youth and therefore the parents’ income is not relevant to determining eligibility as in independent student.

Although HUD amended its definition, not all agencies have, so if your property uses multiple funding sources you need to be aware of each governing agency’s rules.

“If you have more than one funding source and each has different rules, you have to follow all the rules,” Volk said. “When rules conflict, it isn’t always the most stringent rules that apply.”—J.J. **NU**



A Teacher at Heart

NAME: Grace Swierk, NAHP-h, SHCM, CPM

MANAGEMENT COMPANY: The Schochet Companies

POSITION: Director of Compliance

Grace Swierk spent 12 years as a teacher and even though she left that profession in 1987, she still views herself as an educator. Only now, she does it as the director of compliance for The Schochet Companies, based in Braintree, Mass.

“Because I’m a former teacher, I have it ingrained in me to pass on knowledge and help staff grow and develop in their positions. I thoroughly enjoy that,” she said. “That’s what makes me tick.”

Since leaving the high school classroom where she taught business courses, Swierk

has worked at The Community Builders Inc., NEAHMA—where she served as president and then was the organization’s first executive director, and was a principal of Housing Resource Group LLC, before joining Schochet four and a half years ago.

As compliance director, Swierk is responsible for administration and oversight of all of the HUD, LIHTC and state funding programs.

“Basically, I make sure we are doing things the way we should be doing them,” she said.

While she enjoys educating staff, it can be challenging keeping up with the ever-changing federal and state regulations. Technology also creates a new learning curve.

“We have come a long way in 30 years. I have an IBM keypunch card and show it to staff. I tell them how we had

one for every resident in order to receive their Social Security benefit letters. We packaged the cards up in a batch and sent them to the Social Security Administration. About four weeks later, the administration sent back each resident’s benefit verification on green-bar paper printouts,” she said.

“We used to do all the HUD ‘59 certifications by hand and submit the HAP vouchers to HUD on a diskette.”

Now, everything is done electronically. “I have some old manual HUD ‘59 income certifications and when younger staff see these, they are in awe,” she said.

Swierk said that while technology has greatly improved productivity, there is something to be said for processing data the old way. “When the ‘59s were done manually, you had a better sense of understanding

the calculations,” she said.

When Swierk needs to get away, she hits the water. She spends most of her weekends in the summer boating in the New England coastal waters. Her two children and three grandchildren love being on the boat almost as much as she does.

“I love getting off the dock, taking in the fresh air and feeling the ocean’s beauty,” she said. “It’s a lot of fun and life is definitely better on the water.”

Swierk said, during the winter months, she joins her fellow boat club members in talking about boating season. It is a passion that led her to be only the second woman in her boating club to serve as commodore.

It is the commodore’s responsibility to preside over meetings, make sure the facility and marina are running smoothly and the membership is happy, she said. —J.J. NU

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

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