

# NAHMAanalysis

## News and Analysis of Breaking Issues in Affordable Housing

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### **Lease Modifications to Incorporate “One Strike” Rule**

As many members know, HUD has missed several dates for releasing a revised model lease incorporating the changes necessary to support the now year old “One Strike” rule. The latest date which we were promised a revised model lease was April 30<sup>th</sup>, and that deadline has passed again with no revised model lease.

*George’s Spin - So, as a member service we have had drafted the necessary language to support one strike in partnership with Denise Muha at NLHA. The language follows on pages 2-4 of this bulletin. The language was drafted on behalf of NAHMA and the National Leased Housing Association by Mike Reardon, a prominent DC lawyer, and former Senior HUD official. The language has been crafted with the full rule in mind, and taking the recent Supreme Court decision on one strike into consideration.*

***As with all legal documents, however, you are advised to have this language reviewed by your counsel to ensure it complies with state and local laws. We have not obtained HUD approval on the language. We will give this language to them and request general approval, but you probably will find it easier to add this language to your present lease and get the language approved locally. Given the fact that we are still waiting for revised model lease language 9 months after the original due date for revisions we are not sanguine about the prospects of national approval any time soon.***

**Sample Lease Language for HUD Model Lease  
To Reflect Screening & Eviction Rule Requirements<sup>1</sup>**

**23. TERMINATION OF TENANCY:**

- a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever date comes first.
  
- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only:
  - (1) for the Tenant's material noncompliance with the terms of this Agreement;
  - (2) for the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act;
  - (3) for the Tenant's or any household member's conviction for any crime that is drug-related, involved violent criminal activity or involved a sex crime;
  - (5) if the Tenant, a household member, or guest is engaged in drug-related criminal activity on or near the Premises or any person under the Tenant's control is engaged in such activity on the Premises;
  - (6) if the Tenant or a household member is illegally using a drug or the Landlord can determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
  - (7) if the Tenant, a household member, a guest or other person under the Tenant's control engages in (I) any criminal activity that threatens the

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<sup>1</sup>The above sample lease revisions are being provided as a membership service of the National Affordable Housing Management Association (NAHMA) and the National Leased Housing Association (NLHA). Neither NLHA or NAHMA has obtained HUD review of the sample language and assumes no responsibility for its use or compliance with State or local laws. Please have your counsel review and approve the foregoing language before amending your lease.

health, safety, or right to peaceful enjoyment of the Premises by other residents (including property management staff residing on the Premises) or (ii) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the Premises;

- (8) if the Tenant or a household member is a fugitive felon or parole violator;
- (9) if it can be determined that the Tenant's or a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the Premises by other residents;
- (11) expiration of the Section 8 Housing Assistance Payments Contract between the Owner and HUD; or
- (12) "other good cause", which includes, but is not limited to, a Tenant's refusal to accept a Landlord's proposed modification of the lease. The Landlord will determine whether a particular circumstance/action constitutes a "good cause" for evicting a Tenant. Whatever the cause, the Landlord must give the Tenant prior notice that such action would be grounds for termination of tenancy. Terminations for "other good cause" may only be effective at the end of any initial or successive lease term.

The term material noncompliance with the lease includes:

- (1) one or more substantial violations of the lease;
- (2) repeated minor violations of the lease that:
  - a) disrupt the livability of the project, b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, c) interfere with the management of the project, or d) have an adverse financial affect on the project;
- (3) failure of the Tenant to timely supply all required information on the income and composition, or eligibility factors, of the Tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, or consent forms from each adult household member for Landlord to perform criminal background checks), or to knowingly provide incomplete or inaccurate information; and
- (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

- c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this Agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law.

All termination notices must:

- (1) specify the date this Agreement will be terminated;
  - (2) state the grounds for termination with enough detail for the Tenant to prepare a defense;
  - (3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10 day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
  - (4) advise the Tenant of his/her right to defend the action in court if any court action is brought.
- d. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by Paragraph (c).