

# **Chapter 8**

## **Termination of Assistance and Tenancy**

This chapter discusses the responsibilities of AHFC, families, and landlords in terminations of tenancy, terminations of assistance, and terminations of the Housing Assistance Payment (HAP) Contract. References include 24 CFR 982.552, 24 CFR 982.40, and the U.S. Department of Housing and Urban Development (HUD) Housing Choice Voucher Program Guidebook, Chapter 15. The Board of Directors adopted the revisions to this Chapter by resolution 2011-15 on April 20, 2011.

### **1. Reasonable Accommodation**

A person with a disability may require a reasonable accommodation if she/he believes that her/his disability is the cause for a termination action. Termination notices contain instructions for requesting a reasonable accommodation in these instances. Reasonable accommodation requests will be directed to the local AHFC office, and staff will consult with their supervisor for resolution of these requests.

### **2. AHFC Nonpayment of HAP**

The landlord may not terminate a family's tenancy for nonpayment of the AHFC portion of the rent. The family is not responsible for payment of any late fees that accrue as a result of AHFC's late or nonpayment. This is in accordance with Item 7 of the HAP Contract and Item 5 of the Tenancy Addendum.

AHFC may be responsible for paying late rent fees to a landlord if the HAP is not paid promptly when due after the first two calendar months of the HAP Contract terms. If late fees are accrued for factors beyond AHFC's control, AHFC will not pay them. AHFC will also not pay late fees if HAP payments are delayed due to a landlord breach of the HAP Contract.

### **3. HAP Contract Termination**

Part B, Item 4 of the HAP Contract gives AHFC authority to terminate the HAP Contract. The HAP Contract and the lease terminate on the same date. Except where noted below, AHFC will terminate the HAP Contract on the last day of the month following the month in which the notice is given or the end of the lease or HAP Contract term, whichever comes first. AHFC will mail notices of termination to the family and the landlord. Staff will terminate a HAP Contract when:

- The landlord or family terminates the lease;
- AHFC terminates assistance for the family;
- The family moves from the unit;

- 180 calendar days have elapsed since the last HAP to the landlord;
- Available program funding is not sufficient to support continued assistance for families in the program;
- A single household member, including single households with a live-in aide, dies;
- A change in family composition results in inadequate space for the family;
- The contract unit does not meet the Housing Quality Standards (HQS) requirements;
- The landlord has breached the HAP Contract or is ineligible;
- The HAP Contract ends.

AHFC will determine if the family will continue to be eligible for assistance in another unit. See individual topics below to determine how the landlord is paid during a termination action.

### **3.A Cessation of Funding**

AHFC may terminate the HAP Contract if available funding will not support continued assistance. AHFC will send notices to the family and the landlord stating the termination date.

### **3.B Family in Shopping Status**

Families previously assisted, but in shopping status are considered continuously assisted. Instances may arise when AHFC takes action to terminate assistance while the family is in shopping status due to the action or inaction of the family. The termination will be immediate. Staff will notify the family using Termination of Assistance, form V709. The family may contest the termination in compliance with the AHFC grievance procedure. See Chapter 9.

Staff shall refuse to accept landlord papers and will not enter into a HAP Contract on behalf of the family until the outcome of an Informal Hearing is resolved.

### **3.C HQS Failure**

If the unit does not meet HQS requirements and the landlord does not correct the failed items within the required time frame, AHFC will terminate the HAP Contract. See Chapter 7 Housing Quality Standards for guidance and documentation requirements to stop housing payments.

AHFC will not terminate the HAP to the landlord as described above if the family is responsible for the HQS fail. AHFC will terminate assistance if the family does not repair the items after notice. The HAP Contract will terminate when the family assistance is terminated (see below).

### **3.D HQS Inspection Requirement**

The unit must remain in compliance with Housing Quality Standards (HQS) during the term of the HAP Contract. Failure of the family or the landlord to comply with HQS requirements will be deemed as noncompliance. This includes, but is not limited to:

- Failure of the family to appear for scheduled inspections;
- Failure of the family or landlord to allow access to all inspection areas;
- Failure of the family or landlord to maintain the unit to HQS standards;
- Failure of the family or landlord to make necessary repairs to the unit.

See Chapter 7 for inspection notification requirements.

### **3.E Regular Examination Requirement**

Families must complete regular examinations as required in Chapters 4 and 11. Failure of the family to comply with AHFC's examination requirements will be deemed as noncompliance. See Chapter 4 for examination notice requirements.

### **3.F Unit Too Small**

If staff determines that a unit is too small and does not meet HQS space standards due to a change in family composition (24 CFR 982.403), AHFC must issue the family a new voucher and try to help the family find an acceptable unit as soon as possible. The family may choose to stay in the unit and continue to receive rental assistance.

If an acceptable unit is found, AHFC will notify the landlord of the termination using Termination Lease and Housing Assistance Payment Contract, form V707L. The HAP Contract terminates on the last day of the month following the month in which AHFC gave notice to the landlord. The landlord may keep the HAP for the month in which the family moved, plus the following month's HAP.

#### **Example: Unit Size Inadequate**

A family consisting of mother, father, and two sons live in a two bedroom unit. Triplet daughters are born in June. AHFC will issue a new voucher when the births are reported. The family finds and rents a four bedroom unit in July. Notice will be sent to the landlord in July terminating the HAP effective the end of August.

### **3.G Zero HAP for 180 Consecutive Days**

The family may remain under a HAP Contract for the full 180 days allowed by the HAP Contract. The HAP Contract must terminate 180 days after the last HAP is made to the landlord. Staff will provide notification to both the family (Termination of Assistance, form V709) and landlord (Termination Lease and Housing Assistance Payment Contract, form V707L) at least 30 days in advance of the HAP Contract end date.

## **4. Termination by Landlord and Tenant**

The following describes the various types of terminations and time frames for each situation. Proper coding in the computer database is required. The party that is interested in terminating the agreement must provide proper, written notice to AHFC and the other party.

### **4.A Notice of Termination**

AHFC will promptly send written notification to the landlord (Termination of HAP Contract, form V707L) and family (Termination of Family Lease and Housing Assistance Payment Contract, form V707P) upon the receipt of any notice of a pending termination. If the termination is based on an action or inaction by the family, the family may be given a time frame to request an Informal Hearing as outlined in Chapter 9.

Unless the rental agreement establishes a definite term, the tenancy shall be month to month. If no new agreement is signed at the end of the lease or HAP Contract term, AHFC will consider the original agreement to be extended month to month and either party may give written notice in accordance with the terms of the lease. If the lease does not specify, written notice must be provided at least 30 days before the rental due date.

Staff will cancel the contract effective the last day of the month in which the tenant had possession of the unit. The landlord may keep the HAP for the entire month, even if the family moves prior to the end of the month.

### **4.B Notice to Move After Initial Term**

The landlord or the family may or may not give a notice to move after the initial term of the lease depending on the lease agreement. Unless the rental agreement establishes a definite term, the tenancy shall be month to month. If no new agreement is signed at the end of the lease or HAP Contract term, AHFC will consider the original agreement to be extended month to month and either party may give written notice at least 30 days before the rental due date specified as the termination date in the notice.

Although good practice, neither the landlord nor the family must provide a reason to terminate the lease after the initial term unless otherwise stated in the lease. The landlord does not need "other good cause" to opt out of the HAP Contract and lease, provided proper notice is given (PIH Notice 98-64). According to state law, proper notice is a full tenancy month prior to the lease end date. AHFC will notify the parties of the HAP Contract termination upon receipt of the notice to move.

Staff will cancel the HAP Contract effective the last day of the month in which the tenant had possession of the unit. The landlord may keep the housing payment for the entire month, even if the family moves prior to the end of the month.

#### **4.C Abandonment**

Upon notification that the family has moved, AHFC will cancel the contract effective the last day of the month in which the family had possession of the unit. The notice may be verbal and received from either the landlord or family with a note made to the file.

The landlord will keep the housing payment for the entire month in which the family was in the unit. Upon receipt of the notice that the family has moved, AHFC will notify the landlord (Termination Lease and Housing Assistance Payment Contract, form V707L) that payment will stop and notify the family (Termination of Assistance, form V709) that their assistance has been terminated.

#### **4.D Death**

AHFC will cancel the contract effective the last day of the month in which the family lived in the unit, provided there are no remaining family members. A live-in aide is not a family member; therefore, the HAP Contract must be cancelled the last day of the month whether or not a live-in aide resides in the unit. Notice of death may be written or verbal if received from either the landlord or a family member.

The landlord may keep the housing payment for the entire month in which the family was in the unit. The landlord is **not** entitled to housing payment for any month following the month in which the death occurred. There are no exceptions to this policy.

Upon receipt of the notice that the voucher holder is deceased, AHFC will notify the landlord (Termination Lease and Housing Assistance Payment Contract, form V707L) that the housing payment will stop. If a landlord receives a housing payment for any month in which the landlord is ineligible to receive it because of a deceased tenant, staff will immediately notify the landlord in writing (Repayment of HAP Contract, form V721) and require the landlord to repay the overpayment to AHFC within thirty (30) days. If the landlord does not comply, AHFC will deduct the amount due in accordance with the section Recovering Housing Payments in this Chapter.

If a lone adult member of a family dies, the children may be considered the last remaining family member(s) provided an authorized guardian is appointed by authorities. If the guardian applies for voucher assistance and passes AHFC screening, assistance may continue.

#### **Example: Single Adult Household**

The deceased tenants report dated July 15 indicates that Mr. Donau died on May 19.

1. Staff receives an e-mail from Central Office in July regarding Mr. Donau's death in May.
2. Staff did not receive prior notification from Mr. Donau's landlord.

3. The landlord is not eligible for HAP in any month following May.
4. AHFC paid the landlord HAP of \$500 each month for the months of June and July.
5. The landlord must repay AHFC \$1,000 (\$500 x 2 months) within 15 days of notification of the debt.

#### **4.E Eviction**

AHFC is required to pay the landlord until the outcome of the eviction process is settled. Staff will send the appropriate notices upon receipt of the eviction notice. Staff will send Landlord Information during Termination of Lease (form V716) to notify the landlord; staff will send Family Information during Termination of Lease (form V716) to the family. If the eviction coincides with the end of the lease or HAP Contract term, AHFC will continue to pay housing payments if the family is otherwise in compliance with the family obligations.

The landlord may only evict the tenant from the unit through a court action in compliance with the terms of Item 8 of the Tenancy Addendum, the HAP Contract, and the Alaska Uniform Residential Landlord and Tenant Act. AHFC will cancel the HAP Contract effective the last day of the month in which the family had possession of the unit. The landlord may keep the HAP for the entire month in which the family occupied the unit.

#### **4.F Foreclosure**

In the case of any foreclosure, the successor who takes over the property shall assume the lease between the prior landlord and the tenant as well as the HAP Contract signed by the prior landlord and AHFC (HAP Contract Part B, Item 15).

#### **4.G Mutual Termination**

The landlord and family may agree to terminate the lease prior to the initial term. The landlord may keep the HAP for the entire month regardless of the day the family actually vacates the unit. AHFC requires the parties to:

- Complete the Lease Termination Agreement **OR**
- Submit a written statement signed by both the landlord and family (head of household, spouse, or co-tenant) agreeing to end the tenancy.

AHFC may grant an exception to the above policy, such as a reasonable accommodation for a disabled family member, moving due to employment or educational opportunities, moving for personal safety, or other mitigating circumstances. See Chapter 6 for the number of family moves in a period.

## **5. Termination Due to Landlord Noncompliance**

AHFC may terminate the HAP Contract with proper notice to the landlord if the landlord is not in compliance with the HAP Contract. Unless the landlord has complied with all provisions of the HAP Contract, the landlord does not have a right to receive the HAP under the HAP Contract.

The HAP Contract describes actions that are considered a breach, which include:

1. Failure to maintain the unit in accordance with the HQS;
2. Drug trafficking and violent criminal activity;
3. Fraud or bribery or other corrupt or criminal act in connection with federal housing programs;
4. Violations under any HAP Contract;
5. Failure to comply with HUD mortgage insurance/loan program regulations; or if the landlord has committed fraud, bribery, or any other corrupt or criminal act in connection with the mortgage or loan.

## **6. Recovering Housing Payments**

If notice is received that the family vacated during the previous month(s), AHFC will recover the overpayment for any months after the move-out month. AHFC will advise the landlord of the amount owed by sending the Repayment of HAP Contract (form V721) to the landlord.

1. AHFC will automatically deduct the amount owed from the next month's HAP if the landlord is currently leasing to other voucher holders.
2. Please refer to Chapter 13, Debt, for recovery of the HAP.
3. If the landlord returns the overpayment, staff will immediately contact the Central Office and forward the payment to avoid creating an automatic deduction.

## **7. Termination of Housing Assistance**

AHFC may terminate assistance for a family because of the family's action or failure to act based on HUD regulations, Voucher terms and conditions, and the Housing Choice Voucher Administrative Plan (see 24 CFR 982.551, 982.552, and 982.553). AHFC must provide an opportunity for an Informal Hearing before terminating housing assistance (see Chapter 9, Informal Reviews and Informal Hearings).

Termination of assistance may include terminating or refusing to enter into a HAP Contract or approve a lease and refusing to process or provide assistance under portability procedures.

### **7.A Expiration of Assistance Period**

Several rental assistance programs AHFC offers are limited to a specific period of assistance. When a family has exhausted the period of assistance available to them, AHFC will terminate their housing assistance. Under Moving to Work Activity 2014-1 approved by the AHFC Board of Directors on February 27, 2013, families designated as participants in the Step Program are subject to a limited period of rental assistance. Limited rental assistance for set aside vouchers is detailed in Chapter 11.

### **7.B Failure to Complete Financial Literacy Requirement**

Under Moving to Work Activity 2014-1 approved by the AHFC Board of Directors on February 27, 2013, families designated as participants in the Step Program must complete a financial literacy course. The requirement is detailed in Exhibit 1-6. Step Program families that fail to complete the financial literacy requirement within the first two years of assistance are terminated at the end of their current lease or HAP Contract term. Staff will use the Termination of Assistance (form V709) for Voucher Step Program families.

### **7.C Expiration of Voucher**

See Chapter 2 for the definition of continuously assisted. Families that are not under a current HAP Contract, but considered continuously assisted, that allow their voucher to expire, must be terminated using a Termination of Assistance (form V709); however, these families are not eligible for the grievance procedure [24 CFR 982.555(b)(4)].

#### **Voucher Expiration**

1. Staff will check "You are not entitled to an informal hearing" on the Termination of Assistance (form V709).
2. Staff will check "The family terminated the previous assisted lease...".
3. Complete the rest of the notice.

### **7.D Ineligibility Under the Student Rule**

AHFC must terminate assistance due to ineligibility if any family member fails to meet the requirements concerning individuals enrolled at an institution of higher education as specified in Chapter 2, Exhibit 2-5.

## **7.E Family Action or Inaction**

AHFC will terminate assistance for the following action or inaction on the part of the participating family, household members, or other persons under the family's control. The action or failure to act includes but is not limited to:

1. If no family member can satisfy the eligibility requirements under the Citizenship Rule (24 CFR 5, Subpart E).
2. Prior or current commission of fraud, bribery, or any other corrupt or criminal act in connection with any federal program.
3. If any family member currently owes rent or other amounts to AHFC or to another Public or Indian Housing Authority in connection with Section 8 or public housing assistance under the 1937 Act.
4. Refusal to pay in full or enter into a payment agreement for monies owed to AHFC.
5. Defaulting on a payment agreement without paying the balance in full upon demand by AHFC in accordance with Chapter 13, Debt.
6. Absence from the unit by the entire family that violates the Absence from Unit Policy, Chapter 6, Exhibit 6-5.
7. Engaging in or threatening abusive or violent behavior toward AHFC personnel.
8. If a family received a preference for "Displacement due to Domestic Violence" and adds the perpetrator to the household without prior AHFC permission.
9. Failure to complete the regular examination process.
10. If a family member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
11. Commission of drug-related criminal activity, violent criminal activity, or other criminal activity that threatens the health, safety, or right to peaceful enjoyment by other residents and persons residing in the immediate vicinity of the premises, regardless of whether the household member was arrested or convicted.
12. Engaging in the abuse of alcohol or a pattern of abusing alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.
13. Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony. In New Jersey, the term for felony is "high misdemeanor."
14. Violating a condition of probation or parole imposed under federal or state law.

The landlord may terminate the tenancy for criminal activity by a household member in accordance with this section if the landlord determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

## **7.F Violation of Family Obligations**

AHFC will terminate assistance to families who fail to comply with their family obligations specified on the Voucher (form V765 or HUD-52646), including but not limited to:

1. Refusal to sign and submit consent forms for obtaining information required by HUD, or otherwise fail to supply timely and accurate statements of income, assets, expenses, and family composition required for an examination.
2. Failure to correct an HQS breach caused by the family.
3. Failure to allow AHFC to conduct a Housing Quality Standards inspection in the unit after reasonable notice.
4. Refusal to accept an offered voucher to move due to an HQS failure.
5. Moving from the unit without proper termination of the lease; i.e., abandonment or subletting or assigning the lease.
6. Ownership or any other legal or financial interest in the unit, except for participation in the HCV Homeownership Program.
7. Commit any serious or repeated violation of the lease.
8. Receiving housing assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister, or brother of any member of the family, without the prior approval of AHFC.
9. Knowingly receiving any other form of federal rental assistance for the same unit.
10. Knowingly receiving federal rental assistance for two or more units at the same time (“duplicative subsidy”). When moving from one voucher unit to another, subsidy payments may overlap during a month; this is not considered duplicative subsidy.

## **7.G Damage to the Unit or Premises**

Under family obligations specified on the Voucher (form V765 or HUD-52646), the family must not damage the unit or premises or permit any guest to damage the unit or premises [24 CFR 982.404(b)]. The Alaska Landlord-Tenant Act states that a landlord may terminate a tenancy for deliberate infliction of substantial damage to the premises. The Act defines substantial damage as damages that exceed \$400.

To terminate a family’s housing assistance due to damages, AHFC must have documentation that a landlord has obtained a court-awarded judgment for deliberately inflicted damages to a unit that exceeds \$400. A statement of damages from a landlord is not sufficient grounds for termination under this section.

## **7.H Serious Violations of the Lease**

AHFC must terminate HCV assistance whenever a family is evicted from housing for a serious violation of the lease [24 CFR 982.552(b)(2)]. An eviction is a court proceeding in

which the owner is awarded possession of the unit. When a family decides to move in response to a notice to quit, AHFC will not consider the move an eviction and will not terminate a housing voucher based solely on the family's decision to move.

Not every court-ordered eviction is considered an eviction for a "serious violation" of the lease. Each case must be evaluated individually on its own merits. In some cases a family that has been evicted by a court may keep the rental assistance and move to a new unit [24 CFR 982.354(b)(2)].

HUD regulations do not define what constitutes a "serious lease violation." Therefore, it is AHFC policy to rely on the Alaska Uniform Residential Landlord and Tenant Act (AS 34.03.010 – AS 34.03.380) as the basis for determination of what constitutes a serious lease violation resulting in termination of assistance. **AHFC will always consider these lease violations "serious lease violations," resulting in termination of assistance:**

- failure to pay rent;
- failure to pay for tenant-responsible utility service;
- deliberate and substantial damages to the premises in excess of \$400 by the tenant or someone in the tenant's control; or
- the commission of drug-related or criminal activity on the leased premises.

According to the Alaska Landlord and Tenant Act, other categories of lease violations may also rise to the level of a serious lease violation. If the tenant is notified of a problem and remedies it within the time allowed, but the problem occurs again within six months, the landlord may terminate the lease for "good cause" using a proper written notice. **AHFC considers these lease violations "serious violations" because of the repeated nature of the problem and the failure of the tenant to remedy it. These infractions will result in termination of assistance:**

- poor housekeeping that affects the condition of the unit;
- unreasonable disturbance of neighbors' right to peaceful enjoyment of the premises; or
- repeated failure to pay for tenant-responsibility utility service.

There are a number of other reasons whereby a landlord may succeed in obtaining a court-ordered eviction, usually involving inaction by the tenant. Examples include failure to sign a lease amendment or failure to move at the end of a lease term. AHFC may consider the circumstances to determine whether the tenant's action was a deliberate contradiction to a rightful landlord action, or whether there was a reason for the tenant to believe otherwise and go to court for a judge to decide. See Consideration of Circumstances below.

## **8. Consideration of Circumstances**

In determining whether to terminate assistance because of action or failure to act by members of the family, AHFC may consider those circumstances that have a direct bearing on the action or inaction of the family [24 CFR 982.552(c)(2)]. Examples of such circumstances include:

1. The seriousness of the case – in particular, whether it was a deliberate action or inaction on the part of the family.
2. The culpability of individual family members and the effects of termination of assistance on those who were not involved in the action or failure. Nonpayment of rent or other monies due or deliberate violations of an HCV family obligation is clearly not the responsibility of children; however, the effect on the children is not necessarily a mitigating circumstance. AHFC could impose a condition that the person culpable for the action or inaction not reside in the unit while permitting others to continue receiving assistance.
3. An individual involved in the criminal activity is no longer in the household because the person is incarcerated, or the family can produce evidence that the person is no longer in the residence. Examples include a divorce decree, death, or a copy of a lease including the landlord's telephone number and address indicating the person resides elsewhere.
4. The disability of a family member which may result in a reasonable accommodation to ensure compliance with the HCV Administrative Plan, Chapter 1, Reasonable Accommodation, and 24 CFR 8, Nondiscrimination Based on Handicap.

In considering circumstances, determine the nexus between the action or failure to act and the proposed termination. If staff finds reason to believe that mitigating circumstances are compelling enough to forgo termination, counsel the family about the decision and how to avoid a similar circumstance in the future. Staff will document the file with the reasons for the decision and the date and time of the counseling session with the family.

## **9. Protections for Victims of Abuse**

See Exhibit 1-7

### **Numbered Memo**

18-04 Chapter 8 Update