

***PENNSYLVANIA HOUSING FINANCE AGENCY
2019 CONFERENCE***

**PRIVATELY OWNED SUBSIDIZED HOUSING - IS THERE A DIFFERENCE
IN OBTAINING A REMEDY?**

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June 26, 2019**

I. WHAT IS SUBSIDIZED HOUSING?

Subsidized housing is housing which may be publically or privately owned for which the federal government pays a certain portion of a tenant's rent. The subsidies received from the Federal Government are administered by the Department of Housing and Urban Development. This subsidized housing program was established in Title II of the Housing and Community Development Act of 1974, P.L. 93-383 and is codified as a section of the United States Housing Act of 1937, 42 U.S.C. §1437f.

In public housing, the monetary subsidies are directly received by the public authority which built the public residential housing. In the private sector, the funding is either directly received from HUD and paid to the private owner, is paid by a Housing Authority pursuant to a housing voucher issued to the tenant both of which are referred to as a housing assistance payment (commonly referred to as a "HAP"), or is received by the owner as direct federal tax credits. Private housing which receives HAP or a tax credit subsidies generally take seven (7) forms:

1. Project based new construction (24 CFR Part 880);
2. Project based substantial rehabilitation (24 CFR Part 881);
3. New construction set-asides for rural housing projects (24 CFR Part 883);
4. Elderly or handicapped (24 CFR Part 885);

5. Section 8 voucher approved housing;
6. Tax Credit Housing (26 U.S.C. §42);
7. Section 515 Rural Housing or Section 515 Rural Housing with Project Based Section 8 (24 CFR§884.216 (2012)).

Housing, either publically or privately owned, is also subdivided into three (3) broad categories as follows:

1. Housing for families;
2. Housing for the elderly and handicapped; and
3. Section 8 approved private housing with a number of variations as to the type of housing approved.

In each instance, the Congress has, pursuant to the Fair Housing Act of 1937, as amended, provided a source of funding in order to secure clean, decent and affordable housing for low income individuals. Administration of the funding is delegated to the Department of Housing and Urban Development which agency has delegated promulgated regulations for each type of project, be it public or private, and which regulations the public housing authority or private owners of the property and its managers must observe. The regulations governing the eviction procedure of tenants slightly varies among the various types of projects.

II. RENT AS DETERMINED IN SUBSIDIZED HOUSING.

The rent set in Section 8 subsidized housing communities is the product of negotiation. Privately owned projects negotiate with and enter into agreements with HUD regarding the fair market value of each apartment unit. The fair market rental value of each apartment unit is defined by the HUD regulations as “contract rent”. The amount of rent which each tenant pays to

be housed in subsidized housing depends upon the tenant's gross income, less deductions for child care and medical expenses, establishing an adjusted gross income which is multiplied by thirty percent (30%). The HUD regulations define this amount as the "tenant's share" of the rent. The difference between the "contract rent" and the "tenant's share" of the rent is defined as the Housing Assistance Payment (HAP). The rent in a Tax Credit project is not subsidized, but is reduced. A tenant must qualify as a low income wage earner or family to qualify for entry into the program. Once in the program, however, the tenant is not limited to the amount he or she can earn and still qualify for the housing. Section 8 Housing Vouchers may be issued for this type of housing under which arrangement the tenant's rent is controlled by the 30% rules of the Section 8 program.

An additional factor which influences the amount of the tenant's monthly rent is a utility allowance which is given to each tenant in the apartment complex. The amount of the utility allowance varies from apartment complex to apartment complex. The utility allowance is an amount which HUD pays directly to the owner for direct pass through to the tenant for the payment of the utilities used in the apartment unit. If a tenant has a very low adjusted net income, there is a real possibility that with the application of the utility allowance the owners of the apartment complex will, in essence, "pay" the tenant to reside in the apartment unit. These types of tenants are commonly referred to as "negative renters", that is the tenant owes no rent but, instead, receives money from the apartment project in the form of a utility allowance to live in the unit. This situation generally occurs when the only source of income to the tenant is a welfare grant.

III. EVICITION OF SUBSIDIZED TENANTS.

A tenant in a federally subsidized apartment unit may be evicted for the same reasons as a tenant in any other type of rental unit. The term of a lease is not never-ending. Evictions in subsidized housing generally fall into one of six categories: (1) failure to pay rent; (2) failure to pay rent in a timely manner; (3) failure to maintain housekeeping; (4) failure to properly report income resulting in excess housing assistance payments; (5) failure to pay maintenance charges for damages above and beyond normal wear and tear; and (6) use, storage, or distribution of illegal drugs.

The failure to pay rent forms good cause and is an act of material noncompliance under the terms of a subsidized apartment lease. 24 C.F.R. 247.3; 880.601; 881.601; and 803.701. HUD Transmittal 4350.3, REV-1 Change 4.

The failure to pay rent in a timely basis has been recognized by the Courts as a separate and distinct breach of a lease agreement, supporting a finding as an act of material noncompliance justifying the eviction of a tenant from a subsidized housing unit. Brown v. Williamsport Housing Authority, (Lycoming County) No. 88-02, 086.

The failure to maintain housekeeping also provides grounds for evictions in subsidized housing as the failure to maintain clean, orderly, and safe apartment unit represents a threat to the health, safety, and welfare of other tenants. An eviction for poor housekeeping seems to be an issue unique to subsidized housing. 24 C.F.R. 247.3; 880.601; 881.601; and 803.701. The defense raised to evictions for poor housekeeping are numerous and include: (1) the tenant never had any formal education as to what was expected of the tenant along the lines of housekeeping; (2) the tenant never had to keep house previously, and therefore does not have any formal

education in the area of general housekeeping skills; (3) the management perception of poor housekeeping is subjective and not realistic; or (4) even though the apartment is kept by the tenant in a slovenly condition, there is no evidence that the tenant's lack of housekeeping has attracted vermin, thus is not a threat to the community. Ultimately, the determination of whether the housekeeping is of such a nature to justify an eviction is based upon a totality of the circumstances.

The major problem represented by housekeeping in subsidized or any housing is the attraction of cockroaches, bedbugs and other vermin. Cockroaches represent a significant health threat to children as they transmit a variety of diseases. Housekeeping conditions such as piles of clothing; boxes and newspapers; soap scum; and grease splattered ranges and ovens provide areas of harborage and/or food for cockroaches. Moreover, the reproduction rates of cockroaches is prolific and their ability to withstand eradication is legendary. Bedbugs are a more recent phenomena and are prolific in their ability to spread throughout a housing community simply by embedding themselves on shoes, socks and cuffs of pants and being spread. The failure of a tenant to cooperate with management to eradicate cockroaches, bedbugs and vermin form a basis for an eviction.

The failure to pay for maintenance expenses over and above normal wear and tear or routine maintenance is also recognized as an act of material noncompliance under HUD Regulations. HUD Transmittal 4350.3, REV-1 Change 4, ¶4-19. Subsidized housing communities have professional maintenance staff on site. Tenants are charged for any maintenance calls for repairs over and beyond normal wear and tear or charged for repairs that are observed during inspections for damage over and beyond normal wear and tear. The lease

generally provides tenant has thirty (30) days in which to pay for the maintenance charges. In the event that the charges are not paid, HUD Regulations provide the tenant may be evicted for nonpayment of the invoice. 24 C.F.R. 247.3, 880.607; 881.601; 883.901; and 884.216.

The failure to comply with the reporting of changes in income and/or the failure to properly report the amount of income received is also a basis for eviction based upon a fraud or program violation. The lease in a subsidized housing community provides that a tenant must minimally re-certify on an annual basis the household income and compensation. In the event a tenant or a member of the tenant's family loses their employment or changes employment which results in an increase in the household's income, the tenant must promptly report such change to the landlord. The landlord then has an obligation to adjust the tenant's rent. HUD Transmittal 4350.3, REV-1 Change 4. If the tenant fails to properly re-certify his or her income, the landlord is obligated to raise the tenant's rent to "contract rent".

In the event drugs are sold, distributed, or transferred in or about a subsidized apartment unit, this is also grounds for termination of the lease agreement. 24 C.F.R. 5.850-5.852; 5.858-5.861; 5.901; 5.903; and 5.905. The Pennsylvania Landlord Tenant Act also provides that confiscation of illegal drugs from an apartment unit by police officers is also a grounds for eviction. 68 P.S. §250.505(A). The Pennsylvania Health and Safety Code also contains an Act referred to as the "Expedited Eviction of Drug Traffickers Act" which provides if a tenant or any household member or guest of a tenant uses a residential apartment in such a manner that facilitates drug related criminal activity (i.e. distributes or attempts to distribute illegal substances) a complaint may be filed with the Court of Common Pleas and a hearing be held within 15 days of the filing of the Complaint. If a landlord proves that tenant, a household

member or a guest has been involved in drug related criminal action in or near the residential apartment unit or in the common area of the apartment complex, the tenant and all members of the household may be immediately evicted from the residential apartment unit.

IV. DIFFERENCES BETWEEN SUBSIDIZED AND NON-SUBSIDIZED HOUSING.

A. Notice to Quit to be Given to Tenants of Subsidized Housing.

Under Pennsylvania law, a Notice to Quit may be waived by the terms of the lease agreement. HUD regulations forbid the waiver of such Notices. Moreover, the HUD regulations require a Proposed and Final Notice to Quit to be given where a landlord alleges a forfeiture of a lease or proposes to terminate the lease for breaches of the lease with the exception of non-payment of rent. The HUD regulations at Part 247 set forth the number of days a Notice is to give a tenant to leave a leased property and is generally to be governed by state law and the lease. 24 C.F.R. §247.4(c). In May 2003 final regulations were promulgated for the Section 8 New Construction, Substantial Rehabilitation and State Housing Agency programs which regulation incorporates the same language, leaving the Notice period to be set by the terms of the lease and state law, except in cases where the landlord desires to end a lease and not renew the lease, in which case the non-renewal must be based on “other good cause”. 24 C.F.R. §§880.607(c)(2), 881.607(c)(2) and 883.708(c)(2). Pennsylvania state law provides a notice period of ten (10) days for non-payment of rent (68 P.S. §250.501(b)); fifteen (15) days for other breaches of the lease in cases where the lease term is less than one (1) year (68 P.S. §250.501(b)); thirty (30) days for other breaches of the lease where the lease term is one (1) year or greater (68 P.C. §250.501(b)). If the owner is terminating the lease for “other good cause”, the Termination

Notice must be received by the tenant at least thirty (30) days before the date the tenant will be required to move from the unit.

If the owner proposes to terminate a HUD subsidized apartment or lease, the owner must give the tenant a written Proposed and Final Notice to Quit. This notice period may run concurrent with any comparable notice period required by state or local law. The owner must serve the Notice in accordance with the procedures set forth at HUD Transmittal 4350.3, REV-1 Change 4, ¶8-13(B)(2).

- a. The owner's notice must: (1) specify the date the lease will be terminated; (2) state the grounds for termination with enough detail for the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the owner may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) advise the tenant that he/she has ten (10) days within which to discuss the proposed termination of tenancy with owner. The ten (10) day period may begin on the earlier of the date the notice was hand delivered to the unit or the day after the date the notice was mailed.
- b. In any case in which tenancy is terminated because of the tenant's failure to pay rent, the notice shall state the dollar amount of the balance due on the rent account and date of such computation. 4350.3, REV-1 Change 4, 8-13(B)(2)(e).
- c. Notice to Quit and/or Termination must be personally served by hand delivery or if no adult answers, by posting it by first class mail. 4350.3, REV-1 Change 4, 8-13(B)(3)(c).

Service of the Proposed and Final Notice to Quit for the vast majority of HUD subsidized projects is controlled by Pennsylvania state statute which requires the personal delivery of the Proposed and Final Notice to Quit to the tenant or an adult in charge of the household or posting on a conspicuous position of the lease property (front door) if no adult is available to accept

service. 68 P.S. §250.501(f) (also approved at 4350.3, REV-1 Change 4, ¶8-13(B)(3)(a)(2)).

There are a small minority of HUD subsidized properties that require additional forms of service of a Proposed and Final Notice to Quit. HUD Transmittal 4350.3, REV-1 Change 4, ¶8-13(B)(3) provides the following:

- a. Section 236, Section 221(d)(3) BMIR, Rent Supplement, Section 202/8, Section 202 PAC, Section 811 PRAC and Section 8 Loan Management Set-Aside and Property Disposition Set-Aside. The owner must (1) send a letter by first-class mail, properly stamped and addressed and including a return address, to the tenant at his/her address at the project; and (2) serve a copy of the notice on any adult person answering the door at the leased unit, or if no adult responds, place the notice under or through the door, if possible, or else affix it to the door. Service is effective once both notices provided for in (1) and (2) have been accomplished.

- * The date on which the notice is considered to be received by the tenant is the date on which the first class letter is mailed, or the date on which the notice is properly given, whichever is later.

HUD regulations set forth the Proposed and Final Notice may be included in one document, however, legal arguments have been raised that such a combined Notice is confusing as it purports in one part to say that the termination is proposed in nature and in a second part of the same Notice states that it is final. 56 Fed. Reg. 51, 580 (Oct. 11, 1991). The combining of Proposed and Final Notices to Quit for non-payment of rent makes sense under the published HUD regulations as Pennsylvania state law only requires a ten (10) day notice. There are no reported Court decisions concerning the propriety of placing a Proposed and Final Notice in one document. The issue remains unanswered, but HUD regulations approve the use of one combined proposed with final notice to quit. The notice to quit required to be filed by state law

may be filed concurrently and combined with the notice required by federal law. 24 C.F.R. §982.310(e)(1)(ii) (1996)

Courts of Common Pleas which have reviewed the HUD regulations with regard to all of the five (5) types of projects listed in Section I, have ruled the HUD regulations require the Notice to clearly set forth in detail the exact basis upon which a landlord is seeking the termination of the lease. See, Pheasant Hill Estates Associates v. Milovich, 116 Dauph. 284 (1996), and Edison Village v. White, 112 Dauph. 344 (1992). In other words, the Notice must contain sufficient detail to provide the tenant with adequate information to understand the exact basis upon which the termination is being sought, the issues the tenant will face at a hearing, and be pleaded with ample specificity to allow the defendant to form a defense. The failure to properly draft and serve a Notice to Quit or Notice of Termination has been found to be a fatal defect to the entire cause of action. See, Pheasant Hill Estates Associates v. Milovich, supra.

B. Differences in the Basis for Termination/ Forfeiture of a Lease.

HUD regulations provide that a lease may not be terminated by an owner unless a tenant has committed acts of material non-compliance with the terms of the lease. HUD Transmittal 4350.3, REV-1, Change 4 ¶8-13. Acts of material non-compliance are defined by HUD regulations as one or more substantial violations of the lease agreement or repeated minor violations of the lease including, but not limited to, failure to pay rent; extended absences or abandonment of an apartment unit; fraud; tenant failure to submit all required information on household income and composition; failure to pay for repairs; failure to supply in a timely manner all information regarding a tenant's income; or violations of the lease agreement which affect the livability of the project, affect health, safety and welfare of other tenants, interfere with

the management of the apartment project, or have an adverse financial effect upon the apartment project. HUD Transmittal 4350.3, REV-1, Change 4 ¶8-13(A)(1)-(5).

HUD regulations set forth a number of acts representing substantial violations of the lease agreement and thus acts of material non-compliance. Courts, interpreting HUD regulations, have found the following acts or actions to represent substantial violations of the lease and/or acts of material non-compliance: (1) the failure to pay rent; (2) failure to pay rent in a timely basis; (3) failure to pay for damages within the allotted time period within the terms of the lease; (4) criminal activity on the apartment project; (5) drug-related criminal activity on the apartment project; (6) drugs found in an apartment unit and confiscated by law enforcement officials; (7) criminal assaults against other tenants; (8) failure to properly report all income earned by the family; and (9) housing unauthorized persons. The Courts have found the following to be repeated minor violations of the lease to also qualify as acts of material non-compliance including, but not limited to: (1) disturbance of other tenants; (2) failure to maintain proper housekeeping; (3) failure to prepare an apartment for extermination; (4) failure to accept extermination services; (5) failure to observe quiet hours; (6) failure to maintain control of minor children; and (7) failure to maintain the appliances in an apartment.

A landlord in subsidized housing may refuse to renew a lease at the end of the term. The decision not to renew a lease, however, must be based upon good cause. HUD Transmittal, 4350.3, REV-1 Change 4, ¶8-12(C) and ¶8-16. The HUD regulations do not define the term “good cause”, but imply a lesser standard of proof than is required to terminate the lease and include as “good cause” the conduct of the tenant. (¶8-16(A)(2)). If a landlord determines not to renew a lease and has “good cause” to do so, the HUD regulations do not pose upon the landlord

a duty to prove acts of material non-compliance, however, the conduct of the tenant cannot be good cause unless the owner has given tenant prior written notice and stated the conduct would constitute a basis for termination of occupancy in the future. (§8-16(A)(2)).

Housing known as or referred to as “Tax Credit” housing is controlled by the Internal Revenue Code. In order to evict a tenant who is being housed in “Tax Credit” housing a Landlord must have “good cause” to terminate the lease. HUD regulations do not control “Tax Credit” housing unless the tenant has a Section 8 housing voucher or the project is Section 8 Project Based. In the event the tenant has a Section 8 housing voucher issued by the local housing authority, then HUD Section 8 regulations do apply. Otherwise a good cause is needed to terminate a Lease. (Revenue Ruling 2004-82).

C. Differences in Non-Payment of Rent as it Relates to the Failure to Pay Appropriate “Tenant’s Share” of Rent.

There are three (3) situations which arise in subsidized housing where a landlord may seek to evict a tenant as a result of the tenant’s non-payment of the “tenant’s share” of the rent. This is a different situation than mere non-payment of rent. The issue revolves around the failure of the tenant to pay the proper amount of the “tenant’s share” of rent. These situations occur when a tenant fails to report an increase in family income, fails to report all income, or fails to report all child support, spousal support and/or alimony.

Under HUD regulations, a tenant is to pay the tenant’s share of the rent based upon the tenant’s household’s income (i.e., earned income, interest income, alimony, child and spousal support). HUD regulations require an owner to obtain written third party verification of a person’s income. The tenant’s tax returns are not necessarily part of the process. A tenant is

required to recertify their household income and composition on an annual basis. HUD Transmittal 4350.3, REV-1 Change 4. Under HUD regulations, a tenant is required to report to the owner any change in family income of increases of more than Forty and 00/100 Dollars (\$40.00) a month, or a decrease of any sort. HUD Transmittal 4350.3, REV-1 Change 4.

First, the failure to report all household income sometimes is first discovered by an owner during the annual recertification process. In other words, a tenant who, at the beginning of the first month of the lease was receiving welfare, then obtains a full paying job and may not have reported that job or income to the landlord. As a result, the tenant's rent did not change, but should have changed due to the increase in income. HUD regulations allow the owner to investigate the change in the income and to retroactively charge the tenant the amount the tenant should have appropriately been paying when the change in income was incurred. The amount inappropriately received by the tenant is called an excess HAP payment. Therefore, while the tenant may have technically paid the rent, the tenant paid the inappropriate amount of the tenant's share of the rent and in theory failed to pay the proper amount the tenant should have paid as his or her share of the rent.

Second, the failure to report all income is discovered when HUD report to an owner a discrepancy between income reported by the tenant to the owner and that reported by the tenant to the Internal Revenue Service. The Internal Revenue Service and the Department of Housing and Urban Development have recently interfaced their computer systems. As a result of this interface, owners of subsidized projects have been placed on notice that unreported second and third jobs existed for which tenants received W-2's and/or 1099's. In that event, the landlords under their regulatory contract with HUD owe a duty to HUD to adjust the tenant's share of the

rent based upon information received from the IRS and seek from the tenants the excess HAP payments for the period which the tenant did not report additional income.

The third situation where an excess HAP occurs is when all child or spousal support is not reported by a tenant. Due to the recent centralization of orders for support of children arising out of Pennsylvania's sixty-seven (67) Domestic Relations Offices, owners of subsidized housing have been made aware of previously unreported child support. In the past, tenants may have reported receipt of child support from one county, but not another. As a result of no centralized record of child support orders, owners of subsidized housing would not know about the additional orders of support. Now that Domestic Relations Orders have been centralized and all payments made directly through a central source, additional sources of child support have come to the attention of owners. HUD regulations mandate the owners to recalculate the amount of the tenant's share of rent owed and retroactively collect the excess HAP payment from the defaulting tenants.

In "Tax Credit" housing, tenants are required to report income on an annual basis. Rent, however, is not based upon income. A lease may be terminated for a tenant's failure to comply with annual income reporting requirements. The right to occupy the "Tax Credit" property is controlled by a household's income only in the first year. The annual income reporting criterion is a regulatory requirement of the Internal Revenue Service. Rent is established by the household and the Internal Revenue Service but the rent is not subsidized.

D. Differences in Drug-Related Criminal Activity/ Drugs in the Apartment Unit.

1. Federal Regulations in Subsidized Housing.

The Department of Housing and Urban Development, since the mid-1990's, has mandated owners of subsidized housing units initiate eviction actions against any tenant who becomes involved in the use, transportation, storage, possession, or distribution of the illegal substances in or near the apartment project. HUD regulations mandate that all family members be evicted from an apartment unit where any such activity has taken place.

In May, 2001, in an effort to maintain drug free housing, HUD promulgated new regulations defining who is responsible for third parties who commit drug-related criminal activities in or near the apartment complex. Generally, the new regulations hold a tenant responsible for the actions of himself, his family members, members of the household, and any individual over whom he had control. Those individuals over which a tenant has control are defined by regulation as those who were invited to the apartment project by the tenant. Persons not in control of the tenant are those individuals who, in an unannounced fashion, visit the tenant in the apartment project. The issue of control of a third party has always been an area of contention. Tenants argue they have no control over what their guests or other family members do on the project, or what they bring onto the complex site and thus, they should not be held responsible for their guest's actions. In the alternative, tenants argue the landlord should be held responsible to prove in a criminal sense the tenant exercised possession and control over the drug(s) in order to effect an eviction.

In 2002, the United States Supreme Court decided constitutionality of the issue of control and a tenant's defense that he was unaware of a guest or family member's involvement in drug related criminal actions in the matter of Department of Housing and Urban Development v. Rucker, ___ U.S. ___, 122 S.Ct. 1230 (2002). The Rucker case involved an interpretation of

Anti-Drug statutes and promulgated under the Fair Housing Act of 1937 as amended, and HUD interpretation of the issue of a tenant's control over third parties. Pursuant HUD's interpretation of the Anti Drug statutes, and the word "control" of family members and guests, an entire family may be removed from subsidized housing in the event one member of the household or a guest of the household became involved in drug related criminal activity in or near the subsidized apartment unit. In the Rucker case, an entire family was evicted from a subsidized housing unit based upon one member of the household's involvement in the possession and use of marijuana, a drug related criminal activity, in the parking lot of the complex. In Rucker, the remaining family members argued that it was not equitable that they be evicted for the acts of another member of the household or a guest since they were not directly involved in the act and had no control over the individual who became involved in the activity.

HUD argued that the regulation was drafted in order to combat drug related activity in subsidized housing, that the regulation should be interpreted on an objective and not subjective basis (i.e. whether the activity occurred or did not occur versus to the intent of the parties), and that it was next to impossible for a landlord to prove the subjective intent of a person to control either a person or drug related criminal activity.

In Rucker, the Supreme Court held the plain language of Section 1437d(1)(6) of the Fair Housing Act of 1937, as amended, unambiguously require federally assisted low income housing projects to use lease terms that provide to owners the unilateral 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 "innocent" tenant knew or should have known, of the drug related activity. The Court reached this opinion as it found Congress did not impose any qualification in

the statute, and combined with its use of the term “any” to modify “drug-related criminal activity”, precluded any tenant knowledge requirement. The Court found that because “any” has an expansive meaning, “any” drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that Defendant knew, or should have known, about. Id. at 1233.

The Court also rejected the tenant’s argument that there needed to be some element of “control” by the “innocent” tenant over the activities of a family member or guest. Id. at 1234. The Supreme Court held that the statute’s wording “under the tenant’s control” by the rules of grammar required a finding the statute does not refer to a person under a tenant’s personal control. Instead, “control,” as used in the statute means control in the sense that the tenant has permitted access to the premises. The Court held implicit in the terms “household member” or “guest” is the understanding that access to the premises has been granted by the tenant to those individuals. The Supreme Court ruled the obvious reason why Congress would have permitted federally assisted low income housing projects to conduct no fault evictions regardless of the knowledge of a tenant who “cannot control drug crime, or other criminal activities by a household member” is that such inability on the part of the tenant is a threat to the health or is a threat to the health and safety of other residents and the project. Id. at 1235, citing 56 Fed. Reg. at 51567.

The Court also held it was reasonable for Congress to permit no-fault evictions in drug related activities as such activities lead to the “deterioration of physical environment that requires substantial government expenditures”, 42 U.S.C. §11901(4) (1994 ed.) and in order to promote and “provide public and other federally assisted low income housing that is decent, safe and free

from illegal drugs,” §11901(1) (1994 ed.). Id. At 1235.

In conclusion, the Supreme Court held Section 1437d(1)(6) requires lease terms in federally assisted housing projects to incorporate terms in their leases that give an owner the unilateral discretion to terminate the lease of a tenant when a member of the household or guest engages in drug related activity, regardless of whether the tenant knew, or should have know, of the drug related activity. Id. at 1236. “Such “no fault” eviction is a “common” incident of tenant responsibility under normal landlord-tenant law and practice”. 56 Fed. Reg. at 51567. Strict liability maximizes deterrence and eases enforcement difficulties.” Id. at 1235.

HUD Transmittal 4350.3, REV-1 Change 4 paragraph 18-14(C) now provides an owner may consider several factors in making the determination as to whether to evict an entire family for one family member’s actions.

VI. CONCLUSION:

The eviction of a tenant from subsidized housing does not, in theory, differ from eviction of tenants from fair market value property. The differences in the eviction process involve the various procedural aspects of the Notices to Quit, the length of time required to be given to a tenant to remove themselves from the property under the HUD regulations, the manner in which the Notices are served, and the manner in which the tenant’s share of the rent is calculated. Violations of the terms of the contract which give rise to acts of material non-compliance, seem to be the same as and similar to acts which give rise to forfeiture of a lease in a standard landlord/tenant setting. The status of a tenant’s subsidized housing who receives a subsidy or HAP payment does not imbue the tenant with any additional right, but does require the owner of such a project to follow the procedural rules set forth by HUD regulations as well as those by state statute as set forth above.