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Federally Subsidized Housing – Unit Based

What is federally subsidized housing?

Federally subsidized housing means that the government pays part or all of your rent. The part of your rent the government pays is called the "subsidy." Unlike private rental housing, landlords in federally subsidized housing have many more rules to follow. These rules talk about who gets into the housing (admissions), rents, leases, grievances, and evictions. If you live in federally subsidized housing, you have more legal rights than tenants in private rental housing. These rights include the following things:

- The landlord must follow certain rules about who gets admitted to the housing.
- Your rent is limited.
- Usually you pay no more than 30% of your income for rent and utilities.
- Your tenancy usually is not time limited. As long as you don't break the lease or the law, you are allowed to stay.
- You may be evicted only for good cause.
- Usually you must be given notice and a chance to contest a denial of admission.
- Before your subsidy may be ended, you must be given notice and a chance to contest.

What are the types of federally subsidized housing?

There are two types of federally subsidized housing. In one type, the subsidy is tied to the housing unit. This is called "unit-based assistance." In the other type, the subsidy is tied to the

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tenant. This is called "tenant-based assistance." This article is about unit-based assisted housing. Other articles on this web site are about tenant-based assisted housing.

What is unit-based assisted housing?

There are many types of unit-based assisted housing:

- Public housing owned and operated by a public housing authority (PHA).
- FHA §221(d)(3) and §236 housing, which usually is privately owned rental housing insured and subsidized by the Federal Housing Administration (FHA).
- FmHA §515 rural rental housing, which usually is privately owned rental housing, insured and subsidized by the Rural Housing Service (formerly Farmers Home Administration).
- §8 new construction, substantial rehabilitation, and moderate rehabilitation, which usually is privately owned rental housing insured and subsidized by the U.S. Department of Housing and Urban Development (HUD).

How do I apply for unit-based assisted housing?

In public housing, you usually apply at the PHA. In other unit-based assisted housing, you apply at the management office for the project. In all programs your application must be accepted, unless the waiting list is so long there is no reasonable chance you can get housing within a year. You can apply at more than one housing agency. Each housing agency has its own system for applications. Sometimes there are long waiting lists. If you're willing to move, you might find a housing agency that can offer you housing right away. So check around.

Once your application is accepted, your name is put on a waiting list. You must be told about preferences for admission. You may be required from time to time to say you are interested in admission. If you fail to do so, your name may be removed from the waiting list.

Waiting lists usually are kept by number of bedrooms needed. Waiting lists also may be separated based on preferences for admission. When there is a vacancy, the unit must be offered in the order of bedroom size, preferences, and date & time of application.

Who may get a preference for unit-based assisted housing?

The landlord may give a preference to these people: working people, the disabled, the elderly (age 62 or older), the homeless, victims of domestic violence, and people who live in a particular area.

Who may be admitted to unit-based assisted housing?

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The landlord must use the following rules to decide who gets admitted:

- Usually, your income can be no more than 80% of area median income. Income limits vary from area to area, so you may be eligible at one housing agency but not another.
- There is no resource limit. If you have more than \$5,000 in assets, part of that can be counted as income.
- There is no minimum income requirement. However, the landlord may look at your ability to pay basic subsidized rent.
- The landlord may not discriminate against you or make negative decisions about you because of your race, religion, national origin, sex, marital status, sexual orientation, gender identity, source of income, handicap, age, or past bankruptcy.
- The landlord also may not discriminate against you for being an unwed parent, getting public aid, having children out of wedlock, or having children.
- Both single individuals and families may be admitted. Some units are reserved for elderly and handicapped families.
- Only U.S. citizens and eligible immigrants may be admitted.

The landlord must have written rules to decide who gets admitted. These rules must be based on your fitness as a tenant. The landlord may look at your past behavior in paying debts and bills, especially rent. The landlord also may look at your past behavior as a tenant. In addition, the landlord may look at your criminal record, if it involves crimes of physical violence to persons or property, or crimes affecting other tenants. The PHA cannot deny admission, or evict you, just because you have an arrest record, but they can consider your conduct that led to the arrest if it relates to your suitability as a tenant.

If the landlord finds things that are not in your favor, the landlord also must look at things that are in your favor and that would show your fitness as a tenant. The landlord must look at the time, nature and extent of your behavior, and whether it has gotten better. The landlord also must look at whether you are in (or will be in) social service, counseling, training or job programs, and whether you are willing to increase your income.

If you don't get admitted, the landlord must give you a written notice telling you why. This notice must tell you of your right to contest the denial in writing and/or in person.

How is rent set in unit-based assisted housing?

In federally subsidized housing, your rent is less than it would be without the subsidy. Usually you pay 30% of your adjusted monthly income for your housing costs. Your housing costs means both rent and utilities. Your adjusted monthly income means your total income minus certain deductions. There are deductions for dependents, elderly and disabled families, high medical expenses, and costs of child care needed to go to work or school.

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If all utilities except telephone are included in the rent, your rent is 30% of your adjusted monthly income. If all utilities except telephone are not included in your rent, your rent is 30% of your adjusted monthly income minus a "utility allowance." A utility allowance is the reasonable cost of a modest amount of utilities.

If the utility allowance is more than 30% of your adjusted monthly income, you pay no rent. You also get a monthly utility allowance check equal to the difference.

To be sure you pay the right amount of rent, you must report your income at least once a year. You also must report changes in income and family size right away.

What does the lease say in unit-based assisted housing?

You must be given a written lease. The lease must tell you the amount of rent, when rent is due, the landlord's duty to keep the housing in good repair, your rights and duties, the way to handle disputes, and the way to handle evictions. Everything in the lease must be reasonable.

How do I handle problems in unit-based assisted housing?

In most federally subsidized housing, if you have a problem with the landlord, you may ask for a grievance hearing. You must ask for this in writing. You must ask for a hearing within 10 days after the landlord takes action that you disagree with. You can use a grievance to deal with things like repairs, security, guests and visitors, and the amount of rent owed, without going to court.

The hearing is held in front of an unbiased person. You may look at the landlord's records, be represented, present evidence, question the landlord's evidence, and have a written decision. If you win the decision, your landlord must follow it. If you lose the decision, you still may contest it if the dispute goes to court.

What are the reasons for eviction from unit-based assisted housing?

All federally subsidized housing landlords must have a good reason to evict you. This means breaking the lease in a major way or many times, breaking the law in a major way or many times, or some other good reason. A good reason would be not paying rent, not obeying the lease, damaging property, or causing a danger to health or safety.

You must get an eviction notice from your landlord before you can be taken to court. The notice must tell you the specific reasons for eviction. The reasons must be clear enough to let you defend against them. The notice must tell you how and by what date to contest the decision to evict, and the proposed date for ending your tenancy. The notice also must tell you that the landlord must use court action to evict you, that you have the right to present defenses, and that only the reasons stated in the notice can be used to evict you.

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What notice is needed to evict me from unit-based assistance?

To evict you for not paying rent, your landlord must give you a written notice to either move or pay rent in 5 days. If you are in a public housing unit that is owned and operated by a public housing authority, you must be given 14 days to move or pay rent. If you pay the rent in 5 days (or 14 days in public housing), you get to stay. If you don't pay, your landlord can start an unlawful detainer action (an eviction) in General District Court (GDC). Even then, if your landlord's only reason for eviction is non-payment of rent, you get to stay if you pay the amounts owed. These amounts might include:

- All rent and arrears,
- Late charges and attorney's fees contracted for in a written rental agreement,
- Interest, and
- Court costs

The Summons for Unlawful Detainer lists all rent, late charges, attorney's fees, interest and court costs. If a new month's rent is due after you get the Summons, but before the date that you pay, you will have to pay that as well.

You must pay these amounts owed *on or before* your first court return date. The Summons for Unlawful Detainer lists your return date and time. You may pay the amounts owed to your landlord, your landlord's attorney, or the court. If you pay the amounts owed, you need to get a written receipt. You need to come to court on your court date even if you have paid the amounts owed, and bring your receipts. You can prevent eviction by paying the amounts owed only once each year that you continue to live in the same place.

To evict you for any other reason, your landlord usually must give you a 21/30 day written notice to move. This notice must explain the problem or reason the landlord wants to evict. If you correct the problem in 21 days, you get to stay. If not, the lease is terminated after 30 days from the date of the notice. If you don't move out after those 30 days then the landlord can start an unlawful detainer action in GDC.

To evict you for a reason that can't be corrected, your landlord must give you a written notice to move in 30 days. If you don't move by the end of the 30 days, the landlord can start an unlawful detainer action in GDC.

Are there defenses to eviction?

You may have a defense to the eviction. One defense is that the landlord did not keep the place in good shape. To use this defense, you must be current in rent and you must have told the landlord about the problem. You should do this in writing by certified mail to the landlord, before the unlawful detainer is filed. You also must pay rent to the court instead of the landlord.

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Another defense is that the landlord wants to evict because you complained or used legal rights. To use this defense, the landlord must know that you complained to the landlord or government agency about a rental housing problem, or that you joined a tenant's group, before the unlawful detainer is filed.

What are the court eviction procedures?

Your landlord can evict only by filing a lawsuit in GDC. A hearing will be held. If the judge rules in your favor, you get to stay. If the judge rules in your landlord's favor and you came to court, the judge must give you at least 10 more days in which to move. If you have not moved by the end of the 10 days, the landlord, based on the court order, can get a Writ of Possession. This allows the Sheriff to remove you and your belongings, from the premises.

If the judge rules in your landlord's favor and you did not come to court, the Writ of Possession may be issued immediately. The Writ of Possession authorizes the sheriff to remove you. However, the sheriff must give you 72 hours to leave. Your landlord may not cut off utilities, lock you out of the rental unit, or evict you without giving notice and going to court. You don't have to move just because your landlord tells you to leave. You don't have to move even if your landlord takes out an unlawful detainer. Your landlord must wait until a court order is issued. These steps usually take more than two months from the day you get a notice to move.

Any statement in a lease that says you give up (waive) your rights to the court eviction process is unenforceable.

Can my landlord tell my guests or friends not to come to the home I am renting?

Yes, a landlord can keep your guest from coming to the house or apartment that you rent if that person breaks the rules in the lease or breaks the law.

What must my landlord do to keep my guest out?

The landlord must have a written notice given to the guest. It may be delivered to the guest by the sheriff or may be served personally in another way. The notice must state the reason why the guest is no longer allowed to come to the property and must say what the guest did that broke the terms of the lease or the law. The guest cannot be barred unless he or she broke the rules of the lease, or broke local, state or federal law. The landlord may tell your guest that they are not allowed to visit you, and may say that they cannot come on the landlord's property at all if it is an apartment complex or mobile home park.

How will I know if my landlord has done this?

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A copy of the letter or notice sent to your guest must also be served on you.

Can the landlord bring criminal charges against my guest?

Yes, the landlord can apply to the magistrate for a trespass warrant against the guest if the guest has been served the proper notice and still comes on the property.

What if I think that my landlord was wrong to do this?

You can file an action in court asking the court to review the landlord's letter to the guest and asking the court to decide if it was correct or not. This is called a "tenant's assertion." A tenant's assertion must be done properly so you may wish to get legal advice on this.

Can my landlord try and evict me for actions of my guests or if I have the guest visit me after my landlord sent them the notice not to come on the property?

Yes. As the tenant, you are responsible for the way your guests act. Your guests must keep the rules of the lease that you follow and must not break the law. If the landlord has served the proper notice on you that the guest is barred from the property and he/she comes to see you anyway, that can be a reason for the landlord to evict you. If you live in public housing or subsidized housing, you may be held responsible for the acts of a guest even if you did not know that he was coming to see you or that he was going to break the rules. Many subsidized housing and public housing complexes also have strict rules about how long a guest may stay with you before the stay violates your lease as well as rules about reporting guests.

If the landlord does want to evict me for the actions of a guest, what must he do?

The landlord must first send you a written notice stating the reason for the eviction. There are some things that are considered remediable-- meaning they can be fixed. In those cases the landlord is supposed to send a notice giving you 21 days to fix the situation, or else your lease terminates in 30 days. However, if your guest did something very serious or broke the law in a serious way, the landlord can give a 30 day notice to terminate (without the chance to correct the problem) or an even shorter notice if the act was criminal and poses a threat to health or safety. After the landlord has given the proper notice and the time has passed for you to leave, the landlord must file an unlawful detainer action in court. You will have the chance to present any evidence you have at the court hearing.

What is the Mandatory Community Service Requirement in Public Housing?

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Since 2003, all adult public housing tenants must perform 8 hours of community service each month, unless they are exempt (excused from the requirement).

Who is excused?

Some of the people who are excused are:

- Tenants 62 years or older;
- Tenants who are blind or disabled and show that they cannot do the requirement because of their disability;
- The caretaker of a blind or disabled person;
- Tenants who are excused from the work requirements of state welfare programs;
- Members of families that receive TANF if they are following the work requirement rules for TANF;
- Tenants doing "work activities."

What is "work activity"?

There is a long list of "work activities," including:

- Having a job for a certain number of hours a week. The PHA can set the number of hours a week that counts;
- Going to school to help get a job, such as classes toward getting a GED;
- Being in a job search and job readiness assistance program;
- Vocational educational training;
- Good current attendance in high school or in a course of study leading to a certificate of general equivalence.

These are just some of the things that count as "work activities," but it is not the whole list.

What must you do if you are not excused?

You must do community service every year. You must do at least 8 hours per month and at least 96 hours per year.

What counts as community service?

Many things may count. For example, volunteering for a non-profit group, such as the girl scouts or the cancer society, or volunteering at a school, may count. Doing volunteer work at the public housing complex may also count as community service. You should get your community service plan okayed by the PHA before you start doing the work. You cannot use political activities or employment as your community service, but there are many other possibilities that can count as community service.

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What happens if I don't do it?

The PHA must review your community service every year, at least 30 days before the end of a 12 month lease term, to see if you have satisfied your requirement. The PHA may require verification from the agency where you volunteer that you have done the hours of service. You cannot be evicted in the middle of your lease term if you fail to do your community service hours. However, if you don't follow these rules, your lease may not be renewed for another term. Before deciding not to renew your lease because you haven't done your community service, the PHA must notify you of the non-compliance and of your right to a grievance of that decision. The PHA also must give you a chance to fix the problem. You can fix it by agreeing to make up the hours over the 12 month period of the new lease term (in addition to your usual 8 hours per month). However, if you still fail to do the hours or refuse to comply and you are not exempt from the community service requirement, the PHA eventually may not renew your lease.

What if I think that the decision on whether I am exempt, or whether the community service I want to do qualifies, is wrong?

You should be able to ask for a grievance hearing within a certain period of time after the PHA's decision. The grievance procedures should be available at your PHA for you to review. You should review the procedures to be sure you don't miss any deadlines or give up any rights you have.

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