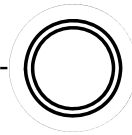


Know Your Participation and Organizing Rights in HUD-Assisted Rental Housing




RESIDENT ACADEMY

NATIONAL HOUSING LAW PROJECT

MAY 8, 2012

SECOND SESSION

HOUSING JUSTICE



National Housing Law Project

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Today We Will Cover

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- The 964 rules and the right to organize a resident council in Public Housing
- The PHA Plan process and organizing voucher participants
- The 245 rules and the right to organize a resident council in Project-based Section 8 and other HUD assisted housing

Today's Presenters

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- **24 Code of Federal Regulation (CFR) 964 rules**
 - Boston Resident Training Institute, Founding and Current Board Members
 - ✦ Peggy Santos
 - ✦ Carol Leary
 - ✦ Meena Carr
- **PHA Plan Process & participation by voucher holders**
 - ✦ Catherine Bishop, National Housing Law Project
- **24 Code of Federal Regulation (CFR) 245 rules**
 - Texas Tenants' Union
 - ✦ Sandy Rollins, Executive Director
 - ✦ Alice Basey, Board President and Voucher holder

Materials

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- **PowerPoints**
- **Reminder**
 - The materials and recording of the webinar “Subsidized Housing Programs: A Basic Overview for Tenants” are posted on NHLP website at <http://www.nhlp.org/webinars>
 - The PowerPoints and recording for today’s session will be posted at the same place

Boston Resident Training Institute (BRTI)

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- Refer to the BRTI PowerPoint

PHA Plan Process & Resident Advisory Board (RAB)

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Overview of PHA Plan Process

PHA FY (Google HUD PHA Profiles or look at last year's PHA Plan)



Action	Jan 1 FY Start date	April 1 FY Start Date	July 1 FY Start Date	Oct. 1 FY Start Date
PHA should begin to develop plan for coming year. RAB and tenants should review prior year plan, develop issues, determine progress on prior year goals and strategies. Current year approved plan attachments and supporting documents are available for review	May (Prior Year) 8 mos	Aug (Prior Year) 8 mos.	Nov (Prior Year) 8 mos.	Feb 8 mos
PHA should have available a draft plan and should be discussing the plan with RAB and tenants and other advocates, such as housing advocates, disability rights groups, homeless advocates and other agencies such as welfare and jurisdiction consolidated plan agency	Mid-July (Prior Year) 5.5 mos	Mid-Oct (Prior Year) 5.5 mos	Mid- Jan. 5.5 mos	Mid- April 5.5 mos
Notice of hearing, proposed plan on file for review, RAB members names published	Mid-Aug (Prior Year) 4.5 mos	Mid-Nov. (Prior Year) 4.5 mos	Mid-Feb 4.5mos	Mid-May 4.5 mos
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon public comment)	First week Oct (Prior Year) 3 mos	First week Jan 3 mos	First week April 3 mos	First week July 3 mos
Plan due at HUD	Mid-Oct. (Prior Year) 2.5 mos	Mid- Jan 2.5 mos	Mid- April 2.5 mos	Mid- July 2.5 mos
HUD approves plan and notifies PHA. PHA provides RAB with a copy of approved plan, notice of approval and funding awards. Or plan rejected	Jan 1	April 1	July 1	Oct. 1

Resident Advisory Board (RAB) and Voucher Tenants

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- All PHAs must have a RAB 42 USC 1437c-1(e); 24 CFR 903.13
- A RAB and Resident Council are different
- PHA must consult RAB on the PHA Annual & 5 Year Plans & must respond in writing to RAB comments
- Most RABs must have voucher participants
- Reasonable process to choose voucher participants
- RAB members must reflect & represent other participants & communicate with participants
- PHA must provide reasonable resources so RAB members may meet and communicate with others

Tell the PHA of your interest in the RAB

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- How does the RAB represent Voucher participants?
- What process does the PHA uses to select RAB members?
 - Follow that process to get on the RAB; Ask to be on the RAB
 - If you are a public housing RAB member, are there a good number of voucher participants? And vice versa?
- How does RAB communicate with other Voucher participants?
 - Ask to know when the RAB meetings are held; to attend the next RAB meeting; to meet with/talk to RAB members
- Tell the PHA and the RAB your concerns (and the concerns of others) about the Voucher program

Right to Organize in HUD- Assisted Housing

Resident Training Academy

May 8, 2012: Training

May 10, 2012: Q and A Period

What properties are covered?

- Project-based Section 8 properties (unless it is administered by the PHA);
- Properties with HUD-insured or HUD-held mortgages assisted under Section 236, Section 221(d)(3) BMIR, the Rent Supplement program, or the Section 8 LMSA program;
- Formerly HUD-owned properties that had been assisted under the programs listed above and was sold with a Use Agreement to maintain the property as low or moderate income housing;
- State or local housing finance agency properties that receive assistance under the Section 236 program or the rent supplement program;
- Properties that receive enhanced vouchers;
- Section 202 properties for the elderly; or
- Section 811 properties for persons with disabilities.

What activities are protected?

Owners must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

1. Distribute leaflets in lobby areas and other common areas;
2. Place leaflets at or under tenants' doors;
3. Initiate contact with tenants;
4. Conduct door-to-door surveys to ascertain interest in establishing a tenant group and to offer information about tenant organizations;
5. Post information on bulletin boards;
6. Assist tenants to participate in tenant organization activities;
7. Hold regularly scheduled tenant meetings in a space on site without the attendance of management representatives; and
8. Develop responses to the owner's request for rent increases, conversion to tenant-paid utilities, reducing the utility allowance, conversion to condos, etc.

You do not have to obtain the owner's or manager's permission to do these things.

What is a Legitimate Tenant Organization?

An organization established by the tenants in a covered property that:

- meets regularly;
- operates democratically;
- is representative of all residents in the development; and
- is *completely independent* of owners, management, and their representatives.

Recognition

Owners of covered multifamily properties and their agents must:

- recognize legitimate tenant organizations;
and
- Give reasonable consideration to concerns raised by legitimate tenant organizations.

Meeting Space

- Owners of covered multifamily properties must reasonably make space available in the community room, if any, or other space appropriate for tenant meetings.
- Tenant meetings must be accessible to persons with disabilities unless it is impractical for reasons beyond the organization's control.
- The owner may charge a fee as approved by HUD if it is normally imposed for the use of the space. The owner is not required to charge a fee.

Tenant Organizers

- A tenant organizer is a tenant or non-tenant who assists in establishing or operating a tenant organization and who is not an employee or representative of the owner, managers, or buyer of the property.
- Owners must allow tenant organizers to assist tenants in establishing or operating an organization.

Non-Tenant Tenant Organizers

- If the owner has a consistent enforced, written policy against canvassing, a non-tenant who is a tenant organizer must be accompanied by a tenant while on the property, unless the organizer is from a group with a HUD grant designed to provide education and outreach to tenants concerning HUD's mark-to-market program.
- If the owner has a written policy favoring canvassing or if the written policy against canvassing is not consistently enforced, any non-tenant who is a tenant organizer must have the same privileges and rights of access as any other uninvited outside party.

Tenants' rights not to be canvassed

- A tenant has a right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

Examples of Interference

HUD Handbook 4381.5, Section 4.8d gives examples of unacceptable actions by owners and management agents:

- Unreasonable denial of meeting space;
- Repeatedly sending management representatives resident meetings when tenants have requested management not attend;
- Evicting or threatening to evict, withholding entitlements, or otherwise penalizing tenants for organizing or asserting their rights;
- Attempting to buy tenants off by offering employment, transfers, rent abatements, repairs or other benefits not available to all residents of the property;
- Attempting to form a competing organization under the control of the management company or owner; or
- Running for office or otherwise serving as a member of the resident organization.

Enforcement

Owners or agents who violate any of these provisions and interfere with the organizational or participatory rights of tenants may be sanctioned by HUD with one or more of the following:

- Debarment – A person or organization that is debarred is prohibited from conducting business with any federal agency for a period of time. Debarment for the most serious violations are usually imposed for 3 years.
- Suspension – Suspension is a temporary action with the same effect as debarment.
- Limited Denial of Participation – LDP generally excludes a party from future participation from the federal program under which the cause arose. It usually lasts 12 months. It can also be limited to a certain geographic area.
- Civil Money Penalties – Fines imposed on owners, principals of owners and agents who knowingly and materially fail to comply with any of the provisions. The maximum fine is \$37,500.

Enforcement Process

Housing Notice H-2011-29 describes these rights and spells out a process for enforcement.

- A tenant or tenant organization may file a written complaint with the local HUD office.
- The owner/management agent must also be provided with a copy of the complaint and factual evidence must support the complaint.
- Evidence supporting the complaint may include: signed statements from tenants who have seen the violations, documents from owners expressing opposition to tenant organizing activities, or documents denying the use of the facilities.
- The HUD Hub/PC Director must discuss the complaint with the project owner or management and the tenant or tenant organization that complained. The Hub/PC Director must determine whether the complaint is legitimate and enforcement action is required.
- If HUD decides to pursue enforcement action, a Notice of Violation and/or a Notice of Default will be sent to the owner. The owner has 30 days to respond.
- If the owner fails to respond or if the response is inadequate, a referral may be sent to the Department Enforcement Center (DEC) and the owner should be flagged in HUD's Active Partners Participation System.
- If the owner's response adequately addresses the violation and is found to be in compliance, there is no flag in HUD's system and no referral for enforcement.
- If the referral to the DEC is necessary, the DEC will review the record and determine what action HUD will pursue. The DEC will advise the Hub Director and the owner of the result of the review and the appeal process.

How did these regulations come to exist?

- The National Alliance of HUD Tenants started a campaign to strengthen the right to organize in 1997.
- At their annual conference in 1998, a tenant from Los Angeles made a powerful presentation on the need for stronger protections for the right to organize to HUD.
- More than 100 tenant organizations around the country commented on the draft regulations HUD issued to make them better.

Sources

Link to the Tenant Participation Regulations:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title24/24cfr245_main_02.tpl

Link to HUD Notice H-11-29:

<http://portal.hud.gov/hudportal/documents/huddoc?id=11-29hsgn.pdf>

Link to HUD Management Agent Handbook (4381.5).

See Chapter 4:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/4381.5



The Right to Organize in Action



Question

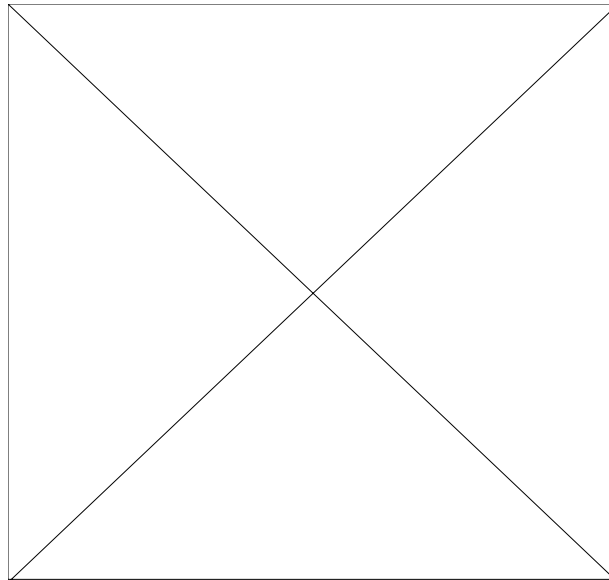
You are passing out leaflets for a tenant meeting and the manager tells you she is going to call the police if you don't stop. What would you do?

Question 2

The manager says you can have the community room for your meeting, but you must buy insurance. Can they get away with this?

Inspiration

- <http://www.youtube.com/watch?v=q7iXcKKpdx0>



Follow Up Discussion

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Thursday, May 10, 2012 at 6:00 PM ET
(5:00 PM CT; 4:00 PM MT; 3:00 PM PT)

If you have brief follow questions for the Thursday
question and answer discussion

Please send them now as part of this webinar or
email ResidentAcademy@nhlp.org

Please be advised that this is a training. We do not
represent you and we are not your lawyers.

This project was supported by a generous grant from The Herb Block Foundation

Thank you

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- Please fill out the evaluation form.