



JUN 15 1987

OFFICE OF THE ASSISTANT SECRETARY FOR  
PLANNING - FEDERAL HOUSING COMMISSIONER

Mr. Nicholas Roomeliotis  
State Attorney  
Wayne County Neighborhood Legal Services  
Downtown Intake Office  
3550 Cadillac Tower  
Detroit, MI 48226-2822

JUN 18 1987

Dear Mr. Roomeliotis:

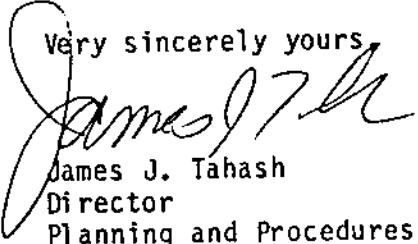
This is in response to your letter of April 30, 1987, to Assistant General Counsel Joseph Gelletich, regarding late fee charges to welfare tenants. Your letter has been forwarded to this office because your request deals with interpretation of program policy rather than legal opinion.

Mr. Saul Green of the Detroit Office is correct in his statement that late fees may be collected by project owners for late payment of the monthly rent. The Kealoha case (Kealoha v. HUD) you reference relates to whether late rental payments constitute substantial noncompliance with the lease terms, thereby providing cause for eviction. My affidavit and the stipulation for dismissal of said case involves material noncompliance and evictions, but does not preclude the collection of late fees.

Owners may charge late fees when tenant rent payments are not received by the fifth calendar day after the due date; however, failure on the part of the tenant to pay such late fees does not precipitate eviction from the project.

This policy is outlined in paragraph 4-14 of HUD Handbook 4350.3, "Occupancy Requirements of Subsidized Multifamily Housing Programs," and has been acknowledged and supported in affidavits and administrative proceedings.

I trust this response satisfies your concerns and queries with respect to late fee charges. If I can be of further assistance to you, please let me know.

Very sincerely yours,  
  
James J. Tahash  
Director  
Planning and Procedures Division



**WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES**

**REPLY TO:**

Downtown Intake Office  
3550 Cadillac Tower  
Detroit, MI 48226-2822  
(313) 962-0466

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DA D. BERNARD, J.D., L.L.M.,  
*Executive Director*

April 30, 1987

Joseph Gelletich  
Assistant General Counsel  
U.S. Department of Housing & Urban Development  
451 7th St. SW  
Washington, D.C.

RE: Late Fee Charges to Welfare Tenants  
Villa Apollo II  
Wyandotte, Michigan  
Project No. 044-44285

Dear Mr. Gelletich,

This letter is to request an opinion from you.

The project cited above is subsidized by HUD. They have a late fee policy in conformity with the HUD model lease. There are many residents who are recipients of welfare benefits, and the project has a policy of not accepting direct vendored rent payments from the Michigan Department of Social Services.

In Michigan, welfare recipients receive two checks a month, approximately on the 10th and 24th. Because their welfare income is strictly budgeted, it is difficult (if not impossible) to save money in advance. Therefore, they often must pay their rent late with the additional \$5.00 late fee. As you might imagine, this policy disproportionately affects welfare recipients.

Continued.....





**WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES**

**REPLY TO:**

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Villa Apollo II  
Wyandotte, Michigan  
Project No. 044-44285**

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- INDA D. BERNARD, J.D., L.L.M.,  
*Cultive Director*

I learned that in the case Kealoha v. HUD, No. 83-05094 (US District Court, D. Hawaii, 1983), a similar late fee policy was challenged by the plaintiff. Mr. Tahash's affidavit, incorporated into the stipulation and order for dismissal, states that:

"HUD assumes that an owner will not consider a rental payment to be late, for purposes of substantial non-compliance with the lease such as to serve as a basis for eviction, if rent is tendered within three business days of receipt of the assistance check from the Hawaii Department of Social Services and Housing. It is HUD's interpretation of the model lease that such late payments do not constitute material noncompliance with the lease notwithstanding that such late payments occur more than once."

I posed the question to Mr. Saul Green, Chief Counsel of HUD in Detroit, as to whether this would prohibit collection of late fees from welfare tenants, if the rent were tendered within the time Mr. Tahash described. He replied that late fees may be collected by project owners, notwithstanding Mr. Tahash's affidavit, because the Kealoha case was a material non-compliance case and therefore distinguishable.

Mr. Gelletich, I am writing to you more or less as an informal "appeal". It makes no sense to me that HUD "will not consider a rental payment to be late", but still require a late charge. Why make an artificial distinction between material non-compliance cases and rent cases?

Continued.....





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RE: Late Fee Charges to Welfare Tenants  
Villa Apollo II  
Wyandotte, Michigan  
Project No. 044-44285

Specifically, I am asking you for an opinion on the following questions:

- (1) If a welfare tenant pays the rent within three business days of receipt of the first welfare check in the month, may a late fee be charged, in light of Mr. Tahash's affidavit in Kealoha?
- (2) If a welfare tenant pays the rent within 3 business days of receipt of the first welfare check in the month, but did not tender a late fee, would that constitute material noncompliance, in light of Mr. Tahash's affidavit?
- (3) May a project unilaterally refuse to accept directly vendored rent payments?
- (4) If rent payments were directly vendored twice a month by the Department of Social Services, would a late charge be permissible?

For easy reference, I am enclosing copies of the Kealoha documents as well as my prior correspondence with Saul Green. You should also note that we litigated this issue in Federal Court against the project owner and HUD. We lost on an equal protection argument against the project owner, and voluntarily dismissed against HUD. In lieu of further litigation, I am writing this request for your opinion.

I truly appreciate your attention to this matter, and I look forward to your reply. Please do not hesitate to contact me if problems arise.

Sincerely,

Nicholas Roomeliotis  
Staff Attorney

NR/pjw  
Enclosure

