



H O U S I N G

Special Attention of:

Notice H 91-35 (HUD)

All Regional Housing Directors; Issued: 5/9/91
Directors of Housing Management, Expires: 5/31/92
Category A and B Offices; Loan
Management Branch Chiefs,
Category A, B and C Offices; Cross References:
Assisted Housing Management Branch Chiefs,
All Contract Administrators; and All State Agencies

Subject:

Drug Problems in HUD-Insured and Assisted Housing -
Lease Changes

PURPOSE. This Notice provides policy guidance in a significant area of the Department's efforts to fight the manufacture, sale and use of illegal drugs in its insured and assisted housing. The Notice adds language to the HUD Model Lease which clarifies that illegal drug activity constitutes a violation of the lease and is grounds for eviction.

BACKGROUND. The procedures which will be discussed here affect all tenants covered by HUD Handbook 4350.3 except those in cooperatives and state-financed projects. It includes tenants assisted by RAP, Rent Supplement and the Section 8 Program (New Construction, Substantial Rehabilitation, Loan Management and PD Set Aside); tenants paying contract rent in the Section 221(d)(3) BMIR projects; and tenants paying basic rent and anything other than market rent in Section 236 projects.

Criminal activity including the manufacture, sale or use of illegal drugs by members of a HUD assisted household is grounds for eviction of the family. Such criminal activity may violate specific requirements of the Model Lease (HUD Handbook 4350.3, Appendix 19a).

Appendix 19a, Section 13 states that the tenant may use the unit only (a) as a private dwelling (b) for the individuals listed on the certification of eligibility or other occupants approved in advance by the landlord. Use of the unit by the tenant or members of that household for drug use/sale, violates the lease prohibition against use of the unit for purposes other than as a private dwelling. In addition, a tenant who allows unauthorized persons to live in the unit for drug dealing or other illicit purposes, violates the requirement that the unit be used by the approved occupants.

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Distribution to Field Offices and State Agencies

Sections 13.b and 13.c provide that the tenant may not "use the unit for unlawful purposes," or "engage in or permit unlawful activities in the unit, in the common areas or on the project grounds." Illegal drug activity in violation of either of these provisions by the tenant, household members or guests constitutes material noncompliance with the lease, and is, therefore grounds for eviction from the unit.

Section 13.e states that the tenant agrees not to "make or permit noises or acts that will disturb the rights or comfort of neighbors." Therefore, apart from eviction for direct involvement in drug manufacture, sale and use, owners may properly seek eviction of tenants for other lease violations which may be associated with or caused by illegal drug activity. Where such activity by the tenant, household members or guests causes noise and disturbance (e.g., the comings and goings associated with an assisted unit being used as a crack house), owners may seek to evict tenants for permitting this activity to occur in violation of the lease. Since this type of activity may occur in common or public areas of the project, it will often be easier to prove the tenant caused disturbance than to prove drug sale, manufacture or use in the unit.

NOTE: The tenant also agrees in Section 14 of the Model Lease to obey all requirements in the owner's house rules. Violation of this section may also be grounds for termination.

DISCUSSION. The Office of General Counsel in Headquarters has approved the addition of language in the Model Lease to permit an owner to evict a tenant for illegal drug-related activity.

Subject to HUD regulations imposing procedures for lease modification, if the owner desires, the lease may be revised with the approval of the HUD Field Office to add provisions which specifically prohibit illegal drug activities in the assisted units or on or near project grounds. Section 13 of the Model Lease currently prohibits commission of unlawful activities in the unit, the common areas or the project grounds. The owner may supplement this prohibition by revising Section 13 of the Model Lease language to read:

13. General Restrictions: The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Certification and Recertification of Tenant Eligibility. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord.

a. The Tenant agrees not to:

1. Sublet or assign the unit, or any part of the unit:

2. have pets or animals of any kind in the unit without the prior written permission of the Landlord; or
 3. make or permit noises or acts that disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.
- b. The Tenant agrees that the Tenant and members of the household must not engage in or permit:
1. any criminal activity, including drug-related criminal activity, whether in the unit or elsewhere on or near the project; or
 2. any other unlawful activity in the unit or on the project.

Owners who desire to revise the lease to specifically prohibit illegal drug activities in the assisted unit or on or near the project grounds MUST utilize the verbatim language quoted above. For any deviation from the above format, an owner must obtain written approval from the Assistant General Counsel of the Multifamily Mortgage Division for projects involving FHA insured loans, and the Assistant General Counsel for Assisted Housing for projects receiving Section 8.

EFFECT OF THE FAIR HOUSING ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973. An owner does not violate the prohibitions on discrimination against individuals with handicaps under Section 504 or the Fair Housing Act by evicting a tenant because he or she illegally uses, sells, manufactures, or distributes controlled substances on project premises. Individuals that currently use controlled substances illegally are not individuals with handicaps under the Fair Housing Act. Moreover, individuals that are involved in illegal drug activity are not otherwise qualified individuals with handicaps under Section 504 or the Fair Housing Act due to their illegal activity.

However, the procedures cannot be applied differently to an individual who currently does not illegally use, sell, manufacture, or distribute controlled substances solely because he or she is addicted to controlled substances, other drugs or alcohol. Further, owners are warned that they must apply the policy for terminating leases consistently to avoid the appearance that the policies are being used to evict otherwise qualified individuals who are protected by Section 504 or the Fair Housing Act.

FOR FURTHER INFORMATION. For the next 90 days, please direct any questions on this memorandum to the Planning and Procedures Division of the Office of Multifamily Housing Management. That telephone number is FTS-458-4162. Thereafter, direct questions to your Desk Officer in the Operations Division.



Arthur J. Hill
Assistant Secretary for Housing-
Federal Housing Commissioner