

Memorandum

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

TO : Marvin Lerman, Regional Counsel, 1G
Region I

DATE: JUL 15 1980

IN REPLY REFER TO:

FROM : Robert S. Kenison, Urban Development Division, GU

SUBJECT: Prohibited Lease Provision Concerning Legal Costs to Tenants,
24 CFR 866.6(h)

This is in response to your memorandum dated March 18, 1980, requesting a clarification of 24 CFR 866.6(h) concerning prohibited lease provisions. In your memorandum you indicate that the regulation is ambiguous because it does not indicate whether a tenant may be charged with legal costs where a lawsuit is withdrawn prior to final adjudication.

The HUD regulation at 24 CFR 866.6 states:

"Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

* * *

"(h) Tenant chargeable with cost of legal actions regardless of outcome. Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit."

The regulation does not preclude a tenant from being charged with legal costs where a lawsuit is withdrawn prior to final adjudication, but it does prohibit a public housing authority (PHA) from imposing this obligation on the tenant as a condition of the lease.

Section 866.6(h) is intended to eliminate from the lease any clause which requires the tenant to agree prior to the occurrence of a dispute between the PHA and the tenant, and notwithstanding the

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* facts of the dispute, to assume financial liability for the legal costs of both parties arising from the dispute. However; once an eviction action has been commenced by the PHA, this does not prohibit the PHA and the tenant from entering into an agreement under the terms of which the tenant agrees to pay legal costs incurred by the PHA in consideration for the PHA agreeing to dismiss the eviction action prior to final adjudication.

* Although the regulations do not prohibit references to absolute or partial liability for legal fees, this office discourages any such references in the lease. Financial liability should be determined after the occurrence of a dispute and based on the individual facts of each dispute. For this reason, if a tenant is to be charged for legal fees, the basis for such a charge must be the result of either a judicial decree or an agreement between the PHA and the tenant entered into subsequent to the commencement of an eviction action.

* In summary, although the tenant may be charged with all legal costs without the case ever reaching final adjudication, the obligation of the tenant to pay these costs is not to be a condition of the lease. Financial liability for legal costs is a matter to be resolved by the parties after initiation of the eviction action and, if reduced to writing, is to be contained in an agreement other than the lease.

Robert S. Kenyon

Associate General Counsel