



Housing Law Bulletin

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HUD ISSUES FINAL RULE ON TENANT ORGANIZING¹

Implementing a federal statute passed late in 1998 to expand tenant organizing rights to Section 8 properties, the Department of Housing and Urban Development (HUD) issued a final rule in June, 2000, covering tenant participation and organizing in most of the privately-owned, HUD-insured and assisted

multifamily housing stock.² The federal law was sought by tenants after numerous instances of management intimidation and harassment; most dramatically, the arrest of organizers in Los Angeles and Dallas in 1998. The new rule, effective July 7, 2000, makes a number of important changes to the proposed rule that HUD issued approximately one year ago.³ This article summarizes the most important provisions of the final rule, which will improve the ability of tenants to educate and organize themselves and represent their members, free from the intimidation or harassment by management that has often impeded tenant activism.

¹NHLP expresses its appreciation to Nicholas Olmsted, a summer intern from New York University Law School's Public Interest Fellowship Program, for preparing this article.

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Scope of Application

The final rule applies to projects financed or assisted under project-based Section 8 (except for public housing authorities (PHAs) administering such assistance), Section 202, Section 221(d)(3), Section 236 or the Rent Supplement Program, Section 811, and projects receiving enhanced vouchers under the preservation or renewal and restructuring laws.⁴

Right to Organize

The final rule, like the proposed rule, indicates that tenants in covered properties "have the right to establish and operate a tenant organization,"⁵ but the final rule expands

²24 C.F.R. Part 245, 65 Fed. Reg. 36,272 (June 7, 2000). The statute was § 599 of the *Quality Housing and Work Responsibility Act*, Pub. L. 105-276 (approved Oct. 21, 1998), codified at 12 U.S.C.A. §1715z-1b (West Supp. 2000).

³64 Fed. Reg. 32,782 (June 17, 1999). For a discussion of the proposed rule and its problems, see *HUD Proposes Rule on Tenant Organizing*, 29 HOUS. L. BULL. 141 (July/Aug. 1999). The article also reviews the history of the regulation of tenant organizing in HUD-assisted housing.

⁴*The Low-Income Housing Preservation and Resident Homeownership Act of 1990*, Pub. L. No. 101-625, Title VI, 104 Stat. 4249 (1990); the *Emergency Low Income Housing Preservation Act of 1987*, Pub. L. No. 100-242, Title II, 101 Stat. 1877 (1987); and the *Multifamily Assisted Housing Reform and Affordability Act of 1997*, Pub. L. No. 105-65, Title V, 111 Stat. 1344 (1997).

⁵65 Fed. Reg. 36,272, 36,281 (June 7, 2000) to be codified at 24 C.F.R. § 245.100 (hereinafter, all citations are to the codified section of the new rules).

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the purpose for which tenants can form the organization. The organization may be aimed not merely at addressing the “terms and conditions of their tenancy” but more broadly at “issues related to their living environment,” including “activities related to housing and community development.”

Recognition of Tenant Groups

The final rule requires owners of covered projects to “recognize legitimate tenant organizations; and [to] . . . [g]ive reasonable considerations to concerns” that they raise.⁶

Requirements for Tenant Organizations

In comparison to the proposed rule, the final rule substantially modifies the requirements for legitimate tenant organizations. It eliminates proposed sections which had imposed many specific requirements for the structure, voting procedures, and governing boards of tenant organizations. Instead, the rule⁷ substitutes a revised and more general standard, stating that a legitimate tenant organization is one that “meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.”⁸

Protected Activities

The final rule sets forth a list of activities regarding tenants and tenant organizers that owners and their agents must allow.⁹ These activities include the following, which were also included in the proposed rule:

- distributing leaflets in lobbies and common areas and under tenants’ doors;
- posting information on bulletin boards;
- initiating contact with tenants;
- helping tenants participate in organization activities; and
- formulating responses to owner’s requests for rent increases, partial payment of claims, prepayment of loans and certain other changes in the operation or management of the development, and “other reasonable activities related to the establishment or operation of a tenant organization.”¹⁰

The final rule also modifies some of the proposed provisions concerning permissible activities.¹¹ First, like its proposed counterpart, the rule requires owners to allow tenants and organizers to convene regularly scheduled

organization meetings in an on-site, accessible space,¹² but the final version further requires owners to allow this to be done “in a manner that is fully independent of management representatives” and forbids such representatives to attend unless invited by the organization to specific meetings to discuss specific issues. Second, in contrast to the proposed rule, the final rule does not limit tenants and organizers to an initial door-to-door survey to ascertain interest in establishing an organization and to offer information. Third, the final rule adds a provision, stipulating that owners and their agents “shall not require tenants and tenant organizers to obtain prior permission” before engaging in the permitted activities described above.¹³

The final rule requires owners and their agents to allow tenant organizers to assist tenants in establishing and operating tenant organizations.

Access to Meeting Space

A common obstacle to tenant organizing is the lack of access to suitable meeting space. The final rule requires owners reasonably to make available space in the project appropriate for meetings, when tenants request it for organizing activities, to establish an organization or to address “the terms and conditions of their tenancy.”¹⁴ The final rule, like the proposed rule, requires that the meetings must be accessible to persons with disabilities, but grants an exception where it would be impractical for reasons beyond the organization’s control (the exception would not be applicable if any accessible common area is available in the project). With regard to fees, the final rule, similar to the proposed rule, allows owners to charge a fee, but adds the condition that the fee be “reasonable, customary, and usual.”¹⁵ The final rule, like the proposed rule, fails to follow long-standing congressional guidance that HUD should authorize use of project funds to cover owner-imposed fees.¹⁶

Assistance from Tenant Organizers

Similar to the proposed rule, the final rule requires owners and their agents to allow tenant organizers to assist tenants in establishing and operating tenant organizations.¹⁷

⁶§ 245.105.

⁷§ 245.110.

⁸See HUD’s *Management Agent Handbook* (4381.5 REV-2).

⁹§ 245.115.

¹⁰§§ 245.115(a), 245.115(b).

¹¹§ 245.115.

¹²§ 245.115(a)(8).

¹³§ 245.115(c).

¹⁴§ 245.120.

¹⁵§ 120(c).

¹⁶See from the original 1978 tenant participation statute, the *Statement of the Committee on Conference*, at p. 96, reprinted in 1978 U.S.C.C.A.N. at p. 4773.

¹⁷§ 245.125.

It defines a tenant organizer as a “tenant or non-tenant who assists tenants in establishing and operating a tenant organization,” but adds a provision that an organizer cannot be “an employee or representative of current or prospective owners, managers, or any of their agents.”¹⁸ However, owners are allowed to exclude nonresident organizers under certain narrow circumstances. Specifically, if the project has a consistently enforced written¹⁹ policy against canvassing, then the owner or agent may require that any non-tenant organizer who is on the property for any purpose be accompanied by a tenant. The final rule also adds an important exception for recipients of *HUD Outreach and Technical Assistance Grants* or other HUD grants designed to provide education and outreach to tenants concerning the mark-to-market renewal and restructuring program, who need not be accompanied by a tenant. The final rule largely replicates the proposed rule’s provision that if a project has a written policy favoring canvassing, any non-tenant organizer must be afforded the same rights and privileges of access as other uninvited outside parties, and that if the project does not have a consistently enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.²⁰

Tenants’ Rights Not to be Re-canvassed

The final rule, again similar to the proposed rule, states that a tenant “has the right not to be re-canvassed” with regard to participation in an organization, but adds the language “against his or her wishes.”²¹

Enforcement

In contrast to the proposed rule, the final rule includes specific enforcement provisions. Where owners or agents violate any of the provisions, the rule provides for sanctions, including debarment, suspension or limited participation in federal programs, and these sanctions may apply to violators’ affiliates.²²

Conclusion

These final rules represent an important milestone in recognizing fundamental tenant rights, and HUD is to be commended for significantly improving the proposed rule in response to tenant comments. We hope that HUD will continue to take management harassment seriously, and use the standards and sanctions provided by these new rules to address violations promptly and consistently throughout the country. ■

¹⁸*Id.*

¹⁹The proposed rule did not require the policy to be written. 64 Fed. Reg. 32,782.

²⁰A difference between the final and proposed versions is that the latter omits “written.”

²¹§ 245.130.

²²§ 245.135.

WELCOME NEW NHLP STAFF

The National Housing Law Project is extremely pleased to announce that S. Lynn Martinez and Todd Espinosa have recently joined its Oakland staff. Lynn comes to NHLP from the Department of Housing and Urban Development (HUD) where, for the last two years, she worked as a Community Builder in the San Francisco office of HUD’s Pacific/Hawaii Regional Office. As a member of the inaugural class of national Community Builder Fellows, Lynn provided counsel and technical assistance on local, state and national impact projects. She was responsible for assisting communities and nonprofit organizations in developing strategies and partnerships to support community development and preserve affordable housing. Before joining HUD, Lynn worked for Legal Services of Northern California (LSNC) where she specialized in handling housing and community development issues, including multi-client impact litigation. While at LSNC, Lynn was awarded the Earl Johnson Community Lawyer Fellowship, which is funded and awarded annually by the State Bar of California to a California attorney to work on emerging legal issues in his or her community. At NHLP, Lynn will be working primarily on our New Section 8 Homeownership Initiative. Lynn can be reached at NHLP’s Oakland Office. Her email address is smartinez@nhlp.org.

Todd Espinosa joins NHLP as a two-year New Voices Fellow, a fellowship funded by the Academy for Education Development and underwritten by the Ford Foundation. The New Voices Fellowship program is a new program to help nonprofit organizations bring innovative young voices to their staff. Todd is a recent graduate of Harvard Law School. He was an intern with NHLP during the summer of 1999 and with the San Francisco Legal Assistance Foundation in the summer of 1998. While at law school, Todd worked with the Harvard Legal Aid Bureau, where he represented low-income residents in landlord-tenant and government benefit cases, and with the Tenant Advocacy Project, where he represented public and subsidized housing tenants in administrative grievance hearings at local Massachusetts public housing authorities. At NHLP, Todd will be working on our new National Fair Housing Initiative, which is focusing on the fair housing implications of the demolition and disposition of public and subsidized housing. Todd can also be reached at NHLP’s Oakland office. His email address is tespinosa@nhlp.org.

We are delighted to have both Lynn and Todd join the NHLP staff and look forward to working with them. ■