



U.S. Department of Housing and Urban Development

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MAR - 9 2009

James M. McCreight, Esq.
Senior Attorney, Housing Unit
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197 Friend Street
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Re: Reasonable Accommodation Language in Termination Notices
in HUD's Multifamily Handbook

Dear Attorney McCreight,

This responds to your request for clarification and guidance on two issues concerning tenant termination notices and a landlord's obligations relative to a tenant's rights to seek reasonable accommodation. The first issue involves the distinction between reasonable accommodation language in termination notices required by HUD's Multifamily Occupancy Handbook ("Handbook No. 4350.3 REV-1", titled "Occupancy Requirements of Subsidized Multifamily Housing Programs") and the different scope of the language required by MHFA's Massachusetts Housing Occupancy Agreement; the second issue involves the application of the phrase "hearing process" as used in HUD's Multifamily Occupancy Handbook.

As you note, HUD's termination notice requirement differs from that mandated by MHFA in its required Occupancy Agreements. The HUD Handbook language pertains to a tenant's right to seek reasonable accommodation in order to effectively participate in the post-termination notice hearing process, while the Massachusetts Housing Occupancy Agreement provides notice to tenants of their right to request a reasonable accommodation in order to defend termination actions or resolve lease violations resulting from a disability.

We agree that, for owners covered under both agreements, it may be preferable and, in some cases, required for owners to incorporate both requirements in their termination notices. HUD's Occupancy Guidebook contemplates such a scenario, emphasizing that the procedures prescribed in the Guidebook are *minimum standards* and that owners should be aware of state or local laws that may be more restrictive. HUD Occupancy Handbook, 4350.3 REV-1, Chapter 8, Section 8-13.B. Further, there is nothing in HUD's Occupancy Handbook that conflicts with the

provision of the Massachusetts Housing Occupancy Agreement to which you cite or otherwise discourages a tenant from raising a reasonable accommodation defense in response to termination. As you know, HUD's Occupancy Handbook strongly recommends that owners include statements about the right of individuals with disabilities to request reasonable accommodations in all written notices given to applicants and tenants. HUD Occupancy Handbook, 4350.3 REV-1, Chapter 2, Section 2-38.C.

Your interpretation of the applicability of the phrase "hearing process," as utilized in HUD's Multifamily Occupancy Handbook, is accurate. As stated above, HUD's Multifamily Occupancy Handbook mandates that owners issuing termination notices include a statement communicating to persons with disabilities that they have a right to request a reasonable accommodation to participate in the hearing process. HUD Occupancy Handbook, 4350.3 REV-1, Chapter 8, Section 8-13.B.2.(c)(5). The intent of this provision is to ensure that all tenants receive an opportunity to participate in the hearing process, irrespective of disability, and to reinforce that it may be necessary for an owner to grant a tenant a reasonable accommodation if such an accommodation is necessary to afford the tenant this opportunity.

The Handbook further mandates that owners provide written notices advising tenants that they have ten days in which to discuss the termination with the owner. HUD Occupancy Handbook, 4350.3 REV-1, Chapter 8, Section 8-13.B.2.(c)(4). The term "hearing process" in this context refers to the requirement that tenants facing termination have the opportunity to address the reasons for termination. Hence, under these same termination notice requirements, the owner is required to provide sufficient detail in the written notice to tenants to enable the tenant to prepare a defense. *Id* at Section 8-13.B.2.(c)(2).

Please do not hesitate to contact me should you have additional questions.

Sincerely,



Miniard Culpepper
Regional Counsel
for New England