

67547-8

IN DIVISION ONE OF THE
COURT OF APPEALS
FOR THE STATE OF WASHINGTON

*Court of Appeals Cause # 675478
(Superior Court cause # 11-2-01638-9)*

TINA WADSWORTH,
Appellant/Defendant,

v.

INDIGO REAL ESTATE SERVICES, INC.
Respondent/Plaintiff

**APPELLANT TINA WADSWORTH'S
OPENING BRIEF**

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

ORIGINAL

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- B. Whether Ms. Wadsworth should have been awarded attorney fees and costs as the prevailing party?
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STANDARD OF REVIEW

The record on appeal consists solely of written materials presented by the parties and the oral argument of their attorneys. “When the record consists entirely of written material, an appellate court stands in the same position as the trial court and reviews the record de novo.” *Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wash.App. 382, 387 (2005), citing *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wash.2d 243, 252 (1994), and *Amren v. City of Kalama*, 131 Wash.2d 25, 32 (1997). Issues of law are also reviewed *de novo. Id.*

STATEMENT OF THE CASE

In January 2011, Appellant Tina Wadsworth leased an apartment in Bellingham from Indigo Real Estate Services, Inc. (“Indigo”). *CP 130-144*. Ms. Wadsworth qualified for rental assistance through “Section 8” of the Federal Housing Act of 1937 (42 U.S.C. § 1437f), *CP 50*, and Indigo had agreed to accept her as a Section 8 tenant. *CP 22-26*. One of the conditions of the Section 8 program is that Indigo’s usual eleven page form lease must be supplemented with an addendum containing provisions required by federal regulations (“the Section 8 Addendum”). *24 CFR 982.308(f)*.

The Section 8 Addendum to the parties’ lease provides that “[t]he

Landlord shall not terminate the Lease except for . . . [m]aterial noncompliance with the lease. . . .” *CP 23*. The Section 8 Addendum defines “material noncompliance” as including “one or more substantial violations of the Lease” or

b. Repeated minor violations of the Lease which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the lease (sic) premises and retained facilities, interfere with the management of the project or have an adverse financial effect on the project.

Id. By the express terms of the Section 8 Addendum, the provisions of the Addendum control in the event of conflict between the Addendum and Indigo’s standard form lease. *CP 22; see also 24 CFR 982.308(f)(2)*.

Soon after Ms. Wadsworth moved in, a man staying illegally in the apartment below her began verbally harassing, and being physically threatening to, Ms. Wadsworth and her seven-year-old daughter. *CP50-51*. Ms. Wadsworth repeatedly asked the complex manager and the Housing Authority for help, without success. *CP 51, 55-62*. Ms. Wadsworth finally placed a piece of plywood against her balcony railing to prevent the man from peering into their apartment and verbally harassing them. *Id.* Ms. Wadsworth subsequently discovered that the man was a registered sex offender. *CP 85*.

On May 17, 2011, Indigo served Ms. Wadsworth with a written “10-

Day Notice to Comply with Lease or Quit Premises,” alleging she had violated a provision of the lease requiring that “balconies and patios shall be kept neat and clean at all times.” *CP 117*. The notice alleged that animal waste had come from her deck, that she had a piece of plywood along the inside of the deck railing and that unspecified “debris, liquid, and various materials” had come through the deck. *Id.* The notice directed her to remove the plywood and take action to prevent materials from falling through the deck within ten days or to surrender possession of the premises. *Id.* The notice specifically informed her that she had the right to “discuss this termination with the landlord” within the ten day period. *Id.*

In response, Ms. Wadsworth denied that anything had fallen through the deck. *CP 77-82* She noted that the decking consisted of boards set approximately one eighth inch apart and that it would be impossible for animal feces to pass through the gaps between the boards. *CP 53*. However, in order to comply with the notice, she cleaned the deck and covered the decking with a plastic tarp. *Id.* She also informed her boyfriend that he could no longer bring his dog within him when he visited. *CP 80*. She notified the landlord that she had placed the plywood panel against the railing as a privacy screen out of concern for her seven-year-old daughter because a man living in the apartment below her was stalking and harassing them and trying to see into their apartment. *CP 55 -59, 61, 79*. She noted that several other units in

the apartment complex had various types of screening in place on their balconies. *CP 80*. Indigo's resident manager refused to exempt the plywood from the 10-day notice, and Ms. Wadsworth removed the plywood fourteen days after receiving the notice. *July 8 RP at 12:22-13:11*.

On June 9, Ms. Wadsworth was served with a Complaint for Unlawful Detainer, alleging failure to comply with the May 17 notice as the sole ground for termination of Ms. Wadsworth's tenancy. *CP 115-145*. The Complaint alleged that a copy of the rental agreement was filed with the Complaint, *CP115*, but only Indigo's standard form lease was attached. *CP130-144*. The Section 8 Addendum was not filed or served with the Complaint. *Id.*

At Indigo's request, the trial court ordered Ms. Wadsworth to appear and show cause why she should not be summarily evicted. Indigo stipulated at the hearing that the sole basis for evicting Ms. Wadsworth was her four-day delay in removing the plywood from her balcony. *July 8 RP at 12:22-13:11*.

Attorney Thomas Flattery entered a limited appearance *pro bono* on behalf of Ms. Wadsworth for purposes of the show cause hearing. *July 8 RP at 6:5-8*. Mr. Flattery argued that under the federal law that governs Section 8 leases, serious or repeated violations of the lease are required to justify

termination of the lease. *July 8 RP at 10:24 – 11:5.*¹ He also argued that the eviction was in retaliation for Ms. Wadsworth's exercise of her rights under the Residential Landlord Tenant Act, Chapter 59.18 RCW. *July 8 RP at 9:14-21.*

Mr. Flattery offered proof that Ms. Wadsworth had placed the panel against the open railing of her balcony to provide privacy to protect herself and her daughter from harassment by a man who frequented the apartment below hers and with whom she and her young daughter had had several confrontations. *July 8 RP at 7:17-23.* He also offered evidence showing that other units in the apartment complex had screening on their balconies, arguing that if the "neat and clean balcony" covenant in the lease barred privacy screens, Indigo had waived enforcement of that covenant by allowing other tenants to have similar screens. *July 8 RP at 9:3-11.* Indigo objected to all evidence offered by Ms. Wadsworth other than her admission that the panel had remained on the balcony for four days after the expiration of the "10 Day Notice To Comply". The trial court sustained these objections. *July 8 RP at 7:24-25, 8:23-24, 9:12-13, 10:16-21;11:6-13, 13:20, &14:7-8.*

Indigo argued that Section 8 regulations apply only to administrative termination of the tenant's participation in the Section 8 program, not to

¹ Mr. Flattery was unaware that there was a "Section 8 Addendum" to the parties' lease, because Indigo had not included it with the Complaint. *CP 20.*

termination of the lease itself:

MR. FLATTERY: There is a requirement that there be a showing of serious and repeated violations --

MR. WALSH: Objection. That's incorrect.

MR. FLATTERY: -- and not a one-time event of having plywood leaning against the railing --

MR. WALSH: Move to strike.

THE COURT: Stricken.

MR. FLATTERY: -- which is not the kind of violation that rises to the level of warrants somebody having their HUD rights jeopardized or lost.

MR. WALSH: Again, the HUD rights -- although you have sustained the objection, HUD rights are a separate issue. They're with the housing authority. There is an administrative process in place right now. I understand she followed the guidelines and she's going to have a hearing to maintain her benefits. This has nothing to do with her benefits.

July 8 RP at 14:2-18. Indigo did not claim, and did not offer any evidence tending to show, that the presence of the plywood panel adversely affected the health or safety of other persons, interfered with other tenants' quiet enjoyment of their units, or adversely affected Indigo's management of the apartment complex or its financial interests.

The trial court rejected Ms. Wadsworth's arguments, and held that Ms. Wadsworth's admitted failure to remove the plywood until four days after the ten-day deadline was dispositive:

Well, in my judgment it has been established that there was not compliance within the ten-day period. I believe that is sufficient to grant relief to plaintiff.

July 8 RP at 16:22-25. The trial court entered an Order prepared by Indigo's counsel that (1) directed the Clerk of the Court to issue a Writ of Restitution and (2) stated that "the tenancy of the defendant(s) in the premises is hereby terminated." *CP 35.* The court also awarded Indigo a judgment for its attorney fees and costs. *CP 33.*

After the show cause hearing, attorney Flattery discovered the existence of the Section 8 Addendum, *i.e.* that Indigo² had falsely represented to the court that the document it filed with the Complaint comprised the entire lease between the parties. *CP 20.* Mr. Flattery immediately moved for reconsideration of the trial court's decision, pointing out that the Addendum specifically supercedes conflicting provisions in the landlord's form lease, and that the Addendum prohibits evictions based on a single minor violation of the lease. *CP 27-32; July 15 RP at 4:3-6:24.*

At the hearing on reconsideration, Indigo admitted that HUD rules governed the parties' lease and that the Section 8 Addendum was part of the lease, *July 15 RP at 12: 24-25*, but argued that the unlawful detainer statute, RCW 59.12, controlled over both. Indigo's theory was that HUD rules and

² Indigo's counsel stated at the hearing on reconsideration that, although the Addendum was known to the landlord, he personally was unaware it existed. *July 15 RP at 11:21-24.* Ms. Wadsworth accepts that representation.

the Addendum did not apply because Indigo was evicting Ms. Wadsworth for failure to comply with a ten-day notice rather than terminating her lease:

[W]e did not terminate the lease. The lease terminates. There is a forfeiture of the tenancy but that's by operation of 59.12 and 59.18

July 15 RP at 14:10–12. The trial court accepted this distinction, even though the judgment had *expressly* terminated Ms. Wadsworth's tenancy:

In my judgment, the addendum to the lease does grant specific rights to all parties. But [it] does not supersede 59.12 in the unlawful detainer statute. They are, I believe, two separate ways of dealing with a situation. The situation that we have here [is] a sound unlawful detainer not a basis for termination as contemplated by the addendum.

July 15 RP at 26:25 -27:6. The trial court denied reconsideration, and awarded Indigo additional attorney fees for defending the motion. The writ of restitution was executed and Ms. Wadsworth was evicted from her apartment. This appeal followed.

ARGUMENT

Tina Wadsworth and her seven-year-old daughter were summarily evicted from their apartment solely because Ms. Wadsworth left a plywood privacy panel in place on her balcony for four days longer than a notice from her landlord allowed. This eviction was contrary to both federal law and the terms of the parties' lease. In addition, the trial court should have exercised its discretion to balance the equities and hold that forfeiture was not an

appropriate remedy for Ms. Wadsworth's minor lease violation. The trial court also erred in failing to consider the evidence offered by Ms. Wadsworth and in failing to draw all factual inferences in her favor at the show cause hearing.

A. Federal law prohibits eviction of a Section 8 tenant for a single, minor lease violation.

Ms. Wadsworth has qualified for and receives "Section 8" housing assistance. Under the federal statutes and regulations governing Section 8 leases, the landlord is guaranteed that the rent will be timely paid each month by the Housing Authority. In exchange, the landlord must agree that it will not evict the tenant except for serious or repeated violations of the lease terms:

The federal government provides rental assistance for low and moderate income families, the elderly, and the disabled through what is known as "the Section 8 program." Congress added the section 8 program to the United States Housing Act of 1937 in 1974 by enacting the Housing and Community Development Act of 1974, Pub.L. No. 93-383, § 201(a), 88 Stat. 633, 662-66 (1974) (codified as amended at 42 U.S.C. § 1437f). The express congressional "purpose" of the section 8 program is "aiding low-income families in obtaining a decent place to live and ... promoting economically mixed housing." 42 U.S.C. § 1437f(a). The program is managed federally by HUD, and administered locally by public housing authorities ("PHA"). Section 8 tenants must sign a lease and pay a portion of their income toward rent. The remainder of the rent charge is paid by PHA pursuant to a housing assistance payment ("HAP") contract between PHA and the owner, which mandates that a lease "shall be for a term of not less than [one] year," *id.* § 1437f(o)(7)(A), shall "contain terms and conditions that ... are

consistent with State and local law,” *id.* § 1437f(o)(7)(B)(ii)(I), and “***shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease***, for violation of applicable Federal, State, or local law, or for other good cause,” *id.* § 1437f(o)(7)(C).

Barrientos v. 1801-1825 Morton, LLC, 583 F.3d 1197, 1202 (9th Cir. 2009)(*emphasis added*).

In the case at bar, Indigo stipulated that the sole reason for Ms. Wadsworth’s eviction was that she left the privacy panel in place on her balcony for four days longer than she should have:

MR. FLATTERY: We’re talking about a four-day overlap between the ten days and when it actually happened. That’s her position. She is prepared to offer witness testimony to support that.

MR. WALSH: I will – for purposes of this hearing I’ll take counsel’s word and stipulate to that.

THE COURT: And it was 14 days rather than 10 days?

MR. WALSH: If it was 14 days rather than 10 days I’ll agree to that.

July 8 RP at 12:25 –13:11. Indigo did not (and could not) claim that Ms. Wadsworth’s violation was serious or repeated; Indigo simply convinced the trial court that it was permitted to evict Ms. Wadsworth ***in spite of*** the federal protections afforded to Section 8 tenants. By allowing Indigo to evict Ms. Wadsworth for a single, minor alleged violation of her lease terms, the trial court effectively eviscerated the regulatory and lease protections guaranteed

to Section 8 tenants under 42 U.S.C. 1437f(o)(7)(C). The trial court's judgment and its order denying reconsideration should be reversed, and the cause remanded to the trial court with directions to enter judgment in Ms. Wadsworth's favor.

B. The parties' Lease prohibits eviction except for serious or repeated minor violations of the Lease, neither of which was present here.

Under 42 USC § 1437f (o)(7)(A) and 24 CFR 982.162(3) and 982.308(b), every lease to a Section 8 tenant must include extra protections for the tenant, including the right not to be evicted except for *material* noncompliance with the terms of the Lease. As required by law, Ms. Wadsworth's Lease included these protections, in the form of the Section 8 Addendum to her Lease. Thus, by the terms of the parties' Lease, Indigo was prohibited from terminating Ms. Wadsworth's tenancy except for material noncompliance with the lease.³ Under the terms of the Addendum, leaving a sheet of plywood on a balcony for four extra days does not constitute "material noncompliance" with the Lease.

The Section 8 Addendum defines "material noncompliance" as (1) "one or more *substantial* violations of the Lease" **OR** (2) "*repeated minor*

³ By the express terms of the Lease and as required by federal Section 8 regulations, the Addendum controls in the event of conflict between the Addendum and any of Indigo's standard lease provisions. *CP 22, 24 CFR 982.309(f)(2)*.

violations of the Lease which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the lease (sic) premises and retained facilities, interfere with the management of the project or have an adverse financial effect on the project.”
CP 23 . Neither of these provisions was satisfied here.

As plaintiff, Indigo had the burden of proving, by a preponderance of the evidence, that Ms. Wadsworth breached her lease. *See, e.g. Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wash.App. 382, 392 (2005) (“The burden is upon the plaintiff in an unlawful detainer action to prove, by a preponderance of the evidence, the right to possession.”) Indigo did not (and could not) claim that leaving a plywood privacy screen in place for four days was a “substantial” violation of the lease. The trial court clearly did not consider Ms. Wadsworth to be in “substantial” violation of her lease:

It is still my belief that the ten days versus 14 days for removal of the plywood is a harsh result. But that’s not my determination to make once the plaintiff has made their case.

July 15 RP at 27:16-19. Thus, the first possible ground for eviction was not satisfied.

As to the second possible ground for eviction, Indigo did not offer proof that there were “repeated” violations. To the contrary, Indigo stipulated, and the court held, *July 8 RP at 16:22-25*, that it was evicting Ms.

Wadsworth on the basis of a single event. Indigo also did not offer any evidence that the presence of Ms. Wadsworth's privacy panel was affecting the health or safety of other persons, interfering with other tenants' quiet enjoyment, interfering with the management of the project, or having an adverse financial effect on the complex.

Since Indigo did not prove that either of the grounds for eviction of a Section 8 tenant was present, it was reversible error for the trial court to terminate the tenancy and grant Indigo's motion for a writ of restitution. The trial court's judgment and its order denying reconsideration must therefore be reversed, and the cause remanded to the trial court with directions to enter judgment in Ms. Wadsworth's favor.

C. State law cannot, and does not, override the protections afforded to Ms. Wadsworth by her Lease and by federal Section 8 statutes and regulations.

Indigo argued below that, regardless of the federal statute or regulations, and regardless of the terms of the parties' lease, the Washington unlawful detainer statute allows a landlord to evict a Section 8 tenant for a single minor violation of the lease, provided (a) that the landlord has given the notice required by RCW 59.12.030(4), and (b) that the tenant has not complied with the notice within ten days. Indigo is incorrect for at least three reasons.

First, under the Supremacy Clause to the United States Constitution,

federal law controls over state law:

State law, however, is also “nullified to the extent that it actually conflicts with federal law.” *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982). “Such a conflict arises when compliance with both federal and state regulations is a physical impossibility or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* (citation and internal quotation marks omitted); *see also Wyeth v. Levine*, — U.S. —, 129 S.Ct. 1187, 1193–94, 173 L.Ed.2d 51 (2009).

Barrientos, 583 F.3d at 1208. *Accord Lindsay v. City of Seattle*, 86 Wash.2d 698, 708 (1976) (State and local laws cannot stand if they impede, burden or frustrate the purpose of federal law). Interpreting RCW 59.12.030 as authorizing an eviction that is expressly prohibited by federal law would result in the state law standing “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in the Section 8 program:

[Congress] refused to allow substantive state and local law to supplant wholly federal termination standards. By enacting the federal good cause requirement, it desired to maintain a uniform federal floor below which protections for tenants could not drop

Barrientos, 583 F.3d at 1210-11. The trial court erred in holding that state law could provide a basis for eviction of a Section 8 tenant in circumstances where the federal law expressly forbids it.

Second, when Indigo accepted Ms. Wadsworth as a Section 8 tenant and signed the “HUD Addendum”, Indigo voluntarily gave up its alleged

state law right to evict Ms. Wadsworth for a minor lease violation, even if that violation would otherwise support an eviction. *Housing Authority of Pasco v. Pleasant*, 126 Wash.App. 382, 393 (2005) (“The U.S. Housing Act requires that the tenancies be terminated only for ‘serious or repeated violation of the terms or conditions of the lease or for other good cause. . . .’”) In the lease, Indigo agreed that even *repeated* minor violations will not be grounds for eviction unless those violations disrupt the livability of the project, adversely affect health, safety or quiet enjoyment of the other tenants, interfere with management of the project or have adverse financial effects on the project.

Nothing in Washington law prohibits a landlord from giving up all or part of its rights. *See, e.g., Community Investments, Ltd. v. Safeway Stores, Inc.*, 36 Wn.App.34(1983) (Notwithstanding statute requiring only 10 days notice to cure breach, Court lacked jurisdiction over Defendant in unlawful detainer action filed 19 days after landlord gave notice to cure where lease contract provided for 20 day notice.) Landlords are permitted to provide their tenants with rights beyond the minimum rights required by law. That is exactly what happened here.

The third and final reason that the trial court erred in relying on RCW 59.12.030 is that the statute does not create a cause of action. The statute provides a minimum time for a tenant to cure a breach of the rental

agreement, and then allows the landlord to evict the tenant if the landlord can prove that the tenant has violated the terms of the lease. But where the parties' lease expressly bars the landlord from relying on the alleged violation to support an eviction, RCW 59.12.030 can not and does not overcome that bar. See *Community Investments, Ltd. v. Safeway Stores, Inc.*, 36 Wn.App. at 37 (“the simple answer . . . is that notice [required by RCW 59.12.030] is not a remedy.”)

Here, the parties' Lease provides that the landlord cannot terminate the lease for a single minor violation, which means that a jurisdictional prerequisite for a state unlawful detainer proceeding – an actionable violation of the lease – was missing. It was therefore reversible error for the trial court to rely on RCW 59.12.030 to override the lease terms. The trial court's judgment and its order denying reconsideration should be reversed, and the cause remanded to the trial court with directions to enter judgment in Ms. Wadsworth's favor.

D. The Trial Court Had Discretion to Deny the Writ of Restitution.

The trial court recognized the harshness of evicting Ms. Wadsworth from her home solely because she failed to remove a piece of plywood from her balcony until four days after the landlord's deadline:

It is still my belief that the ten days versus 14 days for removal of the plywood is a harsh result. But that's not my determination to make once the plaintiff has made their case.

July 15 RP at 27:16-19. The trial court felt it had no discretion and that the landlord had an absolute right to evict the tenant for such trivial non-compliance, even in the absence of harm to the landlord's interests and regardless of the reason for non-compliance. That was error.

As a general rule, forfeiture or termination of leases is not favored and will not be enforced in equity unless the right thereto is "so clear as to permit no denial". *Housing Authority of City of Pasco and Franklin County v. Pleasant*, 126 Wash.App. 382, 390 (2005). Equitable defenses may be raised in an unlawful detainer action as long as the defense arises out of the tenancy. *Josephinium Assocs. v. Kahli*, 111 Wn.App.617 (2002). See also RCW 59.18.380: "the defendant . . . may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy." Defenses arise out of the tenancy when they "affect the tenant's right of possession" or are "based on facts which excuse a tenant's breach". *Josephinium Assocs. v. Kahli*, 111 Wn. App. at 625, citing *Munden v. Hazelrigg*, 105 Wn.2d 39 (1961).

Here, Ms. Wadsworth's alleged breach – having the privacy panel in place – was based on her fear that her young daughter's privacy and safety were at risk from the sex offender residing with another tenant downstairs. She asked management to exclude the offender from the premises and requested an opportunity to move to different apartment within the complex.

CP 51-55, 58. Indigo refused these requests. Ms. Wadsworth was firm in her position but not defiant. She removed the panel, albeit four days later than Indigo demanded. It was error for the trial court to refuse to even *consider* whether these facts excused the alleged breach.

The unlawful detainer statute itself grants the trial court authority to ameliorate the harsh consequences of minor or technical breaches of lease provisions. RCW 59.12.190 provides that upon proper showing the court may relieve a tenant from forfeiture and restore the tenant to possession, upon a showing that there has been “full performance of conditions of covenants stipulated”, so far as the same is practicable. . . .” In the present case, Ms. Wadsworth had fully performed – she removed the plywood panel – weeks before the case was even filed.

While section .190 by its terms applies to post-judgment relief, its existence implies that the trial court has the authority to grant similar relief at the show cause hearing stage where the tenant has fully performed the required actions prior to the commencement of the hearing. No point would be served by having the landlord and tenant return to court a week or two later in order to demonstrate that the required actions had been performed prior to the initial show cause hearing. *Compare Abrams v. Seattle*, 173 Wash. 495, 502 (1933), which noted in dicta that “a court of equity would have lent a willing ear” to a lessee’s claim that if the court granted an

extension of time, the lessee would have been able to cure its breach. Here, no extension of time was needed – the alleged breach was cured before the unlawful detainer action was even filed.

Section .190 is a statutory example of the more general principle that requires courts of equity to examine all the relevant circumstances between the parties where the plaintiff seeks forfeiture as a remedy.

This court has held the general doctrine that forfeitures are not favored in the law, and that courts should promptly seize upon any circumstance arising out of the contract or relations of the parties that would indicate an election or an agreement to waive the harsh, and at times unjust, remedy of forfeiture, a remedy which is oftentimes too freely granted by those who have taken no account of the misfortunes and disappointments which conditions, unforeseen and beyond a party's control, have raised as a bar to performance, however honest may be his intent. *Whiting v. Doughton*, 31 Wash. 327, 71 P. 1026.

Stevenson v. Parker 25 Wn.App at 647.

Another example of this principle is *Deming v. Jones*, 173 Wash. 644 (1933). There, the lessee's rent was partially a function of the amount of gasoline he sold at a service station erected on the landlord's property. The lessee improperly accounted for the gasoline sales and consequently underpaid his rent. The landlord declared the lease forfeited and attempted to evict the lessee. The lessee did not tender the correct amounts until after the unlawful detainer action was commenced. Nonetheless, the court ruled that it must balance the equities in order to decide whether to evict the lessee:

It must be admitted that Frazine failed to make the proper payments or tenders until after suit was brought, and that he and those who operated the station under him had at all times the means of keeping a correct record from which the amount of the rental could be accurately computed. At the least, there was such carelessness and inefficient business methods as would not ordinarily be excusable. Here, that carelessness must be weighed in the scales against a forfeiture of ***rights which are valuable out of all proportion to the harm which appellants have suffered*** by the careless conduct. The law does not favor forfeitures, and equity abhors them.

Deming v. Jones, 173 Wash. at 648 (*emphasis added*).

Here Ms. Wadsworth was not careless. She was diligent in protecting her daughter within the limited means available to her. She complained to her landlord and sought accommodation of her concerns. She complied with her landlord's demand long before suit was filed. In return, she lost her home and suffered a "forfeiture of rights which are valuable out of all proportion to the harm which [Indigo has] suffered", while Indigo suffered no harm whatsoever. The trial court erred when it ruled that it had no discretion and no obligation to balance the equities in determining whether Indigo was entitled to evict Ms. Wadsworth and her daughter.

E. Ms. Wadsworth's Privacy Panel Did Not Violate the Lease Provision cited in Indigo's ten-day Notice to Comply.

A landlord cannot evict a tenant for failing to comply with ***any*** demand made by the landlord. Rather, the demand must be based on a requirement of the lease or rental agreement. RCW 59.12.030(4) requires a

showing that the tenant has failed “to keep or perform any . . . condition or covenant under which the property is held” following a demand for compliance with that condition or covenant. As the plaintiff, Indigo had the burden of proving, by a preponderance of the evidence, that Ms. Wadsworth violated the provision of the lease cited in its ten-day Notice to Comply. *Housing Authority*, 126 Wash.App. at 392.

Here, nothing in the parties’ Lease expressly forbids tenants from blocking the public’s view of their apartments or balconies by attaching a screen to the balcony railing. Instead, Indigo’s ten-day Notice to Comply relied on the following provision of the parties’ lease: “Balconies and patios shall be kept neat and clean at all times.” *CP 117*. Ms. Wadsworth’s balcony *was* neat and clean – she was simply using a sheet of plywood to block the public’s view into her apartment. Indigo therefore failed to prove that Ms. Wadsworth violated the lease provision cited in its ten-day Notice to Comply.

The “neat and clean” lease provision was followed with language that was arguably more on point:

No rugs, towels, laundry, clothing, appliances, or other items shall be stored, hung or draped on railings or other portions of balconies or patios.

CP 117. Indigo cannot rely on this language, because they did not cite it in their ten-day Notice to Comply. But even if Indigo had done so, Ms.

Wadsworth would take the position here that this language does not, and was not intended to, prohibit screening materials like her plywood. The types of objects that are barred (towels, laundry, rugs, clothing) are all typically placed on the railings temporarily for the purpose of drying or airing them, giving the balcony a cluttered appearance. Other items such as appliances are barred so that tenants will not use balconies as storage locations. The reason all of these items are barred is that they would interfere with keeping the premises “neat and clean”. A privacy screen serves a different purpose, and does not interfere with keeping the premises “neat and clean”. The fact that Indigo had allowed other tenants to keep screening materials on their balconies – as shown by photographs offered by Ms. Wadsworth, *CP 90-92* – is evidence that Indigo itself recognized this distinction. Ms. Wadsworth did not violate her lease, and the trial court erred in evicting her.

F. The trial court erred in evicting Ms. Wadsworth without considering the evidence she offered or drawing factual inferences in her favor.

As discussed above, Ms. Wadsworth raised several defenses to Indigo’s unlawful detainer action. She argued that her alleged lease violation was minor, and that Section 8 rules prohibit evictions for single, minor lease violations. She asserted that Indigo’s actions were undertaken in retaliation for her exercise of her rights under her lease and the Residential Landlord-Tenant Act (RCW 59.18). She also disputed that she was in material

noncompliance with her Lease, and offered photographic and other evidence that Indigo permitted many other tenants to leave materials on their balcony. The trial court refused to admit this evidence or to give Ms. Wadsworth an evidentiary hearing. This was error:

The U.S. Housing Act requires that the tenancies be terminated only for “serious or repeated violation of the terms or conditions of the lease or for other good cause” and that termination for “criminal activity” threaten the “health, safety, or right to peaceful enjoyment of the premises by other tenants.” 42 U.S.C. § 1437d(1)(5), (6). ***The issue of whether these requirements are met under the statute was an inappropriate issue to summarily resolve. See Hartson P'ship v. Goodwin, 99 Wash.App. 227, 237, 991 P.2d 1211 (2000). Ms. Pleasant was entitled to a trial on this issue.***

Housing Authority of City of Pasco and Franklin County v. Pleasant, 126 Wash.App. 382, 393 (2005) (*emphasis added*).

[I]f the pleadings in an unlawful detainer action disclose a material issue of fact, the issue must be resolved at trial. RCW 59.12.130; 393 Meadow Park Garden Assocs. v. Canley, 54 Wash.App. 371, 372, 773 P.2d 875 (1989). Specifically, when a tenant challenges her landlord's allegations that she was in material noncompliance with her lease terms, she is entitled to a trial.

Id. at 392 (*emphasis added*).

Here, there is no question that Ms. Wadsworth’s pleadings raised material issues of fact. Reprisals and retaliatory actions by landlords are specifically forbidden by the Residential Landlord-Tenant Act, *RCW 59.18.240-250*. Initiation of an unlawful detainer action within 90 days after a good faith and lawful complaint by a tenant creates a presumption of

retaliation by the landlord. *RCW 59.18.250*. Thus, the statute clearly recognizes and bars circumstances where a technical breach of lease may be used by landlord as a pretext for an eviction.

Here, Ms. Wadsworth offered proof that, within the 90 days prior to Ms. Wadsworth's eviction, Ms. Wadsworth had complained regarding the safety of her family, the apparently illegal presence of the sex offender in the apartment below hers, and unfair treatment by the complex manager. *CP 49-58*. Ms. Wadsworth also offered proof that Indigo's stated reason for the eviction was a pretext, as shown by photographic evidence confirming that Indigo allowed many other tenants to keep screening items on their balconies. This proof was more than sufficient to raise genuine issues of material fact as to whether Indigo's issuance of the ten-day Notice to Comply and filing of an unlawful detainer action were retaliatory.

Since Ms. Wadsworth had raised genuine issues of material fact, the trial court at that point had two options: to set the matter for trial, or to apply the standard applicable to summary judgment proceedings, *i.e.* to draw all factual inferences in Ms. Wadsworth's favor. The trial court here did neither – it just summarily evicted Ms. Wadsworth without regard to the retaliatory eviction defense. This was reversible error.

G. Indigo's Arguments Below Lacked Merit

Indigo presented several interpretations of the Section 8 and unlawful

detainer statutes which the trial court appeared to accept, despite Indigo's failure to cite any authority for them. Indigo's interpretations are contrary both to the language of those statutes and to the policies behind them.

1. Section 8's "good cause" termination protections applied to Indigo's termination of Ms. Wadsworth's tenancy.

At the July 8 show cause hearing, Indigo argued that Section 8's "good cause termination" rule applied to termination of Ms. Wadsworth's Section 8 *benefits*, but not to Indigo's termination of her Section 8 *tenancy*. *July 8 RP at 14:92-18*. Indigo is wrong. 24 CFR 982.310(a), which governs the landlord's termination of a Section 8 tenancy, provides: "During the term of the lease, the owner may not terminate *the tenancy* except" for the "good cause" reasons stated in the regulation. (*emphasis added*.) This protection is *in addition to* similar provisions that govern Ms. Wadsworth's separate contract the Bellingham/Whatcom County Housing Authority, the agency that administered her Section 8 benefits. *See e.g., 24 CFR 982.551 (e)*. The "good cause" provisions applied both to termination of Ms. Wadsworth's lease and to termination of her Section 8 benefits. The trial court erred to the extent that it accepted Indigo's argument on this point.

2. Section 8 does not distinguish between terminating a tenancy and terminating a lease.

Indigo argued at the July 15 hearing on reconsideration that Section

8 protections did not apply to this case because Indigo was terminating Ms. Wadsworth's "tenancy" (her right of possession) rather than terminating her "lease". However, the statute that authorizes and mandates the "Section 8 Addendum" to the lease provides that "during the term of the lease, the owner shall not terminate *the tenancy* except for serious or repeated violation of the terms and conditions of the lease." 42 U.S.C. §1437f(o)(7)(B)(ii)(I) (*emphasis added*); see also 24 CFR 982.310(a). Thus, even if a distinction between terminating the tenancy and terminating the lease is viable under state law, this absolute prohibition in the federal statute controls over state law and over any contrary provision in the lease itself.

The legislative history of the statutory requirement is recounted at length in *Barrientos v. 1801-1825 Morton, LLC*, 583 F.3d beginning at 1203. That history makes it abundantly clear that Congress was concerned with the potential for landlords to terminate federally assisted tenancies without cause, thereby frustrating the federal purpose behind the housing program. At page 1204, the Court summarizes the cited provision as a "condition barring owners from evicting a tenant *mid-lease* or from refusing to renew a lease without cause" (*emphasis added*). To the extent that the trial court agreed with Indigo's claim Section 8 did not apply to termination of Ms. Wadsworth's tenancy, the trial court erred.

3. The Lease Terms and Section 8 Rules Apply During The Initial Term Of The Lease.

Indigo also argued below that the protections in the Section 8 Addendum did not apply because Indigo filed this unlawful detainer action during the first year of the lease.

MR. WALSH: Counsel has raised a pertinent argument regarding termination which is a specific term of art in both landlord/tenant and the Section 8 program. Termination of a lease at the end of the first year or with a 20-day notice or 30-day notice under some model HUD lease, may only be for three enumerated reasons.

Termination for repeated minor breach or a serious breach of the lease. That's the subject of a 20-day notice terminate a month to month tenancy. . . .

So this ten-day notice to comply with a lease obligation is not a termination. . . .

July 8 RP at 11: 8–23. The trial court appeared to adopt this argument, *July 15 RP at 15:18-22, p. 26:25 – p.27: 7.* This was error.

Indigo's theory apparently was that "termination" means termination of a post-lease month-to-month tenancy. Indigo apparently reasoned that because section D.2 of the Section 8 lease provides that the landlord-tenant relationship automatically converts to a month-to-month tenancy after the initial required one year term, and because that month-to-month tenancy can only be terminated by the landlord "for good cause", the Addendum's lease termination provisions apply only to termination of the month-to-month

tenancy and do not apply to terminations during the first year of tenancy, as here.

Indigo’s argument finds no support in the wording of the lease or the federal regulations. Federal Section 8 regulations include a lengthy “Definitions” section, but it does not include a definition of “termination”, *24 CFR 982.4*, much less the unique definition Indigo urges. The plain, unambiguous language of the Section 8 Addendum forbids termination by the landlord **at any time**, except for cause as defined in the lease. It provides simply: “The Landlord shall not terminate the Lease” except for cause. *CP 23*. Neither the Addendum nor the applicable Section 8 regulations make any distinction between a landlord’s termination during the initial term and a termination during the subsequent month-to-month tenancy, as Indigo contends.⁴ Moreover, as noted above, the legislative history makes it clear that Congress was concerned about protecting Section 8 tenants against losing their housing “mid-lease” except where the landlord had “good cause” as defined by the Addendum. *Barrientos v. 1801-1825 Morton, LLC*, 583 F.3d at 1204.

⁴ The lease does have different requirements for a tenant-initiated termination during the first year and thereafter. “The Tenant may terminate the Lease without cause **at any time after** the first year of the term of the Lease, or not more than sixty days written notice by the Tenant to the Landlord.” (So in original. Probably should read “not **less** than sixty days . . .”) *Lease Addendum, section H, page 3 (emphasis added)*. *CP 24*.

Indigo's creative theory effectively renders null the federal statutes designed to protect Section 8 tenants. Moreover, it defies common sense. Why would the parties to a lease agree that a single, minor lease violation will support termination of a tenancy during the lease period, but that multiple violations will be required to terminate a subsequent month-to-month tenancy?

Indigo appeared to argue that the term "termination by the landlord" does not have its ordinary meaning: the landlord ending the landlord-tenant relationship because of a breach of the lease covenants by the tenant. Rather, Indigo argued, "termination in the landlord tenant context is a very specific term of art . . . regard[ing] terminating a landlord tenant relationship either at the end of a term or at the end of a month to month [tenancy]." *July 15 RP at 12: 9–13*. It is inconceivable that a Section 8 tenant would understand a lease term constraining the landlord's authority to terminate the lease in the restrictive "term of art" meaning suggested by Indigo.⁵ Certainly Ms. Wadsworth understood that the point of Indigo's unlawful detainer action was to terminate her lease and put her out in the street.

In fact, Indigo itself characterized its intention as a "termination" in

⁵ In addition, the lease language required by federal regulation defeats Indigo's argument. As pointed out in footnote 4, *supra*, the addendum to the lease provides the Tenant "may terminate the Lease" on sixty days notice during the first year. Indigo does not explain how "termination" can have one meaning in this provision and a different meaning elsewhere in the lease.

the ten day “Notice to Comply” on which its unlawful detainer action is premised. (“You have 10 days to discuss this termination with your landlord.” *CP 117*.) Indigo’s form lease also refers to “termination” of the lease during its term in many places. *See, e.g.* Section 37 (“Your move out notice must not terminate the Lease Contract sooner than the end of the lease term or renewal period.” “If we terminate the Lease Contract” *CP 139*); Section 32 (“Upon your default, we have all other legal remedies, including lease termination.” *CP 137*); Section 22 (“Unless you are entitled to terminate this Lease Contract” *CP136*); & Section 23 (“You may terminate the Lease Contract if” *Id.*) The statutorily required summons that commenced Indigo’s unlawful detainer action informed Ms. Wadsworth: “Your landlord is asking the court to terminate your tenancy”

At most, Indigo’s contention regarding the meaning of “termination” might be said to present an ambiguity in the lease, but an ambiguity does not aid Indigo’s cause. “It is a familiar rule that if the provisions of a lease create ambiguity, the court will adopt the interpretation more favorable to the lessee” *Stevenson v. Parker*, 25 Wash.App. 639, 646 (1980). There is no basis for holding that the “termination for minor breaches” provision in the lease applies only at the end of the first year or during the subsequent month-to-month tenancy. For this reason, and for all the other reasons stated above, the trial court’s order issuing the writ of restitution and denying

reconsideration should be reversed, and the cause remanded to the trial court for dismissal with prejudice.

H. The trial court erred in awarding fees and costs to Indigo and in not awarding them to Ms. Wadsworth.

An award of attorney fees is proper when authorized by the parties' agreement, by statute, or by a recognized ground in equity. *Housing Authority of City of Seattle v. Bin*, 163 Wash.App. 367 (2011). Here, the parties' Lease provides "the prevailing party may recover from the non-prevailing party reasonable attorney's fees and all other litigation costs." *CP 138*. Pursuant to this provision, the trial court awarded fees to Indigo when it granted the Writ of Restitution and again when it denied Ms. Wadsworth's Motion for Reconsideration. Because both of those rulings were in error, the trial court's award of fees to Indigo must also be reversed, and the cause remanded with instructions to award fees to Ms. Wadsworth.

I. Ms. Wadsworth is entitled to an award of attorney fees on appeal.

Pursuant to RAP 18.1 Ms. Wadsworth requests an award of attorney fees on appeal. The basis for awarding fees on appeal is the same as the basis for an award at the trial court level -- the parties' agreement provides for an award of fees to the prevailing party.

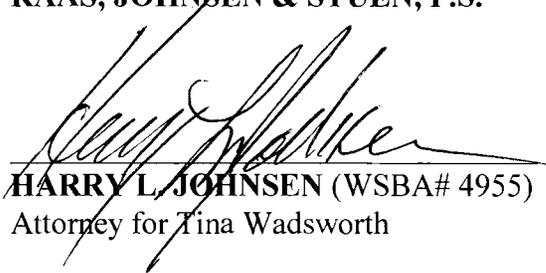
CONCLUSION

Indigo was not required to participate in the Section 8 program. But when Indigo decided to accept the benefits of that program, it obligated itself to abide by the Section 8 regulations which restrict Indigo's ability to evict tenants for minor lease violations. The decision of the trial court must be reversed.

DATED this 15 day of November, 2011.

Respectfully Submitted,

RAAS, JOHNSEN & STUEN, P.S.



HARRY L. JOHNSEN (WSBA# 4955)
Attorney for Tina Wadsworth

APPENDIX A

(ii) Content

Each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 1437c-1(f) of this title and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction.

(B) Selection of tenants

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit) [FNS] shall provide that the screening and selection of families for those units shall be the function of the owner. In addition, the public housing agency may elect to screen applicants for the program in accordance with such requirements as the Secretary may establish. That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalk- ing.

(C) PHA disapproval of owners

In addition to other grounds authorized by the Secretary, a public housing agency may elect not to enter into a housing assistance payments contract under this subsection with an owner who refuses, or has a history of refusing, to take action to terminate tenancy for activity engaged in by the tenant, any member of the tenant's household, any guest, or any other person under the control of any member of the household that--

(i) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or employees of the public housing agency, owner, or other manager of the housing;

(ii) threatens the health or safety of, or right to peaceful enjoyment of the residences by, persons residing in the immediate vicinity of the premises; or

(iii) is drug-related or violent criminal activity.

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit--

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and

the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that--

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that--

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section.

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.; [FN6]

(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) Limitation.--Notwithstanding [FN7] clause (i) or any Federal, State, or local law to the con-

trary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. [FN2] (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking. [FN8];

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection. In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 2602 of Title 12) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not [FN9] affect any State or local law that provides longer time periods or other additional protections for tenants.

(8) Inspection of units by PHAs

(A) In general

Except as provided in paragraph (11), for each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency shall inspect the unit before any assist-

APPENDIX B

§ 982.2

called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the programs. PHAs are no longer allowed to enter into contracts for assistance in the certificate program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rents is reasonable.

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula.

(4)(i) In the certificate program, the subsidy for most families is the difference between the rent and 30 percent of adjusted monthly income.

(ii) In the voucher program, the subsidy is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

(b) *Tenant-based and project-based assistance.* (1) Section 8 assistance may be "tenant-based" or "project-based". In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued

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assistance so long as the family is complying with program requirements.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 982.2 Applicability.

(a) Part 982 is a unified statement of program requirements for the tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based certificate program and the Section 8 voucher program.

(b) Unless specifically stated in this part, requirements for both tenant-based programs are the same.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 982.3 HUD.

The HUD field offices have been delegated responsibility for day-to-day administration of the program by HUD. In exercising these functions, the field offices are subject to HUD regulations and other HUD requirements issued by HUD headquarters. Some functions are specifically reserved to HUD headquarters.

§ 982.4 Definitions.

(a) *Definitions found elsewhere:*

(1) *General definitions.* The terms *1937 Act*, *HUD*, and *MSA*, are defined in 24 CFR part 5, subpart A.

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act*, *covered person*, *drug*, *drug-related criminal activity*, *federally assisted housing*, *guest household*, *HUD*, *MSA*, *other person under the tenant's control*, *public housing*, *Section 8*, and *violent criminal activity*.

(3) *Definitions concerning family income and rent.* The terms "adjusted income," "annual income," "extremely low income family," "tenant rent," "total tenant payment," "utility allowance," "utility reimbursement," and "welfare assistance" are defined in part 5, subpart F of this title. The definitions of "tenant rent" and "utility reimbursement" in part 5, subpart F of

this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See § 982.152.

Administrative fee reserve (formerly "operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. See § 982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see § 982.606 to § 982.609.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the certificate or voucher program.

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the FEDERAL REGISTER in accordance with 24 CFR part 888.

Family. A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at § 982.201(c).

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515(b).

Family self-sufficiency program (FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515(a).

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Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term "first-time homeowner" includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

HAP contract. Housing assistance payments contract.

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see §982.635).

Homeownership option. Assistance for a homeowner or cooperative member under §982.625 to §982.641. A special housing type.

Housing assistance payment. The monthly assistance payment by a PHA, which includes:

(1) A payment to the owner for rent to the owner under the family's lease; and

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the tenant-based programs. See §982.401.

Initial PHA. In portability, the term refers to both:

(1) a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and

(2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, "interest in the home" includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

(2) In the case of assistance for a cooperative member, "interest in the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Lease. (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

(2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family.

with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the Section 8 "tenant."

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see § 982.620 and § 982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See § 982.622 to § 982.624.

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

Merger date. October 1, 1999.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the FEDERAL REGISTER document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PHA plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Present homeownership interest. In the homeownership option: "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Program. The Section 8 tenant-based assistance program under this part.

Program receipts. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

Public housing agency (PHA). PHA includes both:

(1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and

(2) Any of the following:

(i) A consortium of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);

(ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

Reasonable rent. A rent to owner that is not more than rent charged:

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(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used in calculating renewal budget authority in accordance with §982.102.

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for

cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA approves or denies the request.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent. For a tenancy in the certificate program: The total tenant payment minus any utility allowance.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See §982.514(b)). (For the certificate program, "utility reimbursement" is defined in part 5, subpart F of this title.)

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Waiting list admission. An admission from the PHA waiting list.

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

[63 FR 23857, Apr. 30, 1998; 63 FR 31625, June 10, 1998, as amended at 64 FR 26641, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56887, 56911, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 28804, May 24, 2001; 66 FR 33613, June 22, 2001; 67 FR 64492, Oct. 18, 2002]

(c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

§ 982.162 Use of HUD-required contracts and other forms.

(a) The PHA must use program contracts and other forms required by HUD headquarters, including:

(1) The consolidated ACC between HUD and the PHA;

(2) The HAP contract between the PHA and the owner; and

(3) The tenancy addendum required by HUD (which is included both in the HAP contract and in the lease between the owner and the tenant).

(b) Required program contracts and other forms must be word-for-word in the form required by HUD headquarters. Any additions to or modifications of required program contracts or other forms must be approved by HUD headquarters.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999]

§ 982.163 Fraud recoveries.

Under 24 CFR part 792, the PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner by litigation, court-order or a repayment agreement.

[60 FR 34695, July 3, 1995; 60 FR 43840, Aug. 23, 1995]

Subpart E—Admission to Tenant-Based Program

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the program. To be eligible, the applicant must be a "family", must be income-eligible, and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5.

(b) *Income.* (1) *Income-eligibility.* To be income-eligible, the applicant must be a family in any of the following categories:

(i) A "very low income" family;

(ii) A low-income family that is "continuously assisted" under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified

in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in § 248.101 of this title;

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under § 248.173 of this title.

(2) *Income-targeting.* (i) Not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

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(f) For purposes of this section, "owner" includes a principal or other interested party.

[60 FR 34695, July 3, 1995, as amended at 63 FR 27437, May 18, 1998; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.307 Tenant screening.

(a) *PHA option and owner responsibility.* (1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(2) The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.

(3) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

- (i) Payment of rent and utility bills;
- (ii) Caring for a unit and premises;
- (iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;
- (iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
- (v) Compliance with other essential conditions of tenancy.

(b) *PHA information about tenant.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26645, May 14, 1999; 64 FR 49638, Sept. 14, 1999]

§ 982.308 Lease and tenancy.

(a) *Tenant's legal capacity.* The tenant must have legal capacity to enter a lease under State and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form (plus the HUD-prescribed tenancy addendum). If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

(c) *State and local law.* The PHA may review the lease to determine if the lease complies with State and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law.

(d) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

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(2) The unit rented (address, apartment number, and any other information needed to identify the contract unit);

(3) The term of the lease (initial term and any provisions for renewal);

(4) The amount of the monthly rent to owner; and

(5) A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

(e) *Reasonable rent.* The rent to owner must be reasonable (see § 982.507).

(f) *Tenancy addendum.* (1) The HAP contract form required by HUD shall include an addendum (the "tenancy addendum"), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and §§ 982.309 and 982.310); and

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

(g) *Changes in lease or rent.* (1) If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of this section.

(2) In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(i) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(ii) If there are any changes in lease provisions governing the term of the lease;

(iii) If the family moves to a new unit, even if the unit is in the same building or complex.

(3) PHA approval of the tenancy, and execution of a new HAP contract, are not required for changes in the lease other than as specified in paragraph (g)(2) of this section.

(4) The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements (see § 982.503).

[64 FR 26645, May 14, 1999, as amended at 64 FR 56913, Oct. 21, 1999]

§ 982.309 Term of assisted tenancy.

(a) *Initial term of lease.* (1) Except as provided in paragraph (a)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant; and

(ii) Such shorter term is the prevailing local market practice.

(3) During the initial term of the lease, the owner may not raise the rent to owner.

(4) The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC.

(b) *Term of HAP contract.* (1) The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

(2) The HAP contract terminates if any of the following occurs:

(i) The lease is terminated by the owner or the tenant;

(ii) The PHA terminates the HAP contract; or

(iii) The PHA terminates assistance for the family.

(c) *Family responsibility.* (1) If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice of termination at the same time. Failure to do this is a breach of family obligations under the program.

(2) The family must notify the PHA and the owner before the family moves out of the unit. Failure to do this is a

breach of family obligations under the program.

[64 FR 26645, May 14, 1999]

§ 982.310 Owner termination of tenancy.

(a) *Grounds.* During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or

(3) Other good cause.

(b) *Nonpayment by PHA: Not grounds for termination of tenancy.* (1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.

(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.

(c) *Criminal activity.* Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy:

(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(2) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(3) Any drug-related criminal activity on or near the premises.

(d) *Other good cause.* (1) "Other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

(i) Failure by the family to accept the offer of a new lease or revision;

(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

(2) During the initial lease term, the owner may not terminate the tenancy for "other good cause", unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see paragraph (d)(1)(iv) of this section).

(e) *Owner notice—(1) Notice of grounds.*

(i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

(ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

(2) *Eviction notice.* (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

(ii) The owner must give the PHA a copy of any owner eviction notice to the tenant.

(f) *Eviction by court action.* The owner may only evict the tenant from the unit by instituting a court action.

(g) *Regulations not applicable.* 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned

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projects) does not apply to a tenancy assisted under this part 982.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26645, May 14, 1999; 64 FR 56913, Oct. 21, 1999]

§ 982.311 When assistance is paid.

(a) *Payments under HAP contract.* Housing assistance payments are paid to the owner in accordance with the terms of the HAP contract. Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit.

(b) *Termination of payment: When owner terminates the lease.* Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The HA may continue such payments until the family moves from or is evicted from the unit.

(c) *Termination of payment: Other reasons for termination.* Housing assistance payments terminate if:

- (1) The lease terminates;
- (2) The HAP contract terminates; or
- (3) The PHA terminates assistance for the family.

(d) *Family move-out.* (1) If the family moves out of the unit, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

(2) If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the

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new unit, is not considered to constitute a duplicative housing subsidy.

§ 982.312 Absence from unit.

(a) The family may be absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy.

(b) Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate.

(The owner must reimburse the PHA for any housing assistance payment for the period after the termination.)

(c) Absence means that no member of the family is residing in the unit.

(d)(1) The family must supply any information or certification requested by the PHA to verify that the family is residing in the unit, or relating to family absence from the unit. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit, including any information requested on the purposes of family absences.

(2) The PHA may adopt appropriate techniques to verify family occupancy or absence, including letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors.

(e) The PHA administrative plan must state the PHA policies on family absence from the dwelling unit. The PHA absence policy includes:

(1) How the PHA determines whether or when the family may be absent, and for how long. For example, the PHA may establish policies on absences because of vacation, hospitalization or imprisonment; and

(2) Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family.

§ 982.521

- (i) Real property taxes;
- (ii) Special governmental assessments;
- (iii) Utility rates; or
- (iv) Costs of utilities not covered by regulated rates.

(2) An PHA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The PHA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

- (1) An insured or non-insured Section 236 project;
- (2) A Section 202 project;
- (3) A Section 221(d)(3) below market interest rate (BMIR) project; or
- (4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see § 982.309).

(c) *Certificate tenancy—Rent adjustment.* Rent to owner for a certificate tenancy is not subject to provisions governing annual adjustment (§ 982.519) or special adjustment (§ 982.520) of rent to owner.

[65 FR 16822, Mar. 30, 2000]

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Subpart L—Family Obligations; Denial and Termination of Assistance

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.551 Obligations of participant.

(a) *Purpose.* This section states the obligations of a participant family under the program.

(b) *Supplying required information—(1)* The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) *HQS breach caused by family.* The family is responsible for an HQS breach caused by the family as described in § 982.404(b).

(d) *Allowing PHA inspection.* The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease.

(f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See § 982.314(d).

(g) *Owner eviction notice.* The family must promptly give the PHA a copy of any owner eviction notice.

(h) *Use and occupancy of unit.—(1)* The family must use the assisted unit

for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

(i) *Absence from unit.* The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

(j) *Interest in unit.* The family must not own or have any interest in the unit.

(k) *Fraud and other program violation.* The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the

health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

(n) *Other housing assistance.* An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 11119, Mar. 18, 1996; 61 FR 13627, Mar. 27, 1996; 61 FR 27163, May 30, 1996; 64 FR 26650, May 14, 1999; 66 FR 28805, May 24, 2001]

§ 982.552 PHA denial or termination of assistance for family.

(a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and

APPENDIX C

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Title 59. Landlord and Tenant (Refs & Annos)

Chapter 59.12. Forcible Entry and Forcible and Unlawful Detainer (Refs & Annos)

→→ **59.12.030. Unlawful detainer defined**

A tenant of real property for a term less than life is guilty of unlawful detainer either:

- (1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;
- (2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;
- (3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;
- (4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;
- (5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

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(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

CREDIT(S)

[1998 c 276 § 6; 1983 c 264 § 1; 1953 c 106 § 1. Prior: 1905 c 86 § 1; 1891 c 96 § 3; 1890 p 73 § 3; RRS § 812.]

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Title 59. Landlord and Tenant (Refs & Annos)

Chapter 59.12. Forcible Entry and Forcible and Unlawful Detainer (Refs & Annos)

→→ **59.12.190. Relief against forfeiture**

The court may relieve a tenant against a forfeiture of a lease and restore him or her to his or her former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made.

CREDIT(S)

[2010 c 8 § 19015, eff. June 10, 2010; 1891 c 96 § 21; RRS § 830. Prior: 1890 p 80 § 22.]

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