

Department's action, or to exercise jurisdiction over the implementation of the rent increases by the Department. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

Subpart A—Subsidized Projects

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SOURCE: 41 FR 43330, Sept. 30, 1976, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

Subpart A—Subsidized Projects

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted with tenant-based assistance under the Section 8 Existing Housing Certificate or Housing Voucher Program is not subject to this part.)

[54 FR 236, Jan. 4, 1989]

§ 247.2 Definitions.

Drug-related criminal activity means the illegal manufacture, sale, distribu-

tion, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

Eviction means the dispossession of the tenant from the leased unit as a result of the termination of the tenancy, including a termination prior to the end of a term or at the end of a term.

Landlord means either the owner of the property or his representative, or the managing agent or his representative, as shall be designated by the owner.

Rental agreement means all agreements, written or oral, between the landlord and tenant (and valid rules and regulations adopted by the landlord pursuant to a written agreement) relating to the use and occupancy of a dwelling unit and surrounding premises.

State landlord and tenant act means any state statute or local ordinance which imposes obligations on a landlord and tenant in connection with the occupancy of a dwelling unit and surrounding premises and which provides that violations of such obligations by the tenant constitute grounds for eviction.

Subsidized project means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: below-market interest rates under section 221(d) (3) and (5), interest reduction payments under section 236 of the National Housing Act, or below market interest rate direct loans under section 202 of the Housing Act of 1959. For purposes of this part 247 *subsidized project* also includes those units in a housing project that receive the benefit of rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or housing assistance payments through: Project-Based Assistance under the Section 8 Certificate Program (24 CFR part 882, subpart G), Section 8 in connection with Section 202 Loans for Housing for the Elderly or Handicapped (24 CFR part 885), the Section 8 Additional Assistance Program for Projects with HUD-Insured and

HUD-Held Mortgages (24 CFR part 886, subpart A) or the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C).

[41 FR 43330, Sept. 30, 1976. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 53 FR 3368, Feb. 5, 1988; 54 FR 236, Jan. 4, 1989; 61 FR 47381, Sept. 6, 1996]

§ 247.3 Entitlement of tenants to occupancy.

(a) *General.* The landlord may not terminate any tenancy in a subsidized project except upon the following grounds:

(1) Material noncompliance with the rental agreement,

(2) Material failure to carry out obligations under any state landlord and tenant act,

(3) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; 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; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

(4) Other good cause.

No termination by a landlord under paragraph (a)(1) or (2) of this section shall be valid to the extent it is based upon a rental agreement or a provision of state law permitting termination of a tenancy without good cause. No termination shall be valid unless it is in accordance with the provisions of § 247.4.

(b) *Notice of good cause.* The conduct of a tenant cannot be deemed other good cause under § 247.3(a)(4) unless the landlord has given the tenant prior notice that said conduct shall henceforth constitute a basis for termination of occupancy. Said notice shall be served on the tenant in the same manner as that provided for termination notices in § 247.4(b).

(c) *Material noncompliance.* The term *material noncompliance with the rental agreement* includes:

(1) One or more substantial violations of the rental agreement;

(2) Repeated minor violations of the rental agreement that:

(i) Disrupt the livability of the project,

(ii) Adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,

(iii) Interfere with the management of the project, or

(iv) Have an adverse financial effect on the project;

(3) If the tenant:

(i) Fails to supply on time all required information on the income and composition, or eligibility factors, of the tenant household, as provided in 24 CFR part 5; or

(ii) Knowingly provides incomplete or inaccurate information as required under these provisions; and

(4) Non-payment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under State law, except that the payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace period permitted under State law, constitutes a minor violation.

(Approved by the Office of Management and Budget under control number 2502-0204)

[41 FR 43330, Sept. 30, 1976. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 54 FR 39697, Sept. 27, 1989; 56 FR 7531, Feb. 22, 1991; 61 FR 13624, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996]

§ 247.4 Termination notice.

(a) *Requisites of Termination Notice.* The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination

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only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

(b) *Manner of service.* The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) *Time of service.* When the termination of the tenancy is based on other good cause pursuant to §247.3(a)(4), the termination notice shall be effective, and the termination notice shall so state, at the end of a term and in accordance with the termination provisions of the rental agreement, but in no case earlier than 30 days after receipt of the tenant of the notice. Where the termination notice is based on material noncompliance with the rental agreement or material failure to carry out obligations under a state landlord and tenant act pursuant to §247.3(a)(1) or (2), the time of service shall be in accord with the rental agreement and state law.

(d) *Modification of rental agreement.* Notwithstanding any other provision of this subpart, the landlord may with the prior approval of HUD modify the terms and conditions of the rental agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant, together with the tender of a revised rental agreement or an addendum revising the existing rental agreement: Any increase in rent shall in all cases be governed by 24 CFR parts 245,

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246 and other applicable HUD regulations. This notice and tender shall be served on the tenant in the same manner as provided for in §247.4(b) and must be received by the tenant at least 30 days prior to the last date on which the tenant has the right to terminate the tenancy without being bound by the codified terms and conditions. The tenant may accept the modified terms and conditions by executing the tendered revised rental agreement or addendum, or may reject the modified terms and conditions by giving the landlord written notice in accordance with the rental agreement that he intends to terminate the tenancy.

(e) *Specificity of notice in rent non-payment cases.* In any case in which a tenancy is terminated because of the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity set forth in paragraph (a)(2) of this section.

(f) *Failure of tenant to object.* The failure of the tenant to object to the termination notice shall not constitute a waiver of his rights to thereafter contest the landlord's action in any judicial proceeding.

[41 FR 43330, Sept. 30, 1976, as amended at 48 FR 22915, May 23, 1983. Redesignated at 49 FR 6713, Feb. 23, 1984, as amended at 61 FR 47382, Sept. 6, 1996]

§247.5 Inapplicability to substantial rehabilitation or demolition.

This subpart shall not apply in any case in which the landlord terminates the occupancy of a tenant as a direct result of a determination, concurred in by HUD, to substantially rehabilitate or demolish the project or to dispose of the project to a purchaser who purchases for the purpose of substantial rehabilitation or demolition.

§247.6 Eviction.

(a) *General.* The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this subpart.

(b) *Limitations on allegations of new grounds.* In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set

forth in the termination notice served on the tenant under this subpart. The landlord shall not, however, be precluded from relying on grounds about which he or she had no knowledge at the time the termination notice was sent.

(c) *State and local law.* A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by this subpart, except where such State or local law has been preempted under part 246 of this chapter or by other action of the United States.

[48 FR 22915, May 23, 1983. Redesignated and amended at 49 FR 6713, 6715, Feb. 23, 1984]

§ 247.7 Implementation.

Every rental agreement entered into or renewed on and after the date on which this subpart is applicable to such tenant shall contain appropriate provisions implementing this subpart.

Subpart B—HUD-Owned Projects

§ 247.8 Incorporation by reference.

All of the provisions of subpart A of this part covering certain multifamily projects (excepting § 247.5) apply with full force to the property described in § 247.9 and they are hereby incorporated by reference.

§ 247.9 Applicability of procedures.

The procedures outlined in this subpart apply to all decisions to terminate the occupancy of a tenant by the termination of a lease prior to the end of its term or at the end of a term where the tenant resides in any multifamily project which is presently owned by HUD, regardless of whether said project was a subsidized project prior to the acquisition of title by HUD.

§ 247.10 Inapplicability to substantial rehabilitation or demolition; right of disposition unimpaired.

This subpart shall not apply in any case in which HUD terminates the occupancy of a tenant as a direct result of a determination by HUD to substantially rehabilitate or demolish the project or to dispose of the project to a purchaser who purchases for the pur-

pose of substantial rehabilitation or demolition. Nothing in this subpart should be construed to affect in any way the right of HUD to exercise its full statutory authority and discretion to dispose of property acquired pursuant to the National Housing Act.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

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