

§ 880.607

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(b) Form—(1) Part 880 and 24 CFR part 881 projects. For this part 880 and 24 CFR part 881 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

(2) 24 CFR part 883 projects. For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.

(i) Required provisions (Addendum to lease).

Addendum to Lease

The following additional Lease provisions are incorporated in full in the Lease between \_\_\_\_\_ (Landlord) and \_\_\_\_\_ (Tenant) for the following dwelling unit: \_\_\_\_\_. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.

a. The total rent will be \$ \_\_\_\_\_ per month.

b. Of the total rent, \$ \_\_\_\_\_ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and \$ \_\_\_\_\_ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.

c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Landlord will provide the following services and maintenance: \_\_\_\_\_

e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.

Landlord \_\_\_\_\_  
By \_\_\_\_\_  
Date \_\_\_\_\_  
Tenant \_\_\_\_\_  
Date \_\_\_\_\_

[End of addendum]

(ii) Prohibited provisions. Lease clauses which fall within the classifica-

tions listed below must not be included in any Lease.

Lease Clauses

a. Confession of Judgment. Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. Seize or Hold Property for Rent or Other Charges. Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. Exculpatory Clause. Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. Waiver of Legal Notice. Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease.

e. Waiver of Legal Proceeding. Agreement by the tenant to allow eviction without a court determination.

f. Waiver of Jury Trial. Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. Waiver of Right to Appeal Court Decision. Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit. Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13590, Mar. 27, 1996]

§ 880.607 Termination of tenancy and modification of lease.

(a) Applicability. The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) Entitlement of Families to occupancy—(1) Grounds. The owner may not

terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any State landlord and tenant act;

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed “other good cause” under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) *Material noncompliance.* (i) Material noncompliance with the lease includes:

(A) One or more substantial violations of the lease; or

(B) Repeated minor violations of the lease that disrupt the livability of the building; 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 facilities; interfere with the management of the building or have an adverse financial effect on the building.

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immi-

gration status (as provided by 24 CFR part 5), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) *Termination notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

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(d) *Modification of Lease form.* The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by § 880.609 and other applicable HUD regulations.

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

[44 FR 59410, Oct. 15, 1979, as amended at 51 FR 11225, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39703, Sept. 27, 1989; 56 FR 7537, Feb. 22, 1991; 60 FR 14842, Mar. 20, 1995; 61 FR 13590, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

**§ 880.608 Security deposits.**

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or