

Chapter 14



TENANTS OF FEDERALLY SUBSIDIZED HOUSING

There are several different kinds of government housing programs which offer rental assistance or rents that are less than current market rents to tenants with low income. Federal laws provide extra rights and protection to tenants in these programs.

A. Privately owned HUD or USDA subsidized housing

These apartment complexes are owned by private developers. The owners have entered into contracts with the U.S. Department of Housing and Urban Development (HUD) or the U.S. Department of Agriculture (USDA) to charge less than fair market rents in exchange for mortgage assistance from the federal government. Some of these apartment complexes are for elderly and disabled persons only.

Tenants of modest to low income can apply directly to these privately owned subsidized complexes. If the tenant is eligible, he or she will probably be placed on a waiting list. It is the tenant's responsibility to make sure that the application is kept current. It is very important to make sure that the management has a current mailing address. If a tenant is not found eligible, he or she must be notified in writing of the reason, and of his or her right to meet with the management to discuss the decision.

Rents in these complexes will be lower than in equivalent non-subsidized apartments, and some units may be set aside for further assistance, with the rent reduced to 30% of the tenant's adjusted income. Tenants may have to be recertified annually to ensure that they still qualify for reduced rent.

Tenants in HUD and USDA subsidized housing usually cannot be evicted unless they violate the terms of their lease.

B. Section 8 housing choice vouchers

Low-income tenants may apply for a Housing Choice voucher (commonly called a "Section 8" voucher) at a local housing authority. A Housing Choice/Section 8 voucher helps pay the rent for a privately owned house or apartment. The tenant's share of the rent and utilities is 30% of his or her adjusted income (42 USC § 1437a(a)(1)(A)). There are generally waiting lists for Section 8 vouchers. A person's position on the waiting list may depend on factors such as having a disability or being homeless. In some areas, a person who loses his or her housing due to building condemnation or domestic violence may be able to get a Section 8 voucher without having to wait. An applicant who is told that he or she is not eligible for the voucher must be notified in writing and informed that he or she may request an informal review at the housing authority.

Once notified that he or she has a Housing Choice/Section 8 voucher, the tenant has sixty days to find an apartment or house whose landlord will accept voucher payment (24 CFR 982.303(a)). If the tenant is unable to find a place to rent, the tenant may request an extension of the 60 days but must make the request in writing before the 60 days are over. If the tenant has not found a place to rent within the 60 days or any extensions granted, the voucher will be lost. Landlords are not required to rent to a person with a Section 8 voucher.

With a Housing Choice/Section 8 voucher, the tenant may rent any house or apartment which passes the Voucher inspection process. If the total rent is more than the fair market rent established by HUD (42 USC § 1437f(o)(1)(B)), the tenant may agree to pay the difference in addition to the share calculated by HUD, but the tenant's total share of the rent cannot be more than 40% of his or her household income, and the arrangement must be approved in writing by the housing authority.

The security deposit is limited only by the landlord-tenant law and may be as much as one month's rent.

The tenant's share of the rent will be recalculated once a year (42 USC § 1437f(o)(5) and 24 CFR 982.516(a)(1)) or sooner if he or she claims a hardship or reports a change in income. Failure to cooperate with the recertification process can result in termination of the Housing Choice/Section 8 voucher. If a tenant does not agree with the housing authority's determination he or she may request an informal hearing; the request must be made in writing and within the time stated in the notice. The hearing must be held quickly, and the hearing officer must make a written decision stating the reasons for the decision (24 CFR 982.555).

The tenant's share of the rent is recalculated whenever the tenant's family has a change in income (24 CFR 982.516(b)). It is important to report both increases and decreases in income to the housing authority so that the tenant's share is accurate. Even a temporary reduction in the tenant's income can reduce the tenant's share of the rent, making it much easier to keep housing in times of financial difficulty. Failure to report increases in income can result in overpayments by the housing authority which must be repaid by the tenant. The housing authority can then terminate the Housing Choice/Section 8 voucher or ask the tenant to enter into a repayment agreement. Failure to comply with a repayment agreement can result in termination of the Housing Choice/Section 8 voucher. The tenant has the right to an informal hearing with the housing authority to dispute the overpayment or termination of the voucher.

The private landlord cannot charge the tenant any fees that are not agreed to in the lease and in the

Housing Assistance Payments (HAP) contract between the housing authority, the tenant and the landlord (24 CFR 966.4(b)(2)). If the private landlord is not maintaining the property, the housing authority can re-inspect and withhold the housing assistance payments until the landlord brings the unit into compliance with Section 8 requirements. A tenant cannot be evicted by the landlord if the housing authority has withheld its share of the payments (24 CFR 983.353(b)(4)). Section 8 tenants can also abate rent under the landlord-tenant law. The tenant can abate his or her entire share if it is less than the one-third total rent abatement allowed by the law.

Section 8 tenants can be evicted from their apartments as set out in the landlord-tenant law. It is important to read the lease and HAP contract carefully because it may provide more protection than the landlord-tenant law. Eviction does not necessarily mean that you will lose Voucher, although you should check with the housing authority who administers your particular voucher, because many housing authorities do treat evictions as grounds for termination of the Housing Choice/Section 8 voucher. If the housing authority is not terminating your voucher, you can be recertified to rent another unit using your voucher as long as you do not have any debt to the landlord.

If the housing authority proposes to terminate your participation in the Voucher program because of the eviction, they must notify you in writing and offer you an informal hearing. Tenants have the right to be represented by an attorney at a hearing with the housing authority. If you have received a notice terminating your Housing Choice/Section 8 voucher, you should request a hearing immediately and seek legal assistance.

The rules are slightly different each housing authority. Every housing authority is required to have regulations, which the tenant may ask to review.

C. Public housing

Public housing complexes are owned and operated by local housing authorities. Tenants with low income may apply for admission to public housing and will be placed on a waiting list; position on the

waiting list depends upon several factors. Generally, families, elderly and disabled persons have preference over single individuals. Homeless people or people in substandard housing may also have preference in obtaining public housing. It is important to notify the housing authority of any changes in your mailing address so that you will not lose your spot on the waiting list or miss an opening (24 CFR 982.204(c)(1))

In public housing, the tenant must pay 30% of his or her adjusted income for rent and utilities (42 USC § 1437a(a)(1)(A)). It is important to report both increases and decreases in income to the housing authority as soon as you know about them so that the rent can be accurately calculated. The housing authority will recertify the tenant's income once a year (42 USC § 1437a(a)(1)) and recalculate the rent based on any changes in income (24 CFR 960.257(a)(1)). Failure to cooperate with recertification can result in eviction.

Public housing has a grievance procedure which consists of an informal hearing or review (24 CFR et seq.) and then a formal hearing. The specific type of procedure depends upon the rules adopted by the local housing authority. The grievance procedure can be used to address issues such as ineligibility, rent amount, poor conditions, damage charges and for-cause lease terminations. Hearings generally must be requested in writing within ten days of the disputed housing authority action. The local rules generally provide more notice time than the state landlord-tenant law. Always read any notice from the housing authority carefully and consult with the local legal services program if you have any questions or need assistance with the hearing process.

Evictions for criminal activity that is drug related or threatens the safety of other tenants or housing authority employees is sometimes exempt from the grievance procedure. In those cases, the housing authority may go directly to the local court to evict. Check with HUD or an attorney to determine whether the tenant housing authority is exempt from the grievance procedure in those cases.

D. Low Income Housing Tax Credit housing

The owners of many housing complexes in New Mexico have agreements with the U.S. Internal Revenue Service (IRS) to rent to low-income tenants at reduced rents. In return, the IRS allows the owners or to pay lower taxes. These properties are called Low Income Housing Tax Credit (LIHTC or *lie-tek*) properties. Tenants in these properties must report their income annually to show the landlord that they still qualify. Tenant rents at these properties are fixed below market so as to make them affordable to low-income tenants. Unlike HUD and USDA subsidized properties, however, the rent at LIHTC properties does not change if the tenant's income increases or decreases, unless the tenant's income increases so much that he or she is no longer eligible for a low-income unit.

Tenants in LIHTC properties cannot be evicted except for good cause (for example, not paying rent or otherwise violating the lease). LIHTC landlords are not permitted to refuse a tenant just because the tenant has a section 8 voucher.

E. Important tips for all residents of subsidized housing

Most subsidized housing tenants are required to report any changes in income or household composition to the housing authority (if they have public housing or section 8) or their landlord (if they have HUD, USDA or LIHTC housing). It is extremely important that tenants do so *in writing* as soon as they know of these changes.

If you receive a letter saying that you are being evicted or your voucher is being terminated, the letter will often state that you have a right to a grievance meeting or informal hearing. *Always* ask for the meeting or hearing, in writing, before the deadline given in the letter. Keep a copy of the written request so that you can prove you made the request. The housing authority or landlord often is prohibited from evicting you or terminating you from the program until after the meeting or hearing is held. The meeting is your chance to resolve any issues and stop the eviction. In the case of Section 8 voucher termination, if you do not request the meeting, you may lose any further opportunity to fight the voucher termination.

To evict you from subsidized housing, the landlord must use the court process just like any other landlord, even if you do not request a meeting or hearing.

New Mexico law gives special protections to residents of subsidized housing. For example, if you are being evicted for nonpayment of rent, the judge can arrange a payment plan so that you can pay your debt and stay in your home.

In these cases, it is very important to tell the judge:

- That you are in subsidized housing

- The reason you fell behind on your rent (loss of job, loss of benefits, illness)
- Your plan for paying off your debt to the landlord or housing authority

Many residents of subsidized housing—especially LIHTC housing—do not realize that their housing is subsidized. *If you are required to report your income to your landlord, you are probably in subsidized housing.* If you do not know whether you are in subsidized housing, you can usually find out by calling the New Mexico Mortgage Finance Authority at 505-843-6880 or toll free at 800-444-6880.

