

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER F COMPLIANCE MONITORING

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§10.610.Written Policies and Procedures.

- (a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.
 - (1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.
 - (2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.
 - (3) All policies must have an effective date. Any changes require a new effective date.
 - (4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.
- (b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.
 - (1) The criteria must include:
 - (A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:
 - (i) The income and rent limits;
 - (ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,
 - (iii) Fees and/or deposits required as part of the application process.
 - (B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.
 - (i) The screening criteria must avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants.

- (ii) Applicants must be provided the names of any third party screening companies upon request.
- (C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.
- (D) The following statements:
 - (i) The Development will comply with state and federal fair housing and antidiscrimination laws; including, but not limited to, consideration of reasonable accommodations requested to complete the application process. Chapter 1, Subchapter B of this title provides more detail about reasonable accommodations.
 - (ii) Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.
 - (iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).
- (E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.
- (F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.
- (2) The criteria must not:
 - (A) Include preferences for admission, unless such preference is:
 - (i) Allowed for under program rules; or,
 - (ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.
 - (B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or,
 - (C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- (3) If the Development is funded with HOME, Multifamily Direct Loan funds used as HOME match, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.
- (c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.
 - (1) The policy must provide:

- (A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,
 - (B) A timeframe (not to exceed 14 calendar days) in which the Owner will respond to a request.
- (2) The policy must not:
- (A) Require a household to make a reasonable accommodation request in writing;
 - (B) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside program;
 - (C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,
 - (D) Require a household to rent a unit that has already been made accessible.
- (d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.
- (1) The policy must include procedures the Development uses in:
- (A) Opening, closing, and selecting applicants from the wait list;
 - (B) How preferences are applied; and,
 - (C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.
- (2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.
- (e) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications.
- (1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.
- (2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:
- (A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based; ~~and~~
 - (B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. A grievance procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Developments that lease units under the Department's Section 811-PRA program; and ~~property~~;
 - (C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation".

- (3) The Development must keep a log of all denied applicants that completed the application process to include:
 - (A) Basic household demographic and rental assistance information, if requested during any part of the application process;
 - (B) The specific reason for which an applicant was denied, the date the decision was made; and,
 - (C) The date the denial notice was mailed or hand-delivered to the applicant.
- (4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:
 - (A) A copy of the written notice of denial; and,
 - (B) The Tenant Selection Criteria policy under which an applicant was screened.
- (f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.
 - (1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.
 - (2) The notification must:
 - (A) Be delivered as required under applicable program rules;
 - (B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" [~~information on rights under VAWA~~];
 - (C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,
 - (D) Include information on the appeals process if one is used by the property.
- (g) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:
 - (1) How security deposits will be handled for both the current unit and the new unit;
 - (2) How transfers related to a reasonable accommodation will be addressed; and,
 - (3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.
- (h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."
- (i) No later than June 14, 2017, HOME, NHTF, NSP, and state HOME match, Development Owners with contracts dated on or after December 16, 2016, must individualize for their Development and then adopt the TDHCA form based on HUD Form 5381 "Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking" or request from the Department to use another Federal program's Emergency Transfer Plan.

§10.613. Lease Requirements.

- (a) Eviction and/or termination of a lease. For HTC Developments, IRS Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low-income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.
- (b) For HOME, state HOME match, and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.
- (c) For NHTF, the NHTF Interim Rule prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, or for other good cause. Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §93.303.
- (d) ~~[(e)]~~ Evictions and terminations of tenancy for other than good cause are prohibited. In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. If a challenge to an eviction or termination of tenancy is related to a reasonable accommodation as defined by §1.204 of this title (relating to Reasonable Accommodations), a violation of the provision found in subsection (i) ~~[(e)]~~ of this section, or for Developments financed by Direct Loans where actions trigger Title 104(d) of the Housing and Community Development Act of 1974 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Department upon the request of either party will determine if an Owner is in compliance with the referenced requirements using the methods outlined in 1.2 of this Title (regarding Department Compliant System), or as required by federal law. Otherwise, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy for other reasons must be made by a court of competent jurisdiction or an agreement of the parties in arbitration, and the Department will rely on that determination.
- (e) ~~[(d)]~~ HTC and Bond Developments must use a lease or lease addendum that requires households to report changes in student status.
- (f) ~~[(e)]~~ Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.
- (g) ~~[(f)]~~ For HOME, TCAP, state HOME match, NHTF, and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME, TCAP, state HOME match, NHTF, and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been

cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

- (h) ~~[(g)]~~ All Owners ~~[shall comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"). In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners]~~ may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.
- (i) All NHTF, state HOME match, NSP, and HOME Developments for which the contract is on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e).
- (j) ~~[(h)]~~ Leasing of HOME and state HOME match units by organizations that, in turn, rent those units to individuals is not permissible for Developments with contracts dated on or [HOME developments committed funding] after August 23, 2013.
- (k) ~~[(g)]~~ Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 60 days. The unit will be found out of compliance under the finding "Violation of the Unit Vacancy Rule."
- (l) ~~[(g)]~~ It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, unit amenities, and services.
- (m) ~~[(k)]~~ A Development Owner shall post in a common area of the leasing office a laminated copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:
 - (1) Information about Fair Housing and tenant choice;
 - (2) Information regarding common amenities, unit amenities, and services; and,
 - (3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.
 - (4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.