

# Chapter 13

## LEASE TERMINATIONS

### INTRODUCTION:

The NBHA may terminate tenancy for a family because of the family's action or failure to act in accordance with HUD regulations (24 CFR) 966.4 (1) (2), and the terms of the lease. This chapter describes the NBHA's policies for notification of lease termination and provisions of the lease.

### TERMINATION BY TENANT:

#### **13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the NBHA central office or sent by pre-paid first-class mail, properly addressed.

A notice of intent to vacate (NIV) must be signed by the head of household, spouse, or cohead.

## PART II: TERMINATION BY NBHA – MANDATORY

### 13-II.A. OVERVIEW

The lease may be terminated by the NBHA at any time by giving written notice for serious or repeated violation of material terms of the lease.

#### **13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

The NBHA shall terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination or fails to recertify.

**13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**

The NBHA shall terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the NBHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

**13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION [24 CFR 5.218(c) and 24 CFR 960.259(a)(3)]**

The NBHA shall terminate the lease if a resident family fails to *disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.* (See Chapter 3) *The NBHA will defer the family's termination and provide the family with the opportunity to comply with the requirements for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.*

**13-II.E. FAILURE TO ACCEPT THE NBHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

The NBHA shall terminate the lease if the family fails to accept the NBHA's offer of a lease revision to an existing lease, provided the NBHA has done the following:

- *The revision is on a form adopted by the NBHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.*
- The NBHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The NBHA has specified in the offer a reasonable time limit within that period for acceptance by the family.



### **13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

The NBHA shall immediately terminate the lease if the NBHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

### **13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The NBHA is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements.

### **13-II.H. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2010.3]**

*The NBHA must immediately terminate program assistance for deceased single member households.*

## **PART III: TERMINATION BY NBHA – OTHER AUTHORIZED REASONS**

*[24 CFR 966(i)(2)(i); and 24 CFR 966.4(f)]*

### **13-III.A. OVERVIEW**

The NBHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the NBHA may, as an alternative to termination, require the exclusion of the culpable household member. Other reasons for lease termination by the NBHA include, but are not limited to the following:

- Non-payment of rent or other charges under the lease failure to provide timely and accurate statements of income, assets, expenses and family composition at admission, interim, special or annual rent recertifications
  - Assignment or subleasing of the premises or providing accommodation for boarders or lodgers. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member
  - Use of the premises for purposes other than solely as a dwelling unit for the resident and resident's household as identified in this Lease, or permitting its use for any other purposes
  - Failure to abide by necessary and reasonable rules made by the NBHA for the benefit and well being of the housing development and the residents
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- Failure to abide by applicable building and housing codes materially affecting health or safety

- Failure to dispose of garbage waste, ashes, rubbish and other waste in a safe and sanitary manner
  - Failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner
  - Acts of destruction, defacement or removal of any part of the premises, or failure to cause guests to refrain from such acts
  - Fleeing to avoid prosecution, custody, or confinement after conviction for a crime, or attempt to commit a crime that is a felony under the laws of the place from which the tenant flees
  - Violating a condition of probation or parole imposed under federal or state law
  - Failure to pay reasonable charges (other than for normal wear and tear) for the repair of damages to the premises, project buildings, facilities, equipment, or common areas
  - The resident, any member of the resident's household or a guest or other person under the resident's control shall not engage in drug-related or violent criminal activity, *on or off* public housing premises (as defined in the lease) while the other resident resides in public housing. Such criminal activity shall be cause for termination of tenancy. The term "drug related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, a controlled substance Alcohol abuse that the NBHA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
  - Shall not engage in criminal activity in the dwelling unit or on or off the premises and shall prevent criminal activity in the unit or premises by household members and or guests. Any of the following criminal activities by household member and or guest on the premises, shall be a violation of the lease a cause for termination and for eviction from the unit.
  - Non-compliance with non-citizen rule requirements
  - Criminal or other activity by a member of the household or guest(s) that threatens the health and safety of other public housing residents in the immediate vicinity of the premises
  - Criminal activity by a member of the household or guest(s) that threatens the health and safety of the NBHA staff
  - **Possession of illegal unregistered firearm(s).**
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- Discovery, after admission, of any inaccurate facts or omission of information that would have made the resident ineligible for housing, or would constitute fraud.



- Failure to keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition
- Other good cause

### **13-III. B VIOLENCE AGAINST WOMEN'S ACT:**

#### **DEFINITIONS:**

1. **Domestic Violence:** [as defined in Section 40002 of VAWA 1994], which states as follows:

SEC 4002(a)(6): "DOMESTICE VIOLENCE, The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in commons, by a person who is cohabiting with, or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult, or youth victim who is protected from the person's acts under the domestic, or family violence law of the jurisdiction.

2. **Dating Violence:** [as defined in Section 40002 of VAWA 1994], which states as follows:

SEC 40000(a)(8) "DATING VIOLENCE – The term "dating violence" means violence committed by a person:

- (a). who is, or has been in a social relationship of a romantic, or intimate nature with the victim; and
- (b) where the existence of such a relationship shall be determined based on a consideration of the following factors
  - (i) The length of the relationship
  - (ii) The type of relationship
  - (iii) The frequency of interaction between the persons involved in the relationship."

3. **Stalking** – means;

- (a) (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

- (b) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to;
  - (i) that person;
  - (ii) a member of the immediate family of that person; or
  - (iii) the spouse, or intimate partner of that person;...”

4. **Immediate Family Member:** “means, with respect to a person;

- (a) a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or
- (b) any other person living in the household of that person and related to that person by blood or marriage.”

**POLICY:**

When the actions of a resident or other family member result in a determination by NBHA to terminate the family's lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the NBHA *may* request that the victim submit *supporting documentation in accordance with ACOP Provision 3.III.F*. NBHA will make all best efforts to work with victims of domestic violence before terminating the victim's assistance. An incident or incidents or actual or threatened domestic violence, dating violence, or stalking will 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 assistance, tenancy, or occupancy rights of such victim.

**CERTIFICATION:**

*All certifications must include name of perpetrator.* NBHA reserves the right to waive these verification requirements and accept only the victim's self certification if NBHA deems the victim's life to be in imminent danger.

There is no limit on the ability of the NBHA to evict for good cause unrelated to the incident or incidents of domestic violence, dating violence or stalking, other than the victim may not be subject to a “more demanding standard” than non-victims.

There is no prohibition on the NBHA evicting if it “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the victim's tenancy is not terminated.”

Any protections provided by law, which give greater protection to the victim are not superceded by these provisions.



### CONFIDENTIALITY:

Certification documentation shall be retained in confidence by the Authority and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

### 13-III.C. MANDATORY LEASE PROVISIONS [24 CFR 966.4(I)(5)]

#### Definitions [24 CFR 5.100]

The following definitions will be used for this and other parts of this chapter:

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in section 16 VIIB

*Domestic violence* is defined in section 16-VII B

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug. [21 U.S.C. 802]

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and NBHA approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p.65]

*Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

*Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Stalking* is defined in section 16-VII.B



*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

**Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]**

The NBHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The NBHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors as described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]**

The NBHA will terminate the lease when the NBHA determines that a household member is illegally using a drug or the NBHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The NBHA has a no tolerance policy on use of illegal drugs.

The NBHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors as described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

The NBHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

*Immediate vicinity* means within a three-block radius of the premises.

The NBHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors as described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

The NBHA will terminate the lease if the NBHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The NBHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors as described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

The NBHA will terminate the lease if the NBHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The NBHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors as described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**13-III.D. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)] [24 CFR 966.4(l)(2)(ii)(B) and (C)]**

*HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples.*

*The Violence Against Women Act of 2005, explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence [24CFR 5.2005©(1)].*



The NBHA shall terminate for other good cause reasons which include, but are not limited to the follows:

*Fugitive Felon or Parole Violator.* If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

*Persons subject to sex offender registration requirement.* If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the NBHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the NBHA that such a dwelling unit is available

Failure to permit access to the unit by the NBHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform the NBHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of the NBHA pet policy

If the family has breached the terms of a repayment agreement entered into with the NBHA

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward NBHA personnel.

*Abusive or violent behavior towards NBHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.



In making its decision to terminate the lease, the NBHA will consider alternatives as described in Section 13-III.E and other factors described in Section 13-III.F. Upon consideration of such alternatives and factors, the NBHA may, on a case-by-case basis, choose not to terminate the lease.

**Family Absence from Unit [24 CFR 982.551(i)]**

It is reasonable that the family may be absent from the public housing unit for brief periods.

The family must promptly notify the NBHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

*Abandonment.* If the family appears to have vacated the unit without giving proper notice, the NBHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the NBHA will secure the unit immediately to prevent vandalism and other criminal activity.

**Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]**

The NBHA will not evict or terminate the tenancies of families solely because they are over income.

**13-III.E. ALTERNATIVES TO TERMINATION OF TENANCY**

**Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

The NBHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon NBHA request.

**Repayment of Family Debts**

If a family owes amounts to the NBHA, as a condition of continued occupancy, the NBHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the NBHA of the amount owed.

### 13.III.F: TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING:

*This section addresses the protections against termination of tenancy that the Violence Against Women Act of 2005 (VAWA) provides for public housing residents who are victims of domestic, dating violence, or stalking. For general VAWA requirements and NBHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP where definitions of key VAWA terms are also located.*

#### VAWA Protections Against Termination [24 CFR 5.2005(c)]

*VAWA provides that criminal activity directly related 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 tenancy of occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim[24 CFR 5.2005(c)(1)].*

#### Limits on VAWA Protections [24 CFR 5.2005(d and (e))].

*While VAWA prohibits a PHA from using domestic violence, dating violence, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:*

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, or stalking providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.*
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.*

*HUD regulations define actual and imminent threat to mean words, gestures, actions, or other indicators of a physical threat that;*

- a. is real*
- b. would occur within an immediate time frame, and*
- c. could result in death or serious bodily harm [24 CFR 5.2005(d) and (e).*



*In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:*

- *The duration of the risk*
- *The nature and severity of the potential harm*
- *The likelihood that the potential harm will occur [24 CFR 5.2005(e)]*

*Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005 (d)(3)].*

*In determining whether a public housing tenant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the NBHA will consider the following, and any other relevant, factors.*

- *Whether the threat is toward an employee, or tenant other than the victim of domestic violence, dating violence, or stalking.*
- *Whether the threat is a physical danger beyond a speculative threat*
- *Whether the threat is likely to happen within a short period of time*
- *Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat.*

*If the tenant wishes to contest the NBHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.*

*When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, or stalking claims protection under VAWA, the NBHA will request that the individual provide documentation supporting the claim in accordance with the policies in Section 13.III B of this ACOP.*

*The NBHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the NBHA will document the waiver in the individual's file.*

#### *Terminating or Evicting a Perpetrator of Domestic Violence:*

*Although VAWA provides protection from termination for Victims of Domestic Violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the*



*explicit authority to bifurcate a lease, or remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or other, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant". [24 /cfr 5,2005(a), Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4 (e)(9)].*

*Specific lease language affirming the PHA's authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local state, or federal law for eviction, lease termination, or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [3/16/07 Federal Register notice on the applicability of VAWA to HUD programs].*

*The NBHA will bifurcate a family's lease and terminate the tenancy of a family member if the NBHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family member.*

*If the NBHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If necessary, the NBHA will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, the NBHA may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.*

### 13-III.G. CRITERIA FOR DECIDING TO TERMINATE TENANCY

#### Evidence [24 CFR 982.553(c)]

The NBHA will terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

The NBHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

The NBHA will consider the following factors before deciding whether to terminate the lease:

The seriousness of the offending action, especially with respect to how it would affect other residents

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor or a person with disabilities

The effects that the eviction will have on other family members who were not involved in the action or failure to act

The effect on the community of the termination, or of the NBHA's failure to terminate the tenancy

The effect of the NBHA's decision on the integrity of the public housing program

The demand for housing by eligible families who will adhere to lease responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action

The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future

**Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the NBHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

For this purpose the NBHA will require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.



### Reasonable Accommodation [24 CFR 966.7]

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the NBHA will determine whether the behavior is related to the disability. If so, upon the family's request, the NBHA will determine whether alternative measures are appropriate as a reasonable accommodation. The NBHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination.

### Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

The NBHA's eviction actions are consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

## PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

### 13-IV.A. OVERVIEW

The NBHA's written Notice to Quit will state the reason for the proposed termination, the date that the termination will take place, and it will offer the resident all of the rights and protections afforded by the regulations and this policy (see Chapter 14 - Complaints, Grievances and Appeals)

### 13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

The NBHA will conduct criminal records checks when it has come to the attention of the NBHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The NBHA may not pass along to the tenant the costs of a criminal records check.

### 13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the NBHA will notify the household in writing of the proposed adverse action and will provide the subject of the record an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.



The family will be given 10 business days from the date of the NBHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the NBHA in writing to dispute the information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

#### **13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]**

##### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination; the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine NBHA documents directly relevant to the termination or eviction. [24 CFR 996.4(m)].

When the NBHA is required to offer the resident an opportunity for a grievance hearing, the notice shall also inform the resident of their right to request a hearing in accordance with the NBHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the NBHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It shall specify the judicial eviction procedure to be used by the NBHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice shall also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the NBHA, or for a drug-related criminal activity on or off the premises.

The NBHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first class mail the same day.

*All notices of lease termination will include information about the protection against termination provided by the Violence Against Women Act of 20045 (VAWA) for victims of domestic violence, dating violence, or stalking (see section 16 VII.C). Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or other, or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in section 13.III.F and 16.VIID.*

#### Timing of the Notice [24 CFR 966.4(l)(3)(i)]

The NBHA must give written notice of lease termination of:

- At least 14 calendar days prior to termination in the case of failure to pay rent: and
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)
  - If the health or safety of other residents, NBHA employees, or persons residing in the immediate vicinity of the premises is threatened
  - If any member of the household has engaged in any drug-related criminal activity or violent criminal activity
  - If any member of the household has been convicted of a felony
- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply.

#### Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the NBHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident shall be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

#### Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, in addition to advising the family of the reasons their assistance is being terminated, the notice shall also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the NBHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the NBHA's informal hearing procedures.



#### **13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]**

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. The NBHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the NBHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the NBHA will seek the assistance of the court to remove the family from the premises as per state and local law.

#### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

When the NBHA evicts an individual or family for criminal activity, including drug-related criminal activity, the NBHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

#### **13-IV.G. RECORD KEEPING**

A written record of every termination and/or eviction will be maintained for three (3) years by the NBHA at the development where the family was residing, and will contain the following information:

- Name of resident, number and identification of unit occupied date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently
- Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)
- Date and method of notifying the resident
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions