

§ 886.128

failure by the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate the lease on 30 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

(3) *Excusing owner from responsibility.* Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

(6) *Waiver of jury trial.* Agreement by the family to waive any right to a trial by jury.

(7) *Waiver of appeal.* Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by

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the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

[53 FR 3368, Feb. 5, 1988]

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of parts 247 and 5 of this title shall apply. The provisions of part 5, Subpart E, of this title 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 concerning deferral of termination of assistance also shall apply.

[60 FR 14846, Mar. 20, 1995, as amended at 65 FR 16724, Mar. 29, 2000]

§ 886.129 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.121; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of

units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* Paragraphs (a) and (b) of this section apply to Contracts executed on or after October 3, 1984.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with part 5, subpart E, of this title because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in part 5, subpart E, of this title, the owner shall comply with the provisions of part 5, subpart E, of this title concerning assistance to mixed families, and deferral of termination of assistance.

[49 FR 31399, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

§ 886.130 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 886.131 Audit.

(a) Where a State or local government is the eligible owner of a project, or is a contract administrator under § 886.120, receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements of 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

§ 886.132 Tenant selection.

Sections 5.653 through 5.661 of this title govern selection of tenants and occupancy requirements applicable under this subpart A.

[65 FR 16724, Mar. 29, 2000]

§ 886.138 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organization, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided;

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and