

§ 3560.157

7 CFR Ch. XXXV (1-1-08 Edition)

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) *Prohibited provisions.* Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may institute suit without any notice to the tenant that the suit has been filed;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorneys to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) *Housing projects and units receiving HUD assistance.* (1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) *State and local requirements.* Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.156(c)(12), implementation of the words " \* \* \* their citizenship status, \* \* \*" was delayed indefinitely.

§ 3560.157 **Occupancy rules.**

(a) *General.* The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) *Requirements.* The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources;

(10) When a guest becomes a member of the tenant household; and

(11) The procedures tenants must follow to request reasonable accommodations.

(c) *Modification of occupancy rules.* The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of such rules in accordance with § 3560.160.

(d) *Federal, state and local requirements.* The occupancy rules must be consistent with Federal, state, and local law.

(e) *Pets/Assistance Animals.* All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or assistance animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) *Tenant organizations.* Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) *Community rooms.* Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

**§ 3560.158 Changes in tenant eligibility.**

(a) *General requirements.* Tenants must continue to meet the requirements of § 3560.152 to remain eligible for occupancy.

(b) *Tenants no longer eligible.* Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) *Temporary continuation of tenancy.* If conditions described in § 3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) *Surviving and remaining household members.* (1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the departure or death of the tenant or co-tenant;

(iii) They execute a tenant certification form establishing their own tenancy; and

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-