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### Denials, Terminations, & Evictions

- ▶ PHAs have the responsibility to develop and enforce standards governing selection for admission to and the continued occupancy of its public housing units
- ▶ How you handle the process is a matter of both federal requirement and state law
- ▶ Regulatory requirements set forth in the CFR
  - 24 CFR 960 et al
  - 24 CFR 966 et al
- ▶ Laws vary from state to state

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### Denials, Terminations, & Evictions

- ▶ Denying/terminating assistance to a family can be challenging on many levels
  - Gathering evidence
  - Providing applicable due process
  - Applicant/Tenant protections
  - Documentation
  - Legal processes
  - Rent collection
  - Humanitarian element

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## Denials, Terminations, & Evictions

- ▶ At the end of this course, you'll be able to:
  - Identify mandatory and discretionary reasons for denials and terminations
  - Understand the applicable due process elements required at each level
  - Write effective denial letters and termination notices
  - Establish a process for gathering applicable evidence and documentation
  - Administer a compliant grievance process
  - Compose grievance determination letters than stand up in court

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## Topics

- ▶ Processing Denials of Admission
- ▶ Processing Terminations
- ▶ Hearing Definitions
  - Informal Hearing
  - Informal Settlements
  - Grievance Hearing
- ▶ Background of Regulatory Requirements
- ▶ Policy and Procedural Considerations

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## Topics *(continued)*

- ▶ Informal Settlements vs. Grievance Hearings
- ▶ Implementing Policies and Procedures
- ▶ Grievance Hearing Process
- ▶ Post Hearing Documentation
- ▶ Effect of Decision on PHA
- ▶ The Eviction Process
- ▶ Compliance with Fair Housing

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# Denials

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## Tenant Selection

- ▶ PHAs screen applicants for both eligibility and suitability
- ▶ These standards should be well defined and written
  - Tenant Selection and Assignment Plan
  - Admissions and Continued Occupancy Policy (ACOP)

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## Tenant Selection

- ▶ Eligibility Requirements
  - Meet HUD's definition of *Family*
  - Must disclose SSN's
  - U.S. Citizenship
  - Income eligibility

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## Tenant Selection

### ▶ Suitability Criteria

- PHAs are required to adopt written policies for admission of tenants
- Prevent admission of applicants whose habits and practices would be a detriment to other residents and the PHA environment
- Criteria must be reasonable, fair, and objective
- Considers past conduct as a predictor of future behavior
- One simple question to ask...

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## Tenant Selection

### ▶ Suitability Criteria *(continued)*

- Mandatory denials vs. discretionary denials
  - Regulatory clues...
  - Must, shall, may, permitted, should
- Clearly written and communicated definitions
- Consideration of all applicable circumstances
- Consistently applied

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## Application Forms/Packets

- ▶ Outline screening criteria that will be used.
- ▶ Include required VAWA notice
- ▶ Include Language/Alternate Communications form
- ▶ Include CSSR information.

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## Application Forms/Packets

- ▶ Provide space for the applicant to:
  - Explain convictions and present evidence that he/she will be a suitable tenant
  - Request a reasonable accommodation waiver
- ▶ Be comprehensive
- ▶ Be written in clean and accessible language.

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## Reasons for Denial

- ▶ Lifetime Mandatory Reasons for Denial
  - Persons convicted of methamphetamine production
    - **Permanently prohibited** if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing
  - Persons subject to lifetime requirement under a State sex offender registration program

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## Reasons for Denial

- ▶ Other Mandatory Reasons for Denial
  - Persons evicted for drug-related criminal activity from federally assisted housing
    - For 3 years from date of eviction
    - May admit household if PHA determines
      - Evicted household member has successfully completed a supervised drug rehabilitation program; or
      - Circumstances leading to eviction no longer exists

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## Reasons for Denial

### ▶ Other Mandatory Reasons for Denial (continued)

- If the household has “a member” whom the PHA determines that it has reasonable cause to believe is involved in illegal drug use or alcohol abuse that is a threat to others.
  - Considerations:
    - Rehabilitation
    - Removal of member from household

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## Reasons for Denial

### ▶ Other Mandatory Reasons for Denial (continued)

- Over income limit
- Does not meet definition of “family”
- Failure to provide Social Security Numbers
- No family member is a citizen or has eligible immigration status
- Owes a debt to a PHA and is not in compliance with a repayment agreement

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## Reasons for Denial

### ▶ Optional Reasons for Denial

- Does not meet suitability standards as defined in ACOP which may include:
  - Other criminal activity
  - Previous rental history
  - Disturbances to neighbors
  - Credit history/credit reports
  - Employment history

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## Standards of Evidence

- ▶ PHAs need to consider all relevant information related to selection criteria
- ▶ No standard of evidence in the PH regs or in HUD guidance, though HCV regulations provide “safe harbor”
  - Preponderance of the evidence
  - PHAs must engage in solid information-gathering techniques to get to the heart of the issue
    - Witnesses, statements, video, reports, physical evidence, ACOP and lease documents, etc.

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## Use of Arrest Records

- ▶ Notice PIH 2015-19
  - Issued 11/02/2015
  - No expiration date
  - Applicability:
    - Denials
    - Terminations
  - An arrest alone is not enough proof that a person engaged in criminal activity

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## Use of Arrest Records

- ▶ Notice PIH 2015-19 (*continued*)
  - Purpose of the Notice
    - Arrest records alone *may* not be the basis for adverse housing decisions
    - Remind PHAs that HUD does not require the adoption of “One Strike” policies
    - Safeguard the due process rights of applicants

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## Use of Arrest Records

- ▶ Notice PIH 2015-19 (*continued*)
  - Protecting the Due Process of Applicants and Tenants
    - Section 5. of the Notice
      - Let's go find the notice
      - Jump down to Section 5, and give it a read!
    - Class discussion!
      - What is your take on this?

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## Use of Arrest Records

- ▶ Notice PIH 2015-19 (*continued*)
  - What does it all mean?
    - Information is the key
    - "One Strike" policies are becoming antiquated
    - Totality of circumstances should be considered
    - Housing as a path away from crime
    - Suggestions/Best Practices for policy revisions

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## Fair Housing Denial Considerations

- ▶ When denying admission to the program, PHA must consider the reasons for "failure to act" if the applicant is:
  - Disabled
  - Victim of Domestic Violence, Dating Violence or Stalking (*Final Rule November 26, 2010*)
- ▶ Considerations for these items must be listed in the denial letter offering the applicant an "Informal Meeting".

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## Fair Housing Denial Considerations

- ▶ Violence Against Women Act
  - If past criminal activity was the consequence of acts of domestic violence, dating violence, sexual assault or stalking against him/her, the PHA should not deny admission to the victim.
- ▶ In screening for other criminal activity, consider
  - Nature of activity;
  - Age at time of criminal activity;
  - Length of time since conviction;
  - Rehabilitation

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## Fair Housing Denial Considerations

- ▶ Impact of disabilities on action considered for denial.
  - Was damage to previous rental unit due to disability?
  - Would more suitable living conditions and/or a reasonable accommodation make a difference?
- ▶ Would having more affordable housing have made a difference in rent payments or credit history?

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## Fair Housing Denial Considerations

- ▶ PHA cannot refuse to rent to someone because of their real or perceived sexual orientation or relationship or being transgender.
  - Can ask related questions **only** to determine unit size needed.
  - Must report on form HUD-50058 legal name as it appears on Social Security Card.

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## Fair Housing Denial Considerations

- ▶ *Familial status* includes one or more individuals (who have not attained the age of 18 years) being domiciled with—
  - A parent or another person having legal custody of such individual or individuals; or
  - The designee of such parent or other person having such custody, with the written permission of such parent or other person.

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## Fair Housing Denial Considerations

- ▶ Protections on the basis of familial status also apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.
  - 24 CFR 100.20

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## Other Considerations

- ▶ More and more, HUD is holding that PHAs demonstrate consideration of all relevant factors when denying admission
- ▶ Consider:
  - Whether the questionable activity is current
  - The applicability of rehabilitation
  - Family members may be removed
  - Probability of favorable behavior in the future

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## Notify family of determination

- ▶ Within reasonable time (not to exceed 30 days) of receipt of application, notify applicant in writing of determination
  - Eligible
    - State approximate date they can expect an offer
  - Ineligible
    - Opportunity to request an informal review

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## Notify Applicant of Determination of Ineligibility

- ▶ Mail a written notice of each denial.
- ▶ Written notice should:
  - Clearly state the reason for the rejection;
  - State the time period and process for requesting an informal hearing; and
  - Provide VAWA and RA notices
    - HUD-5382 Certification form
    - HUD-5380 Notice of Occupancy Rights Under VAWA

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## Notices of Denial and Appeals

- If denied for criminal history, list specific conviction that led to decision.
- Provide subject of the record (and applicant) a copy of the criminal record relied on to make decision.
- Explain how to request an informal hearing to contest decision and timeframe for request.
- State that an applicant with a disability may request a reasonable accommodation to participate in the meeting.

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## Notices of Denial and Appeals

- Provide applicant with the notice of occupancy rights under VAWA and the VAWA certification form
- Inform that applicant can bring an advocate or attorney to the meeting
- Describe the evidence that can be presented at the meeting
- Inform applicant of right to request a waiver of policy/procedure as a reasonable accommodation
- Provide referral info for local legal services

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## Notices of Denial and Appeals

- ▶ If criminal background check was obtained from a tenant screening agency, the Fair Credit Reporting Act requirements apply.
  - PHA must provide name, address and phone number of agency providing info
  - Any grievance about results of search is conducted through the tenant screening agency

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## Notices of Denial and Appeals

- ▶ If criminal background check was obtained from a tenant screening agency, the Fair Credit Reporting Act requirements apply.  
*(continued)*
  - File disclosure by reporting agency – free if:
    - Adverse action has been taken due to info provided;
    - Victim of identity theft and place a fraud alert in file;
    - File contains info as a result of fraud;
    - You are on public assistance; or
    - You are unemployed

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## Informal Hearing Process

- ▶ Denied applicants may request an informal hearing
  - Not considered a grievance hearing
  - An impartial person conducts the meeting – not staff person (or subordinate of) who made the initial decision
  - Confine subject of meeting to the reason for denial listed in notice.

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## Informal Hearing Process

- ▶ Denied applicants may request an informal hearing
- ▶ Conduct of the hearing:
  - PHA provides reason(s) for denial
  - Applicant may present evidence to the contrary
  - Applicant may claim mitigating circumstances if applicable
  - PHA provides reasonable accommodation, translations or interpreter, if requested.

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## Results of Informal Hearing

- ▶ Applicant does not lose place on WL during the appeals process.
- ▶ Within a reasonable time (5 days or as defined in ACOP), PHA provides a written decision that includes the reason for the decision.
- ▶ If ineligible determination is overturned, applicant remains on waiting list.
- ▶ If ineligibility determination is upheld, applicant is removed from waiting list.

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## Review Questions



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## Review Questions

- ▶ Reasons for mandatory denial of admission to the PH program include all of the following except:
  - a. Persons convicted of methamphetamine production
  - b. Pattern of alcohol abuse
  - c. Persons subject to lifetime requirement under a State sex offender registration program
  - d. Persons evicted for drug-related criminal activity from federally assisted housing

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## Review Questions

- ▶ Agencies are not allowed to deny admission solely on the basis that the family is over the income limit.
  - a. True
  - b. False

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## Review Questions

- ▶ There are permissible situations a PHA may refuse to rent to someone because of their real or perceived sexual orientation or relationship or being transgender.
  - a. True
  - b. False

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## Review Questions

- ▶ If a denial is based on criminal history, the housing authority isn't required to list the specific conviction that led to the decision.
  - a. True
  - b. False

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## Terminations

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## Terminations

- ▶ PHAs must develop dwelling lease requirements that permit the prompt eviction of tenants who are unable or unwilling to live up to the terms of the lease
- ▶ PHAs must also consider state and local landlord-tenant law, which may vary from one jurisdiction to another, as it pertains to terminations
- ▶ Mandatory v. discretionary reasons

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## Terminations

- ▶ PHAs have the responsibility to enforce the lease for a variety of reasons:
  - Regulatory requirements
  - Protection of property
  - Safety/security of other residents
  - Collection of rent

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## Terminations – Definitions

- ▶ **Covered person** means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- ▶ **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 PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit.

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## Terminations – Definitions

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

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## Terminations – Definitions

- ▶ **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.
- ▶ **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.

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## Reasons for Termination

- ▶ Terminations must be processed in accordance with ACOP and dwelling lease.
  - Serious or repeated violation of material terms of the lease
    - Failure to pay rent and other charges required by the lease
    - Tenant obligations under the lease
    - Over income if PHA has adopted policy *24 CFR 960.261*
    - Other good cause (*see next slide*)

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## Reasons for Termination

- ▶ Other good cause
  - Criminal Activity
  - Alcohol/drug abuse that interferes with the peaceful enjoyment of the premises by other residents
  - Discovery after admission of facts that made the family ineligible
  - Discovery of material false statements or fraud
  - Failure to comply with CSSR
  - Failure to accept a lease revision

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## Termination for Criminal Activity or Drug Related Criminal Activity

- ▶ Termination for criminal activity.
  - *Standard of Evidence.* The PHA may evict the tenant by judicial action for criminal activity if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.
  - PIH 2015-19
  - "Preponderance of the Evidence"

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## Termination for Criminal Activity or Drug Related Criminal Activity

- ▶ *Methamphetamine conviction.*
  - The PHA must immediately terminate the tenancy if the PHA determines that **any member of the household** has ever been **convicted** of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

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## Termination for Criminal Activity or Drug Related Criminal Activity

- ▶ *Drug crime **on or off** the premises.*
  - 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.
  - PHA may evict a family when the PHA determines
    - That a household member is illegally using a drug or
    - 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.

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## Termination for Criminal Activity or Drug Related Criminal Activity

- ▶ *Threat to other residents.*
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, PHA management staff residing on the premises, or by persons residing in the immediate vicinity of the premises.

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## Termination for Criminal Activity or Drug Related Criminal Activity

- ▶ *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, (in the State of New Jersey, is a high misdemeanor); or
  - Violating a condition of probation or parole imposed under Federal or State law.

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## Terminations for Drug/Alcohol Abuse

- ▶ The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:
  - Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or
  - Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.
  - Use of medical marijuana.

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## Consideration of Other Circumstances

- ▶ HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.
  - “Blanket policies” for terminations and arrests or convictions are a thing of the past
  - “One Strike” is antiquated
  - Fair Housing Considerations

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## Consideration of Other Circumstances

- ▶ PHAs *may* consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:
  - The seriousness of the act committed by the tenant.
  - The extent that the actual holder of the lease participated in the act.
  - The effects of the eviction on other members of the family that did not participate in the act.
  - The extent to which the holder of the lease has shown personal responsibility for that act, and whether the holder of the lease has taken all reasonable steps to prevent or mitigate the offending action.

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## Consideration of Other Circumstances

### ▶ Applicability of Rehabilitation

- PHAs may consider whether a household member who had used illegal drugs or abused alcohol is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.
- Household member must no longer be engaging in the use or abuse of drugs
- PHA allowed to require evidence of current participation in or successful completion of a supervised rehabilitation program

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## What would you do?

Tenant Action	May Evict	Must Evict
Alcohol abuse that threatens the health, safety, or peaceful enjoyment of residents	✓	
Illegal use of drugs by household member	✓	
Drug crime on or off premises by tenant, household member, or guest	✓	
Conviction for manufacturing or producing methamphetamine on premises of federally assisted housing		✓
Tenant becomes a lifetime sex offender registrant		✓
Tenant fighting with another tenant	✓	
Failure to provide SSN's of new family members		✓

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## VAWA

- ▶ PHAs and owners may not consider actual or threatened domestic violence, dating violence, sexual assault, or stalking as a cause for terminating the tenancy or occupancy rights of a victim of such violence.
- ▶ PHA cannot construe such violence as:
  - Serious or repeated violation of the lease
  - Other good cause for termination
  - Criminal activity
- ▶ PIH Notice 2017-08

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## VAWA

- ▶ VAWA protects the rights of the victim, not the rights of the perpetrator
- ▶ PHAs have the authority to deal with the perpetrator without regard to whether or not the person is a signatory to the lease
  - Remove a household member
  - Bifurcate the lease
  - Terminate/evict

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## VAWA

- ▶ PHA retains the authority to terminate the lease of the victim under the following conditions:
  - The termination is for a lease violation based on something other than an act of domestic violence, dating violence, sexual assault, or stalking against the victim
  - 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 or lawful occupant is not terminated from assistance."

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## VAWA

- ▶ PHAs and owners are required to provide the following with any notice of termination:
  - Notice of Occupancy Rights (HUD-5380); and
  - Certification form (HUD-5382)
- ▶ PHAs may ask for official documentation or physical proof of domestic violence, dating violence, sexual assault, or stalking before granting an alleged victim any of the special protections afforded by VAWA, or PHAs may accept the individual's statement alone.

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## VAWA – Documentation

- ▶ PHA request for documentation must be in writing – simply providing the form HUD-5382 does not suffice.
- ▶ Victim can provide the following:
  - HUD-5382
  - Document signed by a “professional” that specifies the professional believes grounds for VAWA protections exist
  - Federal, state, local, police, or court record
  - Individual statement, at the PHA’s discretion

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## VAWA – Documentation

- ▶ Victim has 14 calendar days from the date of the PHA request to provide documentation
  - PHA may grant extensions at its discretion
  - No adverse actions may be taken during this time
- ▶ If the victim fails to provide documentation within the specified time period:
  - Deny admission of the applicant
  - Terminate participation of the tenant

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## Lease Termination Notice

- ▶ PHA must give written notice of lease termination
  - 14 days in the case of failure to pay rent;
  - A reasonable period of time considering the seriousness of the situation (as little as 3 days, but not to exceed 30 days):
    - If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

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## Lease Termination Notice

- ▶ PHA must give written notice of lease termination (*continued*)
  - If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or
  - If any member of the household has been convicted of a felony;
  - 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

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## Lease Termination Notice

- ▶ The notice of lease termination shall:
  - State specific grounds for termination;
  - Inform the tenant of the tenant's right to make such reply as the tenant may wish;
  - Inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction.
  - Inform the tenant of the right to request a hearing in accordance with the PHA's grievance procedure if the tenant is entitled to a grievance hearing.

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## Lease Termination Notice

- ▶ Due Process Determination
  - When a PHA is not required to provide the opportunity for a hearing under the grievance procedure, a notice of lease termination must:
    - Specify the reason/cause for the termination
    - State the tenant is NOT entitled to a grievance
    - Inform the tenant of the judicial eviction procedure the PHA will use to evict the tenant AND state that HUD has made a due process determination
  - In states without due process determinations, PHAs may use expedited grievance procedures

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## Lease Termination Notice

- ▶ When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination, tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

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## Lease Termination Notice

- ▶ When the PHA is not required to afford the tenant the opportunity for a hearing and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination shall:
  - State that the tenant is not entitled to a grievance hearing on the termination;

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## Lease Termination Notice

- Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations; and
- State whether the eviction is for a criminal activity as described or for a drug-related criminal activity.

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## Notice to Post Office

- ▶ When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

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## Review Questions



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## Review Questions

- ▶ Terminations must be processed in accordance with ACOP and dwelling lease.
  - a. True
  - b. False

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## Review Questions

- ▶ The notice of lease termination shall include which of the following:
  - a. State specific grounds for termination;
  - b. Inform the tenant of the tenant's right to make such reply as the tenant may wish;
  - c. Inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction.
  - d. All of the above

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## Review Questions

- ▶ A termination for drug related criminal activity may only be served if the activity in question occurred on PHA premises.
  - a. True
  - b. False

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## Review Questions

- ▶ It is permissible under certain circumstances to proceed with the termination of a victim who has claimed and demonstrated VAWA protections.
  - a. True
  - b. False

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## Grievance Procedures

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## Public Housing Grievance Process

- ▶ Regulations & Policies
  - 24 CFR 966.50 – 966.57
  - Applicable State Laws
  - Evictions and Termination Policy (in ACOP) ☒
  - Grievance Procedure ☒
    - Must provide copy to each tenant family
  - Lease ☒
- ▶ When one is updated...all must be updated!
  - ☒ Requires 30 tenant comment period before adoption by Board.

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## Grievance Procedures

- ▶ PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.
- ▶ The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

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## Grievance Procedures

- ▶ The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.
- ▶ There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage.

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## Definitions

- ▶ **Grievance**—individual dispute with the PHA.
- ▶ **Complainant**—tenant presenting a grievance personally, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides grievance.
- ▶ **Hearing Officer/Hearing Panel**—person or persons selected to hear grievances and render a decision

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## Definitions

- ▶ **Tenant** —adult person(s) other than a live-in aide
  - Resides in the unit and executed the lease, or
  - Resides the unit and is the remaining head of household

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## Definitions

- ▶ **Elements of Due Process**– eviction/termination in court with the following requirements:
  - Adequate notice to tenant
  - Right to representation by counsel
  - Opportunity to refute evidence and cross-examine witnesses
  - A decision based on the merits

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## Definitions

- ▶ **Expedited Grievance Procedures** may be used for termination or evictions involving criminal activity or drug-related criminal activity if the PHA is not in a due process state.
  - Difference between standard and expedited procedures is the length of time given for each step in the process.
  - Informal settlement of grievances is not applicable.
  - Suggest compressing all deadlines to 3 business days.

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## Definitions

- ▶ **Due Process Determination** – a determination by HUD that the law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit

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## Applicability of Grievances

- ▶ Includes **proposed adverse actions**, such as:
  - Determination of Total Tenant Payment (TTP);
  - Other tenant charges;
  - Requirement to transfer to another unit;
  - Reasonable accommodation/modification denial;
  - Denial of request to add a household member;
  - Denial of the minimum rent hardship exemption;
  - Denial of a pet;
  - Discriminatory action;
  - Denial of an exemption to the CSSR; and
  - A lease termination.

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## Applicability of Grievances

- ▶ Not applicable to:
  - Changes in HUD regulations, statutes or laws
  - Policy contents
  - A complaint filed by one tenant for another tenant
  - Disputes Between Residents
  - Class Grievance (lawsuits against PHA)
  - Termination for criminal activity effecting health, safety, peaceful enjoyment

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## The Goal

- ▶ Resolve grievances at the lowest possible level of the PHA's organizational structure
- ▶ Provide an opportunity for **FAIR AND IMPARTIAL** hearing when informal settlements are not achieved
- ▶ Leave an unquestionable trail of documentation

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## Grievance Procedures

- ▶ Grievance Procedures are currently a separate policy.
  - 24 CFR 966.50 – 966.57 provide requirements for PHA Grievance Procedures.
  - Federal Register Vol. 80, No. 3 (01/06/2015)
    - Streamlining proposed rule
    - Applies to public housing, housing choice voucher, multifamily, and CPDP
    - Reduction of administrative burden on PHAs
    - Align requirements across programs

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## 24 CFR 966.50–57

- ▶ 50 –Purpose and Scope
- ▶ 51–Applicability
- ▶ 52–Requirements
- ▶ 53–Definitions
- ▶ 54–Informal Settlement
- ▶ 55–Procedures to Obtain a Hearing
- ▶ 56–Procedures Governing the Hearing
- ▶ Decision of the Hearing Officer or Hearing Panel

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## Grievance Procedures

- ▶ Changes through streamlining rule:
  - Flexibility to include procedures in the mandatory ACOP,
  - Informal settlements,
  - Grievance procedures for failure to request a hearing,
  - Requiring escrow deposits,
  - Matters relating to transcripts, copies, & conduct of hearing,
  - Permit PHAs to establish expedited grievance procedures,
  - Redefining “hearing officer” to include the possibility of more than one person hearing a complaint.

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## Procedure Considerations

- ▶ Time PHA has to hold an hearings with tenant after receiving oral or written complaint
- ▶ Who presides over the hearing process
- ▶ Time PHA has to provide tenant with written summary of the discussion
- ▶ What is the “Reasonable Time” that tenant has to submit a written request for formal hearing after receipt of a summary of discussion
- ▶ Limited English Proficiency (LEP)

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## Procedure Considerations

- ▶ Any special informal hearing processes (i.e. reasonable accommodations, discrimination, harassment, etc.)
- ▶ VAWA protections
- ▶ Document/Evidence review
- ▶ Standards of evidence
- ▶ Agency policy
- ▶ Time the hearing panel/officer has to issue a written decision

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## Grievance Requests

- ▶ Tenant may submits request for a grievance either orally or in writing
- ▶ Meeting/Hearing must be scheduled promptly
  - A time/place convenient for the complainant and PHA
  - Written notice delivered to the complainant

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## Grievance Requests

- ▶ Meeting/Hearing shall be a fair process
  - Opportunity to review documents
  - Representation
  - Right to present evidence
  - Decision based solely upon facts presented at the meeting

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## Due Process Determination

- ▶ Federal rules permit, but do not require, housing authorities to deny tenants grievance hearings in evictions involving:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or housing authority employees;
  - Any violent or drug-related criminal activity on or off the premises; or
  - Any criminal activity that resulted in a felony conviction of a household member.

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## Public Housing Grievance Process

- ▶ PHA may adopt an expedited Grievance Process for criminal activities if not located in a “due process” state.
- ▶ For a grievance under the expedited grievance procedure, the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure.

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## “Due Process” Safeguards

- ▶ Pre-hearing Document Review
- ▶ Document Copies (*Tenant pays*)
- ▶ Documents not Made Available are Inadmissible
  - Any relative documentation not in file can not be used later for judicial proceedings.
- ▶ Legal or Other Representation
- ▶ Private unless Tenant wants Public
- ▶ Give any Evidence/Argument
- ▶ Cross – Examination
- ▶ Decision Only on Hearing Facts

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## Grievance Preparation

- ▶ Preparation
  - Start Control File
    - Hearing Requests
    - Correspondence
  - Gather Evidence
    - Reports
    - Statements
    - Video
  - Assess Evidence

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## Grievance Preparation

- ▶ Preparation
  - Schedule the meeting/hearing
    - Mutually agreeable date/time (if possible)
    - Location
  - Evidence availability
    - Provide a copy or make copying available of all evidence utilized in making the decision
    - Request all evidence to be presented
  - LEP/Accessibility considerations

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## Tenant Preparation for Hearing

- ▶ PHA cannot rely on any document at Hearing that it fails to tell the tenant about.
- ▶ Tenant may review and copy any documents when relevant to grievance, such as:
  - dwelling lease,
  - written complaints,
  - termination notices,
  - rent payment history,
  - inspection reports,
  - notes of conversations with the HA staff,
  - witness statements, and police records.

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## Informal Settlement

- ▶ First step in the grievance process
- ▶ Complaint presented orally or written
  - PHA policy must state:
    - PHA office where grievance may be submitted
    - Deadline to submit
- ▶ PHA reviews grievance for applicability
- ▶ Schedule the informal meeting
  - Policy should set timeframes
  - Should be scheduled within a reasonable time

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## Informal Settlement

- ▶ Conduct the meeting
- ▶ Prepare and send summary of the meeting
  - Must be done in a reasonable time
  - Summary must specify:
    - Date/time of the meeting
    - Participants
    - Nature of the proposed decision
    - Procedures by which a formal hearing may be obtained if the tenant isn't satisfied
    - VAWA/RA considerations

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## Informal Settlement

- ▶ PHA considerations:
  - Applicability
  - Timeframes
  - LEP
  - VAWA
  - Reasonable Accommodations
  - Failure to appear

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## Formal Hearing

- ▶ HUD's streamlining final rule made major changes to the regulations governing grievances. Many provisions which were covered by regulation are now controlled by PHA policy. These include requirements for:
  - Requesting a hearing
  - Selecting a hearing officer
  - Failure to request a hearing
  - Conduct of the hearing

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## Hearing Officer Selection

- ▶ PHA's Grievance Procedures describe method for selecting/appointing hearing officers.
- ▶ PHA's lease must include a description of how a hearing officer is selected.
- ▶ May use one of the following methods:
  - Method approved by the majority of tenants voting in an election or meeting held for that purpose.
  - Appointment in a manner required under the PHA grievance procedure
  - PHA must consult resident organizations before the appointment of each hearing officer or panel member

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## Hearing Officer Selection

- ▶ Selection of Officer/Panel
  - Impartial
  - Selected in accordance with Grievance Procedures
  - May be agreed upon by Tenant and PHA
  - May not be a Party to Grievance

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## Request for Hearing

- ▶ Failure to request a hearing
  - The PHA's disposition of this grievance through the informal settlement discussion will become final.
  - Tenant may still contest PHA's action in an appropriate judicial proceeding.

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## Formal Hearing

- ▶ Request presented orally or written
  - PHA policy must state:
    - PHA office where grievance may be submitted
    - Deadline to submit
- ▶ PHA reviews grievance for applicability
- ▶ Schedule the formal hearing
  - Policy should set timeframes
  - Should be scheduled within a reasonable time

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## Formal Hearing

- ▶ Scheduling the hearing:
  - Prompt
  - Date/time reasonably convenient
- ▶ Complainant Rights
  - Review and present document/evidence
  - Representation
  - Cross-examination
  - Privacy
  - A decision based solely and exclusively on facts presented at the hearing

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## Formal Hearing

- ▶ Conducting the hearing:
  - Hearing officer/panel controls the hearing
  - Formal, but not a judicial proceeding
  - Due process must be observed
  - Complainant must demonstrate they are entitled to relief sought
  - PHA representative presents reason/cause for termination action
  - Complainant testimony/evidence
  - Cross-examination

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## Formal Hearing

- ▶ Conducting the hearing: *(continued)*
  - The PHA states its case
  - The Complainant states their case
  - The PHA rebuts
  - The Complainant Rebutals
  - The hearing concludes

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## Formal Hearing

- ▶ Decision of the Hearing Officer
  - Written
  - Within a reasonable time after the hearing
  - Based on preponderance of the testimony and evidence presented at the hearing
  - Copy sent to the PHA and to the complainant
  - Decision is binding unless the PHA Board of Commissioners determines:
    - Grievance does not concern PHA action/failure to act
    - Decision of the hearing officer is contrary to federal, state, local law, or HUD regulations

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## Formal Hearing

- ▶ A decision by the hearing officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant does not constitute a waiver of any rights the complainant may have to pursue the matter through the appropriate judicial proceedings.

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## Formal Hearing

- ▶ PHA considerations:
  - Applicability
  - Timeframes
  - LEP
  - VAWA
  - Reasonable Accommodations
  - Failure to appear

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## Failure to Appear

- ▶ If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer/panel may do either of the following:
  - Postpone the hearing for no more than five business days
  - Decide that the party has waived his/her right to a hearing

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## Public Housing Grievance Process

- ▶ Failure to Appear - *(continued)*
  - Officer/Panel will notify the resident and the PHA of the determination
  - Determination that the complainant has waived his/her right to a hearing shall not constitute waiver of any judicial proceeding regarding the grievance

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## Public Housing Grievance Process

- ▶ Previous Decision
  - The hearing officer/panel may render decision without the hearing, if the officer/panel determines the issue has been previously decided in another proceeding.

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## Denial and Grievance Process Tips

- ▶ Document dates, times, places, and witnesses to events and actions.
- ▶ Get to know your local legal aid providers and courts.
- ▶ Consider Fair Housing issues.
- ▶ Develop and use standardized forms.
  - Denial letters
  - Termination letters
  - Forms for requesting informal meetings, settlements, and decisions of Hearing Officer/Panel
- ▶ Educate the Hearing Officer/Panel.

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## Review Questions



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## Review Questions

- ▶ The goal of well established grievance procedures includes:
  - a. Resolve grievances at the lowest possible level of the PHA's organizational structure
  - b. Provide an opportunity for fair and impartial hearing when informal settlements are not achieved
  - c. Leave an unquestionable trail of documentation
  - d. All of the above

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## Review Questions

- ▶ Grievance procedures are not applicable to any of the following situations except:
  - a. Changes in HUD regulations, statutes or laws
  - b. Policy contents
  - c. Rent determinations
  - d. A complaint filed by one tenant for another tenant
  - e. Disputes Between Residents

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## Review Questions

- ▶ The request for a formal hearing may be given either orally or in writing.
  - a. True
  - b. False

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## Post Grievance Documentation

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## Post Grievance Documentation

- ▶ Documentation of your grievance decision is CRUCIAL to the process
  - Great documentation has upheld cases
  - Poor documentation has destroyed cases
- ▶ The glue that holds the case together!
- ▶ Class Discussion – what is the average length of your determination letters?

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - Adherence to agency policy
    - ACOP sets forth the policy
    - Grievance Procedures outline steps and actions that must be followed
  - Key definitions within
    - Timelines – requests, schedules, responses
    - Pre-grievance protocol
      - Documentary discovery
      - Deadlines

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - Due process safeguards were followed
    - Proper notice served
    - Requests made within time allowed
    - Timely scheduling
    - Representation and document review
    - Conduct of the hearing
    - Determination issued within agency allowed timeframe

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - VAWA or RA requirements were observed
    - Violence Against Women Act protections requested and observed
    - Any request for a Reasonable Accommodation appropriately considered

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - A solid chain of evidence
    - Reports
    - Statements
    - Video
    - Pictures
    - File notes

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - Proper consideration of all circumstances
    - Allegations or facts of the case
    - Complainants and representative testimony
    - PHA testimony
    - Consideration of other evidence presented
    - Mitigating circumstances
    - Impact on the family
    - Impact to the remaining families

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - Regulatory authority for our decisions
    - Lease or addendum
    - Agency policy (ACOP)
    - State or local laws (landlord tenant)
    - HUD Handbooks or Guidance
    - Code of Federal Regulations
  - **Make sure your citations are correct!**

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## Post Grievance Documentation

- ▶ Solid documentation demonstrates:
  - A nice, tidy, and compliant process
    - Remember... these letters may not be the end of the process
    - Other interested parties WILL see these letters
    - Makes a statement... as an agency, you have your act together
  - **STANDS UP AGAINST CHALLENGES!**

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## Post Grievance Documentation

- ▶ Format of the Letter
  - Introduction
  - Scheduling of the grievance meeting
  - Participants
  - Purpose of the hearing
  - Action proposed by the agency

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## Post Grievance Documentation

### ► Format of the Letter *(continued)*

- Due process observations
  - Dates of action
  - Dates of requests
  - Response timeframes
  - Scheduling
  - Determination of due process

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## Post Grievance Documentation

### ► Format of the Letter *(continued)*

- Review of documentary evidence
  - Letters
  - Notices
  - Hearings
  - Reports
  - Statements

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## Post Grievance Documentation

### ► Format of the Letter *(continued)*

- Review of physical evidence
  - Pictures
  - Videos
  - Property
  - Condition of the unit (if hearing held in the unit)

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## Post Grievance Documentation

- ▶ Format of the Letter (*continued*)
  - PHA representative testimony
  - Complainant testimony
  - Regulatory citations
  - Agency policy reference
  - Observations and thought process of the hearing officer
  - Decision of the hearing officer.
  - Next steps

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## Grievance Response Sample



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## Review Questions



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## Review Questions

- ▶ Due process safeguards to be demonstrated in post grievance documentation include:
  - a. Proper notice served
  - b. Timely scheduling, meeting, and response
  - c. Representation and document review
  - d. Conduct of the hearing
  - e. All of the above

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## Review Questions

- ▶ Circumstances to be considered when coming to a grievance determination include all of the following except:
  - a. Allegations or facts of the case
  - b. Complainants and representative testimony
  - c. Mitigating circumstances
  - d. Impact on the family
  - e. PHA administrative burden

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## Review Questions

- ▶ Authority relied upon when coming to a grievance determination includes the Code of Federal Regulations, agency policy, federal guidance, and state/local law.
  - a. True
  - b. False

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# The Eviction Process

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## The Eviction Process

- ▶ Eviction is a function of the courts
- ▶ Eviction actions must be consistent with fair housing and equal opportunity provisions
- ▶ Notice must specify the judicial eviction procedure to be used by the PHA
- ▶ Must follow applicable state law process for compliance

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## General Pointers About Evictions

- ▶ Evictions are Unique: Even if you cannot collect, an eviction will help to:
  - stop the bleeding, and
  - regain control & possession of your property

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## General Pointers About Evictions

- ▶ Tenant owes a balance and says they are going to move out
- ▶ Which is better – let them move out or process an eviction?
- ▶ If you want to collect the balance owed, an eviction is usually better because of:
  - Speed – Evictions are faster than collection actions
  - Amount – Have a judgement
  - Service – Harder to serve them once they move.

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## General Pointers About Evictions

- ▶ Evictions deal with two issues:
  - 1<sup>st</sup> Priority – Possession
  - 2<sup>nd</sup> Priority – Damages and debt
- ▶ Keep Them Separate.
  - If one issue is decided (i.e. Tenant moves out), that often does nothing to resolve the other issue (i.e. they may still owe \$1,000 in rents and caused \$500 in damages).

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## General Pointers About Evictions

- ▶ Only Two Ways To Get Them Out
  - 1 – Tenants Voluntarily Leave
    - Includes “cash for keys” or if they abandon.
  - 2 – Court Process
- ▶ If they don’t leave voluntarily, your **ONLY** option is to seek an eviction order through the court process.

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## General Pointers About Eviction

- ▶ Even if the tenant is months behind on rent, without a court order the landlord cannot:
  - Physically remove the tenant
  - Remove the tenant's personal property
  - Lock the tenant out
  - Change the locks
  - Shut off utilities (such as water or gas)

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## General Pointers About Evictions

- ▶ EACH eviction must follow these steps:
  - Step #1: Eviction Notice(s) (plural)
  - Step #2: File Eviction with Court
  - Step #3: Eviction Hearing
- ▶ Hearings are usually ONLY requested for disputed cases.
- ▶ Don't change the locks unless you've completed all necessary steps.

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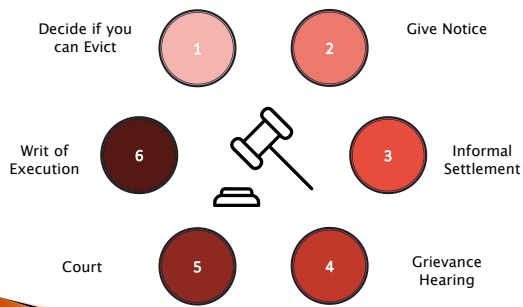
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## The Eviction Process



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## Serving the Eviction Notice

- ▶ Notice will be delivered to tenant in accordance with State tenant/landlord laws.
  - Personal service to Tenant or other Family Member over \_\_\_ years of age (check your state for age requirements)
  - Service by registered or certified mail with return receipt
  - Knock, post and picture (allowed in some states)



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## Serving the Eviction Notice

- ▶ Do NOT serve:
  - Via email
  - Text message
  - Slide under door
  - Place inside the unit
  - Put in the mailbox
  - Give it to a child

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## Types of Notices of Eviction

- ▶ Pay or Quit
  - Typically used when the tenant has not paid the rent.
  - They give the tenant a few days (three to five in most states) to pay the rent or move out ("quit").

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## Types of Notices of Eviction

### ▶ Cure or Quit

- Typically given after a tenant violates a term or condition of the lease, such as a no-pets clause or the requirement to refrain from making excessive noise.
- Usually, the tenant has a set amount of time in which to correct, or "cure," the violation. A tenant who fails to do so must move or face the possibility of an eviction lawsuit.

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## Types of Notices of Eviction

### ▶ Unconditional Quit

- Harshes of all.
- They order the tenant to vacate the premises with no chance to pay the rent or correct a lease or rental agreement violation.

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## Types of Notices of Eviction

### ▶ Unconditional Quit (*continued*)

- In most states, unconditional quit notices are allowed only when the tenant has:
  - repeatedly violated a significant lease or rental agreement clause
  - been late with the rent on more than one occasion
  - seriously damaged the premises, or
  - engaged in serious illegal activity, such as drug dealing on the premises.

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## The Eviction Process

- ▶ *Elements of due process* shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
  - Right of the tenant to be represented by counsel;
  - Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
  - A decision on the merits.

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## File the Eviction with the Courts

- ▶ Visit your local courthouse to file your eviction and pay a fee
- ▶ The clerk will schedule your hearing and will eventually notify the tenant on your behalf – via a summons.
- ▶ You will probably have to show proof (via receipt from certified mail, signed notice of receipt if hand delivered, photo if posted) that you have given the proper amount of time that your state requires for an eviction notice.

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## Prepare for Court

- ▶ Gather all related documentation and proof of your claim. You'll want to have the following items at a minimum:
  - lease agreements
  - records of payment of any kind, including bounced checks
  - records of communication between you and your tenant (phone and email records).
  - a copy of the written notice that you provided your tenant
  - dated proof that the tenant received the notice (a signature from the tenant, or receipt from the Post Office).

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## Day in Court

- ▶ Since a tenant won't be able to lie about not paying their rent, their most likely defense will be to claim that you didn't properly inform them of the requirement.
- ▶ From the courts perspective, you will have the benefit of doubt on your side.
- ▶ Do your homework before your hearing.
- ▶ Always be honest and professional
- ▶ Let your documentation/evidence speak for itself.

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## Day in Court

- ▶ Dress for court!
- ▶ Be respectful of court processes
- ▶ Discuss cases with your attorney prior to entering the courtroom
- ▶ Be patient and deliberate in your answers
- ▶ Give your agency's attorney time to object before blurting out answers
- ▶ It's not a memory game!
- ▶ R E L A X!

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## The Eviction Process

- ▶ **Writ of Execution**
  - If the tenant fails to appear or the court issues a judgment in favor of the landlord, the court will also issue a Writ of Execution.
  - Specifies a time for the tenant to vacate the premises or his or her property will be removed and the tenant denied access to the property.

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## Removal of the Tenant

- ▶ Typically the PHA gives the court judgement to a local law enforcement along with a fee that is charged to the tenant as part of your costs to bring suit.
- ▶ The Writ is generally served by the sheriff personally on the tenant or by posting it on the property.
  - Gives tenant a notice that the officer will be back within x number of days to physically remove the tenant if he isn't gone by then.
  - Generally the Sheriff only supervises the removal and lockout of the tenant.

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## Be Careful Removing Tenants' Abandoned Property

- ▶ A few states allow landlords to freely dispose of property a tenant leaves behind after moving out.
- ▶ Even in these states, this is legal only if it is quite clear that the tenant has left permanently, intending to turn the place over to the owner.
- ▶ In many states, landlords must follow storage and notification procedures.

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## Eviction Tips

- ▶ You will only be entitled to bring court proceedings to evict if you have served the **proper possession notice first** and waited until the notice period has expired.
- ▶ You **cannot evict a tenant other than by obtaining a court order for possession**.
- ▶ **Draft notices correctly** and give the correct notice period.

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## Eviction Tips

- ▶ **Be able to prove to the court that your notice has been served.**
- ▶ **Depriving someone of their home is a very serious matter.**
  - Judges will expect you to follow the proper procedure, have perfect paperwork, and are generally unforgiving if mistakes are made. If you lose your claim you may be ordered to pay tenants legal costs.

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## Review Questions



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## Review Questions

- ▶ The eviction process flows in the following way:
  - a. Give Notice → Grievance Hearing → Informal Settlement → Writ of Execution → Eviction Decision → Court
  - b. Give Notice → Informal Settlement → Grievance Hearing → Court → Writ of Execution → Eviction Decision
  - c. Give Notice → Writ of Execution → Informal Settlement → Grievance Hearing → Court → Eviction Decision

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## Review Questions

- ▶ Permissible methods of service for eviction notices include all of the following except:
  - a. Personal service upon tenant or other age appropriate family member
  - b. Certified Mail
  - c. Place it in the mailbox
  - d. Posting on the entrance to the unit

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## Review Questions

- ▶ The harshest notice of eviction is:
  - a. Pay or Quit
  - b. Cure or Quit
  - c. Unconditional Quit
  - d. Pay, Cure, or Quit
  - e. These are not types of eviction notices

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## Thank You!

For any class questions or follow-up, please contact:  
Vicki Brower @ (817)–922–9000 ext. 123  
or [vicki@nelrod.com](mailto:vicki@nelrod.com)

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Mark Your Calendars...

**The 19<sup>th</sup> Annual  
Nelrod Consortium Conference**

**March 27 - 29, 2019**



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