

**Comparison of Smoke-Free Housing Policy Factors  
 Private Market Rate versus Publicly Subsidized Multi-Unit Housing**

<b>Buildings Factors</b>	<b>Private Market Rate Buildings</b>	<b>Housing Choice Voucher</b>	<b>Project-Based Section 8</b>	<b>Public Housing</b>	<b>Rural Development (RD) Properties</b>
<b>Housing Definitions – descriptions of types of housing as used in this chart</b>	Housing that is privately owned and that does not receive federal subsidies. <sup>1</sup>	Privately owned multi-unit housing that accepts federal support vouchers; vouchers transfer with tenants from property to property. <sup>2</sup>	Privately-owned multi-unit housing that accepts federal subsidies to pay portion of tenants' rent; subsidies are tied to the property. <sup>3</sup>	Multi-unit housing owned by a public entity, such as a city or county agency, and which receives federal subsidies. <sup>4</sup>	Multi-unit housing receiving financial assistance from the Rural Development division of the US Dept. of Agriculture. <sup>5</sup>
<b>Implementation – Lease vs. House Rules</b>	Smoke-free policy can be implemented by ways of a lease addendum or house rules.	Landlord/owner must use the same lease for federally assisted tenants as is used for unassisted tenants. <sup>6</sup>	Landlord/owner must use HUD approved lease <sup>7</sup> ; lease changes must be approved by HUD. <sup>8</sup> Smoke-free policy can be implemented through house rules. <sup>9</sup>	Landlord/owner can implement the policy through a lease addendum as long as the provision is considered "reasonable." <sup>10</sup> Policy can also be implemented through house rules. <sup>11</sup>	Smoke-free policy can be implemented through individual house rules. <sup>12</sup>

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<b>Agency Review of Lease or House Rules</b>	Not Applicable	Public housing authorities' (PHA) role in reviewing the lease is limited; PHA may review the lease to determine compliance with state and local law. <sup>13</sup>	HUD review of house rules is not required. Rules must be reasonable and not infringe on tenants' civil rights. <sup>14</sup>	HUD review of lease and rules is not required. PHA should have counsel review for compliance with local laws. <sup>15</sup>	RD must review all changes to leases <sup>16</sup> and to house rules. <sup>17</sup>
<b>Notice requirement prior to changes to leases or house rules</b>	State landlord & tenant laws generally require a notification period of a full rental period for termination notices. <sup>18</sup> Check applicable state laws for similar requirements.	No program specific notification requirements. Owners should comply with state and local notice requirements. <sup>19</sup>	Owners must give tenants written notice 30 days prior to implementing new house rules. <sup>20</sup>	Tenants and tenant organizations must be given a 30-day opportunity to review and make written comments on any changes to a lease before adoption by PHA. <sup>21</sup>	Tenants must be notified 30 days in advance of any change to occupancy rules. <sup>22</sup>
<b>Fines imposed as a way to enforce policy</b>	Fines can be used as one method of enforcing the policy		HUD would have to approve any extra charges not specifically listed. <sup>23</sup>		

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<b>Non-renewal of lease due to not accepting lease changes</b>	Non-renewal can be for any reason.	During the initial lease term, the owner cannot terminate the tenancy because the tenant refused to accept new lease or lease revision. <sup>24</sup>	For all Section 8 New Construction, Substantial Rehabilitation, and State Agency properties, the regulations list the refusal of the tenant to accept an approved modified lease as “Other Good Cause.” <sup>25</sup>	The PHA may terminate the tenancy if tenant fails to accept lease revision as long as proper notice and time period for acceptance (60 days) is provided. <sup>26</sup>	
<b>Enforcement of smoke-free policy</b>	Tenant can be evicted for any lease violation.	Owner may terminate tenancy for serious or repeated violations of the terms and conditions of the lease. <sup>27</sup>	Owner may terminate tenancy for “material noncompliance” with the lease. This could be a “substantial lease violation” or “repeated minor violations.” <sup>28</sup>	The PHA may terminate tenancy for serious or repeated violation of material terms of the lease. <sup>29</sup>	Owner may evict tenant for violating occupancy rules as a “material noncompliance with the lease.” <sup>30</sup>

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<b>“Good cause” for termination (rationale other than violation of policy for ending the lease)</b>	N/A	“Good cause” during the initial lease term may include disturbing the neighbors. <sup>31</sup> “Good cause” after the initial lease term could include failure to accept a new lease or revision. <sup>32</sup>	“Good cause” could include refusal of a family to accept an approved modified lease form. <sup>33</sup> Tenant must be given prior notice that conduct is basis for termination. <sup>34</sup>	“Good cause” for eviction could be failure to accept new lease when given 60 days written notice in advance of effective date. <sup>35</sup>	“Good cause” could include actions by the tenant that “threaten the health and safety of other persons or the right of other persons to peaceful enjoyment” <sup>36</sup>
<b>“Grandfathering” current tenants who smoke</b>	Grandfathering decision rests with owner/landlord	HUD does not have an official policy on grandfathering of current tenants who smoke. <sup>37</sup>	HUD does not have an official policy on grandfathering of current tenants who smoke.	The PHA has discretion on the application of the smoke-free policy to current smoking residents. <sup>38</sup>	RD does not have a policy addressing “grandfathering of tenants.” <sup>39</sup>

\*Prepared by Warren Ortland, staff attorney with the Public Health Law Center, under contracts with the Live Smoke Free program, a project of the Association for Nonsmokers-Minnesota, covering the Twin Cities area and the American Lung Association in Minnesota serving northeast Minnesota; funded by the Tobacco Prevention and Control Section of the Minnesota Department of Health.

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### Notes

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<sup>1</sup> See HOME BASE FOR HOUSING, HOUSING TYPES DEFINITIONS, available at <http://homebaseforhousing.org/Education/Definitions.cshtml>.

<sup>2</sup> See DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HOUSING CHOICE VOUCHERS FACT SHEET, available at <http://1.usa.gov/1zGxxj0>.

<sup>3</sup> See DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PROJECT BASED VOUCHERS – FREQUENTLY ASKED QUESTIONS, available at <http://1.usa.gov/1zGyiIU>.

<sup>4</sup> See DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD'S PUBLIC HOUSING PROGRAM, available at <http://1.usa.gov/1zGzrjM>.

<sup>5</sup> See DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, HOUSING AND COMMUNITY ASSISTANCE, available at <http://1.usa.gov/1zGAcJx>.

<sup>6</sup> OFFICE OF PUBLIC AND INDIAN HOUSING, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VOUCHER PROGRAM GUIDEBOOK, HOUSING CHOICE, Chapter 8: Housing Search and Leasing, 8-21 (2001) [hereinafter *HUD Voucher*]

<sup>7</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD OCCUPANCY HANDBOOK, Chapter 6: Lease Requirements and Leasing Activities, 6-4 (“In practice, owners must use one of the four model leases prescribed by HUD.”) (2013) [hereinafter *HUD Section 8*].

<sup>8</sup> *Id.* at 6-28. (HUD may approve changes that will make the lease comply with state or local law, or property management practices generally used in the project’s market area, 6-29).

<sup>9</sup> *Id.* at 6-19-21.

<sup>10</sup> OFFICE OF PUBLIC AND INDIAN HOUSING, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, Part 5-Chapter 17 General Public Housing Lease Requirements, 189-190 (2003) [hereinafter *HUD Public Housing*].

<sup>11</sup> *Id.* at 190.

<sup>12</sup> See letter from Karen A. Thompson, Multi-Family Housing Program Director, USDA Rural Development, St. Paul, MN office, October 9, 2008 (on file with Warren Ortland, [warren.ortland@wmitchell.edu](mailto:warren.ortland@wmitchell.edu)); see also Letter from Tammye Trevino, Administrator, Housing and Community Facilities Programs, USDA Rural Development, to State Directors, Rural Development (Nov. 21, 2012), available at <http://bit.ly/11KFZm3>.

<sup>13</sup> *HUD Voucher*, *supra* note 6, at 8-21.

<sup>14</sup> *HUD Section 8*, *supra* note 7, at 6-19.

<sup>15</sup> *HUD Public Housing*, *supra* note 10, at 185.

<sup>16</sup> RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE, MULTI-FAMILY HOUSING ASSET MANAGEMENT HANDBOOK, Chapter 6: Project Occupancy, Section 6: Dwelling Leases, 6-35. [hereinafter *Rural Development*]

<sup>17</sup> *Id.* at 6-24.

<sup>18</sup> See MINN. STAT. § 504B.135 (2006). See also Minnesota Attorney General’s Office, Landlords and Tenants: Rights and Responsibilities, 19.

<sup>19</sup> *HUD Voucher*, *supra* note 6 at 15-3

<sup>20</sup> *HUD Section 8*, *supra* note 7, at 6-22.

<sup>21</sup> *HUD Public Housing*, *supra* note 10, at 190.

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<sup>22</sup> *Rural Development*, *supra* note 16, at 6-21.

<sup>23</sup> *HUD Section 8*, *supra* note 7, at 6-42.

<sup>24</sup> *HUD Voucher*, *supra* note 6, at Chapter 15: Terminations of Assistance and HAP Contracts, 15-2.

<sup>25</sup> *HUD Section 8*, *supra* note 7, at Chapter 8: Termination, 8-22.

<sup>26</sup> *HUD Public Housing*, *supra* note 10, at 201.

<sup>27</sup> *HUD Voucher*, *supra* note 6, at Chapter 15: Terminations of Assistance and HAP Contracts, 15-1.

<sup>28</sup> *HUD Section 8*, *supra* note 7, at Chapter 8: Termination, p. 8-11-13 (“Repeated minor violations” include those that “adversely affect the health or safety of any person, or the right of any tenant to the peaceful enjoyment of the property.”).

<sup>29</sup> *HUD Public Housing*, *supra* note 10, at 201.

<sup>30</sup> *Rural Development*, *supra* note 16, at 6-44.

<sup>31</sup> *HUD Voucher*, *supra* note 6, at 15-2.

<sup>32</sup> *Id.* at 15-3.

<sup>33</sup> 24 C.F.R. § 880.607 (b)(iv) (2010).

<sup>34</sup> 24 C.F.R. § 247.3 (b) (2010).

<sup>35</sup> *HUD Public Housing*, *supra* note 10, at 201.

<sup>36</sup> *Rural Development*, *supra* note 16, at 6-44 (“Prior to terminating a lease, the borrower [building owner] must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation.”) *Id.*

<sup>37</sup> See letter from Stephen Gronewold, Minneapolis HUD office, Aug. 1, 2007 (on file with Warren Ortland, [warren.ortland@wmitchell.edu](mailto:warren.ortland@wmitchell.edu)). See also SFELP website for other HUD letters, at <http://www.tcs.org/sfelp/home.htm>.

<sup>38</sup> U.S. DEP’T OF HOUSING & URBAN DEV., NON-SMOKING POLICIES IN PUBLIC HOUSING, NOTICE: PIH-201209-21 (HA) 2 (2009) [hereinafter HUD NON-SMOKING POLICIES IN PUBLIC HOUSING NOTICE 201209], available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-25.pdf>.

<sup>39</sup> See letter from Karen A. Thompson, Multi-Family Housing Program Director, USDA Rural Development, St. Paul, MN office, October 9, 2008 (on file with Warren Ortland, [warren.ortland@wmitchell.edu](mailto:warren.ortland@wmitchell.edu)).