

Chapter 11

REQUEST FOR TENANCY APPROVAL AND CONTRACT EXECUTION

[24 CFR 982.302, 982.305(a)]

After a family is issued a voucher, they may search for a unit anywhere within SHA's jurisdiction, or outside of SHA's jurisdiction if they qualify for portability. The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payments Contract with SHA. This chapter defines the types of eligible housing and SHA's policies which pertain to initial inspections, lease requirements, and the processing of Requests For Tenancy Approval (RTA).

A. Request for Tenancy Approval [24 CFR 982.302, 982.305]

The Request for Tenancy Approval (RTA) must be submitted on behalf of a family by the proposed landlord during the term of the voucher. The landlord must submit the Request for Tenancy Approval in the form and manner required by SHA.

The Request for Tenancy Approval must be signed by both the owner and voucher holder. SHA will not permit the family to submit more than one RTA at a time.

SHA will review the Request for Tenancy Approval and approve it if:

1. The unit is an eligible type of housing;
2. At the time of inspection, the unit meets HUD's Housing Quality Standards (and any additional criteria as identified in this Administrative Plan);
3. At the time of inspection, the rent is reasonable;
4. The security deposit is approvable in accordance with any limitations in this Plan;
5. The owner is approvable, and there are no conflicts of interest (See Owner Disapproval section below); and
6. The family's share of rent and utilities does not exceed 40 percent of the family's monthly adjusted income, which shall include exempt income in the calculation of adjusted income for this purpose (see Chapter 13, Owner Rents, Rent Reasonableness and Payment Standards).

Disapproval of Request for Tenancy Approval

If SHA determines that the request cannot be approved for any reason, the landlord and the family will be notified by phone. SHA will instruct the owner and family what is necessary to approve the request.

When, for any reason, an RTA is not approved, SHA will furnish another RTA form to the family so that the family can continue to search for eligible housing.

B. Eligible Types of Housing [24 CFR 982.352, 982.601]

SHA will approve any of the following types of housing in the voucher program:

1. Congregate facilities (only the shelter rent is assisted; SHA does not pay for food, cleaning, or other services);
2. Single room occupancy (SRO) units; and
3. Units owned (but not provided an operating subsidy) by SHA.

A family can own a rental unit but cannot reside in it while being assisted. A family may lease and have an interest in a cooperative housing development.

SHA may not permit a voucher holder to lease a unit that is receiving project-based Section 8 assistance or any duplicative rental or operating subsidies.

C. Lease Review [24 CFR 982.308, 982.309]

SHA will request a copy of the lease and HUD-required Tenancy Addendum after the unit has passed inspection. SHA shall specifically review the items listed below:

1. The tenant must have legal capacity to enter a lease under state and local law;
2. The lease must be enforceable under state and local law; and
3. Responsibility for utilities, appliances and optional services must correspond to those provided on the Request for Tenancy Approval.

The family and owner must submit a standard form of lease used in the locality by the owner, which is generally used for other unassisted tenants in the premises. The terms and conditions of the lease must be consistent with state and local law.

The lease must specify:

1. The names of the owner and tenant;
2. The address of the unit rented (including apartment number, if any);
3. The amount of the monthly rent to owner;
4. The utilities and appliances to be supplied by the owner;
5. The utilities and appliances to be supplied by the family; and
6. The initial term of the lease (see below).

The HUD-prescribed Tenancy Addendum (HUD Form 52641) must be included in the lease word-for-word before the lease is executed.

Effective September 15, 2000, the owner's lease must include the lead warning statement and disclosure information required by 24 CFR 35.92(b).

The lease must provide that drug-related criminal activity engaged in by the tenant, any household member, or any guest on or near the premises, or any person under the tenant's control on the premises is grounds to terminate tenancy.

Flat-Rate Utility Billing for Multi-Unit Buildings

SHA will replace the utility allowance for water/sewer and/or garbage in multi-unit buildings with the flat rate fees actually charged to tenants for these services by the owner, if the specifics of the flat rate are detailed in the lease and not subject to change during the term of the lease.

Start Date for New Lease after Tenant Moves: No Double Subsidy

SHA shall start a new lease for a participant who is moving with continued assistance no sooner than the first of the month following the month covered by a Housing Assistance Payment Contract with the previous landlord. SHA shall not make subsidy payments on behalf of the same family to both the former and the new landlord when a family moves mid-month. SHA may make exceptions for good cause depending on the reasons for a move before the end of the month.

Initial Term of the Lease

The initial term of the lease shall in most cases be 12 months. Leases of shorter duration may be approved by the Section 8 Manager on a case-by-case basis for good cause. SHA shall not approve leases of more than 12 months, as these may not be enforceable under state law.

Actions Before Lease Term

All of the following must always be completed before the beginning of the initial term of the lease for a unit:

1. SHA has inspected the unit and has determined that the unit satisfies HQS (tenant-based program);
2. SHA has determined that the rent charged by the owner is reasonable;
3. The landlord and the tenant have executed the lease, including the HUD-required Tenancy Addendum;
4. SHA has approved leasing of the unit in accordance with program requirements; and
5. SHA has determined that the family's share of rent and utilities does not exceed 40 percent of the family's monthly adjusted income, which shall include exempt income in the calculation of adjusted income for this purpose.

D. Separate Agreements

Owners and families may execute separate agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease, if the agreement is in writing and approved by SHA.

Families and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted families, or for items not shown on the approved lease.

The family is not liable under the lease for unpaid charges for items covered by separate agreements and non-payment of these agreements cannot be cause for eviction.

Any appliances, services or other items which are routinely provided to unassisted families as part of the lease (such as air conditioning, dishwasher or garage) or are permanently installed in the unit, cannot be put under separate agreement and must be included in the lease. For there to be a separate agreement, the family must have the option of not utilizing the service, appliance or other item.

For single family houses, SHA will not accept separate agreements for additional charges for garages, basements, or other structures or amenities located on the property.

If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed.

All agreements for special items or services must be attached to the lease approved by SHA. If agreements are entered into at a later date, they must be approved by SHA and attached to the lease.

Separate agreements for optional additional charges will not be used in the calculation of a tenant's affordability limit, but may be used in the calculation of reasonable rent for the property.

E. Rent Limitations [24 CFR 982.507]

SHA will make a determination as to the reasonableness of the proposed rent in relation to comparable units available for lease on the private unassisted market, and the rent charged by the owner for a comparable unassisted unit in the building or premises (see Chapter 13, Owner Rents, Rent Reasonableness, and Payment Standards).

By accepting each monthly Housing Assistance Payment from SHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner is required to provide SHA with information requested on rents charged by the owner on the premises or elsewhere.

At all times during the tenancy, the rent to owner may not be more than the most current reasonable rent as determined by SHA.

If the proposed gross rent is not reasonable, at the family's request, SHA will negotiate with the owner to reduce the rent to a reasonable rent.

F. Disapproval of Proposed Rent: Affordability Cap [24 CFR 982.506, 982.508]

40 Percent Affordability Cap on Rent and Utilities

Consistent with its Move to Work Contract dated January 13, 1999, SHA shall use the following formula for determining whether rent plus utilities are affordable to families at the point of lease-up:

Adjusted gross income calculated as described in this Administrative Plan, which is consistent with 24 CFR Section 5.609, plus all income actually available to the family but which is excluded from Adjusted Gross Income by 24 CFR 5.609(c).

If the rent is not affordable because the family share would be more than 40 percent of the family's monthly adjusted income, including exempt income in the calculation for this purpose, SHA will negotiate with the owner to attempt to reduce the rent to an affordable rent for the family or include some or all of the utilities in the rent to owner.

If the rent can be approved after negotiations with the owner, SHA will continue processing the Request for Tenancy Approval.

If the owner does not agree on the rent to owner after SHA has tried and failed to negotiate a revised rent, SHA will inform the family and owner that the tenancy is disapproved.

Exception to the 40 Percent Affordability Cap

Requests for Tenancy Approvals which have rents within \$10 of the family's 40 percent affordability cap may be approved by the New Move-In Supervisor in order to increase housing opportunities and family choice.

On an exceptional basis, SHA may approve a tenancy where the family's share of rent and utilities takes up to 50 percent of the family's monthly adjusted income including excluded income, as an accommodation for a person with a disability or for other compelling good cause.

All such requests must be approved by the Section 8 Manager, who must assess the reasonableness of the family's reported income and housing costs, including an assessment of the family's ability to sustain the housing situation and still meet the other necessities of life.

G. Information to Prospective Owners about Family's Current and Previous Addresses [24 CFR 982.307, 982.54(d)(7)]

SHA will furnish prospective owners with the family's current address as shown in SHA's records and, if known to SHA, the name and address of the landlord at the family's current and prior address.

SHA may make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

SHA will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, payment of utility bills, eviction history, their record of respecting the rights of other residents,

damage to units, drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

A statement of SHA's policy on release of information to prospective landlords will be included in the briefing packet which is provided to the family.

H. Owner Disapproval [24 CFR 982.306]

Properties Owned by Family Members

For all leases executed after June 17, 1998, a family may not lease properties owned by a parent, child, grandparent, grandchild, sister or brother of any family member. SHA will waive this restriction as a reasonable accommodation for a family member who is a person with a disability, with documentation.

In no circumstances will SHA approve a tenancy in which the owner shares the unit with a relative who is assisted by a voucher.

See Chapter 18, Owner Disapproval and Restriction.

I. Change in Total Tenant Payment (TTP) Prior to HAP Effective Date

When the family reports changes in factors that will affect the total family share prior to the effective date of the HAP contract, the information will be verified and the total family share will be recalculated using the interim review guidelines outlined in Chapter 14. If the family does not report any change, SHA need not obtain new verifications before signing the HAP contract, even if verifications are more than 60 days old.

J. Contract Execution Process [24 CFR 982.305(c)]

SHA prepares the Housing Assistance Payments Contract and Tenancy Addendum for execution. The family and the owner will attach the Tenancy Addendum to the lease and execute the lease agreement, and the owner and SHA will execute the HAP Contract. Copies of the documents will be furnished to the parties who signed the respective documents. SHA will retain a copy of all signed documents.

SHA makes every effort to execute the HAP Contract before the commencement of the lease term. The HAP Contract may not be executed more than 60 days after commencement of the lease term and no payments will be made until the contract is executed.

The following SHA representatives are authorized to execute a contract on behalf of SHA: Certification Specialists, Section 8 Supervisors, and the Section 8 Manager.

Owners must provide the current address of their residence (not a Post Office box). If families lease properties owned by relatives, the owner's current address will be compared to the subsidized unit's address.

Owners must provide an employer identification number or Social Security Number.

Owners must on request submit proof of ownership of the property, such as a deed or tax bill, and a copy of the management agreement if the property is managed by a management agent.

K. Change in Ownership

See Chapter 18, Owner Disapproval and Restriction.