

COMPARING PRIVATE & PUBLIC MULTI-UNIT HOUSING



Private Market Rate vs. Publicly Subsidized Multi-Unit Housing

Housing Program Definitions

Private Market Rate Housing

Privately owned housing that does not receive federal subsidies.²

Housing Choice Voucher

Privately owned housing that accepts federal support vouchers; vouchers transfer with tenants from property to property. Also called: tenant-based vouchers or "Section 8."³

Project-Based Vouchers

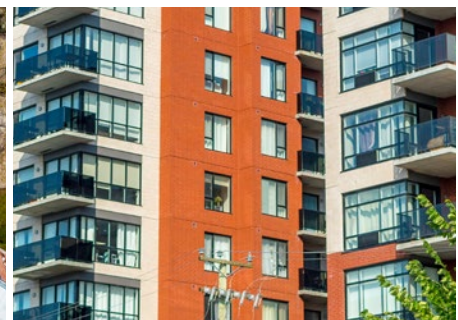
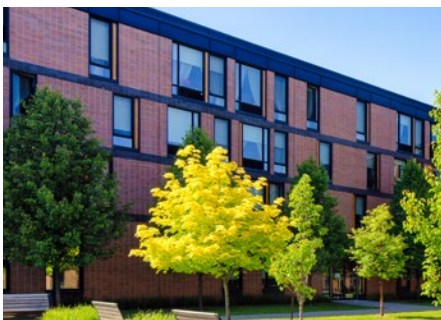
Privately-owned housing that accepts federal subsidies to pay a portion of tenants' rent; subsidies are tied to the property.⁴

Public Housing¹

Housing owned by a public entity, such as a city or county Public Housing Authority, and that receives federal subsidies.⁵

Rural Development (RD)

Multi-family housing receiving financial assistance from the Rural Development division of the U.S. Department of Agriculture.⁶



Implementation / Lease vs. House Rules

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
Smoke-free policy can be implemented through a lease addendum or house rules. ⁷	If the tenant and owner agree to changes in the lease, the changes must be in writing and the owner must give the Public Housing Authority (PHA) a copy of the changes. ⁸ Landlord/owner must use the same lease for federally assisted tenants as is used for unassisted tenants. ⁹	Landlord/owner must use HUD-approved lease. ¹⁰ Smoke-free policy can be implemented through house rules. ¹¹	Since 2018, HUD has required all public housing to be smoke-free. However, PHAs can adopt stronger provisions than those required by the HUD rule — for example, by prohibiting the use of e-cigarettes or requiring grounds to be smoke-free. Landlord/owner can implement the policy through a lease addendum. ¹² The lease must identify the smoke-free rules. ¹³	Smoke-free policy can be implemented through individual house rules. ¹⁴

Agency Review / Lease vs. House Rules

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
Not applicable.	The PHA's role in reviewing the lease is limited. The PHA may choose to review the lease to determine compliance with state and local law. ¹⁵	Landlord/owner must use HUD-approved lease. ¹⁶ HUD review of house rules is not required. ¹⁷	HUD review of lease is not required. Lease requirements must satisfy HUD provisions and comply with state and local laws. ¹⁸	RD must review all changes to leases ¹⁹ and to house rules. ²⁰

Notice Requirement Prior to Lease or House Rule Change

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
State laws generally require a notice of a full rental period (e.g., one month for a month-to-month tenancy) prior to terminating a lease. ²¹ Check applicable state laws for similar requirements.	No program-specific notification requirements unless the change relates to the amount of rent. Owners should comply with state and local notice requirements. ²²	Owners must give tenants written notice 30 days prior to implementing new house rules. ²³ Lease changes must be approved by HUD. Changes to the lease may only be effective at the end of a lease term and the tenant must be provided with the approved modifications 60 days prior to the end of the lease term. ²⁴	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. ²⁵ HUD recommends that PHAs consider resident feedback prior to adopting stricter smoke-free policies. ²⁶	Tenants must be notified 30 days in advance of any change to occupancy rules. ²⁷

Fines Imposed to Enforce Policy

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
Fines can be used as one method of enforcing the policy.		HUD would have to approve any extra charges not specifically listed. ²⁸	Fines may be allowable, but not advisable in the Public Housing context due to the economic hardship on extremely low-income tenants. ²⁹	

Non-Renewal of Lease Due to Not Accepting Lease Changes

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
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. ³⁰ After the initial lease term, the owner may terminate the tenancy if the tenant does not accept a new lease or revision. ³¹	The tenant's refusal to accept an approved modified lease is considered "Other Good Cause" for all Section 8 New Construction, Substantial Rehabilitation, and State Agency Properties. ³²	The PHA may terminate the tenancy if tenant fails to accept lease revision if proper notice (60 days) and reasonable time period for acceptance is provided. ³³	

Smoke-free Policy Enforcement

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
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. ³⁴	Repeated violations of the no-smoking policy may be considered "material noncompliance" with the lease requirements and may result in termination of tenancy. ³⁵	HUD encourages PHAs to use a graduated enforcement approach that includes written warnings for repeated policy violations before pursuing lease termination or eviction. ³⁶ However, the PHA may terminate tenancy for serious or repeated violations of material terms of the lease. ³⁷	Owner may evict tenant for violating occupancy rules as a "material noncompliance with the lease." ³⁸

“Good Cause” for Termination

(Reasons Other Than Violation of Policy for Ending Lease)

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
Not applicable.	“Good cause” during the initial lease term may include disturbing the neighbors. ³⁹ “Good cause” after the initial lease term could include failure to accept a new lease or revision. ⁴⁰	“Good cause” could include refusal of a family to accept an approved modified lease form. ⁴¹ Tenant must be given prior notice that conduct is basis for termination. ⁴²	“Good cause” for eviction could be failure to accept new lease when given 60 days written notice in advance of effective date. ⁴³	“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.” ⁴⁴

Granting Exemption

From the Smoke-Free Policy to Current Tenants Who Smoke

Private Market Rate Housing	Housing Choice Voucher	Project-Based Vouchers	Public Housing	Rural Development (RD)
Decision to allow exemption rests with owner/landlord.	Decision to allow exemption rests with the owner/landlord.	Owners/landlords may allow exemptions for current tenants who smoke. ⁴⁵	HUD does not allow any exemptions to the no-smoking rule — all current and future tenants must comply. ⁴⁶	Multi-family housing borrowers may allow exemptions for current tenants who smoke. ⁴⁷

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Endnotes

- 1 The U.S. Department of Housing and Urban Development requires Public Housing Authorities (PHAs) to implement smoke-free policies no later than July 31, 2018. The following areas must be smoke-free: (1) all public housing units except for mixed-finance project units; (2) all indoor common areas (e.g., community facilities, public housing offices, laundry rooms, daycare centers); and (3) outdoor areas within 25 feet of public housing and administrative office build-

ings. The policy applies to cigarettes, pipes, cigars, and water pipe tobacco (hookahs). 24 C.F.R. pts. 965-66; see also *Smoke-Free Public Housing*, U.S. DEP'T OF HOUS. & URB. DEV., <https://www.hud.gov/smokefreepublichousing>. PHAs may choose to adopt stricter policies, such as prohibiting the use of electronic cigarettes or creating additional smoke-free outdoor areas. If so, amendments to tenant leases must follow the requirements of this column of the chart. U.S. DEP'T OF HOUS. & URB. DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK ch. 3 (2020), <https://www.hud.gov/sites/dfiles/PIH/documents/PHOGLeaseRequirements.pdf> [hereinafter HUD PUBLIC HOUSING].

- 2 See Private Housing *definition*, LAW INSIDER, <https://www.lawinsider.com/dictionary/private-housing> (last visited Mar. 1, 2021); Market Rent *definition*, LAW INSIDER (2020), <https://www.lawinsider.com/dictionary/market-rent> (last visited Mar. 1, 2021).
- 3 See *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Mar. 1, 2021); *Section 8 Rental Certificate Program*, U.S. DEP'T OF HOUS. & URB. DEV., <https://www.hud.gov/programdescription/cert8> (last visited Mar. 1, 2021).
- 4 See U.S. DEP'T OF HOUS. & URB. DEV. PROJECT BASED VOUCHERS — FREQUENTLY ASKED QUESTIONS, https://www.hud.gov/sites/documents/DOC_9157.PDF.
- 5 See U.S. DEP'T OF HOUS. & URB. DEV., HUD'S PUBLIC HOUSING PROGRAM, https://www.hud.gov/topics/rental_assistance/phprog.
- 6 See *Multi-Family Housing Programs*, U.S. DEP'T OF AGRIC., <https://www.rd.usda.gov/programs-services/all-programs/multi-family-housing-programs>.
- 7 See American Nonsmokers' Rights Foundation, *Advice for Enforcing a Smokefree Housing Policy* (2012), <https://no-smoke.org/advice-enforcing-smokefree-housing-policy>.
- 8 U.S. DEP'T OF HOUS. & URB. DEV., HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, *Housing Search and Leasing* (2020), 26 https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Housing_Search_and_Leasing_November%202020.pdf [hereinafter HUD VOUCHER].
- 9 *Id.* at 25.
- 10 U.S. DEP'T OF HOUS. & URB. DEV., HUD OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Chapter 6: Lease Requirements and Leasing Activities, 6-4 ("In practice, owners must use one of the four model leases prescribed by HUD.") (2013), <https://www.hud.gov/sites/documents/43503C6HSGH.PDF> [hereinafter HUD SUBSIDIZED].
- 11 U.S. DEP'T OF HOUS. & URB. DEV., Notice H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-free Housing Policies (Oct. 26, 2012), <https://www.hud.gov/sites/documents/12-22HSGN.PDF> [hereinafter HUD Optional Smoke-free Housing Policies].
- 12 HUD PUBLIC HOUSING, *supra* note 1 at § 16.
- 13 *Id.* at § 3.1.
- 14 See letter from Tammye Treviño, Administrator, Housing and Community Facilities Programs, USDA Rural Development, to State Directors, Rural Development (Nov. 21, 2012), http://www.carh.org/wp-content/uploads/2015/08/MC_RD-SmokeFreePolicy.pdf. Although the letter contains an expiration date of November 20, 2013, staff at the USDA Rural Development program indicated there is no more recent guidance available and that staff often refer back to such guidance, even if expired, in advising borrowers and their management agents. Email from Brian Boyda, Team 6, Midwest Region, Field Operations Division, Multifamily Housing, Rural Development, USDA.
- 15 HUD VOUCHER, *supra* note 8 at 25.
- 16 HUD SUBSIDIZED, *supra* note 10 at 6-4.
- 17 HUD SUBSIDIZED, *supra* note 10 at 6-19.
- 18 HUD PUBLIC HOUSING, *supra* note 1 at § 3.1.1.

- 19 U.S. DEP'T OF AGRIC., RURAL DEVELOPMENT, HB-2-3560 MULTI-FAMILY HOUSING ASSET MANAGEMENT HANDBOOK, Chapter 6: Project Occupancy, Section 6: Dwelling Leases (2005), § 6.24, <https://www.rd.usda.gov/resources/directives/handbooks> [hereinafter RURAL DEVELOPMENT].
- 20 *Id.* at § 6.16.
- 21 See MINN. STAT. § 504B.135 (2020). See also Minnesota Attorney General's Office, Landlords and Tenants: Rights and Responsibilities, at 18, <https://www.ag.state.mn.us/brochures/publandlordtenants.pdf>.
- 22 HUD VOUCHER, *supra* note 8 at 26.
- 23 HUD SUBSIDIZED, *supra* note 10 at 6-22.
- 24 HUD SUBSIDIZED, *supra* note 10 at 6-28 – 6-29.
- 25 HUD PUBLIC HOUSING, *supra* note 1 at § 13.1.
- 26 24 C.F.R. pts. 965 and 966, at 31.
- 27 RURAL DEVELOPMENT, *supra* note 19 at § 6.15.
- 28 HUD SUBSIDIZED, *supra* note 10 at 6-42.
- 29 See NATIONAL HOUSING LAW PROJECT, A GUIDE TO ENFORCING EQUITABLE SMOKE-FREE PUBLIC HOUSING 27-28 (2020), https://www.nhlp.org/wp-content/uploads/FINAL_-_A-Guide-to-Equitable-Smoke-Free-Public-Housing-2020.01.14.pdf.
- 30 U.S. DEP'T OF HOUS. & URB. DEV., THE HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, Chapter 15: Terminations of Assistance and HAP Contracts 15-2, https://www.hud.gov/sites/documents/DOC_35625.PDF [hereinafter HUD VOUCHER, Termination].
- 31 *Id.* at 15-3.
- 32 U.S. DEP'T OF HOUS. & URB. DEV., HUD OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Chapter 8: Termination 8-23 (2007), <https://www.hud.gov/sites/documents/43503C8HSGH.PDF>.
- 33 HUD PUBLIC HOUSING, *supra* note 1 at § 13-1.
- 34 HUD VOUCHER, Termination, *supra* note 30 at 15-1.
- 35 HUD Optional Smoke-free Housing Policies, *supra* note 11.
- 36 21 C.F.R. pts. 965 and 966, at 38.
- 37 HUD PUBLIC HOUSING, *supra* note 1 at § 13.1.
- 38 RURAL DEVELOPMENT, *supra* note 19 at § 6.32.
- 39 HUD VOUCHER, Termination, *supra* note 30 at 15-2.
- 40 HUD VOUCHER, Termination, *supra* note 30 at 15-3.
- 41 24 C.F.R. § 880.607 (b)(iv) (2010).
- 42 24 C.F.R. § 247.3 (b) (2010).
- 43 HUD PUBLIC HOUSING, *supra* note 1 at § 13.1.
- 44 RURAL DEVELOPMENT, *supra* note 19 at § 6.32 (“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.”).
- 45 HUD Optional Smoke-free Housing Policies, *supra* note 12.
- 46 24 C.F.R. pts. 965 and 966, at 15; see also conversation with Lucia M. Clausen, Director-Public Housing, Minneapolis Field Office, U.S. Department of Housing and Urban Development (Mar. 3, 2021).
- 47 See letter from Tammye Treviño, Administrator, Housing and Community Facilities Programs, USDA Rural Development, to State Directors, Rural Development (Nov. 21, 2012), http://www.carh.org/wp-content/uploads/2015/08/MC_RD-SmokeFreePolicy.pdf.