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Prepared for Customers of Ross Business Development, Inc.

RBD FASTFACTS – TENANT ORGANIZATIONS – HUD MULTIFAMILY HOUSING PROGRAMS

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FASTFacts
Tenant Organizations – HUD Multifamily Housing Programs

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Disclaimer

The material contained in this document is not comprehensive of the continually emerging issues surrounding policies in The Multifamily Housing industry. In addition, the handbook guidance is derived from The HUD Handbook 4350.3 Rev 1 Change 4 released in August 2013 and in December 2013 and subsequent notices and memos from HUD.

These materials were updated 1/2021.

The reader should understand that these materials are not designed for, nor should be relied upon, as a source of legal guidance or as a final authority with respect to any particular circumstance.

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Owners and management should seek competent legal advice in developing and carrying out housing policies and procedures.

We have been diligent in our efforts to provide comprehensive and accurate regulatory instruction; Ross Business Development shall not be responsible for errors or inaccuracies.

FASTFacts

Tenant Organizations – HUD Multifamily Housing Programs



The Code of Federal Regulations explains that tenants living in programs covered under HUD's Multifamily Housing Programs have a right to organize.

THE CODE OF FEDERAL REGULATION

24 CFR includes very specific language explaining the rules surrounding tenant organizations.

Tenant shall mean the adult person (or persons) (other than a live-in aide):

- (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
- (2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

- (a) *Recognize legitimate tenant organizations; and*
- (b) *Give reasonable consideration to concerns raised by legitimate tenant organizations.*

§ 245.110 Legitimate tenant organizations.

A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose described in § 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.

§ 245.115 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

- (1) *Distributing leaflets in lobby areas;*
- (2) *Placing leaflets at or under tenants' doors;*
- (3) *Distributing leaflets in common areas;*
- (4) *Initiating contact with tenants;*
- (5) *Conducting door-to-door surveys of tenants to ascertain interest in establishing a tenant organization and to offer information about tenant organizations;*
- (6) *Posting information on bulletin boards;*
- (7) *Assisting tenants to participate in tenant organization activities;*
- (8) *Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants, in a manner that is fully independent of management representatives. In order to preserve the independence of tenant organizations, management representatives may not attend such meetings unless invited by the tenant organization to specific meetings to discuss a specific issue or issues;*
- (9) *Formulating responses to owner's requests for:*
 - (i) *Rent increases;*
 - (ii) *Partial payment of claims;*
 - (iii) *The conversion from project-based paid utilities to tenant-paid utilities;*
 - (iv) *A reduction in tenant utility allowances;*
 - (v) *Converting residential units to non-residential use, cooperative housing, or condominiums;*



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- (vi) Major capital additions; and
- (vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

(c) Owners of multifamily housing projects and their agents shall not require tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under paragraphs (a) and (b) of this section.

§ 245.120 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:



- (1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or
- (2) Tenants seeking to establish a tenant organization or collectively address issues related to their living environment.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the complex has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

(c) Fees. An owner of a multifamily housing project covered under § 245.10 may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.125 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers, or their agents.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant organizers to assist tenants in establishing and operating tenant organizations.

(c) Non-tenant tenant organizers.

(1) If a multifamily housing project covered under § 245.10 has a consistently enforced, written policy against canvassing, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project, except in the case of recipients of HUD Outreach and Assistance Training Grants (“OTAG”) or other direct HUD grants designed to enable recipients to provide education and outreach to tenants concerning HUD's mark-to-market program (see 24 CFR parts 401 and 402), who are conducting eligible activities as defined in the applicable Notice of Funding Availability for the grant or other effective grant document.

(2) If a multifamily housing project covered under § 245.10 has a written policy favoring canvassing, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

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§ 245.130 Tenants' rights not to be re-canvassed.

A tenant has the right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

§ 245.135 Enforcement.

(a) Owners of housing identified in § 245.10, and their agents, as well as any principals thereof (as defined in 2 CFR part 2424), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 2 CFR part 2424. Such sanctions may include:

(1) *Debarment.* A person who is debarred is prohibited from future participation in federal programs for a period of time. The specific rules and regulations relating to debarment are found at 2 CFR part 2424.

(2) *Suspension.* Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 2 CFR part 2424.

(3) *Limited Denial of Participation.* An LDP generally excludes a person from future participation in the federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 2 CFR part 2424, subpart J.

(b) These sanctions may also apply to affiliates (as defined in 2 CFR part 2424) of these persons or entities.

HUD NOTICES



In October 2011, HUD released [HUD Notice 11-29 Implementation of Tenant Participation Requirements in accordance with 24 CFR 245 Subpart B and HUD Handbook 4381.5 REV-2 The Management Agent Handbook](#) to remind owner/agents of compliance requirements regarding tenant organizations.

In 2014, HUD issues a second Notice HUD Notice [14-12 Implementation of Tenant Participation Requirements in accordance with 24 CFR Part 245](#) providing additional detail and describing some specifics about tenant organizations and residents' right to meet. In 2016, HUD released a third notice HUD Notice 15-06 Revision of Tenant Participation Requirements in accordance with 24 CFR Part 245.

In March 2016, HUD issued a third Notice [HUD Notice 16-05 Revision of Tenant Participation Requirements in accordance with 24 CFR Part 245](#). This notice restates requirements issued through Notice H 2014-12 and revises penalties for non-compliance. Specifically, the revisions expand the property types that may be assessed civil money penalties to additionally include non-insured projects that have a project-based Section 8 contract that has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

In addition, the Notice expands discussion of accessible meeting space and clarifies the role of HUD-initiated conciliation in resolving tenant complaints. All other sections of Notice H 2014-12 are incorporated herein with minor or no revisions.

Residents should be aware that they are encouraged to create a tenant organization. There are rules regarding owner/agent participation in tenant organizations. Owner/agents may be penalized, including financial penalties, if they interfere with resident's right to organize.

Any activities conducted at the behest of the tenant organization must be conducted in such a way as to comply with the Fair Housing Act and Section 504 of the Rehabilitation Act.

Impediments to Residents or Resident Associations Attempting To Exercise Their Rights

HUD Handbook 4381.5 (REV-2), The Management Agent Handbook, Chapter 4 “Working with Residents” Section 4.8d identifies specific actions by owners and management agents that constitute impediments to residents or resident associations attempting to exercise their rights. These include:

- ❖ Unreasonable denial of accessible meeting space to residents;
- ❖ Repeatedly sending management representatives to resident meetings when residents have requested management not to attend;
- ❖ Evicting, threatening to evict, withholding entitlements, or otherwise penalizing residents for organizing or asserting their rights;
- ❖ Attempting to form a competing resident organization under the control of the management company or the owner; and
- ❖ Running for office or otherwise serving as a member of the resident organization.

SPECIAL NOTE FOR COMPONENT 1 PH TO PBRA RAD

Owner/agents of properties with Component 1 PH to PBRA RAD should refer to their HUD contract and to the various Notices issued by HUD since the introduction of the PBRA RAD contract.

The current HUD HSG Notice is 2019-09 [Rental Assistance Demonstration-Final Implementation Rev. 4](#)

Residents of Covered Projects converting assistance to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, a Project Owner must provide \$25 per occupied unit annually for resident participation, of which at least \$15 per occupied unit shall be provided to the legitimate tenant organization at the covered property.

Resident participation funding applies to all occupied units in the Covered Project as well as units which would have been occupied if not for temporary relocation.

These funds must be used for resident education, organizing around tenancy issues, and training activities.

In the absence of a legitimate resident organization at a Covered Project, HUD encourages the Project Owner and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate resident organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy.

Project Owners are also encouraged to actively engage residents in the absence of a resident organization.

Project Owners must make resident participation funds available to residents for organizing activities in accordance with HUD’s Notice.

Residents must make requests for these funds in writing to the Project Owner. These requests will be subject to approval by the Project Owner.

Eligible uses of funds are the same as those permitted under “Guidance on the use of Tenant Participation Funds,” Notice PIH 2013-21 [Guidance on the use of Tenant Participation Funds](#).

The Department strongly encourages residents and Project Owners to resolve questions concerning specific uses of resident participation funds directly.

If a dispute over funding arises the resident organization or Project Owner may refer any disputes over funding to the HUD Field Office for intervention only after documented efforts to at direct resolution have proven unsuccessful.

RBD RECOMMENDATIONS

Our recommendation is to ensure that residents know they have a right to organize. This is indicated in the HUD Model Lease. For an example see HUD Model Lease 90105 A Paragraph 28:

28. *Tenants' rights to organize: Landlord agrees to allow tenant and tenant organizers to conduct on the property the activities related to the establishment or operation of a tenant organization set out in accordance with HUD requirements.*

Owner/agents may want to include additional information in the House Rules. Our House Rules FASTForms incorporates the following sample language in to the House Rules:

Tenant Organizations

Residents have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment as well as activities related to housing and community development. A tenant organization is considered legitimate if it has been established by the residents of a multifamily housing project covered under Section 245.110 for the purposes described in 24CFR, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives. The definition of legitimate tenant organization includes "organizing committees" newly formed by residents, and does not require specific structures, written by-laws, elections, or resident petitions.

Any activities conducted at the behest of the tenant organization must be conducted in such a way as to comply with the Fair Housing Act and Section 504 of the Rehabilitation Act. All communications, meetings, and activities must be available to all residents who wish to participate regardless of familial status, race, sex, disability, color, religion, national origin, sexual orientation, gender identity, or marital status. (Note from RBD – Please add any local protections.)

We also recommend that you post information about tenant organizations on the property bulletin board.