

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

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

¹ 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, p. 8-21 (2001).

² U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD OCCUPANCY HANDBOOK, Chapter 6: Lease Requirements and Leasing Activities, p. 6-4 ("In practice, owners must use one of the four model leases prescribed by HUD.") (2007).

³ *Id.*, p. 6-26. (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., p. 6-27).

⁴ *Id.*, pp. 6-17-19.

⁵ 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, p. 190 (2003).

⁶ *Id.*

⁷ 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).

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Agency Review of Lease or House Rules	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. ⁸	HUD review of house rules is not required. Rules must be reasonable and not infringe on tenants' civil rights. ⁹	HUD review of lease and rules is not required. PHA should have counsel review for compliance with local laws. ¹⁰	RD must review all changes to leases ¹¹ and to house rules. ¹²
Notice requirement prior to changes to leases or house rules	Minnesota state law requires notification period of a full rental period for termination notices. ¹³ Check applicable state laws for similar requirements.	No program specific notification requirements. Owners should comply with state and local notice requirements.	Owners must give tenants written notice 30 days prior to implementing new house rules. ¹⁴	Tenants and tenant organizations must be given a 30 day opportunity to review and make written comment on any changes to a lease before adoption by PHA. ¹⁵	Tenants must be notified 30 days in advance of any change to occupancy rules. ¹⁶

⁸ HUD, *supra* note 1, at p. 8-21.

⁹ HUD, *supra* note 2, at p. 6-17.

¹⁰ HUD, *supra* note 5, at p. 185.

¹¹ RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE, MULTI-FAMILY HOUSING ASSET MANAGEMENT HANDBOOK, Chapter 6: Project Occupancy, Section 6: Dwelling Leases, p. 6-35.

¹² *Id.*, at p. 6-24.

¹³ MINN. STAT. § 504B.135 (2006). *See also* Minnesota Attorney General's Office, Landlords and Tenants: Rights and Responsibilities, p. 19.

¹⁴ HUD, *supra* note 2, at p. 6-20.

¹⁵ HUD, *supra* note 5, at p. 185.

¹⁶ USDA, *supra* note 11, at p. 6-21.

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Fines imposed as a way to enforce policy	Fines can be used as one method of enforcing the policy		HUD would have to approve any extra charges not specifically listed. ¹⁷	Tenants cannot be charged a fine for violating the lease or house rules. ¹⁸	
Non-renewal of lease due to not accepting lease changes	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. ¹⁹	An owner cannot refuse to renew a lease solely because a lease term has expired. ²⁰	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. ²¹	

¹⁷ HUD, *supra* note 2, at p. 6-39.

¹⁸ See MINNESOTA LEGAL SERVICES COALITION, A GUIDE TO PUBLIC HOUSING IN MINNESOTA, June 2006, p. 35.

¹⁹ HUD, *supra* note 1, at Chapter 15: Terminations of Assistance and HAP Contracts, p. 15-2.

²⁰ HUD, *supra* note 2, at Chapter 8: Termination, p. 8-11.

²¹ HUD, *supra* note 5, at p. 201.

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Enforcement of smoke-free policy	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. ²²	Owner may terminate tenancy for “material noncompliance” with the lease. This could be a “substantial lease violation” or “repeated minor violations.” ²³	The PHA may terminate tenancy for serious or repeated violation of material terms of the lease. ²⁴	Owner may evict tenant for violating occupancy rules as a “material noncompliance with the lease.” ²⁵
“Good cause” for termination (rationale other than violation of policy for ending the lease)	N/A	“Good cause” during the initial lease term may include disturbing the neighbors. ²⁶ “Good cause” after the initial lease term could include failure to accept a new lease or revision. ²⁷	“Good cause” could include refusal of a family to accept an approved modified lease form. ²⁸ Tenant must be given prior notice that conduct is basis for termination. ²⁹	“Good cause” for eviction could be failure to accept new lease when given 60 days written notice in advance of effective date. ³⁰	“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” ³¹

²² HUD, *supra* note 1, at Chapter 15: Terminations of Assistance and HAP Contracts, p. 15-1.

²³ HUD, *supra* note 2, at Chapter 8: Termination, p. 8-11 – 8-13 (“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.”).

²⁴ HUD, *supra* note 5, at p. 201.

²⁵ USDA, *supra* note 11, at p. 6-24.

²⁶ HUD, *supra* note 21, at p. 15-2.

²⁷ HUD, *supra* note 21, at p. 15-3.

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“Grandfathering” current tenants who smoke	Grandfathering decision rests with owner/landlord	HUD does not have official policy on grandfathering of current tenants who smoke. ³²	HUD does not have official policy on grandfathering of current tenants who smoke.		RD does not have a policy addressing “grandfathering of tenants.” ³³

*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.

²⁸ 24 C.F.R. § 880.607(2008).

²⁹ 24 C.F.R. § 247.3 (2008).

³⁰ HUD, *supra* note 5, at p. 201.

³¹ USDA, *supra* note 11, at p. 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.*

³² See letter from Stephen Gronewold, Minneapolis HUD office, August 1, 2007 (on file with Warren Ortland, warren.ortland@wmitchell.edu). See also SFELP website for other HUD letters, at www.tcsg.org/sfelp/home.htm.

³³ 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).