

# Eastern Michigan Real Estate Investment Association

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## When is it too late to nip it in the bud?

November 2010

The tenant has already found out that you are in foreclosure. Many tenants see this as an opportunity to not pay rent. In this case, it is very important to confront the tenant immediately. Explain that you are working with the bank and this is "standard bank procedure" when mortgage payments are withheld. Let the tenant know you are trying to resolve the matter. You can be honest and tell them the worst case scenario actually could be foreclosure, but if that becomes the case, these proceedings take time and you will still be able to honor the terms of your lease agreement. If the tenant is difficult, warn him that it would be a shame if he stops paying the rent and has to be evicted.

Then, send that 7 day immediately if he is late on the rent. Show that person you

mean business.

### Written Criteria for Tenant Selection-a Landlord Must

Everything starts with the tenant that you select, and the wrong choice can cost you dearly. In addition, if you are not consistent in your selection process (which can easily occur if you do not have a written criteria), you can end up losing a fair housing lawsuit that may cost you way more than you think possible. Some property managers have been fired for turning down tenants for the wrong reasons.

**A WRITTEN CRITERIA MEANS:** It is in writing, it is in your file, dated and signed. The list of criteria should include everything you rely on to determine allowable tenants and a list of your objectives and legally acceptable reasons for denial. These criteria **must** apply to everyone equally.

Here are some acceptable reasons for refusing an applicant:

1. Fails to complete and sign the application.
2. Fails to provide proper ID.
3. Falsifies information on the application
4. No credit, or rental history.
5. Bad credit, or bad rental history from current and prior landlords.
6. Insufficient income to pay rent.
7. Employment stability
8. Insufficient cash on hand to pay the first month's rent and security deposit.
9. Has pets, and your lease prohibits them (except seeing-eye dogs.)

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## Otis-Criminal Background Checks

OTIS (Offender Tracking Information System) is intended to offer information to the public that can then be verified through the Michigan Department of Corrections, Michigan Courts, State Police or other law enforcement agencies. A search of OTIS will provide information about offenders previously or currently under the jurisdiction or supervision of the MDOC. A search result will provide information

about any offender who is or was, in a Michigan prison, on parole or probation, has transferred in or out of Michigan under Michigan Interstate Compact, or who has escaped or absconded from their sentence. If more than three years has elapsed since being under MDOC supervision, offender information will not be available. Learn more at [www.state.mi.us/mdoc/asp/otis2.html](http://www.state.mi.us/mdoc/asp/otis2.html).



## Investment Real Estate Options In Port Huron Limited

By Matthew M. Wallace, CPA, JD

If you haven't already heard, on Monday, September 27, 2010 the city of Port Huron adopted a moratorium on new residential rentals in the city. It is no doubt that such an ordinance will have a profound impact on our city. But how well thought out can that ordinance be?

Whenever I make a major decision, I like to do a balance sheet with two columns, pros in one column and cons in the other. It must be the accountant in me. If the pros outweigh the cons, we go forward with the decision. If the cons outweigh the pros, it is generally wise not to proceed. So let's take a look at the pros and cons of the ordinance.

There is no question that the city is deteriorating. The only pro puts the blame on all the renters in the city of Port Huron. The city administration's reason for the adoption of the ordinance boils down to: we have a deteriorating city and this is caused by renters who, as second class citizens, don't care about our city and are destroying our city, so therefore we have to limit them. This seems to be pretty loaded reasoning.

Let's just step back a minute and not even attempt to analyze that reasoning and look at the cons. The easiest way to look at it is as Economics 101, supply and demand.

Because of the economy and other factors, there is an over-supply of real estate for sale, not only in the city of Port Huron but everywhere. There are limited numbers of purchasers.

Within the city of Port Huron, there is a glut of lower priced homes which are difficult to qualify for owner-occupied mortgages. This leaves the only pool of purchasers for residential rentals to be real estate investors like you and me. With the new ordinance, we will no longer be buying. By decreasing the pool of purchasers you decrease demand. Decreased demand causes increased supply. This results in lower prices. Not only would you depress the prices of the homes that are for sale, but all the homes in the surrounding area neighborhoods.

These lower home values would result in further reductions in assessed valuations. This reduction in tax assessments would reduce the amount of real estate tax revenues coming into the city.

Because these homes cannot be sold and cannot be rented, it will also increase the number of foreclosures. You would have investors who could not keep the homes with no rental income coming in. You would also have homeowners who no longer can afford to live in their own home be unable to sell. This increase in the number of foreclosures would result in increased vacant homes. These vacant homes would further deteriorate our neighborhoods.

In addition, with the increase in vacancies comes the decrease in the population of the city. And because revenue sharing dollars are often based upon population, this could result in decreased revenue sharing dollars for the city.

And it is so easy to get around the moratorium. If you have an unregistered rental that you were planning on fixing up and renting, now after fixing up, you just sell the property to your tenant on land contract. You set the monthly payment equal to the anticipated rent with interest only on the land contract.

# President's Letter

At the same time the land contract is signed, the tenant would also sign a quit claim deed and an assignment of the land contract back to you, who would hold them in escrow until needed.

When the tenant defaults on the payments or moves out, you deliver the quit claim deed and land contract assignment out of escrow and record them, which makes you the owner again. If the tenant defaults and does not move out, you can evict them. Not only do you avoid the moratorium, your property does not have to be certified or inspected as a rental because you are not renting it, you are selling it. The tenant is the owner. And you could get homestead taxes on it because it is the owner's principal residence. However, upon the land contract sale and re-deeding of the property back to you, the real estate taxes would be uncapped and set at the state equalized value.

If it is a two-unit, you could sell an undivided one-half interest to the tenants of each unit. Similarly, a one-third interest with a three unit. This will decrease the "rent" rolls and replace them with "homeowners", but at what cost?

The first and second reading of this controversial ordinance on August 9, 2010 came as a surprise and shock to most everybody except a select few at city hall. The "Quality of Life" committee worked for months in relative obscurity on the proposed ordinance. When it came time to recommend the ordinance to the city council, the committee was told not to give a copy of the ordinance to anyone. The city even went so far as to collect the copies of the proposed ordinance from the committee members so they could not release it to the public.

The first time that anyone in the general public could obtain a copy, was on the city website on the Thursday or Friday before that first and second reading on the following Monday, a mere three or four days over a weekend. Similarly with the third and final reading of the ordinance on September 27, 2010. The public was not aware it was scheduled until it showed up on the city website.

Even though the city was working on this ordinance for months, city administration only allowed the general public three or four days, two of which were over a weekend, to study the proposed ordinance before action would be taken by the city council. So much for transparency in government. I guess it is business as usual at city hall, government by ambush.

This moratorium doesn't sound like a win-win for anyone. The cons seem to overwhelm the pros. Is there an alternative? There most certainly is. We have the technology. The city has a blight ordinance and a rental inspection ordinance that would address much of these concerns.

Historically, the city council has not allocated the funds or supported a long-term sustained enforcement of these ordinances. The city council should now allocate the funds to support these ordinances' enforcement. This would go a long way in slowing, halting or even reversing the decline in our neighborhoods. Then the real problems of substandard housing and neighborhood deterioration could truly be addressed. We have a gem of a city, but it is in the rough. Let's work together to polish that gem and make it sparkle for all to see.

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## “Work-out May Be The Answer to Real Estate Investor in Financial Trouble”

The Michigan economy is without question in the tank, especially the real estate market as we now know. Many real estate investors who were prospering a year ago now find themselves *under water* or in extreme difficulty because of falling market values and negative cash flow. This is especially true for those who leveraged their investments with debt. That strategy

which worked for many years now has backfired because some investors find that the current cost of debt service is in excess of income. This is bleeding some investors into insolvency.

Is that gut wrenching harshness of bankruptcy the answer? Probably not if a real estate investor engages in a “work-out” plan that is acceptable to his or her financial

creditors. If the plan works, it avoids lawsuits and bankruptcy.

The process can be very complicated and involves many disciplines including law, finance, accounting and integrated analysis. With the professional assistance it can do, and a good work-out plan can end an investor’s living nightmare.

## Tenant Lead Law: Rental Property Lead Disclosures FAQ—Real Estate

Here are some of the most frequently asked questions regarding tenant lead law and disclosures that must be made about lead on rental properties.

- What responsibilities about disclosing lead in a rental property does a landlord have to new tenants?
- What rental properties are not covered by the lead disclosure laws laid out in Title X?
- If a landlord wants to renovate a rental property, must he make any lead disclosures?

### **What responsibilities about disclosing lead in a rental property does a landlord have to new tenants?**

As the health hazards of lead poisoning became more and more apparent during the 1900’s, the government was forced to act. In 1992, the Residential Lead-Based Paint Hazard Reduction Act, commonly known as Title X, was passed in an attempt to reduce the number of lead poisoning victims in the United States. Title X is enforced by the Environmental Protection Agency (EPA) and it enforces regulations related to Title X to rental prop-

erty buildings that were constructed before 1978.

In order to be in compliance with the EPA’s regulations, a landlord must disclose any known lead-based paint or lead hazards on the property before renewing or signing a new lease. In order for the disclosure to be valid, both the landlord and the tenant must sign an EPA approved document that proves that the landlord disclosed any known lead on the rental property. Landlord must keep this document for their records for at least three years after the landlord tenant relationship began.

In addition to this disclosure and the EPA approved document, the landlord, to be in line with tenant lead law, must also provide each tenant with the EPA pamphlet *Protect Your Family From Lead in Your Home*, or another state-approved pamphlet.

If a landlord fails to comply with these procedures, he may face penalties from the EPA of up to \$10,000 for each violation. In addition, if a landlord fails to disclose known lead in a rental property, and a tenant is injured by the known lead, the land-

lord may have to pay the tenant triple damages in any lawsuit.

You can find out more about the lead and its dangers in residential rental properties by visiting the EPA’s site at [www.epa.gov/lead](http://www.epa.gov/lead). This website is full of information regarding the hazards associated with lead-based paint as well as lead dust. In addition, the website also provides hints and tips that may help you control lead dust and protect your tenants.

### **What rental properties are not covered by the lead disclosure laws laid out in Title X?**

There are several properties that are not covered by Title X. These include:

- Lofts, efficiencies, studio apartments and other residential leased properties that contain zero bedrooms;
- Housing that had a construction permit obtained after 1978. In addition, any property that had construction started after January 1, 1978.
- Single rooms rented in a larger residential building.

## Tenant Lead Law: Rental Property Lead Disclosures FAQ—Real Estate

- Short term rentals of 100 days or less;
- Any housing that has been certified as lead free by a certified lead inspector (certified by the state); and
- Any housing that was designed for elderly persons (housing designed for seniors, at least one tenant is 62 years of age or older) or persons with disabilities, unless any child less than 6 years old resides there or is expected to reside there.

**If a landlord wants to renovate a rental property, must he make any lead disclosures?**

In order to protect the tenants of any rental properties, a landlord must provide notice whenever he is going to renovate an occupied rental unit or common area in a rental property building that was constructed prior to 1978. Under EPA regulations, the landlord must provide at least 60 days notice to any tenants that will be affected (the tenants occupying the property to be renovated, or all tenants of a rental property building if it is a common area that will be renovated). For a project to be considered a “renovation,” it must be a change that has a likelihood of disturbing painting surfaces. However, there are excep-

tions for emergency renovations and minor repairs.

If the renovation is to take place in an occupied rental unit, the landlord must provide the tenant with a copy of the above mentioned EPA pamphlet. If the renovation is to take place in a common area of a rental property building, the person doing the renovation has to distribute a notice to every rental unit that describes the work that will be done, the location of the work, as well as the dates that the work is to begin and end.

## Rent—Landlord could take entire one-month rent security deposit for tenant who had vacated early but still had apartment keys. *Landlord's "Bottom Line" Bulletin, March 2010 Issue*

### A different angle on a recurring issue

A recent residential property case revisited the very common issue of, what happens when there is a dispute over the payment of rent. Her the focus of the case was on a security deposit that had been withheld from a tenant that had not paid its rent because it was upset that the landlord had failed to fix its refrigerator after repeated requests to do so. The tenant consequently vacated its apartment after the landlord attempted to evict it for nonpayment of its rent.

### The trial court renders an opinion

The landlord sued its tenant to recover the unpaid rent and the tenant responded by suing the landlord for breach of its written lease-based primarily on the landlord's failure to fix the refrigerator and return the tenant's security deposit, which was one month's rent payment. The trial court found that the landlord's failure to attend to the refrigerator in the apartment was a violation of its duties as a landlord but concluded that, although the violation justified the tenant's decision to terminate the lease, he could not establish that he had suffered any damages as a result of it.

However, the trial court also found that the landlord was not justified in evicting the tenant for nonpayment of rent, because it established a pattern with the tenant of accepting rent beyond the first of the month. And, because there was no valid basis for the eviction, the trial court found that it constituted an illegal, retaliatory eviction. Additionally, the trial court found that the tenant was entitled to his security deposit, prorated for the partial month he had resided at the apartment before moving. The landlord appealed.

### Ruling is reversed on appeal

The appeals court held that the trial court's finding was incorrect. It stated that even though the tenant had moved his belongings out of the apartment halfway through the month on a month-to-month tenancy, he nonetheless was required to pay rent for the full month because he retained possession of the premises by keeping the keys to it until month's end and allowing a cleaning company to come in at the end of the month.

The lease provided that: “Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with the rental agreement.” Because the tenant was responsible for a full month's rent, which was offset against the security deposit of the same amount, none of it had been wrongfully withheld. Because the landlord had not wrongfully withheld the security deposit, the appeals court reversed the trial court's decision in favor of the tenant. The appeals court also pointed out that the lease required the tenant to return the keys personally to the landlord's office immediately upon vacating the premises, which he had not done.

### Landlord's Bottom Line

To avoid an argument over what portion, if any, of a security deposit a vacating tenant is entitled to, landlords should spell out the conditions that must be met by the tenant to recoup its deposit and specify under what circumstances it will be prorated, or forfeited altogether.

# How cheap is cheap real estate? Yardsticks to Measure Profit

by John V. Kamin

When you buy distressed properties, adding liquidity to illiquid situations to make transactions work, risking your cash and your credit, you hope to make a profit for taking those risks. But exactly how much and when do you make your profit?

The book *How to Make Money Fast Speculating in Distressed Property* suggests that you must engineer the transaction and plan it so that you can make a profit by reselling in the current (depressed) market. Sure, it's good if you can afford to hold five to 10 years or longer.

But it would be a blunder to buy at full ticket current market, based on what houses might bring in 2016 or 2022. You're looking for deals below the current 2010 market.

Here are more valuable parameters. During the late 1980s to early 1990s downturn, the Resolution Trust Corporation was set up to get rid of a glut of foreclosed properties that overloaded S & L's and banks. The FSLIC had so many bad loans and payouts that it had to be folded into the FDIC and FSLIC disappeared.

The RTC was set up by CPA William Siedman to see and auction off these REOs (Real Estate Owned by banks and lenders). How much money did the RTC get when it auctioned those properties?

After the dust settled, it turned out that the RTC realized average 59% of low appraisals on buildings including homes. Auctioning and selling vacant land, the RTC realized 41% of low appraised values. That is what properties sold for. Do you think that's high or low?

Our clients who bought properties from the RTC did very well during the

remainder of the 1900s decade and beyond, well into the 21st Century boom in real estate.

## More Keys to Profit

*Stick to modern properties.* You don't want 90 year-old termite-ridden wrecks, teetering, bowed in the middle, where the doors don't close, the foundations sag and the windows are ready to pop. You want modern buildings up to code.

*You also want locations near the major job centers* within commuting distance of jobs. Something that is cheap because it's remote, not within commuting distance of major metro job centers will stay cheap. Avoid these. This is common sense.

## Useful Yardsticks

Here are some yardsticks I use when making offers based on current market. You're going to have real estate expenses, whether you sell in this market or some future years. Therefore, when you are the reseller, expect to pay a broker's fee of 6% to 10%. You will also have to pay for Title Insurance; you will pay 50% or more of escrow expenses.

You will also have repair expenses, depending upon the condition of the building. Expensive items are new roofs, new heating, new air conditioning, foundation repair, plumbing and electrical wiring. Also expensive are when homes or building have been trashed with stolen appliances, kicked-in walls, graffiti and smashed windows.

I have never purchased a building where I didn't have at least some roof repairs or needed a new roof. Usually, if the building has gone into foreclosure or has been vacant, new heating and air conditioning units may be needed along with new plumbing. For-

mer occupants often vandalize and wreck buildings as do squatters and thieves.

## Profit-Peak Vital

Therefore, before you estimate 5% or 10% or more for necessary repairs before resale and occupancy, you must do an inspection of the premises. Maybe it looks OK on the outside but from the inside, or on the roof, it may be a house of horrors.

*Don't cut corners on inspections.* You can't afford to buy sight unseen as some real estate advisors are suggesting; those who try to sell Californians cheaper houses in Texas, Louisiana and Florida, un-inspected by you, the buyer.

*Don't buy blind.* Suppose you can't get inside to inspect. Then your repairs discount from appraised value should err on the high side, not the low side.

Since you wish to make a profit for risking your cash and your credit and your carrying costs until date of resale, when you actually resell for a profit, you should probably look for a 20% profit, more or less, based upon your final 2010 purchase price. If you can't make 20%, why bother? There are other competitive fields out there where you can earn substantial money. (10% to 18% on Tax Lien Certificates), without going through all the hassle of actually owning distressed property.

Therefore, if you are buying a vacant property for \$200,000 after all deductions for repairs and resale expenses, you should be hoping to resell it at least 20% higher than the total you paid, over and above your cost of ownership.

## How Long Until Money Flows to You?

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You will have to estimate your holding period until you can resell it. During that time, you will be responsible for paying property taxes, insurance plus interest on any mortgage that you can arrange. If you estimate your holding period at 36 months, you will have three years of property taxes, insurance and interest. If you don't cover these costs, how can you resell at a profit? Properties do take much longer to resell in this depressed market than in a boom market where buyers are lined up; something that happens only 10% to 20% of the time!

## Forced Sales

During the 1990's, the market in Japan, as well as in the U.S., turned soggy. Japanese banks and execs have been buying trophy properties in the U.S. during the late 1980s just to own them: famous buildings and famous golf courses, etc. But when the recession hit, many of the lenders in Japan not only had to sell trophy properties at steep discounts, one of the ones they couldn't sell, they carried them as bad loans for up to 15 years pretending they were good loans. This delayed recovery from the recession in Japan by many years!

You don't want to be placed in that position. For example, if you plan on buying a property for a profit and then reselling you may miss-estimate the necessary holding period by several years. Instead of three years, maybe it will take 5 or 7 years to resell.

In this particular area, after the January 17, 1994 earthquake, properties in the Northridge earthquake zone could not be resold for up to seven years. That is how long it took new buyers to "forget." (Even though many of those properties had been completely remodeled, refurbished and

redesigned with big bucks spent so that they look like new!)

Therefore, you want to estimate your potential holding period to be as accurate as possible.

## What's Cheap, What Isn't?

According to my experience, here is what is not acceptable at a cheap price: bad locations, zoning problems, remote properties or boondocks, obvious disadvantages such as bad neighbors (junkyards, tanneries, landfills, crazies, etc). Avoid these. You are prospecting for profits and NTS (need-to-sell) properties because they have to be sold for other reasons such as to raise cash, settle estates, settle mergers and court orders, asset liquidations by bankrupt companies and creditors, divorces, lawsuits and government orders.

I avoid certain communities in northern Ohio that are trying to shrink. Avoid communities that have so many vacant homes that it affects resale of the occupied homes and tends to reduce resale prices.

Just because something is cheap, because it is priced below replacement cost, doesn't mean it is well designed. In a costly energy-environment, you don't want buildings that have very high ceilings, leftover pollution from gas stations and chemicals and chromium or lead discharges. You don't want the government coming in and making you part of a superfund clean-up site before you can resell the property! You are looking for properties that must be resold for other reasons, usually financial but often other kinds of liquidations.

## Cut Your Standards?

I get all kinds of calls in here where

people want me to approve or "bless" their transactions on properties that are badly located. Hopefuls may come to me with a bargain half-vacant office building that is off the visible main drag, the arterial highway, located a couple of blocks away where it is nearly invisible to potential buyers and tenants. Or someone may call me about a near-foreclosure remote desert property, too far from the major job centers to commute. Those are cheap for very good reasons. I predict they will stay cheap.

For example, on multiple properties, sometimes buyers will try to cherry pick the best one out of three that is on a corner, so that if you sell that one lot to the buyer, you are stuck with the two non-adjacent lots nearby that aren't on a corner and might have inferior zoning position in the immediate future. Tip O'Neill, former Speaker of the US Senate, used to say, "All politics are local." I would paraphrase his saying to, "All real estate is local." Think location, location, location and not at platitudes and generalities such as saying "South Florida will grow when the recession is over" to justify an imprudent current purchase. Don't lower tested, proven standards-lower harder.

## How to Buy Cheaper Than Cheap

Valuable Tip: On properties that are nearing foreclosure (and therefore listed cheap); I sometimes have to tell clients, "Wait up! Let the property be foreclosed. Then, after the lender bids the price of the mortgage, you can go to the acquiring lender a little later and offer him 20% below what he paid at the mortgage foreclosure auction as an REO." Got it?

## How to Get Sellers to "Eat Paper"

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## How cheap is cheap real estate? Yardsticks to Measure Profit

by John V. Kamin

Furthermore I often have to tell my clients to quit scrambling for a mortgage. If you are going to buy an REO from a lender who foreclosed, ask the lender to finance 80% to 90% of the purchase (even though you can afford a large down payment or all cash.)

Tell the foreclosing REO owner that he ought to lend to you because:

a) You will pay property taxes and

insurance instead of him

b) He'll get immediate cash from your 20% down payment or so

c) He will be earning interest instead of paying interest on borrowed money

d) You plan to improve that property, sink money into it (that he won't) to bring it up to modern resalable standards, lessening his REO risk for the loan

After all, if he loaned a lot of money on that same property in the past, much more, he ought to be willing to lend you 80% or so of the current reduced price and loan amount. Wouldn't it be better for the lender-forecloser to have money and interest coming in and you paying the expenses rather than having the lender paying all that?

In a nutshell, this is how you sell "seller financing" to a former lender with a vacant REO!

## Section 8 contract requirements

### Introduction

The numerous articles on affordable housing in the last several issues of this newsletter have discussed various ways that government agencies meet the need for this housing and the voluntary and involuntary roles that landlords play in these efforts. Our current article addresses the provisions in the federal law 42U.S.C. Section 1437f regarding required terms in Section 8 contracts. The trend toward not allowing a rental applicant having a Section 8 voucher be justification for a landlord rejecting that person's application makes this topic timely.

### Underlying authority

Section 1437f provides the authority for the U.S. Department of Housing and Urban Development (HUD) to enter a contract with a public housing authority (PHA) to obtain federal funding that the PHA can pass onto landlords who participate in the Section 8 program. The circumstances in which HUD will directly enter a Housing Assistance Payment contract (contract) with a landlord include no PHA servicing the area in which the landlord's subsidized rental unit is located and HUD being concerned that a PHA that does service that area cannot properly administer the Section 8 program for that area.

This practice places the burden of day-to-day administrative tasks regarding the Section 8 program onto local PHAs that HUD considers capable of meeting that purpose and has HUD step in when there are indications that a PHA cannot manage the housing program adequately. For the purposes of this article, we will assume that contracts that a landlord enters are with a PHA.

A PHA's authority includes not entering a contract with a landlord who either refuses to-or has a history of refusing to-act to terminate a tenancy based on a tenant or someone under the tenant's control acting in a way that threatens the health, safety, or right to peaceful enjoyment of the rental property or its surrounding area by a tenant or a neighbor of the rental property. This standard applies as well if a landlord tolerates violent or drug-related crime. As shown below, these types of inexcusable behaviors are significant issues regarding contracts.

### Monthly rent

A contract that a landlord enters must state the total maximum rent for each rental unit (unit) for which he or she received a Section 8 payment; this rent must include the cost of all utili-

ties and charges for maintenance and management services. Another limit is that this rent not exceed by more than 10 percent of what HUD has determined to be the fair-market rent for that unit. An exception allows this amount to increase to 20 percent of that rent under special circumstances that include implementing a housing strategy that requires allowing the higher rent.

Section 1437f also provides for adjusting the maximum allowable rent on an annual basis or more frequently if changes in the fair market rent for similar types and sizes of units in the same area as the subsidized unit justify such a modification. HUD will also increase the maximum monthly rent for a rental unit if a landlord provides adequate proof of increases in "actual and necessary expenses of owning and maintaining the units." These increases must result from "substantial general increases in real property taxes, utility rates, or similar costs" that maximum rent adjustments regarding the local housing market do not reflect adequately.

In other words, HUD does not want participating in the Section 8 program to cause a landlord undue hardship. Allowing increases for higher operating costs also encourages a landlord to properly maintain subsidized rental housing.

Section 1437f further limits a right to adjustments in maximum rents on these adjustments not having the effect of causing "material differences" between rents for unsubsidized units and for subsidized units in the same community that are "of similar quality, type, and age."

A PHA's determination that a landlord's proposed rent or rent increase is unreasonable has the simple effect of the PHA not entering a contract or not renewing an existing contract. It seems that this standard should continue to apply even if a landlord cannot discriminate against a potential tenant based on that person having a Section 8 voucher because a landlord who is participating involuntarily in that program should not be forced to lower a rent if a voluntary participant is not required to do so.

Further, subsidized rental units are exempt from rent-control laws that would apply otherwise, but the rent for these units must be reasonable as measured against the rent for other rental units that are exempt from rent control. In other words, the rent for subsidized units must be compared with truly comparable other rental units for which a landlord can charge a market-rate rent.

## Section 8 contract requirements

### Contributions to rent

Although most landlords know this, it is worth remembering that the Section 8 subsidy that a landlord receives is the difference between the maximum monthly rent to which he or she is entitled under a contract and the rent that the Section 8 tenant must pay. It is equally well known that HUD or a PHA reviews a subsidized tenant's household income at least once a year to verify that he or she still qualifies for that subsidy.

Another general requirement is that a tenant must have qualified for Section 8 assistance when he or she initially moved into a subsidized unit. Allowing a landlord to collect a subsidy for an empty unit for up to 60 days is conditioned on a subsidized tenant moving out before a lease period ends and addresses a landlord's concern about losing out if a subsidized tenant breaks a lease in this way. The landlord can also pursue the tenant for that person's portion of the rent for at least the period between that person moving out and another tenant moving into that tenant's apartment before the first tenant's lease expired.

### Rent payments

Section 1437f addresses the somewhat regular problem of a PHA not paying its portion of a subsidized tenant's rent timely or correctly by allowing a contract with a landlord to provide for the PHA owing the landlord a penalty if the PHA does not meet its rent related duties. It seems that the scope of this provision includes a PHA paying a landlord an incorrect amount.

A HUD determination that circumstances beyond a PHA's control caused a late payment will excuse the PHA from having to pay a penalty. Examples of this include HUD being late in paying the PHA the funds that allow the payments to the landlord, a major computer problem that was not attributable to any fault by the PHA, and the PHA timely mailing a landlord a check that is delayed in the mail.

### Domestic violence

Some Quinlan landlord-tenant newsletters have also discussed the equally timely topic of prohibitions against discriminating against a tenant based on that tenant facing a threat of domestic violence or actually experiencing that violence. This protection expresses understanding that such victims often cannot escape a potential or actual attacker because they live together and the victim might have trouble amassing enough money to move.

Section 1437f addresses this by prohibiting a landlord from not entering a contract regarding a potential tenant who has a Section 8 voucher if that person is a present or prior victim of domestic violence, dating violence, or stalking but meets the landlord's neutral selection criteria. The primary criteria would be that the tenant shows that he or she can pay his or her portion of the rent.

Similarly, a landlord cannot treat any incidents related to "actual or threatened domestic violence, dating violence, or stalking" as a lease violation or violations that justify evicting the victim. This protection extends to criminal activity by a tenant, a member of his or her household, or someone under the tenant's control that relates directly to this type of violence.

The protection described above seems to excuse a killing or severe bodily harm that is inflicted on an attacker and might provide a subsidized tenant more protection than a nonsubsi-

dized tenant. Many justified and unjustified attacks that cause a great deal of harm are considered crimes, and most leases and laws allow evicting a tenant for committing a crime. This protects other tenants against any threat that the tenant who committed the crime poses regarding them.

Additionally, typical laws that apply when any tenant has been a victim or potential victim of domestic or sexual violence allow that tenant to break a lease or have a rental unit's lock changed. They do not state specifically that these tenants have a right to continue living in their rental units if they respond violently to an attack or threat of attack.

Of course, removing someone from a subsidized tenant's lease has the effect of reducing that person's household in a way that will likely reduce the subsidy that he or she will receive on renewal of his or her Section 8 voucher. This is because the number of bedrooms and overall size of an apartment to which a subsidized tenant is entitled relates directly to how many people are living with him or her.

Section 1437f evens things up a little more by stating that a landlord can evict a victim of the types of violence described above for a lease violation that does not relate to that violence. The requirement of even treatment that is mentioned above requires that such decisions impose the same standard that every other tenant must meet.

Additionally, a landlord can evict even a victim of the relevant types of violence based on adequate proof that that victims violence-related crime or other behavior shows that he or she poses "an actual and imminent threat to other tenants..." or people who are working at the property. This shows that a landlord's responsibility regarding the safety of people who are at rental property for a valid reason outweighs a subsidized tenant's rights to protections against violence and to defend against that violence or a threat of it.

### Tenant selection and lease terms

Section 1437f states also that a contract with a landlord must grant that person the right to select tenants subject to the domestic abuse provisions discussed above and any other general restrictions that HUD imposes. A lease must additionally be in a standard form that is used in the area where the subsidized rental unit is located. This prevents holding a Section 8 tenant to a higher standard than nonsubsidized tenants.

Another restriction is that a Section 8 tenant's lease must be for at least one year unless the landlord's Section 8 contract with HUD or a PHA is for a shorter period. Otherwise, a landlord could end up receiving only a Section 8 tenant's portion of the rent after that contract expires.

An exception to the one-year rule applies if a PHA determines that a shorter lease is common in the area and would give a Section 8 tenant a better housing opportunity. One example would be a tenant needing an apartment for three months until a new subsidized home that he can buy is completed.

Additionally, a PHA can establish a system that gives eligible Section 8 tenants priority for housing based on certain characteristics. These priorities must reflect local housing needs and priorities that a PHA determines.

Section 1437f provides being a victim of a violent crime that was reported to a law enforcement agency as an example of a priority that might be required. This encourages reporting such crimes by



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