

MoCARH 2009 FALL TRAINING

OVERVIEW OF RURAL DEVELOPMENT LEASE REQUIREMENTS



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OBJECTIVES

- **Understanding the Lease Agreement**
- **Highlight of Recent Revisions to Lease Agreement**
- **Completion & Execution of RD Lease Agreement**
- **When to Modify the current Lease Agreement or Complete a new Lease Agreement**
- **Lease Violations & Termination of Tenancy**

REGULATORY REQUIREMENTS

- **7 CFR 3560.156 – Lease Requirements**
- **Asset Management Book**
 - **Chapter 6, Section 6.24-6.27**
 - **Chapter 6, Section 6.31 – Lease Violations**
 - **Chapter 6, Section 6.32 – Termination of Occupancy**
 - **Chapter 7, Section 7.5 – Rents During Eviction or Failure to Recertify**
 - **Attachment 6-E – Lease Requirements**
 - **Attachment 6-F – Prohibited Lease Clauses**
- **Missouri State Laws**
- **7 CFR 3560.159 – Termination of Occupancy**
- **7 CFR 3560.160 – Tenant Grievances**



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LEASE AGREEMENT

- Borrower is responsible for development of Lease Agreement
 - Lease Agreement must contain required items as outlined in regulations (Att. 6-E)
 - Missouri RD developed Lease Agreement per regulations & State Law
 - Has been reviewed by our legal counsel
 - If borrowers develop their own Lease Agreement and/or Addendums must have certification from borrower's attorney that it is in compliance with RD regulations and Federal, State, and Local Laws
 - **Current RD Lease Agreement has a revision date of 10/2009**



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LEASE AGREEMENT

- Missouri's Lease Agreement is posted on our Missouri Homepage:
<http://www.rurdev.usda.gov/mo/mfhpage.htm>
- Lease Agreement is also in large print
- Template provides instruction for completing Lease Agreement
- Borrowers can use Addendums to Lease Agreement
 - Must be in compliance with Federal, State, and Local Laws and Rural Development
 - Borrower's proposed Lease Agreement and all Addendums must be attached to Borrower's Management Plan



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Completion & Execution of RD Lease Agreement

- Lease Agreement must be executed by applicant and borrower **prior** to occupancy
 - Any modifications to Lease Agreement should be initialed by the tenant, landlord and dated
- Once executed, applicant is entitled to occupy unit so long as they remain eligible and they comply with lease requirements



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**LET'S REVIEW A COMPLETED
LEASE AGREEMENT!**

TERM OF LEASE AGREEMENT

- Lease Agreement is for 1 year
- Will be automatically continued annually when tenant is recertified
 - Tenant's rental payment is based on effective tenant certification
 - Tenant Certification Form must be attached to Lease Agreement

When should a new Lease Agreement be Completed?

- When RD Lease Agreement has been revised
 - Agency will require borrower/landlord to begin using the “revised” Lease Agreement for the following:
 - New applicant at move-in
 - At the time of annual recertification for existing tenants

When should a new Lease Agreement be Completed?

- Tenant transfers to a different unit within the complex that has a different rental rate
 - i.e. – moves from a 1 bedroom unit to a 2 bedroom unit
 - Must modify Tenant Certification (TC) to reflect rent schedule, unit number and tenant rental payment if it changes as result of the new unit
 - Transmit action through MINC using “Send Inside Transfer”
 - Have tenant initial and date by revisions made on TC
 - Complete New Lease Agreement reflecting correct rent information, security deposit requirements, etc.

When should a new Lease Agreement be Completed?

- Co-Tenant becomes Tenant
 - Requires a New Tenant Certification
 - Must verify income, assets and allowable deductions
 - Must transmit “Co-Tenant to Tenant Re-Certification”
 - Must complete and execute new Lease Agreement

When should a new Lease Agreement be Completed?

- When household members change
 - Requires new tenant certification
 - Must verify income, assets and deductions
 - Must transmit Re-Certification via MINC
 - Complete new Lease Agreement
 - If household is now overhoused or underhoused, RD must approve occupancy waiver

When should the Lease Agreement be modified?

- When tenant is assigned RD Rental Assistance
 - Tenant Certification is required to be revised to reflect the correct Tenant Subsidy Code (1) and notate date that Rental Assistance is assigned on TC form
 - Must transmit through MINC by selecting the transaction “Send Tenant Subsidy”
 - To Modify Lease Agreement, complete Section III. 1. of Lease Agreement with all parties (Tenant, Co-tenant, and Landlord) initialing and completing effective date of Rental Assistance assignment

When should the Lease Agreement be modified?

- When status of Eligibility Changes
 - i.e. – household's income changes and they become income ineligible with agency waiver
 - Can modify Section III. 8 by having Tenant, Co-tenant, and Landlord initial and insert effective date
 - Tenant Re-Certification must be completed and transmitted

When should the Lease Agreement be modified?

- When tenant relocates to a different unit that has the same rental rate
 - i.e. – currently in a one bedroom unit and transfers to another one bedroom unit in which the rental rate is the same
 - Need to Modify Tenant Certification
 - Needs to be initialed and dated by tenant and management
 - Complete “Inside Transfer” in MINC
 - Modify Lease Agreement to reflect correct Unit Number (nothing else would be revised as the rents are the same and the unit size is the same)

When should the Lease Agreement be modified?

- The Lease Agreement does **not** need to be modified for a Rent and/or Utility Allowance Change
 - When the Rents and/or Utility Allowance Change
 - Modify tenant certification by reflecting the new Basic and Note Rents and Utility Allowance
 - If tenant's Net Tenant Contribution changes as a result of the rent change, the tenant needs to initial and date by revisions
 - Rent Change needs to be transmitted with proposed budget via MINC
 - » Tenants must be given at least a 60 day notice of rent change



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“See handy Lease Agreement/
Tenant Certification Reference Guide”

RD's Responsibility

- Reviews Lease Agreement for Agency Approval and if completed correctly
 - Occupancy Rules must be attached to Lease Agreement
- Reviews to determine that applicant/tenants are aware of tenant grievance process
- Applicant/Tenant understands the process for relaying information such as maintenance, income information, and timeframes for providing information



LEASE VIOLATIONS & TERMINATION OF TENANCY



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Lease Violations

- Section IV 1. – Termination of Lease
 - Tenants can terminate Lease for “good cause” with 30 days **written** notice
 - Landlord can terminate or refuse to renew Lease for “*material non-compliance*” or “*good cause*”
 - Prior to termination of the Lease, Landlord must provide tenant written notice of Lease Violation

Expiration of Lease Agreement is not grounds for termination

NOTICE OF LEASE VIOLATION

- Must notify tenant in writing of Lease Violation **PRIOR** to terminating the Lease
- Must give tenant opportunity to correct the problem **PRIOR** to terminating the Lease
 - Must give 10 days after date of notice for tenant to respond
- Must advise that the Tenant's conduct is grounds for termination
- Must provide basis for termination
 - Specify the provision of the Lease Agreement or Occupancy Rules that have been violated
- Must be delivered to the tenant by certified mail, return receipt requested, or hand delivered with a signed and dated receipt from tenant

Incidences related to termination
must be documented in the tenant's file



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NOTICE OF LEASE VIOLATION

- The following language per Section 6.33 of Asset Management HB must be included in Notice:
 - *“The right to respond to the notice within 10 calendar days after date of notice”*; and
 - *“The right to a hearing in accordance with 7 CFR 3560.160 (f), which is available upon request.”*; and
 - This is the Tenant Grievance Procedure

NOTICE OF LEASE VIOLATION

- *“Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture’s Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250-9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410.”*



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WHAT IS “Material Non-Compliance”?

- Refer to Section IV, 1. (b) of Lease Agreement for definition
 - Substantial and/or repeated violations of the Lease or Occupancy Rules
 - Includes non-payment or repeated late payment of rents or other financial obligations
 - Drug Violation

WHAT IS “Good Cause”?

- Tenant is no longer Eligible as defined in Section IV. 1. (c) of Lease Agreement:
 - Income Ineligible
 - Occupancy Ineligible (overhoused or underhoused)
 - Must vacate within 30 days of being notified that they are no longer eligible for occupancy or at the expiration of the lease, whichever is longer.
 - See General Lease Information, Section I (first page)
 - No longer qualify under Low Income Housing Tax Credits rules

WHAT IS “Good Cause”?

- Actions by Tenant or member, or by Tenant’s guest if they:
 - Interfere with rights and quiet enjoyment of other tenants; or
 - Threaten the health and safety of other persons, or
 - Are abusive, harassing or threatening to the Landlord’s manager or other tenants; or
 - Cause physical damage to property; or
 - Fail to reimburse property for physical damage to rental unit; or
 - Have Unauthorized Pets; or
 - Fail to provide information for annual tenant certification; or
 - Falsify information regarding income or other factors and repaying any unauthorized assistance due; or
 - Fail to maintain unit in clean condition; or
 - Fail to pay security deposit; or
 - Criminal Activity or Alcohol Abuse

LEASE VIOLATIONS

- Notice of Lease Violations and Terminations must comply with State and Local Laws, and must be reviewed and approved the RD (Sec. 6.31 of HB)
 - Borrower should provide a sample Notice of Lease Violation for Agency Review
 - RD will also review when conducting supervisory visits and/or tenant file review or when tenant requests our review
 - If notices are not properly prepared, borrower will be required to halt Termination proceedings
 - If Borrower/Management believes that conditions still warrant lease termination, corrected Notices may be issued to the tenant.

LEASE VIOLATIONS

- Borrowers/Management should be consistent in the handling of Lease Violations and Terminations
 - Be consistent in how notices are prepared, timeframes, etc.
- Consult with legal counsel when uncertain about reasons for termination, or the process for lease termination

NOTICE OF TERMINATION

- Must specify the Date the Lease will be Terminated
- Must include a statement of the basis for the Lease Termination
 - Must refer to specific Lease Provisions or Occupancy Rules that have been violated
- Must include that the Landlord may initiate judicial action to enforce the lease termination; and
- Must be delivered to the tenant by certified mail, return receipt requested, or hand delivered with a signed and dated receipt from tenant

TERMINATION OF TENANCY

- RD does not review for merit of Termination of Tenancy
 - RD may review notice to determine if it was properly prepared
 - i.e. – was prior notice of lease violation provided, was proper lease clauses used, etc.
- Transmit “Send Eviction” transaction in MINC when the Notice of Termination has been sent

TERMINATION OF TENANCY

- During the eviction process, tenant will continue to pay same rent per Tenant Cert (TC) and Borrower will continue to receive Rental Assistance, if applicable
 - If TC expires during the eviction process, Rental Assistance will be terminated
 - Tenant still continues to pay same rental payment per expired TC
 - If Tenant is re-instated (not evicted), then Rental Assistance will be reinstated upon Recertification

See handy “Tenant Adverse Action Reference Guide”



Remember,
Good Tenants
save you Money!



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