

Chapter 19

EVICTION POLICY AND PROCEDURES

A. OVERVIEW

The eviction of a resident from Public Housing, or other assisted or affordable housing programs as operated by the IHA is a serious matter. Eviction is not the preferred method of resolving agency or resident problems. However, when all other reasonable efforts have failed, resident eviction becomes necessary to enforce reasonable rules and regulations of the agency and to ensure that the individual rights of the resident population as a whole are protected.

This eviction policy and procedure IS IN ADDITION TO AND INTENDED TO SUPPLEMENT AND CLARIFY THE ALLOWED GROUNDS FOR EVICTION UNDER THE LEASE(S) and the Admission and Occupancy Policies.

B. CAUSES FOR EVICTION

Tenancy may be terminated for **serious and/or repeated** violation of material terms of the lease agreement. The most common causes of lease termination are as follows:

1. Failure to pay rent
2. Failure to pay charges other than rent (maintenance repair costs, late fees, repayment agreements, or other charges as applicable)
3. Drug-related criminal activity on or off IHA premises
4. Disruptive, violent, or criminal behavior that threatens the health, safety or right to peaceful enjoyment of the premises
5. Unit damage/destruction
6. Failure to maintain the unit in a decent, safe and sanitary condition
7. Assignment of lease, subletting of premises, or providing accommodations for persons not on the lease
8. Failure to appear for scheduled appointments or failure to provide information to management for continued occupancy recertifications (“family obligations”)
9. Permitting individuals that are banned from the property to visit, or reside on the property.

Note: The above listing is not all inclusive of evictable violations. Violation of any material term of the lease agreement may be grounds for lease termination/eviction.

Evictions are to be based solely upon documented facts.

C. DOCUMENTATION AND PROCESSING THE REQUEST FOR EVICTION

Documentation Sources

The program staff person prior to filing any action with the Courts shall present all documentation regarding the tenant(s) failure to uphold the material terms of the lease to his/her Supervisor. Documentation must clearly support the need for eviction. Documentation must show that all other reasonable efforts to resolve the problem and to enforce the rules and regulations have been made by the program staff, and/or other IHA staff as applicable (i.e. Inspectors, Hearing Officers, Resident Services), **or** that the seriousness of such offense requires immediate action. Documentation may consist of one or more of the following items:

- Preponderance of evidence (Note: Conviction of crime is not necessary for eviction)
- Incident Report or other written statement from law enforcement
- Written statements from credible neighbors and/or residents
- Written statements from IHA staff acting as eye-witnesses
- Photographic evidence
- UPCS Inspection Report, maintenance inspection, maintenance work order
- Prior written warnings from Property Manager (Written warnings must quote the applicable lease provision violated).

CAUTION: Attention should be given to the Witness's/Complainant's credibility, motivation, and source(s) of documentation provided.

Note: In the event that the eviction is for violation of health/safety (commonly referred to as "housekeeping") or for tenant damages, tenants must have been afforded the opportunity to pay the costs for repairs and failed to do so or other follow-up procedures (re-inspections, referral of tenant to outside service agencies for assistance) have failed to remedy the deficiency.

Presentation of Documentation

In "packaging" the documentation for presentation to the Supervisor, the program staff Manager shall prepare a statement requesting review of documents for eviction and summarizing the documentation available supporting his/her request to evict setting forth the reason for the proposed eviction, outlining relevant supporting

documentation including dates/times as applicable. The statement shall be attached to the supporting documentation (photographs, Incident Reports, etc.).

The complete tenant file shall be delivered for presentation to the Supervisor with the packaged documents securely placed as the top item on the right-hand side of the tenant file. The Supervisor will review the documentation and the file and will return the file to the program staff with authorization to proceed to evict or will disapprove the file and provide rational (based on regulation, policy, or current IHA procedure) for the disapproval and provide to the program staff any recommendation for follow-up or for additional documentation as may be needed.

In no event shall a supervisor approve a request to evict without the packaged documentation (proof of need) or without the complete tenant file (in order to provide opportunity to review past tenant history and past management action).

D. TYPES OF EVICTION NOTICES AND FILING PROCEDURES

Non-Payment of Rent

Notice (*Notice of Charges Due*) shall be served for delinquency of rent. Notice may be served by (a) Personal Service (with Notice delivered personally to Head of Household and witnessed by other IHA personnel) or mailed first class, (b) Substitute Service (with Notice delivered personally to family member over the age of 18 years), or (c) Conspicuous Service (with Notice adhered to premise door).

14-Day Notice All Conventional Public Housing

Lockout paperwork (*Affidavit of Complaint for Summary Eviction*) shall be filed with the appropriate jurisdictional Court and with the Constable/Designee in the event payment is not received in full prior to the Notice deadline.

30-Day Notice for Lease Violations

For general lease violations not inclusive of drug or criminal activity or activity posing an extreme threat to health/safety, a 30-Day Notice is served to the resident household (*30-Day Notice of Violation of Lease and Intent to Terminate*) citing the provision(s) of the Lease violated.

The 30-Day Notice must be served with the applicable programmatic Grievance Procedure included in the Notice.

The Notice and Grievance Procedure may be served by (a) Personal Service or first class mail, (b) Substitute Service, or (c) Conspicuous Service. A copy of the Notice for a Grievance is included in the notice.

In the event the resident grieves the action (in compliance with the Grievance Procedure or Court), the Eviction is stayed until such time as a decision is rendered.

In the event the resident does not grieve the action and the Notice period elapses, or, in the event the resident grieves the action and the Hearing or Court results in a recommendation to proceed with the Eviction and the Notice period has elapsed, the Property Manager shall file action with the Court requesting removal of the family and release of the unit (*5 Day Unlawful Detainer*).

In the event the resident does not vacate once the allotted time have elapsed, the Property Manager shall file for lockout with the appropriate jurisdictional Court.

Criminal Activity (Expedited Process)

As stated in the IHA “One Strike and You’re Out” Policy, any person who while a resident of the Authority is found to have engaged in one of more of the following specified criminal offenses or disruptive behaviors on any property owned by the Authority, or in the case of drug-related criminal activity committed any violation whether or not such offense was committed on or off Authority property, the resident, tenant and/or the entire household *shall be evicted* from the Authority dwelling unit. For the purposes of this section, proof of engaging in or committing a prohibited act shall not require a formal court proceeding or conviction, but rather may be based solely upon evidence of arrest for a proscribed act or other competent and reliable evidence tending to suggest that such a criminal offense or prohibited act was committed. The criminal activities and other disruptive behaviors that will result in eviction include:

- Any violation (relating to Homicide)
- Any violation (relating to Assault or Battery)
- Any violation (relating to Sexual Battery)
- Any violation (relating to Lewd and Lascivious Behavior)
- Any violation (relating to Robbery, Car Jacking and Home Invasion Robbery)
- Any violation (relating to Weapons and Explosives)
- Any violation (relating to the Possession, Sale or Distribution of Controlled Substances)
- Any violation (relating to Kidnapping and False Imprisonment)
- Any violation (relating to Burglary and Trespass)
- Any violation (relating to Arson and Criminal Mischief)
- Any violation (relating to Child Abuse)
- Any violation (relating to Threats and Extortion)
- Any violation (relating to Disorderly Intoxication)
- Any violation (relating to Disorderly Conduct and Breach of Peace)

- Any other violation of any state or federal law which contains as an element of the offense the use of force or violence, the possession of a controlled substance, or the presence of a state of intoxication or inebriation.
- Any disruptive or dangerous activity or conduct of a person while on Authority property, which is committed while such person is intoxicated or in an inebriated state.

The IHA will immediately and permanently terminate tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

3-Day Expedited Notice

3-Day Expedited Notice (*Notice of Violation of Lease with Intent to Terminate*) is served in cases of drug-related criminal activity, criminal activity, or any activity of an extreme nature that pose a threat to the health/safety of others including but not limited to a threat to the safety of staff.

The 3-Day Expedited Notice may be served without any Grievance Procedure securely attached to the Notice. **The Grievance Procedure states that for lease violations involving drug related criminal activity, criminal activity, or any activity of an extreme nature, there is no IHA formal grievance hearing process granted by IHA. Any response the resident shall make in regard to such Notice shall be made to the court of law in the jurisdiction in which the Notice was issued.**

The Notice and Grievance Procedure may be served by (a) Personal Service and first class mail, (b) Substitute Service, or (c) Conspicuous Service.

In the event the resident does not vacate the unit within the 3-Day Notice period, the program staff shall file action with the Court requesting removal of the family and release of the unit (*3-Day Unlawful Detainer*).

In the event the resident does not vacate the premises once the three (3) days have elapsed under the *Unlawful Detainer*, the program staff shall file for lockout with the appropriate jurisdictional Court.

E. ACCEPTANCE OF PAYMENTS DUE WHILE UNDER EVICTION

Evictions for Non-Payment: No payments may be accepted by IHA, its agents or employees, for charges due under the lease agreement (including rent, late fees, maintenance charges, etc.) *except* when payment is for charges in full*.

Acceptance of funds, whether payment in full or partial payment, negates the eviction and halts all eviction actions and process.

*IHA will not accept personal or private third party checks in matters of eviction for non-payment. If the resident desires to cease the eviction action through payment of all charges, payment must be made by money order. (Third party checks are acceptable from known social service agencies.)

Evictions for Other than Non-Payment: No payments may be accepted by IHA, its agents or employees, for charges due under the lease agreement (including rent, late fees, maintenance charges, etc.) *including* when payment is for full charges. *However*, such payment may be requested to be paid to the Court by either the Court or the lessee, and held in escrow pending the outcome of the Court's decision.

F. DECISIONS OF THE COURT

In matters of eviction, all evictions pursued by IHA are subject to civil law including evictions for drug-related or criminal activity.

The decisions of the presiding Court shall be considered final in all matters of eviction unless through Administrative Review it is found that staff has erred or other similar mitigating circumstances prevail. In cases wherein the decision of the Court is subject to reversal, the complete file (hardcopy of tenant file, all eviction documentation) shall be presented to the Executive Director for review and decision. Only the Executive Director may reverse a decision of the Court and reinstate an evicted household.

G. TERMINATIONS PROTECTED BY VAWA

Criminal Activity directly relating to domestic violence, dating sexual assault, or stalking engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or an affiliated individual of the tenant's family is the victim of threatened victim of that domestic violence, sexual assault, sexual assault or stalking.

The IHA may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to a family members or others without terminating assistance/evicting victimized lawful occupants.