



VIRGINIA  
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SOCIETY

## Federally Subsidized Housing – Tenant-Based

### What is federally subsidized housing?

Federally subsidized housing means that the government pays part or all of your rent. The part of your rent the government pays is called the "subsidy." Unlike private rental housing, landlords in federally subsidized housing have many more rules to follow. These rules talk about who gets into the housing (admissions), rents, leases, grievances, and evictions. If you live in federally subsidized housing, you have more legal rights than tenants in private rental housing. These rights include the following things:

- The landlord must follow certain rules about who gets admitted to the housing.
- Your rent is limited.
- Usually you pay no more than 30% of your income for rent and utilities.
- Your tenancy usually is not time limited. As long as you don't break the lease or the law, you are allowed to stay.
- You may be evicted only for good cause.
- Usually you must be given notice and a chance to contest a denial of admission.
- Before your subsidy may be ended, you must be given notice and a chance to contest.

### What are the types of federally subsidized housing?

There are two types of federally subsidized housing. In one type, the subsidy is tied to the tenant. This is called "tenant-based assistance." In the other type, the subsidy is tied to the housing unit. This is called "unit-based assistance." This article is about tenant-based assisted housing.

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## **What is tenant-based assisted housing?**

There is one main type of tenant-based assisted housing. This is called a Section 8 (§8) housing voucher. This is a type of federally subsidized housing where the assistance is tied to the tenant. This is a subsidy that you can take from place to place. Your voucher helps you rent decent housing in the private market. Your voucher helps pay part of your rent and sometimes part of your utility bills.

The voucher program is run by the U.S. Department of Housing and Urban Development (HUD). A local agency has an agreement with HUD (or sometimes with the Virginia Housing Development Authority - VHDA) to run the program in a certain area, usually a county or independent city.

## **How do I apply for tenant-based assisted housing?**

You apply for a voucher with the local agency that runs the program. This is called the §8 agent. This may be your local public housing authority (PHA), department of social services (DSS), community action agency, or some other office. Your application must be accepted, unless the waiting list is so long there is no reasonable chance you can get a voucher within a year. You can apply with more than one §8 agent. Each §8 agent has its own system for applications. Sometimes there are long waiting lists. If you're willing to move, you might find a housing agency that can offer you housing right away. So check around.

Once your application is accepted, your name is put on a waiting list. You must be told about preferences for a voucher. You may be required from time to time to say you are interested in a voucher. If you fail to do so, your name may be removed from the waiting list.

Waiting lists usually are kept by number of bedrooms needed. Waiting lists also may be separated based on preferences for a voucher. When a voucher is available, it must be offered in the order of bedroom size, preferences, and date & time of application.

## **Who may get a preference for tenant-based assisted housing?**

The §8 agent may give a preference to these people: working people, the disabled, the elderly (age 62 or older), the homeless, victims of domestic violence, and people who live in a particular area.

## **Who may get a voucher for tenant-based assisted housing?**

The §8 agent must use the following rules to decide who gets a voucher:

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- Usually, your income can be no more than 80% of area median income. Income limits vary from area to area, so you may be eligible with one §8 agent but not another.
- There is no resource limit. If you have more than \$5,000 in assets, part of that can be counted as income.
- There is no minimum income requirement.
- The §8 agent may not discriminate against you or make negative decisions about you because of your race, religion, national origin, sex, sexual orientation, gender identity, marital status, source of income, handicap, age, or past bankruptcy.
- The §8 agent also may not discriminate against you for being an unwed parent, getting public aid, having children out of wedlock, or having children.
- Both single individuals and families may get a voucher.
- Only U.S. citizens and eligible immigrants may get a voucher.

The §8 agent only decides who gets a voucher. The landlord chooses the tenant. The §8 agent may not consider your fitness as a tenant or expected behavior as a tenant. The §8 agent may not screen for the landlord. The §8 agent may deny a voucher because of certain conduct:

- You don't sign and submit consent forms to get information.
- You violated any duty under the voucher program.
- You were evicted from federally subsidized housing in the past five years.
- You ever had your voucher assistance ended.
- You committed fraud, bribery, or other corrupt or criminal act in connection with any federal housing program.
- You currently owe rent or other amounts to any §8 agent.
- You have not paid back any §8 agent for amounts paid to a landlord.
- You break an agreement with the §8 agent to pay amounts owed to the §8 agent.
- You fail to take part in a required Family Self Sufficiency (FSS) plan.
- You have done or threatened abusive or violent behavior toward the §8 agent.
- You fail to take part in a required Welfare-to-Work (WTW) program.
- You committed drug-related or violent criminal activity.
- Your criminal record can be considered. The PHA cannot deny admission, or evict you, just because you have an arrest record, but they can consider your conduct that led to the arrest if it relates to your suitability as a tenant.

If you don't get a voucher, the §8 agent must give you a written notice telling you why. This notice must tell you of your right to contest the denial in writing and/or in person.

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# Using a Section 8 Voucher

## What happens when I get a voucher?

When you get a voucher, you may use it for a unit up to a certain amount of rent and for a certain number of bedrooms. You have 60 days to find decent rental housing from a private landlord willing to take part in the program. The §8 agent inspects the unit to be certain it meets Housing Quality Standards (HQS). You sign a lease with the landlord for a term of at least one year. The landlord signs a Housing Assistance Payments (HAP) contract with the §8 agent. You pay no more than 30 percent of adjusted monthly income for rent and utilities. The §8 program pays the rest of the rent. When you get a voucher, you must be given this information:

- How the program works.
- Your duties and your landlord's duties.
- Where you may rent a unit.
- The term of your voucher.
- How the amount of the housing assistance payment is set.
- How the maximum amount of rent for an assisted unit is set.
- The HUD required "Tenancy Addendum" that must be included in your lease.
- The Request for Lease Approval form.
- A statement about providing information concerning a family to landlords.
- Voucher subsidy standards.
- How to choose a unit.
- Equal opportunity laws.
- A list of potential landlords.
- Informal hearing procedures.

Your voucher is good for 60 days. During that time, you must find a suitable unit. This may be the unit you already live in. If your voucher is about to expire, you may ask for one or more extensions. When you find a unit, you submit a Request for Lease Approval form, signed by you and the landlord, along with the lease. The §8 agent then decides whether the landlord, the unit, and the lease are fit.

## How does the §8 agent decide if the landlord is fit?

The §8 agent can't approve a landlord who is suspended from the voucher program. The §8 agent also can't approve a landlord who has violated fair housing laws. In addition, the §8 agent may disapprove a landlord who has done these things:

- Violated duties under a HAP contract, or violated other HUD rules.
- Committed fraud, bribery, or other corrupt or criminal act in connection with any federal housing program.

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- Committed drug-related or violent criminal activity.
- Rented units that didn't meet state or local housing codes.
- Not followed Housing Quality Standards.
- Not paid state or local real estate taxes, fines or assessments.
- Failed to evict federally assisted tenants who did things for which they should have been evicted.

## **How does the §8 agent decide if the unit is fit?**

The §8 agent inspects the unit to see if it meets Housing Quality Standards (HQS). The standards include these things: sinks, showers, tubs, toilets, food preparation, garbage disposal, space, security, heating, lighting, electricity, structure, materials, air quality, hot and cold water supply, absence of lead-based paint, access, site, neighborhood, sanitary condition, and smoke detectors. The §8 agent must inspect the unit before the initial term, at least annually, and at other times as needed to determine if the unit meets HQS.

## **What must be in the lease for §8 housing?**

You and the landlord must sign a written lease. This lease must include at least these things:

- The names of the parties,
- The unit rented,
- The term of the lease,
- The amount of the monthly rent to the landlord,
- What utilities and appliances the landlord must supply,
- What utilities and appliances you must supply, and,
- Any provisions as to renewal of the lease.

## **What are my rights and responsibilities as a §8 tenant?**

Your lease must include a “tenancy addendum” that includes the following protections:

- The rent is limited to the reasonable rent approved by the §8 agent.
- Charging or collecting other payments from the tenant or any other source is prohibited.
- The tenant is not responsible for payment to the landlord of rent above the amount of the tenant’s share as approved by the §8 agent.
- The landlord cannot require the tenant to pay extra for furniture, meals, supportive services, or anything else normally included in the rent.
- The landlord must maintain the premises and provide utilities sufficient to comply with the housing quality standards.
- The landlord must give 60 days’ notice to the §8 agent of any rent changes.
- The parties must give each other written notice for any actions under the lease, and agreed changes to the lease must be in writing and provided to the §8 agent.

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- During the term of the lease, the landlord may terminate the tenancy only for specified good cause. The landlord must first give proper advance notice, followed by court action if necessary.
- The landlord must provide an itemized list of charges against the security deposit and promptly refund any balance.
- The landlord may not discriminate on the basis of race, religion, national origin, age, gender, sexual orientation, gender identity, familial status, or disability.

The “tenancy addendum” will include the following tenant responsibilities:

- The tenant must promptly report any additions to the household, and obtain prior written approval from the landlord and the §8 agent.
- The tenant must use the voucher unit only as a residence and not use it for profit-making activities.
- The tenant may not sublease, assign or transfer the unit.
- The tenant must pay the part of the rent not covered by §8.
- The tenant must notify both the landlord and the §8 agent before moving out of the unit.
- The tenant must allow the landlord to collect any balance owing under the lease in excess of the security deposit.
- The parties must give each other written notice for any actions under the lease.
- The lease automatically terminates if the HAP contract ends or if the §8 agent terminates the voucher.

### **Can my landlord tell my guests or friends not to come to the home I am renting?**

Yes, a landlord can keep your guest from coming to the house or apartment that you rent if that person breaks the rules in the lease or breaks the law.

### **What must my landlord do to keep my guest out?**

The landlord must have a written notice given to the guest. It may be delivered to the guest by the sheriff or may be served personally in another way. The notice must state the reason why the guest is no longer allowed to come to the property and must say what the guest did that broke the terms of the lease or the law. The guest cannot be barred unless he or she broke the rules of the lease, or broke local, state or federal law. The landlord may tell your guest that they are not allowed to visit you, and may say that they cannot come on the landlord's property at all if it is an apartment complex or mobile home park.

### **How will I know if my landlord has done this?**

A copy of the letter or notice sent to your guest must also be served on you.

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## **Can the landlord bring criminal charges against my guest?**

Yes, the landlord can apply to the magistrate for a trespass warrant against the guest if the guest has been served the proper notice and still comes on the property.

## **What if I think that my landlord was wrong to do this?**

You can file an action in court asking the court to review the landlord's letter to the guest and asking the court to decide if it was correct or not. This is called a "tenant's assertion." A tenant's assertion must be done properly so you may wish to get legal advice on this.

## **Can my landlord try and evict me for actions of my guests or if I have the guest visit me after my landlord sent them the notice not to come on the property?**

Yes. As the tenant, you are responsible for the way your guests act. Your guests must keep the rules of the lease that you follow and must not break the law. If the landlord has served the proper notice on you that the guest is barred from the property and he/she comes to see you anyway, that can be a reason for the landlord to evict you. If you live in public housing or subsidized housing, you may be held responsible for the acts of a guest even if you did not know that he was coming to see you or that he was going to break the rules. Many subsidized housing and public housing complexes also have strict rules about how long a guest may stay with you before the stay violates your lease as well as rules about reporting guests.

## **If the landlord does want to evict me for the actions of a guest, what must he do?**

The landlord must first send you a written notice stating the reason for the eviction. There are some things that are considered remediable-- meaning they can be fixed. In those cases the landlord is supposed to send a notice giving you 21 days to fix the situation, or else your lease terminates in 30 days. However, if your guest did something very serious or broke the law in a serious way, the landlord can give a 30 day notice to terminate (without the chance to correct the problem) or an even shorter notice if the act was criminal and poses a threat to health or safety. After the landlord has given the proper notice and the time has passed for you to leave, the landlord must file an unlawful detainer action in court. You will have the chance to present any evidence you have at the court hearing.

## **How is rent set in tenant-based assisted housing?**

In federally subsidized housing, your rent is less than it would be without the subsidy. Usually you pay 30% of your adjusted monthly income for your housing costs. Your housing costs include both rent and utilities. Your adjusted monthly income means your total income minus

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certain deductions. There are deductions for dependents, elderly and disabled families, high medical expenses, and costs of child care needed to go to work or school.

If all utilities except telephone are included in the rent, your rent is 30% of your adjusted monthly income. If all utilities except telephone are not included in your rent, your rent is 30% of your adjusted monthly income minus a "utility allowance." A utility allowance is the reasonable cost of a modest amount of utilities.

If the utility allowance is more than 30% of your adjusted monthly income, you pay no rent. You also get a monthly utility allowance check equal to the difference.

To be sure you pay the right amount of rent; you must report your income at least once a year. You also must report changes in income and family size right away.

### **How do I move a voucher from one unit to another?**

Because your assistance is tied to you, and not to your unit, you may carry your voucher from one landlord to another. To have your assistance continue without interruption, you must follow all the proper procedures to break or not renew one §8 lease, and to enter a different §8 lease. If you want to move to another county, the §8 agent in the old and the new county must allow you to use your voucher in the new county.

If you are beyond the first year of your lease, you need only give your landlord a written 30 day notice of intent to move. You should ask for a new voucher from the §8 agent right away. You should try to use the new voucher on a new unit right away. All paperwork must be done at least 15 days before your new lease starts. If you give your 30 day notice of intent to move and get a new voucher the same day, you must get all paperwork for the new unit done in 15 days. The unit inspection report, the lease, and the HAP contract must be done in 15 days to assure there will be no break in your housing assistance payments.

If you are within the first year of your lease, the process is more complicated. You can't merely give a written 30 day notice of intent to move. Rather, you must break your lease. There are only two ways to do this:

- You and your landlord agree in writing to break the lease.
- Your landlord has broken some promise under the lease and hasn't fixed the problem within a reasonable time after getting a written request from you or the §8 agent.

When you move a voucher from one assisted unit to another, you must follow five steps:

1. You give your old landlord a written notice you are ending the lease, and you give the §8 agent written notice you have done this.

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2. The §8 agent gives your old landlord a written notice ending the HAP contract, and gives you written notice this has been done.
3. The §8 agent gives you a new voucher that is good for 60 days.
4. After you find a new unit, the §8 agent inspects it to be certain it meets Housing Quality Standards and the rent is fair.
5. If §8 agent approves the new landlord, the unit, and the lease, you and the new landlord sign a new lease, and the §8 agent and the new landlord sign a new HAP contract.

## **Losing/Giving up a Voucher**

### **What are the reasons I can lose my voucher?**

You can lose your voucher if you are evicted from housing assisted under the voucher program. You also can lose your voucher for the same reasons you can be denied a voucher. In addition, you can lose your voucher for these reasons.

- Not giving required information.
- Not allowing inspection of the unit by the §8 agent.
- Breaking the Housing Quality Standards.
- Breaking the lease in a major way or many times.
- Not telling the §8 agent and the landlord before you move out or end the lease.
- Not giving the §8 agent a copy of any landlord eviction notice.
- Letting people live in your unit who aren't on your lease.
- Subleasing or assigning your unit.
- Being absent from your unit longer than permitted.
- Owning your unit.
- Getting duplicate assistance.

### **What are the procedures to end a voucher?**

Before you can lose your voucher, the §8 agent must give you a written notice. The notice must tell you why, and must tell you of your right to contest the loss of your voucher. If you ask for it, you must be given a hearing to decide whether you should lose your voucher. You also may ask for a hearing to contest most decisions by the §8 agent.

The hearing is held in front of an unbiased person. You may look at the §8 agent's records, be represented, present evidence, question the §8 agent's evidence, and have a written decision. If

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you win the decision, the §8 agent must follow it. If you lose the decision, you still may contest it if the dispute goes to court.

### **What are the reasons for eviction from tenant-based assisted housing?**

All federally subsidized housing landlords must have a good reason to evict you. This means breaking the lease in a major way or many times, breaking the law in a major way or many times, or some other good reason. A good reason would be not paying rent, not obeying the lease, damaging property, or causing a danger to health or safety.

If you are within the first year of your lease, your landlord's good reason to evict must be based on your fault. If you are beyond the first year of your lease, your landlord's good reason to evict need not be based on your fault. This includes your landlord's wish to use the unit for personal or family use, or for a purpose other than as a residential rental unit. This also includes a business or economic reason, such as sale of the unit, renovation of the unit, or leasing the unit at a higher rental.

You must get an eviction notice from your landlord before you can be taken to court. The notice must tell you the specific reasons for eviction. The reasons must be clear enough to let you defend against them. The notice must tell you the proposed date for ending your tenancy. The notice also must tell you that the landlord must use court to evict you, that you have the right to present defenses, and that only the reasons stated in the notice can be used to evict you.

### **What notice is needed to evict me from tenant-based assistance?**

To evict you for a reason other than non-payment of rent, the landlord must give you written notice of 30 days, assuming that rent is paid monthly. If it's paid by the week, then only 7 days notice is required.

To evict you for not paying rent, your landlord must give you a written notice to either move or pay rent in 5 days. If you pay the rent in 5 days, you get to stay. If you don't pay, your landlord can start an unlawful detainer action (an eviction) in General District Court (GDC).

Even then, if your landlord's only reason for eviction is non-payment of rent, you get to stay if you pay all the amounts owed, including:

- All rent and arrears,
- Late charges and attorney's fees contracted for in a written rental agreement,
- Interest
- Court costs

The Summons for Unlawful Detainer lists all rent, late charges, attorney's fees, interest and court costs. If a new month's rent is due after you get the Summons, but before the date that you pay, you will have to pay that as well.

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You must pay these amounts owed *on or before* your first court return date. The Summons for Unlawful Detainer lists your return date and time. You may pay these amounts owed to your landlord, your landlord's attorney, or the court. If you pay these amounts owed, you need to get a written receipt. You need to come to court on your court date even if you have paid these amounts owed, and bring your receipts. You can prevent eviction by paying these amounts owed only once each year that you continue to live in the same place.

To evict you for any other reason, your landlord usually must give you a 21/30 day written notice to move. This notice must explain the problem or reason the landlord wants to evict. If you correct the problem in 21 days, you get to stay. If not, the lease is terminated after 30 days from the date of the notice. If you don't move out after those 30 days then the landlord can start an unlawful detainer action in GDC.

To evict you for a reason that can't be corrected, your landlord must give you a written notice to move in 30 days. If you don't move by the end of the 30 days, the landlord can start an unlawful detainer action in GDC.

Your landlord also must give the §8 agent a copy of any eviction notice given to you. If your landlord does not do this, you have a defense to the eviction.

### **Are there defenses to eviction?**

You may have a defense to the eviction. One defense is that the landlord did not keep the place in good shape. To use this defense, you must be current in rent and you must have told the landlord about the problem. You should do this in writing by certified mail to the landlord, before the unlawful detainer is filed. You also must pay rent to the court instead of the landlord.

Another defense is that the landlord wants to evict because you complained or used legal rights. To use this defense, the landlord must know that you complained to the landlord or government agency about a rental housing problem, or that you joined a tenant's group, before the unlawful detainer is filed.

### **What are the court eviction procedures?**

Your landlord can evict only by filing a lawsuit in GDC. A hearing will be held. If the judge rules in your favor, you get to stay. If the judge rules in your landlord's favor, the judge must give you at least 10 more days in which to move. If you have not moved by the end of the 10 days, the Sheriff, at the landlord's request, may execute a Writ of Possession. This allows the Sheriff to remove you and your belongings, from the premises. However the Sheriff must give you at least 72 hours' advance notice to leave.

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Your landlord may not cut off utilities, lock you out of the rental unit, or evict you without giving notice and going to court. You don't have to move just because your landlord tells you to leave. You don't have to move even if your landlord takes out an unlawful detainer. Your landlord must wait until a court order is issued. These steps usually take more than two months from the day you get a notice to move.

Any statement in a lease that you give up (waive) your rights to the court eviction process is unenforceable.

## **What are my rights to hearings and review of a decision I disagree with?**

The voucher program has both an “informal review” process available to applicants, and an “informal hearing” process available to participants. Under HUD regulations, participants are families who have received a voucher and who have had the §8 agent execute the first HAP contract with a landlord on their behalf. All others are applicants.

### Informal Review

All applicants whose applications are denied are entitled to prompt written notice of the denial, containing a brief statement of the reasons, that the applicant may request an informal review of the decision, and how to obtain the informal review. An informal review is required when:

- The applicant is denied a listing on the waiting list (assuming the waiting list is open.)
- The applicant is denied a voucher or has a voucher withdrawn.
- The §8 agent refuses to execute a HAP contract or to approve a unit.
- The §8 agent refuses to provide assistance under the portability program.

The review is conducted by an impartial person appointed by the §8 agent, other than a person who made or approved the decision under review, or a subordinate of such person. The applicant must be given the opportunity to present written or oral objections to the decision, and must be notified in writing of the final decision after the informal review, including a brief description of the reasons for the final decision.

### Informal Hearing

All families whose housing assistance is terminated are entitled to prompt written notice of the termination, containing a brief statement of the reasons, that the applicant may request an informal hearing on the decision, how to obtain the informal hearing, and the deadline by which to request an informal hearing. An informal hearing is required if you disagree with any of the following cases:

- Determination of the family's annual or adjusted income and the use of such income to compute the housing assistance payment.

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- Determination of the appropriate utility allowance (if any) for the tenant paid utilities from the utility allowance schedule.
- Determination of the family unit size under the subsidy standards.
- Determination that a family is living in a unit with a larger number of bedrooms than appropriate for the family unit size.
- Determination to terminate assistance for a participant family because of the family's action or failure to act.
- Determination to terminate assistance because the participant family has been absent from the assisted unit longer than the maximum period permitted.
- Establishment of the utility allowance schedule.
- Determination not to approve an extension or suspension of a voucher term.
- Determination not to grant approval of the unit or tenancy.
- Determination that a unit does not meet Housing Quality Standards (HQS). However, an informal hearing is available for a decision to terminate assistance for a breach of the HQS alleged to be caused by the family.
- Determination that a unit is not in accordance with HQS because of family size or composition.
- Determination to exercise or not to exercise any right or remedy against the landlord under the HAP contract.

Informal hearing procedure steps:

1. **Adverse action.** Unless excluded, a tenant may request a hearing to dispute any §8 agent decision relating to the individual circumstances of the family and whether it is in accordance with the law, HUD regulations, and §8 agent policies.
2. **Selection of Hearing Officer.** An informal hearing is conducted by an impartial person designated by the §8 agent, other than a person who made or approved the PHA action under review, or a subordinate of such person.
3. **Discovery.** The family must be given the opportunity to examine before the hearing any §8 agent documents directly relevant to the hearing.
4. **Hearing rights.** The family must be given the opportunity to be represented at the hearing, the right to present evidence and arguments, the right to question any witnesses, and a written decision based solely on the evidence. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
5. **Hearing decision.** The hearing officer must issue a written decision stating briefly the reasons for the decision, with factual determinations based on a preponderance of the evidence.

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6. **Effect of decision.** The decision is binding on the §8 agent, unless:
- a. It concerns a matter for which a hearing is not required or that otherwise exceeds the authority of the hearing officer, or
  - b. It is contrary to HUD regulations or requirements or to federal, state or local law.

If the §8 agent determines it is not bound by a hearing decision, it must promptly notify the family of that determination and of the reasons.

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