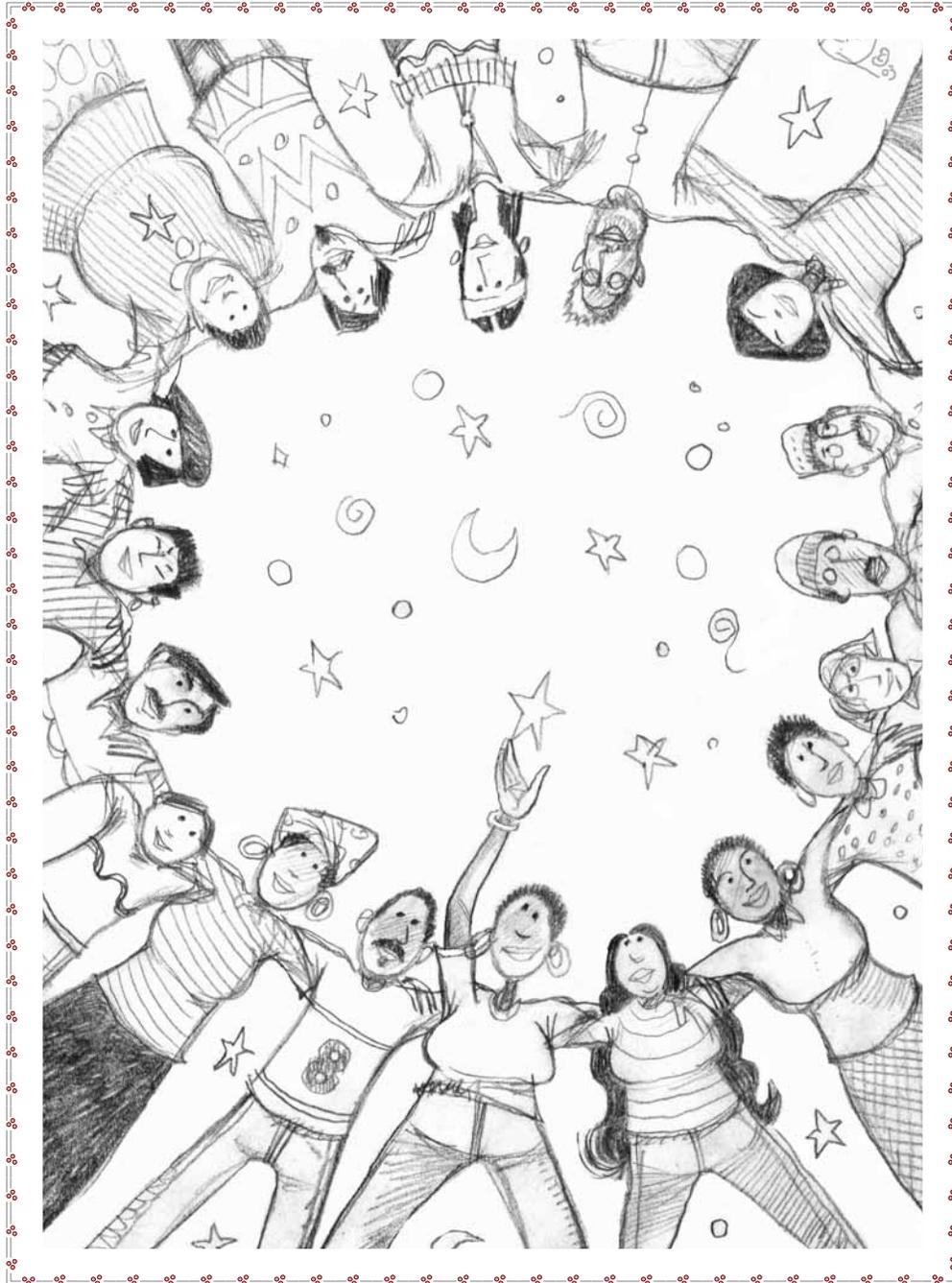


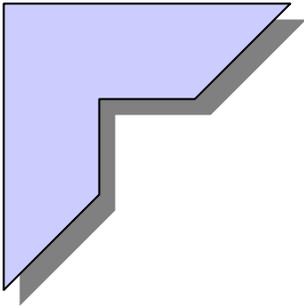
# Tenant Council Election Manual

## A Guide to Building a Duly Elected Resident Body



prepared by  
The Delaware Housing Coalition and  
The League of Women Voters of Delaware

April 2010



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## Tenant Council Election Manual

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April, 2010

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Most of all, it was made possible by the long hours of organizing work done by our early tenant organizers, all of whom came from public and assisted housing: the late B.J. Burton, the late Alba Telle, Winnie Cooper, Dorothy Henry, Sadie Nance, Tina Riley, and Rhinell Weldon.

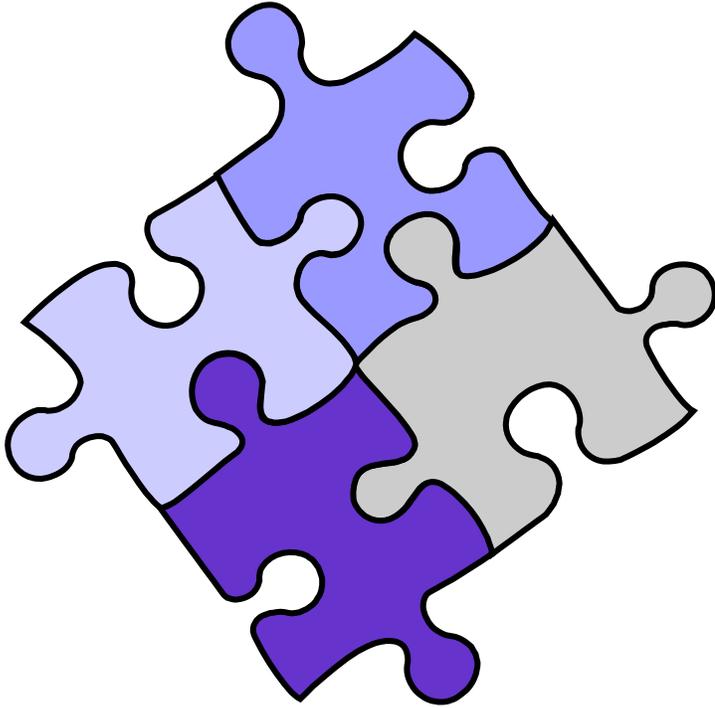
Finally, it was made possible by the Catholic Campaign for Human Development (Wilmington Diocese), the Administrative Commission on the Speer Trust (New Castle Presbytery), the Evangelical Lutheran Church of America (ELCA), the Joshua Fund of the Episcopal Church of St. Andrew and Saint Matthew, and many other groups who made an initial investment in the effort to raise tenant voices in Delaware.

The MISSION of the Delaware Housing Coalition is to advocate for safe, decent, and affordable housing throughout the state. Our goal is to affect, impact, and shape the environment relating to housing. We are committed to fostering the growth and long-term flourishing of grass roots constituencies which develop their power; nurture their own problem-solvers and leaders; and work together to change the conditions which prevent them from obtaining safe, decent, and affordable housing.



# Tenant Council Election Manual

A Guide to Building a  
Duly Elected Resident Body



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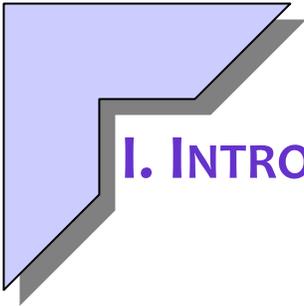
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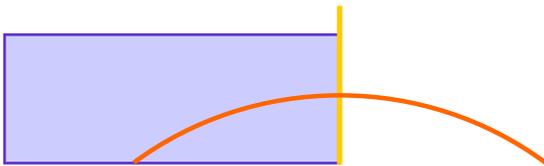
# I. INTRODUCTION

- A. This Is Your Manual
- B. History
- C. Purpose and Use of this Manual

## A. This Is Your Manual

This manual is dedicated to increasing and strengthening the voice of Delaware tenants at every level:

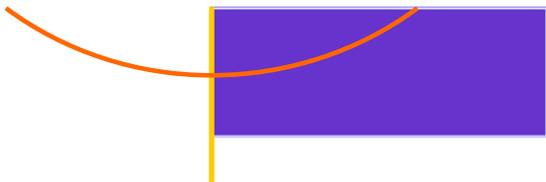
- your building
- your development
- your neighborhood
- the county
- state
- national



***"In a democracy, the individual enjoys not only the ultimate power but carries the ultimate responsibility."***  
***-- Norman Cousins***

Based on the experience of successful grassroots leaders, we see that a duly elected, democratically-run tenant council is the most important building block on the road to achieving meaningful tenant input, decision-making power, and control over their own lives and communities.

Please read it and apply the knowledge toward building grassroots democracy in your own community.



## B. History

Through its work for affordable housing advocacy, the Delaware Housing Coalition (DHC) began helping tenant councils to establish themselves in assisted housing sites in lower Delaware in 1999.

The League of Women Voters of Delaware (LWV) has been involved in observing tenant council elections for much longer.

Between them, DHC and the LWV have aided dozens of resident groups in assisted and unassisted housing throughout the State to start a tenant council or steering group.

Your tenant council is a means through which your many voices can be heard as one.

A duly elected tenant council gives you, the tenants, the power to act in partnership with management or other groups, e.g. police.

It is the first step in a process that has led to many new forms of tenant independence, including:

- tenant voice in new resident selection process
- tenant management
- tenant ownership of land and property
- tenant-controlled nonprofit community development corporations
- cooperatively owned housing

## C. Purpose and Use of this Manual

The primary purpose of this manual is to describe a standard process which ensures the legitimacy of the election of officers for a tenant council.

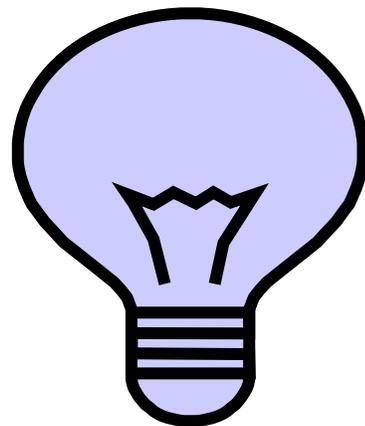
By having a uniform way of selecting a tenant council, no one person's voice is heard over another's.

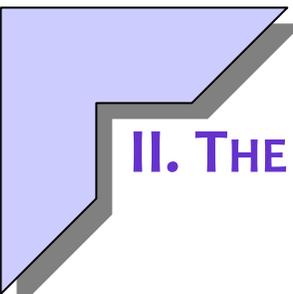
As the manual indicates, the initiation of the election process is also the beginning of a democratic process in your building and/or development.

The procedures described in this manual are legal and encourage tenant control over the process.

Information in this election manual will be written in a way that is easy to understand. The manual will be accessible to tenants.

If the steps in this election manual are followed, your election will be legitimate.

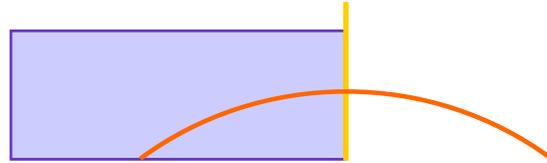




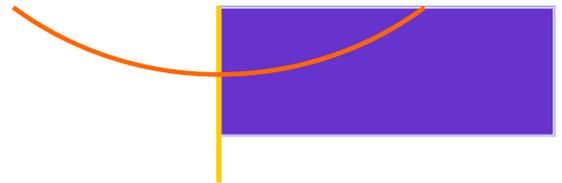
## II. THE ROLE OF THE COUNCIL

Some of the roles of your tenant council are:

- To represent the interests of **all** the tenants;
- To have a tenant organization that is **independent of** management;
- To provide a mechanism through which grievances to management, etc. can be addressed;
- To provide a means through which tenant suggestions for quality of life issues in the development can be received and worked on;
- To provide a means by which tenant concerns can be prioritized and addressed;
- To have a legitimate body speaking for, and backing tenant concerns;
- To represent tenants to media, other tenant councils, and other outside groups;
- To educate and inform tenants of the nature of grievances and other issues that the tenant council will undertake and keep tenants up-to-date on that process;
- To provide a legal entity representing tenant interests which can apply for grants to improve the quality of life<sup>1</sup>; and



**“As I would not be a slave, so I would not be a master. This expresses my idea of democracy.”**  
**-- Abraham Lincoln**



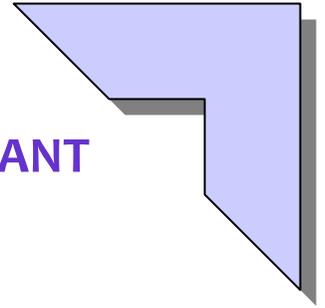
- To be a **partner** in the overall policy development and direction of operations<sup>2</sup> by a housing authority or to have the right to be recognized as having a voice in residential community affairs by the management.<sup>3</sup>

(1) This applies to certain subsidized housing developments, but not all.

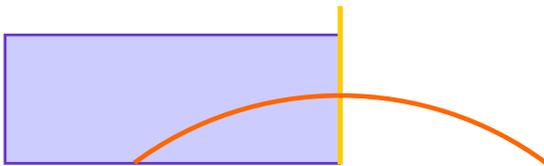
(2) 24 C.F.R. 964.135

(3) Form C, “Rights and Responsibilities,” HUD Office of Multifamily Housing

### III. WHY ELECTIONS ARE IMPORTANT

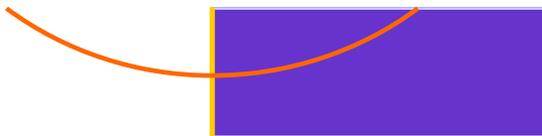


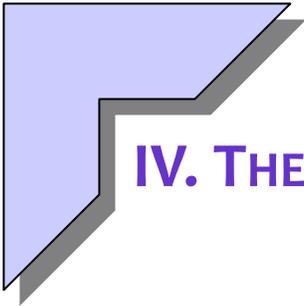
- Elections are part of the democratic process;
- Elections enable you, as tenants, to actively participate in choosing who will represent your concerns;
- Elections avoid arbitrary decisions by self-designated leaders who try to speak on behalf of the resident body;
- Elections help to build new leadership within your community and strengthen already existing leadership;
- Elections help to build a stronger community by giving your community common goals, a history of overcoming obstacles and adversity, and a tradition of tenant independence;
- Elections express your desire to be full members of the community, working as agents for change and improvement, and rejecting the passive role of being housing “consumers” to be managed by others;
- Elections make a statement about you, the tenants, as members of the wider community who are acting as responsible fellow citizens;
- Elections are the first step in a more deliberate and planned presence by tenants in their dealings with management and the wider community; and
- Elections can lead to more powerful forms of tenant influence and control, as described above.



**“The essence of contract is agreement, not coercion or obedience.”**

**-- Utah Phillips**





## IV. THE ELECTION PROCESS

- A. The Third Party Observer
- B. Holding an Interest Meeting
- C. The Nominations
- D. The Election

- The election process as outlined provides a road map and step-by-step directions to organize and carry out an election in your development or building.

- The steps described are a combination of what the US Department of HUD requires and in addition, what we have found to have worked well in Delaware.

(1) 24 CFR 964.130 for Public Housing developments

(2) A recall is a post-election procedure which allows for a party who had been elected and does not (or cannot) perform their duties to be taken out of office in an organized manner.

(3) 24 CFR 964.130; see Appendix

(4) For the purpose of this manual, it will be assumed that the Third Party Observer will be the local branch of the League of Women Voters.

### A. The Third Party Observer

The US Department of Housing and Urban Development (HUD)<sup>1</sup> requires that for public housing sites, all official steps of the entire election process and any recall<sup>2</sup> procedures be observed by an independent third party. We agree that this is a good idea for all elections regardless of what type housing you live in. This ensures that you as residents involved in the election benefit from having the process be monitored and approved by individuals who know how the process should be run **and** have no personal interest in the results of the election.

Examples of qualified third parties include the local branches of the League of Women Voters (LWV) and the Urban League.

In addition, for public housing sites, HUD states that at a minimum, a tenant council may use local election board/commissions<sup>3</sup>:

After receiving preliminary instruction from this manual and DHC, steering groups should contact their local LWV contact as soon as possible in order to discuss and coordinate the process with them.<sup>4</sup>

## B. Holding an Interest Meeting

Most tenant councils start with a small committee of residents talking informally among themselves about the value and potential of working together to solve a problem, to improve a situation and/or to add services in their building/complex. These interested tenants may be called a steering group (SG).

It is important for tenants to work toward creating a body that is **independent of the management/owner**. This does not mean that a tenant council has to be in an adversarial relationship with management. It does mean that your tenant council will be treated as a legitimate body that is considered a **partner** whose voice is to be sought out and seriously considered.

Tenants can contact the Delaware Housing Coalition to receive a copy of this election manual. DHC will meet with the steering group to review the manual and give technical assistance. The steering groups can then call the local branch of the League of Women Voters to start coordinating the election process.

The next step is for the steering group to plan to hold an **interest meeting** for all tenants, making sure the LWV has agreed to the time and place so they can observe the process.

It is best if the meeting can take place on the premises, for example in a community room if the building/complex has one. If not, a local church hall, fire hall, or similar community facility may be able to donate space. It is important that whatever facility is reserved – that the room be as accessible as possible to persons with handicaps. Considerations should also be made for those with handicaps if transportation is involved.

The steering group should also carefully

consider when the meeting(s) should be held. For example, if residents are working various shifts, the time when most folks would be available should be considered. Early evening may be best for developments with working people; if it is a senior development, perhaps the mid-afternoon may be most suitable. Provisions should be made to get information to residents who are unable to get to the meeting.

Except for the third party observer and invited guests such as representatives from DHC, it is important that no outsiders, especially personnel from management, be present at the meeting. This includes a maintenance person or manager who lives on the premises – these individuals are considered to be management-related even if they reside on the premises.

Create a flier and slip it under every door and/or post it in several conspicuous public places. **Fliers should be posted one week before the scheduled meeting.** Good places to post fliers include community rooms, common laundry rooms, above group mailboxes, near elevators, etc. (Please check your lease and house rules to ensure no violations occur)

The flier should state that a group of concerned residents is holding an Interest Meeting to determine whether the residents want to form a tenant council and to initiate the nominations process if it is decided that they would like to see a tenant council formed. The flier should also include a phone number for questions. *See Forms A and B.*

The interest meeting **may** be the nominating meeting. This depends on the readiness of your fellow tenants. If an additional meeting just for nominations is needed after the interest meeting, this will add additional days and another step

to the election process (see timeline below, page 18).

If there is a pre-existing tenant council, the interest meeting **is** the nominating meeting. All steps outlined above should be included. By-laws of the existing tenant council must be followed.

At the meeting, the purpose of the meeting, the role of a tenant council, and a brief outline of the election process and requirements for participation should be explained to the group. If the group decides to form a tenant council, the number of Board representatives needed should be decided, nominations for the Board of the Council should then be taken.

If the group decides not to form a tenant council, alternatives for improving communication among tenants may be discussed.

All actions should be recorded by an agreed-upon member of the volunteer steering group.

### C. The Nominations

Whether the interest meeting becomes a nominating meeting or whether there is a separate nominating meeting held, one person should be designated as the recorder of the meeting that makes nominations.

Nominations are taken for the Board of the Tenant Council, not for specific offices. Those decisions will be made by the elected board at their first “organizational meeting” after the election.

Each nominee should be nominated by one person and seconded by another. A tenant may nominate her/himself. Nominees must consent to serve.

After the close of nominations, a set time for changes or additions should be decided. A week is sufficient to allow for changes once the slate of nominees is posted.

Names of all persons nominated, who consented to serve, should be posted in common areas as soon as possible, but no more than three (3) days after the interest meeting. Instructions for making changes should be included in this posting. See *Form N*.

The date and time of the election may be posted immediately after the nomination meeting, if that has been decided. See *Form C*.

An election reminder (*Form D*) may also be posted sometime after the close of nominations.

One option for receiving additional nominations is to have a neutral, toll-free phone number posted to call to make changes/additions. The time and date of the close of nominations should be clearly written on this flier.

Persons calling in changes should identify themselves and state their apartment number to verify their status as a tenant in that development. They should also affirm that any person that they are nominating has consented to serve on the Board of the Tenant Council.

Any deletions from the original slate should be verified **by the person** whose name is being deleted.

A second option is to have “tear-off” tabs at the bottom of the fliers announcing the nominations. On the tear-off section all pertinent information should be included. Residents could then take this tear-off and send in their changes of nominees for the slate.

Another option is to place a marked, locked box in an appropriate common area where nomination changes can be placed. See *Form K*.

## D. The Election Slate

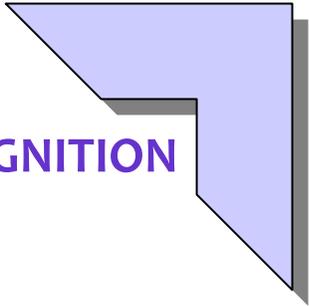
Once the nominations are closed, an election slate (*Form E*) should be posted. After the time, date and place of the election have been verified with the LWV and the host voting place, this should be included with the election slate information and a phone number for questions. Instructions regarding types of acceptable verification of residency (if required) should be included on this flier as well. This flier should also be copied and posted at least in several common areas, if not delivered to each household within seven days of the close of the nominations.

### Sample Ballot

A sample of the final ballot (*Form G*) may be posted closer to the election day in order to help your fellow tenants prepare to vote. This sample ballot needs to reflect the same names that are in the posted slate of nominees.

### Room setup

- Signs should be posted outside of the room to indicate that this is the voting place).
- It should be assured that there are enough tables and chairs set up to accommodate the flow of voter traffic. (Voters need to register and show identification to LWV members.) (Two (2) LWV members usually observe the election therefore two tables for voters should be sufficient).
- Extra pens should be available for voters to use.
- All voters should sign in (*Form F*).
- A sample ballot should be posted where it can be easily reviewed.



## V. GAINING RECOGNITION

- A sealed box with an opening for ballots should be provided.
- One or more tables and chairs should be set up away from the ballot box to ensure voters' privacy in completing the form.

### Counting and Posting

After the election is over the ballots will be counted by the LWV.

The results (*Form I*) will be posted outside the election room or other appropriate places.

A phone number will be made available for follow up.

The results forms will be signed by LWV. There will be three (3) originals one is given to management, one is posted, and one will be kept by the LWV. A copy will be sent to DHC.

For public housing sites, a signed and notarized certification and a checklist to determine if a council is duly elected may also need to be signed by the LWV.

### Absentee Ballots

In some cases an absentee ballot option may be appropriate. If you believe this is the case, please discuss with your local League of Women Voter's representative. Any tasks relating to an absentee ballot process must be completed with the same time frame as other steps.

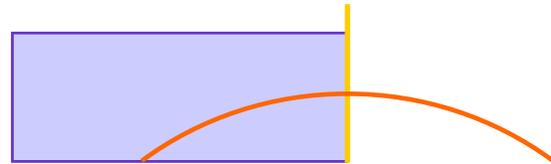
Posting the results of the election is the first step in letting the residents know the outcome of the election.

As soon as possible after the election, the new council officers should meet to hold an organizational meeting, deciding among themselves who shall hold which office. The result of this decision should be posted for all the tenants right away.

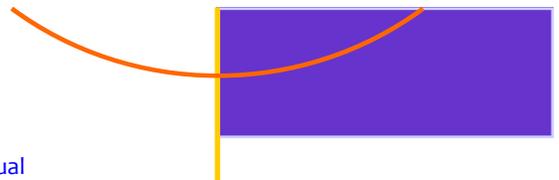
A meeting of the full tenant council should be scheduled soon after the organizational meeting. *See Form M.*

The LWV and DHC, should also be notified of the meeting.

A media release may be considered, announcing the formation of a tenant council and the election of officers.



**“Lead, follow, or get out of the way.”**  
-- Thomas Paine

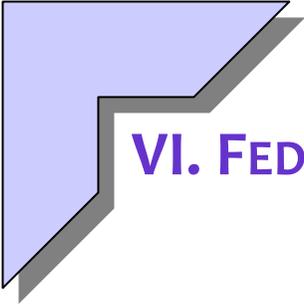


## Election Process Timetable

Countdown to Election Day Starts at least 37 Days Ahead.

(There should be no less than 30 days between the day of the nominations and election day)

Day	Step #	Action	Steps:
-37	①	Post Interest Notice	① Interest Meeting Notice. Fliers should be posted one week ahead of time (Day -37) in common areas announcing that an interest meeting will take place. <b>Form A (or B)</b>
-30	②	Hold Interest Meeting	② Interest Meeting is conducted, nominations made, and date of election set. (Day -30).
-27	③	Post Nominations	③ Results of Interest Meeting (Nominations) posted within three (3) days (Day -27). Instructions for changes included in this posting. Announcement of election date posted. <b>Form C</b>
-20	④	Close Nominations	④ Steering Group receives nomination changes. Nominations are closed. (Day -20). Board slate posted. <b>Form E</b>
-12	⑤	Post Sample Ballot	⑤ Sample final ballot is posted with instructions for elections. (Day -12) <b>Form G</b>
	⑥	<b>ELECTION DAY!</b>	⑥ Election Day <b>Forms G and I</b>



## VI. FEDERAL GUIDELINES

### **PUBLIC HOUSING:**

TITLE 24, PART 964 OF THE  
CODE OF FEDERAL REGU-  
LATIONS  
(EXCERPT)

### **SECTION 8 HOUSING:**

TITLE 24, PART 245 OF THE  
CODE OF FEDERAL REGU-  
LATIONS (EXCERPT)

### **C. FAIR HOUSING:**

TITLE 24, PART 100 OF THE  
CODE OF FEDERAL REGU-  
LATIONS (EXCERPT)

### **A. PUBLIC HOUSING:**

TITLE 24, PART 964 OF THE CODE OF  
FEDERAL REGULATIONS  
CONTENTS

Subpart A—General Provisions

Subpart B—Tenant Participation

Subpart E—Resident Board Members

[Code of Federal Regulations]

[Title 24, Volume 4]

[Revised as of April 1, 2002]

From the U.S. Government Printing Of-  
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[CITE: 24CFR964.1]

PART 964-

Tenant Participation and Tenant Oppor-  
tunities in Public Housing

Subpart A—General Provisions

§ 964.1 Purpose.

The purpose of this part is to recognize  
the importance of resident involvement  
in creating a positive living environment  
and in actively participating in the overall  
mission of public housing.

§ 964.3 Applicability and scope.

(a) The policies and procedures con-  
tained in this part apply to any PHA that  
has a Public Housing Annual Contribu-  
tions Contract (ACC) with HUD. This  
part, except for subpart E, does not ap-  
ply to PHAs with housing assistance pay-  
ments contracts with HUD under section  
of the U.S. Housing Act of 1937.

(b) Subpart B of this part contains HUD  
policies, procedures, and requirements  
for the participation of residents in pub-  
lic housing operations. These policies,  
procedures, and requirements apply to  
all residents participating under this part.

(e) Subpart E of this part implements  
section 2(b) of the United States Housing  
Act of 1937 (42 U.S.C. 1437), which pro-  
vides for resident membership on the  
board of directors or similar governing

body of a PHA. Subpart E applies to any  
public housing agency that has a public  
housing annual contributions contract  
with HUD or administers tenant-based  
rental under section 8 of the United  
States Housing Act of 1937 (42 U.S.C.  
1437f).

(f) The term "resident," as used through-  
out this part, is interchangeable with the  
term "tenant," to reflect the fact that  
local resident organizations have differ-  
ing preferences for the terms. Terms  
such as "resident council" and "tenant  
council" and "resident management"  
and "tenant management" are inter-  
changeable. Hereafter, for ease of dis-  
cussion, the rule will use the terms resi-  
dent, resident council and resident man-  
agement corporation, as appropriate.

§ 964.7 Definitions.

Eligible residents for FIC. A participating  
resident of a participating HA. If the HA  
is combining FIC with the Family Self-  
Sufficiency (FSS) program, the term also  
means Public Housing FSS and Section 8  
families participating in the FSS program.  
Although Section 8 FSS families are eli-  
gible residents for FIC, they do not qualify  
for income exclusions that are provided  
for public housing residents participating  
in employment and supportive service  
programs.

HA means the same as Public Housing  
Agency (PHA).

Management. All activities for which the  
HA is responsible to HUD under the ACC,  
within the definition of "operation" un-  
der the Act and the ACC, including the  
development of resident programs and  
services.

Management contract. A written agree-  
ment between a resident management  
corporation and a HA, as provided by  
subpart C.

Public Housing Agency (PHA) is defined  
in 24 CFR part 5.

Public housing development (Development). The term "development" has the same meaning as that provided for "low-income housing project" as that term is defined in Section 3(b)(1) of the Act.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident management corporation. An entity that proposes to enter into, or enters into, a contract to manage one or more management activities of a HA.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

- (1) Which is at least 51 percent owned by one or more public housing residents; and
- (2) Whose management and daily business operations are controlled by one or more such individuals.

Supportive services for FIC. New or significantly expanded services that are essential to providing families living with children in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

§ 964.11 HUD policy on tenant participation.

HUD promotes resident participation and the active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA. HUD encourages HAs and residents to work together to determine the most appropriate ways to foster constructive relationships, particularly through duly elected resident councils.

§ 964.14 HUD policy on partnerships.

HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening

and improving public housing. Strong partnerships are critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community.

§ 964.15 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages HAs, resident councils and resident management corporations to explore the various functions involved in management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident-managed entities include improved quality of life, experiencing the dignity of meaningful work, enabling residents to choose where they want to live, and meaningful participation in the management of the housing development.

§ 964.16 HUD role in activities under this part.

(a) General. Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation including resident management are local decisions to be made jointly by resident councils/resident management corporations and their HAs. HUD will promote tenant participation and tenant opportunities programs, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with these initiatives.

(b) Monitoring. HUD shall ensure that the requirements under this part are operating efficiently and effectively.

§ 964.18 HA role in activities under subparts B & C.

(a) HAs with 250 units or more.

(1) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(2) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(3) A HA may consult with residents, or resident councils (if they exist), to determine the extent to which residents de-

sire to participate in activities involving their community, including the management of specific functions of a public housing development that may be mutually agreeable to the HA and the resident council/resident management corporation.

(4) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(5) If requested, a HA should provide a duly recognized resident council office space and meeting facilities, free of charge, preferably within the development it represents. If there is no community or rental space available, a request to approve a vacant unit for this non-dwelling use will be considered on a case-by-case basis.

(6) If requested, a HA shall negotiate with the duly elected resident council on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the HA and the resident council. If a HA fails to negotiate with a resident council in good faith or, after negotiations, refuses to permit such usage of community space, the resident council may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the resident council's efforts to negotiate a written agreement. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the request or for refusing to negotiate. HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on an agreement. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(7) In no event shall HUD or a HA recognize a competing resident council once a duly elected resident council has been established. Any funding of resident

activities and resident input into decisions concerning public housing operations shall be made only through the officially recognized resident council.

(8) The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident groups to work on issues and planning.

(9) The resident council shall hold frequent meetings with the residents to ensure that residents have input, and are aware and actively involved in HA management-resident council decisions and activities.

(10) The HA and resident council shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

(11) The HA, in collaboration with the resident councils, shall assume the lead role for assuring maximum opportunities for skills training for public housing residents. To the extent possible, the training resources should be local to ensure maximum benefit and on-going access.

(b) HAs with fewer than 250 units.

(1) HAs with fewer than 250 units of public housing have the option of participating in programs under this part.

(2) HAs shall not deny residents the opportunity to organize. If the residents decide to organize and form a resident council, the HA shall comply with the following:

(i) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(ii) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(iii) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(iv) In no event shall HUD or a HA officially recognize a competing resident council once a duly elected resident council has been established. If a duly elected resident council has been

formed, any input into changes concerning public housing operations shall be made only through the officially recognized resident council.

§ 964.30 Other Program requirements.

In addition to the requirements set forth in 24 CFR part 5, the following Federal requirements apply to this program:

(a) Affirmative Outreach.

(1) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulations at 28 CFR part 35.

#### Subpart B—Tenant Participation

§ 964.100 Role of resident council.

The role of a resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing. Resident councils may actively participate through a working partnership with the HA to advise and assist in all aspects of public housing operations.

§ 964.105 Role of the jurisdiction-wide resident council.

(a) Jurisdiction-wide resident council. Resident councils may come together to form an organization which can represent the interest of residents residing in units under a HA's jurisdiction. This can be accomplished by the presidents of duly elected resident councils forming an organization, by resident councils electing a representative to the organization, or through jurisdiction-wide elections. If duly elected resident councils form such an organization, the HA shall recognize it as the voice of authority-wide residents for input into housing authority policy making.

(b) Function. The jurisdiction-wide council may advise the Board of Commissioners and executive director in all areas of HA operations, including but not limited to occupancy, general management, maintenance, security, resident training, resident employment, social services and modernization priorities.

(c) Cooperation with other groups. There shall be regularly scheduled meetings between the HA and the local elected resident council, and the jurisdiction-wide resident council to discuss problems, plan activities and review progress.

§ 964.115 Resident council requirements.

A resident council shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(a) It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses; or

(3) In one or more contiguous buildings;

(4) In a development; or

(5) In a combination of these buildings or developments;

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(c) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five (5) elected board members.

The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

§ 964.117 Resident council partnerships.

A resident council may form partnerships with outside organizations, provided that such relationships are complementary to the resident council in its duty to represent the residents, and provided that such outside organizations do not become the governing entity of the resident council.

§ 964.120 Resident management corporation requirements.

A resident management corporation must consist of residents residing in public housing and have each of the following characteristics in order to receive official recognition by the HA and HUD:

- (a) It shall be a non-profit organization that is validly incorporated under the laws of the State in which it is located;
- (b) It may be established by more than one resident council, so long as each such council:
  - (1) Approves the establishment of the corporation; and
  - (2) Has representation on the Board of Directors of the corporation;
- (c) It shall have an elected Board of Directors, and elections must be held at least once every three (3) years;
- (d) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.
- (e) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in the public housing represented by the resident management corporation;
- (f) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and
- (g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a

resident council.

§ 964.125 Eligibility for resident council membership.

- (a) Any member of a public housing household whose name is on the lease of a unit in the public housing development and meets the requirements of the by-laws is eligible to be a member of a resident council. The resident council may establish additional criteria that are non-discriminatory and do not infringe on rights of other residents in the development. Such criteria must be stated in the by-laws or constitution as appropriate.
  - (b) The right to vote for resident council board shall be limited to designated heads of households (any age) and other members of the household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.
  - (c) Any qualified voting member of a resident council who meets the requirements described in the by-laws and is in compliance with the lease may seek office and serve on the resident council governing board.
- § 964.130 Election procedures and standards.
- At a minimum, a resident council may use local election boards/commissions. The resident council shall use an independent third-party to oversee elections and recall procedures.
- (a) Resident councils shall adhere to the following minimum standards regarding election procedures:
    - (1) All procedures must assure fair and frequent elections of resident council members—at least once every three years for each member.
    - (2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.
    - (3) Each resident council shall adopt and issue election and recall procedures in their by-laws.
    - (4) The election procedures shall include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.
    - (5) All voting members of the resident community must be given sufficient notice (at least 30 days) for nomination and

election. The notice should include a description of election procedures, eligibility requirements, and dates of nominations and elections.

- (b) If a resident council fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted, HUD shall require the HA to withdraw recognition of the resident council and to withhold resident services funds as well as funds provided in conjunction with services rendered for resident participation in public housing.
- (c) HAs shall monitor the resident council election process and shall establish a procedure to appeal any adverse decision relating to failure to satisfy HUD minimum standards. Such appeal shall be submitted to a jointly selected third-party arbitrator at the local level. If costs are incurred by using a third-party arbitrator, then such costs should be paid from the HAs resident services funds pursuant to § 964.150.

§ 964.135 Resident involvement in HA management operations.

Residents shall be involved and participate in the overall policy development and direction of Public Housing operations.

- (a) Resident management corporations (RMCs) may contract with HAs to perform one or more management functions provided the resident entity has received sufficient training and/or has staff with the necessary expertise to perform the management functions and provided the RMC meets bonding and licensing requirements.
- (b) Residents shall be actively involved in a HA's decision-making process and give advice on matters such as modernization, security, maintenance, resident screening and selection, and recreation.
- (c) While a HA has responsibility for management operations, it shall ensure strong resident participation in all issues and facets of its operations through the duly elected resident councils at public housing developments, and with jurisdiction-wide resident councils.
- (d) A HA shall work in partnership with the duly elected resident councils.
- (e) HAs, upon request from the duly elected resident council, shall ensure that the duly elected resident council

officers as defined in subpart B of this part, and other residents in the development are fully trained and involved in developing and implementing Federal programs including but not limited to Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grant Program, Urban Revitalization Demonstration, Drug Elimination, and FIC.

(f) HAs shall involve resident council officers and other interested residents at the development through education and direct participation in all phases of the budgetary process.

(g) Resident council officers shall be encouraged to become involved in the resident screening and selection process for prospective residents at the development. Those selected to perform resident screening and selection functions must be trained by the HA in resident screening and selection and must sign a legal document committing to confidentiality.

#### § 964.140 Resident training.

(a) Resident training opportunities. HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

- (1) Community organization and leadership training;
- (2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;
- (3) Public housing policies, programs, rights and responsibilities training; and
- (4) Business entrepreneurial training, planning and job skills.

(b) Local training resources. HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:

- (1) Resident organizations;
- (2) Housing authorities;
- (3) Local community colleges, vocational schools; and
- (4) HUD and other Federal agencies and other local public, private and non-profit organizations.

#### § 964.145 Conflict of interest.

Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the HA.

#### § 964.150 Funding tenant participation.

(a) Funding duly elected resident councils and jurisdiction wide resident councils.

(1) The HA shall provide fund it receives for this purpose to the duly elected resident council at each development and/or those jurisdiction-wide councils eligible to receive the resident portion of the tenant services account to use for resident participation activities. This shall be an addition to the Performance Funding System (PFS), as provided by 24 CFR part 990, to permit HAs to fund \$25 per unit per year for units represented by duly elected resident councils for resident services, subject to the availability of appropriations. Of this amount, \$15 per unit per year would be provided to fund tenant participation activities under subpart B of this part for duly elected resident councils and/or jurisdiction-wide councils and \$10 per unit per year would be used by the HA to pay for costs incurred in carrying out tenant participation activities under subpart B of this part, including the expenses for conducting elections, recalls or arbitration required under § 964.130 in subpart B. This will guarantee the resources necessary to create a bona fide partnership among the duly elected resident councils, the HA and HUD. Where both local and jurisdiction-wide councils exist, the distribution will be agreed upon by the HA and the respective councils.

(2) If funds are available through appropriations, the HA must provide tenant services funding to the duly elected resident councils regardless of the HA's financial status. The resident council funds shall not be impacted or restricted by the HA financial status and all said funds must be used for the purpose set forth in subparts B and C of this part.

(3) The HA and the duly elected resident council at each development and/or those jurisdiction-wide councils shall collaborate on how the funds will be distributed for tenant participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the Field Office

for intervention. HUD Field Office shall require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of the Field Office intervention, the Field Office shall refer the matter to HUD Headquarters for final resolution.

(b) Stipends.

(1) HUD encourages HAs to provide stipends to resident council officers who serve as volunteers in their public housing developments. The amount of the stipend, up to \$200 per month/per officer, shall be decided locally by the resident council and the HA. Subject to appropriations, the stipends will be funded from the resident council's portion of the operating subsidy funding for resident council expenses (\$15.00 per unit per year).

(2) Pursuant to § 913.106, stipends are not to be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(3) Funding provided by a HA to a duly elected resident council may be made only under a written agreement between the HA and a resident council, which includes a resident council budget and assurance that all resident council expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement must require the local resident council to account to the HA for the use of the funds and permit the HA to inspect and audit the resident council's financial records related to the agreement.

#### Subpart E—Resident Board Members

##### § 964.405 Applicability.

(a) General. Except as described in paragraph (b) of this section, this subpart applies to any public housing agency that has a public housing annual contributions contract with HUD or administers tenant-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) Exceptions. The requirements of this subpart do not apply to a public housing agency that is:

- (1) Located in a State that requires the members of a governing board to be

salaried and to serve on a full-time basis; or

(2) Not governed by a governing board.

§ 964.410 Additional definitions.

The following additional definitions apply to this subpart only:

Directly assisted. Directly assisted means a public housing resident or a recipient of housing assistance in the tenant-based section 8 program. Direct assistance does not include any State financed housing assistance or Section 8 project-based assistance.

Eligible resident. An eligible resident is a person:

(1) Who is directly assisted by a public housing agency;

(2) Whose name appears on the lease; and

(3) Is eighteen years of age or older.

Governing board. Governing board means the board of directors or similar governing body of a public housing agency.

Resident board member. A resident board member is a member of the governing board who is directly assisted by that public housing agency.

§ 964.415 Resident board members.

(a) General. Except as provided in §§ 964.405(b) and 964.425, the membership of the governing board of each public housing agency must contain not less than one eligible resident board member.

(b) Resident board member no longer directly assisted.

(1) A resident board member who ceases to be directly assisted by the public housing agency is no longer an "eligible resident" as defined in § 964.410.

(2) Such a board member may be removed from the PHA board for that cause, where such action is permitted under State or local law.

(3) Alternatively, the board member may be allowed to complete his/her current term as a member of the governing board. However, the board member may not be re-appointed (or re-elected) to the governing board for purposes of serving as the statutorily required resident board member.

(c) Minimum qualifications for board membership. Any generally applicable

qualifications for board membership also apply to residents, unless the application of the requirements would result in the governing board not containing at least one eligible resident as a member. Further, PHAs and localities may not establish eligibility requirements for board membership that are solely applicable to residents.

§ 964.420 Resident board member may be elected.

(a) General. Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan, adopted in accordance with 24 CFR part 903.

(b) Notice to residents. The public housing agency must provide residents with at least 30 days advance notice for nominations and elections. The notice should include a description of the election procedures, eligibility requirements, and dates of nominations and elections. Any election procedures devised by the public housing agency must facilitate fair elections.

§ 964.425 Small public housing agencies.

(a) General. The requirements of this subpart do not apply to any public housing agency that:

(1) Has less than 300 public housing units (or has no public housing units);

(2) Has provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(3) Has not been notified of the intention of any resident to participate on the governing board within a reasonable time (which shall not be less than 30 days) of the resident advisory board receiving the notice described in paragraph (a)(3) of this section; and

(4) Repeats the requirements of paragraphs (a)(2) and (a)(3) of this section at least once every year.

(b) Public housing agencies that only administer Section 8 assistance. A public housing agency that has no public housing units, but administers Section 8 tenant-based assistance, is eligible for the exception described in paragraph (a) of this section, regardless of the number of Section 8 vouchers it administers.

(c) Failure to meet requirements for ex-

ception. A public housing agency that is otherwise eligible for the exception described in paragraphs (a) and (b) of this section, but does not meet the three conditions described in paragraphs (a)(2) through (a)(4) of this section, must comply with the requirements of this subpart.

§ 964.430 Nondiscrimination.

(a) Membership status.--

(1) General. A resident board member is a full member of the governing board.

(2) Resident participation must include matters regarding Federal public housing and Section 8 tenant-based assistance. A resident board member must be allowed to take part in decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based rental assistance programs. This rule does not extend to matters that:

(i) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or

(ii) Do not involve housing assistance (as may occur where the city or county governing body also serves as the PHA board).

(3) Public housing agency may expand scope of resident participation. A public housing agency may choose to expand the scope of resident member involvement to matters not required under paragraph (a)(2) of this section.

(b) Residence status. A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) Conflict of interest. A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency, or the resident board member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcate-

## B. SECTION 8 HOUSING:

TITLE 24, PART 245.5 OF THE  
CODE OF FEDERAL REGULATIONS

Subpart A--General Provisions

Subpart B--Tenant Organizations

[Code of Federal Regulations]

[Title 24, Volume 2]

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### PART 245--

Tenant Participation in Multifamily Housing Projects--

#### Subpart A--General Provisions

Sec. 245.5 Purpose.

The purpose of this part is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs.

Sec. 245.10 Applicability of part.

(a) Except as otherwise expressly limited in this section, this part applies in its entirety to a mortgagor of any multifamily housing project that meets the following--

(1) Project subject to HUD insured or held mortgage under the National Housing Act. The project has a mortgage that--

(i) Has received final endorsement on behalf of the Secretary and is insured or held by the Secretary under the National Housing Act (12 U.S.C. 1701--1715z-20); and

(ii) Is assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z-1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program;

(D) The Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program assistance;

(2) Formerly HUD-owned project. The project--

(i) Before being acquired by the Secretary, was assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z-1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program; or

(D) The Section 8 LMSA Program following conversion to such assistance from assistance under the Rent Supplement Program; and

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project;

(3) State or local housing finance agency project. The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z-1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

(4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937 (this regulation does not cover tenant participation in PHAs that administer such project-based assistance);

(5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended;

(6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or

(7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

(b) Limitation for cooperative mortga-

gor. Only the provisions of subparts A and C of this part apply to a mortgagor of any multifamily housing project described in paragraph (a) of this section if the mortgagor is a cooperative housing corporation or association.

(c) Definitions.

Rent Supplement Program means the assistance program authorized by section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Section 8 LMSA Program means the Section 8 Loan Management Set-Aside Program implemented under 24 CFR part 886, subpart A.

Section 221(d)(3) BMIR Program means the below-market interest rate mortgage insurance program under section 221(d)(3) and the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715l(d)(5)).

Sec. 245.15 Notice to tenants.

(a) Whenever a mortgagor is required under subparts D or E of this part to serve notice on the tenants of a project, the notice must be served by delivery, except, for a high-rise project, the notice may be served either by delivery or by posting. If service is made by delivery, a copy of the notice must be delivered directly to each unit in the project or mailed to each tenant. If service is made by posting, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located and, during any prescribed tenant period, in a conspicuous place at the address stated in the notice where the materials in support of the mortgagor's proposed action are to be made available for inspection and copying.

Posted notices must be maintained intact and in legible form during any prescribed notice period.

(b) For purposes of computing time periods following service of notice, service is effected, in the case of service by delivery, when all notices have been delivered or mailed and, in the case of service by posting, when all notices have been initially posted.

#### Subpart B--Tenant Organizations

Sec. 245.100 Right of tenants to organize.

The tenants of a multifamily housing

project covered under Sec. 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

Sec. 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under Sec. 245.10, and their agents, must:

(a) Recognize legitimate tenant organizations; and (b) Give reasonable consideration to concerns raised by legitimate tenant organizations.

Sec. 245.110 Legitimate tenant organizations.

A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project covered under Sec. 245.10 for the purpose described in Sec. 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.

Sec. 245.115 Protected activities.

(a) Owners of multifamily housing projects covered under Sec. 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

- (1) Distributing leaflets in lobby areas;
- (2) Placing leaflets at or under tenants' doors;
- (3) Distributing leaflets in common areas;
- (4) Initiating contact with tenants;
- (5) Conducting door-to-door surveys of tenants to ascertain interest in establishing a tenant organization and to offer information about tenant organizations;
- (6) Posting information on bulletin boards;
- (7) Assisting tenants to participate in tenant organization activities;
- (8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants, in a manner that is fully independent of management representatives. In order to preserve the independence of tenant organizations, management representatives may not attend such meetings

unless invited by the tenant organization to specific meetings to discuss a specific issue or issues; and

(g) Formulating responses to owner's requests for:

- (i) Rent increases;
- (ii) Partial payment of claims;
- (iii) The conversion from project-based paid utilities to tenant-paid utilities;
- (iv) A reduction in tenant utility allowances;
- (v) Converting residential units to non-residential use, cooperative housing, or condominiums;
- (vi) Major capital additions; and
- (vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under Sec. 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

(c) Owners of multifamily housing projects and their agents shall not require tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under paragraphs (a) and (b) of this section.

Sec. 245.120 Meeting space.

(a) Owners of multifamily housing projects covered under Sec. 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

- (1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or
- (2) Tenants seeking to establish a tenant organization or collectively address issues related to their living environment.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the complex has an accessible common area or areas, it will not be impractical to make organizational meetings

accessible to persons with disabilities.

(c) Fees. An owner of a multifamily housing project covered under Sec. 245.10

may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

Sec. 245.125 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers, or their agents.

(b) Owners of multifamily housing projects covered under Sec. 245.10, and their agents, must allow tenant organizers to assist tenants in establishing and operating tenant organizations.

(c) Non-tenant tenant organizers. (1) If a multifamily housing project covered under Sec. 245.10 has a consistently enforced, written policy against canvassing, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project, except in the case of recipients of HUD Outreach and Assistance Training Grants ("OTAG") or other direct HUD grants designed to enable recipients to provide education and outreach to tenants concerning HUD's mark-to-market program (see 24 CFR parts 401 and 402), who are conducting eligible activities as defined in the applicable Notice of Funding Availability for the grant or other effective grant document.

(2) If a multifamily housing project covered under Sec. 245.10 has a written policy favoring canvassing, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

Sec. 245.130 Tenants' rights not to be recanvassed.

A tenant has the right not to be recanvassed against his or her wishes regarding participation in a tenant organization.

Sec. 245.135 Enforcement.

(a) Owners of housing identified in Sec. 245.10, and their agents, as well as any

principals thereof (as defined in 24 CFR 24.105), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 24 CFR part 24. Such sanctions may include:

(1) Debarment. A person who is debarred is prohibited from future participation in Federal programs for a period of time. The specific rules and regulations relating to debarment are found at 24 CFR part 24, subpart C.

(2) Suspension. Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 24 CFR part 24, subpart D.

(3) Limited Denial of Participation. An LDP generally excludes a person from future participation in the Federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 24 CFR subpart G.

(b) These sanctions may also apply to affiliates (as defined in 24 CFR part 24) of these persons or entities.

(c) The procedures in 24 CFR part 24 shall apply to actions under this subpart.

## C. FAIR HOUSING:

### TITLE 24, PART 100 OF THE CODE OF FEDERAL REGULATIONS

#### Subpart A--General

#### Subpart B--

#### Discriminatory Housing Practices

#### Subpart C--

#### Discrimination in Residential Real Estate-Related Transactions

#### Subpart D--

#### Prohibition Against Discrimination Because of Handicap

#### Subpart E--

#### Housing for Older Persons

#### Subpart F--

#### Interference, Coercion or Intimidation

[Code of Federal Regulations]

[Title 24, Volume 1]

[Revised as of April 1, 2002]

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### PART 100--

#### Discriminatory Conduct under the Fair Housing Act--

#### Subpart A--General

##### Sec. 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

##### Sec. 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of broker-

age services, or in the availability of residential real estate-related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally-assisted program or activity from other requirements applicable to buildings and dwellings.

##### Sec. 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members;

(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the

Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in subpart E of this part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner, provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time.

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

Sec. 100.20 Definitions.

The terms Department, Fair Housing Act, and Secretary are defined in 24 CFR part 5.

Aggrieved person includes any person who--

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Broker or Agent includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers,

solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Handicap is defined in Sec. 100.201.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 U.S.C., receivers, and fiduciaries.

Person in the business of selling or renting dwellings means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling

or any interest therein;

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

State means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

#### Subpart B--Discriminatory Housing Practices

Sec. 100.50 Real estate practices prohibited.

(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under sections in the subpart. For example, the conduct described in Sec. 100.60(b)(3) and (4) would constitute a violation of Sec. 100.65(a) as well as Sec. 100.60(a).

(b) It shall be unlawful to:

(1) Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with

sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap,

familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in subpart D of this part.

Sec. 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

(a) It shall be unlawful for a person to

refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

Sec. 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit ser-

vices or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

Sec. 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the

provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited activities relating to dwellings under paragraph (b) of this section include, but are not limited to:

(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or

to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, fliers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements and advertisements include, but are not limited to: (1) Using words, phrases, photographs, illustrations, symbols or forms which convey

that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) 24 CFR part 109 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act and in investigating complaints alleging discriminatory housing practices involving advertising.

Sec. 100.80 Discriminatory representations on the availability of dwellings.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

#### Sec. 100.85 Blockbusting.

(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity. (c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to en-

courage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

#### Sec. 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organi-

zation or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.

#### Sec. 100.110 Discriminatory practices in residential real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

#### Sec. 100.115 Residential real estate-related transactions.

The term residential real estate-related transactions means:

(a) The making or purchasing of loans or providing other financial assistance--

(1) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(2) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

#### Sec. 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited

to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(c) This section does not prevent con-

sideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

Sec. 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally.

The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status or national origin.

Sec. 100.140 General rules.

(a) Voluntary self-testing and correction. The report or results of a self-test a lender voluntarily conducts or authorizes are privileged as provided

in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Data collection required by law or any governmental authority (federal, state, or local) is not voluntary.

(b) Other privileges. This subpart does not abrogate any evidentiary privilege otherwise provided by law. Sec. 100.141 Definitions.

As used in this subpart:

Lender means a person who engages in a residential real estate-related lending transaction.

Residential real estate-related lending transaction means the making of a loan:

(1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(2) Secured by residential real estate.

Self-test means any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the Fair Housing Act. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. Self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing.

Sec. 100.142 Types of information.

(a) The privilege under this subpart covers:

(1) The report or results of the self-test;

(2) Data or factual information created by the self-test;

(3) Workpapers, draft documents and final documents;

(4) Analyses, opinions, and conclusions if they directly result from the self-test report or results.

(b) The privilege does not cover:

(1) Information about whether a lender conducted a self-test, the methodology used or scope of the self-test, the time period covered by the self-test or the dates it was conducted;

(2) Loan files and application files, or other residential real estate-related lending transaction records (e.g., property appraisal reports, loan group meeting minutes or other documents reflecting the basis for a decision to approve or deny a loan application, loan policies or procedures, underwriting standards, compensation records) and information or data derived from such files and records, even if such data has been aggregated, summarized or reorganized to facilitate analysis.

Sec. 100.143 Appropriate corrective action.

(a) The report or results of a self-test are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Appropriate corrective action is required when a self-test shows it is more likely than not that a violation occurred even though no violation was adjudicated formally.

(b) A lender must take action reasonably likely to remedy the cause and effect of the likely violation and must:

(1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any likely violation, by determining which areas of operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the particular branch where the likely violation has occurred. Generally, the scope of the self-test governs the scope of the appropriate corrective

action.

(c) Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this subpart:

(1) A lender is not required to provide remedial relief to a tester in a self-test;

(2) A lender is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated;

(3) A lender is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(d) Depending on the facts involved, appropriate corrective action may include, but is not limited to, one or more of the following:

(1) If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the applications were improperly denied; compensating such persons for any damages, both out-of-pocket and compensatory;

(2) Correcting any institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

(3) Identifying, and then training and/or disciplining the employees involved;

(4) Developing outreach programs, marketing strategies, or loan products to serve more effectively the segments of the lender's market that may have been affected by the likely violation; and

(5) Improving audit and oversight systems to avoid a recurrence of the likely violations.

(e) Determination of appropriate corrective action is fact-based. Not every corrective measure listed in paragraph (d) of this section need be taken for each likely violation.

(f) Taking appropriate corrective action is not an admission by a lender that a violation occurred.

#### Sec. 100.144 Scope of privilege.

The report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any:

(a) Proceeding or civil action in which a violation of the Fair Housing Act is alleged; or

(b) Examination or investigation relating to compliance with the Fair Housing Act.

#### Sec. 100.145 Loss of privilege.

(a) The self-test report or results are not privileged under this subpart if the lender or person with lawful access to the report or results:

(1) Voluntarily discloses any part of the report or results or any other information privileged under this subpart to any aggrieved person, complainant, department, agency, or to the public; or

(2) Discloses the report or results or any other information privileged under this subpart as a defense to charges a lender violated the Fair Housing Act; or

(3) Fails or is unable to produce self-test records or information needed to determine whether the privilege applies.

(b) Disclosures or other actions undertaken to carry out appropriate corrective action do not cause the lender to lose the privilege.

#### Subpart C--Discrimination in Residential Real Estate-Related Transactions

#### Sec. 100.146 Limited use of privileged information.

Notwithstanding Sec. 100.145, the self-test report or results may be obtained and used by an aggrieved person, applicant, department or agency solely to determine a penalty or remedy after the violation of the Fair Housing Act has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the

particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.

#### Sec. 100.147 Adjudication.

An aggrieved person, complainant, department or agency that challenges a privilege asserted under Sec. 100.144 may seek a determination of the existence and application of that privilege in:

(a) A court of competent jurisdiction; or

(b) An administrative law proceeding with appropriate jurisdiction.

#### Sec. 100.148 Effective date.

The privilege under this subpart applies to self-tests conducted both before and after January 30, 1998, except that a self-test conducted before January 30, 1998 is not privileged:

(a) If there was a court action or administrative proceeding before January 30, 1998, including the filing of a complaint alleging a violation of the Fair Housing Act with the Department or a substantially equivalent state or local agency; or

(b) If any part of the report or results were disclosed before January 30, 1998 to any aggrieved person, complainant, department or agency, or to the general public.

#### Subpart D--Prohibition Against Discrimination Because of Handicap

#### Sec. 100.200 Purpose.

The purpose of this subpart is to effectuate sections 6 (a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

#### Subpart D--Prohibition Against Discrimination Because of Handicap

#### Sec. 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a con-

trolled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

(c) The application of paragraph (a)

of this section may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

Sec. 100.204 Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of Sec. 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of Sec. 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

Sec. 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a State, County or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer

plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1-1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a)

and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

#### Subpart E—Housing for Older Persons

##### Sec. 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

##### Sec. 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of Secs. 100.302, 100.303 or Sec. 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

##### Sec. 100.302 State and Federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

##### Sec. 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in Sec. 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or

older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

##### Sec. 100.304 Housing for persons who are 55 years of age or older.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, older person means a person 55 years of age or older.

Sec. 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under Sec. 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, occupied unit means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by Sec. 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of Secs. 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in Sec. 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not oc-

cupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of Sec. 100.306.

Sec. 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as "adult living", "adult community", or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing

facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of Secs. 100.305 and 100.306(a).

Sec. 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with Sec. 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of Sec. 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

- (1) Driver's license;
- (2) Birth certificate;
- (3) Passport;
- (4) Immigration card;
- (5) Military identification;
- (6) Any other state, local, national, or international official documents con-

taining a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

- (1) Government records or documents, such as a local household census;
- (2) Prior forms or applications; or
- (3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

Sec. 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial

status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

(b)(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, group, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

#### Subpart F--Interference, Coercion or Intimidation

Sec. 100.400 Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct

that is unlawful under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

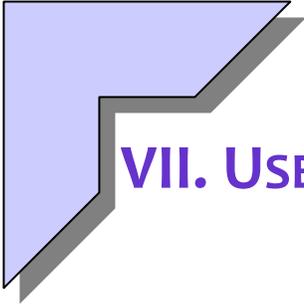
(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

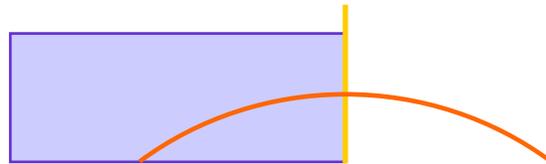
(5) Retaliating against any person because that person has made a complaint, testified, assisted, or partici-

pated in any manner in a proceeding under the Fair Housing Act.

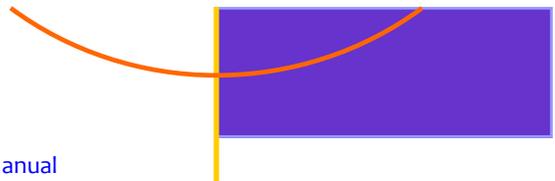


## VII. USEFUL FORMS

- Form A: Interest Meeting Flier
- Form B: Nomination Meeting Flier
- Form C: Election Announcement
- Form D: Election Reminder
- Form E: Council Board Slate Announcement
- Form F: Resident Voter Sign-In Sheet
- Form G: Ballot
- Form H: “Duly Elected Council” Check List
- Form I: Announcement of Election Results
- Form J: Certification of Council Election
- Form K: Nomination Box Cover
- Form L: Election Box Cover
- Form M: Election Celebration Flier
- Form N: Nominations Results



***“Take it easy. But take it.  
-- Woody Guthrie***



Form A

# TENANT COUNCIL

## INTEREST MEETING

For residents of

---

\_\_\_\_\_, \_\_\_\_\_

day            date

---

place

\_\_\_\_\_

time

- Get information on Tenant Councils
- Nominate a slate of board members
- Establish a date for elections

Form B

\_\_\_\_\_ Community

RESIDENT MEETING

For nomination of  
tenant council officers

Day and date: \_\_\_\_\_

at

\_\_\_\_\_

time

\_\_\_\_\_

Help form a Tenant Council that speaks for us on housing, employment, and other community matters!

Guests include:

\_\_\_\_\_

A representative of the League of Women Voters

All are welcome!

Form C

# Tenant Council Elections

On the date of

During the hours of  
to

At this location

Conducted by

**You must have I.D. in order to vote!**

- drivers license
- phone bill
- cable bill
- letter addressed to you
- your lease or rent receipt

Form D



# Tenant Council Elections! This is a Reminder to VOTE

on

---

between the hours of

and

---

at

---

**Make your voice heard.**

# Election of Tenant Council Officers

## \_\_\_\_\_ Tenant Council

Date: \_\_\_\_\_

Times: from \_\_\_\_\_ to \_\_\_\_\_

Monitors: League of Women Voters

You must bring --

ID (drivers license, for example) and  
proof of address

You will have the chance to vote for FIVE people out of the following group of candidates:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Form F

# Resident Voter Sign-In

Development of \_\_\_\_\_

Election of Tenant Council Board Members

Date \_\_\_\_\_

To be eligible to vote, you must be a resident of this development who is 18 years of age or older and be in an assisted housing unit. One vote is being cast per housing unit.

Print your name here	Print your address here
Sign your name here	

Print your name here	Print your address here
Sign your name here	

Print your name here	Print your address here
Sign your name here	

Print your name here	Print your address here
Sign your name here	

Print your name here	Print your address here
Sign your name here	

Print your name here	Print your address here
Sign your name here	

Page ____ of ____	Signature of Election Monitor
-------------------	-------------------------------

# Ballot for the Election of Tenant Council Officers

Tenant Council: \_\_\_\_\_

Date: \_\_\_\_\_

INSTRUCTIONS: Vote for ONLY FIVE candidates, by marking the box (☐) beside each of their names with an "X." If you vote for more than five, we will have to disqualify your ballot.

Name	X
	<input type="checkbox"/>

Form H  
Sample Check List

## Checklist To Determine If Tenant Council is Duly Elected

1. Date of Review
2. Name of Development \_\_\_\_\_ City-State
3. Do You Have An Election Group?      Y      N
4. Are All Members of Election Group/Officers On The Lease?      Y      N
5. Date Of Last Election \_\_\_\_\_, Was The Election More Than 3 Years From Today's Date?      Y      N
6. Was An Independent Third-Party Used In The Election Process?      Y      N
7. Was Election Publicly Posted And/Or Announced at Least 30 Days Prior To Election?      Y      N  
State How Publicity Was Accomplished
8. Does The RC/RMC/RO Have By-Laws Pursuant to 24 CFR 964?      Y      N
9. Did The Housing Authority Monitor The Election Procedures?      Y      N  
Name of Housing Authority Representative

**\* If The RC/RO Answered "Yes" To All Questions Except #6, It Is Eligible For "Duly Elected" Tenant Council Recognition.**

**\* If The RC/RO Answered "No" To Any Of Questions and "Yes" to Question #6, The RC/RO Is Not Eligible for "Duly Elected" Tenant Council Status.**

Form I

# Announcement of Election Results Tenant Council Officers

Tenant Council: \_\_\_\_\_

Date: \_\_\_\_\_

The following individuals have been elected as tenant council board members in the elections held on this date.

1
2
3
4
5
6
7
8
9

\_\_\_\_\_  
Election Monitor

\_\_\_\_\_  
Witness

Copies:

- To post
- To housing authority/management company
- To LWV Files
- To DHC

## CERTIFICATION OF Tenant COUNCIL BOARD ELECTION

I certify that

\_\_\_\_\_  
\_\_\_\_\_  
(Name of Tenant Council)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
\_\_\_\_\_  
(City/State)

has duly elected all of the Tenant Council Officers as required by the U.S. Department of Housing and Urban Development, 24 Code of Federal Regulations, Part 964.

The date of the Tenant Council Board Election was:

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Certifying LHA Official)

\_\_\_\_\_  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Independent Third-Party Monitor)

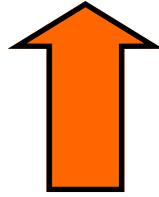
\_\_\_\_\_  
\_\_\_\_\_  
(Date)

Notary:

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

My Commission expires \_\_\_\_\_

Form K



Please place  
additional nominations  
for officers in here by

---

(day & date)

Nominations Box

Tenant Council Elections

Form L



Please place  
your secret election ballot in this box.

Votes will be tallied and results  
posted here at the end of the voting  
period.

# Ballot Box

## Tenant Council Elections

Form M

# Celebration of Tenant Council Elections & Award Ceremony

TO CELEBRATE THE NEW Tenant COUNCILS  
INTRODUCE Tenant COUNCIL OFFICERS, AND  
THANK ALL WHO HELPED FORM THE COUNCIL

PLACE: \_\_\_\_\_

TIME: \_\_\_\_\_

DAY & DATE: \_\_\_\_\_

FOR MORE INFORMATION or HELP GETTING THERE

CALL:

\_\_\_\_\_

**ANNOUNCING THE RESULTS OF THE NOMINATING MEETING**  
**Tenant Council**

that was held on

\_\_\_\_\_, \_\_\_\_\_  
Day Date

1. Resident Council elections will be held on \_\_\_\_\_.
2. Until noon \_\_\_\_\_, additional written nominations can be placed in the nominating ballot box in the manager's office.
3. All residents 18 years of age or older in good standing with no lease violations are eligible to vote and to run for office.
4. Election will be conducted by the League of Women Voters.

If you have questions, contact: \_\_\_\_\_

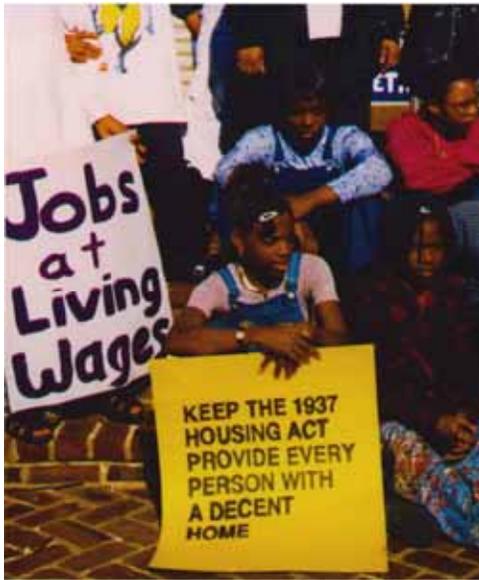
Additional residents can be nominated by using this form.

Current Slate of Nominees: \_\_\_\_\_ Tenant Council

Nominated to date	Additional nominees
Jeremiah Peabody	
Ephraim Zimbalist	
Minnie Midgley	
Farley Dickinson	
Edwina McIlvaine	
Rudgeon Wilensky	



Tenant March for Good Housing, May 1997, Dover, Delaware



Tenants on the steps of Legislative Hall  
Dover, May 1997



Greenfield Manor Tenants, Bear, Delaware, May 2001

