

# Serving Communities, Managing Residents, & Moving On

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# What Will We Cover?

- Serving Communities: What Housing is available and what are the restrictions? (i.e. how do I get my client in?)
- Managing Residents & Moving On: What is a lease violation? Discussion of common issues.



# Serving Communities

- Serving Communities: What Housing is available and what are the restrictions? (i.e. how do I get my client in?)
  - Public Housing
  - Section 8
  - LIHTC
  - Private LL/ T

# Public Housing

## CONGRESS

- Enacts the laws
- Appropriates the dollars
- Holds hearings on the program
- May respond to individual inquiries

## HUD

- Adds more rules and fills in the blanks
- Distributes the dollars to the PHAs
- Administers the program and monitors PHAs

## PHAs

- Add more rules
- Admissions & Continued Occupancy Plan (ACOP)
- Spend the dollars
- Own and/or manage the public housing facilities
- Board of Commissioners, Resident Advisory Board (RAB), & other resident organizations
- 5-Year Annual Plan

# Project-Based Section 8

## CONGRESS

- Enacts the laws
- Appropriates the dollars
- Holds hearings on the program
- May respond to individual inquiries

## HUD

- Contracts with private owner
- Pays rental subsidy to owner to provide affordable housing

## OWNER

- Agrees to keep rents affordable
- May be non-profit, for profit, limited dividend, or PHA
- May opt out of contract
- Rental subsidy tied to unit

*Section 8 Voucher*

**PHA**

PHA issues voucher to Tenant; Tenant agrees to comply with voucher family obligations.

PHA & Landlord execute HAP contract; PHA pays subsidized portion of Tenant's rent to Landlord.

**Section 8 Voucher Program**

**TENANT**

**LANDLORD**

Tenant & Landlord enter into lease; Tenant pays rent to Landlord.

# Low-Income Housing Tax Credit (LIHTC)

## STATE CREDIT ALLOCATION AGENCY

- Receives tax credits from IRS based on state population
- Allocated under QAP criteria
- 9% competitive & 4% non-competitive(?) tax credits, which come with bond financing

## INVESTORS

- Limited partners who are individuals, corporations, or financial institutions
- Buy tax credits creating cash equity for owner
- Tax credit for 10 years

## OWNER

- Usually a limited partnership
- Agrees to rent a specific number of units to qualified tenants for 15 years plus any extension
- General partner may be non-profit or government entity

# Rents in Federally-Assisted Housing

- Tenant portion of rent vs. full contract rent
  - ▲ Section 8 – easily figured and is on rent forms
  - ▲ Public Housing – unique
  - ▲ LIHTC – rent contract for “rent-restricted” units
- Rent includes what tenant pays for utilities (excluding phone, cable, & internet).
- **Gross Rent** is the combination of **contract rent** and what the tenant is expected to pay for utilities (**utility allowance**).



# Minimum Rent, Suspension, & Waiver

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## Public Housing

- Minimum rent can be set anywhere from \$0 to \$50 a month.

## Voucher Program

- Minimum rent can be set anywhere from \$0 to \$50 a month.

## Project-Based Section 8

- Minimum rent is \$25 a month.

## Hardships for all Programs

- ***Suspension of Minimum Rent*** – for temporary economic hardship (less than 90 days)
- ***Waiver of Minimum Rent*** – economic hardship for more than 90 days



# Admissions:

## Applying to Federally Subsidized Housing

- Eligibility requirements for individual programs:
  - Public Housing
  - Project-Based Section 8
  - Section 8 Vouchers
- Access issues that apply to all three programs:
  - PIH Notice 2010-19, ¶19; H Notice 2011-21, § IX

# Admissions:

## Applying to Federally Subsidized Housing

- Access issues that apply to all three programs:
  - Immigration eligibility & Social Security Number requirements
  - Criminal history screening
  - Reasonable accommodations for people with disabilities
  - Sexual orientation, gender identity, and marital status
  - Violence Against Women Act protections for DV victims
  - Language access requirements

# Public Housing

## What Rules Apply?

- Layers of Legal Authorities
  - ▲ Federal Statute
  - ▲ HUD Regulations
  - ▲ Other administrative guidance, such HUD Notices and Public Housing Occupancy Guidebook  
(<http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>)
  - ▲ PHA must have written admissions policies.
    - Including on rejection of applicants whose “habits and practices” may have a detrimental effect on other residents.
    - Admissions policies are typically included in the PHA’s Admission and Continued Occupancy Plan (ACOP).

# Eligibility & Admission

- Admissions basics:
  - Family is eligible if income is 80% of area median income (AMI).
  - Income targeting: 40% of all new admissions must be extremely low income (30% of AMI).
  - Most PHAs have a waiting list which may be a central list and/or site-based (sometimes combined with voucher list)
  - Advocates should determine whether waitlists are open, available bedroom sizes, and whether housing is designated for elderly and/or disabled head of household.
  - PHA may establish local preferences, e.g., homeless, residents of jurisdiction, working families, survivors of domestic or sexual violence, etc.

# Eligibility & Admission (cont'd)

- Consider beyond income eligibility:
  - ▲ PHAs *must* examine immigration status.
  - ▲ PHAs *must* screen & reject applicants for certain criminal activity.
  - ▲ PHAs *may* consider additional such as prior rent-paying & eviction history.
  - ▲ PHAs *may* reject current drug users or those who abuse alcohol.
- PHAs *must* consider mitigating circumstances (e.g., time, nature, extent, and seriousness of conduct).
- PHAs *must* notify applicant of reason for rejection & right to an informal hearing.

# How Can I Find Public Housing?

- Apply with the local PHA in the jurisdiction you want to live.
- To find the PHA in your area, go to [www.hud.gov/offices/pih/systems/pic/haprofiles](http://www.hud.gov/offices/pih/systems/pic/haprofiles)

# Public Housing Grievance Hearing

24 C.F.R. 966.51-966.59

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- ***Grievance*** is any dispute regarding PHA action or failure to act in accordance with the lease or PHA regulations, which adversely affects the tenant's rights.
  - ▲ Process includes informal review & settlement before a grievance hearing.
- Grievance Hearing



# HUD is Watching You!

## Enterprise Income Verification (EIV)

- HUD requires all PHAs/owners to cross-check income reported with regular reports HUD gets from SSA & employment sources. If numbers do not match, PHA/owner is required to independently verify.
- **Tenant must pay back if income should have been reported and wasn't (generally a 40% cap on repayment plans).**
  - ▲ PIH Notice 2010-19, ¶19; H Notice 2011-21, § IX

# Project-Based Section 8 Program

## What Rules Apply?

- Layers of Legal Authorities
  - ▲ Federal Statute
  - ▲ HUD Regulations
  - ▲ HUD Handbook 4350.3
  - ▲ HUD Notices ([www.hud.gov/hudclips](http://www.hud.gov/hudclips))
  - ▲ Owner is responsible for selecting tenants & developing a tenant selection policy that may consider a variety of factors, e.g., credit & eviction history.

# Section 8 Housing Choice Voucher Program

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## What Rules Apply?

- Layers of Legal Authorities
  - ▲ Federal Statute
  - ▲ HUD Regulations
  - ▲ Housing Choice Voucher Program Guidebook
  - ▲ HUD Notices ([www.hud.gov/hudclips](http://www.hud.gov/hudclips))
  - ▲ PHAs may develop local preferences & policies for screening applicants. These must be stated in writing in the PHA's local Section 8 Administrative Plan.

# Eligibility

- Generally, eligibility criteria are similar to the eligibility requirements for public housing.
- Applicants typically must be “**very low-income**” (income cannot exceed 50% of AMI).
  - ▲ Owners must target some units to “extremely low-income” households (income of 30% AMI or below).

# Admissions Process

- Owner *must*:
  - Maintain waitlist of applicants;
  - Select applicants from waitlist;
  - Develop tenant selection procedures;
  - Screen for certain criminal activity and immigration status.
  - Notify applicants of reasons for denial and offer applicants an opportunity to meet with the owner if denied.
- Owner *may*:
  - Create preferences;
  - Consider mitigating circumstances.

# How Can I Find Project-Based Section 8 Units?

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- HUD low-rent apartment search  
<http://www.hud.gov/apps/section8/index.cfm>
- National Housing Trust  
[http://www.nhtinc.org/housing\\_data.php](http://www.nhtinc.org/housing_data.php)

# Where Can My Client Get a Voucher?

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- Client applies for voucher by filling out an application with the PHA or Voucher Agency.
- Client can apply for voucher with multiple PHAs, even if not residing in the PHA's jurisdiction.
  - ✦ May be subject to residency preferences.
- Information on number of vouchers & utilization by PHA:
  - ✦ <http://www.cbpp.org/cms/index.cfm?fa=view&id=3586>
  - ✦ [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/psd](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd)

# Admissions: Two Steps

## STEP 1:

- PHA determines who will receive a voucher.
  - ▲ Applicants *must* be “very low-income” – income cannot exceed 50% of area median income (AMI). In very limited circumstances, applicants may be “low-income.”||
    - PHAs *must* target 75% of vouchers to “extremely low-income” households (30% of AMI or below).
- PHAs *must* deny applicants with certain criminal history or immigration status.
- PHA *may* establish screening criteria in accordance with local Administrative Plan.
- PHAs *may* consider mitigating circumstances.
- PHA *must* notify applicants of reasons for rejection and right to request an informal review proceeding.



# Admissions: Two Steps

## STEP 2:

- Private landlord may screen applicant.
  - ▲ Private landlords have a great deal of discretion in screening applicants.
  - ▲ Screening by private landlords often includes review of tenancy, credit, and criminal history.

# **Access Issues that Apply to All Three Programs**

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- Immigration eligibility
- Social Security Number disclosure requirements
- Criminal history screening
- Reasonable accommodations for people with disabilities
- Sexual orientation, gender identity & marital status protections
- Violence Against Women Act protections for DV victims
- Language access requirements

# Immigration Eligibility

- The following categories of immigrants are eligible for Public Housing and Section 8:
  - ▲ Lawful permanent residents
  - ▲ Lawful temporary residents
  - ▲ Refugees, asylees, trafficking victims, and persons granted withholding of deportation or removal
  - ▲ Parolees
  - ▲ Citizens of Micronesia, Marshall Islands, and Palau
- Housing eligibility categories differ from those used for other public benefits.
- There are several other subsidized housing programs that do NOT have immigration restrictions.

# **Mixed Immigration Status Families**

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- If at least one member of household is a U.S. citizen or an eligible immigrant, the family can live in public housing or Section 8.
  - ▲ Citizen or eligible immigrant can be a minor.
- Rent subsidy is pro-rated based on the number of eligible persons.
- All household members must disclose income but can choose not to declare status.

# Social Security Number Requirements

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- All applicant household members must supply SSNs to the PHA or owner in order to be eligible, *except* for those who do not claim eligible immigration status.

# Criminal History Screening

- PHAs and owners **MUST** deny admission to an applicant who:
  - Is subject to a lifetime registration requirement under a state sex offender registration law.
  - Was convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.
    - Note: This exclusion ONLY applies to the Public Housing, Voucher, and Section 8 Moderate Rehabilitation Programs.
  - Was evicted from federally assisted housing for drug-related criminal activity within the previous three years UNLESS the applicant completed a drug rehabilitation program approved by the PHA.

# Criminal History Screening (cont'd)

- PHAs and owners **MAY** deny admission to an applicant who committed:
  - Drug-related criminal activity.
  - Violent criminal activity.
  - “Other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees.”

# Criminal History Screening (cont'd)

- The criminal activity must have occurred within a “**reasonable time**” before the admission decision.
  - ▲ “*Reasonable time*” is not defined in the statute or HUD regulations.
  - ▲ HUD guidance:
    - 5 years may be reasonable for serious offenses
    - PHAs and HUD-assisted owners may use a different look-back period for different categories of offenses.
  - ▲ Location of local policies on criminal records
    - PHA
      - Admin Plan – Voucher program
      - ACOP – Public Housing
    - HUD-assisted owner – tenant selection plan



# Rights of People with Disabilities

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- Reasonable Accommodation:
  - ▲ PHAs and owners *must* ensure that the application process is accessible to people with disabilities.
  - ▲ PHAs and owners *may* be required to waive or alter an admissions requirement where necessary to provide a person with disabilities access to housing.
  - ▲ PHAs and owners *must* consider extenuating circumstances where required as a matter of reasonable accommodation.
  - ▲ PHAs and owners should have reasonable accommodation policies and should notify applicants of their right to request a reasonable accommodation.

# Sexual Orientation, Gender Identity, & Marital Status

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- HUD regulations state the following:
  - Eligibility determinations for HUD programs and HUD-funded housing must be made without regard to sexual orientation, gender identity, or marital status.
  - PHAs and owners of HUD-assisted housing may not inquire about an applicant's sexual orientation or gender identity.
    - Exception: emergency shelters with shared sleeping areas or bathrooms.

# Rights of Domestic Violence Survivors

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- Violence Against Women Act (VAWA) protects survivors of domestic violence, dating violence, and stalking during the admissions process.
- VAWA provides the following:
  - ✦ “That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance.”||
  - ✦ HUD has stated that “victims of domestic violence, dating violence, or stalking must not be denied assistance . . . based solely on a criminal history related to domestic violence, dating violence, or stalking.|| *75 Fed. Reg. 66,255*

# Language Access Requirements

- Housing access for people with limited English proficiency (LEP):
  - LEP persons must be given meaningful access to federally subsidized housing programs.
  - PHAs and owners must take affirmative steps to communicate with applicants who need application information in languages other than English.
  - PHAs and owners may be required to provide translation or interpretation of eligibility requirements and notices regarding admissions decisions.

# Resources

- NHLP, *An Affordable Home on Reentry*,  
<http://www.nhlp.org/guidebooks>
- NHLP, *Assisting Survivors of Domestic Violence in Applying for Housing*,  
<http://www.nhlp.org/OVWgrantees>
- NHLP Manual, *HUD Housing Programs: Tenants' Rights (\$\$\$)*

# **Private LL/T**

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## **Denial Reasons:**

- Criminal History**
- Bad Credit**
- Past Evictions**
- Poor Landlord References**

**What can you do to help?**



# Managing Residents & Moving On

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- **What is a Lease Violation?**
- **Common Defenses/  
Considerations**
- **Common Problems: Discussion**

# Public Housing

(24 C.F.R. 966.4)

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- Lease must provide that the PHA may terminate the lease for:
  - Serious or repeated violation of material terms of the lease;
  - Failure to fulfill household obligations as described in the regulations; or
  - Other good cause.



# Public Housing: Other Good Cause

24 C.F.R. 966.4(1)

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- “Other good cause” is defined as including, but is not limited to: Criminal activity or alcohol abuse;
  - Discovery (after admission) of facts that made the tenant ineligible;
  - Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;

# Public Housing: Other Good Cause

24 C.F.R. 966.4(1)

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*(cont'd)*

- ✦ Failure of a family member to comply with the community service requirements; and
- ✦ Failure of the tenant to accept the PHA's offer of a lease revision to an existing lease on a form adopted by the PHA.

# HUD Multifamily

24 C.F.R. 247.3

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- Landlord may not terminate the lease except for:
  - Material noncompliance with lease;
  - Material failure to carry out obligations under any landlord and tenant act;
  - Criminal activity; and
  - Other good cause.

# HUD Multifamily: Other Good Cause

24 C.F.R. 247.3

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- Other good cause not defined in regulations, but prior notice to tenant required. 24 C.F.R. 247.3(b)
- Also Project-Based Section 8 (Part 880, 881, 883)

# Section 8 Moderate Rehab

24 C.F.R. 882.511

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- Landlord may not terminate the lease except for:
  - Serious or repeated violations of the terms and conditions of the lease;
  - Violation of applicable Federal, State, or Local law;
  - Other good cause.
- Other good cause not defined in regulations.

# Housing Choice Voucher

24 C.F.R. 982.310

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- Landlord may not terminate the lease except for:
  - ▲ Serious or repeated violations of the terms and conditions of the lease;
  - ▲ Violation of applicable Federal, State, or Local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or
  - ▲ Other good cause.
- Good cause is required during the term of the lease.
  - ▲ 42 U.S.C. 1437f(o)(7)(C)

# Housing Choice Voucher

## Other Good Cause

- Other good cause may include:
  - Failure by the family to accept the offer of a new lease or revision;
  - A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;
  - The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
  - A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

# Other Programs

- Low Income Housing Tax Credit
  - ▲ 26 U.S.C. § 42 (h)(6)(E)(ii)(I)
  - ▲ IRS Revenue Ruling 2004-82 (July 30, 2004)
- Project-Based Voucher Program
  - ▲ 24 C.F.R. 983.257
- HOME
  - ▲ 24 C.F.R. 92.253(c)



# Nonpayment of Rent

- Nonpayment of rent is often a serious lease violation.
- Defenses
  - ✦ Improper calculation of rent
  - ✦ Inclusion of other charges with rent
  - ✦ Tender
  - ✦ Warranty of habitability
  - ✦ *De minimus* breach
  - ✦ Absence of tenant fault
  - ✦ Fair Debt Collection Practices Act
  - ✦ Bankruptcy

# Minor Violations

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- Minor violations (HUD Handbook 4350.3, ¶ 8-13)
  - ✦ Late payments
  - ✦ Keeping unauthorized occupants
  - ✦ Failure to pay utilities
  - ✦ Disruptive behavior
  - ✦ Damaging the property
  - ✦ Failure to pay for repairs for damage caused by tenant
- Must be repeated before arising to good cause

# Unauthorized Occupants

- Guests v. unauthorized occupants
- Guest policies that prohibit the family from hosting long-term guests
- Clear policies and enforcement on adding tenants

# Violation of Program Requirements

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- Failure to report changes in income or family composition
- Citizenship eligibility
- Public housing community service requirement
- Failure to provide SSN

# Failure to Report Changes in Income or Family Composition

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- Tenant obligation to report changes in income
  - ▲ For public housing
    - 24 C.F.R. 966.4(c)(2)
    - See Admission and Continued Occupancy Plan (ACOP)
  - ▲ For other HUD assisted housing
    - 24 C.F.R. 247.3(c)(3)
    - Model Lease requires tenant to report increases of \$200 or more per month.

# Failure to Cooperate with Recertification

- HUD Multifamily Housing, Recertification process, Handbook, 4350.3, Chapter 7
- PHA Admission and Continued Occupancy Plan (ACOP)

# **Criminal Activity or Threatening Behavior**

- To terminate the lease for criminal activity, the crime must be
  - Drug-related
  - Other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
  - The PHA may also terminate if a family member engages in alcohol abuse.
  - Violent criminal activity for Voucher Program including PBV.

# Definitions

- ***Drug-related criminal activity*** is “the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.”
- ***Violent criminal activity*** “means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or reasonably likely to cause, serious bodily harm or property damage.”



# Persons Covered

- Criminal activity may be conducted by tenant, household member, guest, or person under control of tenant.

# Location of Criminal Activity

- Drug-related criminal activity:
  - ▶ Public housing – on or off the premises
  - ▶ HUD Multifamily – on or near
  - ▶ Voucher – on or near
- Violent:
  - ▶ Voucher – on or near
- Other criminal activity:
  - ▶ Nexus requirement for all programs – must affect the safety or quiet enjoyment of residents on the premises.

# Common Eviction Defenses

- Violation cured
- Harmless violation
- Waiver and laches
- Exclusion of culpable household member
- Reasonable accommodation
- VAWA
- Mitigating circumstances

# Domestic Violence is Not Good Cause for Termination of Tenancy

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- For Public Housing, Voucher, Public-Based Section 8, and other HUD multifamily programs, an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence.
  - ▲ 42 U.S.C. 1437f(d)(1)(B) and (o(7)(C), *see also* 1437d(1)(6). “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence, dating violence, or stalking ....” 75 Fed. Reg. 66255, 24 C.F.R. 5.2005(c), and 982.553(e).

# Mitigating Factors

- Mitigating factors:
  - Seriousness of offense
  - Extent of participation or culpability of individual family members
  - Mitigating circumstances related to disability
  - Effects of termination of assistance on other family members who were not involved
- Some courts require the PHA/landlord to consider mitigating factors before commencing eviction.
- PHA's Admission and Continued Occupancy Plan

# Common Tenancy Problems

- Bed Bugs
- Tenant-on-Tenant disputes
- Housekeeping violations
- Smoking
- Pets/ Service Animals

# **Bed Bugs**

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- **Be Proactive: Teach tenants about transmission and to call at first sight of a bug**
- **Enforce Housekeeping Standards**
- **Once you have Bed Bugs it is difficult to prove causation and fault, so frequently LL pays for eradication**

# Tenant Disputes

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- Sad State of Affairs, It's a Middle School Out There!!
  - Have a process that is not anonymous
  - Encourage complaints to explain how a tenant violated the lease
  - If possible include all residents in creating a dispute resolution process
  - Encourage tenants to find activities outside of the residence.



# Housekeeping

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- Set Clear Standards based on safety and avoidance of damage
- Good Examples: removal of waste, clear pathways and clean-up food spills
- Poor: Free of Dust, Clear floors, uncluttered
- Look for solutions: An accommodation?  
Referral to 211? Cleaning List?

# Smoking

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- Clearly mark smoking areas and create policies
- Create safe smoking areas if possible to avoid issues

# Pets/ Service Animals

- Fair Housing Act
- Applies to virtually all forms of housing, exceptions include (a) buildings with 4 or fewer units where the landlord lives in one of the units, and (b) private owners who do not own more than three single family houses, do not use real estate brokers or agents, and do not use discriminatory advertisements

# Elements of a Reasonable Accommodation

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- (1) Tenant has a disability;
  - (2) Landlord/Housing Authority knows about disability;
  - (3) Reasonable accommodation may be necessary to afford tenant an equal opportunity to use and enjoy his or her dwelling;
- and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration

# Pets/ Service Animals

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals, even when a landlord's policy explicitly prohibits pets. Because emotional support and service animals are not "pets," but rather are considered to be more like assistive aids such as wheelchairs, the law will generally require the landlord to make an exception to its "no pet" policy so that a tenant with a disability can fully use and enjoy his or her dwelling.

# Questions?

