

**FEDERALLY SUBSIDIZED HOUSING**

**New York State Unified Court System  
2008 Summer Judicial Seminar  
June 27, 2008**

**Edward Josephson - Jennifer Levy  
South Brooklyn Legal Services  
105 Court Street  
Brooklyn, NY 11201**

## Table of Contents

I.	<u>Types of Federally Subsidized Housing</u>	1
II.	<u>Voucher Program: Rights and Responsibilities</u>	2
III.	<u>Voucher Program: Court Procedure</u>	6
IV.	<u>Voucher Program: Tenant Rights in Administrative Process</u>	9
V.	<u>Transfer Vouchers</u>	10
VI.	<u>Miscellaneous Voucher Issues</u>	12
VII.	<u>Project Based Subsidies</u>	13
VIII.	<u>Immigrants' Eligibility</u>	16
IX.	<u>Succession Rights</u>	16

I. Types of Federally Subsidized Housing

A. Section 8 Housing Choice Voucher Program: 42 U.S.C. 1437; 24 C.F.R. Part 982; HUD Guidebook 7420.10G

- Tenants receive federal subsidy administered by local agency (NYCHA, HPD or DHCR) for use in privately owned buildings. Tenants annually recertify income with the agency.
- Landlord signs lease and Section 8 Lease addendum with tenant, and Housing Assistance Payments Contract with the agency.
- Tenants' rent share is 30% of income, plus any excess above agency's "payment standard."
- Tenants have right to administrative hearing if agency seeks to terminate subsidy.
- Tenants may move and take subsidy to new apartment.
- NYCHA (but not HPD or DHCR) subsidies are governed by the First and Second Consent Decrees in Williams. The First Decree governs termination of tenant subsidies by NYCHA; the Second Decree governs eviction proceedings commenced against NYCHA Section 8 tenants.

B. Project Based Subsidies: 42 U.S.C. 1437. HUD Handbook 4350.3 applies to all programs below except Moderate Rehabilitation.

- HUD contracts directly with private owner to subsidize rents.
- Tenants recertify their income with the project management.
- Disputes over subsidy issues are resolved in court, not administrative proceeding.
- Tenants cannot take subsidy with them if they move.

## Types of Project Based Subsidies:

1. Project Based Section 8 (Moderate Rehabilitation, 24 C.F.R. Part 882; Substantial Rehabilitation, Part 881; New Construction, Part 880)
  - Tenants pay 30% of income as rent.
2. Section 236 (17 U.S.C. 1701, et seq.; 24 C.F.R. Part 236)
  - Tenants pay a “basic rent” not tied to tenant income. Contract rents are reduced to “basic rent” based on owner’s receipt of mortgage subsidy. Basic rents are generally unaffordable to low income tenants without Section 8 voucher or FEPS.
3. RAP and Rent Supplement (24 C.F.R. 236.701 et seq.)
  - These additional subsidies are available to 20 – 40% of tenants in Section 236 buildings. RAP tenants pay 30% of income; Rent Supplement tenants pay 30% of the apartment contract rent.

C. Public Housing (NYCHA): 24 C.F.R. Part 960

## II. Voucher Program: Rights and Responsibilities

### A. Landlords’ obligation to accept Section 8

- In April 2008, the City Council enacted Intro 61-A (Local Law 10 of 2008) which prohibits landlords from discriminating against prospective or current tenants based on their source of income. The statute prohibits landlords from refusing to rent to a prospective tenant because she wishes to use a Section 8 voucher, or from refusing to accept Section 8 subsidies on behalf of an existing tenant. The new law was enforced by the court in Rizzuti v. Hazel Towers, N.Y.L.J. April 2, 2008, p.27 c.1 (Sup. Ct. N.Y. Co.) The statute applies to buildings with 6 or more apartments, and to rent controlled units in any building. The statute also applies to smaller buildings (less than 6 units) if the landlord owns any other building with more than 5 units.
- In Rosario v. Diagonal Realty LLC, 8 N.Y.3d 755 (2007), the Court of Appeals ruled that Rent Stabilized landlords, and landlords who receive J-51 tax benefits, may not refuse to renew their tenants’ Section 8 contracts,

and that the RSL and J-51 laws were not preempted by federal statutes governing Section 8. See also, Cosmopolitan Assocs., LLC v. Fuentes, 11 Misc.3d 37 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2006) (where “landlord receives the benefits of the J-51 program, it may not avoid its obligation under the program to accept Section 8 subsidy payments on behalf of tenant.”); Kosoglyadov v 3130 Brighton Seventh, LLC, 18 Misc.3d 362, 852 N.Y.S.2d 624 (Sup. Ct. Kings Co. 2007) (J-51 landlord cannot refuse to accept applicant’s Section 8 voucher).

In unregulated apartments, landlords need not renew Section 8 contracts. In 1996, Congress repealed the requirement that Section 8 contracts be renewed except for good cause. 42 U.S.C. § 1437f(d)(1)(b)(ii) as amended by 104 P.L. 134 § 203, 110Stat. 1321- 281. See, Alawlaqi v. Kelly, 2001 WL 1602742, 2001 NY Misc. LEXIS 621 (App. Term 2d & 11<sup>th</sup> Jud. Dists) (no good cause needed to terminate tenancy after lease expiration). However, if the tenant has a Section 8 lease that requires renewal (usually because the tenant has been in the apartment for many years) the landlord must renew the lease. See Numme v. Lemon, 191 Misc.2d 133, 741 N.Y.S.2d 384 (App. Term. 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists. 2002).

B. Rent calculation: 24 C.F.R. Part 5

Voucher rents are equal to 30% of adjusted income plus the excess of the actual rent over the “payment standard,” which is set at 90 - 110% of the Fair Market Rent (FMR) set by HUD for each locality (in NYC, the payment standard = 100% of FMR, except that NYCHA allows 110% FMR who received Section 8 prior to July 2004). Adjusted income is gross income, minus \$480 per year for minor children, \$400 per year seniors or disabled household members. Other deductions from gross income are listed in 24 C.F.R. § 5.603 - .611.

Voucher holders may rent apartments above the payment standard, but the tenant is responsible for the excess. Tenants are prohibited from spending more than 40% of their income on rent at the time they sign their first lease, and then may/must pay all future increases.

Tenants must certify income and household composition on annual basis. 24 C.F.R. §§ 982.516; 982.551.

C. Tenant obligation to pay full rent

1. In any eviction proceeding against a Section 8 participant, the landlord may not seek the subsidy portion of the rent from tenant. Williams Second Consent Decree, ¶ 10(a).
2. Where suspension or termination of the subsidy results from the landlord's violation of the Section 8 contract, claims for the subsidy portion of the rent may also be barred under principles of equitable estoppel.

McNeill v. NYCHA, 719 F.Supp. 233 (S.D.N.Y. 1989) (landlords stayed from suing for suspended subsidy); Bravo Corp. v. Lewis, N.Y.L.J. March 24, 1999, p.26 c.1 (App. Term 1<sup>st</sup> Dep't) (Civil Ct cannot review NYCHA subsidy termination; tenant not liable where suspension was due to repairs); Santos v. Hendrickson, N.Y.L.J. February 1, 1993, p.34 c.4 (Yonkers City Ct) (can't charge tenant for suspended subsidy); Anthony v. Beamon, N.Y.L.J. April 18, 1990, p.25 c.5 (Dist. Ct. Nassau Co.) (same); Oddy v. Beamon, N.Y.L.J. February 4, 1992 p.25 c.6 (App. Term 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists) (termination of payments due to HQS no basis for holdover proceeding); P.J. Properties v. Correa, N.Y.L.J. August 7, 1996 p.21 (Yonkers City Ct.) (can't charge tenant for subsidy recouped for overpayment to other tenant); Fenimore Realty Co. v. Jones, January 16, 1991, p.21 (Civ. Ct Kings Co.) (landlord stayed from collecting subsidy amount).

3. Even where the Section 8 suspension or termination was not caused by the landlord, the landlord cannot collect the full contract rent in the absence of a new agreement that so provides.

Dawkins v. Ruff, 10 Misc.3d 88, 810 N.Y.S.2d 783 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2005)(vacating stip); Licht v. Moses, 11 Misc.3d 76, 813 N.Y.S.2d 849 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2006); Shickler v. Thorpe, N.Y.L.J. Feb. 27, 2002 (App. Term 9<sup>th</sup> and 10<sup>th</sup> Jud. Dists.); Parkmore Props v. Prasad, N.Y.L.J., Oct. 19, 1999 (App. Term 9<sup>th</sup> and 10<sup>th</sup> Jud. Dists); Rainbow Assoc. v. Culkin, 2003 WL 2004427, 2003 N.Y. Misc. LEXIS 392 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2003); Prospect Place HDFO v. Gaildon, 800 N.Y.S.2d 355 (App. Term 1<sup>st</sup> Dep't 2005); New Hempstead Terrace LLC v. Reeves, 18 Misc.3d 1113(A) (Dist. Ct. Nassau Co. 2008).

In Vincenzi v. Strong, 16 Misc.3d 1121(A), 847 N.Y.S.2d 905 (Civ. Ct. Bx. County 2007), the court held that the signing or deeming of a standard rent stabilized renewal lease did not constitute an "agreement" to pay the full contract rent because the renewal incorporated the "terms and

conditions” of the previous lease, which required the tenant to pay only her former Section 8 rent share. Cf., Kenmore Assoc., LP v. Burke, N.Y.L.J. March 13, 2008, p.26 c.3 (Civ. Ct. N.Y. Co.) (right to jury trial extends into rent stabilized tenancy after expiration of Section 8 contract).

Compare, D’Ambrosio v. Rivera, N.Y.L.J., Dec. 27, 2006 (Kings County Civ. Ct.), in which tenant was held responsible for full rent in renewal lease in unregulated apartment after NYCHA refused to approve the renewal amount. (Oddly, in this case, it appears that the landlord was seeking only the rent increase, not the Section 8 subsidy portion, which NYCHA may have continued to pay. Acceptance of the subsidy payments may well have precluded the landlord from demanding an increase in the tenant’s payments.)

- D. Good cause for eviction is required during lease term, or where grounds arose when lease was in effect, or where grounds “relate to the Section 8 tenancy.” Williams, ¶ 4. Landlord may terminate for serious or repeated violations of lease, criminal activity, tenant misconduct, or “other good cause *during the term of the lease*.” 24 C.F.R. § 982.310.

Sanchez v. Vierra, N.Y.L.J. November 12, 1997, p.29 c.5 (App. Term 2d & 11<sup>th</sup> Jud. Dists) (must plead cause for terminating Section 8 tenancy); Abbondandolo v. Lo Cicero, N.Y.L.J. January 10, 1992, p.25 c.1 (App. Term 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists) (failure to state good cause to terminate Sec. 8 lease mandates dismissal); DeFranco v. Pellicer, N.Y.L.J. July 7, 1987, p.14 c.2 (App. Term 2d & 11<sup>th</sup> Jud. Dists). But see, Victor v. Perez, N.Y.L.J. October 1, 1997, p. 25 (Civ. Ct. Bx Co.) (good cause not needed after lease expiration).

Landlord must give tenant notice with grounds for termination, and give agency copy of any eviction notice served on tenant. § 982.310(e). Compare, PTV v. Mesa, N.Y.L.J. March 1, 2000 (Civ. Ct. Bx Co.) (federal regs do not require service of nonpayment petition on DHCR as administering agency).

Nonpayment of rental subsidy is not grounds for termination of tenancy. 982.310(b)

- E. Housing Quality Standards (HQS)

Federal HQS are set out in 24 C.F.R. § 982.401. If landlord fails to maintain apartment according to HQS, Housing Agency may terminate, suspend, or reduce subsidy, or terminate the HAP contract. § 982.404. Housing Agency must inspect each unit annually. § 982.405. Landlord is precluded from charging tenant for unpaid subsidy suspended due to HQS violations. Williams Second

Consent Decree, ¶ 10.

Rent abatements are calculated as a percentage of the full contract rent, not the tenant's share. See also, Committed Community Assocs. v. Croswell, 171 Misc.2d 340; 659 N.Y.S.2d 691 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 1997), aff'd, 250 A.D.2d 845, 673 N.Y.S.2d 708 (2<sup>nd</sup> Dep't 1998). See also, Penny Point Park Apartments v. Barnes, 2007 WL 3289133 (N.J. Super. A.D. 2007) (abatement in rent equal to the proportionate loss of habitability is an effective remedy which may be afforded to tenants of public housing); Anderson v. Abidoye, 824 A.2d 42 (D.C. App. 2003) (tenant receives full abatement unless housing agency interposes claim); Cruz Management Co., Inc. v. Wideman, 417 Mass. 771 (1994) (damages calculated on full rent)

F. Subsidy Terminations: Tenant Breach of Lease

The Housing Agency may terminate the subsidy for tenant lease violations, as well as violations of Section 8 tenant obligations. 24 C.F.R. § 982.552. HA may also terminate for violent or drug related crimes, including drug possession. 983.553. HA may terminate subsidy based on nonpayment of tenant rent share. 982.552(a)(6). HA may consider mitigating circumstances. 982.552(c).

III. Voucher Program: Court Procedure

The Second Williams Partial Consent Decree, entered in 1995, governs procedure when landlord seeks to commence eviction proceedings against a Section 8 voucher holder, where the voucher is administered by NYCHA, but not by HPD or DHCR.

Failure to comply with the Williams procedures is grounds for dismissal of proceeding. Dawkins v. Ruff, 10 Misc.3d 88, 810 N.Y.S.2d 783 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2005); Cashmere Realty Corp. Hersi, N.Y.L.J. Dec. 28, 2005 (Civ. Ct. N.Y. Co.); Erskine v. Bengazi, N.Y.L.J. Dec. 3, 1991 p.30 c.6 (App. Term 2d & 11<sup>th</sup> Jud. Dists); Fishel v. Walker, N.Y.L.J. Oct. 18, 1985 p.16 c.3 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists); Michael M. Lee & Co. v. Wilson, N.Y.L.J. June 28, 2002, p.24 (Civ. Ct. Queens Co.); Williams v. Blacks, N.Y.L.J. December 26, 2001, p.17 (Civ. Ct. Queens Co.) (NYCHA objects to holdover commenced after HQS suspension); Jennie Realty v. Sandberg, 125 Misc.2d 28, 480 N.Y.S.2d 268 (App. Term 1<sup>st</sup> Dep't 1984); Alawlaqi v. Kelly, 175 Misc.2d 570, 669 N.Y.S.2d 152 (Civ. Ct. Kings Co. 1997). New certification required for each proceeding. Mau v. Stapleton, 136 Misc.2d 793 (Civ. Ct. Kings Co. 1987).

In 433 West Assoc. v. Murdock, 276 A.D.2d 360, 715 N.Y.S.2d 6 (1<sup>st</sup> Dep't 2000) the Appellate Division, citing Jennie Realty, reaffirmed that pleading Section 8 status and compliance with Williams were "essential elements" to the landlord's prima facie case

and, that “noncompliance therewith constituted defenses to the holdover petition.” However, the court held that these defenses were not “jurisdictional” and therefore were waived due to the failure of tenant’s counsel to raise them. See, Sultanik v. Byrd, 15 Misc.3d 1141(A), 841 N.Y.S.2d 823 (Justice Court Westchester Co. 2007) (“while [non-] jurisdictional defenses, such as the landlord’s failure to plead and comply with Section 8 federal regulations, may be waived by the tenant, there was no waiver here.”)

A. Certification procedure applies in:

- Nonpayment cases
- Holdover cases “arising out of or relating to termination or suspension of subsidy or Housing Assistance Payments Contract.” ¶ 6.
- Procedure does not apply to holdover cases unrelated to Section 8. However, even where certification is not required, the landlord must serve any notice of termination on NYCHA and serve copies of the petition and notice of petition on NYCHA. ¶ 6(b).
- Certification is also not required when tenant is no longer a program participant. 1543-75 Nostrand Assoc v. Simpson, N.Y.L.J. Oct. 1, 1995, p.31 c.1 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists) (Williams does not apply where subsidy termination not due to failure on part of landlord, e.g. recertification problem); Vanderveer Estates v. Brown, N.Y.L.J. Sept. 5, 2001, p.20 c.1 (Civ. Ct. Kings Co.) (same).

B. Certification Procedure, ¶ 7

1. Landlord must complete a “certification” form setting forth the basis for eviction, e.g. rent breakdown in nonpayment cases, good cause in holdovers, and send it to NYCHA.
2. Certification must be made 25 days before any eviction proceeding commenced (30 days if by mail to NYCHA). Tenant may respond to certification within 10 days.
  - (a) Landlord certifies that it will not commence a nonpayment proceeding against the tenant for the subsidy portion of the rent.
  - (b) NYCHA must object within 20 days to the certification in 5 situations (e.g. no good cause, landlord seeks NYCHA rent share).
  - (c) Landlord may not commence an eviction case before 25 days (or

30 days) have elapsed since notice to NYCHA, unless landlord has already received NYCHA's response.

- (d) Landlord state in the petition the reasons given to NYCHA for the eviction, whether NYCHA has accepted, objected to, or failed to respond to the certification, and that the landlord does not seek to recover the subsidy portion of the rent from tenant. ¶ 16

3. Landlord must name and serve NYCHA as a necessary party where:

- (a) NYCHA objects to certification
- (b) Landlord seeks to recover from NYCHA the subsidy portion of the rent, or where landlord has certified a holdover. Failure to join NYCHA is grounds for dismissal. ¶ 12

4. Where landlord proceeds in violation of Williams, NYCHA will respond by notifying the court and the parties in writing that the landlord is proceeding improperly and will join in tenant's motion to vacate judgment. ¶ 17

5. Special procedure for handling rent-redetermination disputes is set forth in ¶ 19 of the Consent Judgment: applies when tenant asks for recalculation or conference or hearing before commencement of eviction case. NYCHA will expedite the rent determination hearing and will render a decision w/in 30 days. NYCHA will then participate in the eviction case as witness or party. Until NYCHA renders a decision, the housing court may decide the tenant's proper share of rent. Once NYCHA renders a decision, that decision is binding on the Court.

6. Civil court has no power to direct NYCHA to issue subsidy. Fieldbridge v. Champion, N.Y.L.J. March 26, 1993, p.24 c.5 (App. Term 2d & 11<sup>th</sup> Jud. Dists); Nostrand Assoc. v. Flowers, N.Y.L.J. April 21, 1994 p.26 c.2 (App. Term 2d & 11<sup>th</sup> Jud. Dists); Sobers v. Baker, N.Y.L.J. April 15, 1998, p.25 (Civ. Ct. Kings Co.)

C. Pleading Section 8 status of tenancy

In 433 West Assoc. v. Murdock, 276 A.D.2d 360, 715 N.Y.S.2d 6 (1<sup>st</sup> Dep't 2000) the Appellate Division held that pleading Section 8 status was an "essential element" of the landlord's case, and that noncompliance constituted a defense to the petition. (The court also found that tenant's counsel had waived the defense). However, other cases have held that failure to plead regulatory status is amendable in the absence of prejudice to the tenant. Coalition Houses L.P. v.

Bonano, 12 Misc.3d 146(A) (App. Term 1<sup>st</sup> Dep't 2006); 17th Holding L.L.C. v. Rivera, 195 Misc.2d 531, 758 N.Y.S.2d (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 2002) (failure to plead rent regulatory status amendable); Paikoff v. Harris, 185 Misc.2d 372, 713 N.Y.S.2d 109 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists 1999) (failure to state regulatory status is amendable, at least where tenant was apprized of issue in prior litigation); Villas of Forest Hills Co. v. Lumberger, 128 A.D.2d 701, 513 N.Y.S.2d 116 (2<sup>nd</sup> Dep't 1987).

Most recently, the Appellate Term sustained dismissal of a petition for failure to plead existence of regulatory agreement with City. Volunteers of America v. Almonte, 17 Misc.3d 57, 847 N.Y.S.2d 327 (App. Term 2d & 11th Jud. Dists 2007). See also, Todman v. Thompson, 2003 WL 21960005 (App. Term 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists) (petition dismissed for failure to plead Martin Act); Kew Gardens Hills Apt. Assoc., L.P. v. Jeffers, 2003 WL 21700009 (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Jud. Dists) (same).

Older cases have held that failure to plead Section 8 status is grounds for dismissal of the petition. Liberman v. Schmerler, N.Y.L.J. August 4, 1999 p. 21 (Civ. Ct. Kings Co.); Agard v. Cajigas, N.Y.L.J. January 29, 1997, p.28 c.6 (Civ. Ct. Kings Co.), Homestead Equities Inc. v. Washington, 176 Misc. 2d 459; 672 N.Y.S.2d 980 (Civ. Ct. Kings Co. 1998); 2114 Realty LLC v. Carrington, N.Y.L.J. December 16, 1998, p.21 (Civ. Ct. Kings Co.); CABS H.D.F.C. Inc., v. Maldonado, October 25, 1995 p.21 (Civ. Ct. Kings Co.); McKenzie v. Linnen, September 14, 1994, p.21 (Civ. Ct. Kings Co.) (must state

which Section 8 program governs tenancy); Washington Plaza Assocs. v. Morgan, N.Y.L.J. February 21, 1990, p.26 c.3 (Civ. Ct. Bx Co.).

#### IV. Voucher Program: Tenant Rights in Administrative Process

##### A. Federal notice and hearing requirements

The Housing Agency must give written notice of proposed subsidy termination or change in rent share. 24 C.F.R. § 982.555©. The Housing Agency must give opportunity for informal hearing prior to termination of subsidy, and subsequent hearing where rent changes. 24 C.F.R. § 982.555(a).

Agency decisions terminating tenant subsidies will be annulled where the agency does not follow its own procedures and federal law.

Green v. Hernandez, N.Y.L.J. March 16, 2005 (Sup. Ct. N.Y. Co.); Almeida v. Hernandez, 9 Misc.3d 986 (Sup. Ct. Kings Co. 2005); Matos v. Hernandez, 10 Misc.3d 1068(A) (Sup. Ct. N.Y. Co. 2005); Quesada v. Hernandez, N.Y.L.J., Nov. 16, 2004, p.19, c.3 (Sup.Ct. N.Y. Co.); Almonte v. Roberts, N.Y.L.J. December 1, 1999 (Sup. Ct. Queens Co.)

##### B. First Williams Consent Decree: governs termination of subsidy by NYCHA (but **not** HPD and DHCR vouchers)

1. Notice Provisions: prior to terminating a subsidy, NYCHA must send three warning notices stating the grounds for termination, giving the tenant time to correct the problem and advising the tenant of her right to an administrative hearing. The first notice is a warning letter. The second notice is called a “T-1” or “Notice of Termination.” The third notice is a “T-3” or “Notice of Default.” (There is no “T-2.”) See, Fair v. Finkel, 284 A.D.2d 126, 727 N.Y.S.2d 401 (1<sup>st</sup> Dep=001) (termination in violation of Williams procedure is a nullity).

2. Hearings: tenants are entitled to a hearing before a Housing Authority “impartial” hearing officer. If they request a hearing within 45 days of issuance of the “T-3” Notice, the subsidy must continue pending the hearing. Tenants also may request a post-termination hearing without

continuing subsidy, even after expiration the 45 day period.

C. NYCHA reinstatement policy

Current NYCHA policy is to reinstate subsidy retroactively if requested within 1 year of termination and proper notice cannot be documented. NYCHA will reinstate prospectively if proper notice was given, the tenant requests reinstatement within 6 months of termination and there was no previous termination. After 6 months, prospective reinstatement may be granted on a discretionary basis. LHDs 01-14, 01-15, 02-44, 06-12.

D. HPD's procedures: The termination procedures are laid out in HPD's Administrative Plan, Chapter 16. They give recipients an opportunity for a conference and then, if they are unsuccessful at the conference or they don't opt for a conference, they may request a hearing. The hearing must be requested within 21 days of the notice of termination.

V. Transfer Vouchers

A. If tenant chooses to move or is forced to move out of the leased unit, tenant "may move to another unit with continued assistance so long as the family is complying with program requirements." 24 C.F.R. § 982.1(b)(2)

B. Federal regulations mandate issuance of transfer voucher where the lease has terminated, or the landlord has commenced an eviction proceeding or served a notice to vacate or terminate the tenancy. 24 C.F.R. § 982.314(b).

A Housing Agency may deny the participant permission to move only if it does not have sufficient funding to provide continued assistance to the participant, or if has other grounds for denial or termination of assistance pursuant to § 982.552, or pursuant to a policy limiting tenants to one move per year. 24 C.F.R. § 982.314(e).

D. NYCHA Policy: Despite the regulations, NYCHA effectively denies tenants transfer vouchers except in "emergencies," which include the commencement of holdover proceedings. NYCHA policy is to approve transfers within 2 weeks of receipt of termination notice or petition and to issue transfer vouchers in 6 weeks (total – 4 weeks from approval) if tenant has received the holdover petition. LHD 02-6, reaffirmed in LHD #07-16. This policy does not apply to lease violation holdovers.

HQS Suspensions: Tenants whose subsidies are suspended due to substantial HQS violations are generally eligible for emergency transfer vouchers, and all tenants will have emergency status after 6 months of suspension. After one year of suspension, tenants will not be eligible to transfer, but the subsidy can be reinstated in place upon correction of the HQS violations. LHDs # 06-8, 06-17, 07-19.

- D. HPD Policy: HPD will grant a transfer request unless: 1) the family has violated a family obligation; 2) the family owes HPD money; or 3) the family owes the landlord money. These grounds can be waived. (Admin. Plan 2006, p. 14-1) If a tenant is “evicted for a serious violation of the lease,” he must be terminated from the Program. “Evicted” includes moving prior to the conclusion of court proceedings if HPD determines “based on available evidence” that the cause for the proceeding was serious violations of the lease. Non-payment of rent is a serious violation of the lease. (Admin. Plan 2006, p. 15-1–15-4).
- E. Victims of Domestic Violence: NYCHA LHD # 06-14 provides that victims of domestic violence not involving a felony can receive an emergency transfer if they have a current order of protection and proof that an incident occurred in the last 12 months and an advocacy letter from an approved social services agency. For victims of domestic violence involving a felony, they can receive an emergency transfer if they have a current order of protection (or a police or domestic violence report showing a felony code) and a letter from an approved social services agency. Victims of domestic violence will need to get a lease release from their landlord unless they submit proof that they no longer occupy their apartment.
- The new HAP contract also allows for bifurcation of lease and assistance if there is evidence of domestic violence. If both victim and perpetrator are authorized members of the household, PHA may bifurcate the assistance so that the victim receives assistance but not the perpetrator. NYCHA takes the position that it can, but need not, institute formal termination proceedings against the perpetrator. LHD # 07-17.

Neither HPD nor DHCR have issued policies as explicit as NYCHA’s, but both are required to use the new HAP contract and tenancy addendum, and both agencies, in their administrative plans, state that domestic violence is a factor to consider in determining whether/how assistance will continue if the family splits up.

## VI. Miscellaneous voucher issues

### A. Foreclosure

Earlier cases holding that a Section 8 tenancy is not terminated by foreclosure appear to have been based on the provisions of the Section 8 lease in contract then in use, and the “good cause” requirement incorporated therein, based on a statutory provision now repealed. Federal Home Loan Mortgage Corp. v. Franklin, 167 Misc.2d 800, 635 N.Y.S.2d 1006 (Civ. Ct. Richmond Co. 1995); German v. Federal Home Loan Mortgage Corp., 899 F.Supp. 1155 (S.D.N.Y. 1995). *Contra*, Atlantic Mortgage and Investment Corp. v. Pervis, 21 Conn. L. Rptr. 619, 1997 WL 866672 (Conn. Super. Ct. 1997).

B. Disability-related issues

Federally assisted programs “must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement” as “non-handicapped persons.” 24 C.F.R. § 8.4(b)(2). The Housing Agency must approve up to a 20 percent increase in the payment standard when necessary to accommodate disabled tenants. 24 C.F.R. § 982.506. The Housing Agency must also extend life of a voucher to accommodate disabled tenants. 24 C.F.R. § 982.303(b).

See also, Freeland v. Sisao Realty LLC, 2008 WL 906746 (E.D.N.Y. 2008) (landlord may be required to accept voucher as accommodation to disability); 302 Eastern Corp. v. Pack, N.Y.L.J. June 20, 2001 (Civ. Ct. Kings Co.) (nonpayment stayed pending tenant’s ADA claim that NYCHA terminated subsidy without accommodating her disability); Bell v. Martinez, N.Y.L.J. March 8, 2000 (Sup. Ct. N.Y. Co.) (tenant’s hospitalization excuses failure to recertify); Crossroads Apts v. Laboo, 152 Misc.2d 830, 578 N.Y.S.2d 1004 (City Ct. Rochester 1991) (disability may justify waiver of no pet clause).

But see, Salute v. Stratford Greens, 136 F.3d 293 (2d Cir. 1996) (disabled apartment applicants may not compel prospective landlord to accept their subsidies as accommodation under the FHA).

VII. Project Based Subsidies

A. Regulatory provisions

HUD Handbook 4350.3 governs most project based units. Most recent Handbook may be found at <http://homepages.nyu.edu/~swl2/4350.3-CHG-2.pdf>.

HUD Handbook provisions are mandatory upon landlords. Thorpe v. Housing Authority of Durham, 383 U.S. 268; Staten v. Housing Authority of Pittsburgh, 469 F.Supp. 1013 (E.D. Pa. 1979); Green Park Assoc. v. Inman, 121 Misc.2d 204, 467 N.Y.S.2d 500 (Civ. Ct. N.Y. Co. 1983); Management Insurance Systems v.

Harris, 1979 U.S. Dist. LEXIS 10632 (S.D.N.Y. 1979). Contra, Williams v. Hanover Housing Auth., 871 F.Supp. 527 (D. Mass. 1994) (interpretive, as opposed to substantive rules not binding); St. Nicolas Apts. v. U.S., 943 F. Supp. 966 (C.D. Ill. 1996).

B. Civil Court jurisdiction

The Civil Court has jurisdiction to dismiss landlord claims for failure to comply with Handbook provisions. Lower East Side I Assoc. v. Estevez, 6 Misc.3d 632, 787 N.Y.S.2d 636 (Civ. Ct. NY Co. 2004) (failure to provide such information as office address, office hours and contact person required dismissal of this proceeding). 1199 Housing Corp. v. McCartney, N.Y.L.J., January 28, 1997, p. 25, c. 3 (App. Term, 1<sup>st</sup> Dep't) (Court has jurisdiction to decide propriety of landlord's retroactive revocation of Federal rent subsidy); Fulton Park v. Adams, N.Y.L.J. April 5, 2000 (Civ. Ct. Kings Co.) (same); Bedford Gardens v. Rosenberg, N.Y.L.J. March 27, 1998, p.31 c.2 (App. Term 2d & 11<sup>th</sup> Jud. Dists) (improper notice mandates dismissal of nonpayment proceeding); D.U. Third Realty Co. v. Murphy-Young, N.Y.L.J. March 15, 1995, p.28, c.5 (Civil Court, Kings Co.) (landlord cannot bring nonpayment if Handbook notices are not sent); Sutter Houses Assoc. v. French, N.Y.L.J. April 5, 1988, p.17 c.2 (Civ. Ct. Kings Co.); (defective notice mandates dismissal of nonpayment); Central Bklyn Devel. Corp. v. Copeland, 122 Misc.2d 726, 471 N.Y.S.2d 989 (Civ. Ct. Kings Co. 1984) (failure to comply with notice requirements mandates dismissal); Fifty First Capitol Assoc. v. Jordan, N.Y.L.J. September 27, 1984 (App. Term 1<sup>st</sup> Dep't), aff'd, 124 A.D.2d 1079.

C. Rent calculations

1. Section 8 programs: (e.g. Substantial Rehab, New Construction, Moderate Rehab): rent is 30 percent of adjusted income
2. Rent Supplement: rent is greater of 30 percent of adjusted income, or 30 percent of contract rent
3. Section 236: tenant pays greater of 30 percent of adjusted income or

“basic rent.” Basic rents are based on management costs reflecting subsidized mortgage, but are not related to tenant income. Basic rents are generally more than double the welfare shelter allowance. Section 236 rents therefore do not decrease when tenants’ income declines. Generally, 20 - 40 percent of Section 236 units also receive a Rent Supplement subsidy, made available through a waiting list maintained by the project management. Section 236 tenants may also receive portable Section 8 subsidies through NYCHA, HPD or DHCR.

D. Recertification and subsidy termination

Landlord must provide the tenant with four notices prior to recertification. 1) Initial Notice: at annual recertification; 2) First Reminder Notice: 120-90 days prior to recertification date; 3) Second Reminder Notice: 90-60 days prior to recertification date; 4) Third Reminder Notice: 60-30 days prior to recertification date. Owner is required to keep records of notices

If the tenant fails to recertify prior to the annual recertification date, the owner may suspend the subsidy and charge the tenant market rent as of the annual recertification date. If tenant is reinstated, the subsidy will not be retroactive unless the tenant can prove extenuating circumstances. HUD Handbook 4350.3, Section 7-8.

Fraud is grounds for termination of the tenancy, but not grounds for charging market rent. Fraud is defined as deliberate deceit. Errors arising from misunderstanding or other unintentional conduct are not fraud, and can be corrected by payment of undercharges. § 5-18, 5-19. Starrett City v. Hamilton, N.Y.L.J. February 21, 1991 p.27 c.6 (App. Term 2d & 11<sup>th</sup> Jud. Dists) (misstatement not fraud where doesn’t lead to lower rent share).

E. Termination of Tenancy

A ten day notice is required. Handbook, Ch. 8(B)(2).

Landlord cannot maintain non-payment proceeding for *de minimus* errors in recertification that don’t amount to fraud. Further, in the absence of fraud, there is no cause to maintain a holdover. Remeeder HDFC v. Robertson, 16 Misc.3d 1133(A), 847 N.Y.S.2d 904 (Civ. Ct. Kings Co. 2007).

Drug-Related Evictions: Under Rucker and the Anti-Drug Abuse Act of 1988, a single instance of drug-related criminal activity committed by a guest or household member can be cause for eviction, even if that activity is restricted to personal use. Maria Estela I Associates v. Camareno, Index No. L&T 42595/05 (Bx Co. Civ. Ct., Aug. 16 2006) (Judge Doherty dismissed the federal drug claims

in a holdover based on the fact that the tenant's lease did not contain provisions stating that drug-related conduct would be cause for eviction.)

F. Opt-outs

In the absence of contrary language in regulatory agreements or local law, project based Section 8 landlords may decline to renew their contracts after giving one year's notice to the tenants and to HUD. 42 U.S.C. § 1437f(c)(8)(A).

Upon termination of the project based contract, tenants will be issued "enhanced" Section 8 vouchers which they use in their current apartments, or to transfer. 42 U.S.C. § 1437f(t)(1)(B). Landlords are obligated to accept the enhanced vouchers. Estevez v. Cosmopolitan Assoc. LLC, 2005 WL 3164146 (E.D.N.Y. 2005); Jeanty v. Shore Terrace Realty Ass'n, 2004 WL 1794496 (S.D.N.Y. 2004).

The assisted family will pay as rent either 30 percent of income or the rent paid on the date of conversion, whichever is greater. Thus, Section 236 basic rent tenants will not have their rent reduced to Section 8 levels. However, if the tenant's income declines by 15% after the date of conversion, the rent is reduced to the greater of the percentage of income paid on the conversion date, or 30 percent of income. 24 U.S.C. § 1437f(t)(1)(D).

Under a new HUD policy, tenants in apartments too large for their family size may remain in their apartments without a rent increase until an appropriately sized apartment becomes available. PIH-2008-12, March 2008 (available on probono.net). Before this, after one year, overhoused families would have to pay the difference between their current rent and the subsidy paid for the appropriate apartment size.

In Townhouse West, LLC v. Williams, 855 N.Y.S.2d 332 (Civ. Ct. N.Y. Co. 2008), the court held where a landlord seeks rent unpaid due to delays in issuance of the enhanced voucher subsidy by NYCHA, the Williams consent decree will apply.

VIII. Immigrants' eligibility

Restrictions on assistance to non-citizens are set forth in 24 C.F.R. §§ 5.500 et seq.

- E. Eligible immigrants: qualified alien status: lawful permanent resident, refugee, asylee, parolee or granted withholding of deportation under amnesty. Households where all family members meet the immigration criteria will receive the full subsidy for their household size, if otherwise eligible.

- B. Mixed Households: Families which contain some eligible household members and some ineligible household members are considered a mixed household. Mixed households entitled to assistance after November 29, 1996 will receive a prorated grant based on the number of eligible members. Tenants residing in housing and receiving assistance on or before November 29, 1996 were entitled to continued assistance, i.e. a fully subsidized rent without any adjustments to reflect the presence of undocumented persons in the household.

Rents are prorated by the number of eligible family members. For example in a family of five if there are 3 eligible then that family would receive a benefit of three fifths or 60% of the full subsidy for which they would otherwise be eligible.

IX. Succession rights:

- F. Voucher Program:

NYCHA allows the following family members to request permanent permission to join the household: spouse or registered domestic partner; dependent children of spouse or registered domestic partner; an adult legally adopted; child under 18 not currently residing in apartment. Other family members may request conditional or temporary status. Family members who have resided in the household for 1 year after receiving permanent permission are entitled to succeed to the voucher. LHD # 07-22.

HPD will allow a remaining family member to succeed to the subsidy if he joined the household with HPD's permission, appeared on an income certification, and resided in the household for six months. HPD Administrative Plan, Sept. 2007, p. 5-4.

Evans v. Franco, 93 N.Y.2d 823, 687 N.Y.S.2d 615 (1999), held that remaining family members of holders of portable Section 8 vouchers could not succeed to the subsidy if they were not listed on income recertification forms. The Court reasoned that 24 C.F.R. § 982.551 requires participants to obtain approval from NYCHA prior to adding anyone to their household composition.

- G. Project Based Programs:

2013 Amsterdam Ave. Hous. Assoc. v. Wells, 10 Misc.3d 142A (App. Term 1<sup>st</sup> Dep't 2005) granted succession rights based on evidence that the successor actually lived in apartment for 2 yrs before prime tenant's death, citing Manhattan Plaza, a Mitchell-Lama case. Upaca Site 7 Assoc. v. Hunter-Crawford, 12 Misc.3d 1154(A), 819 N.Y.S.2d 213 (Civ. Ct. NY Co.) followed Wells and held that evidence of co-habitation will result in a finding of succession despite the successor's absence on income recertifications. Valley Dream Hous. Co. v.

Schmidt, 16 Misc.3d 1138(A) (Dist. Ct. Nassau County 2007) also followed Wells.

However, Manhattan Plaza Assoc. v. DHPD, 8 A.D.3d 111 (A.D. 1<sup>st</sup> Dep't 2004), cited in Wells, relied on since amended City Mitchell-Lama regulations saying that absence from income affidavits only created a presumption against co-occupancy. The court held that HPD did not violate federal law by opting to permit succession of persons not on the affidavits. However, current Mitchell-Lama regulations require listing on affidavits.

Moreover, in Schorr v. New York City Dept. of HPD, 10 N.Y.3d 776 (2008), the court held that HPD could not be estopped from denying succession rights to family member not listed on income forms.

It is therefore unclear whether Wells represents a permanent departure from the rule set forth in Davidson 1992 Associates v. Corbett, 190 Misc.2d 813, 738 N.Y.S.2d 813 (App. Term 1<sup>st</sup> Dep't 2002) that applied Evans to project based Section 8; (see also, Sunset Housing Assoc. v. Caban, N.Y.L.J. November 28, 2001, p.17 (Civ. Ct. Kings Co.); and Pinetown Houses Co. v. Andujar, N.Y.L.J., Oct. 25, 2006 (Dist. Ct. Nassau Co.)), or whether the Appellate Terms will adhere to Wells and its predecessors: Tri-Block Associates v. Reid, N.Y.L.J. May 3, 2000, p.30 c.6 (Civ. Ct. Kings Co.); Greene Ave. Assoc. v. Reape, 182 Misc. 2d 379; 697 N.Y.S.2d 913 (Civ. Ct. Kings Co. 1999); President Arms Apartments v. Wilson, N.Y.L.J. April 23, 1997, p.29 c.2 (Civ. Ct. Kings Co.); Westbeth Corp. v. Castagna, N.Y.L.J. June 19, 1996, p.28 c.6 (Civ. Ct. N.Y. Co.); Tri-Block Associates v. Cardona, N.Y.L.J. October 2, 1996, p.27 c.1 (Civ. Ct. Kings Co.); NSA North Flatbush Associates v. Mackie, 166 Misc.2d 446, 632 N.Y.S.2d 388 (Civ. Ct. N.Y. Co. 1995); Rivlin House Associates v. Estate of Brown, N.Y.L.J. September 20, 1991, p.21 c. 2 (App. Term, 1<sup>st</sup> Dep't); Riverview Development Co. v. Samuels, N.Y.L.J. October 2, 1991, p.27 c.2 (Civ. Ct. Bx. Co.); Church Home Associates v. Bostick, N.Y.L.J., September 19, 1990, p.21 c.6 (Civ. Ct. N.Y. Co.); Morrisania II Associates v. Harvey, 139 Misc.2d 651, 527 N.Y.S.2d 954, 961 (Civ. Ct. Bx. Co. 1988).

Inclusion on recertification forms is not sufficient to establish succession rights in absence of other proof of residence. Hochhauser v. City of New York Dept. of HPD, 48 A.D.3d 288, 853 N.Y.S.2d 22 (1<sup>st</sup> Dep't 2008).

Helpful Websites:

[www.hudclips.org](http://www.hudclips.org): HUD documents - all statutes, regulations, handbooks, notices  
[www.hud.gov/local/nyn](http://www.hud.gov/local/nyn): HUD New York Region Website  
[www.nhlp.org](http://www.nhlp.org): National Housing Law Project - latest developments in subsidized housing  
[www.povertylaw.org](http://www.povertylaw.org): National Center on Poverty Law (formerly Clearinghouse for Legal Services)  
[www.wnylc.com](http://www.wnylc.com): Western New York Law Center  
[www.probono.net](http://www.probono.net): housing library includes Section 8 materials including consent decrees

#### INFORMATION AND RESOURCES

**NYCHA:** Housing Court Contact Assistants:  
Manhattan: Marilyn Wilson 917 492 8960  
Brooklyn: Tracy Hooper 718 250 9896  
Bronx: Leonard Foxson 718 329 7774  
Queens: Tempest Sanders 718 393 7440  
Staten Island: Barry Birnbaum 718 556 2992

**HPD:** Section 8 Tenant Information 917 286 4300

**DHCR:** Section 8 Information 212-480-6460

## FEDERALLY SUBSIDIZED HOUSING

**Judith Goldiner**  
**[jgoldiner@legal-aid.org](mailto:jgoldiner@legal-aid.org)**  
**212 577 3332**

### AGENDA

10:30-10:40	Introductions	10 minutes
10:40-10:50	Types of Federally Subsidized Housing	10 minutes
10:50-11:10	Voucher Program: Rights and Responsibilities	20 minutes
11:10-11:25	Voucher Program: Court Procedure	15 minutes
11:25-11:35	Voucher Program: Tenant Rights in Administrative Process	10 minutes
11:35-11:45	Transfer Vouchers	10 minutes
11:45-12:00	Miscellaneous Voucher Issues	15 minutes
12:00-12:10	Break	10 minutes
12:10-12:20	Project Based Subsidies	10 minutes
12:20-12:30	Immigrants' Eligibility	10 minutes
12:30-12:40	Succession Rights	10 minutes
12:40-1:00	Questions and Answers	20 minutes