

Old 24 CFR 982.455 (pre-1999)

§ 982.455 Termination of HAP contract: Expiration and opt-out.

(a) Automatic. The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

(b) Owner termination notice. (1) Law. Paragraph (b) of this section implements Section 8(c) (9) and (10) of the 1937 Act (42 U.S.C. 1437f(c) (9) and (10)) for the tenant-based Section 8 programs.

(2) Definitions. The following terms are defined for purposes of this section:

(i) Termination. Termination of the HAP contract because of:

(A) Owner opt-out; or

(B) Expiration of the HAP contract.

(ii) Opt-out. Owner's decision to terminate tenancy of an assisted family for "other good cause" that is a business or economic reason for termination of tenancy. See § 982.310 (a)(3) and (d).

(iii) Expiration. "Expiration" means the occurrence of either of the following events:

(A) Automatic termination of the HAP contract when 180 calendar days have passed since the last housing assistance payment.

(B) An HA determination, in accordance with HUD requirements, that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program.

(3) Owner termination notice. Not less than 90 calendar days before a termination of a tenant-based HAP contract because of an opt-out or expiration, the owner must provide written notice of the termination to the HUD field office, the HA and the family. The owner's notice must specify the reasons for the termination. The notice must contain sufficient detail to enable the HUD field office to evaluate whether the termination is lawful and whether there are additional actions that can be taken by HUD to avoid the termination. The owner's notice must state that the owner and the HA may agree to a renewal of the HAP contract, thus avoiding the termination.

(4) HUD review of owner termination notice. (i) The HUD field office must review the owner's notice, and consider whether there are additional actions which should be taken to avoid the termination.

(ii) For a unit assisted under the certificate program:

(A) The HUD field office will determine whether the HA has properly adjusted the contract rent in accordance with the HAP contract and HUD regulations. If not the HUD field office will require the HA to make a proper adjustment of the contract rent in accordance with the HAP contract and the regulation.

(B) In case of termination because of an opt-out, the owner must be offered the opportunity to enter into a new HAP contract (and assisted lease) at the maximum initial contract rent allowed (within the

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23861, Apr. 30, 1998; 64 FR 26647, May 14, 1999; 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010]

§ 982.453 Owner breach of contract.

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-related criminal activity.

(6) If the owner has committed any violent criminal activity.

(b) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999; 64 FR 56914, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.454 Termination of HAP contract: Insufficient funding.

The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999]

§ 982.455 Automatic termination of HAP contract.

The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

[64 FR 26647, May 14, 1999]

§ 982.456 Third parties.

(a) Even if the family continues to occupy the unit, the PHA may exercise any rights and remedies against the owner under the HAP contract.

(b)(1) The family is not a party to or third party beneficiary of the HAP contract. Except as provided in paragraph (b)(2) of this section, the family may not exercise any right or remedy against the owner under the HAP contract.

(2) The tenant may exercise any right or remedy against the owner under the lease between the tenant and the owner, including enforcement of the owner's obligations under the tenancy addendum (which is included both in the HAP contract between the PHA and the owner; and in the lease between the tenant and the owner.)

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EAST BAY
COMMUNITY
LAW CENTER

February 6, 2013

Via First Class Mail and Facsimile

fax: (510) 528-1000

RE: _____

Dear _____

I write in response to your 90 Day Notice, dated December 14, 2012, which instructs _____ that you intend to opt out of the section 8 program for his building, _____ street, in Berkeley, where he has resided for 20 years. However, because _____'s tenancy has not terminated, you cannot lawfully opt out of the section 8 program.

As you know, the section 8 program is overseen at the federal level, by the department of Housing and Urban Development (HUD). Before 1999, there was a provision in the Code of Federal Regulations (24 C.F.R. § 982.455(b)) authorizing opt-outs by owners and setting forth a procedure for doing so. Indeed, before 1999, the title of § 982.455 was "Termination of HAP contract: Expiration and opt-out." I have enclosed a copy of the pre-1999 version of 24 C.F.R. § 982.455 for your convenience.

However, in 1999 the law was changed, completely abolishing the opt-out provision along with all of the procedures set forth in subsection (b). The entirety of 24 C.F.R. § 982.455(b) was removed from the Code of Federal Regulations, and the title of § 982.455 was changed to "Automatic Termination of HAP contract". All that remains of § 982.455 is the language in (a), which is unchanged from the pre-1999 version, and provides only that the HAP contract terminates automatically 180 days after the final HAP payment to the owner. *There is no longer any legal authority for opting out or otherwise ending the HAP contract without first terminating the tenancy.*

Under federal law, a landlord "may not terminate the tenancy except" for serious or repeated violation of the lease, violation of federal, state or local law, or "other good cause." 24 C.F.R. 982.310(a). The Ninth Circuit Court of Appeals upheld and clarified the meaning of this requirement in *Barrientos v. 1801 1825 Morton LLC*, (2009) 583

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F.3d 1197.¹ In that case, a landlord issued notices of "withdrawal" from the section 8 program, and when they were informed by the public housing authority that such notices are invalid, they issued eviction notices. The court held that such notices are not sufficient to terminate the tenancy where they fail to comply with additional local protections. *See also Wasatch Property Management v. Degrate*, (2005) 112 P.3d 647, 649 (declining "to review the Court of Appeal's alternate holding that the notice was inadequate for failure to show good cause to terminate the lease").

Local law further limits the federal "good cause" requirement to those "just causes" set forth in the Berkeley Municipal Code 13.76.130. *See Barrientos* at 1215 ("HUD has amply demonstrated its thoughtful consideration of, and its commitment to, the principle that local eviction control laws that are more protective of tenants are not preempted by its own good cause regulation."). A California Court of Appeals has taken this rule even further in *Crisales v. Estrada*, (2012) 204 Cal. App. 4th Supp. 1 at 8 (finding landlord's opt-out notice from Section 8 program defective and refusing to enforce a 3-day notice to collect increased rent because the opt-out failed to state a cause within the enumerated categories for eviction under the local eviction control ordinance).

I would appreciate a prompt response to this letter; as you know, Mr. Caughlan is 78 years old and the uncertainty created by the proposed opt-out is causing him immense stress. Please do not hesitate to contact me to discuss the matter or with any questions or concerns, at (510) 548-4040 extension 375 or bdarrow@ebclc.org.

Thank you for your time and understanding,

Brendan Darrow
Attorney for Jeremy Caughlan

Cc: Tia Ingram, Executive Director, Berkeley Housing Authority, fax: (510) 981-5480;
Jennifer Bell, Goldfarb & Lipman, fax: (510) 836-1035

w/ enclosure: Old 24 CFR 982.455 (pre-1999)

¹ For more information about the *Barrientos* decision, see the National Housing Law Project's summary at <http://nhlp.org/node/1130>.