

Nixon Peabody LLP

Affordable Housing Law Alert

Developments in Affordable Housing Law

MARCH 24, 2006

HUD Expands Tenant Notice Requirement For Section 8 Renewal.

By Gary Eisenman

It has come to our attention that HUD has directed certain Project Based Section 8 Contract Administrators to expand the applicability of the tenant notification requirement relating to Owner applications for rent increases where the Owner is seeking Section 8 rent increases of any sort.

The notice is a 30 day notice to tenants with an opportunity for comment. The Owner must then certify that the Notice was provided.

The relevant Regulation regarding "Notice to Tenants" is found at 24 CFR 245.310 and is intended to be required where an Owner is seeking a budget based rent increase in the context of a HUD subsidized development which has non-Section 8 tenants. For example, in Section 236 or 221(d)(3) building which has non-Section 8 Tenants that applies for a budget based rent increase, if granted, the rent increase will impact on the non-Section 8 Tenants. The Section 8 Tenants are generally not impacted since the tenant will continue to pay a maximum of 30% of their income as adjusted for number of rooms and family size. Whereas, the non-subsidized tenants pay the entire rent out of pocket and are therefore given notice and opportunity to comment and receive answers to their comments, before HUD will approve the increase.

Recently, without any formal Notice or Proposed Regulatory Amendment from HUD, but per HUD direction, certain Contract Administrators have been requiring Owners seeking rent adjustments to comply with the tenant Notice and Comment process pursuant to 24 CFR 245.310, before they will process the rent adjustment and renewal. This practice raises several concerns, including that this conflicts with MAHRA which generally requires the Secretary to renew HAP contracts and provide certain adjustments at renewal. This leads to the conclusion that a MAHRA Adjustment is a matter of right, and Tenant Comments are therefore irrelevant.

Please contact Gary Eisenman, Richard Price, Monica Hilton Sussman or Anthony Ruvolo if you have any questions.



NIXON PEABODY LLP
ATTORNEYS AT LAW

This newsletter is intended as an information source for the clients and friends of Nixon Peabody LLP. The content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel. Copyright © 2006 Nixon Peabody LLP. All rights reserved.

Affordable Housing Team

Please feel free to call or e-mail (emailname@nixonpeabody.com) any of the Affordable Housing team members listed below.

ATTORNEY	E-MAIL NAME	PHONE
Paul E. Bouton	pbouton	617-345-1240
Arlo M. Chase	achase	212-940-3758
David P. Corsi	dcorsi	415-984-8426
Gary R. Eisenman	geisenman	212-940-3722
Harry J. Kelly	hkelly	202-585-8712
John L. Kelly	jkelly	212-940-3790
Randall Kelly	rkelly	202-585-8760
Joseph Lynch	jjlynch	212-940-3717
Richard M. Price	rprice	202-585-8716
Michael H. Reardon	mreardon	202-585-8304
Anthony D. Ruvolo	aruvolo	202-585-8820
Jeffrey W. Sacks	jsacks	617-345-1056
Alexandra Stefanovic	astefanovic	202-585-8158
Monica H. Sussman	msussman	202-585-8833
Patrice Harris Talbott	ptalbott	202-585-8729
Dwayne M. Toliver	dtoliver	202-585-8852
Stephen J. Wallace	swallace	202-585-8714
Justine E. Wilcox	jjwilcox	202-585-8745

Albany, NY
30 South Pearl Street
518-427-2650

Boston, MA
100 Summer Street
617-345-1000

Buffalo, NY
40 Fountain Plaza, Suite 500
716-853-8100

Garden City, NY
990 Stewart Avenue
516-832-7500

Hartford, CT
185 Asylum Street
860-275-6820

Los Angeles, CA
555 West Fifth Street, 46th Floor
213-533-1050

Manchester, NH
889 Elm Street
603-628-4000

New York, NY
437 Madison Avenue
212-940-3000

Orange County, CA
2040 Main Street, Suite 850
949-475-6900

Palm Beach Gardens, FL
4400 PGA Boulevard, Suite 900
561-626-3011

Philadelphia, PA
1818 Market Street
215-246-3520

Providence, RI
One Citizens Plaza
401-454-1000

Rochester, NY
1100 Clinton Square
585-263-1000

San Francisco, CA
Two Embarcadero Center
415-984-8200

Washington, DC
401 9th Street, NW, Suite 900
202-585-8000

Visit our website at nixonpeabody.com