



Berkeley Housing Authority

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Office of the Executive Director

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Termination of a Housing Assistance Payment Contract (Opt-Out)

I. The Opt-Out Provision

This notice is provided to correct *misinformation* we have shared with owners regarding the ability to terminate a Housing Assistance Payment (HAP) contract by – “*opting out*” of the Section 8 Program. Participation in the Section 8 Housing Choice Voucher Program is voluntary for landlords (Housing Assistance Payment contract) and households (Section 8 Voucher). Either party may terminate participation in the S8 Program at any time, provided the termination is in compliance with HUD rules.

In years past there was a provision in the HUD regulations that allowed an owner to “opt-out” of the HAP contract. Until recently, we continued to operate under this regulation, unaware that it had been removed from the Federal regulations. We regret any inconvenience this may cause. We have revised our policies to comply with the Federal regulations, and the Berkeley Rent Control Ordinance with regard to termination of tenancy.

24 Code of Federal Regulations 982.455 Termination of HAP contract: Expiration and opt-out (prior rule)

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.

- (A) Owner opt-out;
- (B) Expiration of the HAP contract

24 Code of Federal Regulations 982.455 Automatic Termination of HAP contract (current code)

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

II. Termination of the Housing Assistance Payment (HAP) Contract

Recognizing that termination of the Housing Assistance Payment (HAP) Contract can trigger an unintended termination of the tenancy, the rules governing the Federal Section 8 (S8) Housing Choice Voucher Program only provide for termination of the HAP contract (1) when the lease between the owner and household has been properly terminated, or (b) the family is no longer eligible to receive a rental subsidy.

1. **Lease Termination.** An owner may terminate the lease at any time for “Good Cause” (see enclosure or contact the Berkeley Rent Stabilization Office for more information). **NOTE: this is true for a tenancy with, or without Section 8 assistance.** We will require verification from the Court, an Attorney, or the Rent Stabilization Office that the lease has been properly terminated before processing the HAP termination request.
2. **Termination of S8 Assistance.** The household’s assistance may be terminated voluntarily at the request of the family, **or** by BHA:
 - a. If the family is terminated from the S8 program for violating one or more of the Family obligations;
 - b. At the end of the month, when no eligible person is in the unit (i.e. head of household passes away, and there are no other assisted household members);
 - c. The unit has been in failed status (uncorrected inspections conditions that don’t meet minimum Housing Quality Standards) for more than 60-days; or
 - d. Six months after \$0 rental subsidy payments to the landlord (where the household is paying 100% of the rent).

III. Re-Rental of the Unit

For information about the lawful rent that can be charged after termination of a Section 8 assisted tenancy, please contact a Rent Board Housing Counselor at (510) 981-RENT (7368) or visit their website at www.ci.berkeley.ca.us/rent.