

## Chapter 13

### OWNERS

#### INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between BHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including BHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

#### PART I. OWNERS IN THE HCV PROGRAM

##### 13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

###### Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the PHA’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA’s jurisdiction, are willing to participate in the HCV program.

###### BHA Policy

BHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages through its website, [www.cityofberkeley.info/bha](http://www.cityofberkeley.info/bha) and by other means including written promotional materials, mass mailings to owner listings maintained by the Berkeley Rent Stabilization Program, and working with owner associations, to ensure owners are familiar with the program and its advantages.

BHA will reach out to owners of properties in the City with Below Market Rent units, density bonus units, or inclusionary zoning units.

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

## Retention

In addition to recruiting owners to participate in the HCV program, BHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

### BHA Policy

All BHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

BHA will use its website to provide owners with information that explains the HCV program, including HUD and BHA policies and procedures, in easy-to-understand language.

Working with owners to address improper behavior by a member of the household, or unsafe conditions present in the assisted unit.

BHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated BHA contact person.

- Coordinating inspection and leasing activities between BHA, the owner, and the family.

- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.

- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

### **BHA MTW Activity 7 – Vacancy Loss**

Fiscal Year Introduced: 2023

Fiscal Year Approved by HUD: Pending

The BHA will offer an incentive to landlords when a current tenant dies, while occupying the unit, of one (1) month of rent, as long as the landlord agrees to rent the unit to another HCV participant. The landlord will receive the incentive upon leasing to another HCV tenant and executing the HAP contract and Tenancy Addendum with the BHA. This activity applies to all HCV landlords.

### **BHA MTW Activity 8 – Landlord Incentives**

Fiscal Year Introduced: Prior to MTW program participation

Fiscal Year Approved by HUD: N/A

To attract and retain qualified landlords, the BHA has already implemented a landlord incentive of up to \$1,500 in Unit Turnover Program funds to cover expenses to ready a vacant unit for lease up in the Housing Choice Voucher Program. Project-based, Moderate Rehab, Below Market Rate properties, and new luxury developments landlords are not eligible to apply for the incentive. Landlords will receive the incentive upon leasing to another HCV tenant (after an approved Request for Tenancy Approval and initial inspection). This activity applies to all HCV landlords.

As a member of the Landlord Incentives cohort, the BHA desires to document incentives already undertaken prior to acceptance into the MTW program for research purposes.

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires the PHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

#### BHA Policy

BHA will maintain a rental listing service of available units whose owners are willing to lease a unit to an eligible HCV family. This listing will be posted on the BHA website, in the BHA office, and posted in a manner that it can be viewed from the courtyard adjacent to the BHA office.

BHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. BHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to BHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. BHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

BHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, BHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

BHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Providing separate meters for utilities for each unit; if one or more units share a single meter, owner will be required to pay for utilities
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence Against Women Reauthorization Act of 2005 (VAWA) when screening and terminating tenants
- Complying with the City of Berkeley's Fair Chance Housing Ordinance in regard to screening for criminal history (see Ch. 3).

### **13-I.D. OWNER QUALIFICATIONS**

BHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where BHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

#### **Owners Barred from Participation [24 CFR 982.306(a) and (b)]**

BHA must not approve the assisted tenancy if BHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct BHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### **Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]**

BHA must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. BHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]**

BHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of BHA (except a participant commissioner)
- Any employee of BHA, or any contractor, subcontractor or agent of BHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. BHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by BHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, BHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;

- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by BHA or assistance under the HCV program for an eligible BHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of BHA, description of the nature of the investment, including disclosure/divestiture plans.

Where BHA has requested a conflict of interest waiver, BHA may not execute the HAP contract until HUD has made a decision on the waiver request.

#### BHA Policy

In considering whether to request a conflict of interest waiver from HUD, BHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

#### **Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

HUD regulations permit BHA, at BHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If BHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

#### BHA Policy

BHA will refuse to approve a request for tenancy if BHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or

another person under the control of any member of the household that: (i) threatens the right to peaceful enjoyment of the premises by other residents; (ii) threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) is convicted of drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes; or

The owner has not paid state or local real estate taxes, fines, or assessment.

The owner is subject to a sanction from the City of Berkeley that prohibits renting the unit for residential purposes

In considering whether to disapprove owners for any of the discretionary reasons listed above, BHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, BHA may, on a case-by-case basis, choose to approve an owner.

### **Conditional Approval of an Owner**

Where there is a history of an owner not properly managing a property as documented in BHA records of prior assisted tenancies; code enforcement citations and other adverse actions undertaken by the City of Berkeley; or documentation from the Berkeley Police Department about unabated nuisance activity or criminal behavior associated with the property, BHA may require the owner to (a) provide a management plan, (b) hire a resident manager, or (c) contract for professional property management services.

### **Legal Ownership of Unit**

The following represents BHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

#### BHA Policy

BHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

Where a unit is owned by a cooperative, or subject to governance by a Home Owners Association, BHA will require written notice from the governing body (a) declaring the unit can be rented, and (b) identifying the individual (by name or position) that is authorized to execute the rental lease.

### **13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]**

The owner must not discriminate against any person because of race, color, religion, gender, sex, national origin, age, familial status, marital status, sexual orientation or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with BHA.

The owner must cooperate with BHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the

HAP contract with BHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

### **13-I-F. Berkeley Rent Stabilization Board**

Units rented under the Section 8 program are exempt from registration requirements of the Rent Stabilization Board. However, such units **are** subject to the requirements on (a) paying interest on the tenant's security deposit; (b) paying on the tenant's interest on their deposit upon move out; and (c) "good cause for eviction" as outlined by the *Rent Stabilization and Eviction for Good Cause Ordinance* (i.e., the owner must cite one of the good causes enumerated in the Ordinance to evict a Section 8 tenant). For information on the City's Eviction for Good Cause ordinance, see: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=9296>.

Owners must pay interest each December at a rate published on the Rent Board's website ([www.cityofberkeley.info/rent](http://www.cityofberkeley.info/rent)). Depending on the deposit amount and that year's interest rate, the interest payment can be quite low. Owners may also pay the interest by giving the tenant permission to deduct it from a rent payment.

Owners must also pay tenants interest on their deposit upon move-out. The rate they must pay would be the "monthly move-out rate" published on the Rent Board's website. It would be calculated on a pro-rated basis starting from the previous November 1 through the date of move-out.

## **PART II. HAP CONTRACTS**

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between BHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as BHA's obligations. Under the HAP contract, BHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in BHA's HCV program.

If BHA has given approval for the family of the assisted tenancy, the owner and BHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].



In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. BHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

### BHA Policy

BHA deems payment received by the owner (a) when the electronic payment is processed to the bank account on file, or (b) a physical check is printed and made available for pick up.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## **13-II.C. HAP CONTRACT PAYMENTS**

### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, BHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of

each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. BHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by BHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the BHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and BHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from BHA, the excess amount must be returned immediately. If BHA determines that the owner is not entitled to all or a portion of the HAP, BHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

### **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from BHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR 982.451(a)(5)]**

BHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if BHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

BHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond BHA's control. In addition, late payment penalties are not required if BHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

### **Termination of HAP Payments [24 CFR 982.311(b)]**

BHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, BHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

#### BHA Policy

The owner must inform BHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform BHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide BHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, BHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier provided the unit is safe to occupy, even if there are items that fail HQS. The owner must inform BHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

The owner must notify BHA as soon as he/she knows, or should know, that a member of the assisted household is: (a) absent from the unit for more than 30-days; (b) passes away; or (c) ceases to reside in the unit.

Service of a 30-day notice or execution of a Mutual Release does not release BHA of its obligation to continue rental subsidy payments to the landlord provided the assisted family continues to occupy the unit, and the unit meets HQS.

### **13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]**

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8, including accepting the monthly rent subsidy while having actual or constructive knowledge that the unit is not occupied by the authorized household member(s)
- If the owner has represented the unit as available for rental, while being aware that it cannot be legally rented

- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- 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 program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity.

If BHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

BHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. BHA may also obtain additional relief by judicial order or action.

BHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. BHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

#### BHA Policy

Before BHA invokes a remedy against an owner, BHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, BHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, BHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- BHA terminates the HAP contract;
- BHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since BHA made the last housing assistance payment to the owner;

- The family is absent from the unit for longer than the maximum period permitted by BHA;
- The Annual Contributions Contract (ACC) between BHA and HUD expires
- BHA elects to terminate the HAP contract.

#### BHA Policy

BHA must terminate the HAP contract effective no later than the last day of the month, in which the last assisted household member passes away.

BHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If BHA terminates the HAP contract, BHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

#### BHA Policy

In all cases, the HAP contract terminates at the end of the calendar month when the assisted family's eligibility for assistance terminates, or the family vacated the unit, whichever occurs first. The owner is not entitled to any housing assistance payment after this period, and must return to BHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### **13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of BHA.

An owner under a HAP contract must notify BHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by BHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that BHA finds acceptable. The new owner must provide BHA with a copy of the executed agreement.

## BHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

BHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, BHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to BHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;

- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

- The effective date of the HAP contract assignment;

- A written agreement to comply with the terms of the HAP contract; and

- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, BHA will suspend payments and place a hold on the contract pending the owner's decision to assume the contract, or successful termination of the lease. If the new owner wants to offer the family a new lease, and the family agrees to the changes, BHA will process the leasing in accordance with the policies in chapter 9.