

# ASSISTED HOUSING MANAGEMENT

A Legal Compliance  
Guide for Owners  
& Managers of  
HUD-Assisted  
Housing Sites

DECEMBER 2025

# insider

## IN THIS ISSUE

### FEATURE

The Shutdown Ends: Assisted  
Housing Dodges a Bullet ..... 1

### DEPARTMENTS

#### CRIME AND SECURITY

Are No-Fault Eviction Clauses for Guests'  
Criminal Behavior Enforceable? ..... 4

#### CONTRIBUTORS CORNER

HUD Asset Dispositions: Understanding  
the Two-Year Rule ..... 7

#### RECENT COURT RULINGS

Landlord Took Reasonable Steps to Enforce  
Community's No-Smoking Policy ..... 9

Waiver-By-Acceptance of Rent Rule Applies  
to Assisted Housing ..... 10

Insecure Window Screens Don't Violate  
Lease's Warranty of Habitability ..... 11

## The Shutdown Ends: Assisted Housing Dodges a Bullet

*But other HUD programs and staffers don't.*

**A**fter 44 days of agonizing uncertainty, Congress voted to end the federal government shutdown on Nov. 13. All things considered, the longest shutdown in U.S. history could have been far worse for the assisted housing industry. Before the shutdown began, HUD said that it would continue to make most previously allocated payments through the end of October while making no assurances for

payments after that. As the shutdown dragged on, it looked like the assistance payment spigot might actually be shut off on Nov. 1, threatening to leave millions of people homeless.

### HUD's Last-Minute Reprieve for November & December

But HUD provided an 11th hour reprieve by notifying the National

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Association of Housing and Redevelopment Officials that it would maintain monthly Public Housing Operating Fund and Tenant-Based Rental Assistance funding, including Housing Assistance Payments and administrative fees for Housing Choice Vouchers, Emergency Housing Vouchers, and Mainstream vouchers for November and December.

In addition, HUD managed to process all projected November HCV shortfalls and had even recalled staff to ensure timely processing of December shortfall payments, based on updated VMS data.

### The Casualties of the Shutdown

While spared the worse, the industry still faced uncertainty for 2026 should the shutdown drag on that long, forcing local PHAs to draw on their reserves to maintain operations and defer or cancel badly needed improvements and capital projects.

Even less fortunate were the other key HUD programs that remained in a nationwide freeze during the shutdown, including:

**Healthcare mortgages:** Nearly \$2 billion worth of mortgages for HUD-backed healthcare projects were put on hold, delaying availability of over 12,800 beds in care units in over 30 states;

**Assistance to seniors:** The shutdown temporarily halted FHA-supported reverse mortgage endorsements, delaying access to funds needed by seniors for healthcare, daily living, and aging in place;

**Lead hazard abatement:** HUD suspended its Lead Hazard Reduction Grant Program, which funds repairs for over 10,000 homes occupied by children who are exposed to lead and other hazards; and

**Native American home ownership:** Another significant casualty of the shutdown was the HUD Section 184 Housing Program, which provides affordable loans to Native Americans for the purchase of new homes.

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## HUD LAID OFF MORE THAN 90 STAFFERS FROM REAC, CONSTITUTING ITS ENTIRE TEAM OF BUILDING INSPECTORS.

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### HUD Layoffs

Among the most severely impacted victims were all the HUD workers who lost their jobs. The shutdown did little to thwart the Trump administration's campaign to reduce the federal government's workforce. On Oct. 10, the President ordered the layoffs of thousands of federal employees across a broad range of departments. HUD laid off more than 90 staffers from its Real Estate Assessment Center constituting its entire team of building inspectors. **Result:** The agency will now have to rely solely on outside contractors to perform vital inspections work, assuming that it even keeps its current inspection contracts in place.

But HUD targeted its biggest cuts for the Office of Fair Housing and Equal Opportunity, where nearly 100 specialists charged with enforcing fair housing laws were let go. A Bloomberg report cites anonymous sources within the agency as stating that HUD laid off the entire fair housing staff at two of its 10 regional offices, including:

- Denver, which oversees Colorado, Utah, Wyoming, North Dakota, South Dakota, and Montana; and
- San Francisco, which covers California, Nevada, and Arizona.

Five other regional offices also suffered heavy fair housing staff cuts.

## CRIME AND SECURITY

# Are No-Fault Eviction Clauses for Guests' Criminal Behavior Enforceable?

*Two recent cases illustrate how courts decide.*

### NO-FAULT EVICTION FOR THE CRIMINAL ACTIVITY OF A GUEST ISN'T A SLAM DUNK.

**L**andlords have the clear right to evict tenants from federally assisted low-income housing for violence and criminal activity that threatens or harms the health, safety, or peaceful enjoyment rights of other residents. But eviction becomes more problematic when those acts are committed not by tenants but their guests, especially when the guest acts without the tenant's knowledge, consent, or involvement.

The controversy came to a head in 2002 when the U.S. Supreme Court upheld the constitutionality of a provision of the federal Anti-Drug Abuse Act of 1988 [42 U.S.C. 1437d(1)(6)] authorizing PHAs to evict innocent tenants for the drug-related activity of their household members or guests [HUD v. Rucker, 535 U.S. 125, 122 S.Ct. 1230, 152 L.Ed.2d 258 (2002)].

While Rucker deals with drug-related activity, PHAs have extended the concept of holding tenants strictly liable for their guests to other forms of dangerous criminal activity. Accordingly, "no-fault" eviction clauses have become a staple of PHA leases. However, limits apply. Here are two recent cases illustrating the factors courts consider in deciding whether to enforce "no-fault" against a non-culpable tenant for the criminal violence of a guest.

### PHA Can Evict for Shooting by Person Under Tenant's Control

**What the Lease Says:** The Housing Authority of the City of Pittsburgh (HACP) lease requires a tenant:

[t]o assure that no 'Covered Person' engage in ... [a]ny criminal activity on or off the Premises that threatens the health, safety, or right to peaceful enjoyment of any HACP community by members of the Household, Guests, other Tenants or employees of HACP ...

The lease also includes a no-fault eviction clause providing that a Covered Person's criminal conduct at the tenant's unit is a material breach justifying lease termination. It defines Covered Person as including a/an:

- Tenant;
- Member of Tenant's Household;
- Guest; or
- Other Person Under the Tenant's Control (OPTC) "who is, or was at the time of the activity in question on the Premises ... because of an invitation from Tenant or another member of the Household who has express or implied consent on behalf of Tenant."

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## PHAS MAY GRANT TENANTS THE OPPORTUNITY TO CURE THEIR VIOLATIONS.

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**What Happened:** A tenant holds an open-house party in her apartment for a few friends to celebrate her 59th birthday. The festivities take a tragic turn when a non-resident visiting the mother of his child in a neighboring unit wanders into the party and fatally shoots a guest. HACP seeks to evict the tenant for violating the no-fault clause of her lease. The tenant denies responsibility for the incident, contending that the shooter was an unauthorized occupant while noting that she was actually nicked by one of the bullets.

The trial court sides with HACP, finding that the shooter was a Covered Person for whom the tenant is strictly liable. But the appeals court rules that the tenant had no control over the shooter's conduct setting up a final showdown in the Pennsylvania Supreme Court.

**Ruling:** In a split decision, the high court holds that HACP has grounds for "no-fault eviction" due to the conduct of a third party.

**Reasoning:** The shooter clearly engaged in "criminal activity" in the tenant's apartment. But was he a "Covered Person" for whom the tenant was strictly liable? While acknowledging that he wasn't a Guest because the tenant didn't directly invite him to the unit, the Court found that the shooter was an OPTC because he was on the "Premises" at another tenant's invitation. In other words, an invitation to the Premises is an invitation to the Units of the Premises. "This also means an invitation from one Unit on the Premises to another Unit is an invitation to stay or remain on the Premises." In support of this reasoning, the Court noted that the party was an open house and the testimony suggested that it "was a common enough practice for individuals in the community to arrive at a Unit unannounced to wish happy birthday and enjoy some food." **Bottom Line:**

The shooter was at the tenant's unit at her invitation "at the time of the conduct in question," making him an OPTC for whom she was strictly liable [Hous. Auth. v. Nash, 2025 Pa. LEXIS 1496, 2025 LX 439080, 2025 WL 2732608].

### PHA Can't Evict Tenant Who Cures No-Fault Eviction Violation

**What the Lease Says:** The lease of a long-term Hawai'i Public Housing Authority (HPHA) tenant provides that:

Tenant shall assure that no Tenant, member of Tenant's household, guest or visitor of the Tenant or member of the household or any other person under the Tenant's control engages in: (1) any criminal activity or conduct that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; (2) Any drug-related criminal activity on or off the premises; or (3) The use of marijuana, even if its use is pursuant to a lawful prescription under state law.

The lease also provides for no-fault eviction if the tenant doesn't adhere to the guests clause and other material terms of the lease.

**What Happened:** A guest staying in his mother-in-law's apartment gets into a verbal confrontation with a downstairs neighbor. Things escalate and the guest hits the neighbor on the head with a baseball bat causing serious injury. Appalled at what happened, the tenant immediately kicks her son-in-law out and forbids him from coming back ever again. The son-in-law never returns. HPHA sues to evict the tenant for allowing a guest to engage in criminal conduct that endangered other tenants' health and safety. The tenant claims she cured the violation by permanently barring her son-in-law from returning, but HPHA contends that the violation

**PHAS'  
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is uncurable since the assault and resulting injuries can't be undone. HPHA wins in lower court but loses on appeal, and the case reaches the state's highest court.

**Ruling:** The Hawaii Supreme Court rules that the tenant cured the violation and reinstates her tenancy.

**Reasoning:** The authority of PHAs to evict tenants for the criminal conduct of guests is discretionary, not mandatory. PHAs may also grant tenants the opportunity to cure their violations. In this case, it was necessary to look not just to the lease but also HPHA's own Admissions and Continuing Occupancy Policy (ACOP) listing different kinds of lease violations and how much time, if any, tenants have to cure them. The ACOP listed violations of a lease provision "that potentially threaten the health or safety of other residents" as carrying a cure period of 24 hours. This belied HPHA's assertion that the violation was uncurable because the assault couldn't be undone. Not only was the violation curable, but the tenant did cure it by kicking her son-in-law off the property within the 24-hour cure period. The cure was effective because the son-in-law never came back. Bottom Line: Eviction was unwarranted [Bell v. Hawai'i Pub. Hous. Auth., 156 Haw. 1,

568 P.3d 61, 2025 Haw. LEXIS 92, 2025 LX 21022, 2025 WL 1039265].

### Takeaway

Despite *Rucker*, no-fault eviction for the criminal activity of a guest isn't a slam dunk. *Rucker* allows but doesn't require PHAs to evict innocent tenants for dangerous crimes of guests and household members. And because no-fault eviction is discretionary, it's also subject to review. In considering whether PHAs properly exercised their discretion, courts and administrative tribunals consider:

- Whether the third person for whom the tenant is being held accountable actually committed the criminal activity triggering the right to no-fault eviction;
- Whether the third person was a household member, guest, or person under the tenant's control;
- Whether the third person was present at the unit at the tenant's invitation at the time of the crime in question;
- The seriousness of the criminal act;
- Whether the PHA provided proper notice of eviction and complied with all applicable eviction procedures and protocols;
- Whether the violation was curable under the PHA's protocols; and
- Whether the tenant actually cured the violation effectively and in time.

## CONTRIBUTORS CORNER

## HUD Asset Dispositions: Understanding the Two-Year Rule

Here's an example incorporating post-HOTMA rules.

By **Daniel Bagliore**

**THE TWO-YEAR  
CLOCK STARTS  
ON THE DATE OF  
DISPOSITION,  
NOT THE  
CERTIFICATION  
DATE.**

**W**hen a household disposes of an asset for less than fair market value—such as selling a home to a relative below market or donating cash—HUD rules [HUD Handbook 4350.3, Rev-1, Paragraph 5-7(G)(8)] require that the disposed value remain on the Form 50059 for **two years following the date of asset disposition (not from the certification effective date)**.

This rule ensures that assets are properly tracked and prevents households from artificially reducing their reported resources to qualify for assistance.

### Example: Applying the Rule

Your resident reports the sale of her house to her son who resides elsewhere. Although the house was worth \$500,000 on the open market, she sold it to her son for \$200,000 on Oct. 10, 2025. The remaining balance on the mortgage was \$75,000, and closing costs (in converting the asset to cash) were \$30,000.

**Under HUD pre-HOTMA rules**, since the disposed value exceeds \$1,000 (i.e., \$1,001 or more) and the house was not disposed due to foreclosure, bankruptcy, divorce, or separation, the \$195,000 value must be included on any certifications that fall within the two-year period from the date of disposition.

**Under HUD post-HOTMA rules**, the \$1,000 threshold has been eliminated. All assets disposed of for less than fair market value within two years of the certification effective date must be reported, regardless of amount. Dispositions due to foreclosure or bankruptcy remain excluded, while divorce or separation settlements are excluded only when the household receives consideration not measurable in dollar terms [24 CFR §5.603(b)].

### Determination of Two-Year Period

To determine the two-year period, count two full years from the date of disposition. For example:

- Date of Disposition: 10/10/25
- Two-Year Period: 10/10/25 to 10/9/27

From there, you can determine which certifications will reflect the disposed asset and the earliest the asset can be removed with an interim recertification.

Let's assume that you are conducting a Jan. 1, 2026, annual recertification for your resident, as shown in the box on p.8.

To determine which certifications must reflect the disposed asset, include it on **any certification effective within that two-year period** (10/10/25 to 10/9/27).

### Calculation of Asset's Disposed Value

Let's first calculate the disposed value of this asset:

Item	Amount
Fair Market Value	\$500,000
Less: Amount Owed	-\$75,000
Less: Costs Incurred	-\$30,000
Less: Amount Received	-\$200,000
Disposed Value	\$195,000



### Which Certifications the Disposed Asset Will Affect

Disposition Date	2-Year Period	1st AR	2nd AR	Earliest IR for Removal
10/10/25	10/10/25 – 10/9/27	1/1/26	1/1/27	11/1/27

Since the asset was disposed on Oct. 10, 2025, the disposed asset will report on the 1/1/26 and 1/1/27 annual recertifications, both of which occur within the two-year reporting period.

#### Removal of the Disposed Asset

The disposed asset may be removed with an interim recertification after the two-year period expires. In this case, because the two-year period ends on Oct. 9, 2027, the earliest date the disposed asset can be removed through an interim recertification is Nov. 1, 2027.

In the absence of an interim recertification, the disposed asset must be removed with the next annual recertification following the expiration of the two-year period. In this case, the disposed asset must be removed with the Jan. 1, 2028, annual recertification. Most HUD-compliant site software will remove the disposed asset automatically once the two-year period expires.

**Note:** The two-year rule applies even if the asset was disposed of before the household's admission to the property. If the two-year period is still active at the time of move-in, the disposed asset must be included on the move-in certification and on any subsequent certifications that fall within the remaining portion of the two-year period.

**Always remember:** the two-year clock starts on the date of disposition, not the certification date. While most software will remove the disposed asset automatically once the two-year period expires, staff should confirm that the asset has been properly removed and be prepared to explain the change to residents when it occurs.

***Daniel Bagliore** is a freelance writer with more than 25 years of affordable housing experience.*



## RECENT COURT RULINGS

# Landlord Took Reasonable Steps to Enforce Community's No-Smoking Policy

### What Happened:

Concerned about the continued presence of smoke in the community, a tenant with an expiring lease asked her landlord if she could renew on a month-to-month rather than annual basis. The landlord agreed.

Roughly 18 months into the arrangement, the tenant failed to pay rent for two months in a row, and the landlord evicted her. After vacating the apartment, she sued the landlord for violating the lease by failing to enforce the community's no-smoking policy. As evidence, she submitted a copy of the "Smoke Free Property Addendum" to her lease stipulating that the premises were a "no-smoking living environment," and that the landlord would "take reasonable steps to enforce" the policy including via posting no-smoking signage.

The landlord insisted that it did try to enforce the policy and wasn't responsible for the conduct of tenants outside its control.

### Ruling:

The Wisconsin appeals court upheld the trial court's ruling in the landlord's favor.

### Reasoning:

The trial record contained evidence to support the conclusion that the landlord

took reasonable steps to keep the community smoke-free, including:

- An actual no-smoking sign that was posted in the community;
- An email from the tenant acknowledging that the sign had been posted;
- Another email assuring the tenant that it was "doing everything possible" to deal with the smoking and urging the tenant to help it determine where it was coming from, especially in the hours when on-site staff left was gone; and
- A letter from management notifying tenants about the complaints about smoking it was receiving and emphasizing that smoking was a lease violation.

The addendum also included language noting that the landlord "cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke," and that the landlord's "ability to police, monitor, or enforce" the no-smoking policy is "dependent in significant part on voluntary compliance."

- *Morgan v. Wis. Mgmt. Co.*, 2025 Wisc. App. LEXIS 874, 2025 LX 435096, 2025 WL 2778962

# Waiver-By-Acceptance of Rent Rule Applies to Assisted Housing

## What Happened:

After the utility company turned off the power to her apartment, a Section 8 tenant and her boyfriend secretly broke into the apartment building's utility closet and reconnected her electricity. In so doing, they inadvertently disconnected the electricity to other units in the building. Thanks to security camera footage, management discovered what the tenant had done. But instead of acting right away, the landlord waited three months to evict the tenant for the transgression. The tenant argued that in accepting three months of rental assistance payments, the landlord had waived its eviction rights. After losing at trial and on appeal, the tenant appealed to the state's top court.

## Ruling:

The third time proved the charm for the tenant as the Minnesota Supreme Court ruled that the landlord waived its right to evict.

## Reasoning:

As in many states, in Minnesota, acceptance of rent payments by a landlord

with knowledge of a tenant's breach is a waiver of the right to evict the tenant for that breach. The so-called "waiver-by-acceptance" doctrine applies not just to conventional but also HUD assisted and public housing. In other words, Section 8 vouchers and other housing assistance payments constitute rent for purposes of the waiver-by-acceptance rule, even if some leases don't characterize such payments as "rent." The fact that rent is paid by HUD or a government agency rather than the actual tenant doesn't support excluding tenants receiving housing assistance from the doctrine of waiver by acceptance, the court reasoned. Nor does the fact that HUD regulations give public housing agencies discretion to contract with landlords to temporarily continue providing housing assistance payments after a tenant has vacated a unit.

- Hook & Ladder Apts., L.P. v. Nalewaja, 2025 Minn. LEXIS 502, 2025 LX 432139, 2025 WL 2714155

# Insecure Window Screens Don't Violate Lease's Warranty of Habitability

## What Happened:

A minor living with her mother on the second floor of an affordable housing community pushed through a window screen and fell to the ground 15 feet below. The screen through which the girl fell had been secured with tape along the bottom of the screen and screws on the side. The mother/tenant sued the landlord and management company for breach of the warranty of habitability and consumer fraud. The defendants argued that the tenant's claims were legally invalid and asked the court to dismiss the case without a trial.

## Ruling:

The Vermont court granted the defendants' summary judgment motion.

## Reasoning:

The tenant claimed that the defendants violated the lease's warranty of habitabil-

ity by installing and failing to maintain "manifestly unsafe windows" in the apartment. But she didn't present any evidence to refute their contention that the allegedly insecure window screen rendered the apartment uninhabitable. Nor did she furnish them the notice and opportunity to cure required to make out a warranty of habitability claim under state law. There was no case for consumer fraud because the tenant knew that window screens were missing when she leased the apartment and the defendants never represented the screens as being a security device. Last but not least, the court pooh-poohed the tenant's husband's lawsuit because he didn't sign the lease or live in the unit and thus had no standing to sue for breach of the lease's warranty of habitability.

- Cook v. Johnson Cmty. Hous. Ltd. P'ship & All. Prop. Mgmt., 2025 Vt. Super. LEXIS 243, 2025 LX 454827