



HOUSING CHOICE VOUCHER

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CHAPTER 13 OWNERS

INTRODUCTION

Owners play a major 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.

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 the PHA, and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including PHA 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; HCV Landlord Strategy Guidebook for PHAs]

Education and Outreach

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.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program. PHAs can provide education and outreach in a variety of ways. Some strategies include hosting or attending events targeted to landlords or affordable housing providers. Education and outreach can include activities like newsletters, presentations, briefings to community groups, one-on-one appointments, or other ways of sharing information or creating relationships between PHAs and owners. The PHA may also provide monetary incentives and reimbursements to encourage participation in the program.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities.

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PHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

MSHDA Policy

MSHDA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. MSHDA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community-based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners, apartment associations, industry investor groups, and real estate brokers associations
- To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

MSHDA is currently offering damage claim payments until December 31, 2025. For more information on these programs, please see Exhibit 13-4, HCV Owner Incentive Programs.

Outreach strategies will be monitored for effectiveness and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, the PHA must also provide the kind of customer service that will encourage participating owners to remain active in the program. See the “Landlord-Focused Customer Service” chapter of the *HCV Landlord Strategies Guidebook* for more information.

MSHDA Policy

All MSHDA 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.

MSHDA will provide owners written information that explains the program, including HUD and MSHDA policies and procedures, in easy-to-understand language.

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

- Providing the owner with a designated MSHDA contact person.
- Coordinating inspection and leasing activities between MSHDA, the owner, and the family.

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- 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 through a landlord handbook, including answers to frequently asked questions.
- Contacting owners via emails or texts to disseminate information.

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

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the PHA to assist 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. As part of the briefing packet, the PHA is also required to provide a current listing of accessible units known to the PHA. 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)].

MSHDA Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify MSHDA.

MSHDA 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 unassisted tenant. The PHA 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 the PHA, 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 requirements for the approval of an assisted tenancy.

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.

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Other types may be assisted under certain conditions. See Chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's inspection standards and/or equivalent state, or local standards approved by HUD passing Inspection Standards [24 CFR 982.305(a)(2)]. The PHA will inspect the owner's dwelling unit at least biennially to ensure that the unit continues to meet inspection requirements. See Chapter 8 for a discussion of the inspection standards and policies for inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the proposed rent for 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, if the gross rent exceeds the applicable payment standard, the PHA must ensure that the family share 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. The HUD Tenancy Addendum (Form HUD-52641-A) includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See Chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See Chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

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

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

- Complying with 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 housing inspection standards, including performance of ordinary and extraordinary maintenance
 - A unit is not in compliance with housing quality standards if the PHA or other inspector authorized by the state or local government determines that the unit has deficiencies based upon an inspection, the agency or inspector notifies the owner in writing of the deficiencies, and the deficiencies are not remedied within the appropriate timeframe.
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract

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- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Act (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family [see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); 24 CFR 982.452(b)(1); and FR Notice 1/4/23]

MSHDA Policy

In addition to all of the items above, the owner must adhere to local rental property registration and code requirements.

13-I.D. OWNER QUALIFICATIONS

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA 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)]

The PHA must not approve the assisted tenancy if the PHA 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 the PHA 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]

The PHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister or brother, stepfamily, or in-law of any member of the family. The PHA 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.

MSHDA Policy

Effective on or after June 17, 1998, MSHDA will not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, brother, stepfamily, or in-law of any member of the family; however, MSHDA may make an exception as a reasonable accommodation for a family member with disability as outlined in Chapter 2 of the Administrative Plan.

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Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19; Form HUD-52641, Section 13]

The PHA 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 the PHA (except a participant commissioner)
- Any employee of the PHA, or any contractor, subcontractor, or agent of the PHA, 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

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

- *Immediate family member* means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual.

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

Any waiver request submitted by the PHA must include the following [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, the PHA, 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 their duties under state or local law, including reference to any responsibilities involving the HCV program;

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- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible PHA 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 the PHA, description of the nature of the investment, including disclosure/divestiture plans.

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

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

HUD regulations permit the PHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the PHA 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].

MSHDA Policy

MSHDA will refuse to approve a request for tenancy if MSHDA 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 noncompliance with inspection standards 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 drug-related criminal activity or violent criminal activity;

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- 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.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA 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, the PHA may, on a case-by-case basis, choose to approve an owner.

Exhibit 13-3 contains an explanation as to when MSHDA may elect to debar or exclude an owner from participation in the HCV Program.

Legal Ownership of Unit

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

MSHDA Policy

MSHDA 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.

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

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

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

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

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract (Form HUD-52641) represents a written agreement between the PHA, and the owner of the dwelling unit occupied by an HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations.

Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family approved by the PHA to occupy the unit.

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

When the PHA has determined that the unit meets program requirements and the tenancy is

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approvable, the PHA and owner must 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: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the PHA representative 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. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

PHAs also 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 MSHDA or actual receipt by the owner).

MSHDA Policy

MSHDA has not adopted a policy that defines when the housing assistance payment by MSHDA is deemed received by the owner; therefore, no modifications to the HAP contract will be necessary.

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

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- 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 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, the PHA 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. The PHA 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 the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the PHA 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 rent to 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 the PHA, the excess amount must be returned immediately. If the PHA determines that the owner is not entitled to all or a portion of the HAP, the PHA 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].

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By accepting the monthly check from the PHA, 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 inspection standards; 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)]

The PHA 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 late penalties if the PHA 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.

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

MSHDA Policy

If there is a late fee stated in the owner's lease agreement, the landlord may submit a written request to MSHDA within 10 business days of the late MSHDA payment.

MSHDA will review the request and notify the owner of the decision within 10 business days.

The MSHDA established late fee amount is the lesser of the participant's late fee amount identified in the owner's lease or \$25.

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

The PHA 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, the PHA 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.

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MSHDA Policy

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

The owner must inform MSHDA when the owner has obtained a court judgment or other process allowing the owner to evict the participant and provide MSHDA 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 participant, MSHDA 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. The owner must inform MSHDA of the date when the family actually moves from the unit, or the family is physically evicted from the unit.

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 inspection standards
- If the owner has violated any obligation under any other HAP contract under Section 8
- 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 regulation 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 the PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract the PHA must take enforcement action in accordance with 24 CFR 982.404.

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

The PHA 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. The PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

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MSHDA Policy

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

If relevant, MSHDA 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, MSHDA 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.;
- The PHA terminates the HAP contract.;
- The PHA 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 the PHA made the last housing assistance payment to the owner.;
- The family is absent from the unit for longer than the maximum period permitted by the PHA.;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires.
- The PHA elects to terminate the HAP contract.

MSHDA Policy

MSHDA 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 size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;
- The unit does not meet inspect standards [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.

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If the PHA terminates the HAP contract, the PHA 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].

MSHDA Policy

MSHDA cannot make any HAP payment for any month after the month the family vacates the unit.

Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which MSHDA gives written notice of contract termination to the owner. with the following exceptions:

- When the lease contains no renewal provisions, the HAP Contract terminates on the last day of the lease agreement. If the lease end date is a date other than the last day of the month, the HAP payment will be pro-rated based on the lease end date.
- When the family moves from the contract unit, the HAP Contract terminates at the end of the month of move out.
- The HAP Contract terminates at the end of the month in which the death of the sole family member occurred, which may be retroactive.
- The HAP Contract terminates 60 days after the effective date of abatement of housing assistance for failure to correct inspection deficiencies.
- If the assisted unit is determined to be uninhabitable (examples include, but are not limited to fire, sewage back-up, a condemnation notice), the HAP Contract terminates at the end of the month following the determination the unit is uninhabitable.
- If MSHDA has determined that the property has been foreclosed upon and the redemption period has expired or otherwise passed to the mortgagee or has otherwise determined that the owner named in the HAP contract ceased to be the owner of the property, MSHDA will terminate the HAP Contract at the end of the month in which the redemption period expires.
- In its sole discretion, MSHDA reserves the right to terminate the HAP contract with less than the notice period described above if MSHDA determines that the owner's breach of the HAP contract is a result of fraud, abuse, criminal activity, or serious and/or repeated violations of the HAP contract. The owner is not entitled to any housing assistance payment after this period and must return to MSHDA 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.

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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 the PHA.

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

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 the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.

MSHDA Policy

Assignment of the HAP contract and/or Acceptance 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.

The PHA 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, the PHA will inform the current owner in writing whether the assignment may take place.

The new owner must execute an Acceptance of the HAP contract document and provide the following:

- A copy of the escrow statement or other document showing the transfer of title such as a recorded deed;
- Proof of paid taxes;
- 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;
- A copy of the MSHDA Payee Registration (MSHDA 220); and
- A signed agreement to abide by the rules and regulations for landlords and owners participating in the HAP contract; and HCV Program.
- A certification 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, the PHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the PHA will process the leasing in accordance with the policies in Chapter 9.

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13-II.G. FORECLOSURE [Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional protections for tenants also applies.

MSHDA Policy

If a property is in foreclosure, MSHDA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

MSHDA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest.

This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

MSHDA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that MSHDA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to inspection standards), or due to an inability to identify the new owner, MSHDA will issue the participant a voucher to move.

- The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or
- For the family's reasonable moving costs, including security deposit costs.

MSHDA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract. If necessary, the PHA reserves the right to seek administrative remedies against prior and new owner.

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See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

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EXHIBIT 13-3: OWNER DEBARMENTS AND EXCLUSIONS

Owner Debarments and Exclusions

The information in this Exhibit is intended for current owners participating in MSHDA's Housing Choice Voucher (HCV) Program as well as new owners interested in participating in the HCV Program. The information in this Exhibit provides an explanation of landlord non-compliance with the Housing Assistance Payment (HAP) Contract, and when MSHDA may elect to debar or exclude an owner from participation in the HCV program. This information is subject to change at the sole discretion of MSHDA.

Non-Compliance with the HAP Contract

The Housing Assistance Payment (HAP) contract is the primary document that governs the relationship between the owner of a unit in the HCV and Project-Based Voucher (PBV) programs and MSHDA. The HAP contract and HUD regulations at 24 CFR section 982.453 lay out the following as breaches of the contract by the owner (including a principal or other interested party such as a property manager):

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 Housing Quality Standards (HQS).
2. If the owner fails to maintain the dwelling unit in accordance with HQS, MSHDA must take prompt and vigorous action to enforce the owner obligations.
3. MSHDA may inspect the unit and premises at any time MSHDA determines necessary to ensure that the unit meets HQS and must notify the owner of any HQS deficiencies uncovered.
 - a. MSHDA must not make any housing assistance payments to the owner if the unit is in violation of HQS unless the owner corrects the deficiencies within the required timeframe and MSHDA verifies that the corrections have been properly made.
 - b. If a defect is life threatening, the owner must correct the defect within no more than 24 hours.
 - c. For other defects, the owner must correct the defect within no more than 30 calendar days (or any MSHDA-approved extension).
 - d. If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).
4. If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
5. 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.

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6. If the owner has engaged in drug-related criminal activity.
7. If the owner has committed any violent criminal activity.

When MSHDA determines the HAP contract is breached, MSHDA must take certain steps to comply with the HAP contract and program requirements:

1. In the event of the breach of the HAP contract, MSHDA must notify the owner in writing of the determination of the breach and the reasons for that determination. The notice may require the owner to take a corrective action by an established deadline.
2. MSHDA may recover any overpayment, suspend housing assistance payments, abate, or reduce the housing assistance payment, terminate the payment or terminate the HAP contract.
3. MSHDA may also obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages.
4. MSHDA must provide the owner with written notice of any termination or reduction in housing assistance payments or the termination of the HAP contract.

When MSHDA Has Discretion to Exclude Owners from their HCV and PBV Programs

Pursuant to Notice PIH 2023-06 MSHDA has discretion to exclude owners from participating in the program for any of the following reasons:

1. The owner has violated obligations under one or more HAP contracts under the HCV or PBV programs or any other housing program under Section 8 of the U.S. Housing Act of 1937;
2. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
3. The owner is currently engaged in or has participated in recent drug-related criminal activity or violent criminal activity;
4. The owner has or has had a practice of non-compliance with HQS in HCV or PBV program units or with applicable housing standards for units leased under any federal housing program;
5. The owner has a history or practice of refusing to evict tenants assisted under the HCV or PBV programs or other federally assisted housing, for activity by the tenant, household member, a guest, or another person under the control of any member of the household that:
 - a. Threatens the right to peaceful enjoyment of the premises by other residents or of persons residing in the immediate vicinity of the premises;
 - b. Threatens the health or safety of residents, persons residing in the immediate vicinity of the premises, MSHDA employees, or owner employees engaged in managing the housing; or
 - c. Is currently engaged in drug-related criminal activity or violent criminal activity;
6. The owner has a history or practice of renting units that fail to meet state or local housing codes; or

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7. The owner has not paid State or local real estate taxes, fines, or assessments.

MSHDA Defined Owner Debarments and Exclusions

A debarment from MSHDA's HCV program suspends the owner's ability from participating in the HCV program for a specified period of time. The period of time for suspension is based on the infraction committed.

An exclusion from MSHDA's HCV Program, permanently excludes the owner from participating in the HCV/PBV Program.

Termination of HAP Contract

In the instances identified below, the owner will be provided 30-day notice of HAP Contract Termination. During the notice period, the owner may provide documentation or payment to MSHDA to attempt to resolve the breach of HAP Contract. If MSHDA determines the documentation or payment provided resolves the discrepancy, the HAP Contract termination will be rescinded, and the owner will continue receiving payment(s).

1. Incorrect Tax ID and/or Business Name
2. Incorrect Address
3. IRS W-9, IRS W-8, or Payee Authorization (MSHDA 220) Is Not Signed

Debarment from Participation

Owners are considered a business and do not have a right to conduct business with MSHDA.

If an owner violates the HCV Program under one of the following criteria, the HAP Contract will be terminated, and the owner will be suspended from receiving rental assistance from MSHDA for any HCV Program applicant or participant for the time period identified.

The suspension from participation in the HCV Program will be in place for any and all businesses identified to be tied to any member, partner, manager, or other individual with authority of the offending business, unless and until proper documentation is provided to refute the claim and/or the business member is removed from the legal documentation.

Debarment and Suspension Period:

- 1) Unreported Property Foreclosure at the end of the redemption period.
 - Will not be allowed to participate in the HCV Program for twelve (12) months from the date MSHDA provides notification to the owner.
- 2) Unreported Transfer of Property (example: Quit Claim Deed)
 - Will not be allowed to participate in the HCV Program for twelve (12) months from the date MSHDA provides notification to the owner.
- 3) Criminal Activity – Illegal Drugs. Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, use, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

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- Lifetime ban from the HCV Program if a criminal screening confirms the owner has manufactured or produced methamphetamine on the premises of MSHDA or other federally assisted housing. (See Exclusion)
- 4) All other illegal drugs: If a criminal screening confirms the owner has engaged in illegal manufacture, sale, distribution, use or possession of an illegal drug, the owner will not be allowed to participate in the HCV Program for two (2) years from the date MSHDA provides notification to the owner.
 - 5) Criminal Activity – Violent: Violent criminal activity is defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.
 - If a criminal screening confirms the owner has engaged in violent criminal activity, the owner will not be allowed to participate in the HCV Program for two (2) years from the date MSHDA provides notification to the owner.
 - 6) Criminal Activity – Other.
 - If a criminal screening confirms the owner has engaged in other criminal activity, the owner will not be allowed to participate in the HCV Program for twelve (12) months from date MSHDA provides notification to the owner.

Examples of other criminal activity include but are not limited to:

- Gang activity
 - Fugitive felon
 - Identify theft
 - Sex offender – non-lifetime
- 7) Other Breaches of Housing Assistance Payment (HAP) contract.
 - If the owner has breached the HAP contract as outlined above, the owner will not be allowed to participate in the HCV program for two (2) years from the date MSHDA provides notification to the owner.

Examples of breach of HAP contract include:

- Did not pay owner-responsible utilities with or without a shut-off notice
- Side-lease, written or oral agreement
- Owner is a prohibited relative as outlined in the HAP contract
- Owner resides in the assisted unit
- Owner did not report to MSHDA:
 - Participant does not live in the assisted unit
 - Participant is deceased
 - Participant was evicted

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- Criminal activity in the unit conducted by the participant
- Unauthorized household members

Exclusion from Future Participation

Owners are considered a business and do not have a right to conduct business with MSHDA. If an owner violates the HCV Program under one of the following criteria, they will be permanently excluded from participating in the HCV Program.

The permanent exclusion from participation in the HCV Programs will be in place for any and all businesses identified to be tied to any member, partner, manager, or other individual with authority of the offending business, unless and until proper documentation is provided to refute the claim and/or the business member is removed from the legal documentation.

- 1) Criminal Activity – Lifetime Sex Offender as an Owner/Business Member
- 2) Criminal Activity – Illegal Drugs by an Owner/Business Member
- 3) Owner never possessed a legal interest in the assisted unit
- 4) Prosecution by HUD’s Office of Inspector General or the State of Michigan Attorney General
- 5) Second Offense under the Termination of HAP Contract Section - if the second offense committed is the same or substantially similar as the initial offense (i.e. repeat offender).
 - Example: A side lease is identified by MSHDA staff or Contracted Partner. The business is subject to the Debarment timeline for this offense. The business is later reinstated with MSHDA, and another side-lease is identified.
- 6) Third Offense under the Termination of HAP Contract Section - if at least two of the offenses committed are unique (i.e. not a repeat offender). The three offenses must be committed on three different occasions.
 - Example: Two side-leases are identified in one investigation. The identification of this issue will be considered one offense, and the business is subject to the debarment timeline for the offense. The business is later reinstated with MSHDA, and it is identified that they did not pay the unit utilities as required. The identification of this issue will be considered the second offense, and the business is subject to the debarment timeline for the offense. The business is later reinstated with MSHDA, and it is identified that they evicted the participant but kept collecting MSHDA’s Housing Assistance Payment. The identification of this issue will be considered the third offense, and a lifetime ban will be initiated.
- 7) Accounts Receivable Debt Owed to MSHDA
 - An owner is excluded from participation in the HCV Program unless and until the debt is paid in full, a repayment agreement is executed, or the recapture of future rents by MSHDA eliminates the debt.

If one of the above remedies occurs and the information provided resolves the discrepancy in the opinion of MSHDA, the exclusion will be lifted, and the owner may

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resume business. If the owner defaults on a repayment agreement, the exclusion will be reapplied.

- 8) Any case presented to MSHDA's Director of Rental Assistance and Homeless Solutions and MSHDA's Director of MSHDA's Auditing, Compliance and Fraud Investigations that is unanimously agreed upon to be permanently excluded from the HCV Program.
 - These may include instances of violations already included above; however, the severity, occurrence of several violations concurrently, and/or the context of the situation may warrant a greater suspension period to protect program participants and the integrity of the HCV Program. In these instances, the owner will not be allowed to participate in the HCV Program for the timeframe identified and documented by the represented parties.

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EXHIBIT 13-4: OWNER INCENTIVE PROGRAMS

Using the Administrative Fees provided by HUD for the Housing Choice Voucher, Mainstream Voucher and Emergency Housing Voucher programs, MSHDA is providing for the following owner incentive programs for participating owners. The terms and condition for each program are outlined below as well as the eligibility requirements for each activity.

Owner Damage Claim Payments

MSHDA is making available \$500,000 in administrative fees for damage claim payments to landlords due to damages caused by program participants that are identified upon move-out. The availability period for this funding is December 1, 2021, to December 31, 2025, and only applies to tenant move-out dates during this time. MSHDA reserves the right to end the availability of the payments if the amount of funds allocated for this purpose are exhausted prior to the specified end date, regardless of the pending status of additional claims. There will be no administrative appeal available regarding these claims to MSHDA. NOTE: Rental units covered under a MSHDA PBV HAP contract are eligible for damage claim payments.

The minimum amount an owner can request in damage claims is \$300. The maximum amount an owner can request in damage claims is the lesser of \$3,000 or the total amount of damages. In either instance, the owner must deduct the amount retained from the tenant's security deposit and any amount reimbursed by insurance or other sources to arrive at the eligible claim amount. In submitting a claim, the owner certifies:

- a legal right to pursue a claim in court against the tenant for damages beyond wear and tear;
- none of the claimed damages existed prior to the lease;
- any funds paid to owner pursuant to this program will be credited in favor of tenant against such damages claim; and
- the claim is not requested for any fraudulent purpose, etc.

Only items that have been damaged above "normal wear and tear" will be considered. Damage claims cannot be filed by the owner when a tenant is transferring from one unit to another due to tenant preference.

Charges for household furnishings, tools, cleaning fees, late fees, court costs, lawyer fees and advertising will not be considered.

Supplies such as paint and paint brushes will be considered; however, only for the purpose of repairing damages to the unit, not common areas and/or other units. If the amount claimed is excessive, MSHDA may request additional documentation and/or information from the owner prior to approving the claim.

In addition, MSHDA is unable to consider any damage caused by an animal or pet. No monies will be paid for damage from pets. If the owner wishes to allow a pet, a separate agreement, signed and dated by both parties, is suggested. The owner may wish to collect an additional pet deposit to cover any possible damages.

Damage Claim Process

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All damage claim documents must be uploaded into a secure folder for MSHDA's review and determination. Before a secure folder can be created, the owner must send an email of interest to MSHDA-RAHS-DC@michigan.gov that provides the following preliminary information:

- Owner Name
- Unit Address

Once MSHDA confirms the preliminary information in its Housing Choice Voucher (HCV) system, the owner will be provided a link to create the secure folder for the damage claim submission.

Once the secure folder is created, the owner must upload the information below for review and determination. The information must be submitted within 120 calendar days of the MSHDA Housing Assistance Payment (HAP) Contract termination effective date. MSHDA will make a determination on the eligibility of the funds within ten (10) business days of receipt of all required documents.

Required documents for damage claim submission:

1. Documentation that shows the tenant was notified of the list of repairs showing the security deposit being deducted from the total costs. Such documentation may include:
 - A copy of the letter sent to the tenant at the last known address A copy of an email sent to the tenant.
 - A notarized statement from the owner certifying a good faith effort was attempted to notify the tenant of the information above.
2. Photos or videos that clearly identify the damages to the unit.
3. If work is performed by a private contractor: provide itemized list of charges from the contractor that identifies the amount of the repairs. This list should show each item, broken down between parts and labor. Each item listed must have a receipt for verification. The receipts must be numbered to correspond with the itemized list of charges. All receipts for labor performed by a private contractor must show name, business address, phone number, and contractor license number, if applicable. "Lump sum" receipts, bids, proposals, and estimates are not acceptable. The receipt must show a breakdown of all charges.

For example: If a painting contractor provides the owner with a bill for \$200.00, the owner must have the contractor state what portion was for paint and what portion for labor. The itemized list and receipts must accompany the damage claim form.
4. If the work is performed by the owner or owner's maintenance staff: provide itemized invoices and receipts for parts and materials. Labor is not an eligible cost when work is completed by the owner or owner's maintenance staff.
5. Copy of the tenant/landlord lease or other documentation that verifies the security deposit amount collected.
6. Photos or videos that clearly identify the repairs were completed.