

# Right to Organize in HUD- Assisted Housing

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Texas Tenants' Union

[www.txtenants.org](http://www.txtenants.org)

# What properties are covered by 24 CFR Part 245, HUD's Right to Organize Regulations?

- Project-based Section 8 properties (unless it is administered by the PHA);
- Properties with HUD-insured or HUD-held mortgages assisted under Section 236, Section 221(d)(3) BMIR, the Rent Supplement program, or the Section 8 LMSA program;
- Formerly HUD-owned properties that had been assisted under the programs listed above and was sold with a Use Agreement to maintain the property as low or moderate income housing;
- State or local housing finance agency properties that receive assistance under the Section 236 program or the rent supplement program;
- Properties that receive enhanced vouchers;
- Section 202 properties for the elderly; or
- Section 811 properties for persons with disabilities.

# What activities are protected?

Owners must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

1. Distribute leaflets in lobby areas and other common areas;
2. Place leaflets at or under tenants' doors;
3. Initiate contact with tenants;
4. Conduct door-to-door surveys to ascertain interest in establishing a tenant group and to offer information about tenant organizations;
5. Post information on bulletin boards;
6. Assist tenants to participate in tenant organization activities;
7. Hold regularly scheduled tenant meetings in a space on site without the attendance of management representatives; and
8. Develop responses to the owner's request for rent increases, conversion to tenant-paid utilities, reducing the utility allowance, conversion to condos, etc.

You do not have to obtain the owner's or manager's permission to do these things.

# Question

Which of the following do you think is *not* a requirement of a legitimate tenant group?

a. meets regularly

b. has by-laws

c. is completely independent of owners, management and their representatives

d. operates democratically

e. has an elected board.

# What is a Legitimate Tenant Organization?

An organization established by the tenants in a covered property that:

- meets regularly;
- operates democratically;
- is representative of all residents in the development; and
- is *completely independent* of owners, management, and their representatives.

# Recognition

Owners of covered multifamily properties and their agents must:

- recognize legitimate tenant organizations;  
and
- give reasonable consideration to concerns raised by legitimate tenant organizations.

# Meeting Space

- Owners of covered multifamily properties must reasonably make space available in the community room, if any, or other space appropriate for tenant meetings.
- Tenant meetings must be accessible to persons with disabilities unless it is impractical for reasons beyond the organization's control.
- The owner may charge a fee as approved by HUD if it is normally imposed for the use of the space. The owner is not required to charge a fee.

# Tenant Organizers

- A tenant organizer is a tenant or non-tenant who assists in establishing or operating a tenant organization and who is not an employee or representative of the owner, managers, or buyer of the property.
- Owners must allow tenant organizers to assist tenants in establishing or operating an organization.



# Non-Tenant Tenant Organizers

- If the owner has a consistent enforced, written policy against canvassing, a non-tenant who is a tenant organizer must be accompanied by a tenant while on the property, ***unless the organizer is from a group with a HUD grant designed to provide education and outreach to tenants.***
- If the owner has a written policy favoring canvassing or if the written policy against canvassing is not consistently enforced, any non-tenant who is a tenant organizer must have the same privileges and rights of access as any other uninvited outside party.

# Tenants' rights not to be canvassed

- A tenant has a right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

# Examples of Interference

HUD Handbook 4381.5, Section 4.8d gives examples of unacceptable actions by owners and management agents:

- Unreasonable denial of meeting space;
- Repeatedly sending management representatives to resident meetings when tenants have requested management not attend;
- Evicting or threatening to evict, withholding entitlements, or otherwise penalizing tenants for organizing or asserting their rights;
- Attempting to buy tenants off by offering employment, transfers, rent abatements, repairs or other benefits not available to all residents of the property;
- Attempting to form a competing organization under the control of the management company or owner; or
- Running for office or otherwise serving as a member of the resident organization.

# Enforcement

Owners or agents who violate any of these provisions and interfere with the organizational or participatory rights of tenants may be sanctioned by HUD with one or more of the following:

- Debarment – A person or organization that is debarred is prohibited from conducting business with any federal agency for a period of time. Debarment for the most serious violations are usually imposed for 3 years.
- Suspension – Suspension is a temporary action with the same effect as debarment.
- Limited Denial of Participation – LDP generally excludes a party from future participation from the federal program under which the cause arose. It usually lasts 12 months. It can also be limited to a certain geographic area.
- Civil Money Penalties – Fines imposed on owners, principals of owners and agents who knowingly and materially fail to comply with any of the provisions. The maximum fine is \$42,500.

# Enforcement Process

Housing Notice H-2016-05 describes these rights and spells out a process for enforcement.

- A tenant or tenant organization may file a written complaint with the local HUD office.
- The owner/management agent must also be provided with a copy of the complaint and factual evidence must support the complaint.
- Evidence supporting the complaint may include: signed statements from tenants who have seen the violations, documents from owners expressing opposition to tenant organizing activities, or documents denying the use of the facilities.
- The HUD Hub/PC Director must bring the parties together to attempt conciliation in every tenant complaint. If the parties reach an agreement to correct the violations, they will execute a conciliation agreement and the HUB/PC director will approve and sign it, if it protects the public interest.
- Participation in conciliation is voluntary for both parties.

# Enforcement Process, Continued

- If conciliation is not successful, the Hub/PC Director will conduct an investigation.
- Upon completion of the investigation, they can decide there is no reasonable cause and close the case.
- If HUD decides the owner has committed violations, the Hub/PC Director will send a written notice of the violations to the owner and the owner will have 30 days to correct them.
- If the owner fails to respond or if the response is inadequate, a referral may be sent to the Department Enforcement Center (DEC) and the owner should be flagged in HUD's Active Partners Participation System.
- If the owner's response adequately addresses the violation and is found to be in compliance, there is no flag in HUD's system and no referral for enforcement.

# Appeal of “no reasonable cause”

- If tenants disagree with “no reasonable cause” decision from the Hub/PC Director, the complaint can be appealed to the Director of the Office of Asset Management in Washington.
- The OAM will invite the parties to produce additional evidence, review all materials and find there is either reasonable cause or no reasonable cause. If there is no reasonable cause, HUD will take no further action.
- If HUD determines a violation has occurred or is about to occur, HUD will pursue enforcement remedies: debarment, suspension, limited denial of participation and/or civil money penalties.

# How did these protections come to exist?

- Soon after forming, The National Alliance of HUD Tenants worked to get HUD to recognize the right to organize, winning language in the HUD handbook and Residents Rights and Responsibilities brochure.
- In 1997, NAHT started a campaign to strengthen the right to organize following the arrests of two organizers.
- At their annual conference in 1998, a tenant from Los Angeles made a powerful presentation on the need for stronger protections for the right to organize. HUD agreed!
- NAHT got an amendment passed in 1999 to extend legislative authority for new Right to Organize regulations.
- When HUD issued the draft regulations, more than 100 tenant organizations around the country commented on the draft regulations HUD issued to make them better.
- In 2002, NAHT won an amendment to the Civil Monetary Penalty regulations amended to allow fines for violations of the Right to Organize.
- The NAHT Board successfully advocated for the new Notices in 2011, 2012 and 2016 with an appeals process for enforcement



# Sources

## Link to the Tenant Participation Regulations:

<https://www.gpo.gov/fdsys/pkg/CFR-2014-title24-vol2/xml/CFR-2014-title24-vol2-part245-subpartB.xml>

## Link to HUD Notice H-16-05:

<http://portal.hud.gov/hudportal/documents/huddoc?id=16-05hsgn.pdf>

## Link to Civil Money Penalty Regulations:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d87938d73a9a8cce10bcc6cdd19988d3&rqn=div8&view=text&node=24:1.1.1.1.23.2.71.7&idno=24>

## Link to HUD Management Agent Handbook (4381.5):

<http://portal.hud.gov/hudportal/documents/huddoc?id=43815c4HSGH.pdf>

# The Right to Organize in Action



# Question

You are passing out leaflets for a tenant meeting and the manager tells you she is going to call the police if you don't stop. What would you do?

# Question

Which of the following is *not* a requirement of a legitimate tenant group? (*There may be more than one.*)

- a. meets regularly
- b. has by-laws
- c. is completely independent of owners, management and their representatives
- d. operates democratically
- e. has an elected board.

# Inspiration

- <http://www.youtube.com/watch?v=q7iXcKKpdx0>