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Subsidized Housing

Programs, Procedure, and Special Issues

Matt Hulstein, April 16, 2020 (via Zoom)



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Introduction

- CVLS
 - Chicago's oldest and largest pro bono organization
 - We help low income Chicagoans with a variety of everyday legal problems, including eviction
 - Most of our clients are represented by quality, volunteer attorneys
- Matt Hulstein
 - Staff attorney with CVLS for past eight years
 - Oversee our Chancery Court Appointment Program
 - Handle a collection of housing and consumer issues
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Why this Work Is Important

- Matthew Desmond, writer of the book *Evicted* and MacArthur “Genius Grant” recipient:
https://www.youtube.com/watch?v=KEIlgG_s1DkE
- Waitlists:
 - CHA: <https://applyonline.thecha.org/PopupWaitTimes.aspx>
 - HACC: <https://thehacc.org/open-waitlists/>
- Consequences of eviction:
 - Loss of affordable housing is a cause of poverty.
 - Eviction from HUD subsidized housing triggers a mandatory denial from future HUD programs.
 - An eviction appears on background checks, making renting more difficult and expensive.
- If doing *pro bono* work, you’ll likely encounter subsidized housing.
<https://resources.hud.gov/#>



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Learning Objective

At the end of today's training, you will be able to confidently defend a subsidized housing termination.

Agenda

- Part I: HUD Housing Programs
 - Public Housing
 - Project Based
 - Housing Choice Voucher (f.k.a. “Section 8”)
- Part II: Procedure
 - Eviction
 - Voucher terminations
 - Ancillary evictions
- Part III: Special Issues
 - Non-payment of rent
 - Criminal activity
 - Disabilities
 - VAWA



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Part I

HUD's Rental Programs



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HUD Rental Programs

- Three main HUD Programs:
 - Public Housing
 - Project Based (collection of lots of programs)
 - Housing Choice Voucher (f.k.a. "Section 8")
- Good summary of programs:
 - National Housing Law Project (NHLP): <https://www.nhlp.org/resource-center/>
 - HUD webpages for each program
 - Legal Aid Chicago's Housing Outline: Available at Illinois Legal Aid Online (ILAO): <https://www.illinoislegalaid.org/>.
- Sources of authority:
 - Housing Act, 42 USC 1437
 - HUD Regulations at 24 CFR Part 5, plus separate Parts for each program
 - HUD Guidebooks
 - PHA Plans and Leases



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HUD Programs Are Income-based

- To be admitted, the family must be low income, which is based on a percentage of the area's median income
 - HUD's website:
<https://www.huduser.gov/portal/datasets/il/il2020/2020summary.odn>.
- Family must go through regular and interim recertifications to prove continued eligibility and calculate rental portion
- Generally, family pays 30% of household monthly gross income as rent
 - HUD pays remainder to make up market rent



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Which Program Is It?

- Each Program has a different interaction between:
 - Parties
 - HUD
 - Public Housing Authority (PHA)
 - Landlord
 - Tenant
 - Subsidy and the Unit
- How to tell
 - Low, odd number for family's rent payment
 - Tenant paperwork (lease, notices, etc.)
 - Ask tenant specific questions
 - Databases:
 - HUD website
 - National Housing Preservation Database (NHPD): <https://preservationdatabase.org/>
 - Illinois Housing Development Authority (IHDA): <https://www.ihda.org/rental-housing/#RentalAssistance>



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Public Housing

- Attributes:
 - PHA is the owner, landlord, and manages the subsidy
 - Subsidy stays with the unit
- Terminated through: Eviction with pre-termination grievance hearing
- Authority:
 - 24 CFR Parts 960 and 966
 - HUD Guidance: Occupancy Handbook:
https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mod/guidebook (coming soon!)
 - Local Programs: CHA and HACC Public Housing Projects.
 - CHA ACOP: <http://www.thecha.org/documents/> (search "ACOP"); Lease Agreement: <http://www.thecha.org/documents/> (search "Lease Agreement").
 - HACC ACOP: Cant find online...



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Project Based Subsidies

- Attributes:
 - Private company is owner and landlord
 - Management company likely handles recertifications (not for PBV)
 - Subsidy stays with the unit (some exception for PBV)
- Terminated through: Eviction, likely with right to “meet” with landlord
- Collection of different programs and authority:
 - Project Based Voucher (PBV; combination of HCV and Project Based subsidies): 24 CFR Part 983
 - HUD Multifamily Mortgage Programs: 24 CFR Parts 880, 881, 883, 884, and 886
 - Elderly and Disabled Housing Programs: 24 CFR 891



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Project Based Subsidies, Cont...

- Three main sources of authority:
 - 24 CFR 247 (Evictions)
 - HUD Occupancy Guidebook:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3
 - HUD Model Lease:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.pdf>
- For PBV:
 - Another subsidy may overlap it for the same development. If no other subsidy, authority above does not apply.
 - Still need “cause” to terminate tenancy (like Public Housing and Project Based)
 - No model lease, but subsidy addendum:
<https://www.hud.gov/sites/documents/52530C.PDF>



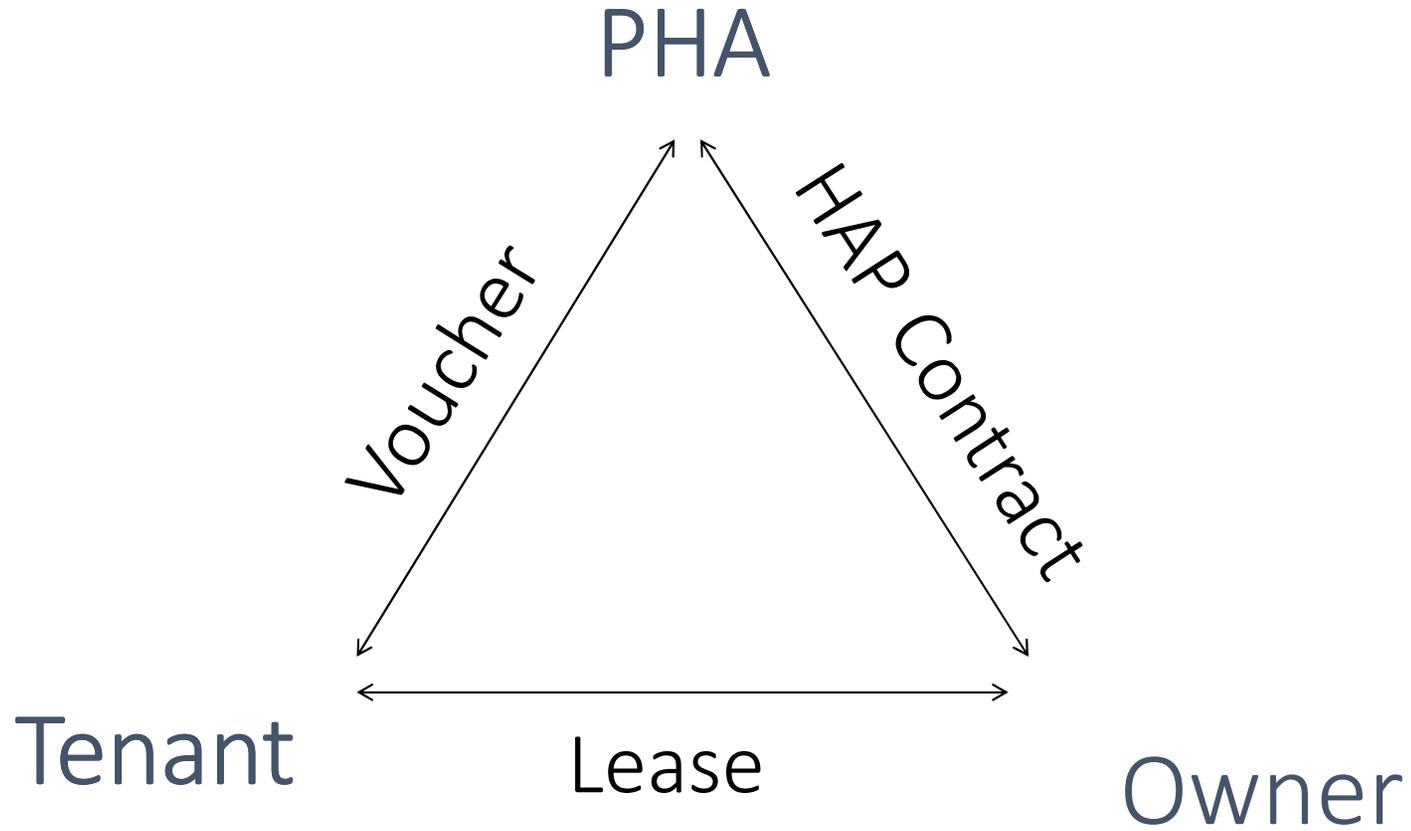
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Housing Choice Voucher

- Attributes:
 - Public Housing Authority (PHA), like CHA or HACCC manages subsidy
 - Tenant has a voucher she can use to rent in private market
 - Owner and landlord are private individuals, with a subsidy contract with PHA
- Terminated through: PHA-held administrative hearing
- Authority:
 - 24 CFR Part 982
 - HUD Guidebook: https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook
 - Lease: HAP addendum: <https://www.hud.gov/sites/documents/52641-A.PDF>
 - Local PHAs must publish an Administrative Plan. These have force of law on agency.



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A Quiz!



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- Tenant is facing an eviction...
 - She doesn't have a copy of her lease. You pull up the HUD model lease on your computer, and it looks familiar to her.
 - The notice refers to several different paragraphs of the model lease and says tenant has 10 days to meet with landlord to discuss violations.
 - This is her first apartment with any subsidy.
- What Program is It? Type your answer into the chat section. We'll reveal the answer at the end!



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Part II

Terminations



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Evictions

- If Public Housing or Project Based, eviction will terminate both housing and subsidy
- If Housing Choice Voucher, eviction and subsidy termination are separate. Either or both could be at stake.
 - Owner evicts
 - PHA terminates subsidy
- Eviction laws:
 - Eviction Act: 735 ILCS 5/9-101
 - If Chicago, RLTO: Chicago Muni Code, 5-12-010
 - If project is in Chicago, tenant will have right to cure lease violation (if can be cured) within lease termination notice



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Public and Project Based Evictions

- Authority:
 - Public Housing: 24 CFR 966.4(l)
 - Project Based: 24 CFR Part 247
- Grounds: “Serious or repeated violation of material lease term”
- Notice
 - Substance:
 - Must be “specific” so tenant can prepare a defense
 - Who, what, when, where, and how
 - Notice period:
 - Public Housing: 14 days
 - Project Based: 10 days (source: HUD model lease)
 - Service: Check CFR Parts
- Pre-filing “grievance”
 - Public Housing: Has right to pre-termination grievance hearing (except for criminal activity)
 - Project Based: Has right to “meet with landlord” in 10 days (source: HUD model lease)



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HCV Terminations

- These are administrative, not judicial, terminations
 - Think *Goldberg v. Kelly* and *Matthews v. Eldridge* SCOTUS cases
- Authority: 24 CFR 982.553 (grounds) and 982.555 (hearing process)
- Grounds: Likely violation of family obligations (982.551)
- Notice (Intent to Terminate Notice, "ITT"):
 - Substance:
 - Must be "specific" so tenant can prepare a defense
 - Who, what, when, where, and how
 - Service: Regular mail
 - In response, tenant can request administrative hearing
- Administrative Hearing
 - Discovery
 - Present witnesses
 - Review evidence other side will present
 - Impartial decision maker
 - Rules of evidence to not apply, but decision cannot be based solely on hearsay



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HCV and Evictions

- Before voucher termination
 - Bound by:
 - 24 CFR 982.310 (grounds and process)
 - HAP contract
 - Cannot discriminate based on source of income
 - An eviction for material violation of lease (which includes non-payment of rent) triggers mandatory termination of voucher.
 - PHA's non-payment of subsidy cannot be basis of eviction
 - Can request moving papers and take voucher to new unit
 - Want to be very careful of how you handle defense of eviction and settlement!
- After voucher termination (for PHA's non-payment of voucher)
 - Well, this sucks...
 - HUD regs no longer apply. Termination of voucher terminates HAP subsidy contract.
 - Have to challenge PHA's termination to get voucher back. 6 month filing deadline.



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HCV Admin. Review Actions

- Authority: PHAs have not adopted Administrative Review Law (735 ILCS 5/3-102), so decisions reviewed by common law *writ of certiorari*
 - Six month filing deadline
 - Heard in Chancery Division
- Process
 - Complaint must attach copy of decision and seek review. Very basic.
 - PHA's "answer" is the administrative record
 - Should include documents and a transcript of hearing
 - Possible motion for TRO to keep subsidy payments flowing
 - Briefing schedule
 - If tenant wins, PHA must pay all withheld subsidy to either landlord or tenant



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Part III

Common Issues



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Criminal Activity

- Who: Household members and guests (guests not grounds for terminating HCV voucher, but is grounds for terminating HCV lease.)
 - Rucker v. HUD: Doesn't matter if HOH didn't know about crime. Strictly liable.
 - CHA leases still maintain an "innocent tenant defense"
- Types of crimes:
 1. Drug related (marijuana still a federal crime),
 2. Violent (has legal definition), or
 3. Other criminal activity that threatens peace and safety of those living in the immediate vicinity.
- Proof: Preponderance of the evidence
 - Mere arrest is not enough, though it can be evidence (if admissible)
 - Plea bargain is not conclusive, though still very heavy evidence
- Most crimes are a discretionary basis for termination. Can try settle the case.



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Non-payment of Rent

- Issues with the subsidy
 - Was rent properly calculated?
 - Did tenant receive proper notice of:
 - Recertification appointments?
 - Rent increases?
- Habitability problems
 - Tenant generally has the right to withhold rent for habitability problems (would rarely advise this, personally...)
 - For HCV subsidy
 - tenant can request PHA conduct Housing Quality Standards (HQS) inspection.
 - If landlord fails HQS test, PHA stops HAP. That is the remedy for habitability problems there, and could undercut any further withhold defense.
 - Look for possible retaliation as defense. If eviction filed within a year of tenant report, presumed retaliatory.



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Disabilities

- Authority: 24 CFR Parts 1 and 8
- Illegal to discriminate on the basis of a disability, including refusing to grant a reasonable accommodation.
 - Reasonable accommodation could be adjustment to landlord/PHA policy
 - Can be requested at any time, including in course of case
- Elements:
 1. Person with a disability
 2. Nexus between disability and policy/alleged violation
 3. Change in policy would allow disabled person to continue in program
 4. Proposed change is reasonable

VAWA



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- Authority: 24 CFR 5.2001 - .2011; Illinois Safe Homes Act, 765 ILCS 750; Subsection of Eviction Act allows barring abuser 735 ILCS 5/9-106.2
- In general
 - Incident of domestic violence cannot be cause for terminating victim's housing
 - Landlord or PHA can remove/bar abuser from unit or subsidy
 - For Public Housing and HUD Projects, victim can also request an emergency transfer (limited by unit availability)
- OPs and police reports help but are not necessary to prove domestic violence. Should use HUD certification.

COVID-19



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- CARES Act pauses evictions for HUD programs (and from property where mortgage is federally-backed (Fannie, Freddie, FHA, etc.)
- Terms of Moratorium:
 - Evictions and late fees are paused for 120 days (until July 25, 2020)
 - Rent is still due during moratorium, just no immediate consequences
 - When moratorium ends, landlord must give 30 days' notice of any lease termination. Right to cure should extend full 30 days.
- If tenant experiences a drop in income, should request recertification right away to lower rental portion.

Answer to Quiz!



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HUD Project Based subsidy!



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Questions?

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