

**CHAPTER 8: PROPERTY MANAGEMENT**

**8.1 INTRODUCTION**

The quality of property management has a direct bearing on the performance of a GRRHP loan. While providing for acceptable property management is the responsibility of the borrower, the lender is responsible for ensuring that the asset value is preserved. In this role, the lender has an obligation to establish standards and to

- Key Topics in this Chapter**
- Role of Lender in Property Management
  - Management Plan
  - Property Manager
  - Management Agreement
  - Occupancy Requirements
  - Tenant Protection and Grievance Procedures
  - Reference and Conclusion

review the borrower’s actions in developing a management plan and selecting a property manager or management agent. Throughout the life of the loan, the lender must monitor property management through, among other means, review of financial reports and periodic site visits to assess property operations and physical conditions.

**SECTION 1: ROLE OF LENDER IN PROPERTY MANAGEMENT**

**8.2 RESPONSIBILITIES OF THE LENDER**

The Agency and the lender have a mutual interest in assuring that GRRHP properties are managed to:

- Protect the economic value of the property, which will support timely repayment of the loan and minimize losses; and
- Ensure that the property is operated in compliance with the program requirements and continues to provide decent, affordable housing in rural areas.

The lender must monitor GRRHP loans to verify that properties are well managed. To accomplish this, the lender must evaluate key management issues. These issues are briefly summarized below. Major issues such as the management plan, project manager qualifications and performance, management agreement and occupancy requirements are discussed in more detail in the remaining sections.

**A. Management Plan**

The management plan specifies the borrower and property manager’s plan for operating the property. The lender must approve the management plan. Part of the plan will be site-specific and part of the plan will be a generic description of the property

manager's procedures and staffing. To determine if the property will be well managed, the proposed management plan must be appropriate for the property type and market area.

**B. Property Manager Qualifications**

The lender must examine the property manager's qualifications to operate the property successfully and in compliance with the Agency's requirements. The manager should have experience with similar properties, and the staffing and organizational capacity to meet all of the property management requirements.

**C. Management Agreement**

The lender should review the management agreement or contract between the borrower and the property manager covering the terms and conditions under which the property manager will provide services. Section 4 of this chapter details the issues the lender must review or require in the management agreement.

**D. Site Visits**

The lender must inspect the property annually to ensure that it is being maintained in compliance with program requirements, local codes, and the management plan [7 CFR 3565.351 (e)].



**E. Occupancy and Rent**

The GRRHP contains a number of unique program requirements on tenant eligibility and rent restrictions. These include a limit on the income of tenants at initial occupancy, unit rent restrictions, and average project rent restrictions. The specific provisions are detailed in Section 5 of this chapter. The lender must ensure that the borrower and property manager thoroughly understand and comply with these requirements.

**F. Affirmative Fair Housing Marketing Plan**

The lender must review the borrower's *Form HUD 935.2, Affirmative Fair Housing Marketing Plan*, as a part of the management plan and determine if it is appropriate for the specific property and market area. It must be reviewed annually and modified when necessary if the goals of the plan are not being met. Instructions for review of this plan can be found in Chapter 4.



**G. Reporting**

The lender must obtain periodic reports from the borrower on the condition of the property. At a minimum these reports must include:

- On an annual basis, an audited annual financial statement conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). This report will include a balance sheet, income and expense statement, and a statement of borrower compliance with program requirements.
- On a quarterly basis, once the loan note guarantee is issued, the lender must submit *Form RD 1980-41* to the USDA Finance Office.
- On a monthly basis, for properties that are delinquent or in default, the lender must provide the Agency with a delinquency report including information about:
  - ◇ The amount of any monetary delinquency;
  - ◇ The physical condition of the property;
  - ◇ The financial status of the property;
  - ◇ The status of any non-monetary compliance problems; and
  - ◇ Proposed actions and timetable to resolve the delinquency, default, or non-compliance issues.

#### **H. Relationship Reporting**

The management agent must complete a *Form HUD 9832, Management Entity Profile* that provides information about the management agent and each member of the management team. Any identity of interest relationship with the property manager must be fully disclosed in *Form HUD 9832*. An identity of interest is defined in Chapter 1.

## **SECTION 2: MANAGEMENT PLAN**

### **8.3 OVERVIEW**

The management plan is the borrower's and property manager's plan for operating the property. It should address all aspects of property operation, maintenance, and compliance with applicable laws, regulations, and other program requirements. Standards and deadlines for performance must be included in the plan. The lender should assess the management plan for responsiveness to the specific requirements of the program [7 CFR 3565.351] as well as for information which indicates that the plan is appropriate to the requirements of the specific property.

The Agency requires that certain provisions be included in the management plan. These components are identified below. Attachment 8-A provides additional detail on the desired content of the required provisions.

## 8.4 MANAGEMENT PLAN REQUIREMENTS

The management plan is the document that tells the lender how the property will be operated over the life of the loan. The lender should review the plan to determine if it is appropriate for the property and the program requirements. It is the responsibility of the lender to monitor the management of the property for compliance with the management plan. A copy of the current plan must be kept on file in the lender's office. The Agency will not generally need to receive a copy of the management plan.

### A. Management Plan Contents

The lender must decide if the proposed management plan is suitable to meet the property's needs and if it addresses the minimum requirements identified below. Lenders may add additional requirements to address specific circumstances or market conditions. Remember that the management plan is an active document. The management plan can and should be revised as circumstances warrant.



It is anticipated that GRRHP properties may have supplemental financing or housing subsidies, and attendant occupancy or management requirements. Some of the other financing programs, such as low income housing tax credits, may have more restrictive income or tenant eligibility rules. The borrower has the responsibility to maintain compliance with all of these requirements. The Agency will, in most cases, comport its management requirements with the most stringent requirements imposed as a result of alternative financing sources. However, this may not be appropriate in all cases. For example, if a project's occupancy is suffering due to inadequate numbers of qualified tenants under the "most stringent rules," and may result in a default on the GRRHP loan, the Agency may require the lender to adhere to Agency occupancy standards to avoid a default.

Key management plan components to look for in the management plan are summarized here. They are described in more detail in Attachment 8-A.

- **Occupancy.** Has the property manager shown how it will perform standard operations such as rent collection and tenant screening, and how it will maintain compliance with the Affirmative Fair Housing Marketing Plan and unique tenant eligibility rules?

- **Maintenance.** Are there effective maintenance programs and good routines to respond to tenant work orders? Are utility costs monitored and energy conservation practices encouraged?
- **Personnel management.** Is the staffing appropriate for the size and services of the property? Are the job descriptions clear regarding on-site vs. main office personnel? Are the bundle of services included in the management fee distinguished from the charges to operations for on-site staff?
- **Financial management.** Are there adequate administrative procedures for money management, rent collection, reporting, recordkeeping, and data systems? What are the procedures for monitoring the operating and reserve accounts and insurance policies?
- **Tenant services.** Does the plan address the quality of services for the tenants, including safety and security, maintenance services, communication with the property manager, and tenant grievance procedures?

## B. Agency Review

Although the Agency does not approve the management plan, the Agency must approve the *HUD Form 935.2, Affirmative Fair Housing Marketing Plan*, which is to be prepared for the specific property and market area. Approval standards for this plan are detailed in Chapter 4.



## SECTION 3: PROPERTY MANAGER

### 8.5 OVERVIEW

This section describes issues related to the property manager that must be reviewed by the lender. Under the direction of the borrower and within the parameters of the management plan, the professional property manager has the direct responsibility for the property's daily operations. As a result, they play a key role in successfully marketing the property and in maintaining property values over time. The quality of their work also directly affects the quality of services to tenants.



The lender must review and approve the qualifications of the property manager selected by the borrower. The *Form HUD 9832* required of the management agent will provide important information about the ownership of the property management firm and its prior experience.

The Agency, the lender, and the borrower all have a keen interest in ensuring the highest quality management of the property and compliance with GRRHP regulations. The lender

should be sure that property managers are familiar with the key features of this program, including:

- The risk-sharing nature of the program which provides that the lender and the borrower will lose money if the loan defaults due to failure to comply with all loan and program requirements;
- Statutory income restrictions that must be certified at initial occupancy;
- Rent restrictions that limit unit rents and average project rents, and rents and utility allowances that must be certified annually; and
- The likelihood that secondary or supplemental financing will be involved and may require additional occupancy and rent restrictions.

Additional detail on the program occupancy requirements are provided in Section 5 of this chapter.

## 8.6 KEY PROPERTY MANAGER ISSUES

Some of the key property manager issues the lender should review include:

- **Relationship to the lender.** Does the lender have hiring and firing authority over the property manager if the borrower fails to act in a timely manner to resolve management deficiencies? Is the management agreement assignable to the lender, and ultimately to the Agency, in case of a default on the loan?
- **Management compensation.** Is the management fee clearly expressed? Are fees customary and typical for the market area for similar housing?
- **Industry knowledge and management training.** Is the property manager current on affordable housing issues and requirements? Is there a training program in place for training staff on GRRHP, other housing program requirements, and property management techniques? Is the property manager using current data management and recordkeeping technology?
- **On-site management.** Are there clear written job descriptions and responsibilities for on-site staff? Are management policies clearly documented? If the property is too small for on-site management, is the property manager's headquarters close enough to the property to effectively manage on a daily basis?



## 8.7 PROPERTY MANAGER EXPERIENCE

The property manager must be qualified to fulfill the management plan requirements and have experience managing small rural housing developments. The property manager must provide evidence of knowledge of the GRRHP and compliance with laws and standards governing the property's operations such as: fair housing, local property standards, environmental hazards, equal employment, accessibility laws, and related laws on equal opportunity and maintaining a drug free workplace.



Because GRRHP properties are likely to have additional sources of project financing, the property manager must also have adequate experience to manage the income and occupancy requirements of each financing program. These may include: Low Income Housing Tax Credits, HOME funds, Community Development Block Grant Funds, and State or local affordable housing assistance. The property manager must have a process to stay current on affordable housing issues and requirements.

The property management firm must have at least one person in a supervisory position with a minimum of two years of experience and satisfactory performance directing and overseeing the management of multifamily properties serving a similar resident clientele.

The lender is encouraged to visit the sites currently managed by the proposed property management firm as a reference check.

## 8.8 PREVIOUS PARTICIPATION AND OTHER FEDERAL REQUIREMENTS

The lender must obtain a *Form RD 1944-37, Previous Participation Certification* from the property manager and retain the original in the files. This certification must state that neither the property management entity nor its principals are debarred or suspended from Federal work. The lender must confirm this and may do so by accessing the GSA debarment list online at <http://www.arnet.gov/epls/> or in CAIVRS (Credit Voice Response System). If a borrower wants to use a debarred or suspended property management firm and believes it has a sufficiently good reason, the borrower may appeal to the lender. If the lender agrees, then the appeal must be forwarded to the Agency. The Agency reserves the right to reject a property management firm based on previous participation.



# SECTION 4: MANAGEMENT AGREEMENT

## 8.9 OVERVIEW

The management agreement details the contractual relationship between the borrower and the property manager. It must require the property manager to conduct its operations according to the Agency's requirements and applicable laws. The lender must review and approve the

management agreement and confirm that the terms are reasonable and customary. Also the lender must obtain an assignment of management agreement from the borrower in the event that the mortgage goes into default for monetary or non-compliance reasons and the property management agreement must be assigned to the lender or the Agency as appropriate. The executed management agreement and an executed assignment of management agreement must be kept on file with the lender.

#### **8.10 TERMS AND CONDITIONS**

The management agreement commits the manager to managing the property in accordance with the management plan and other requirements. The agreement provides the legal authorization for the property manager to act as the borrower's agent in carrying out authorized activities. The principal authorized activities include: budget preparation, entering into contracts for work at the property, collection of rents, and eviction of tenants.

Additional provisions of the agreement typically include: an indemnification of the property manager for good faith actions taken to carry out the borrower's policies, and an acknowledgment that the property manager is not financially obligated to fund the project expenses.

In the event that the property manager does not comply with the terms of the loan, management agreement, or the management plan, the lender must have the authority to require the borrower to replace the management agent with a qualified and competent agent. The lender's loan documents and the management agreement must include this requirement and, upon failure to comply, provide for the lender or the Agency, as appropriate, to take control of the property as mortgagee-in-possession with the ability to terminate the management agreement.

#### **8.11 MANAGEMENT FEE**

The management fee, including any incentives or bonuses to be paid from property funds to the property management firm, or any other party, must be reasonable and customary for similar properties in the market area. The total management compensation should be specified in the management agreement.

### **SECTION 5: OCCUPANCY REQUIREMENTS**

#### **8.12 OCCUPANCY REQUIREMENTS AND LENDER REVIEW**

*[7 CFR 3565.202 and 3565.203]*

The lender must ensure that the property is managed in conformance with the following occupancy requirements.



**A. Income of Residents**

Units are to be available only to households whose incomes (as defined in Paragraph 8.12 C.), at the time of initial occupancy, do not exceed 115 percent of the area median income. After initial occupancy, a tenant's income may exceed this limit. [7 CFR 3565.202].

**B. Tenant Income Certifications**

The initial tenant certifications must contain certain basic information required by the Agency such as types of income and sources. Annual rectification of tenant income is not required under the GRRHP, however, documentation of statutory compliance and information needed to fulfill fair housing reporting requirements will be required (as discussed in paragraph 8.12 D.). Property managers will have to recertify tenant incomes if required by other financing or housing assistance programs. When certifying or recertifying tenant income, any industry accepted certification form may be used if it provides all information required by the Agency. For example, if the property is also a tax credit property, the tax credit certification form may be used to calculate income for GRRHP purposes. If the property has no other subsidies attached, *Form RD 1944-8, Tenant Certification*, must be used.

When completing the income certification form, the property manager should only complete the portions of the form that are applicable to the GRRHP, such as name, address, telephone number, household members, and source and amount of income of all adults. Applicants are not eligible to claim deductions from income as permitted by Section 515 and certain other programs.

**C. GRRHP Definition of Income**

Income should be calculated per household as follows:

- The sum of all income of each adult member of the household for the prior year, including any interest income from any assets. Income must include all transfer payments such as child support and alimony.
- No adjustments to income will be made, such as exclusions for lump sum, SSI payments, student financial aid, adoption assistance payments, local employment training program participation, payments in support of a developmentally disabled family member at home, or similar payments.

**D. Reporting of Income**

To document statutory compliance and to provide required fair housing reports, the lender must periodically provide information on the characteristics of tenants, such as tenant incomes and household size. Because some tenants will have incomes recertified

annually due to other program requirements, this requirement may be fulfilled by submission of these recertifications. However, the lender must also obtain tenant income and household information on all other tenants (as discussed in Paragraph 8.12.B.).

**E. Restrictions on Rent**

The Agency has established certain rent restrictions to preserve affordability of GRRHP units over time. The rent restrictions for the program are as follows:

- The monthly rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 1/12<sup>th</sup> of 30 percent of 115 percent of area median annual income, adjusted for family size; and
- On an annual basis, the average monthly rent for a project, taking into account all individual unit rents, including any tenant-paid utilities, must not exceed 1/12<sup>th</sup> of 30 percent of 100 percent of area median annual income, adjusted for family size. [7 *CFR 3565.203*].

To comply with these rent restrictions the borrower must establish an estimate of tenant-paid utility costs. The calculation for tenant paid utilities for each unit size and type of heating fuel must be made at initial occupancy when the rent structure is established. Exhibit A-6 of RD Instruction 1944-E, Housing Allowances for Utilities and Other Public Services, may be used for this purpose.



The analysis must be updated annually or when information is received from utility companies of a utility cost increase. This process should reduce the administrative effort to track utilities on a unit and household basis, yet maintain an appropriate allowance for utilities paid by tenants in the rent calculation. If the lender believes that the rent structure has become distorted over time due to inaccurate utility expense estimates, then the property manager may undertake a utility survey. Utility surveys are not required by the Agency if the tenant-paid utility allowance appears to be accurate.

## **F. Use Restrictions**

The goal of the program is to provide and maintain the supply of affordable housing for low- and moderate-income residents of rural areas. GRRHP properties must not be operated as temporary or transient housing, or for use as migrant housing. Nor can the property be operated as a health facility or student housing. The initial and subsequent terms of the lease must be 12 months or greater, unless special servicing issues warrant a shorter lease term.

## **SECTION 6: TENANT PROTECTION AND GRIEVANCE PROCEDURES**

### **8.13 OVERVIEW**

The lender must receive confirmation from the borrower or property manager that the tenants have been informed in writing of their rights under the grievance and appeal section of the regulations [7 CFR 3565.351]. In addition, the lender must ensure that the borrower or property manager provide rejected applicants with relevant civil rights information. Tenants must receive and sign for receipt of a packet of information at lease signing that includes the grievance and appeals information. Tenants should also receive information about property rules and regulations, how to contact the property manager, and basic community information.



Some areas of the country have concentrations of non-English speaking residents. In such markets, or if the property has a large number of non-English speaking applicants or tenants, the borrower or property manager must make reasonable efforts to provide tenant information in the tenants' language.

### **8.14 TENANT PROTECTION**

The lender must verify that the property manager maintains a process for addressing tenant concerns about the management and maintenance of the property. An action or possible inaction by the borrower or property manager may adversely affect tenants of the project. Tenants are entitled to the benefits of the Agency grievance process or to pursue grievances under applicable local, State and Federal law.

### **8.15 GRIEVANCE PROCEDURES**

The lender must ensure that the borrower or property manager notifies the tenants that they have access to an approved grievance process and appeals system. Borrowers are required to post the Fair Housing Poster and other Agency information in accordance with [7 CFR Part 1944] that informs tenants of their rights under the grievance procedures. Exhibit 8-2

provides a flowchart of the process. Attachment 8-B provides details on the hearing requirements.

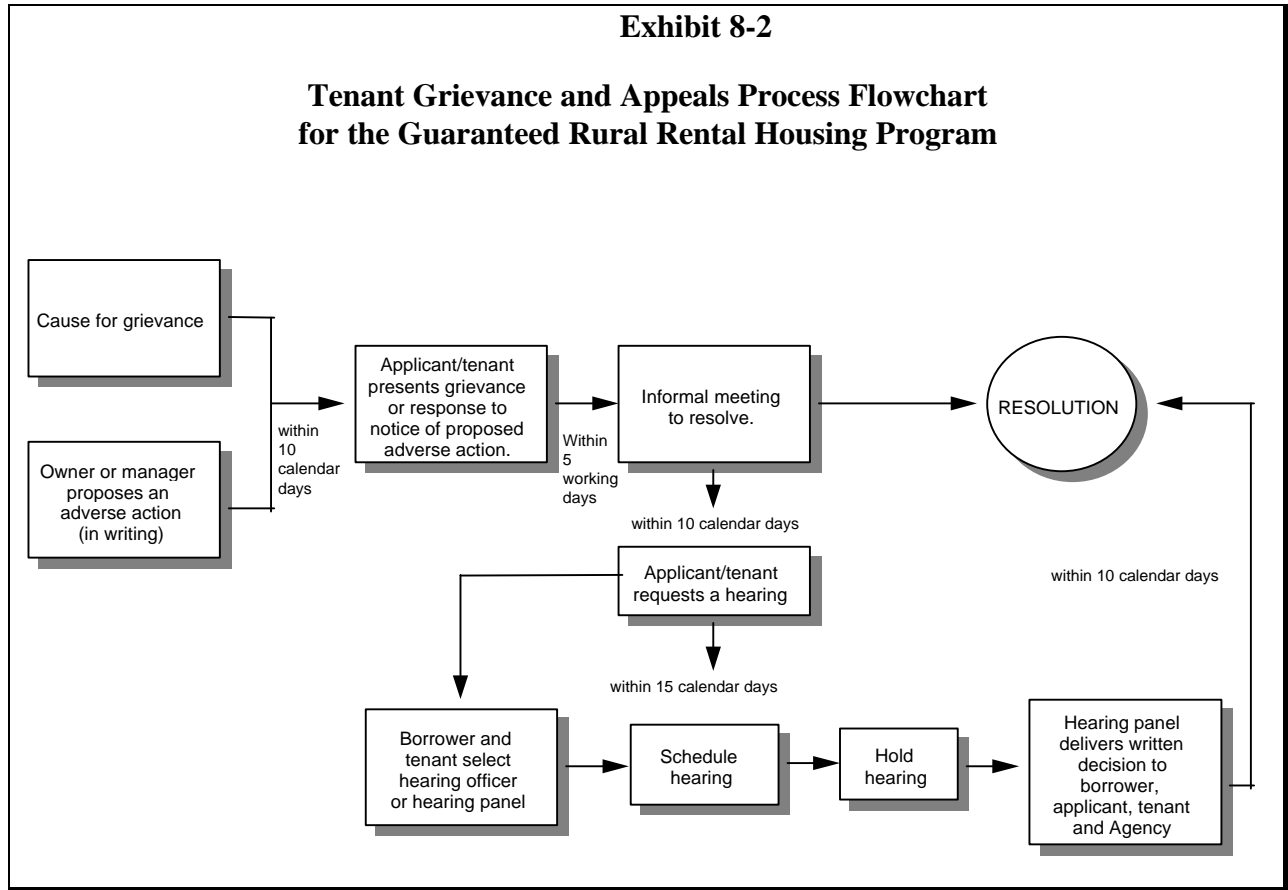
When there is a grievance, it is important to determine whether the grievance is appropriate for the Agency’s grievance process. Often the grievance is more properly addressed in other venues, such as a civil court in the case of personal disputes between tenants, or by the Secretary of HUD or the Secretary of Agriculture in the case of alleged civil rights discrimination (as discussed in Paragraph 8.16). Tenant complaints which are appropriately addressed under the Agency grievance process include unauthorized rent changes or lease modifications, inequitable enforcement of terms of the lease, and inadequate maintenance of the unit or property. Exhibit 8-1 lists the circumstances in which a tenant may or may not be able to file a complaint under the grievance process for this program.

<b>Exhibit 8-1</b>	
<b>Tenant Grievances – Allowable Circumstances</b>	
<i><b>A complaint may not be filed if:</b></i>	<i><b>A complaint may be filed if:</b></i>
<ul style="list-style-type: none"> <li>• There is a proposed rent change that is authorized by the Agency.</li> <li>• A tenant or prospective tenant believes that he/she has been discriminated against. This issue cannot be resolved through the appeals process, however, if a person believes that discrimination has occurred they should file a complaint with the Secretary of HUD.</li> <li>• A project has formed a tenants’ association and all parties involved have agreed to use this association as a method of settling grievances.</li> <li>• There are changes in the rules that are required by the Agency and proper notice has been given.</li> <li>• The tenant is in violation of the lease and those violations result in termination of tenancy.</li> <li>• Disputes between tenants that do not involve the borrower or management agent.</li> <li>• The grievance is related to displacement or other effects as a result of Agency-approved prepayment of a guaranteed loan.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a modification of the lease; change in the rules; or changes in the rent that are not authorized by the Agency.</li> <li>• The borrower or management agent fails to maintain the property in a manner that is decent, safe, and sanitary.</li> </ul>

The grievance process should only be employed after informal discussions between the aggrieved party and the property manager or borrower have failed and the Agency is asked to intervene. The parties will select a hearing panel or hearing



officer to govern the hearing which will be held within 15 calendar days of the request by either party for a hearing. Exhibit 8-2 illustrates the grievance and appeals process.



**8.16 CIVIL RIGHTS [7 CFR 3565.8]**

**A. Lender Obligations**

The lender must require certification from the borrower that the property manager will conduct its activities without regard to race, color, religion, sex, familial status, national origin, age, or disability. This includes any actions in the sale, rental, or advertising of the dwellings.

Compliance with the Fair Housing Amendments Act, and the Americans with Disabilities Act is required for all participants in the program. These Federal laws direct lenders, borrowers, and their agents, specifically including property managers, to:

<b>Examples of Unit Features That May Be Modified to Accommodate Tenants</b>
<ul style="list-style-type: none"><li>• Doorknobs/handles</li><li>• Bathroom fixtures</li><li>• Light switches</li><li>• Appliance handles/knobs</li><li>• The size of doorways</li></ul>

- Make accommodations in rules, policies, practices, or services to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas.
- Allow an individual with a disability to modify a unit at his or her expense, to make it more suitable or enjoyable. The tenant can be required to escrow funds to restore the unit to its original condition if the modifications are not suitable to the rental market.

Property managers should provide training to their staff on these subjects and establish an internal monitoring program to routinely check compliance with these requirements.

**B. Penalties**

Lenders, borrowers or their agents, who fail to comply with the requirements of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act), are liable to sanctions authorized by law, including, but not limited to, cancellation of the guarantee and investigation by the U.S. Attorney and/or HUD.



**8.17 HOUSING DISCRIMINATION**

No form of housing discrimination will be tolerated in the GRRHP. Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against, may file a complaint with the servicing lender, the Agency or HUD. Complaints may be filed with the Office of Civil Rights, U. S. Department of Agriculture, Washington, D.C., or with the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, D.C.

## ATTACHMENT 8-A

### MANAGEMENT PLAN REQUIREMENTS FOR THE GUARANTEED RURAL RENTAL HOUSING PROGRAM

There is no required form of management plan for the GRRHP, however, this exhibit provides detailed guidance on each of the required management plan components identified in Paragraph 8.4. The lender must insure that the borrower has provided for acceptable property management services and practices. References to the regulations are noted where applicable.

#### GRRHP MANAGEMENT PLAN REQUIREMENTS



##### 1. Occupancy Requirements and Monitoring

This part of the plan includes a statement of the occupancy requirements for the property, including the GRRHP requirements and the requirements of any other financing program that is applicable. The plan should describe how the property management firm will implement the requirements and ensure compliance over time.

Because of the important statutory and program requirements, the lender must carefully review this part of the management plan and then submit it to the Agency for final approval.

- **Non-contiguous or scattered sites with one loan.** Scattered sites are to be managed under one management plan and must be located within an area small enough to allow convenient, efficient management. The plan should detail how this will be accomplished and whether on-site or off-site management is planned.
- **Plans and procedures for marketing units and maintaining compliance with the Affirmative Fair Housing Marketing Plan.** The completion of a *Form HUD 935.2, Affirmative Fair Housing Marketing Plan*, is a statutory requirement. The plan must take into account the unique circumstances of the property and market area and must be able to be implemented by the property manager over the life of the guaranteed loan. The initial plan must be reviewed by the lender and forwarded to RHS for approval. The plan must be reviewed annually by the lender thereafter. [7 CFR 3565.353]



- **Procedures for determining applicant eligibility.** Property managers must demonstrate knowledge of the unique income eligibility rules of the program [7 CFR 3565.202]. Due to the likelihood of GRRHP properties being developed with multiple sources of financing, the property manager must be able to interview and document prospective tenants under the requirements of the other programs while meeting all of the GRRHP requirements. Some of the other programs will have more limitations on tenants' incomes than this program so the property manager must know and manage the distinct rules appropriately. 
  - **Leasing and occupancy policies.** Property managers must demonstrate the capacity to manage the unique leasing occupancy restrictions of the GRRHP program, and other applicable programs [7 CFR 3565.203]. Some programs will have requirements which exceed those of the GRRHP, such as the annual rent recertification requirement of the tax credit program, and managers must be knowledgeable of those requirements. 
  - **Rent collection.** How and where the tenant pays the monthly rent must be described — whether by mail, to a lock box, or collected on-site. Clear and consistent rules on collection of delinquent rent and assessment of late fees must be in the written plan and in the tenant lease.
  - **Termination of leases and eviction.** The plan must identify key lease provisions pertaining to termination of leases and eviction, and how the property manager will monitor compliance and take action to enforce these provisions. The provisions and the enforcement process must be fully consistent with Agency policies as well as with local, State and Federal law.
  - **Tenant Protection and Grievance Procedures.** The borrower or management agent must provide tenants with a copy of the tenant protection and grievance procedures at the time of lease execution, and, must provide civil rights information to rejected applicants. Tenant grievance procedures must be posted in a conspicuous public location at the property such as the entry or common areas [7 CFR 3565.351(c)].
  - **Security.** Adequate security must be provided to the property and the tenants. A written security plan to address issues such as tenant protection measures, vandalism, and drugs, is recommended. Any special security concerns for the site should be identified and remedial measures fully described.
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## 2. Tenant Services

The borrower and property manager are encouraged to offer tenant services appropriate to the needs of residents. Such services might include an after-school program for families or social programs for elderly residents. The cost of such services must be included in the operating budget if they are to be paid from project funds. Property managers must also provide a link to other resources in the community for services to the tenants whenever possible. The borrower and property manager must describe which community-based services will be supported at the property. Information packets must be available to new residents which include lists of resources and area employers.

## 3. Maintenance

- **Plans for carrying out an effective maintenance, repair, and replacement program.** Routine and non-routine maintenance procedures must be explained in the plan, including how tenants access the maintenance system, and how work requests from tenants will be handled in a timely manner.
- **Environmental review compliance.** The plan must describe how the property manager will manage compliance with applicable Federal and State environmental laws and any conditions set forth in the Agency's environmental review.
- **Energy conservation measures and practices.** The plan must describe any practices to be used to reduce energy and water consumption in common areas and by tenants. Education programs on conservation energy in their units must be included as part of such practices.

## 4. Personnel Management

- **Personnel policies and staffing arrangements.** The property manager must detail the management and maintenance staffing plan for both on-site and off-site staff, provide job descriptions and delegation of authority, and list emergency contacts in the management plan. The number, type, and compensation of the staff must be appropriate for the property.
- **Training.** Information about staff training on program requirements and on management procedures and techniques must be included in the plan.

## 5. Financial Management and Reporting

The plan must describe how the required reports to the lender will be prepared and submitted in a timely manner, including:

- **Access to Books and Records.** The borrower and property manager must agree to provide access to the project books and records for review by the USDA staff and Office of Inspector General, the General Accounting Office, and the Department of Justice, or their representatives, upon appropriate notification [7 CFR 3565.351(a)(7)].
  - **Accounting and Record-keeping.** The plan must include information on accounting and recordkeeping, including data systems, and software used to address:
    - ◇ Rent rolls, lease-up and vacancy information;
    - ◇ Scheduled maintenance;
    - ◇ Reserve withdrawals;
    - ◇ Accounts payable and receivable;
    - ◇ Tenant income reporting;
    - ◇ Monthly bank statements and reconciliations; and
    - ◇ Procedures to maintain books in accordance with Generally Accepted Government Auditing Standards (GAGAS).
  - **Insurance and Fidelity Coverage.** Insurance coverage must be provided in accordance with Agency standards. The type and level of property and fidelity insurance coverage must be specified in the plan. The plan must specifically highlight any unique insurance coverage appropriate for the property area.
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## ATTACHMENT 8-B

### THE HEARING PROCESS FOR TENANT GRIEVANCES AND APPEALS FOR THE GUARANTEED RURAL RENTAL HOUSING PROGRAM

#### THE HEARING PROCESS

##### A. Request for a Hearing

If an informal meeting between the tenant or prospective tenant does not resolve a tenant grievance, a grievance hearing may be requested. The tenant or prospective tenant shall present their request within ten days after the receipt of the summary of the informal meeting. The request must contain the following information:



- The reason for the grievance or contest of the borrower or management agent's proposed action;
- The action or relief sought; and
- Any additional information pertinent to the report.

If the tenant or prospective tenant's request for a hearing is not received within the prescribed time, the right to a hearing will be withdrawn and the borrower or management agent's decision will become final.

##### B. Selection of the Hearing Panel or Hearing Officer

The two parties shall elect a hearing officer. If a hearing officer cannot be agreed upon, the two parties shall choose members to serve on a hearing panel. The hearing panel will consist of three members. The tenant and the borrower or management agent must each elect one person to the panel. It is then the responsibility of the two chosen members to elect a third member to the panel. If within 30 days of the date a hearing is requested a hearing panel has not been formed, the borrower or management agent must inform the Agency. Within ten days of reviewing the facts, the Agency will appoint a hearing officer. Once a hearing officer or panel is selected, the Agency will inform them in writing of their responsibilities for governing the hearing.



Helpful information for selecting a hearing panel or hearing officer includes:



- The hearing officer cannot be a person selected solely by the tenant or management agent.
- The hearing panel members should be impartial.

To minimize time and the level of effort, a management agent may elect to have a standing panel to hear tenant grievances for each project managed. If a standing panel is chosen, the following process should be substituted for the process discussed above.

- A hearing panel consisting of three members including at least one tenant panelist, and one panelist selected by the agent.
- Tenants will nominate and vote for both a panel member and an alternate. Residents must be notified of the time, date, and location of the election.
- The borrower or management agent will select two members to serve on the standing panel. One will serve as the alternate.
- The third member of the panel must be selected jointly by the tenants and management agent.
- The chairperson shall be elected by the other two interested parties. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.
- Each member should be asked to serve on the panel for a specified term. All members of the standing panel shall be willing to render their services without compensation.

### **C. Hearing Schedule**

The hearing shall be scheduled 15 days after the receipt of the tenant's request for a hearing. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties cannot agree on a place and time, the hearing officer or hearing panel will select a time and place.



#### **D. Examination of Records**

At a reasonable time before the hearing, the borrower or management agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing.

Documents can be examined and copied at the tenant's expense if:

- The document, record, or policy is one that will be used during the hearing process; and
- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproductions.

#### **Documents That May Not Be Copied**

1. Credit reports
2. Project budgets
3. Supervisory findings

#### **E. Escrow Deposits**

Tenants may establish escrow accounts whenever a grievance involves a rent increase not authorized by the Agency or a failure to maintain the property in a decent and sanitary manner. The tenant must make timely rent payments to the account, but the borrower or management agent will not receive the payment until the grievance has been settled.

When an escrow account is employed, tenants must adhere to the following list of rules:

- All rent payments must be made to the escrow account on time and continue until the grievance is resolved. Failure to do so will terminate the entire process, and all sums will be due immediately.
- The escrow account must be established in a Federally insured institution.
- All receipts of deposit must be made available for examination by the borrower/agent.

#### **REQUIREMENTS GOVERNING THE HEARING**

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected and must permit:

- Both parties to be represented by counsel or another person(s) chosen as their representative;
- The right of the tenant or prospective tenant to request a private hearing;

- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower or management agent relies; and
- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to question and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party may present evidence to support their position. All participants of the hearing are to conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner will be excluded from the proceedings and may, as a result, receive an unfavorable decision.

If the tenant or prospective tenant fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than five days or determine that the party has waived his or her right to a hearing. All parties involved in the hearing shall be informed of the hearing panel's decision.



## **THE HEARING DECISION**

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties. The hearing officer or hearing panel shall inform the Agency of the decision and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is not final until it has been approved by the Agency. The Agency approval is only to make sure that the decision is in compliance with other Agency programs. The requirement for Agency review should be noted in the decision letter.

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