

# Habitability Issues in HUD Housing



Natalie M. Atallah  
Attorney-Advisor  
HUD Office of General Counsel

LA Law Library Pro Bono Week 2022



# Objectives of This Training

1. Become familiar with HUD and its major rental assistance housing programs
2. Learn about habitability law in the state of California
3. Obtain detailed information about how to report habitability issues in HUD housing



## Please Note...

The purpose of this presentation is to provide members of the public with general information about habitability issues in HUD housing.

Please note that HUD's Office of General Counsel (OGC) provides legal opinions, advice, and services to all of HUD's departmental programs and activities, but **does not provide legal advice or services to the public.**

OGC will not be providing legal advice during today's presentation, and the information in this presentation should not be treated as legal advice.

Individuals with habitability issues in HUD housing are encouraged to seek information from HUD (including HUD's Office of Public and Indian Housing and HUD's Office of Multifamily Housing, as applicable) as well as other community resources to address their specific housing issues.





# Background About HUD and HUD Housing Programs



# Fast Facts About HUD

- HUD is the acronym for the United States Department of Housing and Urban Development.
- HUD is a cabinet department in the executive branch of the U.S. federal government.
- September 9, 1965: HUD is established by the Department of Housing and Urban Development Act signed into law by President Lyndon B. Johnson.
- HUD is administered by the United States Secretary of Housing and Urban Development.



# HUD's Mission

- HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination, and transform the way HUD does business.





# HUD Housing Programs: an Overview

## Public Housing

- Established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities.
- HUD administers federal aid to local public housing authorities (PHAs) that manage the housing for low-income residents at rents they can afford.
- Approximately 970,000 units of public housing in the U.S.
- Public housing comes in all sizes and types, from scattered single-family houses to high rise apartments for elderly families.



# HUD Housing Programs: an Overview

## Housing Choice Voucher Program (Section 8 Vouchers)

- The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.
- Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from HUD to administer the voucher program.
- Includes supportive housing voucher programs such as VASH (Veterans Affairs Supportive Housing), Moderate Rehabilitation Single Room Occupancy, and Shelter Plus Care.





# HUD Housing Programs: an Overview

## Project-Based Section 8

- Program developed by HUD to provide rental subsidies for eligible tenant families and/or individuals residing in newly constructed, rehabilitated and existing rental and cooperative apartment projects.
- The project-based rental assistance makes up the difference between what an extremely low-, low-, or very low-income household can afford and the approved rent for an adequate housing unit in a multifamily project.
- Eligible tenants must pay the highest of 30 percent of adjusted income, ten percent of gross income, or the portion of welfare assistance designated for housing.
- Includes certain types of senior housing and properties financed by Low Income Housing Tax Credits (LIHTC).



# Do I Live in HUD Housing?

You may live in HUD **public housing** or **voucher-based housing** if...

- One of the parties to your lease is a public housing authority (PHA)
- You annually submit income/household eligibility paperwork to a PHA.

You may live in HUD **project-based Section 8** housing if...

- Your lease mentions HUD or contains HUD lease documents
- You annually submit HUD income/household eligibility paperwork to your landlord.



# Habitability Law in California





# What is Habitable Housing?

- “Habitable” housing means housing that is fit to live in.
- California law defines “habitable” as a rental unit that is fit for occupation by human beings and that substantially complies with state and local building and health codes that materially affect tenants’ health and safety.
  - *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638; Civ. Code §§ 1941 and 1941.1.



# The Implied Warranty of Habitability

- The **implied warranty of habitability** applies to all residential tenancies in California. Under this implied warranty, the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability.
  - *Green v. Superior Court* (1974) 10 Cal.3d 616; *Hinson v. Delis* (1972) 26 Cal.App.3d 62.
- Tenants are also required by law to take reasonable care of their rental units, and are responsible for repairing all damage that results from their neglect or abuse, or damage caused by anyone for whom they are responsible.
  - Civ. Code §§ 1929 and 1941.2.



# What is Uninhabitable Housing?

- A unit may be uninhabitable if it substantially lacks any of the following (not an all-inclusive list):
  - Plumbing facilities in good working order, including hot and cold water;
  - Heating facilities in good working order;
  - A working toilet, wash basin, and bathtub or shower;
  - Safe fire or emergency exits;
  - An electric system in good working order;
  - A locking mail box for each unit.

*For more, see Civ. Code § 1941.1. A concise summary of California law on this topic can be found at: <https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>.*





# Addressing Habitability Issues in HUD Housing



## 24 CFR § 5.703: “Decent, Safe, Sanitary”

- This important provision applies to all public housing units, project-based Section 8 units, and even properties with mortgages insured or held by HUD.
- 24 CFR § 5.703 requires that:  
**HUD housing must be decent, safe, sanitary and in good repair.**



## 24 CFR § 5.703: “Decent, Safe, Sanitary”

- Applicable owners or PHAs “must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: ***the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.***”





## 24 CFR § 5.705: Inspections

“Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, **must inspect such HUD housing annually** in accordance with HUD-prescribed physical inspection procedures. The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice.”



# HUD Housing Inspections

- HUD inspects properties and units based on federal inspections standards set by HUD's Real Estate Assessment Center (REAC).
- **For public housing and project-based Section 8 housing**, properties are inspected every 1 to 3 years. How often they are inspected is based on their previous inspection score. Properties that score well are inspected less often.
- **For Section 8 voucher units**, families choose their housing based on certain criteria. Once a family finds a home, the unit must be inspected before they can rent the property. Afterwards, inspections occur every 1 to 2 years.

# Reporting Habitability Issues in HUD Housing



- If you have concerns about the safety or condition of your HUD housing, you can report an issue. Depending on what the issue is, this may result in a special inspection. This would be in addition to a regularly scheduled REAC inspection.

*For a detailed description of the REAC inspection process, please visit:*

*[https://www.hud.gov/topics/REAC\\_Inspections/residents#bb](https://www.hud.gov/topics/REAC_Inspections/residents#bb)*



# Three Steps for Reporting Habitability Issues



1. Report the issue to your landlord, property owner, or manager.
2. If they do not address the issue, contact your property's HUD program administrator.
3. If your issue is still not resolved, contact your local HUD office.

*For a more detailed description of these steps and contact information for program administrators or local HUD offices, please visit:*

*[https://www.hud.gov/topics/REAC\\_Inspections/residents#bb](https://www.hud.gov/topics/REAC_Inspections/residents#bb)*

# What to Include When You Report a Habitability Issue to HUD



- Describe the problem.
- State if it is an emergency and why (how does it affect your health or safety).
- Include your unit number and building name.
- Provide your contact information.
- Include the initial response from your building management and/or PHA or PBCA from when you reported the issue.

# What to Know When Reporting a Habitability Issue



- **Keep a written record of your conversations:** Include any email, text, or handwritten conversations. Keep track of the date and time you spoke.
- **You shouldn't have to pay for issues to be resolved.** You should never have to pay for fixes to your unit due to normal “wear and tear.” Nor should you be charged to make fixes happen faster. You may need to pay if you caused the damage by neglect or destructive behavior. If you feel your housing provider is not providing you with a decent, safe, and sanitary home, you can report a bad landlord.



# What to Know When Reporting a Habitability Issue



- **Report retaliation or discrimination:** HUD has policies that protect you when reporting a concern. You can file a discrimination complaint.
- **Other steps you can take:** You can join or form a tenant group, resident council advisory board, or other local housing advocacy group. You can speak to your local elected government officials about your concerns. You can also find free or low-cost legal help or aid.



# Properties That Fail Inspection

## Public housing and project-based Section 8 properties

- If a property fails an inspection or the inspector finds issues (or deficiencies), the owner must:
  - Correct any serious health or safety defects at once.
  - Make a plan to address all other reported housing issues in both inspected and uninspected units and throughout the property.
- Note for multifamily properties: Your Project-Based Contract Administrator (PBCA) will follow up to make sure these issues are fixed. This is often done during a Management and Occupancy Review (MOR). If the property owner will not or can't correct the failing housing conditions, HUD may end its contract with the owner and move you to other housing.



# Properties That Fail Inspection

## **Housing choice voucher program**

- If the property fails the initial move-in inspection and the landlord refuses to fix the issue, you may need to find another apartment to lease. Work with your public housing agency (PHA) if you are in this situation.
- If a property fails an annual inspection:
  - Your landlord must correct any serious health or safety defects at once. The property must be re-inspected the next day.
  - HUD typically gives landlords 30 days to correct the issues and have the property re-inspected.





# Conclusion

- Please visit:  
[https://www.hud.gov/topics/REAC\\_Inspections/residents#bb](https://www.hud.gov/topics/REAC_Inspections/residents#bb) for more details about reporting habitability issues in HUD housing.
- Los Angeles HUD Field Office  
Phone: (213) 894-8000  
E-mail: CA\_Webmanager@hud.gov