

**6113 TENANT ADMISSION AND OCCUPANCY: REDEVELOPED
AND SERVICE RICH PROPERTIES**

6113.1 Scope.

Redeveloped Properties are mixed-finance communities owned by private entities which communities are created through HOPE VI or other public funding combined with private financing, which have some or all of their units assisted by operating funds or project-based rent subsidy payments provided by DCHA. Service Rich Properties may be DCHA-owned, conventional public housing or privately owned units assisted with operating funds provided by DCHA and managed by DCHA or third parties, which provide and/or oversee the delivery of services for residents.

6113.2 Overview.

- (a) Pursuant to the MTW Agreement between DCHA and the U.S. Department of Housing and Urban Development, dated July 25, 2004, as amended by an Agreement dated September 29, 2010, and as such agreement may be further amended, DCHA may, notwithstanding certain provisions of the Housing Act of 1937 and regulations issued pursuant thereto, adopt local rules for the governance of its public housing and housing choice voucher programs.
- (b) Accordingly, Section 6113 sets forth the regulatory framework for the property based rules and ongoing oversight or approvals governing: occupancy and re-occupancy; selection criteria; screening criteria; application processing; waiting lists; lease provisions; income determinations; and grievance procedures for properties officially designated as Redeveloped or Service Rich Properties by the DCHA Board of Commissioners.
- (c) Service Rich Properties operated as District of Columbia-licensed assisted living residences also shall operate subject to, and in accordance with the requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)), and regulations promulgated thereunder, Title 22 (Health), The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and any other applicable local or federal regulatory requirements.

6113.3 Selection Criteria.

- (a) The selection criteria, including all priorities and preferences for applicants for initial occupancy following construction and re-occupancy upon vacancy of units at Redeveloped or Service Rich Properties that are

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receiving operating subsidies or project-based rent subsidy payments from DCHA, are those incorporated in a regulatory and operating agreement or RAD control agreement by and between the owner and DCHA after consultation with representatives of the community and former and/or prospective residents. These selection criteria are hereinafter referred to herein as the “General Selection Criteria”.

- (b) While the General Selection Criteria may vary by property, selection and screening criteria for all properties shall include the mandatory federal standards with respect to certain types of criminal activity as specified in federal statute.
- (c) For UFAS-Accessible Units, besides the General Selection Criteria, occupancy of the Units shall be to a household qualified for the available bedroom size of the Unit and a verified need for the features of a UFAS-Accessible Unit in the following order of priority, with date and time of application or transfer request where there are multiple applicants within any one priority:
 - (1) First, to a qualified returning resident who previously resided in one of the developments being redeveloped.
 - (2) Second, to a qualified applicant referred by DCHA from its list of households designated in 2006 for interim assistance in accordance with the provisions of the Amended VCA.
 - (3) Third, to a qualified applicant referred by DCHA from its list of households designated in 2007 for interim assistance in accordance with the provisions of the Amended VCA.
 - (4) Fourth, to a qualified DCHA resident on DCHA’s Transfer List;
 - (5) Fifth, to a qualified public housing applicant on DCHA’s Waiting List;
 - (6) Sixth, to a qualified Housing Choice Voucher.

6113.4 Application Process.

Each property shall develop its own process for taking applications, subject to review and approval by DCHA.

- (a) Application forms for transferring or returning residents and applicants are developed by the owner for the Redeveloped Property and shall be subject to review and approval by DCHA.

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- (b) Completed applications for returning residents, transferring residents or applicants shall be accepted at the property and shall be reviewed and approved in accordance with the criteria approved in accordance with Subsection 6113.2.
- (c) The occupancy and re-occupancy application and selection process shall be monitored by DCHA's Office of Asset Management.

6113.5 Waiting Lists.

- (a) Where the number of returning residents, transferring residents or new applicants exceeds the number of available units, applicants seeking to be housed at the property shall be placed on a waiting list.
 - (1) Waiting lists shall be maintained by the manager of the property based on the date and time of application and in accordance with the selection criteria developed for the property and approved by DCHA in accordance with Subsection 6113.2; or
 - (2) At certain properties, a basic eligibility determination for public housing shall be made by DCHA's Client Placement Division and eligible tenants shall be referred to the property where the property's selection criteria shall be applied.
- (b) A list of all properties, along with the status of each site based waiting list as either open or closed, shall be available from the DCHA's Client Placement Division. When a property makes a determination to open its waiting list, notice shall be provided to the DCHA resident advisory board and published in the *District of Columbia Register*.

6113.6 Lease Terms.

- (a) Leases for Redeveloped Properties or Service Rich Properties may be developed by the owner or manager, subject to the approval of DCHA for compliance with applicable local and federal provisions as well as DCHA's regulations, including the requirements regarding Special Supplements to Lease governed by the provisions of Subsection 6112.4 of Title 14.
- (b) Provisions relating to rent, rent collection, security deposits, excess utility charges, and such other provisions as DCHA may approve, may vary from the DCHA standard form of lease.

6113.7 Income Determinations.

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Certification and recertification of income shall be performed by the manager of the property and monitored periodically by DCHA for compliance with applicable DCHA and federal regulations. At certain Service Rich Properties designated by DCHA, income for certification and recertification purposes may be disregarded for up to two (2) years of occupancy.

6113.8 Service Rich Properties – Assisted Living Residences.

- (a) Authority. HUD has authorized DCHA to operate certain of its Service Rich Properties as assisted living residences, as defined in the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)).
- (b) Eligibility; Continuing Occupancy.
 - (1) Families selected to live in a DCHA assisted living residence must meet assisted living-specific selection criteria, as outlined in site-based, site-managed community-specific eligibility criteria that are set forth in the Management Plan for the property, which DCHA will make available.
 - (2) Continued occupancy for families residing at DCHA assisted living residences will be based on adherence to the programmatic and occupancy requirements for the specific property, as set forth in the Dwelling Lease, Residential Agreement, and any Individual Service Plan, or any addenda thereto.
- (c) Grievance Rights.
 - (1) DCHA assisted living residences shall establish grievance procedures, which include informal and formal settlement procedures, (1) for all grievances arising public housing landlord tenant matters, that are consistent with the requirements of 24 CFR §§ 966.50 *et seq.*, and (2) for all grievances arising from assisted living matters, including transfer, discharge and relocation, the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)). The procedures shall be incorporated into the Dwelling Lease, as set forth in 24 CFR § 966.4(n), and shall be set forth in the Residential Agreement, pursuant to D.C. Official Code § 44-106.02.
 - (2) The grievance procedures shall provide:
 - (A) Informal Settlement of Grievance, as follows:

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- (i) If a Tenant wishes to grieve a decision of the administrator of the assisted living residence, he or she or his or her representative/surrogate must request an informal conference in writing within four (4) days of receiving the decision of the administrator in writing or within four (4) days of any alleged failure to act on the part of the administrator.
- (ii) The request for an informal hearing must include a description of the nature of the complaint and issue to be grieved. Upon request, a facility employee shall help the resident complete the written request.
- (iii) The administrator will provide the Tenant with a dated receipt when the request for an informal conference is filed. The informal conference will be scheduled at a mutually agreeable time and will be held within two (2) days of the receipt of the request by the administrator.
- (iv) The Tenant may bring his or her representative/surrogate and an advocate if he or she wishes. A Supervisor of the Administrator will preside and render the decision resulting from the informal conference. A copy of the written decision will become a part of the Resident's clinical record.
- (v) The Supervisor shall provide the decision in writing to the Resident within twenty four (24) hours of the completion of the informal conference. The decision shall include a summary of the discussion, the decision regarding the disposition of the complaint and the specific reasons for the decision. The decision summary will list the names of the participants, and the date of the meeting. When the written results of the decision are delivered to the Resident, they will include a description of the options remaining to the Resident, including instructions on how to request a Formal Hearing.
- (vi) If the original decision is concerning a discharge, transfer or relocation and it is upheld, and if the Resident decides not to pursue a Formal Grievance Hearing, the Resident must comply with the decision within thirty (30) days of having received

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the Notice of Relocation, Transfer or Discharge prepared and delivered according to the provisions of D.C. Official Code § 44-1003.02(a).

(B) Formal Grievance Hearing Regarding Involuntary Discharge, Transfer or Relocation, as follows:

- (i) If the Resident wishes to proceed with a formal hearing in order to contest the decision to involuntarily discharge, transfer or relocate the Resident, the Resident, his or her representative/surrogate or the Long-Term Care Ombudsman shall mail a written request to the Department of Health and deliver it to the Administrator within seven (7) calendar days after receiving a notice of discharge or transfer to another facility, or within five (5) calendar days after receiving a notice as described above, of relocation within the facility.
- (ii) If the Resident elects to request a Formal Hearing, the Administrator will remind the Resident that if the original decision is upheld, then the Resident will be required to leave the facility by the fifth (5th) calendar day following his or her notification of the hearing decision or before the 31st calendar day following his or her receipt of notice of discharge required by D.C. Official Code § 44-1003.02(a), whichever is later. If the Resident is being required to relocate within the facility, he or she will be reminded by the Administrator that this must occur by the eighth (8th) calendar day following his or her receipt of the notice to relocate or the third (3rd) calendar day following his or her notification of the hearing decision, whichever is later. The Administrator shall provide all notices required under this paragraph in written and oral form.
- (iii) The Department of Health will designate an appointee of the Office of Administrative Hearings as the Hearing Officer.
- (iv) The Office of Administrative Hearings will schedule the formal hearing to occur within five (5) days of the request from the Resident.

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- (v) The Resident may bring his/her representative/surrogate, and advocate or the Long-Term Care advocate to participate in the hearing. The facility shall have the burden of proof unless the ground for the proposed discharge, transfer, or relocation is a prescribed change in the resident's level of care, in which case the person(s) responsible for prescribing that change shall have the burden of proof and the resident shall have the right to challenge the level of care determination at the hearing. The Resident may not litigate Medicaid eligibility at the hearing.
- (vi) The Office of Administrative Hearings will provide the decision within seven (7) days of the completion of the hearing. The decision will become a part of the Resident's clinical record.
- (vii) If the original decision is upheld, the resident must leave the facility by the fifth (5th) calendar day after the receipt of the Hearing Officer's decision or the thirty-first (31st) day after receiving the discharge notification, whichever is later. If the original decision required relocation within the facility and it is upheld, this must occur before the third (3rd) calendar day after receiving the Hearing Officer's decision or by the eighth (8th) calendar day after having received the relocation notification, whichever is later. Notice shall be provided orally and in writing.
- (viii) If the resident prevails in contesting the notice then the discharge is rescinded unless administrator appeals the decision.
- (ix) Failure to request a formal grievance hearing shall not constitute a waiver by the Resident of his or her right thereafter to contest the Administrator's action in disposing of the complaint in an appropriate judicial proceeding.
- (x) A decision by the Office of Administrative Hearings in favor of the Administrator or which denies the relief requested by the Resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Resident may have to a trial or judicial review in any judicial

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proceedings, which may thereafter be brought in the matter.

- (xi) If the Resident chooses to take the matter to court, he or she must make the filing within the thirty (30)-day notice period.
 - (xii) A Resident may seek judicial review of any decision of the Office of Administrative Hearings by filing a petition with the Court of Appeals of the District of Columbia; or any decision of DCHA by filing an action in District of Columbia Superior Court.
- (d) Rent Calculation and Rent Collection at DCHA Assisted Living Residences.
 - (1) Tenant rent at DCHA assisted living residences shall be established as set forth at 14 DCMR § 6200, except as provided in subparagraphs (ii) and (iii) of this subsection.
 - (2) So long as a Family pays any applicable assisted living program fees timely, as provided in the Dwelling Lease, then for purposes of calculating adjusted income, as defined in 14 DCMR § 6099, to establish tenant rent for DCHA assisted living residences, such assisted living program fees shall be considered medical expenses and shall be deducted, in full, from the Family's annual income, as set forth in DCHA's approved 2014 Moving To Work Plan. In the event that adjusted income is zero dollars (\$0.00) or less, then rent shall equal zero dollars (\$0.00). Minimum rent, as defined by 14 DCMR § 6210, for assisted living residences, if any, shall be established by DCHA.
 - (3) Payments or allowances to residents of DCHA assisted living residences, for incidental living expenses under the provisions of any applicable assisted living program may be excluded from annual income for the purpose of calculating tenant rent.
 - (4) The Dwelling Lease for DCHA assisted living residences will include an itemized list of all fees, how they are calculated and allowances or payments for incidental living expenses.
- (e) Assisted Living Residences - Resident Agreements.
 - (1) For purposes of this Section 6113, the term "Residential Agreement" shall have the meaning and components according to the requirements of Section 44-106.2 of the D.C. Official Code. In

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addition, the Resident Agreement shall set forth the terms and conditions governing participation in the assisted living programming

- (2) At DCHA assisted living residences, the Resident Agreement may include or incorporate Individual Service Plans, as defined by D.C. Official Code § 44-106.04, to be completed by the participating household members.
 - (3) Upon execution, the Resident Agreement and related documents will become part of the Dwelling Lease. Participating Families must comply with the terms and conditions of the Dwelling Unit Lease Agreement, Addenda, the Resident Agreement and any related documents.
 - (4) Failure to abide by the terms of the Resident Agreement and related documents shall be considered a violation of the Dwelling Lease Agreement.
- (f) Assisted Living Residences - Transfers.
- (1) A request by a Family to transfer to a DCHA assisted living residence, in accordance with 14 DCMR § 6400, will be deemed “a tenant initiated transfer” request if the Family accepts the offer of a unit at a DCHA assisted living residence.
 - (2) If a Family, which resides in a DCHA assisted living residence, no longer wishes to participate in the programing available at the assisted living residence, but remains compliant with the Dwelling Lease, then the Family will receive up to two (2) transfer offers of Conventional Public Housing units, in writing.
 - (3) A Family residing in a DCHA assisted living residence unit that receives a written offer to transfer into a new dwelling unit may refuse the offer on the basis of evidence, satisfactory to DCHA, that acceptance of the offered unit would cause undue hardship, as set forth in Subsection 6111.9, and such refusal shall not count against one of tenant’s allowable offers under paragraph ii of this subsection.
 - (4) If a Family and refuses a second offered unit without good cause, then the Family may elect to stay at the assisted living residence, and shall comply with all applicable requirements, as set forth in the Dwelling Lease, or DCHA shall initiate discharge and termination processes, in accordance with Subsection 6113.8(h).

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- (5) Unless otherwise specified in the applicable Regulatory and Operating Agreement or Management Plan, or otherwise determined by DCHA, in the event of any family-initiated transfer to or from a DCHA assisted living residence to or from a conventional public housing unit as set forth in paragraph (f)(2) of this subsection, then the Family will be responsible for relocation costs.
 - (6) In addition to the foregoing requirements of this paragraph (g), any transfer of any resident from a DCHA assisted living residence shall be subject to, and in accordance with the applicable discharge and transfer requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)).
- (g) DCHA Assisted Living Residences – Discharge/Termination.
- (1) Any termination of any tenancy at DCHA assisted living facility shall be subject to the applicable termination and discharge provisions (including tenants' rights and protections) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)), in addition to any other DCHA, District or federal requirements
 - (2) If DCHA determines that a Family residing in an assisted living residence is in violation of the Dwelling Lease, except for lease violations predicated on criminal activity that threatens the residents health, safety or right to peaceful enjoyment of the assisted living residence, drug related criminal activity on or off the Leased Premises or at the assisted living residence or violent criminal activity, DCHA shall issue to the Lessee a notice to cure or vacate, stating in writing the violation(s) which provides the basis for the termination the lessee's right to cure the violations and instructions on how to cure the violations, provided that such notice and any requirement that tenant vacate the assisted living residence shall be subject to requirements of any applicable District or federal statute or regulation including those governing the assisted living residence or its services or programs. Administrator shall deliver notice orally and in writing.
 - (3) The notice shall inform the Family of its right to file an administrative complaint in accordance with Subsection 6113.8 (c), and any other administrative rights to which Tenant may be entitled by virtue of any District or federal regulation or statute

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governing the assisted living residence or its services.

- (4) If a Lessee has filed a complaint requesting an administrative determination of his or her rights, in accordance with Subsection 6113.8(d), in response to service of a notice to cure or vacate or a notice of lease termination, and or such other notice required by District or federal regulation or statute including the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.* (2012 Repl.)), to which the assisted living facility, may be subject, and has not prevailed, the Lessee shall be issued a notice to vacate, as the time to cure has past and the Lessee shall be subject to legal action to gain possession of the unit (eviction).
- (5) If DCHA determines that a Family's violation of the Lease results from a change in circumstance which renders the Family ineligible for the services offered at the assisted living facility, which change is not at the fault or initiative of the Resident, then DCHA may, subject to availability and applicable requirements, transfer the Family to a unit in conventional public housing, in accordance with Subsection 6113.8(f).
- (6) In the event of any lease violations, predicated on criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the assisted living residence, violent or drug related criminal activity on or off the Leased Premises or the assisted living residence, DCHA shall issue a notice to vacate, together with such other notice required by District or federal regulation or statute to which the assisted living facility or its programs or services may be subject.
- (7) DCHA will not issue a notice to cure or vacate, or notice to vacate, where DCHA has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.

SOURCE: Final Rulemaking published at 33 DCR 7973 (December 26, 1986); as amended by Final Rulemaking published at 46 DCR 603 (January 22, 1999), incorporating by reference the text of Proposed Rulemaking published at 45 DCR 7913 (November 6, 1998); as amended by Final Rulemaking published at 50 DCR 5739 (July 18, 2003); as amended by Final Rulemaking published at 51 DCR 9184 (September 24, 2004); as amended by Final Rulemaking published at 51 DCR 11326 (December 10, 2004); as amended by Final Rulemaking published at 53 DCR 9290 (November 17, 2006); as amended by Final Rulemaking published at 61 DCR 11192 (October 24, 2014); as amended by Final Rulemaking published at 64 DCR 12956 (December 22, 2017); as amended by Final Rulemaking published at 66 DCR 6831 (June 7, 2019).