

ASSISTED HOUSING MANAGEMENT INSIDER®

★ ★ INCORPORATING ASSISTED HOUSING FINANCIAL MANAGEMENT INSIDER ★ ★

SEPTEMBER 2012

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Seven Arrested in Housing Voucher Scheme

The alleged scheme unfolded after an individual approached a housing officer and offered bribes for Section 8 housing vouchers last December, according to a spokeswoman for the Housing Authority of the City of Los Angeles (HACLA). The city currently has about 47,000 vouchers, but the wait list is closed, making the vouchers extremely difficult to obtain.

According to the LAPD, the main suspect offered \$2,000 for every client the HACLA advisor would approve for the vouchers. The suspect also asked that the criteria and screening process be waived on Section 8 applications.

The HACLA advisor alerted authorities, kicking off a major operation involving the LAPD Major Crimes Division Criminal Investigation, Rampart Division; housing authority investigators; and HUD. Seven suspects were arrested and \$175,000 was recovered during the arrests. The primary suspect has pled guilty to bribing a public official.

FEATURE

Review Contractor Invoices for Common Overbilling Errors

Sometimes contractors accidentally overbill you. Less frequently, but still too often, they may even try to cheat you. Being the victim of overbilling practices not only costs you lots of money, it can also lead to audit problems. Auditors pore over contractor invoices to make sure they back up the amounts you charge to the site operating account. If the auditors believe the charges aren't reasonable, necessary, or properly supported, HUD could order you to reimburse the site for any charges it doesn't accept.

To avoid unknowingly paying more for items and services than the amounts you thought you negotiated, or paying for items or services you didn't order, look closely at contractor invoices. By correcting invoice errors, you can save a lot of money. We'll tell you how to spot and correct overbilling errors to avoid paying too much for contractors' services and possibly facing audit troubles as well.

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MAINTENANCE

Avoid Violations During HUD Inspections with Last-Minute Site Checkup

You may think that because you take good care of your site, conduct regular inspections, and promptly fix problems, you're prepared for your site's upcoming HUD inspection. But it's important to give your site a last-minute once-over to make sure you catch any problems before the inspector arrives. Some of the easiest-to-avoid inspection problems can cost you big points or get you hit with a health-and-safety "ticket," says Paul Crosby, director of maintenance with Gene B. Glick Company, Inc. But you can keep your score up and avoid these violations by taking an hour or two the day before your scheduled HUD inspection to check for and fix a number of these easy-to-repair violations, or at least make them appear less serious, says Crosby.

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Assisted Housing Management Insider [ISSN 1072-009X (PRINT), 1938-310X (ONLINE)] is published by Vendome Group, LLC, 6 East 32nd Street, New York, NY 10016.

Volume 19, Issue 9

Subscriptions/Customer Service: To subscribe or for assistance with your subscription, call 1-800-519-3692 or go to our Web site, www.vendomegrp.com. Subscription rate: \$472 for 12 issues. **To Contact the Editor:** Email: eyoo@vendomegrp.com. Call: Eric Yoo at (212) 812-8435. Fax: (212) 228-1308.

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Overbilling Errors (continued from p. 1)

Require Cost Breakdowns and Documentation

Before we detail the common invoice errors, your site should have proper procedures in place, such as requiring a cost breakdown for contracting jobs before executing a contract. "In fact, all work should be covered by a contract that spells out the details of the work to be done, the time frame in which it is to be completed, and the specific cost," says Mark Chrzanowski, compliance specialist at Gene B. Glick Management Co.

These cost breakdowns memorialized within a contract provide the boundaries or basis for evaluating contractor invoices. The cost breakdown requirement applies even when executing a contract change order that's outside the scope of the original contract.

For example, one Kansas City owner executed a contract change order without requiring contractors to provide the required cost breakdown of the proposals or completing the independent cost estimate before reviewing proposals. It had originally entered into a contract to replace 47 heating, ventilation, and air conditioning (HVAC) and hot water heater units in March of 2010. The change order was executed to wrap existing duct work with insulation to eliminate condensation damage to the ceiling and light fixtures. The original contract required only the new HVAC units to be attached to the existing duct work and didn't require replacement or improvement of duct work.

HUD Handbook 2210.18, paragraph 1.2(B)(4), states that modifications that change the scope of work beyond the original contract must be justified as noncompetitive or procured competitively. The owner didn't justify the change order services as noncompetitive or procure the services competitively. The owner also didn't require contractors to provide the required cost breakdown of the proposals submitted for the change order services. HUD Handbook 2210.18, paragraph 1.2(B)(4), also states that the owner must request a cost breakdown of the proposed cost.

Further, Form HUD-5370 states that contractors must break down proposals into direct costs, indirect costs, and profit. As a result, the owner couldn't support the more than \$10,000 in contractor and subcontractor fees charged for administering the change order services [HUD Audit 2012-KC-1004].

In another audit, a Virginia owner was ordered to reimburse the site for unsupported contractor charges. Auditors found many instances of unreasonable or unsupported charges for amounts paid to maintenance contractors. For example, the site paid for work identified in its records as "siding," but had no bill showing the costs for labor and materials. The site paid other contractors for "labor and materials" without getting a bill that described the work the contractors did. And the site paid one contractor after he simply gave staffers an envelope stuffed with hardware store bills to justify the amount he asked for. The auditors required the owner to reimburse the site operating account for over \$96,000 in unsupported charges [HUD Audit Rept. 96-PH-212-1017].

16 COMMON INVOICE ERRORS

Here are 16 common invoice errors that can result in overbilling and attract the probing eyes of HUD auditors, along with our experts' suggestions on how to solve them.

1. WORK ONLY VAGUELY DESCRIBED

A contractor may send you an invoice with only a vague description of the work done. If you don't know exactly what work was done, you won't know if you're being billed for the service you requested. You could be billed for work that you didn't order, that isn't your responsibility, or that wasn't done.

Solution. If you get a vague invoice, ask the contractor for another one that describes in detail the work that was done. The word "miscellaneous" on an invoice is a red flag, and you should find out exactly what services and costs it includes. Compare the invoice to the cost breakdowns for the project in the contract, which should specify the breakdown of expense items by category and item names that must be used for invoicing, adds management consultant Doug Chasick, Chief Learning Officer at LeaseHawk.

2. WORK NOT AUTHORIZED

Sometimes a contractor will bill you for work you didn't authorize it to do. The contractor may have gotten the go-ahead from one of your employees, even though the employee wasn't authorized to give it. Or a resident may ask the contractor to do work and try to bill it to you.

Solution. If you're being billed for unauthorized work, ask the contractor for the name of the person who authorized it. Chrzanowski recommends adopting a multi-level approval process to help ensure consistent decisions and proper communications among all involved parties. For example, an owner might name a single representative to deal with contractor questions or issues as they arise, such as additional required work. And this person may be the same individual or different from the person responsible for supervising the work for the owner. The job supervisor would communicate with the contractors to ensure that they understand the owner's expectations.

If one of your employees authorized the work, instruct the employee not to authorize work again without permission from the designated supervisor. If a resident authorized the work, tell the contractor that the resident had no right to authorize the work or to bill it to you. The best solution is to add a list or addendum

to the contract that lists the specific designated people who may authorize additional work or change orders and what their spending authorization limits are. Also, the addendum should include a specific list of work that needs to be done along with "not to exceed" amounts for certain items that can't be forecast to the penny, says Chasick.

3. SERVICES NOT PROVIDED

A contractor may bill you for work or items it didn't actually provide.

Solution. If you get an invoice for work you don't remember being done, check to see if it was actually done. If you're unable to check on it yourself, ask the contractor about the work in question. This way, you put the contractor on notice that you're inspecting invoices closely and that you won't accept any padding.

Be sure to document any disputed work. Chasick recommends taking photographs of incomplete jobs, sub-standard work, projects not authorized, or incorrect parts.

EXAMPLE: A landscaper bills you for digging an irrigation ditch on your lawn, but you don't recall having such work done. You go to the lawn and find no irrigation ditch. If you bring this discrepancy to the contractor's attention, it will probably correct the invoice and reduce your bill.

4. WORK NOT 'NECESSARY'

Some contracts give your contractor the right to perform tasks and charge them to you when certain conditions are found or when work is "necessary." For example, you may have contracted with a snow removal contractor to remove snow and bill the owner when at least an inch of snow had accumulated on the ground. But the contractor may have billed for snow removal when only half an inch of snow fell.

Solution. Check your contract to see how "necessary" work is defined and whether you think the work billed on your invoice meets that definition. If it doesn't, tell the contractor that you refuse to pay for it. It's smart to include a clause in your contracts saying that contractors must get your written permission to perform necessary work or work that hinges on certain conditions.

5. HOURS WORKED AND NUMBER OF WORKERS NOT SPECIFIED

Sometimes a contractor will bill you for labor costs at an hourly rate, and either charge you for more hours than

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Overbilling Errors (continued from p. 3)

it actually worked or for more employees per hour than actually worked on the job.

Solution. If the number of hours you're being charged for isn't specified in the invoice, ask the contractor for this information. Then ask the contractor how many people worked on the project. If either number seems too high, ask the contractor to explain. If you still have doubts about the number of people who actually worked on the project, ask your employees if they can recall how many of the contractor's workers were on the job and when.

6. LABOR RATE INCORRECT

Sometimes a contractor will bill you for labor at a rate that's higher than the contract rate.

Solution. If a billing rate seems incorrect, check whether it matches the rate set in your contract. If the contractor gets paid by the hour, your contract should set out the exact rate you'll pay the contractor.

7. SUBCONTRACTORS NOT USED

A contractor may charge you for the use of a subcontractor when no subcontractor was actually used.

Solution. If you suspect that no subcontractor was used on the job, ask the contractor for the name and phone number of the subcontractor and call to find out whether it did any work.

8. PERSONNEL NOT ESSENTIAL

Sometimes a contractor will bill you for the time of non-essential personnel or trainees. You shouldn't pay to train new employees, and you certainly shouldn't pay for the time of employees who don't work.

Solution. If you get a bill and the labor portion seems too high, ask the contractor exactly who was working on the project and in what capacity. If the contractor says that a trainee was used, tell the contractor you don't want the trainee's time to be billed at the full rate. Try to find out whether everyone on the job was actually working. Ask your employees if they noticed how many of the contractor's workers were actually working at the job site.

9. HOURS IMPROPERLY ROUNDED UP

Sometimes contractors who are paid by the hour round up to the nearest hour, even if the contract requires them to bill you to the nearest 10- or 15-minute increment. If this happens once or twice, it won't cost you too much, but the costs will add up if you get a lot of bills that are rounded up to the nearest hour.

Solution. If you're being routinely billed for full hours of work and your contract doesn't permit rounding up, ask the contractor to explain. If the contractor admits to rounding up, negotiate a reduction in your bill and tell the contractor you'll no longer accept rounding up. If the contractor denies rounding up, put the contractor on notice that you'll be examining the invoices closely and monitoring the work time yourself.

10. TRAVEL TIME OVERBILLED

Sometimes contractors overbill you for travel time. The amount of travel time may be excessive or rounded up to the nearest hour.

Solution. If a contractor charges you an excessive amount for travel, ask what its travel schedule was. Say that you won't pay for excessive travel time and that, even if the contract doesn't say so, you want travel time rounded up to the nearest 10-minute increment, not to the nearest hour. For example, a snow removal contractor may be routinely billing you for an hour of travel time to bring its equipment to the site even though the equipment is being brought from only a quarter mile away.

11. 'PAST DUE' AMOUNTS PAID UP OR NONEXISTENT

A contractor may bill you for amounts "past due" that you either have paid or have never been billed for.

Solution. If you get a bill for an amount past due, check your records to see if you were ever billed for that amount and whether you paid it. If it turns out you have already paid the amount and the check has cleared your account, show the canceled check to the contractor. If you haven't been billed for that amount, ask the contractor for a copy of the original invoice, which should state what you were billed for.

12. DOUBLE-BILLING FOR ITEMS BACK ORDERED OR WORK NOT BEGUN

Sometimes a contractor will bill you twice for a back-ordered item—once when it orders the item, and again when it receives the item. A contractor may also try to bill you either for work in progress or work that it hasn't yet begun, and then bill you again after the work is done.

Solution. If you get a bill for work or items that seem familiar from a previous invoice, check to see whether you have already paid for them. If so, show the contractor the original invoice and the canceled check, if necessary. To avoid this double-billing problem, you should pay for items only after you receive or use them and for work only after it's actually done.

13. LATE FEES NOT IN CONTRACT

Sometimes a contractor will bill you a late payment fee even if the contract doesn't authorize such fees. It may also try to charge you interest on the overdue amount, or a fee for the cost of billing you twice.

Solution. If you're charged a late fee or an interest charge, check your contract to see if it allows such fees. If it does, check to see whether you paid within the deadline.

14. IMPROPER TAXES COMPUTED

Sometimes a contractor will charge you for sales taxes that don't exist, and then pocket the extra money.

Solution. Have your accountant double-check that all sales tax computations are legitimate.

15. SUBSTITUTING GENERIC OR USED PARTS

A contractor may bill you for more expensive, brand-name parts but actually substitute generic or used parts.

Solution. Make sure your contract specifies what kinds of parts the contractor will use. Ask the contractor for a copy of the invoice for the product that identifies

the product's brand name. Sometimes a product's brand name is clearly visible on the product itself.

16. EXCESSIVE BILLING FOR OPEN-ENDED CONTRACT TERMS

Some contract work has unknown or open-ended elements or responsibilities, such as the precise number of shingles a contractor will need to replace the roofs at your site. These kinds of open-ended contract terms can be an invitation to contractor overbilling.

Solution. To close up these open ends, it's a good idea to require the contractor to specify "not-to-exceed" amounts or worst-case scenarios and include these amounts in the contract to limit the final tally. This way you won't end up with outrageously high bills you didn't anticipate.

Insider Sources

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Mark Chrzanowski: Compliance Support Administrator, Gene B. Glick Management Co., 8425 Woodfield Crossing Blvd., Ste. 300W, Indianapolis, IN 46240; www.glickco.com.

COMPLIANCE

Avoid Charging Ineligible Legal Expenses to Site's Operating Account

Assisted sites can amass a lot of legal expenses for site-related matters like evicting problem residents or drafting letters to comply with certain HUD rules. You can charge site-related legal expenses to your site's operating accounts, but only if you comply with HUD's rules on handling these expenses.

Auditors pore through your site's records to make sure you have the documentation to back up the legal expenses you've charged to the site and that you haven't charged any ineligible legal expenses. If auditors aren't satisfied that you've complied with HUD rules on handling legal expenses, you could end up having to repay the site out of your

own pocket for hefty legal fees, warns CPA and affordable housing expert Seth Strongin. Here are four tips for complying with HUD rules and avoiding having to repay your site's operating account for ineligible legal expenses.

Tip #1: Make Sure Legal Expenses Are Site-Related

You may charge legal expenses to site accounts as long as they're site-related, says Strongin. Legal expenses are considered site-related if they relate to frontline operations or otherwise benefit the site and not the owner or management company, he notes. For example, you can charge the site for the cost of legal expenses associated with:

- Drafting letters to residents, contractors, or HUD;
- Preparing for and conducting eviction trials;
- Recovering costs of damages from residents;
- Drafting lease amendments;
- Enforcing a contract with a contractor;
- Appealing property tax assessments on the site;
- Defending against fair housing lawsuits; and
- Lead paint litigation, but only after the owner has fully complied with HUD's requirements and is "successful" in defending against the lawsuit [HUD Handbook 4350.1, par. 19-10].

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Compliance (continued from p. 5)

Tip #2: Don't Charge Owner-Related Legal Expenses to Site Accounts

You can't charge the site for legal expenses that relate to issues of ownership, such as drafting partnership agreements or transferring ownership interest. Generally, legal expenses that benefit the owner and not the site are ineligible and shouldn't be paid from the site's operating account, says Strongin. Instead, the owner must pay these expenses out of distributions or other non-site funds, he says. Other examples of ineligible owner-related legal expenses are those associated with:

- Converting a partnership to a limited liability corporation;
- Resolving disputes between partners; and
- Defending mortgage foreclosure actions [Handbook 4350.1, par. 10-17].

What if the matter indirectly benefits the site as well as the owner? These legal expenses aren't eligible either, Strongin warns. For example, you can't charge the site for legal expenses associated with:

- Filing bankruptcy petitions;
- Drafting and negotiating loan workout agreements [Handbook 4350.1, par. 10-17]; and
- Prepaying or refinancing mortgages and loans.

You also can't charge legal expenses for matters that pertain exclusively to management company operations, such as defending nonsite-related employment discrimination lawsuits. If you do, auditors will most likely require the management company to repay site accounts [HUD Audit Rept. 95-PH-212-1012].

Tip #3: Make Sure Legal Expenses Are 'Reasonable'

HUD rules require that all site expenses, including legal expenses, be "reasonable." This means that you can't charge legal expenses for an attorney who charges excessively high fees or whose fees aren't related to the amount of work the attorney put into a specific matter. And you can't charge the site flat fees for in-house legal work that exceeds the cost of outside attorneys' fees in the area. If you do, HUD may require you to repay the site for excessive legal fees.

This happened to the managing agent of several assisted sites in Michigan. The agent used its own legal staff to handle evictions, rather than hiring outside attorneys. The staffers wrote and filed eviction notices and attended court hearings. The agent charged the sites a flat fee of \$35 for each case the staffers worked on plus an hourly rate for staff time ranging from \$40 to \$110. HUD auditors said these charges were too high.

To prove this, the auditors checked the bills of the agent's outside attorneys (the agent later started using outside attorneys to do the same eviction work its in-house staff had done). Unlike the agent, the outside attorneys simply charged a fee based on hourly rates, with no flat fee added. The average fee for a case was \$37, far less than the agent's fees. The auditors calculated that the excessive legal expenses totaled \$102,385. The auditors said the agent had to repay this amount to the sites' operating accounts [HUD Audit Memo 96-CH-212-1807].

To make sure you're not charging excessively high legal expenses to your site's operating account, do some research into legal fees

in your area. For example, call your local bar association, and ask other sites in the area what they pay their attorneys. Also, take steps, such as setting fee caps or limiting telephone conversations with your attorney, to limit your legal expenses.

Tip #4: Demand Detailed Bills to Support Site Charges

It's important to keep sufficient documentation of your site's legal expenses so auditors can determine the nature of the legal work and whether or not the expenses qualify as site-related, says Strongin. If they can't make this determination, you could end up having to repay any unsupported amounts, he warns.

So ask your attorney to give you a bill that carefully itemizes the services performed and the cost assigned to each service, says Strongin. How much detail is enough? Auditors should be able to tell what work was performed, when it was performed, the site to which the work related, and the names of any residents involved. Don't accept a shorthand description like "trial preparation" or "lease drafting." Instead, the bill should say something like:

Aug. 9, 2012: Preparation for Aug. 23, 2012, trial re eviction of resident Poe from Unit 5J at Shady Acres—\$500; or

Sept. 7, 2012: Drafting lease amendment for Shady Acres re drug-related activity by residents—\$250.

Insider Source

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Maintenance (continued from p. 1)

We'll tell you where to look for problems and what our experts say to look for during a last-minute inspection of your site. We'll also give you a Model Checklist: Use Pre-Inspection Checklist for Resolving Last-Minute Problems, that you can use to make sure you avoid frustrating point losses for easy-to-repair violations.

Where to Look for Problems

HUD inspects all areas of your site, so you should walk through all areas to look for problems. Here's where to look:

Site grounds and building exterior. Look for problems outside on your site's grounds and the exterior of the building.

Interior common areas. Look for problems in the site's interior areas. Depending on the size and layout of your site, you may have to check for and repair items in the following interior areas: lobby; office; community rooms; basements/closets/storage; garbage areas; laundry room; kitchens; halls/stairs; restrooms; day care facility; and other common areas.

Vacant units. HUD will inspect vacant units at your site, so look for quick-fix items in these units, says Crosby.

Occupied units. HUD will also inspect occupied units. But it may be difficult for you to inspect these units at the last minute, says Crosby. You probably won't have enough time to give residents notice of your last-minute inspection so that they can provide access, and then inspect all the units at your site the day before the HUD inspection. Instead, try targeting a few occupied units in

each building for your last-minute inspection.

What to Look For

You probably won't have time to catch—and fix—every type of violation during a last-minute inspection, says Crosby. This isn't the time to deal with violations that require expensive special equipment and experts to repair—you should keep on top of those problems as part of your site's ongoing maintenance and self-inspections, he says.

So focus on the easy-to-fix violations instead. You can do most of the following tasks without any special maintenance training and for very little cost. Others may take just a few minutes of your maintenance staff's time to fix. Here are some items you should do before an inspection to avoid losing points unnecessarily:

- Trim vegetation growing through fences or into sidings and tree branches growing too close to buildings;
- Mop up puddles in walkways, parking lots, roofs, and other parts of your site;
- Pick up litter and garbage;
- Remove or spot-paint small patches of graffiti (larger areas may require experienced contractors);
- Replace broken or burned out lightbulbs;
- Clear exit doors and windows of obstructions;
- Clear fire escapes of obstructions;
- Clear electrical panels of obstructions;
- Replace missing or broken electrical switchplates and outlet covers;
- Clear furnace/electrical rooms of storage and other obstructions;

- Adjust water heater pressure/temperature to proper levels;
- Properly align misaligned HVAC vents;
- Reset ground fault interrupters (GFIs);
- Fix leaky faucets;
- Fix running/clogged toilets;
- Unclog sinks and tubs; and
- Check for inoperable smoke detectors and replace batteries as needed.

Use Checklist to Cover All Items

Use the checklist to make sure you've made the repairs listed above as needed. The day before a scheduled HUD inspection, walk through the exterior and interior of your site with your maintenance supervisor. As you go through each area of the site, check off any items that now pass inspection—whether because they were taken care of before your inspection or because you just took care of them. If an item needs follow-up, red circle its checkbox. Check off the red-circled items as you either complete your own quick-fix repairs or confirm that site staff has completed them.

Our checklist is divided into two parts: one for site grounds and building exterior areas, and one for areas inside the site. You should perform the tasks listed under "Site Interior" for all applicable areas, including the lobby, office, community room, basements, closets, storage areas, garbage areas, laundry room, common area kitchens, halls and stairs, restrooms, day care, other common areas, and vacant or inspectable units. This means you may have to fix certain items in multiple areas of the site. For example, leaky faucets are a vio-

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MODEL CHECKLIST

Use Pre-Inspection Checklist for Resolving Last-Minute Problems

Here's a checklist that you or your site's maintenance staff can use to look for and fix last-minute problems before your HUD inspection. You can adapt the checklist for use at your site. As you go through each area, check off any items that passed inspection to start with or that you

fixed during the walk-through. When you find an item that you can't take care of until after the walk-through, red circle the checkbox next to it. Check off these red-circled items as you or other staff members complete repairs. Keep the completed checklists on file.

QUICK PRE-INSPECTION CHECKLIST

SITE AND BUILDING _____

INSPECTED BY _____ DATE _____

INSTRUCTIONS: Use this checklist of last-minute items to help prepare for our upcoming HUD inspection. As you walk through the site, check off items that pass inspection or that you took care of during the walk-through. When you find an item that you can't take care of until after the walk-through, red circle the checkbox next to it. Check off these red-circled items as you or other staff members complete repairs. You should complete the "site interior"

checklist for all applicable areas, including the lobby, office, community rooms, basements, storage areas, laundry room, common area kitchens, halls and stairs, other common areas, and vacant or inspectable units. Do not use this checklist as a substitute for our more thorough regular self-inspection. Use it only as a last-minute check for easy-to-fix inspection violations.

GROUNDS/BUILDING EXTERIOR

FRONT	BACK	
		Overgrown vegetation/tree branches trimmed
		Puddles mopped up
		Litter/garbage picked up
		Graffiti removed/spot painted
		Lightbulbs replaced

SITE INTERIOR

LOBBY	OFFICE	COMMUNITY ROOM	BASEMENT/STORAGE	LAUNDRY ROOM	HALLS/STAIRS	OTHER COMMON AREAS	VACANT/INSPECTABLE UNITS	
								Puddles mopped up
								Litter/garbage picked up
								Graffiti removed/spot painted
								Lightbulbs replaced
								Exit doors/windows unblocked
								Fire exits/escapes unblocked
								Electrical panels unblocked
								Electrical switchplates/outlet covers intact
								Furnace/electrical rooms cleared of storage, other obstructions
								Water heater pressure/temperature checked and adjusted
								HVAC alignments checked and corrected
								Ground fault interrupters (GFIs) reset
								Leaky faucets fixed
								Running/clogged toilets fixed
								Sinks/tubs unclogged
								Smoke detectors checked/batteries changed

Maintenance (continued from p. 7)

lation whether they occur in your site's common area kitchen or in a unit kitchen. So make sure you've fixed any leaky faucets in that area, as well as in any unit you inspect.

Also, don't forget to give your site a thorough cleaning to give HUD inspectors a good first impression of your site—wipe down window sills, office equipment, laundry machines, and light fixtures; mop floors; and vacuum carpeting. Even a slightly dusty site sends the message that you

don't care about your site and gives inspectors reason to look harder at your site's overall physical condition.

Insider Source

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RECENT COURT RULINGS

► Owner Must Show Material Noncompliance with Lease

Facts: The lease between an owner and a Section 8 resident included an addendum providing that “[t]he owner shall not terminate the lease except for ... [m]aterial noncompliance with the lease.” The addendum further specified that before terminating the lease, the owner must give the resident written notice stating the date of termination, explaining the reasons for the termination, and notifying the resident of her right to present defenses in a court action.

The owner served the resident with a 10-day notice to comply with the lease or vacate. The notice alleged several violations of a house rule requiring that “balconies and patios shall be kept neat and clean at all times.” The notice stated that a plywood panel along the inside of the resident's balcony deck railing violated this regulation. She was directed to remove the plywood and to take action to prevent materials from falling through her deck within 10 days or to surrender possession of the premises. The resident was informed that she had the right to “defend this action in a court of law” and the right “to discuss this termination with the landlord” within the 10-day period.

The resident cleaned the deck and covered the decking with a plastic tarp. She conveyed to the owner several reasons for the presence of the plywood, but the owner refused to exempt the plywood panel from the 10-day notice requirement. The resident removed the plywood 14 days after receiving the notice.

The owner then filed an eviction lawsuit. The trial court ruled for the owner, and the resident appealed.

Ruling: A Washington appeals court reversed the lower court's decision and sent the case back to trial.

Reasoning: Because both federal law and the lease addendum prohibited the termination of a tenancy in the absence of a Section 8 tenant's material noncom-

pliance with the lease, the trial court erred by determining that she had unlawfully detained the premises without first determining whether her conduct constituted material noncompliance.

The appeals court noted that every Section 8 lease had to include a HUD-required tenancy addendum, 24 C.F.R. §983.256. The protections provided by the lease addendum and by federal law were properly considered as limitations to the state's unlawful possession statute. In order to determine if the tenant had unlawfully possessed the premises, the trial court was required to determine whether her failure to comply with the owner's notice to remove the plywood panel within 10 days constituted material noncompliance with the terms of the lease.

■ Indigo Real Estate Services, Inc. v. Wadsworth, July 2012

► PHA Didn't Prove Resident's Violent Tendencies

Facts: A PHA filed an eviction lawsuit against a resident based on drug-related criminal activity and an altercation with a neighbor that disturbed other neighbors.

The resident was arrested for driving under the influence of psychotropic medication in August 2011. A year earlier, in September 2010, the resident had an altercation with her neighbor that led to the neighbor calling the police. The PHA alleged that the resident assaulted the neighbor.

In her affidavit, the resident denied ever assaulting the neighbor. Rather, the resident claimed that she confronted the neighbor because she believed the neighbor was trying to sell drugs to her daughter.

The PHA didn't submit any affidavit supporting its version of events; it wanted the court to decide that even if the resident's claim that she didn't assault the

(continued on p. 12)

THE TRAINER

We'll review the compliance issues raised in this month's articles. Then we'll give you a quiz to test your understanding of the issues discussed.

REVIEWING CONTRACTORS' BILLS; AVOIDING INELIGIBLE LEGAL CHARGES

In this month's feature, we discussed how to avoid audit trouble by spotting and correcting overbilling errors in contractors' invoices. If you don't review these invoices, you could unknowingly pay more for items and services than the amounts you thought you negotiated, or pay for items or services you didn't order. By correcting invoice errors, you can save a lot of money. We explained how to spot and correct overbilling errors to avoid paying too much for contractors' services and possibly facing audit troubles as well.

In our article on making sure ineligible legal expenses aren't charged to the site's operating account, we explained that if auditors aren't satisfied that you've complied with HUD rules on handling legal expenses, you could end up having to repay the site out of your own pocket for hefty legal fees. We gave you four tips for complying with HUD rules and avoiding having to repay your site's operating account for ineligible legal expenses.

TRAINER'S QUIZ

INSTRUCTIONS: Each of the questions below has only one correct answer. On a separate sheet of paper, write down the number of each question, followed by the answer you have chosen—for example, (1) b, (2) a, and so on. The correct answers (with explanations) follow the quiz. Good luck!

QUESTION #1

You get a bill from your contractor and the labor portion seems too high. What should you do?

- Check to see whether the labor rate matches the rate set in your contract. If the number of hours you're being charged for isn't specified in the invoice, ask the contractor for this information.
- Ask your attorney to look into the matter.
- Ask your accountant to look into the matter.

QUESTION #2

When is double-billing likely to occur?

- When a contractor bills you twice for a back-ordered item—once when it orders the item, and again when it receives the item.
- When a contractor bills you either for work in progress or for work that it hasn't yet begun, and then bills you again after the work is done.
- When your accountant reviews your contractor's invoice and charges you based on how many errors it finds.

- All of the above.
- Both a. and b.

QUESTION #3

Your contract for a project should specify what kinds or brands of parts the contractor will use. True or false?

- True.
- False.

QUESTION #4

You suspect your contractor performed and billed you for unnecessary work. How should you determine whether the work was necessary and the bill is proper?

- Check with the standards of the contractor's trade association.
- Check your contract for a definition of "necessary" and whether written permission from you was needed to authorize extra work.
- Hire an engineer or other professional consultant to review the work and make a determination.

TRAINER'S QUIZ

QUESTION #5

The owner of the site you manage is refinancing the site's mortgage, and says you can pay the related legal fees from the site's operating account. Is he right?

- a. Yes. b. No.

QUESTION #6

Which of the following legal services will HUD allow you to charge to the site?

- a. Preparing for and conducting eviction trials.
b. Drafting lease amendments.
c. Appealing property tax assessments on the site.
d. Defending against fair housing lawsuits.
e. All of the above.
f. Both a. and b.

QUESTION #7

You ask your attorney to give you a bill that itemizes the services performed and the cost assigned to each service. The invoice you receive includes the items "trial preparation" and "lease drafting." Is this enough detail to satisfy HUD auditors?

- a. Yes. b. No.

ANSWERS & EXPLANATIONS

QUESTION #1

Correct answer: a

Also ask the contractor exactly who was working on the project and in what capacity. If the contractor says that a trainee was used, tell the contractor you don't want the trainee's time to be billed at the full rate. And ask your employees if they can recall how many of the contractor's workers were on the job and when.

QUESTION #2

Correct answer: e

If you get a bill for work or items that seem familiar from a previous invoice, check to see whether you have already paid for them. If so, show the contractor the original invoice and the canceled check, if necessary. To avoid double-billing problems, you should pay for items only after you receive or use them and for work only after it's actually done.

QUESTION #3

Correct answer: a

True. A contractor may try to bill you for more expensive, brand-name parts, but actually substitute generic or used parts. So in addition to specifying what brands will be used in the contract, ask the contractor for a copy of the invoice for the product that identifies the product's brand name. Sometimes a product's brand name is clearly visible on the product itself.

QUESTION #4

Correct answer: b

First, check your contract. Some contracts give your contractor the right to perform tasks and charge them to you when certain conditions are found or when work is "necessary." Good contracts also include a clause saying that contractors must get your written permission to perform necessary work or work that hinges on certain conditions. If the contractor hasn't gotten this written authorization for work it has billed you for, refuse to pay for it.

QUESTION #5

Correct answer: b

No. HUD says the owner must pay these expenses out of distributions or other non-site funds, even though the matter indirectly benefits the site as well as the owner. Other ineligible owner-related legal expenses include those associated with defending mortgage foreclosure actions, filing bankruptcy petitions, drafting and negotiating loan workout agreements, converting a partnership to a limited liability corporation, and resolving disputes between partners.

QUESTION #6

Correct answer: e

All of these legal expenses are legitimate, according to HUD. In addition, legal costs associated with drafting letters to residents, contractors, or HUD; recovering costs of damages from residents; enforcing a contract with a contractor; and, under certain conditions, lead paint litigation are also expenses that can be charged to the site's operating account.

QUESTION #7

Correct answer: b

No. Auditors should be able to tell not only what work was performed, but when it was performed, the site to which the work related, and the names of any residents involved. Don't accept shorthand descriptions of the work.

Recent Court Rulings (continued from p. 9)

neighbor were true, her version of the incident demonstrates that she acted in a manner that disturbed the neighbors, which is in violation of the lease, which states: “Tenant shall not act or allow household members or guests to act in a manner that will disturb the rights or comfort of neighbors.”

Ruling: A New York trial court ruled against the PHA and dismissed the case.

Reasoning: The court concluded that to allow the resident to be evicted for confronting a neighbor who she believed attempted to sell her daughter drugs would be ill advised. Also, the court ruled that the resident’s nonviolent driving under the influence of prescription medicine didn’t violate the lease.

The court wouldn’t set a precedent in which a resident is penalized for protecting the health and safety of her child. Further, the incident occurred almost two years ago. The resident hasn’t had any other altercations in the duration of her 25-year residence at the site with other residents either before or after the incident in September 2010. While only one incident is sufficient to constitute “good cause” for termination of a lease, the PHA reaffirmed the resident’s tenancy numerous times since the incident, demonstrating that the incident wasn’t a major concern to the PHA. To terminate a 25-year tenancy due to this altercation would be inappropriate. Therefore, the court said, the PHA provided no valid legal basis for eviction.

■ Town of Oyster Bay Housing Authority v. Wilicki, July 2012

► **Owner Not Liable for Discrimination**

Facts: An occupant sued the local PHA for discrimination for failure to lease him the unit in which he claimed he had resided with his mother before her death.

As a child, the occupant moved with his mother and her husband into the unit. But records show that

he moved out of the unit in 1976. His mother continued to live in the unit after her son’s departure and until she died in July 2007. At the time of her death, she was the unit’s tenant of record and its sole authorized occupant.

In early September 2007, the occupant visited the site’s management office and requested that he be allowed to succeed his mother as the tenant of record. He claimed that he had resided in the unit for 10 years and that his income was minimal. He admitted that his mother hadn’t listed him as an occupant in the affidavit of income that she had provided annually to the PHA.

In limited circumstances, after a tenant dies or leaves a unit, the succession by a remaining family member to the tenant’s lease is permitted. To obtain remaining family member status, the relative must lawfully have become part of the tenant’s household, obtain written permission from the site manager, have remained in continuous occupancy of the unit for at least one year from the date when written permission was given, and be otherwise eligible for public housing.

The PHA asked the court for a judgment without a trial in its favor.

Ruling: A New York district court ruled in favor of the PHA.

Reasoning: The court decided that the PHA had legitimate nondiscriminatory explanations for the denying the occupant’s request. The PHA’s records indicated that he had left the unit in 1976; his mother had never sought to add him as a member of the household and that she hadn’t reported his occupancy as was required in her annual affidavit of income. Therefore, he had never become part of the family composition—that is, he had never legally become a part of his mother’s household for purposes of the PHA’s remaining family member policy.

■ Williams v. New York City Housing Authority, July 2012