

# ASSISTED HOUSING MANAGEMENT INSIDER®

★ ★ INCORPORATING ASSISTED HOUSING FINANCIAL MANAGEMENT INSIDER ★ ★

NOVEMBER 2012

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## Mismanagement at Maine State Housing Authority

A final report from the HUD Inspector General found that the Maine State Housing Authority mismanaged its program and failed to ensure that participants in its Housing Choice Voucher program were living in decent, safe, and sanitary conditions. This is according to a press release from U.S. Sen. Susan Collins' office. Collins had written to HUD in December to request a review of the Maine State Housing Authority's oversight of its Section 8 program. Her request came after the Fire Chief in Paris, Maine, wrote to her to report serious safety violations in units that receive federal payments under the Section 8 program.

In its final report to Collins issued on Oct. 2, HUD found that 53 of 61 units,

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## FEATURE

### Take Four Steps When Dealing with "Exigent" Health and Safety Hazards

During an inspection, Real Estate Assessment Center (REAC) inspectors look at specific areas of the site for health and safety hazards. Most of these hazards can cost you points on your inspection score but don't necessarily subject you to other, more serious penalties.

But some health and safety hazards are considered so dangerous that HUD requires you to take steps to correct these hazards immediately and certify within three days that you've done so. HUD calls these types of life-threatening hazards "exigent health and safety hazards" because of the urgent need to correct them in view of the risk of physical injury and death that they pose.

Uncorrected exigent health and safety hazards have serious repercussions for your site. These include possible administrative enforcement, which can lead to suspension and debarment from HUD programs. In addition, these types of hazards expose you to local

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## COMPLIANCE

### Post Required Federal Signs for Building and Management Employees

Federal laws require employers—including apartment building owners and management companies—to post signs explaining legal information to their employees. Failure to post the signs can cost as much as \$10,000 per violation. Fortunately, compliance is easy. The signs are available free of charge from the government agencies that oversee the sign-posting laws.

Although you may believe that you already have all these signs, it may not be enough. Many have been updated over the past few years, so you should make sure that you're posting the latest version in order to be in compliance with the law. It's important to note that your state may impose additional posting requirements. For information regarding your state's posting requirements, contact your state's Department of Labor.

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## “Exigent” Hazards (continued from p. 1)

finances from local and safety authorities. And these hazards can also put you at risk of lawsuits if residents or others are injured by these dangerous conditions. Residents may also withhold rent until you fix the hazards.

We’ll tell you what conditions HUD considers to be exigent health and safety hazards requiring immediate action. And we’ll tell you what steps to take to correct these conditions and to show HUD that you’ve done so. To help you do this, we’ve provided a Model Form: Owner Certification of Corrections, which mirrors the one HUD requires you to send to show you’ve corrected any exigent health and safety hazards. And we’ve created a Model Form: Documenting Exigent Health and Safety Hazards Repairs, which you can adapt and send with the certification.

### What Conditions Are Exigent Health and Safety Hazards?

During an inspection, REAC inspectors look at eight categories of health and safety hazards: air quality, electrical, elevator, emergency and fire exits, flammable materials, garbage and debris, infestation, and physical hazards. Within these eight categories, there are 13 types of conditions that HUD considers to be exigent (what HUD previously called life-threatening). These are:

- Missing electrical outlets and switches;
- Missing or broken cover plates for electrical outlets or switches;
- Missing circuit breakers on electrical panels or boxes;
- Missing covers for electrical panels or boxes;
- Water leaks on or near electrical equipment;
- Missing or inoperable smoke detectors;
- Missing, damaged, or expired fire extinguishers;
- Blocked or unusable emergency or fire exits;
- Visibly missing components of fire escapes;
- Security bars preventing exit through windows;
- Misaligned flue or ventilation systems on water heaters;
- Misaligned flue or ventilation systems on HVAC systems; and
- Detection of propane, natural, or methane gas.

### Four Steps to Take if You Get Cited

If an inspector cites you for an exigent health and safety hazard, take the following four steps:

**Step #1: Repair hazard immediately.** HUD rules require you to repair all exigent health and safety hazards immediately, if possible, but no later than three business days after the inspection. Once an inspector finishes an inspection, the inspection software summarizes all exigent health and safety hazards into one report, which the inspector will give you in writing (called a Notification of Exigent and Fire Safety Hazards), says REAC inspection expert Jack Smith.

It's important to repair each hazard properly. For instance, if you're cited for open electrical panels, the proper way to repair this type of hazard is to insert a circuit breaker, a fuse, or a blank plastic insert made by the proper panel manufacturer, notes Smith. But some sites have tried to fix this type of hazard in improper ways—for example, by covering the slots with electrical or duct tape or gluing inappropriate material over the slots. If you don't repair the hazard properly, REAC won't consider it corrected, says Smith.

And you must use the right person to make the repair. For example, your maintenance staff can change the battery on a smoke detector. But you may need to hire a trained contractor to repair gas leaks or electrical hazards.

To make sure you repair each hazard properly, go over the exigent health and safety report with the inspector to find out what repairs would put the cited hazard in acceptable condition, suggests Smith. Then determine whether your staff has the expertise to make these repairs or whether you need to hire an outside contractor, he says.

**Step #2: Discuss with local HUD office or contract administrator.** Once REAC gets your inspection results, it will post any findings of exigent health and safety hazards on the Real Estate Management System (REMS) 48 hours after the inspection, as well as on the REAC Web site. HUD has instructed local HUD offices and contract administrators to check for these results. Then they must call you to confirm that you've gotten the Notification of Exigent and Fire Safety Hazards. They should also ask you if you've corrected the hazards, and will discuss the hazards with

MODEL FORM

### Send or Fax Signed Certification Within Three Days of Inspection

Send or fax a signed certification, like the one below, on the owner's letterhead within three business days of your inspection to certify that you've corrected any exigent health and safety hazards. HUD requires standard certification language, so make sure your certification uses exactly the same words as the version we've given you. Complete the blanks in our Model Certification with the appropriate information about your site. Then have the owner sign the certification or, if you sign it as managing agent on behalf of the owner, be sure to describe your relationship to the owner in the second numbered paragraph. Finally, be sure to attach a completed repair report when you send it.

#### PROJECT OWNER'S CERTIFICATION THAT ALL EXIGENT HEALTH AND SAFETY ITEMS HAVE BEEN CORRECTED

\_\_\_\_\_ (the "Project Owner"), the  
*[Insert name of project owner]*

owner of \_\_\_\_\_ (the "Project"), by and  
*[insert project name, city, state, and project number]*

through its duly authorized representative identified below, hereby certifies that:

- All Exigent Health and Safety ("EH&S") items at the Project have been corrected. Such EHS items include those identified in the Notification of Exigent and Fire Safety Hazards Observed, dated *[insert date]*.
- The attached Report accurately identifies the repairs that have been made to correct the EHS items, the location of those repairs, and the date or dates the repairs were made. If repairs were not made, the dangerous condition was eliminated.

This certification is made by the Project Owner and is signed by a duly authorized representative of the Project Owner, who is so authorized by reason of his/her position as the *[state fully the relationship between the signer of the certification and the project owner:]* \_\_\_\_\_

\_\_\_\_\_

All of the foregoing statements, as well as the date, signature, and identifying information of the signer and the Project Owner that follow, are HEREBY CERTIFIED as true and accurate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PROJECT OWNER: \_\_\_\_\_

BY: SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

you. During the conversation, discuss any problems you're having making repairs. Your local HUD office or contract administrator may decide to refer you to HUD's Enforcement Center for adminis-

trative enforcement. By discussing any problems with them beforehand and working out a solution, you may be able to avoid getting referred for enforcement.

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## “Exigent” Hazards

(continued from p. 3)

### Step #3: Document repairs.

REAC requires you to document in writing your repairs of exigent health and safety hazards. Use a repair report like our Model Report. This report must be attached to your certification, as Step #4 explains. At the top of your report, give basic information about the site and the inspection. Below this information, your report should have columns to record the following:

◆ **Item number.** Keep track of the number of exigent hazards cited. It’s a good idea to list the hazards in the same order they

were listed on the notification. For instance, if you were cited for three exigent health and safety hazards, list them on the report in the same order they’re listed on the notification, and number them 1, 2, and 3, so there’s no confusion about which hazards you corrected.

◆ **Location of hazard.** For each item, state where the inspector found the hazard. Give the building and unit number, if applicable, and specify the area, such as “basement storage area,” “second-floor hallway,” or “rear exit door.”

◆ **Type of hazard.** State the hazard you were cited for—for instance, blocked fire exit or open electrical panels.

◆ **How you or staff repaired the hazard.** Describe what action you, your maintenance staff, or, if necessary, a hired contractor took to repair the hazard, such as replacing a missing fire extinguisher or unblocking fire exits.

◆ **Date and time of repair.** Record the date and time you or your staff repaired the hazard, to show you made the repairs right away. Even though REAC doesn’t require you to submit physical documentation, it’s a good idea to take a photograph of the repaired area, with a date and time stamp if possible, in case you need proof later that you’ve made the repairs.

**Step #4: Send or fax certification to local HUD office or contract administrator within three days.** Send or fax a signed certification, like our Model Certification, on the owner’s letterhead within three business days of the REAC inspection. Our certification contains standard language that HUD requires you to use, so make sure your certification uses exactly the same words as ours. When preparing your certification, fill in the blanks in our Model Certification with the appropriate information about your site. Only the owner or its “duly authorized representative” can sign the certification, so have the owner sign it, if possible. If you sign the certification as managing agent on behalf of the owner, be sure to describe your relationship to the owner. Finally, attach a completed repair report as referred to in the second numbered paragraph.

### Insider Source

**Jack T. Smith:** Director of Training, The Inspection Group, 6656 Lower Lake Dr., Westerville, OH 43082; [www.theinspectiongroup.com](http://www.theinspectiongroup.com).

### MODEL FORM

## Documenting Exigent Health and Safety Hazards Repairs

Here’s an example of a report you can use to document that you’ve repaired any exigent health and safety hazards found by the REAC inspector. It’s a good idea to list the hazards in the same order the REAC inspector listed them on the Notification of Exigent and Fire Safety Hazards. You’ll need to include a copy of this report with the certification you send or fax to your local HUD office or contract administrator. Talk to your attorney about adapting this report for use at your site.

### EXIGENT HEALTH AND SAFETY HAZARD REPAIR REPORT

<b>PROPERTY ID#:</b>	XXX-XXXX
<b>PROPERTY NAME:</b>	ABC Apartments
<b>ADDRESS:</b>	123 Main St., Anytown, USA 12345
<b>MANAGING AGENT &amp; TEL. #:</b>	John Manager, (555) 555-5555
<b>INSPECTION ID#:</b>	XXXXX
<b>DATE OF INSPECTION:</b>	10/1/12
<b>INSPECTOR’S NAME:</b>	Jane Inspector

ITEM #	LOCATION OF HAZARD	TYPE OF HAZARD	HOW REPAIRED	DATE & TIME OF REPAIR
1	Bldg. 1, basement	Open slots in electrical panels	Inserted blank plastic inserts	10/1/12, 1:15 p.m.
2	Bldg. 2, rear fire exit door	Door blocked by maintenance tool shelf	Removed tool shelf	10/1/12, 2:30 p.m.
3	Bldg. 1, Unit 3E	Inoperable smoke detector	Replaced battery in smoke detector	10/1/12, 3 p.m.

Go to the Real Estate section of our Web site, [www.vendomegrp.com](http://www.vendomegrp.com), for more information about our publications.

## HUD AUDITS

### ► **Hammond Housing Authority Didn't Administer Recovery Act Grants Properly**

HUD audited the Recovery Act formula and competitive grants administered by the Hammond Housing Authority in Hammond, Ind., as part of its annual audit plan. It selected the authority based on its analysis of risk factors related to the housing agencies in Region V's jurisdiction.

The auditors found that the authority didn't administer its grants in accordance with Recovery Act, HUD, and its own requirements. While the authority generally obligated and expended its Recovery Act funds in accordance with Recovery Act rules and regulations, it didn't ensure small purchases or contracts above its small purchase threshold were properly procured and executed in accordance with HUD's requirements and its own procurement policies. Further, it didn't ensure federal and its own procurement requirements were followed when change orders were approved for work items that were outside the scope of work for construction contracts.

The authority also didn't ensure that Recovery Act grant funds were: (1) disbursed within HUD's required time frame; (2) properly allocated and drawn from appropriate budget line items; and (3) spent on eligible items. The authority also didn't ensure that its contractors complied with the "buy American" requirements of the Recovery Act, the Davis-Bacon Act, and HUD's Section 3 Act of 1968. It also didn't accurately report its Recovery Act information for all three Recovery Act grants in [FederalReporting.gov](http://FederalReporting.gov).

The auditors recommended that HUD require the authority to:

- Provide documentation or reimburse HUD \$174,471 from non-federal funds for transmission to the U.S. Treasury for inappropriate change orders;
- Support or reimburse HUD more than \$106,000 from non-federal funds for transmission to the U.S. Treasury;
- Pursue collection of \$7,000 from its mixed finance development partner; and
- Implement adequate procedures and controls to address the findings in the audit report.

■ HUD Audit Report 2012-CH-1009: The Hammond Housing Authority, Hammond, IN (8/3/12)

### ► **Jefferson Parish Housing Authority Violated Federal Regulations**

HUD audited the Jefferson Parish Housing Authority in Marrero, La., as part of its annual audit plan to review public housing programs. The auditors sought to determine whether the authority operated in accordance with HUD and other requirements.

The auditors found that the authority didn't always comply with federal procurement regulations or ensure that its expenditures were eligible and supported. Specifically, the authority:

- Didn't always follow federal procurement and other requirements for its accounting, legal, and auditing services;
- Couldn't support disbursements made for security services, a grant coordinator, and credit card purchases, and paid for ineligible credit card purchases;
- Made ineligible payments to its commissioners; and
- Created a conflict of interest when it made payments to a state legislator's company.

These conditions occurred because the authority didn't understand or follow federal regulations or its procurement policy, didn't have adequate procurement or accounting policies and procedures or proper internal controls, and disregarded HUD guidance.

The auditors recommended that HUD require the authority to:

- Repay \$202,114 in ineligible costs;
- Support or repay \$453,793;
- Develop and implement proper internal controls;
- Immediately stop using funds for prohibited costs; and
- Provide training to authority employees.

The auditors also recommended that the director of the Departmental Enforcement Center impose appropriate administrative sanctions against the authority's executive director and board members for violating HUD requirements.

■ HUD Audit Report 2012-AO-1002: The Jefferson Parish Housing Authority, Marrero, LA (7/30/12)

## *Compliance* (continued from p. 1)

### **Federal Minimum Wage Sign**

**Who must post sign.** Anyone who has one or more employees.

**Content.** The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor (DOL). The sign exhibits the current federal minimum wage and explains who is eligible for it. The sign must also include language explaining federal child labor laws and the overtime provisions of the federal Fair Labor Standards Act. Under the act, employers are required to pay covered nonexempt employees a minimum wage of not less than \$7.25 per hour. This rate became effective July 24, 2009.

**Location.** You must post the sign in a conspicuous place where employees are likely to see it.

**How to get sign.** For a copy, contact the DOL at (866) 487-9243 or go to: [www.dol.gov/whd/regsl/compliance/posters/flsa.htm](http://www.dol.gov/whd/regsl/compliance/posters/flsa.htm).

**Most recent version.** The July 2007 revision of the minimum wage poster, reflecting the 2007 amendments to the Fair Labor Standards Act, is still valid and employers may continue to post it.

### **Equal Employment Opportunity Sign**

**Who must post sign.** Anyone with 15 or more employees.

**Content.** The sign explains the various federal anti-discrimination employment laws, including the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay Act.

**Location.** You must post the sign in a conspicuous place where notices for employees and job applicants are generally posted.

**Penalty.** The Equal Employment Opportunity Commission (EEOC) can fine you up to \$100 per violation for not properly posting the sign.

**How to get sign.** For a copy, contact the DOL at the above telephone number or go to: [www.dol.gov/ofccpl/regsl/compliance/posters/lofcccpost.htm](http://www.dol.gov/ofccpl/regsl/compliance/posters/lofcccpost.htm)

**Most recent version.** The latest version of the sign was issued in November 2009.

### **Job Safety and Health Protection Sign**

**Who must post sign.** Anyone with one or more employees.

**Content.** The sign explains that employers must provide their employees with a safe work environment, free from recognized hazards, and they must comply with Occupational Safety and Health Administration (OSHA) regulations.

**Location.** You must post the sign in a conspicuous place where notices for employees are generally posted.

**Penalty.** The law sets no fine for not posting the sign.

**How to get sign.** For a copy, call the local OSHA office or (800) 321-6742, or download and print from the following link: [www.osha.gov/Publications/osh3165.pdf](http://www.osha.gov/Publications/osh3165.pdf).

**Most recent version.** The latest version of the sign says “OSHA 3165-12-06R” in the lower right-hand corner.

### **Employee Polygraph Protection Act Sign**

**Who must post sign.** Anyone with one or more employees.

**Content.** The sign explains that under most circumstances employers cannot require their employees to take a lie detector test. In rare and controlled circumstances, the act permits polygraph testing of certain employees who are reasonably suspected of involvement in a workplace incident such as theft or embezzlement that resulted in specific economic loss or injury to the employer. In these instances, the lie detector tests are subject to strict standards for the conduct of the test, including the pretest, testing, and post-testing phases. An examiner must be licensed and bonded or have professional liability coverage. And the act strictly limits the disclosure of information obtained during a polygraph test.

**Location.** You must post the sign in a conspicuous place where employees are likely to see it.

**Penalty.** The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to \$10,000 per violation, including failure to post the sign.

**How to get sign.** A copy of the sign can be obtained from the DOL Web site at [www.dol.gov/whd/regsl/compliance/posters/leppa.htm](http://www.dol.gov/whd/regsl/compliance/posters/leppa.htm).

**Most recent version.** The June 2003 revision of the Employee Polygraph Protection Act Poster is still valid, and employers may continue to post it. “WH Publication 1462” appears in the lower right-hand corner.

### Family and Medical Leave Act Sign

**Who must post sign.** Anyone with 50 or more employees.

**Content.** The sign must explain that covered employers are required to provide up to 12 weeks of unpaid, job-protected leave to certain employees for certain family and medical reasons.

**Location.** You must post the sign in a conspicuous place where notices for employees and job applicants are generally posted.

**Penalty.** The Wage and Hour Division of the DOL can fine you up to \$100 per violation for not posting the sign.

**How to get sign.** A copy of the sign can be obtained from the DOL at [www.dol.gov/whd/regs/compliance/posters/fmla.htm](http://www.dol.gov/whd/regs/compliance/posters/fmla.htm).

**Most recent version.** The latest version was revised in January 2009; “WHD Publication 1420” appears in the bottom right-hand corner. This latest version incorporates a rule that became effective on Jan. 16, 2009. The rule provides for special military family leave for employees to care for a related service mem-

ber or employees who need to manage their affairs while the family member is on active duty in support of a contingency operation.

### Uniformed Services Employment and Reemployment Rights Act Sign

**Who must post sign.** Employers of service members returning from a period of uniformed service, including those called up by the reserves or National Guard.

**Content.** The sign explains the reemployment rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System.

**Location.** You may provide the notice by posting it where employee notices are typically placed.

**Penalty.** There are no citations or penalties for failure to post the sign. However, an individual could ask the DOL to investigate and seek compliance, or file a private enforcement action to require you to provide the notice to employees.

**How to get sign.** For a copy, call the DOL at (866) 487-2365 or go to [www.dol.gov/vets/programs/userral/USERRA\\_Private.pdf](http://www.dol.gov/vets/programs/userral/USERRA_Private.pdf).

**Most recent version.** The latest version was published in October 2008.

## COMPLIANCE

### Know When to Dispose of Old Household Files

Files on households can take up a lot of space. After a few years, you may be tempted to throw out some of these files, which contain documents relating to former and current households as well as to applicants who were rejected or withdrew their applications. If you're not careful, you might throw out documents that could help you thwart lawsuits or documents HUD needs to look over for management reviews and audits to ensure that you're complying with HUD rules.

Fortunately, the HUD Handbook spells out the minimum requirements regarding the proper time and procedures for disposing of old files.

**Applicants.** If your site has a waiting list, you're required to retain current applications of prospective households as long as their status on the waiting list is active [HUD Handbook 4350.3, par. 4-22(A)]. In addition, HUD requires you to keep files relating to an applicant household for at

least three years after you reject the household or it withdraws its application. Files should include the application, any correspondence between you and the household such as the initial rejection notice, the applicant reply, a copy of the owner's final response, any verification forms, and all documentation supporting the reason for removing the applicant from the waiting list [HUD Handbook 4350.3, par. 4-22(B)].

(continued on p. 8)

## **Compliance** (continued from p. 7)

During the application process, you may have conducted your own criminal background check on the applicant. Owners are allowed to use sources other than the housing authority to conduct criminal background checks. The owner may conduct his or her own background search of criminal records, or may hire a contractor. HUD says that criminal records obtained by the owner are to be maintained confidentially, not misused or improperly disseminated, and destroyed three years after tenancy is terminated. And criminal records received for applicants who never move in are to be retained with the application for three years [HUD Handbook, par. 8-14 (C)(14)].

**Current households.** Don't dispose of any portion of a current household's file while the household still lives at the site [HUD

Handbook 4350.3, par. 4-22(C)]. You might need to draw upon old information in the files about current households. For example, a household might claim that you improperly calculated its rent in the past. Old information in the files will show that your rent calculations were justified.

**Former households.** Keep a former resident household's file for at least three years after it moves out. The file should include all application paperwork, certification and recertification forms, a signed lease, and copies of any notices you sent to the household. In addition, you're required to maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out [HUD Handbook 4350.3, par. 5-23(B)].

**Disposal of files.** If you dispose of files, be sure to do it carefully

and thoroughly. HUD requires owners to maintain applicant and tenant information in a way to ensure confidentiality. In fact, any applicant or tenant affected by negligent disclosure or improper use of information is allowed to sue and seek damages [HUD Handbook 4350.3, par. 5-23 (D)].

Owners are required to dispose of all files and records in a manner that will prevent any unauthorized access to personal information [HUD Handbook 4350.3, par. 5-23 R)]. Methods of disposal include shredding or burning. Leaving unshredded or unburned files out at the curb for collection or tossing them in a Dumpster is too risky. The files contain confidential information such as Social Security and bank account numbers. And you could be sued or fined if any misuse of this information can be traced to your negligent disposal of household files.

## RECENT COURT RULINGS

### ► **PHA Not Liable for Unpaid Subsidy Payments**

**Facts:** Under a housing assistance payments (HAP) contract with a site owner, a local PHA is barred from making a monthly Section 8 payment to the owner for a unit that doesn't meet the minimum housing quality standards (HQS) established by federal law. During the inspection of one of the owner's units on Oct. 18, 2010, the PHA identified four "serious" HQS violations: (1) the living room window didn't stay up; (2) large holes were found in the kitchen wall; (3) the handle of the kitchen faucet was either nonfunctioning or missing; and (4) severe mildew/mold was found in the bathroom.

Upon receiving notice of the failed inspection, the owner claimed that it took prompt action to correct the conditions and that on Nov. 1, 2010, it faxed to the PHA a copy of the Certification of Completed Repairs in which one of its representatives certified

that the "life threatening and/or other serious HQS violations" were corrected on Oct. 29, 2010. The "Tenant Certifications" section was left blank, and a note attached to the Certification indicated that the "work is done [but the] tenant refuses to sign." At the top of the Certification, a "reinspection date" was listed as Nov. 12, 2010.

The PHA suspended its Section 8 payments to the owner for the unit as of Nov. 30, 2010. When the owner's staff asked why the subsidy hadn't been reinstated even though the Certification of Completed Repairs was turned in, the PHA responded that the subsidy would be reinstated only upon a satisfactory inspection of the unit. But according to the owner, the PHA didn't reinspect the unit until April 11, 2011. At the April 11, 2011, inspection, PHA staff once again identified several "serious" HQS violations.

The owner sued the PHA for unpaid Section 8 rent subsidies for the period of December 2010 to Decem-



ber 2011. The PHA asked the court to dismiss the case because the owner initiated the lawsuit after the four-month time limit to file a complaint.

**Ruling:** A New York court agreed with the PHA and dismissed the owner's complaint.

**Reasoning:** There was no dispute between the parties as to the information provided to the owner in the notice of failed inspection: that if both the owner and the tenant certified that the repairs had been made within 20 days, then payments wouldn't be suspended. But if the owner certified that repairs had been made but the tenant did not, then the PHA would have to reinspect the unit. Because the tenant didn't sign the certification and the PHA hadn't yet reinspected the unit, the payments were suspended as of Dec. 1, 2010.

The time to file a lawsuit began to run when the PHA suspended the owner's Section 8 payments, just as the owner had been warned would happen by the notice. Since the owner didn't file a complaint within four months, the law prevents the court from hearing the case.

■ 193 Realty, LCC v. New York City Housing Authority, September 2012

### ► PHA Provided Reasonable Eviction Notice to Resident

**Facts:** A former resident sued the local PHA for evicting him and eliminating his contract for housing assistance without giving him proper notice. The resident argued that the PHA violated his due process rights because he didn't receive adequate notice of the eviction proceedings. The notices all came back to the PHA as undeliverable. The PHA asked the court for a judgment in its favor without a trial.

**Ruling:** A South Carolina district court granted the PHA's request and dismissed the resident's claims.

**Reasoning:** The court ruled that the sent notices complied with service-of-process requirements. All the notices were sent to the resident at the only address on file. And all that's required by South Carolina and federal law is that the notices be "reasonably calculated to inform" the resident of the termination of the lease "whether or not the other actually comes to know of it."

Furthermore, when it was determined that the resident's unit appeared to be abandoned, the PHA filed for eviction with the South Carolina Magistrate's

Court. At the time, the process server was unable on three separate occasions to serve the resident. And the sheriff had attached an eviction notice on the door of the resident's unit.

Finally, the court ruled that the resident had adequate notice of the grounds for eviction in this case from the very beginning of his lease agreement. Under South Carolina law, an owner may terminate a rental agreement for nonpayment of rent "provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period." The "written notice" requirement of that section is met if the agreement contains the following section or its substantial equivalent: "If you do not pay your rent on time, this is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit." A provision in the resident's lease contained similar language and conveyed to the resident that his lease could be terminated if he failed to pay rent.

■ Major v. Housing Authority of the City of Greenville, September 2012

### ► PHA Not Required to Grant Resident's Transfer Request

**Facts:** An 84-year-old resident living in a one-bedroom unit submitted a request to the local PHA for a larger unit, along with a doctor's verification indicating that the small size of her unit had created stress that contributed to her poor health. The PHA denied her request.

A week later, the resident submitted a grievance seeking review of the PHA's decision. On the grievance form, the resident claimed that her unit was too small, and that the lack of space was creating significant stress for her. She noted that she had suffered a stroke in 1993 and two strokes in February 2011, and expressed concern that she might have another stroke due to the stressful living situation. She also stated on the form that she's diabetic, and she bangs her feet and knees while maneuvering through the unit. She further added that, at some point in the past, she broke an ankle and that due to the residual discomfort she has difficulty moving around the unit. She also expressed concern that if there were an emergency, responders wouldn't be able to assist her.

(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.*

### DEALING WITH EXIGENT HAZARDS; POSTING FEDERAL SIGNS; DISPOSING OF HOUSEHOLD FILES

In this month's feature, we discussed what conditions REAC inspectors consider to be exigent health and safety hazards requiring immediate action. And we told you what steps to take to correct these conditions and to show HUD that you've done so.

In our article on posting required signs for employees, we explained which federal signs you must post,

where you must post them, and how to get the most recent version.

Finally, in our article on disposing of old household files, we reviewed HUD's minimum requirements regarding the proper time and procedures for disposing of old files.

#### 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

Which of the following conditions isn't considered an exigent health and safety hazard by HUD?

- a. Missing electrical outlets and switches.
- b. Missing or inoperable smoke detectors.
- c. Inoperable stove burners.
- d. Security bars preventing exit through windows.

##### QUESTION #2

If an inspector cites you for an exigent health and safety hazard, you must repair the condition immediately, if possible, but no later than five business days after the inspection. True or false?

- a. True.
- b. False.

##### QUESTION #3

To show you've completed repairs of any exigent health and safety hazards, you must send both a signed certification and a repair report to your local HUD office or contract administrator. True or false?

- a. True.
- b. False.

##### QUESTION #4

Your management company has 70 employees, some of whom have served in the National Guard. Which of the

following signs are you required to post under federal law?

- a. Federal Minimum Wage sign.
- b. Equal Employment Opportunity sign.
- c. Job Safety and Health Protection sign.
- d. Employee Polygraph Protection Act sign.
- e. Family and Medical Leave Act sign.
- f. Uniformed Services Employment and Reemployment Rights Act sign.
- g. All of the above except d and e.
- h. All of the above except g.

##### QUESTION #5

Employers are required to pay covered nonexempt employees a minimum wage of not less than \$7.25 per hour. True or false?

- a. True.
- b. False.

##### QUESTION #6

If your site has a waiting list, you may not dispose of any files of applicants as long as their status on the waiting list is active. True or false?

- a. True.
- b. False.

## TRAINER'S QUIZ

### QUESTION #7

You must keep a former resident's household file for at least three years after he moves out. True or false?

- a. True.
- b. False.

### QUESTION #8

When disposing of household files, you should:

- a. Shred them.
- b. Burn them.
- c. Place them in a Dumpster.
- d. Any of the above.
- e. a or b.

## ANSWERS & EXPLANATIONS

### QUESTION #1

**Correct answer: c**

During an inspection, REAC inspectors look at eight categories of health and safety hazards, and within these eight categories, there are 13 types of conditions that HUD considers to be exigent—including a, b, and d.

### QUESTION #2

**Correct answer: b**

False. You must repair the exigent health and safety hazard immediately, if possible, but no later than *three* business days after the inspection.

### QUESTION #3

**Correct answer: a**

True. REAC requires you to document in writing your repairs of the exigent health and safety hazards, and to send a certification containing certain standard language.

### QUESTION #4

**Correct answer: h**

All of the above. If you answered g, note that the Employee Polygraph Protection Act sign applies to anyone with one or more employees, and the Family and Medical Leave Act sign applies to anyone with 50 or more employees.

### QUESTION #5

**Correct answer: a**

True. The current rate has been in effect since July 2009.

### QUESTION #6

**Correct answer: a**

True. In addition, HUD requires you to keep files relating to an applicant household for at least three years after you reject the household or it withdraws its application.

### QUESTION #7

**Correct answer: a**

True. The file should include all application paperwork, certification and recertification forms, a signed lease, and copies of any notices you sent to the household. In addition, you're required to maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out.

### QUESTION #8

**Correct answer: e**

Leaving unshredded or unburned files out at the curb for collection or tossing them in a Dumpster is too risky. The files contain confidential information such as Social Security and bank account numbers. And you could be sued or fined if any misuse of this information can be traced to your negligent disposal of household files.

## Mismanagement in Maine (continued from p. 1)

or 87 percent, of the units it inspected didn't meet Maine State Housing's housing quality standards. More than half of the failing units had defects serious enough that landlords should be required to remedy them within 24 hours, and three units had conditions so bad that residents were moved due to

imminent health and safety risks. The report concludes that Maine State Housing didn't have adequate oversight of its contractors or their inspectors and didn't have effective internal quality controls for its own inspectors, according to the press release. As a result, taxpayers paid at least \$194,956 in housing assis-

tance payments for tenants who were living in units that failed to meet quality standards. The report also concludes that Maine State Housing officials didn't always comply with either HUD or their own policies on procurement and expenditure practices.

## **Recent Court Rulings** (continued from p. 9)

At the grievance hearing, a PHA staff member testified that, based on the doctor's documentation, the PHA's Reasonable Accommodation office denied the request. The PHA doesn't recognize differences in one-bedroom unit sizes, and the resident's disabilities were insufficient to merit a transfer. The hearing officer denied the resident's grievance, concluding that "the testimony and evidence presented at the hearing established that [the resident's] medical condition does not support the reasonable accommodation request for a bigger 1 bedroom unit."

The resident appealed in trial court. During her appeal, she advised the trial court that the unit next door to hers was larger and unoccupied. The trial court granted her statutory appeal and ordered that she be permitted to move to the unit next door or to an Americans with Disabilities Act (ADA)-accessible unit at the site.

The PHA then filed a motion for reconsideration, asserting that the unit next door was occupied, and

that the resident didn't need an ADA-accessible unit. The trial court granted the PHA's motion, vacated its previous order, and ordered that if or when a larger one-bedroom unit becomes available at the site, it should be made available to the resident. The PHA appealed this decision.

**Ruling:** A Pennsylvania appeals court reversed the trial court's ruling.

**Reasoning:** The trial court had concluded that the PHA had failed to prove that the request was against policy or regulations. But the appeals court concluded that it was the resident's burden to establish that she met the policy requirements. Her claimed physical conditions of stress, slow blood circulation, and prior strokes didn't qualify her for a transfer. And the evidence offered wasn't sufficient to establish a handicap and a resulting right to a reasonable accommodation. The court concluded that there's nothing that requires the PHA to transfer the resident or distinguish the sizes of one-bedroom units.

■ Bennett v. Housing Authority of the City of Pittsburgh, October 2012

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