

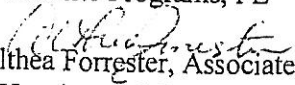


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

SUN 27 2013

MEMORANDUM FOR: Milan Ozdinec, Deputy Assistant Secretary for Public Housing and Voucher Programs, PE

FROM: 
Althea Forrester, Associate General Counsel for Office of Assisted Housing and Community Development, CAHB

SUBJECT: Whether Section 8 Housing Assistance Payments Owed To A Section 8 Owner Can Be Garnished

This note updates OGC's earlier opinion (hereinafter "OGC Opinion") regarding whether Section 8 Housing Assistance Payments (hereinafter "HAP") owed to a Section 8 owner can be garnished for the benefit of its creditor.¹ As stated in the OGC Opinion, HAP owed to a Section 8 owner cannot be garnished on behalf its creditor because Federal law preempts garnishment of the Section 8 housing assistance payments under State law.

Under the Federal statute and HUD regulations governing the Section 8 Housing Voucher Program, HAP to a Section 8 owner are not subject to State law process for garnishment of the funds on behalf of the owner's creditor. The PHA is only authorized to pay the housing assistance payment directly to the owner, in accordance with the terms of the assistance contract between the PHA and the owner. Payment to the garnishor (or to a court or other depository of garnished funds in accordance with the local process) does not constitute payment to the owner as required by Federal law. The PHA cannot pay the Section 8 assistance funds to a recipient other than the owner. This Federal prohibition applies even if, as a matter of State law, garnished funds would be applied against the owner's debt to the garnishor.

The Federal Statute clearly indicates that Section 8 HAP can only be made to the Section 8 owner and therefore preempts State law process for garnishment. The Statute provides that: "the Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section."² This language illustrates that Congress left no room for State law to supplement or, as in this case, upset the federal intent regarding Section 8 HAP.³ Allowing state garnishment law to redirect HAP from the Section 8 owner to its creditor or garnishor would conflict with federal law and frustrate Congressional intent vis-à-vis Section 8 HAP.

The Section 8 Regulations implement the Statutory mandate and expressly state that housing assistance payments have to be paid to the owner according to the HAP contract. Assistance

¹ U.S. H.U.D., Off. of the Gen. Couns., Apr. 20, 1987.

² U.S. Housing Act of 1937, 42 U.S.C. 1437f(b)(1) (2012).

³ See e.g., United States v. Locke, 529 U.S. 89 (2000).

payments “may only be paid to the owner during the lease term.”⁴ Similarly, Section 8 funds must only be expended for housing assistance payments and PHA administrative fees.⁵ The contractual agreements between HUD and the PHA and between the PHA and the section 8 owner clearly incorporate the Statutory and regulatory language regarding the housing assistance payments. The Consolidated Annual Contribution Contract for the Rental Voucher Program (CACC) states that Section 8 funds can only be expended for housing assistance payments.⁶ Similarly, the HAP contract clearly states that assistance payments can only be paid to the Section 8 owner for the specific purposes outlined and in accordance with the terms and conditions in the contract.⁷

For these reasons, garnishment of HAP for the benefit of the section 8 owner’s creditor is inconsistent with the Federal legal scheme for the Section 8 program.⁸ Federal law precludes garnishment of the Section 8 assistance payments notwithstanding any authority for garnishment under State law. We express no view on whether garnishment would otherwise be appropriate under State law.⁹ Once the PHA has paid the assistance payment to the owner, the funds are the owner’s property, and may be subject to attachment or other creditor’s remedies available under the State law.

⁴ 24 C.F.R. §982.311 (2012).

⁵ *Id.* at 982.157(b)(i) & (ii).

⁶ Consolidated Annual Contribution Contract, Rental Certificate and Rental Voucher Program (CACC), U.S. Dep’t of H.U.D., OPIH, Form HUD-52520, *available at*: <http://www.hud.gov/offices/adm/hudclips/forms/files/52520.pdf>

⁷ Housing Assistance Payment Contract (HAP Contract), Part B, U.S. Dep’t of H.U.D., OPHI, OMB Approval 2577-0169, Form HUD-52641, *available at*: <http://portal.hud.gov/hudportal/documents/huddoc?id=52641.pdf>

⁸ Federal Housing Administration v. Burr, 309 U.S. 242, 245 (1940) (*Stating* that the authority to garnish property was not applicable where not consistent with statutory or constitutional scheme).

⁹ See Central Contracting Co. v Youngdahl & Co., 209 A. 2d 810 (Pa. Sup. Ct. 1963).