



HDLI MESSENGER

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WHAT'S HAPPENING AT HDLI?

HDLI's 2006 Fall CLE Conference entitled "PUBLIC HOUSING AND SECTION 8: Strategies to Avoid Legal Pitfalls in a Changing Regulatory Environment" takes place October 16, 2006 at NAHRO's National Conference in Atlanta, GA.

Section 8 Succession Rights

A grandmother moves into a Section 8 unit upon the death of her daughter to care for the daughter's minor children. Does she have any rights? This inquiry begs two issues: 1) whether the grandmother may have rights to continue to receive the daughter's Section 8 subsidy, and 2) whether the grandmother has rights to continued possession of the unit. With regard to the issue of subsidy rights, one should consult his/her local state law and PHA policies to see whether the grandmother would have a continued right to the subsidy. In some jurisdictions, close familial family members do enjoy such rights when certain prerequisites are met, which might include a requirement that they actually lived in the unit before the death. Your PHA will likely have a policy addressing the issue. However, should your policies, including screening policies, allow for the grandmother's issuance of a voucher, such would not compel the landlord to accept the grandmother as a new tenant, as subsidy rights is a separate issue from possessory or occupancy rights.

With regard to the issue of continued possession, again, you should consult your state law. Absent state law to the contrary, it is unlikely that the landlord would be *required* to accept the grandmother as a tenant. Under Section 8 law and regulations, the selection of tenants is the sole function of the landlord, who is responsible for screening and selection of the persons to occupy his or her apartment. 24 CFR Section 982.307(a)(2). There is nothing in the Section 8 statute, 42 U.S.C. Section 1437f et seq., or its implementing regulations, 24 CFR 982, et seq., that grants

an affirmative succession right. In the recent case of *Maglies v. Guy*, 386 N.J. Super. 449, 901 A.2d 971 (N.J. Super Jul. 14, 2006), the Superior Court of New Jersey reversed a trial court decision granting an occupant of the apartment successor rights under the Section 8 lease. In this case the person seeking the right to continue living in the unit was actually already living there and listed as an occupant at the time of the head of household's death, and there were no minor children involved. When the tenant died, the landlord did not want to accept her daughter as a tenant because she had poor credit and allegedly suffered from psychological problems. The landlord subsequently sought to evict the daughter. The trial court granted the daughter possessory rights, holding that she was a bona fide member of the household entitled to continued occupancy. The landlord appealed, and the appeals court held that neither federal law, the Section 8 regulations, nor state eviction law conferred any right upon the daughter to continued occupancy. The court refused to imply any such right. The court found that whether or not the daughter had the right to continue in the Section 8 program as a "remaining family member," this did not mean that she also automatically succeeded to her mother's leasehold and the landlord was required to accept her as a tenant. The court specifically found that the right that landlords enjoy under 42 U.S.C. Section 1437f(d)(1)(a) to select their tenants is not affected by the Section 8 statutes, regulations, or HUD guidelines. For the same holding, see also *Carter v. Meadowgreen Assocs.*, 268 Va. 215, 597 S.E.2d 82 (Va. 2004).

