

MDOC Policies For Owners.

24 CFR 882 Moderate Rehabilitation (Mod Rehab) & 24 CFR 982 Housing Choice Voucher Program

Similar Terms (synonyms) in this document:

Tenant, Family, Lessee and Participant have the same meaning.

Owner, Landlord, Property Manager and Lessor have the same meaning.

MDOC and Field Agent have the same meaning.

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A. SUITABILITY AND SCREENING OF TENANT.

1. Housing Choice Voucher Program. 24 CFR 982.307. Listing a family (tenant) on the MDOC wait list, or selecting a family for participation in the Section 8 program, is not a representation by MDOC to the Owner about the family's expected behavior, or the family's suitability for tenancy. At or before MDOC approval of a tenancy, the MDOC local field agent must inform the owner that the local field agent has not screened the family's behavior or suitability for tenancy and that such **screening of tenants is the owner's responsibility**. Owners are encouraged to screen families on the basis of their tenancy histories.

An owner may consider a family's background with respect to such factors as:

- 1) Payment of rent and utility bills;
- 2) Caring for a unit and premises;
- 3) Respecting the rights of others to the peaceful enjoyment of their housing;
- 4) Drug related criminal activity or other criminal activity that is a threat to the life, safety or property of others; and
- 5) Compliance with other essential conditions of tenancy.

The MDOC local field agent must give the owner:

- 1) The family's current and prior address (as shown on MDOC records); and
- 2) The name and address (if known to the local field agent) of the owner at the family's current and prior address.

2. Moderate Rehabilitation Program. MDOC may not screen for factors which relate to the suitability of the applicant family as tenants. Such factors include (but are not limited to) prior rent paying history, outstanding debts owed to previous owners (unless owed to MDOC), history of damage to rental properties, police record, employment, etc., with the exception of the denial of admission regarding drug-related and violent criminal activity.

MDOC recommends that prospective owners request references from all prospective tenants, whether they are Section 8 or not.

B. SECURITY DEPOSITS

1. Housing Choice Vouchers. 24 CFR 982.313 The owner may collect a security deposit from the tenant. The MDOC local field agent will prohibit security deposits in excess of private market practice for the local area, or in excess of amounts charged by the owner to unassisted tenants.

When a tenant moves out of a dwelling unit, the owner, subject to State or Local Law may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease.

The owner must give the tenant a written list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.

2. Mod Rehab. (24 CFR 882.414). (a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Total Tenant Payment or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.

(b) If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Tenant Rent or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Tenant Rent or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from MDOC for an amount not to exceed the lesser of:

(1) The amount owed the Owner, or

(2) Two month's Contract Rent; minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the Owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Tenant Rent due under the Lease and then to any other amounts owed. No reimbursement may be claimed for unpaid rent for the period after the Family vacates.

C. OWNER RESPONSIBILITIES. (24 CFR 982.452)

The owner is responsible for performing all owner's obligations under the HAP contract and lease.

- 1) performing all management and rental functions for the assisted unit, including selecting
 - a voucher holder to lease the unit, and deciding if the family is suitable for tenancy of the unit;
- 2) maintaining the unit in accordance with Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance;
- 3) complying with equal opportunity requirements;
- 4) preparing and furnishing to MDOC information required under the HAP contract;
- 5) collecting from the family:
 - a) Any security deposit;
 - b) tenant contribution (the part of rent to owner not covered by the MDOC housing assistance payment)
 - c) Any charges for unit damage by the family.
- 6) enforcing tenant obligations under the lease.
- 7) paying for utilities and services (unless paid by the family under the lease).
- 8) for provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, under 24 CFR 100.203.

Breach of the HAP Contract by the Owner. 24 CFR 982.453. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

- 1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with HQS.
- 2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8 of the Housing Act of 1937 (42 USC 1437f).
- 3) If the owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- 4) For projects with mortgages insured by HUD, or loans made by HUD, if the owner has failed to comply with regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery, or any other corrupt or criminal act in connection with the mortgage or loan.
- 5) If the owner has engaged in drug trafficking.
- 6) if the owner has committed any violent criminal activity.

MDOC rights and remedies against the owner under the HAP contract include:

- 1) recovery of overpayments,
- 2) abatement or other reduction of housing assistance payments,
- 3) termination of housing assistance payments, and
- 4) termination of the HAP contract.

D. PAYMENTS TO OWNERS.

1. Owner Rent Payments. **MDOC will normally make monthly payments to Owners on or before the tenth of each month.** These payments will only be made if a HAP Contract has been executed. The payments will cover the difference between the Contract Rent and the tenant share of rent and will reflect changes in family income, composition or housing cost that have been reported to MDOC by the 20th of the preceding month. All payments are reviewed by MDOC staff to assure computation accuracy by local field agents.

2. Vacancy Payments.

a) Mod Rehab. (24 CFR 882.411). Owners may apply for payment for units vacated by a Tenant in violation of Lease, including the Housing Assistance Payment for the month in which the Tenant vacated the unit, plus one (1) additional month if the unit remains vacant. The additional month vacancy payment, when added to any amounts received from the family for that time period, cannot exceed eighty percent (80%) of the Contract Rent. Claims for vacancy require owners to submit documentation of the attempt to re-rent the unit. Vacancy payment is contingent on:

- 1) Vacancy payment is only for the period the unit is vacant;
- 2) Owner must notify MDOC of tenant vacancy immediately upon learning of it;
- 3) Owner takes all feasible action to fill the vacant unit;
- 4) Owner does not reject any eligible applicant;
- 5) Owner has not received payment for the vacant unit from any other sources including security deposit held by the Owner;
- 6) Owner has not violated the Lease or eviction requirements of the HAP Contract; and
- 7) Owner has claimed the vacancy payment within 60 days of the date the unit was vacated.

b) Housing Choice Vouchers. No vacancy payments are allowed for units leased in the Vouchers Program. The owner may keep the HAP for the remainder of the month if the tenant moves prior to the last day of the month.

3. Damage Repair And Unpaid Tenant Rent – Mod Rehab. An owner may request reimbursement from MDOC for repair costs for damages (subject to limits and schedules set in this plan) caused to a unit or for unpaid tenant rent up to a maximum of three months when an assisted family resided in the unit. **ESTIMATES OR PROPOSALS FOR DAMAGE REPAIRS ARE NOT ACCEPTABLE AS A BASIS FOR REIMBURSEMENT.** The Owner must arrange final inspection of the damaged unit by the MDOC prior to any clean-up or repair within 10 days of vacancy. Without this inspection, damage repairs to the unit are not reimbursable.

To insure prompt repair of damages, assure fair treatment of participating tenants, and minimize vacancies within rental units, **MDOC will not accept damage repair claims from owners over 45 days later than the date of the move out (damage) inspection** of the unit.

Damage repair claims must include itemization of claimed damage repairs, by room, coordinated with valid receipts. Where the original claim was received by MDOC within the 45 day limit, if there are items in the claim requiring additional information or clarification, owner responses will not be accepted after 45 days from the date of the MDOC request for information or clarification. Where additional information or clarification requested by MDOC is not received by MDOC within the 45 day limit, the claim will be considered as complete, and processed as received originally by MDOC.

Owners should contact local field agents for assistance in filling out forms. Damage repair claim reimbursements are subject to the MDOC Damage Repair Claim Life Expectancy Guideline contained in this administrative plan.

The Owner also must attempt, in the prescribed format, to collect from the Tenant prior to any payment for unpaid rent or damage repairs by MDOC. The Owner must also be in compliance with the Montana Landlord and Tenant Act (MCA 70-24).

The Owner may claim the lesser of:

- 1) amount owed the Owner; or
- 2) two months Contract Rent minus the greater of TTP at initial lease or fifty dollars.

E. RENT ADJUSTMENTS.

1. Annual Adjustments.

a. Mod Rehab Projects under initial 15 year HAP Contract (24 CFR 882.410). Owners may request, in writing, an annual adjustment to the Contract Rent effective on or after each anniversary date of the HAP Contract. The rent increase request must be received by MDOC prior to the annual date of the contract, in order for increased rent payments to be effective on the anniversary date, since changes will be effective the month following the submittal by the owner of the request and proposed revised rent schedule. (example: If the owner waits until 5 months after the anniversary date to request, the increase will only be effective for the remaining six months of the year.) The approval of the rent increase is contingent on assurance by the Owner that the unit(s) comply with the decent, safe and sanitary provisions of HUD Housing Quality Standards and that the Owner is otherwise in compliance with the terms of the Lease(s) and Contract. Annual Adjustment Factors published by HUD each year will be utilized. An evaluation that the rent is reasonable as defined in 24 CFR 882.410(b), is also required.

b. Mod Rehab HAP Contract Extensions (15 year initial period has expired) . After the initial 15 year contract expires, if the Mod rehab project has 5 or more units, it is eligible for a contract extension. Rent amounts are calculated using the HUD 3 tiered system, selecting the lowest of the present contract rent times the HUD Operating Cost Adjustment Factor, or local comparable rents, or 120% of FMRs, for the renewal (extension) rents granted for the next year.

c. Housing Choice Vouchers (24 CFR 982). The rent to owner may not be increased during the first year of the lease.

An owner may request an annual rent increase on or after each annual anniversary date of the HAP contract if, during the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

The **rent to owner will only be increased** for housing assistance payments covering months **commencing on the later of:**

1. the first day of the first month commencing on or after the contract anniversary date (if notice was received by the PHA at least 60 days prior to the anniversary date); or

2. the first day of the next month commencing at least sixty days after the PHA receives the owner's request.

The adjusted rent to owner will equal the lesser of:

1. The reasonable rent as most recently determined by the PHA; or
2. The amount requested by the owner.

In making the annual adjustment, the pre-adjustment rent to owner is not to include any previously approved special adjustments.

2. Mod Rehab SPECIAL RENT ADJUSTMENTS (only Projects under initial 15 year HAP Contract) (24 CFR 882.410). An owner who believes that the annual rent adjustment is not sufficient to reflect increases in the actual and necessary expenses of owning and maintaining a unit *which have resulted from substantial increases in real property taxes, utility rates, and assessments* may request a special rent adjustment. The request will be allowed after HUD approval only if and to the extent that the owner clearly demonstrates that such increases have caused increases in owner's operating costs which are not adequately compensated for by the annual adjustments provided by that annual rent adjustment.

Adequate documentation from the owner consists of tax bills for the current and prior year, utility bills for the past 24 months to show increases are tied to rate increases, not volume usage, financial statements, etc demonstrating that these costs have increased in excess of the allowed annual adjustment. The special adjustment will be reviewed by MDOC and submitted to HUD with a recommendation. The special adjustment, if approved, will be effective upon the date determined by HUD Rocky Mountain Region.

For Mod Rehab projects over twenty units, audited financial statements must accompany the request.

F. CORRECTING HQS DEFICIENCIES.

1. Mod Rehab. Each unit under lease is subject to annual and special housing quality standards inspections by MDOC, and special inspections by H.U.D.. HQS failures must be corrected by the owner, even if they were caused by the tenant family.

The owner will be given a reasonable amount of time by MDOC in which to correct the defect. If repairs are not completed at the end of the time period allotted, MDOC may cancel the HAP contract for cause.

2. Housing Choice Vouchers. Each unit under lease is subject to annual and special

housing quality standards inspections by MDOC, and special inspections by H.U.D..

a. Owner HQS Obligations

(1) The owner must maintain the unit in accordance with HQS.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, MDOC must take prompt and vigorous action to enforce the owner obligations. Remedies include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.

(3) MDOC will not make any housing assistance payments for a unit failing to meet HQS, unless the owner corrects the defect within the period specified by MDOC and MDOC verifies the correction. If life threatening, the owner must correct the defect in 24 hours. For other defects, the owner must correct the defect in the period allotted by MDOC.

(4) The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (24CFR982.404(b) and 982.551(c)). (However, MDOC may terminate assistance to a family because of HQS breach caused by the family.)

b. Family HQS Obligations

(1) The family is responsible for a breach of HQS caused by:

(i) The family fails to pay for any utilities the owner is not required to pay for, which are to be paid by the tenant; or

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(2) If an HQS breach caused by the family is life threatening, the family must correct the defect in 24 hours. For other family-caused defects, the family must correct the defect in the period allotted by MDOC.

(3) If the family caused a breach of HQS, MDOC must take prompt and vigorous action to enforce the family obligations. MDOC may terminate assistance for the family under 24CFR982.552.

G. MUTUAL LEASE RESCISSION.

If an owner and a family wish to release each other from a Lease prior to the end of the lease term, a mutual rescission can be negotiated between them. This agreement has to be signed by both parties and include:

1. Date of Lease rescission;
2. Understanding that the Housing Assistance Payment Contract will cease effective on the date of mutual rescission;
3. The Owner agrees to relieve MDOC of responsibility under the HAP Contract;
4. If the family remains in the unit beyond the effective date of the rescission, the family

is solely responsible for rent or other charges due;
and 5. Understanding that Housing Assistance Payment amounts to the owner, related to any portion of the current month remaining after the date of rescission, must be returned to MDOC.

The Housing Assistance Payment Contract to the owner does not cease due to a mutual rescission of the lease under the Section 8 Moderate Rehabilitation Program.

H. TERMINATIONS AND EVICTIONS.

If a participant tenant family accepts a "Notice to Pay Rent or Quit" as an eviction, and moves based on the notice, MDOC, for tenant eligibility purposes, will consider the move based on the notice as a move by the tenant with proper notice, the same as if the tenant had given written 30 day notice. In this case MDOC will not then give the owner a 30 day notice. This will not affect the ability of a Mod Rehab owner to claim vacancy payments.

Tenants may terminate the Lease for any cause after the completion of one year of the Lease.

If after completion of one year of the Lease the Tenant wishes to terminate the Lease, the Tenant must give the Owner at least thirty days written notice but not more than sixty days prior to vacating the unit. A copy of this notice must be sent to MDOC.

Owners are required to report tenant vacancies to local field agents promptly to prevent excessive payments.

Moderate Rehabilitation lease termination provisions are in 24 CFR 882.511.

Owner termination of lease: During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

- 1) Serious or repeated violation of the terms and conditions of the lease;
- 2) Violations of federal, state, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or
- 3) Other Good Cause.

The family is not responsible for payment of the portion of the rent to owner covered by the HAP contract between the owner and MDOC. **A MDOC failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner.** During the term of the lease the owner may not terminate the tenancy of the family for non-payment of the MDOC housing assistance payment.

Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy:

- 1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of:
 - a) the premises by other residents; or
 - b) their residences by persons residing in the immediate vicinity of the premises; or
 - c) any drug related criminal activity on or near the premises.

During the first year of the lease term, the owner may not terminate the tenancy for "other good cause", unless the owner is terminating the tenancy because of something the family did, or failed to do. For example, during this period, the owner may not terminate the tenancy for "other good cause based on any of the following grounds:

- a) failure by the family to accept the offer of a new lease or revision;
- b) the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit;
- or c) a business or economic reason for termination of the tenancy.

Owner notice - Notice of grounds: The owner must give the tenant a written notice that specifies the grounds for termination of tenancy. The notice must be given at or before commencement of an eviction action. The notice of grounds may be included in, or may be combined with an owner eviction notice to the tenant.

Eviction notice : A notice to vacate, or a complaint or other official pleading used under state or local law to commence an eviction action. The owner must give MDOC through the local field agent, a copy of any owner eviction notice to the tenant. The owner may only evict the tenant from the unit by instituting a court action.

"Other Good Cause" for termination of tenancy by the owner may include, but is not limited to any of the following examples:

- 1) Failure by the Family to accept the offer of a new lease or revision;
- 2) a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;
- 3) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- 4) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to lease the unit at a higher rental)(90 day notice is required).

I. COLLECTING OVERPAYMENT AMOUNTS OWED THE MDOC.

MDOC will contact the Owner by mail and request repayment.

1. If the owner does not repay immediately, and is continuing in Section 8 with other tenants, MDOC will automatically reduce payments due the owner for other tenants in the amount due the program until the debt is satisfied.
2. If the owner does not arrange repayment within 30 days, and does not continue in the program, MDOC will request the State Auditor attach any state warrant issued to the owner to satisfy the debt.
3. If the amount is \$750 or over, and is not repaid within 120 days, MDOC will refer the debt to the FBI or HUD Inspector General for possible investigation and collection.

J. DAMAGE REPAIR CLAIM LIFE EXPECTANCY GUIDELINE.

Mod Rehab Only

The following chart gives the average life expectancy for common items in rental property. Repairs will be prorated based on the age of the item. Condition of these included items based on comments from the initial move in inspection, and the move out (damage) inspection will be considered in evaluating a damage repair claim. MDOC WILL NOT PAY FOR UPGRADING OF PROPERTY DAMAGED BY A TENANT TO A BETTER QUALITY THAN EXISTED WHEN THE TENANT MOVED IN (example: owner wishes to replace an interior masonite hollow core door with a more expensive solid core oak door; MDOC will pay to repair the original door or replace with a similar quality (and condition) door). If a written guarantee or certification of a different life expectancy is provided at the time the claim is submitted, it will be prorated accordingly.

<u>Item</u>	<u>years</u>	<u>Item</u>	<u>years</u>
Cabinets, kitchen	15	Cabinet, medicine	12
Carpet	10	Counter tops, kitchen	10
Curtains	5	Dishwasher	10
Doors, closet (folding)	8	Doors, exterior (masonite)	8
Doors, exterior (metal)	20	Doors, exterior (wood)	15
Doors, interior (masonite)	10	Doors, interior (wood)	20
Doors, screen	8	Doors, shower	10
Drapes & Hardware	10	Hardware & rods, curtain	8
Hardware, door & window	12	Hardware, door & window, mobile home	5
Fan, exhaust	10	Fixtures, light	15
Faucets	10	Flooring, kitchen	12
Flooring, bathroom	12	Heater, hot water	10
Garbage Disposal	5	Paint, exterior	7
Lock, door	10	Paint, interior (all others)	5
Paint, interior (flat)	3	Rails, porch exterior	10
Paneling, interior	10	Range hood	10
Range	15	Sink, bathroom	20
Refrigerator	15	Tub, bath	20
Sink, kitchen	20	Toilet	20
Tub enclosures, bath	6	Wallpaper	8
Toilet float & trim	10	Window screens & frames	5
Windows	20		

LABOR RATES ALLOWED:	GENERAL LABOR	\$10.00 PER HOUR
	SKILLED LABOR	\$15.00 PER HOUR