

Housing Assistance Payments Contract (HAP Contract)

Housing Voucher Program Section 8 Tenant-Based Assistance

Part B of HAP Contract: Body of Contract

Housing Authority of the County of
San Mateo (HACSM)

1. Purpose

- a. This is a HAP contract between HACSM and the owner. The HAP contract is entered to provide assistance for the family under the Housing Voucher Program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
- b. The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract.
- c. During the HAP contract term, HACSM will pay housing assistance payments to the owner in accordance with the HAP contract.
- d. The family will reside in the contract unit with assistance under the Housing Voucher Program. The housing assistance payments by HACSM assist the tenant to lease the contract unit from the owner for occupancy by the family.

2. Lease of Contract Unit

- a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Housing Voucher Program
- b. HACSM has approved leasing of the unit in accordance with requirements of the Housing Voucher Program.
- c. The lease for the contract unit must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
- d. The owner certifies that:
 - (1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum.
 - (2) The lease is in a standard form that is used in the locality by the owner and that is generally used for other unassisted tenants in the premises.
 - (3) The lease is consistent with State and local law.
- e. The owner is responsible for screening the family's behavior or suitability for tenancy. HACSM is not responsible for such screening. HACSM has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.

3. Maintenance, Utilities, and Other Services

- a. The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS).
- b. The owner must provide all utilities needed to comply with the HQS.
- c. If the owner does not maintain the contract unit in accordance with the HQS, or fails to provide all utilities needed to comply with the HQS, HACSM may exercise any available remedies. HACSM remedies for such breach include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. HACSM may not exercise such remedies against the owner because of an HQS breach for which the family is responsible, and that is not caused by the owner.
- d. HACSM shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by HACSM and HACSM verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by HACSM
- e. HACSM may inspect the contract unit and premises at such times as HACSM determines necessary, to ensure that the unit is in accordance with the HQS.
- f. HACSM must notify the owner of any HQS defects shown by the inspection.
- g. The owner must provide all housing services as agreed to in the lease.

4. Term of HAP Contract

- a. **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease,

and terminates on the last day of the term of the lease (including the initial lease term and any extensions).

b. When HAP contract terminates.

- (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
- (2) HACSM may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If HACSM terminates program assistance for the family, the HAP contract terminates automatically.
- (3) If the family moves from the contract unit, the HAP contract terminates automatically.
- (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
- (5) HACSM may terminate the HAP contract if HACSM determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.
- (6) The HAP contract terminates automatically upon the death of a single member household, including single member households with a live-in aide.
- (7) HACSM may terminate the HAP contract if HACSM determines that the contract unit does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.
- (7) If the family breaks up, HACSM may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.
- (8) HACSM may terminate the HAP contract if HACSM determines that the unit does not meet all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.

5. Provision and Payment for Utilities and Appliances

- a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.
- b. The lease must specify what appliances are to be provided or paid by the owner or the tenant.

6. Rent to Owner: Reasonable Rent

- a. During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by HACSM in accordance with HUD requirements.
- b. HACSM must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted units. To make this determination, HACSM must consider:
 - (1) The location, quality, size, unit type, and age of the contract unit; and
 - (2) Any amenities, housing services, maintenance and utilities provided and paid by the owner.
- c. HACSM must redetermine the reasonable rent when required in accordance with HUD requirements. HACSM may redetermine the reasonable rent at any time.
- d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises. The owner must give HACSM any information requested by HACSM on rents charged by the owner for other units in the premises or elsewhere.

7. HACSM Payment to Owner

- a. When paid
 - (1) During the term of the HAP contract, HACSM must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.

- (2) HACSM must pay housing assistance payments promptly when due to the owner.
- (3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, HACSM shall pay the owner penalties if all of the following circumstances apply: (i) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment by a tenant; (ii) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and (iii) The owner also charges such penalties against the tenant for late payment of family rent to owner. However, HACSM shall not be obligated to pay any late payment penalty if HUD determines that late payment by HACSM is due to factors beyond HACSM control. Moreover, HACSM shall not be obligated to pay any late payment penalty if housing assistance payments by HACSM are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following HACSM remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).
- (4) Housing assistance payments shall only be paid to the owner while the family is residing in the contract unit during the term of the HAP contract. HACSM shall not pay a housing assistance payment to the owner for any month after the month when the family moves out.

- b. **Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.
- c. **Amount of HACSM payment to owner**
 - (1) The amount of the monthly HACSM housing assistance payment to the owner shall be determined by HACSM in accordance with HUD requirements for a tenancy under the voucher program.
 - (2) The amount of HACSM housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements HACSM must notify the family and the owner of any changes in the amount of the housing assistance payment.
 - (3) The housing assistance payment for the first month of the HAP contract term shall be prorated for a partial month.
- d. **Application of payment.** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- e. **Limit of HACSM responsibility.**
 - (1) HACSM is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a tenancy under the voucher program.
 - (2) HACSM shall not pay any portion of the rent to owner in excess of the housing assistance payment. HACSM shall not pay any other claim by the owner against the family.
- f. **Overpayment to owner.** If HACSM determines that the owner is not entitled to the housing assistance payment or any part of it, HACSM, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Housing Voucher Program assistance contract).

8. Owner Certification

During the term of this contract, the owner certifies that:

- a. The owner is maintaining the contract unit and premises in accordance with the HQS.
- b. The contract unit is leased to the tenant. The lease includes the tenancy addendum (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to HACSM, including any revisions of the lease.

- c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted units in the premises.
- d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, HACSM, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.
- e. The family does not own or have any interest in the contract unit.
- f. To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.
- g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless HACSM has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

9. Prohibition of Discrimination. In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:

- a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.
- b. The owner must cooperate with HACSM and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

10. Owner's Breach of HAP Contract

- a. 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, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - (3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - (4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the 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 any drug-related criminal activity or any violent criminal activity.
- b. If HACSM determines that a breach has occurred, HACSM may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. HACSM shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by HACSM to the owner may require the owner to take corrective action, as verified or determined by HACSM, by a deadline prescribed in the notice.
- c. HACSM's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- d. HACSM may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.
- e. Even if the family continues to live in the contract unit, HACSM may exercise any rights and remedies for owner breach of the HAP contract.
- f. HACSM's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.

11. HACSM Access to Premises and Owner's Records

- a. The owner must provide any information pertinent to the HAP contract that HACSM or HUD may reasonably require.
 - b. HACSM, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.
 - c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.
- 12. Exclusion of Third Party Rights**
- a. The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or HACSM under Part B.
 - b. The tenant or HACSM may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.
 - c. HACSM does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the contract unit or the premises or with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
 - d. The owner is not the agent of HACSM, and the HAP contract does not create or affect any relationship between HACSM and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the contract unit or the premises or with implementation of the HAP contract.
- 13. Conflict of Interest**
- a. "Covered individual" means a person or entity who is a member of any of the following classes:
 - (1) Any present or former member or officer of HACSM (except a HACSM commissioner who is a participant in the program);
 - (2) Any employee of HACSM or any contractor, sub-contractor or agent of HACSM, who formulates policy or who influences decisions with respect to the program;
 - (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or
 - (4) Any member of the Congress of the United States.
 - b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.
 - c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.
 - d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.
If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to HACSM and HUD.
The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.
 - e. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.
- 14. Assignment of the HAP Contract**
- a. The owner may not assign the HAP contract to a new owner without the prior written consent of HACSM.
 - b. If the owner requests HACSM consent to assign the HAP contract to a new owner, the owner shall supply any information as required by HACSM pertinent to the proposed assignment.
- c. The HAP contract may not be assigned to a new owner that is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).
 - d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:
 - (1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or
 - (2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.
 - e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless HACSM has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
 - f. HACSM may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):
 - (1) Has violated obligations under a housing assistance payments contract under Section 8;
 - (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;
 - (3) Has engaged in any drug-related criminal activity or any violent criminal activity;
 - (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs, or non-compliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;
 - (5) Has a history or practice of failing to terminate tenancy of tenants assisted under any Federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
 - (a) Threatens the right to peaceful enjoyment of the premises by other residents;
 - (b) Threatens the health or safety of other residents, of employees of HACSM, or of owner employees or other persons engaged in management of the housing;
 - (c) Threatens the health or safety of, or the right to peaceful enjoyment of their residents by, persons residing in the immediate vicinity of the premises; or
 - (d) Is drug-related criminal activity or violent criminal activity;
 - (6) Has a history or practice of renting units that fail to meet State or local housing codes; or
 - (7) Has not paid State or local real estate taxes, fines or assessments.
 - g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to HACSM. The new owner must give HACSM a copy of the executed agreement.
- 15. Foreclosure.** In the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the HAP contract between the prior owner and HACSM for the occupied unit. This provision does not affect any State or local law that provides longer time periods or other additional protections for tenants. **This provision will sunset on December 31, 2012 unless extended by law.**
- 16. Written Notices.** Any notice by HACSM or the owner in connection with this contract must be in writing.
- 17. Entire Agreement: Interpretation**

- a. The HAP contract contains the entire agreement between the owner and HACSM.
- b. The HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

SAMPLE