Chapter 12

LEASE TERMINATIONS
[24 CFR 966.4]

INTRODUCTION
HAKC may terminate tenancy for a family because of the family's action or failure to act in accordance with HUD regulations [24 CFR 966.4], and/or the terms of the lease. This chapter describes HAKC’s policies for notification of termination of tenancy and provisions of the lease.

A. TERMINATION BY TENANT

The tenant may terminate the lease by providing HAKC with a written 30-day advance notice as defined in the lease agreement. The family must submit notice in writing, hand-delivered to the property or sent by mail. Unopened, cancelled, first-class returned mail will not be considered sufficient evidence that notice was given.

B. TERMINATION BY HAKC

Termination of tenancy will be in accordance with 24 CFR 966.4(a)(2) and HAKC’s lease.

The Violence against Women Reauthorization Act of 2013 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as “other good cause” for terminating the tenancy or occupancy rights of the victim of such violence. (Refer to Chapter 12-D)

The lease may be terminated by HAKC at any time by giving written notice for serious or repeated violation of material terms of the lease, such as, but not limited to the following:

- Nonpayment of rent or other charges due under the Lease, or repeated chronic late payment of rent;
- Failure to provide timely and accurate statements of income, assets, expenses and family composition at Admission, Interim, Special or Annual Rent Recertifications;
- Assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
- Use of the premises for purposes other than solely as a dwelling unit for the Tenant and Tenant's household as identified in this Lease, or permitting its use for any other purposes;
- Failure to pass annual inspections with adequate notices to correct;
- Failure to abide by necessary and reasonable rules made by the Landlord for the benefit and well being of the housing project and the Tenants;
- Failure to abide by applicable building and housing codes materially affecting health or
safety;

- Failure to dispose of garbage waste and rubbish in a safe and sanitary manner;
- Failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner;
- Acts of destruction, defacement or removal of any part of the premises, or failure to cause guests to refrain from such acts;
- Failure to pay reasonable charges (other than for normal wear and tear) for the repair of damages to the premises, project buildings, facilities, equipment, or common areas; or
- The Tenant, any member of the Tenant's household, or a guest or other person on the premises due to tenant’s residency will not engage in criminal activity, including drug-related criminal activity, on or off public housing premises (as defined in the lease), while the Tenant is a Tenant in public housing, and such criminal activity will be cause for termination of tenancy;
- Inviting, allowing, or creating a situation that causes any person or persons who have been banned from HAKC property to be present on the HAKC property. An up-to-date banned list is available at each property management office and the Office of Public Safety. Residents may request to view the banned list to determine if an individual appears on the list.
- Alcohol abuse that HAKC determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Allowing access to the residential unit to a person who appears on the HAKC Trespass List after written notice has been provided to the Head of Household, that such person appears on the Trespass List;
- Non-compliance with Non-Citizen Rule requirements, and
- Other good cause.

C. **NOTIFICATION REQUIREMENTS**

HAKC's written Notice of Termination of Tenancy will state the reason for the proposed termination, the date that the termination will take place, and it will offer the resident all of the rights and protections afforded by the regulations and this policy. (See Chapter 13 on Complaints, Grievances and Hearings.)

Notices of termination of tenancy will be in writing and delivered to the tenant or adult member of the household, posted or sent by first class mail properly addressed to tenant.

All notices of lease termination for cause of actions protected by VAWA for violent activity will include a statement of the protection against termination provided by VAWA for victims of
Housing Authority of Kansas City

Lease Terminations

Adopted by Commission:

Effective: February 12, 2018

domestic violence, dating violence, sexual assault, or stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies.

**Timing of the Notice**

If HAKC terminates the lease, written notice will be given as follows:

- At least 14 calendar days prior to termination in the case of failure to pay rent;
- A reasonable time, considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents, household members or HAKC employees is threatened.
- At least thirty days prior to termination in all other cases.

When HAKC evicts an individual or family for criminal activity, the HAKC will notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit. This will only occur if it is verified that the family no longer resides in the unit, or the HAKC as received judgment for possession.

**Criminal Activity**

HAKC will **immediately and permanently** terminate tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

The HAKC may terminate the lease when a member of the household, visitor or guest engages in drug-related activity, on or off the HAKC premise. It shall be presumed that the Tenant knew or should have known of the drug-related activity if a member of the household, or visitor or guest engages in drug-related activity of a member of the household, or visitor or guest engages in drug-related activity on HAKC premise. The same will apply if it is determined that the person abuses alcohol in a way that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents. This includes cases where HAKC determines that there is a pattern of illegal use of controlled substances or alcohol abuse.

**Threats to Other Residents, HAKC Staff or Contractors**

HAKC will immediately terminate tenancy for any covered person(s) who engage in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, HAKC staff or Contractors or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

**Fugitive Felon or Parole Violator.**
HAKC will immediately terminate tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place for which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

**Eviction for Criminal Activity.**
The HAKC will terminate tenancy by judicial action for criminal activity in accordance with 24 CFR 966.4 if it is determined that the covered person(s) has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

It shall be presumed that any individual who is listed on the lease as a member of the Tenant’s household, and who engages in criminal activity, resides with the Resident, unless, before the date of any incident giving rise to criminal activity, Tenant shall specifically inform the property management in writing that said individual is no longer a member of his/her household, no longer resides upon the leased premises, and requests removal of that individual from the lease. If any individual who is a guest, visitor or person under the Tenant’s control engages in criminal activity, it shall be presumed that the Tenant knew or should have known of the criminal activity.

In evaluating evidence of negative behavior, HAKC will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

HAKC may waive the requirement regarding drug-related criminal activity if:

The person demonstrates successful completion of a credible rehabilitation program approved by HAKC, or

The individual involved in drug-related criminal activity is no longer in the household because the person is incarcerated.

**D. PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING [VAWA 2013]**

The Violence against Women Reauthorization Act of 2013 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as “other good cause” for terminating the tenancy or occupancy rights of the victim of such violence.

The Violence against Women Reauthorization Act of 2013 (VAWA), provides that “criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, will not be cause for termination of the tenancy or occupancy rights, if the tenant or
immediate family member of the tenant’s family is the victim or threatened victim of that abuse.”

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit the HAKC’s authority to terminate the tenancy of any tenant if the HAKC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property.

**VAWA protection does not apply to the individual is not on the lease. VAWA protection does not apply to a live-in aide or caretaker.** While a live-in aide or caregiver who resides in a unit may be a lawful occupant, nonetheless such individual is not a tenant and the protections of VAWA would not apply, except that the live-in aide or caregiver cannot be denied assistance if he or she independently applies for assistance.

Similarly, if an affiliated individual is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant with whom the affiliated individual resides cannot be evicted or have assistance terminated on the basis of the violence suffered by the affiliated individual, and, consequently, the affiliated individual may receive indirectly the benefit of continued assistance to the tenant.

“Affiliated individual”, with respect to an individual, means: (A) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent to a child (for example, the affiliated individual is a child in the care, custody, or control of that individual); or (B) any individual, tenant, or lawful occupant living in the household of that individual.

VAWA 2013 provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as: (1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or (2) good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of a victim or threatened victim of such incident.
Victim Documentation

HAKC Policy

When a tenant family is facing termination of tenancy because of the actions of a tenant, household member, guest, or other person under the tenant’s control and a tenant or immediate family member of the tenant’s family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the HAKC will require the individual to submit documentation affirming that claim.

The documentation may include one of the following elements:

- VAWA Certification Form- HUD 5382 - A signed statement by the victim that may provide the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking. or;

- One of the following:
  - A police or court record documenting the actual or threatened abuse
  - A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the HAKC within 14 business days after the HAKC request is received by the victim. Upon written request from the tenant, the HAKC will extend the 14-day deadline for an additional 10 business days as long as the extension request is submitted within the initial 14 business-day period.

If the individual does not provide the required certification and supporting documentation within 14 business days or the approved extension period, the HAKC may proceed with termination of the family’s lease.

If the HAKC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant’s tenancy is not terminated, the HAKC will bypass the standard process and proceed with the immediate termination of the family’s lease.

Regardless of the certificate- the HAKC may proceed to terminate the perpetrator by bifurcation of the lease when allowed by the state law.

If the HAKC is confronted with conflicting documentation about the incident of domestic
violence, dating violence, sexual assault, or stalking. VAWA provides, as does the existing regulation on conflicting documentation, that if the HAKC receives documentation under 24 CFR 5.2007(b)(1) (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the HAKC may require an applicant or tenant to submit third-party documentation as provided in 24 CFR 5.2007(b)(1)(ii) or (b)(iii). The statute specifies no time period in which the third-party documentation is to be submitted, however HAKC requires submission within 30 days.

**Terminating or Evicting a Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the HAKC the explicit authority to bifurcate a lease, or to remove a household member from a lease, “in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.” This authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance.

**HAKC Policy**

When the actions of a tenant or other family member result in a determination by the HAKC to terminate the family’s lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the HAKC will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame.

If the certification and supporting documentation are submitted within the required time frame or any approved extension period, the HAKC will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, the HAKC will proceed with termination of the family’s lease.

If the HAKC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant’s tenancy is not terminated, the HAKC will bypass the standard process and proceed with the immediate termination of the family.
Housing Perpetrators

The HAKC will have the victim of domestic violence, dating violence, or stalking sign and state the name of their perpetrator and the HAKC will add the perpetrator to the banned list. Victims that allow the person on this banned list as a visitor will be a violation of the lease and a notice to vacate will be issued. The individuals on the banned list cannot be added to the lease or visit, unless by court order.

Reasonable Time to Establish Eligibility (bifurcation)

For individual victims that are ineligible, but residing in the unit legally, HUD allows a minimum 90-day period that would be divided into two time periods to possibly gain eligibility:

- One-time period would be to establish eligibility to remain in the unit in which the tenant is now residing, and a second time period would be to allow the tenant to locate alternative housing if the tenant is unable to establish eligibility for the unit in which the tenant is now residing.

For the first period, the process provides for 60 calendar days, commencing from the date of bifurcation of the lease, for the tenant to establish eligibility to remain in the unit in which the tenant is now residing. For the second reasonable period, the process provides for 30 calendar days, commencing from the 61st date from the date of bifurcation of the lease for the tenant to find alternative housing.

Of course, during first (60 days) period and the second (30 days) period, the tenant may undertake efforts to both establish eligibility to remain in the unit in which the tenant is residing and to find alternative housing.

HAKC is strongly encouraged to assist a tenant in efforts to establish eligibility for the covered housing in which the tenant is participating, and then assist in finding alternative housing if it no longer seems possible that the tenant will be able to establish eligibility for the covered housing program.

For each of these time periods, the process would allow, but not mandate, the HAKC to grant an extension for up to 60 calendar days, subject, however, to the program regulations under the applicable covered housing program authorizing the HAKC to grant an extension, as part of the HAKC’s standard policies and practices or, alternatively, granting such an extension on a case-by-case basis.

HAKC’s public housing and Section 8 voucher programs where demand for available housing and assistance is high—a period of more than 90 days may adversely affect applicants waiting for admission to public housing or receipt of a voucher, and, therefore, for these programs, the process for extension would include documentation of the need and approval by the HAKC.

It is important to note that the reasonable time period may only be provided to tenants by covered housing providers that remain subject to the requirements of the other covered housing
program once the eligible tenant departs the unit.

**HAKC Confidentiality Requirements**

All information provided to the HAKC regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law. The HAKC will not disclose to other parties where the victims have moved if the victim is transferred or allowed to enter into another program.

**E. RECORD KEEPING**

A written record of every termination and/or eviction shall be maintained by HAKC at the development where the family was residing, and shall contain the following information:

- Name of resident, number and identification of unit occupied;
- Date of the Notice of Lease Termination and any other notices required by State or local law; these notices may be on the same form and will run concurrently;
- Specific reason(s) for the Notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the Notices described in detail (other than the Criminal History Report);
- Date and method of notifying the resident;
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

**F. TERMINATIONS DUE TO INELIGIBLE IMMIGRATION STATUS** [24 CFR 5.514]

If HAKC determines that a family member has knowingly permitted an ineligible individual to reside in the family's unit on a permanent basis, the family's assistance will be terminated for 24 months. This provision does not apply to a family if the eligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.