



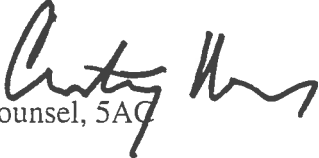
**U.S. Department of Housing & Urban Development**  
**Office of the Regional Counsel - Region V**  
**77 West Jackson Boulevard, Room 2617**  
**Chicago, IL 60604-3507**

**PRIVILEGED AND CONFIDENTIAL**

**DATE:** March 21, 2017

**MEMORANDUM FOR:** Debbie Gray, Director, Project Management, 5AHMLAP

**ATTN:** Deborah Monroe,  
Account Executive, 5AHML

**FROM:** Courtney Minor, Regional Counsel, 5AC 

**SUBJECT:** Request for Legal Review of Smoke Free Lease  
Amendment (the "Addendum")  
Koram Senior Housing  
4444 North Harding Avenue, Chicago, Illinois  
FHA Project No. 071-11184 ("Project")

As requested, this office reviewed a proposed Addendum for Koram Senior Housing, a 223f refinance of a 202/811 Direct Loan project which benefits from a HAP contract. We reviewed the Addendum in accordance with 24 CFR Part 880, the HUD Occupancy Handbook 4350.3 ("Handbook"), Notice H2012-22 "Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies" ("Notice"), and the Quality Housing and Work Responsibility Act of 1998 ("QHWRA").

The Handbook requires modifications to the Model Lease by way of amendment or addendum be in form acceptable to HUD. The Notice encourages subsidized housing to adopt smoke-free housing policies as long as the policies do not violate state or local law or any HUD guidance. QHWRA requires owners to deny admission to those households with a member who the owner determines is, at the time of consideration for admission, illegally using a "controlled substance" as that term is described in the Controlled Substance Act ("CSA"). Marijuana is a controlled substance as defined in the CSA. While owners may elect to terminate occupancy based on illegal drug use, they are not required to evict current tenants for such use. Further owners may not establish lease provisions or policies that affirmatively permit occupancy by medical marijuana users.

Since the Notice was published, HUD distributed "toolkits" and other resources (the "Toolkit") to assist owners and management agents in their establishment of smoke-

free housing policies. Since the proposed Smoke-free Housing Policy (the "Policy") for this Project, is a smoke free policy, we suggest that the definition of smoking be narrowed to include only smoking, inhaling, burning or carrying of the products indicated. Thus these products would have to be lighted. As far as e-cigarettes are concerned, they may be addressed elsewhere in the Policy. We also suggest that the designated smoking area mentioned in the introduction of the Policy be clearly defined as to its location and by clear signs. In the third paragraph of the Policy that is underlined and placed in bold, in the first line, the word "of" should be changed to "on". Is the "tenant on tenant" harassment provision of paragraph numbered four, page 3, a new provision or is it previously defined in the lease? In the seventh paragraph of the Policy, page 3, "immediate access" needs to be clearly defined and the purpose for which it is needed should be stated. In the first full paragraph on page 4, line one, "titles" should be changed to "titled". In the last paragraph of the Policy, the prohibition of oral tobacco products is discussed. Neither the Notice nor the Toolkit addresses oral tobacco products. Interpreting the oral tobacco provision of the Policy as a House Rule, it must be reasonably related to the safety and habitability of the building and the comfort of the residents and comply with state and local requirements in order to be acceptable. E-Cigarettes should also be assessed in this manner.

In the Addendum, we find a few typographical errors, that may detract from the essence of certain paragraphs, specifically paragraph seven in the third line, the word "a" should be inserted after the word, "be" and before the word, "material". In paragraph eight, line eight the word, "warranty" should be changed to "warrant"; in line eleven, the word "of" should be changed to "on"; and in line thirteen, the word "that" at the end of the line should be changed to "than".

In conclusion, we suggest the above regarding the Policy and the Addendum for your consideration and as such are not able to offer legal concurrence at this time. In addition, we do advise that in establishment of Policy and Addendum that the Owner uses its own informed judgment that such provisions are consistent and enforceable under state and local law.

We make no comments regarding any administrative matters or policies and leave to your office the evaluation of program matters relating to this Addendum, this Policy and ongoing compliance with program requirements.

For questions or other assistance, please feel free to contact Kim Yow Harris of my staff at 312-913-8617.