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CHAPTER 8. LEASE AND SALE OF SINGLE FAMILY PROPERTIES  
FOR THE HOMELESS

SECTION I - POLICY

- 8-1 Available Inventory. Up to 10 percent of total properties in the regional inventory at the beginning of each fiscal year are eligible for leasing in the Single Family Property Disposition Homeless Program. There is no limit on the number of properties that can be sold.

SECTION II - INTERNAL CONTROL OBJECTIVES

- 8-2 Compliance. Regional Offices will validate compliance with prescribed regulatory requirements of the Lease and Sale to the Homeless Program. Properties are rented and sold to authorized homeless providers, only, in accordance with program requirements.
- 8-3 Property Protection. Properties will be adequately protected to prevent physical loss or misuse. Each Field Office shall annually verify the physical condition and habitability of all units leased to homeless providers.
- 8-4 General Liability Insurance. Adequate general liability insurance will be maintained during the life of the lease.

SECTION III - SIGNIFICANT REQUIREMENTS OF THE HOMELESS PROGRAM

- 8-5 Administration and Management. The Lease and Sale of HUD-Acquired Single Family Properties for the Homeless (Homeless Program) is governed by 24 CFR Parts 291 (Subparts E and F), 577.135(c) and 578.135(c).
- A. Community Planning and Development (CPD) is responsible for administration, management and monitoring of the program except as shown herein. CPD provides separate instruction and guidance for their responsibilities under the program.
- B. Communication between applicants, lessees and HUD will generally be the responsibility of CPD. Property Disposition will provide technical assistance to CPD in understanding Property Disposition program procedures and requirements and will promptly advise CPD of the failure of a lessee to timely reimburse HUD for payment of property taxes, shortages in the escrow account, problems with insurance coverage or contacts with applicants and tenants. Property Disposition is also responsible for physical inspection of properties and will seek CPD assistance to ensure access to occupied properties.
- C. In offices where there is no CPD staff, the Program will be handled by the nearest HUD office with CPD responsibility. However, it should be fully understood that Regional Administrators and Office Managers are responsible for

cooperation, coordination and execution of all aspects of the Homeless Program. The exhibit provided in this chapter will assist in delineating responsibilities under the program.

- 8-6 Ten Percent Limitation. All Regional Offices will be limited to leasing a maximum of 10 percent of their beginning of the fiscal year inventory to homeless providers. The beginning of year inventory is defined as the total inventory existing as of October 1 of each fiscal year. Regional Offices may reallocate the number of properties to be leased by each Field Office as long as the total leased within the region is within 10 percent of the regional inventory on October 1. Field Offices need not restrict the numbers of properties leased to 10 percent of its own inventory, provided the Region is willing to transfer all or part of the allocation of another Field Office.

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Regional Directors of Housing may also request that Headquarters increase its 10 percent regional allocation. Headquarters may make such a reassignment from another region not using its full 10 percent allocation. Such a request for an increase, or reallocation, should be made to the Director, Office of Insured Single Family Housing at Headquarters.

- 8-7 Leases and Master Agreement. All new leases, Master Agreements and subleases must be on the following forms:
- A. Lease with Option to Purchase HUD Acquired Single Family Properties for Use by the Homeless (Appendix 77). Use this lease as the property lease between HUD and the lessee. The lease is first signed by the applicant then the CPO.
  - B. Lease with Option to Purchase Property by Supportive Housing Program Applicants (Appendix 78). Use this lease as the property lease between HUD and the Supportive Housing Program applicant. The lease is first signed by the applicant then the CPO.
  - C. Master Agreement (Appendix 79). This agreement is in addition to the lease agreement and is the applicant's agreement to abide by all regulations governing the program. After signature by the applicant, the master agreement is signed by an official of CPD.
  - D. Model Sublease (Appendix 80). The example sublease provided at Appendix 80 is for use by lessors who sublease to homeless occupants. This lease sets forth the minimum conditions of the lease between the provider and the homeless occupant. The sublease does not have to be in the format attached and is not prepared by HUD. (See paragraph 8-37 for additional

information on sublease to homeless tenants.)

- 8-8 Applicant Agreement. A preapproved applicant must agree in writing to abide by the regulations governing this program as set forth in 24 CFR Parts 291, 577 and 578 in order to lease or purchase HUD-owned property. (The Applicant Agreement is known as the Master Agreement).
- 8-9 Applicant Approval. The regulation requires thorough applicant data before an applicant is approved by HUD for participation in the program. 24 CFR 291.410.
- 8-10 Definitions. Complete definitions are shown at 24 CFR 291.405 of the Homeless Rule. However, because of its significance to the program, the definition of homelessness has been clarified and is repeated below. Please note that persons facing eviction on the basis of criminal conduct such as drug trafficking and handgun violations shall not be considered eligible for this program.

Homeless means:

1. Individuals or families who lack the resources to obtain housing, whose annual income is not in excess of 50 percent of the median income for the area, as determined by HUD, and who:
  - A. Have a primary nighttime residency that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
  - B. Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or
  - C. Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of

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criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

2. Handicapped persons who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks necessary to obtain

access to housing.

- 8-11 Eligible Properties. All eligible properties, whether for direct sale or lease, must be offered to approved applicants for a ten-day period before being offered for sale to the general public.
- 8-12 Insurance. Lessees are required to maintain general liability insurance against loss by reason of death or injury to any person or loss or damage to the property of any person resulting from the use of the property. The amount of insurance required is to be determined by the Field Office. Insurance is to be maintained for the duration of the lease, and proof of insurance is to be provided to HUD at the time the lease is signed.
- 8-13 Lead-based Paint Hazard Notice. For properties constructed prior to 1978, only, lessees must be given a copy of the Notice: Watch Out for Lead-Based Point Poisoning! Paragraph 26 of the lease (Appendix 77 or 78) provides that the Lessee acknowledge receipt of the Notice by their signature on the lease. Testing and treatment for lead-based paint is required only where applicants lease or purchase properties constructed before 1978 and where children under the age of seven are expected to reside. Testing and treatment shall be on all "applicable" surfaces, which means all painted surfaces, rather than "chewable" surfaces. "Applicable" surfaces include all intact and nonintact interior and exterior painted surfaces of a residential structure. (See paragraph 8-29 for lead-based paint procedures.) Where testing reveals the presence of lead-based paint requiring treatment and the lessee concludes that the cost of treatment would be beyond its means, the lessee may cancel the lease.
- 8-14 Limits on Lease Term and Occupancy. The maximum lease term is one year. Assuming satisfactory performance, the lease may be renewed annually up to a maximum of five years. An occupant's tenancy is limited to no longer than two years.
- 8-15 Recordkeeping. Lessees must establish and maintain sufficient records to enable HUD to determine whether the requirements of the program have been met. Property Disposition will maintain the original of property leases, and the original of records related to property maintenance and repair, property inspections, tax escrow account, general liability insurance, and a copy of the check register or SAMS 1100 Cash Transmittal Form showing deposit of the \$1 year lease fee for each lease period. CPD will maintain the records required for their responsibility of outreach, preapproval and approval of applicants, and all matters related to monitoring and program compliance.
- See paragraph 8-68 for SAMS processing requirements for the Homeless Program.
- 8-16 Occupant Rent. Providers may charge a rent or fee to homeless occupants as described at 24 CFR 291.415. In no event may the rent exceed the occupant's pro rata share of the provider's costs of operating the property. CPD is responsible for monitoring rents charged and collected in the homeless program. Reports of excessive rent collections from homeless occupants should be promptly reported

to CPD.

- 8-17 Sublease to a Homeless Occupant. A lessee must execute a sublease to a homeless occupant within 30 days of leasing a property from HUD or within 30 days after a property is vacated, unless a longer period is approved by CPD with Property Disposition's concurrence. This provision does not apply to Supportive Housing applicants who are leasing pending the award of a grant.

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- 8-18 Tax Escrow Account Lessees are required to establish an escrow account, with a Property Disposition official as a co-signer on the account, to ensure that funds are available for the payment of taxes. See paragraph 8-38 for tax escrow procedures.
- 8-19 Waivers. Upon completion of a determination of finding of good cause, the Assistant Secretary for Housing-Federal Housing Commissioner may waive any nonstatutory requirement of 24 CFR 291 Subpart E except those sections shown below redelegated to Community Planning and Development. Requests for waivers from Field Offices must be in writing, signed by Regional Administrator, and must be supported by documentation of the pertinent facts. Requests for waivers must be addressed to the Director, Office of Insured Single Family Housing, Attention: Director, Single Family Property Disposition Division.

The authority to waive the following sections has been redelegated to Community Planning and Development and may not be redelegated. Requests for waivers of these sections must be addressed to: Assistant Secretary for Community Planning and Development (CPD), Attention: Office of Special Needs.

- A. Section 291.410 (a),(b) and (c) - Applicant preapproval; applicant agreement; applicant data.
- B. Section 291.415 (a) - Sublease requirements and limits on occupancy.
- C. Section 291.415 (c)(2)(i), (ii) and (iii) and (c)(3) - Limits on amount of rent.
- D. Section 291.420 (a)(2) - Sublease requirements for Supportive Housing Program applicants.
- E. Section 291.440 - Lessee recordkeeping requirements.

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SECTION IV - LEASE WITH OPTION TO PURCHASE ACQUIRED  
PROPERTIES FOR USE BY THE HOMELESS

- 8-20 Eligible Applicants. CPD makes the determination of applicant eligibility from criteria included in the regulations and in CPD guidance. A preapproved applicant must provide documentation to support their request for approval, including a description of their real property needs, number(s) of properties requested, and a description of their geographic area of interest.
- 8-21 Eligible Properties. The following single family properties are eligible for lease under this program.
- A. Up to 10 percent of a Regional Office's beginning of the fiscal year (October 1) total inventory may be made available. (See paragraph 8-6.)
  - B. The property must be vacant.
  - C. The property must not be committed to another purpose or program.
  - D. The property must be a new acquisition, not yet listed for sale, or
  - E. The property must have been listed for public sale for a minimum cumulative period of 45 days and is:
    - 1. Unsold, with no pending offer
    - 2. On extended listing or Held Off Market (HOM).
- 8-22 Executing Leases. Property Disposition and CPD must carefully coordinate the execution of leases. Property Disposition will execute all property leases under the program at the request of CPD. Executing leases means the determination of the appropriate amount of insurance coverage and the purchase price, preparation of the lease(s), and obtaining the signature of the homeless provider. The lease is to be signed by the Chief Property Officer (CPO) after it is signed by the applicant.
- 8-23 Before Lease is Signed or Renewed. Property Disposition must collect the \$1 year rent (see paragraph 8-36), and ensure that the insurance binder has been provided (see paragraph 8-28) and a tax escrow account established, if necessary (see paragraph 8-38) before a lease is signed or renewed.
- 8-24 Lease Renewal. Property Disposition must approve or concur in lease renewal, based upon considerations of whether the lessee has met regulatory and program requirements and the terms of the previous year's lease, particularly whether the tax escrow account and insurance have been responsibly maintained. Property Disposition will deny lease renewals if it determines that the lessee has not complied with these requirements or terms of the lease. Property Disposition should also ensure that a property inspection has been made, as shown in paragraph 861. In addition, Property Disposition and CPD must carefully coordinate the requirements for a Master Agreement before new leases or renewals are signed.

- 8-25 Lease Forms, Master Agreement and Model Sublease (Appendices 77, 78, 79 and 80). See paragraph 8-7 for a description of leases.
- 8-26 Leases Executed Under the Homeless Interim Rule. Lessees who executed leases under the Homeless Initiative Interim Rule published January 11, 1990 at 55 FR 1156 may elect to renew on previously-issued lease forms. However, a Master Agreement and the current lease forms are mandatory for the lease of any new properties. Any lease may be renewed by preparation of a Lease Renewal (Appendix 81), with a statement that the lessee hereby elects to renew the lease for an additional term of one year, to end on a specified date, and signed by the lessee and CPO.

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- 8-27 Ten-day Consideration and Inspection Period.
- A. Notification of Eligible Properties. Applicants have ten-days for consideration and inspection of a property. The ten-day period begins upon receipt by the applicant of the list of properties. Where notification is by mail, the 10-day period begins to run five days after mailing by CPD.
- CPD is responsible for providing lists of properties to preapproved applicants. However, because Property Disposition has no method for tracking the time after the list of properties is provided to CPD, unless Property Disposition is advised by CPD that CPD has received a written expression of interest in the property, Property Disposition must assume there has been no written expression of interest and must proceed to offer the properties for sale to the general public not later than 15 days after the date the list of new acquisitions was provided to CPD. After the initial 10-day offering period, properties are not available to providers for lease again until the property has been made available to the public for 45 days.
- If an applicant provides a written expression of interest during the 10-day period, it is appropriate that a reasonable amount of additional time be allowed for the preparation and execution of the lease. The Field Office will determine the amount of additional time which will be necessary for lease execution. This should normally occur within several days unless there are extenuating circumstances which would require that the provider be given more time.
- B. During the 45-day Mandatory Public Sale Period. If notified by CPD that CPD has received an expression of interest in an eligible property during the period it is in the 45-day mandatory public sale period (see paragraph 8-21 E.), the

10-day period for consideration and inspection begins on the day after the expiration of the 45-day period.

- C. After Expiration of the 45-day Mandatory Public Sale Period. If CPD receives an expression of interest on a property after the expiration of the mandatory 45-day public sale period, the ten-day consideration and inspection period begins when the provider notifies CPD of its interest in the property and not on the date that CPD advises Property Disposition.

In all cases, Property Disposition should assist CPD to the maximum extent possible to assure that applicants are given every opportunity to lease HUD-owned properties. In general, however, normal processing should not be interrupted for longer than 15 days.

- 8-28 Insurance. HUD is self-insured against hazards. Lessees must, however, obtain general liability insurance on each leased property, in an amount determined by the Field Office and specified in the lease agreement, against loss by reason of death or injury to any person or loss or damage to the property of any person resulting from the use of the property, with HUD named as an insured, coinsured or an additional insured. PD must make a determination of the correct amount of insurance based upon considerations including the fair market value of the property.

Proof of insurance, such as a copy of the insurance binder is to be provided to Property Disposition upon execution of the lease. Because CPD will have advised the applicant of the insurance requirement as part of their outreach, CPD should assist Property Disposition as appropriate to obtain the insurance binder. A copy of the policy must be provided to CPD within 30 days of lease execution and CPD must ensure that the policy remains in force for the duration of the lease. CPD is to request that the insurer notify HUD if the insurance is canceled.

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- 8-29 Lead-Based Paint. This section applies to the lease or sale of properties constructed prior to 1978 and establishes procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children under seven years of age. All testing and elimination of these hazards will be at the applicant's expense.

A. Definitions. The following definitions apply:

1. Applicable surfaces means all intact and non-intact painted interior and exterior surfaces of a residential structure.
2. Defective paint surfaces means paint on applicable



surfaces that is cracking, scaling, chipping, peeling, or loose.

3. Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.
- B. Inspection and Treatment of Defective Paint Surfaces. Property Disposition must inspect the property for defective paint surfaces before offering the property for sale or lease. If defective paint surfaces are found, treatment shall be completed by Property Disposition before the sale or lease of the property.
  - C. Testing and Treatment of Applicable Surfaces. If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children under the age of seven years, the lessee or purchaser must cause the unit to be tested for lead-based paint on all applicable surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or laboratory analysis of paint samples. XRF test readings of 1 mg/cm<sup>2</sup> or higher using an XRF shall be considered positive for presence of lead-based paint. If testing is conducted by laboratory analysis of paint samples and it is not practicable to determine the size of the sample area, then a concentration of 0.5 percent by weight, or 5000 parts per million (ppm), is considered positive. Where lead-based paint is identified, the lessee or purchaser must cause all applicable surfaces to be treated. Treatment must consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). If the lessee or purchaser certifies to HUD that the property will not be occupied by homeless families with children under the age of seven years, no testing or treatment will be required.
  - D. Dispense with Testing and proceed to Treatment. If a lessee or purchaser has reason to believe that a property contains lead-based paint on applicable surfaces, it may, at its option, dispense with the testing procedure and proceed directly to treatment.
  - E. Occupancy by Children Under the Age of Seven. The lessee or purchaser may not allow the property to be occupied by children under seven years of age until proof of testing or treatment, if necessary, as been submitted to and reviewed by Property Disposition.
  - F. Lease Termination. Where testing of leased property reveals the presence of lead-based paint requiring treatment and a lease has been executed, if the lessee concludes that the cost of treatment would be beyond its means, the lessee may terminate the lease without penalty upon 30-days written notice, as shown in paragraph 15 of the lease form.

- 8-30 Occupancy before Lease or Sale. Occupancy of a HUD-owned property cannot be approved before the effective date of a lease or a sale closing date under any circumstances.
- 8-31 Operating Costs. Lessees are responsible for the payment of all utilities, property taxes (unless the provider receives an exemption from the taxing authority), repair costs (including treatment

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for lead-based paint, if necessary), condominium or homeowner association fees and operating costs. Operating costs include maintenance and reasonable repair costs occasioned by the normal wear and tear of use. (See paragraph 8-35.)

- 8-32 Providing Lists of Properties to CPD and Notification to Applicants.
- A. Property Disposition and CPD must consult to establish an effective and efficient method whereby Property Disposition regularly provides lists of new acquisitions to CPD. The method mutually agreed upon between CPD and Property Disposition must be committed to writing and retained by PD wherever the Regional Administrator or Field Office Manager deem it appropriate.
  - B. Property Disposition will provide lists of new acquisitions as long as CPD has a need. CPD will coordinate the dissemination of the property information so as to ensure that where more than one applicant designates a specific geographic area, those applicants receive the list of properties at the same time. Properties will be leased to applicants on a first come-first served basis.
  - C. With the exception of new acquisitions, there is no requirement that lists of other eligible properties be compiled for CPD on a regular basis.
- 8-33 Purchase of Leased Properties. An applicant may exercise its option to purchase the property at any time during the term of the lease by executing the form HUD-9548, Sales Contract. The applicant will be given 30 to 60 days, (depending on the practice of the local HUD Field Office) from the date of acceptance of the contract by Property Disposition to close the sale. Upon exercising the option to purchase, Property Disposition will code the property in SAMS following the instructions contained in Section IX. See, also, Section VI.
- 8-34 Purchase Price. Property Disposition determines the purchase price to be shown on the lease form. Lessees who leased properties prior to January 11, 1990, have an entitlement to purchase the property at the fair market value shown on the disposition program at the time

the lease was first initiated, unless they signed a Master Agreement (Appendix 79) and renewed their lease on the form Lease With Option to Purchase HUD Acquired Single Family Properties for Use by the Homeless (Appendix 77) or the Supportive Housing Lease-Option (Appendix 78). In these cases, the purchase price and conditions are as shown below.

The purchase price for all properties leased to homeless providers since January 11, 1990 is the fair market value shown on the disposition program at the time the lease was first initiated or the fair market value at the time of sale, whichever is lowest, less ten percent, provided the lessee agrees to use the property either to house low-income tenants for a period of not less than 10 years or to resell the property to a low-income buyer. If the lessee does not agree to the condition of sale, the purchase price will be the higher of the fair market value when the lease was first initiated as shown on the lease form, or the fair market value at time of sale, less ten percent. The purchase price may not be adjusted to reflect the cost or value of any repairs done to the property by the lessee. The costs of repairs/rehabilitation are to be recovered by the lessee from income from rents or fees, and may not be reimbursed by HUD in the form of an adjustment to the purchase price.

Upon lease initiation, the fair market value should be taken directly from the disposition program and inserted in the lease. This initial value does not change, even though the fair market value may change and the lease renewed. At the time of sale, if a provider disputes the purchase price determined by HUD as set forth herein, the provider may obtain an independent appraisal at their own expense. HUD will make the final determination of fair market value using available appraisals and in-house data which supports the property's current fair market value.

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8-35 Rehabilitation and Repair. Lessees are authorized to rehabilitate properties under lease only with the written consent of Property Disposition. Only minimal repairs are allowed to make the property tenantable and major rehabilitation is prohibited.

The lessee is responsible for repair of any property damage caused by its acts or neglect, or its occupants' acts or neglect. This includes the operating costs of maintenance and reasonable repair occasioned by the normal wear and tear of use. The lessee is required to repair such damage at its own expense. If the lessee does not make repairs within a reasonable time after the damage occurs, HUD may, at its option, make the repairs and charge the cost to the lessee. Failure by the lessee to make the necessary repairs or to reimburse HUD for the cost of repairs will constitute grounds for termination of the lease and may result in termination from the program.

8-36 Rent. Lessees must pay HUD a nominal rent of \$1 for each one-year lease period. Upon execution of a lease, Property Disposition must ensure that the \$1 year rent fee is collected and deposited to HUD's credit with the U.S. Treasury. Lessees may charge their occupants rent, including utilities. CPD will determine the occupant's financial means to pay rent. In no event may the rent charged exceed the occupant's pro rata share of the lessee's costs of operating the property. CPD should promptly be advised of any reports of excessive rent collections.

8-37 Sublease. Within 30 days of leasing a property from HUD or within 30 days after a property is vacated, a lessee must sublease the property to the homeless, unless a longer period is approved by CPD with Property Disposition's concurrence. CPD is responsible for managing, monitoring and, if necessary, providing technical assistance to the lessee in the preparation of subleases. Property Disposition's obligation is to ensure that properties do not remain vacant beyond the 30-day limit. If Property Disposition becomes aware of vacancies beyond 30 days, CPD is to be notified promptly so that corrective action can be taken.

A model sublease is included for your information as Appendix 80. The requirement for a sublease is shown in the property lease. The model sublease does not have to be in the format attached; however, the model provided sets forth the minimum conditions of the sublease. The sublease is not prepared by HUD because it is between the lessee and occupants. CPD will monitor a lessees' compliance with the requirement for a sublease.

8-38 Taxes. Except as shown below, lessees are required to establish a tax escrow account, with the CPO as co-signer on the account, to ensure that funds are available for the payment of property taxes. As part of their outreach, CPD will advise all applicants of the requirement for a tax escrow account as discussed herein. CPD is also responsible for identifying state and local taxing authorities within their jurisdiction, local tax exemption procedures, and the relevant names, addresses and contact phone numbers. This information should be readily available to all program participants requesting it.

HUD may not require the provider to establish a tax escrow account or to pay or deposit funds for the payment of taxes if the provider furnishes documentation that they have been exempted by the state or local government from the requirement to pay all or a portion of property taxes. Once that determination is made, or a tax escrow account established if necessary, then the lease may be executed. Property Disposition must monitor tax escrow accounts (such as reviewing periodic statements), on a regular basis to ensure that lessees make deposits to the account in amounts sufficient to reimburse HUD in a timely manner for the estimated amount of property taxes to be paid by HUD in the next tax period. See Real Estate Taxes, Chapter 5, for procedures to ensure that taxes are not paid if none are owed.

The timely reimbursement to HUD for property taxes paid by HUD, or deposit of the estimated amount to be paid in the next tax period,

are a significant consideration in determining the

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applicant's performance under the lease. Whenever the failure of a provider to pay taxes as required becomes an issue of nonperformance, Property Disposition must advise CPD so that corrective action will be taken.

8-39 Ten Percent of Inventory Available for the Homeless Lease Program. See paragraph 8-6.

8-40 Term of Lease. The maximum lease term is five years. An initial lease may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee and with the approval of Property Disposition, at the end of the first lease term for up to four additional one-year terms, on a year-to-year basis, provided the lessee has met the requirements of the program. Property Disposition may use the format of the Lease Renewal shown on Appendix 81 to renew the lease.

Lessees who leased properties under the Homeless Initiative Interim Rule published January 11, 1990 at FR 1156 may extend the maximum term of their lease to five years if they sign a new lease form which reflects all other changes to the program as prescribed in the current Rule. If a lessee converts an old lease to a five-year lease, the maximum lease term is five years less the number of years under the prior lease. The lease form must be changed to reflect the appropriate maximum lease term.

8-41 Termination of Lease. A lessee may terminate a lease at any time without penalty upon 30-days' written notice. (See paragraph 15 of the lease form, Appendix 77.) When a lease is voluntarily terminated, the property should be promptly returned to inventory and placed on the market for sale to the public. If a lease is terminated before the end of the lease term, taxes and utilities due on the property will be prorated between Housing and the lessee. Properties must be returned to HUD vacant, and in as good a condition as when received, including boarding and other security.

At the end of the maximum lease period, if the provider has not exercised the option to purchase, CPD will notify the provider to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located.

8-42 Termination for Cause. Property Disposition must work closely with CPD wherever HUD proposes termination of a lessee for cause, particularly where the properties are occupied. Headquarters must also be contacted as necessary for guidance in issues of termination for cause. The Director of the Single Family Property Disposition

Division in Headquarters is to be promptly notified of any instance in which lease termination for cause may result in the return to inventory of occupied properties.

- 8-43 Vacancies of 30 Days or More After Lease. Within 30 days of leasing a property from HUD, or within 30 days after a property is vacated, the lessee must sublease the property to the homeless, unless a longer period is approved by CPD with Property Disposition's concurrence. Property Disposition must approve where a vacancy longer than 30 days is required. When properties are found to have been vacant 30 days or more, Property Disposition must advise CPD that properties are vacant and document the case file. It is CPD's responsibility to ensure that properties are not left vacant for 30 or more days.

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SECTION V - LEASE WITH OPTION TO PURCHASE PROPERTY  
BY SUPPORTIVE HOUSING PROGRAM APPLICANTS

- 8-44 Eligibility. Applicants for Supportive Housing Program acquisition (grant) funds, under both the Transitional Housing Program and the Permanent Housing for the Handicapped Homeless Program, may apply for a lease with option to purchase, although they are not required to do so. Grant applicants may lease HUD-owned property for a term of six-months while their grant application is being reviewed in CPD.

If a grant is denied, in order to remain in the property, the applicant must qualify as a homeless provider pursuant to regular homeless program regulations and requirements as shown herein. If approved by CPD as a homeless provider, the lease must be converted to the regular lease-option shown at Appendix 77.

- 8-45 Applicant Responsibilities: Except as shown below, the applicant's responsibilities for leasing under this program are the same as under the regular lease program, including the requirement for payment of the pro rata share of property taxes, general liability insurance, utilities, security and maintenance and repair of the property.
- A. Different criteria exist for determining the eligibility of an applicant. Eligible applicants will be determined by CPD based upon definitions in the Supportive Housing Program.
  - B. The lease term is six-months versus one year.
  - C. There is no requirement for occupancy by a homeless individual or family within 80 days and, therefore, no requirement for a sublease. However, the property may be occupied by the homeless after CPD determination of capacity. If occupied, a

sublease is necessary.

- D. There is no requirement for a tax escrow account during the six months the property is under lease. If a grant is not awarded, the lease must be converted to the regular lease with option program in which a tax escrow account must be established, if applicable.
- E. Except as provided in paragraph 8-37 the provider may not sublease the property during the lease term.

8-46 Execution of the Lease with Option Agreement. The form Lease with Option to Purchase Property by Supportive Housing Program Applicants (Appendix 78) is to be entered into by HUD and the grant applicant. The lease will be prepared at the request of CPD. PD will obtain the provider's signature on the lease. The CPO will sign the lease after it has been signed by the applicant and all other terms and conditions of lease execution including insurance and prepayment of the pro rata share of property taxes, have been met.

8-47 Converting the Lease with Option to Lease with Option to Purchase; Occupancy during Lease Term.

- A. A lessee whose application for grant assistance is not approved may convert the lease-option agreement to a Lease with Option to Purchase HUD Acquired Single Family Properties for Use by the Homeless (Appendix 77) under the same terms and conditions as exist for applicants under that program, subject to CPD approval.
- B. A lessee may be allowed to sublease the property to the homeless while its application for a grant is pending if the lessee demonstrates to CPD's satisfaction that it has the capacity to operate and manage a homeless program. In the event the grant application is not approved, the lessee must execute a lease with option to purchase agreement under the terms and conditions of that program in order to continue to sublease the property to the homeless.

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8-48 Lead-Based Paint Refer paragraph 8-29 for lead-based paint requirements.

8-49 Purchase of Leased Properties. See 8-33, 8-34 and Section VI.

8-50 Termination of the Lease with Option Agreement. If the applicant is not approved for grant funds the lease with option agreement terminates automatically at the end of the lease term unless an extension has been granted by CPD with Property Disposition's concurrence or the applicant fails to exercise its right to

purchase.

If the lessee voluntarily terminates the lease with option agreement during the lease term, the applicant must promptly notify CPD that it is releasing the property back to HUD. Property Disposition must promptly return the property to processing. Property Disposition will pro rate property taxes as of the termination date of the lease with option agreement. The property must be returned to HUD in the same condition in which it was conveyed to the applicant, excluding normal wear and tear if it was occupied. Upon expiration of the six-month lease or voluntary termination by the applicant, Property Disposition must promptly return the property to processing unless CPD approves an extension of the lease with the concurrence of Property Disposition or the applicant converts the lease as discussed in paragraph 8-47.

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SECTION VI - SALE OF ACQUIRED PROPERTIES DIRECTLY TO NON-PROFIT ORGANIZATIONS AND UNITS OF LOCAL GOVERNMENT

8-51 Eligibility. Applicants eligible under this section are state and local governmental agencies, nonprofit organizations and others who have been preapproved by CPD as homeless providers. This section is separate and distinct from the Supportive Housing Program and deals with direct and competitive sales to nonprofit groups and units of local government. A direct sale is a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. A direct sale under the homeless program is permissible only to eligible applicants approved by CPD.

When an applicant or lessee purchases property, Property Disposition staff are to establish the sales price, execute the Sales Contract from information provided by CPD, and coordinate the sales closing.

8-52 Procedures for sale to All Preapproved Applicants.

A. Consideration Period. Applicants preapproved by CPD may request lists of properties within their designated geographical areas before Property Disposition lists them for sale. CPD will coordinate the dissemination of information to insure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time. Properties will be sold to applicants on a first come-first served basis.

After an applicant has been notified of eligible properties available in its geographical area, properties will remain available for a 10-day consideration and inspection period. The 10-day period will begin to run upon receipt of the list of eligible properties by the applicant. In the case of



notifications by mail, the 10-day period will begin to run five days from the date CPD provides the notification to the applicant.

As in the lease program, because Property Disposition has no method for tracking the time after the list of properties is provided to CPD, Property Disposition must assume there has been no expression of interest and must proceed to offer the properties for sale to the general public no later than 15 days after the list of properties was provided to CPD.

After the initial 10-day consideration and inspection period, a property will be available to applicants for direct sale provided the property meets the following criteria.

1. Is unsold.
2. Has no pending offer from the public.
3. Is not in a public bid offering period, and
4. Is not committed to another purpose or program.

If, during the 10-day consideration and inspection period, CPD receives a written expression of interest, the property must promptly be held off market, and coded in the Single Family Accounting Management System (SAMS) as shown in Section IX. It is appropriate that a reasonable amount of additional time be allowed for the preparation and execution of the sales contract. Although the Field Office will determine the amount of additional time which will be necessary for the performance of these tasks, this should occur within several days unless there are extenuating circumstances which would require that the provider be given more time.

- B. Direct Sale. Lessees who elect to exercise their purchase option under the homeless lease with option program may do so at any time and are entitled to purchase as described in paragraphs 8-33, 8-34 and Section VI. The purchase price to all other homeless providers will be the fair market value for the property in the approved Disposition Program, less 10 percent.

- C. Competitive Sale. As an alternative to direct sales, an applicant, whether or not preapproved by CPD, may submit a competitive bid on any property listed for sale to the general public, following normal HUD procedures for the competitive bid process. If the applicant's competitive bid is the winning bid at the bid opening, Property Disposition will accept the bid, and will reduce the net amount due HUD by 10 percent. Since HUD will not pay closing costs or a sales commission, such offers are to be submitted without the assistance of a selling

broker. Thus, the gross bid is in effect the "net bid" since there are no deductions.

- D. Lead-Based Paint. See Lead-based Paint Hazard Notice at paragraph 8-13 and lead-based paint procedures at paragraph 8-29.
- E. Terms of Sale.
  - 1. To purchase property by direct or competitive sale, an applicant must execute Form HUD-9548, Sales Contract (Appendix 39).
  - 2. Sales will be on an as-is, with or without FHA mortgage insurance. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. No other closing expense will be paid by HUD. The applicant must pay all other closing costs.
  - 3. Applicants are expected to close the sale no later than 80 to 60 days (depending upon the practice of the local Field Office) from the date of acceptance of the contract by the Field Office.
  - 4. Housing's closing agent will be used to close the sale. Earnest money deposits and closing extension fees may be collected by Housing, if necessary, to assure compliance with the sales contract.
  - 5. Major rehabilitation or occupancy of a property is not allowed under any circumstances until the sale has closed and title has passed.

8-53 Coding into SAMS - See Section IX beginning at paragraph 8-68.

8-54 Holding Properties Off the Market for Applicants Not Yet Approved. In general, CPD should preapprove homeless providers for direct purchase. Property Disposition should not hold properties off the market pending such approval. However, in unusual circumstances, Property Disposition may, at the request of CPD, hold a limited number of properties off the market pending applicant approval where deemed appropriate, such as where the applicant has a need for properties in specific locations and there are a limited number of HUD-owned properties in the area. CPD is to treat such requests for applicant approval on a priority basis.

8-55 Providing Lists of Properties to CPD and Notification to Applicants - See Section VII.

8-56 Qualifications for Nonprofits. Applicants wishing to purchase acquired properties on a direct sale basis must be preapproved by CPD.

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SECTION VII - OUTREACH FOR HOMELESS PROGRAM

- 8-57 CPD Responsibilities. CPD is responsible for all outreach. This includes direct contacts in response to inquiries, making lists of properties available to preapproved applicants, providing information to preapproved providers regarding any exemption from or reduction of property taxes under State or local laws, and otherwise responding to questions and concerns about the program, CPD will also provide informational materials on this and the Supportive Housing Program.
- 8-58 Property Disposition Responsibilities. At the discretion of the Regional Administrator, in offices without a CPD function, Property Disposition staff may conduct outreach activities, as long as responsibilities are clearly defined and accountability is established. (Also, see timekeeping at paragraph 8-67.)

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SECTION VIII - MONITORING THE LEASE PROGRAMS

- 8-59 Compliance. Except as shown herein, CPD is responsible for monitoring compliance with all requirements of the program and Property Disposition should not become involved in communications between HUD, the lessee, or homeless occupants. The issues discussed below are relevant to Property Disposition responsibilities under the program.
- 8-60 Case File. The Property Disposition case file is the official property file. As such, although CPD will retain original and working documents related to applicant approval and monitoring, PD must ensure that the PD case file contains:
- A. The original of all leases.
  - B. Original correspondence approving rehabilitation and/or minor repairs.
  - C. Original property inspection reports.
  - D. Copy of the check register showing deposit of the \$1 year lease fee to the property account or copy of the SAMS 1100 Cash Transmittal Form.
  - E. Original insurance binder and/or policy showing that the property is covered by general liability insurance.

F. Original documents showing evidence that lessee has established a tax escrow account for payment of property taxes with Property Disposition as co-signer.

8-61 Property Inspections. Property Disposition is responsible for inspection of HUD-owned properties leased under this program. Inspections should be made as often as necessary where there are major or continuing problems (such as reports of damage beyond normal wear and tear), but must be made immediately prior to executing the lease and at least annually thereafter, preferably on the anniversary of the execution of the lease.

During inspection, the property's condition should be compared to its condition at the time of lease initiation. No alterations, additions, or improvements are allowed without the written approval of Property Disposition. If Property Disposition learns of such alterations, additions, or improvements, CPD should be promptly advised and corrective action taken to ensure compliance with program requirements. CPD should also be advised of reports of vandalism or property damage beyond normal wear and tear, and additional inspections made until the problem is resolved. Corrective action must be taken to prevent property damage beyond normal wear and tear.

8-62 Check List. A Suggested Inspection Check List is enclosed for documenting inspections. (See Appendix 76.) Use of the same inspection check list for the initial and subsequent inspection will facilitate a determination of whether the property is returned to HUD in as good a condition as when initially leased, excluding normal wear and tear.

8-63 Contact with Lessee/Tenants. CPD is responsible for monitoring compliance with terms of the lease and sublease and for tenant assessment. CPD also acts as liaison with the lessee to facilitate Property Disposition access to occupied properties for the purpose of property inspection. During inspections, wherever Property Disposition staff encounter tenant complaints or any property condition requiring contact with the lessee, they are to promptly advise CPD of the nature of the complaint or problem. Conversely, during CPD monitoring or tenant assessment, should CPD observe property damage beyond normal wear and tear, CPD will inform Property Disposition.

8-64 Inspection Contracts: Although inspections may be conducted by Property Disposition or other Housing staff, Field Offices may desire to contract out for this service. Existing Area

Offices are not to use AMBs or REAMs for this purpose. When delegated contracting authority, the Field Office may contract for these services. Otherwise, the Field Office should contact the Regional Contracting Division at the earliest possible time as only a Contracting Officer can procure these services. Options available are:

- A. An existing AMB/REAM Monitor currently used by the Field Office. Contact the Regional Contracting Division for the appropriate contract document.
- B. An inspection service exclusively for this purpose utilizing a Blanket Purchase Agreement (BPA). The BPA format may be customized for this inspection service. Contact the Regional Contracting Division for BPA information and instructions.

8-65 Privacy/Freedom of Information. The identity of any individual or family occupying HUD-owned properties is protected under the personal privacy exemption of the Freedom of Information Act (5 U.S.C. 552(b)(6)). HUD interprets this exemption as extending to the street addresses of properties leased under the program, since information on the location of properties can be used to identify the occupants. However, the exemption does not extend to groups or organizations; therefore, the identify of lessees, which are governmental or nonprofit organizations, cannot be protected.

Requests for information requiring unusual search or compilation time should be made following established procedures for the Freedom of Information Act.

8-66 Real Estate Asset Manager (REAM) Contract. Upon execution of a lease, the property is to be removed from the inventory of the REAM. The REAM's staff or contractors may not perform repairs or other work at the property as a part of their existing REAM contract.

8-67 Timekeeping. Property Disposition staff performing work directly related to the Homeless Program must report their time using codes from the Employee's Time Report System (ETRS), HUD 2140.5. Housing staff performing any of the responsibilities of CPD as shown herein must use the appropriate CPD ETRS codes.

#### SECTION IX - PROCESSING REQUIREMENTS FOR SAMS

8-68 Accurate Coding. Each property leased or sold to a homeless provider must be accurately coded into the Single Family Accounting Management System (SAMS) as part of the approved Disposition Program and as part of the Management of Occupied Properties rental subsystem for leased properties. Since there are different methods of coding the Lease-Option Program, Supportive Housing, and Direct Sales, you must follow the instructions carefully. Note: These instructions automatically expire when superseded by their inclusion in the SAMS User Handbook.

8-69 Tracking. When an applicant under the Homeless Program provides CPD with an expression of interest, Property Disposition must track the property as follows:

A. Lease With Option and Supportive Housing Leases.

1. New Acquisitions. Use the CM DS C3 screen, Held Off Market Code "4 - Programmed for Rent" for both of these lease types. A SAMS Form 1101, "Define Lease/Lessee", must also be completed and sent to Data Prompt, Inc., when the properties are leased. On the SAMS 1101, insert at item #4 Type: "HH" for a regular Lease with Option or "SH" for a Supportive Housing Lease.
2. After the Expiration of the 45-Day Public Sale Period. Use Screen CM DS WR to return the case to step 2 for reanalysis. A new Disposition Program will be

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required to place the property in "Hold Off The Market" status for the ten day consideration and inspection period. On the CM DS C3 screen, use either Held Off the Market Code 7 - "Offered Homeless" or 8 - "Offered Support," whichever is applicable. If the inspection period has expired or the lease is to be executed (whichever occurs first) the property must again be marked for reanalysis. Use screen CM DS WR to return the case to step 2 for reanalysis and prepare a new Disposition Program. If a lease is entered into, follow the procedure outlined above for New Acquisitions. In the event no lease is executed, the property will need to be returned to the market. Code the CM DS C3 screen "N - Not Held Off Market" and select the proper sale type.

3. Lease With Option or Supportive Housing Lease that Converts to a Sale. If the purchase option is exercised, use Screen CM DS WR to return the case to Step 2 for reanalysis. A new Disposition Program will be required to transfer the HOM status from "4" to "N - Not Held Off the Market." On the Sale Type field enter "DR - Direct Sale." The Direct Sale pop-up screen will appear. Enter Direct Sale Type: "L - Homeless Lease w/Option" or "S - Supportive Housing" only. Complete the remainder of the screen for As Is Price and Discount (Y/N) - yes or no. If yes is selected, SAMS will automatically calculate the 10% discounted sales price and display the price in the next field.

B. Direct Sale.

1. If an applicant expresses an interest in purchasing by Direct Sale prior to the public offering, code the Sale Type "DR - Direct Sale" in the CM DS C3 screen. The use of DR will produce a pop-up screen that requires the

identification of the Direct Sale Type. Of the available options, select only from the following.

- F - HOMELESS - Nonprofit
- M - HOMELESS - Local Government

2. Complete the remainder of the screen for As Is Price and Discount (Y/N) - yes or no. If yes is selected, SAMS will automatically calculate the 10% discounted sales price and display the price in the next field.
3. If an applicant expresses interest in a property and the property is eligible as shown in paragraph 8-11, then the property must be marked for reanalysis via the CM DS WR screen and moved to DM step 2. Complete the new Disposition Program on the CM DS C3 screen described in Direct Sale above.

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Chapter 8 - Exhibit

RESPONSIBILITIES FOR ADMINISTERING THE SINGLE  
FAMILY PROPERTY DISPOSITION LEASE-OPTION PROGRAM FOR THE HOMELESS

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TASK	PD	CPD	
Approval/preapproval of applicants		X	
Determination of occupant rent amount(s)		X	
Determination of lessee operating costs		X	
Dispute Resolution:			
Lessee/tenants		X	
Other	X	X	
Evictions		X	
Inspections:			
of property	X		
of tenant assessment and monitoring		X	
Insurance:			
Determination of coverage value	X		
Monitoring timely coverage		X	
Obtaining binder before lease execution	X		
Obtaining policy		X	

Lease:			
Preparation at request of CPD		X	
Renewal at request of CPD with Housing			
Concurrence		X	
Signature on property leases		X	
Lists:			
Compiling lists of eligible properties		X	
Providing to CPD		X	
Providing to applicants			X
Master Agreement			
Preparation			X
Signature			X
Median income determination			X
Monitoring:			
of tenants			X
of property taxes and tax escrow account		X	
of current insurance coverage			X
of SAMS		X	
Notifying applicants of eligible properties			X
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TASK		PD	CPD
Occupant/tenant contacts with HUD			X
Operating costs, determining eligibility			X
Outreach to public inquiries/applicants			X
Privacy:			
of property address/tenant names		X	X
Property inspections		X	
Property taxes			
payment of		X	
(Also, see tax escrow account)			
Rent:			
Collection of lessee \$1/year		X	



Determination of occupant rent		X
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Repairs:		
Approval of repairs	X	
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Sales:		
Determination of purchase price	X	
HUD signature on sales contract	X	
Obtaining information from lessee for preparation of sales contract		X
Preparation of sales contract	X	
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Taxes: Outreach to provide information about state or local tax exemptions or reductions		X
Tax escrow account:		
Reimbursement of taxes paid by HUD	X	
Collection	X	X
Monitoring	X	X
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