

March 28, 2014

By email to PublicationComments@dchousing.org

Lori Parris
Deputy General Counsel
D.C. Housing Authority
1133 North Capitol St. NE
Washington, D.C. 20002

Re: Notice of Proposed Rulemaking: Special Needs and Redeveloped Properties

Dear Ms. Parris:

Thank you for the opportunity to comment on the proposed changes to Title 14, DCMR, Sections 6113, creating regulations for DCHA's new "Special Needs Properties." We are excited about the opportunity this new initiative presents for clients to age in their homes.

Nonetheless, we have serious concerns about the regulations as proposed, and, more fundamentally, about the legal regime that will govern these properties. As you know, assisted living facilities – which DCHA plans at least some of the properties to be – are subject to separate and detailed rules that may or may not be compatible with various public housing requirements. It is not clear that those two sets of law, and the need to comply with both, have been adequately addressed in the regulations. In addition, we are concerned that in choosing to live in one of these units, public housing residents and families will unwittingly be relinquishing the right to remain in public housing should they no longer qualify for or desire to participate in the "Special Needs" program.

For these reasons, detailed below, we urge the Office of General Counsel to withdraw these regulations until those questions have been resolved.

1. The regulations deprive Special Needs residents of the transfer rights accorded to all other public housing residents.

Section 6113.10(e) provides that if a family residing at a Special Needs Property not owned by DCHA wishes to move, or is *required* to move because it no longer qualifies for the residence, "the Family will not be transferred to a DCHA owned public housing and any other potential transfer or relocation shall be addressed in the approved Management Plan." For families residing in those properties, this proposed rule represents a total abrogation of their transfer rights and a total abdication of DCHA's responsibility to them.

If implemented, this rule would have harsh consequences for tenants who choose to live in these properties but subsequently undergo a change of circumstances – a family member dies, is born, or no longer qualifies for the services offered at the property. In conventional public housing, such a change of circumstances would trigger a mandatory transfer to another DCHA public housing unit. 14 D.C.M.R. § 6404.1. For example:

- A family resides in a UFAS unit because one of the members needs its accessible features. If that family member dies, the family no longer qualifies for the UFAS unit, and DCHA will transfer the family to another residence.
- A family residing in a two-bedroom unit has another child, necessitating a transfer to a three-bedroom. DCHA will transfer the family to an appropriately sized unit.
- A resident obtains a Civil Protection Order and requires a transfer for public safety reasons. DCHA will move the resident to another property.
- A resident lives in a unit that has irreparable housing quality standards issues and needs to be transferred to another, habitable unit.

In each of these cases, the family may lose its actual unit, but not its place in public housing. Under the proposed regulation, however, families in privately-owned properties – even when those properties are assisted by DCHA with DCHA public housing funds – would lose everything: their home and any chance at affordable housing.

This problem is not speculative. The examples above arise from our experiences representing tenants in privately-owned Redeveloped Properties, where DCHA similarly takes the position that it has no responsibility toward these families – families whom DCHA itself moved from conventional into redeveloped public housing. In both situations, the agency’s position is wrong. There is no legal basis for treating tenants with identical financial assistance differently based on whether the assistance comes from DCHA directly or through a private owner. Nor is it just to do so.

We urge DCHA to develop a coherent transfer policy for Special Needs and Redeveloped Properties that applies in the same way to tenants at DCHA-owned and non-DCHA-owned properties. The goal of any such policy should be preserving tenants’ access to safe, decent, affordable housing when they undergo changes in life circumstances.

2. The regulations do not adequately address conflicts between the laws governing public housing and those governing assisted living facilities.

The current version of the regulations includes a great deal of language promising compliance with “any applicable District or federal statute or regulation.” While this language reflects a laudable commitment to following the law, it does not actually address, much less resolve, the inevitable clashes between the public housing legal regime and that governing assisted living facilities. A few prominent examples are:

- A resident facing involuntary transfer or discharge from an assisted living facility is entitled to a grievance hearing, which is held at the Office of Administrative Hearings. D.C. Code § 44-1003.03. The Office of Administrative Hearings, however, has no jurisdiction over DCHA. It therefore is not clear how a resident of a DCHA-funded assisted living facility would exercise his or her right to challenge a discharge from the facility and/or a notice to vacate the property.
- The proposed regulations direct each property to develop its own grievance procedures, which must comply with the federal regulations governing grievances in public housing. Again, however, the assisted living law requires not a grievance process at each property, but a fulsome administrative hearing administered by “The Mayor” (i.e., OAH). A property-run grievance process would not satisfy that requirement.
- These regulations, like all the laws governing subsidized housing, permit eviction for “serious or repeated violation of the lease.” 6113.11(a). The assisted living statute, however, directs that discharge from the facility be avoided if at all possible, and endorses it only for nonpayment of charges or inability of the facility to meet the resident’s needs. D.C. Code § 44-106.08.

At our meeting last month to discuss these regulations, it was suggested that these conflicts would be worked out in the management plan for the individual Special Needs Properties. That is not adequate. These are cross-cutting legal issues that must be resolved at the agency level, not left to each individual property. Moreover, they should be resolved before DCHA and/or the private owner is potentially be confronted with a discharge or eviction situation.

For these reasons, we strongly suggest that the agency withdraw the proposed regulations pending resolution of these questions concerning transfer, discharge, grievances, and eviction. We look forward to discussing these comments with you, and with the Board of Commissioners.

Sincerely,

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