Chapter 13

OWNERS

INTRODUCTION

Owners play a major role in the HCV programs by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. The chapter is organized in two parts:

- **Part I: Owners in the Section 8 Programs.** This part discusses the role of an owner in the DMMHA’s HCV program and highlights key owner rights and responsibilities.

- **Part II: HAP Contracts.** This part explains the relationship between the DMMHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including DMMHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.
PART I. OWNERS IN THE SECTION 8 PROGRAMS

13-I.A. OWNER RECRUITMENT AND RETENTION

Recruitment

As necessary, outreach will be employed to attract owners to the Section 8 Housing Choice Voucher Program. Informational material will be on hand at the DMMHA Administrative Office, and group meetings will be arranged with representative agencies for the purpose of educating the community and continuing contact with owners will be maintained to encourage them to participate in the Section 8 Housing Choice Voucher Program.

As necessary, letters and appropriate advertising of the program will be used to attract real estate firms, property managers, and owners who control substantial numbers of units.

The DMMHA will maintain lists of available housing as submitted by owners, realtors, landlords and agents. A separate listing will be maintained of handicapped accessible units.

Additional procedures for outreach activities are contained in the Agency’s Marketing Plan (Exhibit 4-1).

Retention

In addition to recruiting owners to participate in the HCV program, the DMMHA will also provide the kind of customer service that will encourage participating owners to remain active in the program.

All DMMHA activities that may affect an owner’s ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit are encouraged to notify the DMMHA or place the available unit on the GoSection8.com web-site. The DMMHA will maintain a listing of such owners in the Reception area of its administrative offices and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The DMMHA has no liability or responsibility to the owner or other persons for the family’s behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family’s request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow
When submitted to the DMMHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD’s Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The DMMHA will inspect the owner’s dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, and policies for HQS inspections at initial lease-up and throughout the family’s tenancy.

The DMMHA will determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonable determination process.

At initial lease-up of a unit, the DMMHA will determine that the share of rent to be paid by the family does not exceed 40 percent of the family’s monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. The HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The DMMHA and the owner shall execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.


The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease.
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit.
• Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance.
• Complying with equal opportunity requirements.
• Preparing and furnishing to the DMMHA information required under the HAP contract.
• Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
• Enforcing tenant obligations under the dwelling lease.
• Paying for utilities and services that are not the responsibility of the family as specified in the lease.
• Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203].
• Comply with the Violence Against Women Reauthorization Act of 2013 (VAWA) when screening and terminating tenants.

13-I.D. OWNER QUALIFICATIONS
The DMMHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the DMMHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]
The DMMHA will not approve the assisted tenancy if the DMMHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the DMMHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d)]
The DMMHA will not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the tenant family. The DMMHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161]
The DMMHA will not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:
• Any present or former member or officer of the DMMHA (except a participant commissioner)
• Any staff member of the DMMHA, or any contractor, subcontractor or agent of the DMMHA, who formulates policy or who influences decisions with respect to the programs
Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs

Any member of the Congress of the United States

**Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

HUD regulations permit the DMMHA to disapprove a request for tenancy for various actions or inactions of the owner.

If the DMMHA disapproves a request for tenancy because an owner is not qualified, it will not terminate the HAP contract for any assisted families that are already living in the owner’s properties unless the owner has violated the HAP contract for those units.

**FBI RECORD CHECK REQUESTS FROM PROJECT-BASED PROPERTY OWNERS**

In accordance with HUD Notice PIH 2003-11, as amended, property owners may request that the City of Des Moines, Municipal Housing Agency (DMMHA) obtain FBI criminal records on their applicants and/or participants to be used in the determination of admission to a federally funded program that they administer, and/or for lease enforcement or eviction of families receiving a rental subsidy under a federally funded program.

DMMHA requires that such requests be submitted in writing and that all fees incurred by the Agency to obtain the information, plus a $50 administrative fee per name, are reimbursed by the property owner making said request.

Owners must comply at all times with all Federal regulations governing the Section 8 programs.

In addition, screening of Owners will include the following:

1. The owner has not violated obligations under a housing assistance payments contract under Section 8 of the 1937 Housing Act.
2. Within the last five years, the owner has not committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program and has not engaged in drug-related criminal activity or any violent criminal activity. DMMHA reserves the right to verify the owner’s history with all available law enforcement authorities.
3. The owner does not have a history or practice of renting units that fail to meet state or local housing codes. DMMHA staff will check owners and property for compliance with local housing codes.
4. The owner does not have real estate taxes, delinquent on the property submitted for participation. Staff will verify with local tax office and/or the Polk County Assessor and the Polk County Court.
5. The owner does not have a history or practice of non-compliance with HQS. Owners will be denied if DMMHA records verify the termination of three (3) previous HAP contracts, within the last calendar year due to owner non-compliance.
6. The DMMHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HA determines that
approving the unit would provide a reasonable accommodation for a family member who is a person with disabilities.

7. The owner does not have a history or practice of failing to terminate tenancy of tenants of assisted units under Section 8 or any other federally assisted housing program for activities engaged in by the tenant, any member of the household, a guest or another person under the control for serious or repeated violations of the lease agreement. Owners with a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for reasons mentioned previously, will be deemed ineligible and the RFTA will be denied.

8. The owner does not have a history or practice of refusing or failing to comply with DMMHA’s requirement to enforce the lease agreement.

9. The owner does not have a history or practice of non-compliance with the Violence Against Women Act of 2013.

10. The Owner does not owe DMMHA any money from previous HAP overpayments or for any other reason.

All of the above will be confirmed before approval of Request for Tenancy Approval. Additionally, the owner(s) will sign a Landlord Certification document. If the property owner is denied participation in the program, the owner and family will receive written notification.

**Legal Ownership of Unit**

The following represents DMMHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

Ownership of property will be verified prior to entering the program. Verification of ownership, including articles of incorporation and partnership agreements, must be submitted along with the Request for Tenancy Approvals. Owners must have a current City Rental Inspection Certificate, when such a certificate is required by the City in which the unit is located.
PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between the DMMHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner’s responsibilities under the program, as well as the DMMHA’s obligations. Under the HAP contract, the DMMHA agrees to make housing assistance payments to the owner on behalf of the family approved by the DMMHA to occupy the unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the DMMHA’s HCV program.

When the DMMHA has determined that the unit meets program requirements and the tenancy is approvable, the DMMHA and owner shall execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the DMMHA will make monthly HAP payments to the owner on behalf of the family, at the beginning of each month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The DMMHA will notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the DMMHA is credited toward the monthly rent to owner under the family’s lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the DMMHA is not responsible for payment of the family share of rent.

The family’s share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the DMMHA, the excess amount will be returned immediately. If the DMMHA determines that the owner is not entitled to all or a portion of the HAP, the DMMHA may deduct the amount of overpayment from any amounts due to the owner,
including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

**Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the DMMHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner’s knowledge, the family resides in the unit as the family’s only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

**Late HAP Payments [24 CFR 982.451(a)(5)]**

The DMMHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if the DMMHA fails to make the HAP payment on time.

A Housing Assistance Payments schedule has been established to ensure that checks will be mailed at the beginning of each month. Owner requests for late fees, up to a maximum of $5 per month, must be made in writing to the Accounting Manager, within the first 10 calendar days of the month. The Housing Agency will not be responsible for late fees for days in which the Housing Agency is not open for business.

The DMMHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the DMMHA’s control. In addition, late payment penalties are not required if the DMMHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract.

**Termination of HAP Payments [24 CFR 982.311(b)]**

The DMMHA will continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the DMMHA will continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The owner must notify DMMHA in writing immediately if the tenants jump lease or vacate the unit prior to the end of the lease term.

The owner must notify the DMMHA in writing immediately when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.
The owner must notify the DMMHA in writing immediately when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the DMMHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the DMMHA will continue to make HAP payments to the owner until the date of the court judgment granting possession of the unit to owner.

13-II.C. BREACH OF HAP CONTRACT [24 CFR 982.453]
Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS.
- If the owner has violated any obligation under any other HAP contract under Section 8.
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
- If the owner has engaged in drug-related criminal activity.
- If the owner has committed any violent criminal activity.

If the DMMHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The DMMHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination of the HAP contract. The DMMHA may also obtain additional relief by judicial order or action.

The DMMHA will notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The DMMHA will provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

13-II.D. HAP CONTRACT TERM AND TERMINATIONS
The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if:

- The owner or the family terminates the lease.
- The DMMHA terminates the HAP contract.
- The DMMHA terminates assistance for the family.
• The family moves from the assisted unit.
• 180 calendar days have elapsed since the DMMHA made the last housing assistance payment to the owner.
• The family is absent from the unit for longer than the maximum period permitted by the DMMHA.
• The Annual Contributions Contract (ACC) between the DMMHA and HUD expires
• The DMMHA elects to terminate the HAP contract.

The DMMHA may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
- The family breaks up – see chapter 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the DMMHA terminates the HAP contract, the DMMHA will give the owner and the family written notice. The notice will specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract.

The HAP contract terminates at the end of the calendar month that follows the calendar month in which the DMMHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the DMMHA any housing assistance payment received after this period. However, at the sole discretion of DMMHA, if an owner or the assisted residence is found to be in serious breach of the owner obligations under the Housing Assistance Payment (HAP) contract the HAP contract and payments may be terminated immediately.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract for the new unit is required.

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy. DMMHA must give prior written approval for the new unit.

**Housing Assistance Payments (HAP) Contract Terminations Due to Insufficient Funds**

The DMMHA reserves the right to terminate the HAP contract if DMMHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the
Program. In the event that the DMMHA determines that the Agency has insufficient funds to make HAP payments for all of its current participants, HAP contracts will be terminated on a last issued, first terminated basis. The number of HAP contracts that will be terminated at any given time will be at the sole discretion of the DMMHA.

Termination letters will be sent to both the Section 8 owner and tenant no less than 60 days prior to the effective date of the termination.

DMMHA will maintain a separate waiting list of all participants whose HAP contract was terminated due to insufficient funding. At such time as DMMHA determines there is enough funding to re-issue the Housing Choice Vouchers to these families, DMMHA will re-issue on a first terminated, first issued basis. Re-issuance of assistance to participants terminated due to insufficient funds is at the sole discretion of the DMMHA.

13-ILE. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The owner may not assign the HAP contract to a new owner without the prior written consent and notification of approval by DMMHA. Failure to comply with DMMHA requirements will be considered a violation of the HAP contract and will be grounds for termination.

1) The owner must request approval by notifying, in writing the DMMHA of the sale of property. The notice must include the name, address and phone number of the new owner and the effective date of the transfer of ownership of the property.

2) The request will be reviewed by DMMHA and the new owner will be screened using the same criteria as stated in the owner screening section of this Plan.

If the new property owner is eligible for participation, DMMHA will contact the new owner. The new owner will be required to provide the following:

a) A copy of the deed or contract for the property with evidence of its recording with the Polk County Recorder.

b) A copy of the notice to the family's informing them of the transfer of ownership.

c) Upon receipt of the required documents from the new property owner the Case Manager will contact the new owner and make an appointment to sign the Transfer of Ownership form and HAP contract amendment. Upon execution of the form, the new owner will be provided a copy of the Housing Assistance payments contract and amendments, the Lease Agreement and the last inspection report.

d) If the proposed owner is denied participation in the program, the current owner will receive written notification and be advised that the transfer of the Housing Assistance payments contract was not approved.
3) The effective date of the transfer will be no sooner than the first of the month following the date the Agency received written notification of the change of ownership. The Housing Assistance Payment will not be issued until the first check run after all transfer procedures have been completed. The Agency will not be responsible for HAP payments sent prior to the Agency’s receipt of the notice of change of ownership.

4) The Agency will suspend the HAP payment in the event that the ownership of property is in legal dispute. It will remain suspended until such time that the owner of record may be verified.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the DMMHA will terminate the HAP contract. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the DMMHA will process the leasing in accordance with the policies in chapter 9. Housing assistance payments may not be made until a new HAP contract has been approved by the DMMHA and signed by the new owner.