

# Chapter 8

## Using a Section 8 Housing Choice Voucher

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*Legal Tactics: Finding Public and Subsidized Housing*  
Third Edition, 2009

Words in *italics* appear in the  
Glossary in the back of this book



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## Renting with a Section 8 Housing Choice Voucher

sometimes can be difficult. Rents may be too high.

Apartments may not be in decent condition. Or you may be facing housing discrimination because you have a voucher.

The purpose of this chapter is to give you information about how to deal with common problems that people face when first getting a voucher and trying to use it.



# Getting the Voucher

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## 1. What happens once I get a voucher?

### **Briefing**

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If you have been selected from a waiting list for a Section 8 Housing Choice voucher (sometimes just called “Section 8”), you will be told to come to the housing agency that has the voucher for a briefing. At the briefing, a staff person will give (issue) you a voucher. The voucher is a piece of paper with your name on it which also shows the number of bedrooms that you are eligible for and how long before it expires. The voucher will be good for at least 60 days from when you first get it. This means that you will have at least 60 days to find a place to live that meets the requirements of the Section 8 program.

At the briefing, housing agency staff should explain the rules about finding and leasing a place to rent. They should also tell you how you can ask for extensions for more time to find a place. See **Question 2** for more information about how long the voucher lasts while you are searching. This briefing may be with just you or with a group of people who are also receiving vouchers.

Because of the importance of this briefing, if English is not your primary language, ask the housing agency whether they can arrange for an interpreter.<sup>1</sup> If you have a disability, the briefing must be held in an accessible place.

If you get your Section 8 voucher from one housing agency and you want to use it in a different community where another housing agency administers the voucher program—which is called *portability*—there are special rules. Generally, the housing authority that gave you the voucher will tell you how to contact the new housing authority, and you must promptly do so.<sup>2</sup>

The new housing authority may choose to re-examine your household income. Unless your income makes you ineligible for the program, the new housing authority will give you a voucher.<sup>3</sup> That voucher will have an expiration date.<sup>4</sup> It will also show how many bedrooms you can have in your apartment.

## **Request for tenancy approval form**

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Once you find an affordable place, a landlord who is willing to rent to you must submit a form called a *request for tenancy approval* to the housing agency. On this form the owner states the number of bedrooms, proposed rent, amount of security deposit, what utilities are included, and date that the apartment can be rented. After the request for tenancy approval form is submitted, the housing authority approves or rejects the rent, inspects the apartment to make sure that it is habitable, and reviews the lease. The place must pass certain minimum standards of habitability.<sup>5</sup>

When you sign a lease with the landlord, the landlord must also sign a contract with the housing agency called the Housing Assistance Payments Contract (HAP Contract). This contract states the term of your lease (which must be at least one year, although the housing authority may approve a shorter lease term after the first year), the names of all household members approved by the housing authority to live in the apartment, the amount of subsidy that the housing agency will pay the landlord, and what utilities and appliances are to be supplied by the owner and by the tenant.



# Looking for an Apartment

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## 2. What can I do if I have not found a place to live and my Section 8 voucher is about to expire?

When you first get your Section 8 Housing Choice voucher, the housing agency should tell you how much time they are giving you (*search period*) and how to ask for extensions. You must be allowed at least 60 days to search for a place to live.<sup>6</sup> This is sometimes called the “initial” search period.<sup>7</sup> Some housing authorities have initial search periods longer than 60 days. Each housing authority’s Section 8 Administrative Plan should say how long the initial search period is.

### Getting an extension

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If your voucher is about to expire, you may be able to get an extension of this search period. In many cases, housing authorities will give one or two 30-day extensions. But—it is up to the housing agency to decide whether or not to give you an extension, and you cannot appeal the decision to deny an extension, unless you need an extension because of a disability.

Some housing authorities will give you an extension if you can show that you have been looking hard for a place to live.<sup>8</sup> For this reason, keep track of your search for housing; if you have to ask for an extension, you will then have a record of your efforts. See the **Reference Materials** in **Chapter 2: How to Apply** for a sample form that will help you keep track of your housing search.

If there is a person with a disability in your household and that disability is making it harder to find a place to live, a housing agency must give as many extensions as are reasonably necessary for you to find a place to live.<sup>9</sup>

## Stopping the search time clock

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Each housing authority's Section 8 Administrative Plan should say when the housing authority will "suspend," or stop, the clock running on your search time when you have a voucher. Many housing authorities suspend the search time when you have submitted a *request for tenancy approval* (see **Question 1**). Others will agree to stop the search time clock if you have a medical or other emergency that has prevented you from being able to look for an apartment, or if you have been denied an apartment for an illegal reason, such as discrimination, and you are suing the landlord to get that unit.

## Can't find a place

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If this is your first Section 8 voucher and you do not find a place to live within the time that the housing agency gives you (including any extensions), you may lose this Section 8 voucher and go to the end of the waiting list.

### 3. What if a landlord will take my Section 8 voucher, but the apartment does not pass inspection?

If you have a Section 8 Housing Choice voucher, you must find a place that meets minimum standards of health and safety. The housing agency must conduct an initial inspection before approving the tenancy. For places built before 1978, the owners must also certify that it is safe from lead hazards.

Both you and the owner must be notified of the inspection results. If the apartment does not comply with the minimum health and safety requirements, the owner will receive detailed information about what items need work in order to pass inspection. The housing authority may set a deadline for completion of these repairs.

If the owner will not make the repairs that are necessary to rent with your voucher in a particular unit, that may be illegal discrimination against you.<sup>10</sup> It is also illegal discrimination for an owner to refuse to rent to you because you have young children and there is lead in the apartment.<sup>11</sup>

If you have been discriminated against while looking for housing with your Section 8 voucher, you should contact the Massachusetts Commission Against Discrimination. See the **Directory** in the back of this book. For more

information about what steps you can take if you think you are facing discrimination, go to: [www.MassLegalHelp.org/housing/discrimination](http://www.MassLegalHelp.org/housing/discrimination).

# How Rents Are Set

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## 4. What will my share of the rent be when I rent an apartment with a Section 8 voucher?

The short answer is that under Section 8 rules, when you first rent a unit or move to a new unit, your share of the rent will be between 30% and 40% of your household's *adjusted income*. Later on in your tenancy, your share of the rent may be even more than 40% if the landlord raises the rent. The minimum amount of rent that you must pay will be 30% of your household's adjusted income. The maximum when you first rent or move can be no greater than 40% of your monthly income.<sup>12</sup> But, it is impossible to tell exactly how much your rent will be until after a housing authority approves a specific place.

When you get a voucher, you should ask the housing agency to write out the maximum amount that you will be able to rent a place for.

The longer answer to this question is more complicated. Figuring out your portion of the rent depends on several variables.

### Fair market rents and payment standards

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Every year, HUD publishes the *fair market rents* for each area in the United States. These figures reflect what HUD thinks is the appropriate rent, based on number of bedrooms, for each area of the country. The current *fair market rents* in Massachusetts are listed in the **Reference Materials** at the end of this chapter.

Using these *fair market rents*, a local housing authority then sets what is called a *payment standard*, which is used to calculate the rent the housing authority pays to the owner (known as the housing assistance payment, or HAP). A housing authority may establish its payment standard between 90% and 110% of local fair market rents.<sup>13</sup> Generally, what happens is that the housing authority subtracts 30% of your *adjusted income (tenant total payment)* from the *payment standard* and pays the difference to the landlord. This is called the *maximum subsidy*.

$$\begin{array}{r} \text{Payment standard} \\ - \text{ Total tenant payment (usually 30\% of income)} \\ = \text{ Maximum subsidy (from the housing authority)} \end{array}$$

The *maximum subsidy* is the most that the housing authority will pay a landlord.<sup>14</sup> If the rent is higher than the payment standard, then you will have to make up the difference. For example:

- If you found a place where the amount of rent plus tenant-paid utilities is below the housing authority's *payment standard*, you would pay 30% of your monthly income for rent and tenant-paid utilities.
- If you could only find a place with rent plus utilities above the *payment standard*, you would be allowed to pay up to 40% of your monthly adjusted income for rent and tenant-paid utilities when you first move in. If your portion of the rent and tenant-paid utilities exceeds 40% of your adjusted income, you will not be allowed to lease the apartment. But there may be some things that you can do (see **Question 5**).

## 5. What can I do if the housing agency says I can't rent a place because the rent is too high?

When you first *lease up* with a voucher, the Section 8 law limits the percentage of income that you can pay toward rent and tenant-paid utilities to 40% of your income.<sup>15</sup> The law also limits how much rent an owner can charge because it must be "reasonable" when compared to similar units in the area.<sup>16</sup> This means that some apartments and houses will have rents that are too high for the Section 8 program.

If the housing authority payment standard is low (for example, 90% of *fair market rents*), you can try to advocate that it raise the payment standard to 100% or 110% of the fair market rents for the area. For more about fair market rents and payment standards, see **Question 4**.

If you find an apartment but the housing authority says the rent is too high, ask the landlord whether she would consider lowering the rent to an amount that is allowed by the housing agency. Some landlords like the guarantee of payment that the Section 8 program offers and are willing to lower the rent. The housing authority may be willing to play a role in requesting a lower rent from the owner.

The number of bedrooms you need will affect the rent that the housing authority will approve. A larger-bedroom unit will allow a housing authority to approve a higher contract rent.

If you have a disability and need access to certain housing or medical services, the housing agency may be able to increase its payment standard as a reasonable accommodation.<sup>17</sup> This might require the permission of the Department of Housing and Urban Development (HUD), and it is a complicated process to get this approval. You will need the help of a lawyer. For more about this, see **Chapter 10: Reasonable Accommodations**.

# Facing Discrimination

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## 6. What can I do if a landlord will not rent to me because I have a Section 8 subsidy?

In Massachusetts, it is illegal for a landlord to discriminate against you because you have a Section 8 voucher.<sup>18</sup> If, when you ask landlords whether they take Section 8 vouchers, you are told “no,” you may be facing discrimination.

For example, a landlord may say outright that she will not rent to people with Section 8. This is clear discrimination and is illegal. But a landlord may choose not to rent to someone with a Section 8 because the housing agency will not pay the requested rental amount. This is probably not discrimination, even though it seems unfair. In selecting a tenant, a landlord can also look at whether you have the ability to pay your portion of the rent. This is not discrimination either.

### Steps to take

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If you feel you are being discriminated against because you have Section 8, you need to act immediately and write down exactly what happened.

You should then contact the housing agency that gave you a Section 8 voucher and explain what happened. Housing agencies have a duty to help you if you are prevented from using your Section 8 because of illegal discrimination.<sup>19</sup>

In addition, you can arrange a *test* of the landlord. Testing is a method of investigating a landlord’s behavior to help determine whether that person is illegally discriminating against you. There are agencies that can help you test a landlord.<sup>20</sup> Try to arrange a test on the same day you have had the problem.

If you feel there is enough evidence to show that you are being illegally discriminated against, you can also file a discrimination complaint with a local, state, or federal government agency.<sup>21</sup> The housing agency that gave you your voucher must give you information about how to file and fill out a

discrimination complaint.<sup>22</sup> You can file a complaint with the Massachusetts Commission Against Discrimination, and you should also call your local Legal Services office. See the **Directory** at the back of this book.

You may also try to get a *temporary restraining order* from the court. This is an order from a judge that would prevent the landlord from renting the apartment to anyone else until the discrimination issues have been investigated.<sup>23</sup>

It is likely that you will need a lawyer to assist you with this process. For more information about how to get a tester, prove discrimination, and file a complaint, go to: [www.MassLegalHelp.org/housing/discrimination](http://www.MassLegalHelp.org/housing/discrimination).

## **7. What if a landlord signs a request for tenancy approval and then decides not to rent to me?**

In Massachusetts, some courts have viewed a *request for tenancy approval* as a binding contract between a landlord and a tenant.<sup>24</sup> Therefore, if a landlord chooses not to rent to you after signing a request for tenancy approval, you may be able to go to court and sue the landlord to get an order that you be allowed to rent and move into the apartment. However, the idea of a request for tenancy approval being a binding contract is not a problem the courts have absolutely and uniformly ruled on. This is a complicated area and you should seek the help of a lawyer.

Even if you decide that you do not want to rent an apartment from a landlord who refuses to rent to you after signing a request for tenancy approval, you may still sue that landlord for money damages for breaching a contract and, possibly, for discriminating against you. Suing the landlord may also send the landlord a powerful message that she should not act this way again with another Section 8 voucher-holder. But suing is a difficult process.

Keep in mind that many housing authorities suspend or stop the search time on your voucher when you submit a signed request for tenancy approval. Check with your housing authority to see if your search clock stopped ticking when you turned in the request for tenancy approval.



# **Reference Materials**



## 8. Fair Market Rents in Massachusetts for 2009-2010

These figures change every year. For an update, and to find out which towns are in each area, go to: [www.huduser.org](http://www.huduser.org).

Area	0 bedroom	1 bedroom	2 bedroom	3 bedroom	4 bedroom
<b>Barnstable County</b>	\$779	\$913	\$1201	\$1473	\$1478
<b>Berkshire County</b>	\$618	\$694	\$801	\$1097	\$1128
<b>Boston-Cambridge-Quincy</b>	\$1090	\$1156	\$1357	\$1623	\$1783
<b>Brockton</b>	\$974	\$1014	\$1277	\$1527	\$1914
<b>Eastern Worcester County</b>	\$725	\$810	\$1066	\$1274	\$1871
<b>Easton-Raynham</b>	\$848	\$1124	\$1307	\$1563	\$2260
<b>Fitchburg-Leominster</b>	\$706	\$811	\$1017	\$1245	\$1353
<b>Franklin County</b>	\$623	\$726	\$900	\$1201	\$1450
<b>Lawrence</b>	\$761	\$968	\$1171	\$1398	\$1442
<b>Lowell</b>	\$843	\$1009	\$1297	\$1549	\$1699
<b>New Bedford</b>	\$587	\$753	\$861	\$1031	\$1391
<b>Pittsfield</b>	\$583	\$681	\$845	\$1086	\$1119
<b>Providence-Fall River</b>	\$751	\$836	\$963	\$1151	\$1419
<b>Springfield</b>	\$610	\$726	\$922	\$1104	\$1281
<b>Taunton-Mansfield-Norton</b>	\$732	\$924	\$1128	\$1384	\$1493
<b>Western Worcester County</b>	\$567	\$780	\$874	\$1043	\$1340
<b>Worcester</b>	\$708	\$814	\$991	\$1185	\$257
<b>Dukes County</b>	\$936	\$1188	\$1414	\$1690	\$1742
<b>Nantucket County</b>	\$1096	\$1516	\$1683	\$2013	\$2073

Source: Federal Register, Vol. 74, No. 188, September 30, 2009, pp. 50552.

## Endnotes

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- <sup>1</sup> HUD Housing Choice Voucher Program Guidebook 7420.10G (Apr. 2001), § 8.2, p. 8-2.
- <sup>2</sup> Portability rules are generally found at 24 C.F.R. § 982.355(c), but they do not apply in Massachusetts. *Williams et al. v. Hanover Housing Authority et al.*, 871 F. Supp. 527 (D. Mass. 1994). For a description of Massachusetts portability rules, see letters to Massachusetts housing authorities from HUD Office of Public Housing, dated Jan. 18, 2002 and Oct. 6, 2003, on file at Massachusetts Law Reform Institute.
- <sup>3</sup> See 24 C.F.R. § 982.355(c)(9), which allows the new housing authority to deny or terminate assistance for the reasons established in the regulations at 24 C.F.R. §§ 982.552 and 982.553. This probably applies in Massachusetts.
- <sup>4</sup> 24 C.F.R. § 982.355(c)(6). The new housing authority’s voucher cannot expire before the first voucher was set to expire. This probably applies in Massachusetts.
- <sup>5</sup> See 24 C.F.R. § 982.401 for the program’s Housing Quality Standards. The unit must also comply with the state Sanitary Code.
- <sup>6</sup> 24 C.F.R. § 982.303(a).
- <sup>7</sup> 24 C.F.R. § 982.303(a).
- <sup>8</sup> 24 C.F.R. § 982.303(b).
- <sup>9</sup> 24 C.F.R. § 8.28(a)(4); 24 C.F.R. § 982.303(b)(2).
- <sup>10</sup> “It is well-settled that the refusal to rent to a Section 8 recipient due to the cost of repairs as required by the health code of the Commonwealth is not a defense to a claim under c. 151B, § 4(10).” This quote is from an Order of the full Mass. Commission Against Discrimination (MCAD) in *Portis v. Paul*, No. 97-BPR-4718 (9/25/03).
- <sup>11</sup> G.L. c. 111, § 199A.
- <sup>12</sup> See 24 C.F.R. § 982.508. This applies where the total of the rent and utilities is greater than the payment standard.
- <sup>13</sup> HUD approval is not required to establish a payment standard amount in that range (“basic range”). The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount (“exception payment standard amount”). 24 C.F.R. § 982.503(b)(2). If the family includes a person with disabilities and requires a higher payment standard for the family as a *reasonable accommodation* for such person, the housing authority may establish a higher payment standard for the family within the basic range. 24 C.F.R. § 982.505(d).
- <sup>14</sup> See 24 C.F.R. § 982.505(a).
- <sup>15</sup> 24 C.F.R. § 982.508.
- <sup>16</sup> 24 C.F.R. §§ 982.503 and 982.507. See annual list of *fair market rents* for 2009-2010 in the **Reference Materials** for this chapter.
- <sup>17</sup> 24 C.F.R. § 982.503(c) (2)(ii) and 24 C.F.R. § 8.28(a)(5).
- <sup>18</sup> G.L. c. 151B, § 4(10).

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- <sup>19</sup> 24 C.F.R. §§ 982.304 and 982.53; *NAACP v. Pierce*, 624 F. Supp. 1083 (D. Mass. 1985), remanded for remedial order 817 F.2d 149 (1st Cir. 1987).
- <sup>20</sup> *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Northside Realty Associates, Inc. v. United States*, 605 F.2d 1348 (5th Cir. 1979); *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894 (3rd Cir. 1977); *Hamilton v. Miller*, 477 F.2d 908 (10<sup>th</sup> Cir. 1973); *Education/Instruction, Inc. v. Copley Management & Dev. Corp.*, 1 Fair Hous.-Fair Lend. (P-H) paragraph 15,530 (Mar. 30, 1984) (all holding that testing is legal even though testers act under “false pretenses” and that they have standing to sue). Also, HUD funds testing programs through its Fair Housing Initiatives Program, 42 U.S.C. § 3616a(b)(2)(A).
- <sup>21</sup> **Local:** Although many cities and towns have fair housing commissions or human rights committees, only a few have enforcement powers. **State:** G.L. c. 151B, §§ 3, 5, 6 and 8; 804 C.M.R. §§ 1.00 et seq.; **Federal:** 42 U.S.C. § 3610.
- <sup>22</sup> 24 C.F.R. § 982.304.
- <sup>23</sup> **Federal:** 42 U.S.C. § 3613(c)(1). For a series of cases discussing federal discrimination law, housing, and judicial remedies, see *Heights Community Congress v. Hilltop Realty, Inc.*, 774 F.2d 135 (6th Cir. 1985), *cert. denied*, 475 U.S. 1019 (1986); *Runyon v. McCrary*, 427 U.S. 160 (1976); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975); *Smith v. Sol D. Adler Realty Co.*, 436 F.2d 344 (7th Cir. 1970); **State:** G.L. c. 151B, § 9; G.L. c. 93, § 102(b); G.L. c. 12, §§ 11H and 11I.
- <sup>24</sup> See *Blanks v. Gray*, Hampden Housing Ct. LE-3301-S-87 (Apr. 4, 1988), where a landlord is contractually bound to rent an apartment for which she had signed a “Request for Lease Approval” under the Section 8 program; *Delgado v. Stefanik*, Hampden Housing Ct. 89-LE-3532-H; and *Stefanik v. Delgado*, 89-SP-0029-H (Nov. 1, 1989), where someone who has been wrongfully denied an apartment after a contract to rent has been formed can sue the landlord under G.L. c. 186, § 15F.

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