

SECTION 1

COMMISSIONER'S LETTER WITH STAFF CONTACT INFORMATION



Department of Housing

Connecticut  
still revolutionary

Evonne M. Klein  
Commissioner

March 4, 2014

Senator Andres Ayala, Co-Chair  
Representative Selim G. Noujaim, Co-Chair  
Regulation Review Committee  
State Capitol, Room 011  
Hartford, CT 06106

Dear Senator Ayala and Representative Noujaim:

Pursuant to § 4-170 of the Connecticut General Statutes, I submit to you for your review and approval and placement on the Committee's agenda the enclosed proposed revised regulation for inclusion in the Regulations of Connecticut State Agencies entitled "Tenant Rights in State Public Housing." This is a revised regulation which is being resubmitted after being withdrawn from the Committee's agenda for the February 2014 meeting. The regulation has been revised to address concerns raised by the Legislative Commissioners' Office in a memorandum to the Legislative Regulation Review dated February 25, 2014. A detailed memorandum which summarizes the agency's response to the February 25, 2014 memorandum is attached to this letter.

The purpose of these regulations is to implement the provisions of 8-68f of the Connecticut General Statutes ("CGS"), which requires the Commissioner of the Department of Housing ("DOH") to establish, for housing owned or operated by a Landlord which receives financial assistance under any state housing program, uniform minimum standards to: (1) provide each of its Tenants with a written lease, (2) adopt a procedure for hearing Tenant complaints and Grievances, adopt procedures for soliciting Tenant comment on proposed changes in Landlord policies and procedures, including changes to its form of lease and to its admission and occupancy policies, and encourage Tenant participation in the Landlord's operation of state housing programs, including, where appropriate, the facilitation of Tenant participation in the management of housing projects.

Please note this is a resubmission of regulations initially submitted by the Department of Economic and Community Development ("DECD"). DOH, as successor-in-interest to DECD for affordable housing matters pursuant to CGS § 8-37r, has worked closely with the staff of the Legislative Regulations Review Committee (the "Committee") and stakeholders to address all comments provided by the Committee and such stakeholders. Although these regulations have been in process for some time, they are the result of consensus reached by effected parties and other stakeholders including, but not limited to, housing authority representatives, tenant advocates and legal aid.

If there are any questions regarding this request, please contact Amy Filotto, DOH's Legal Counsel at (860) 270-8062. Thank you for your consideration of this matter.

Sincerely,

Evonne M. Klein  
Commissioner

Enclosures

cc: Kirstin L. Briener, Committee Administrator



MEMORANDUM

To: Legislative Commissioners' Office  
From: Department of Housing  
Date: March 4, 2014

RE: Regulation No: 2013-13A  
Agency: Department of Housing  
Subject: Tenant Rights in State Public Housing

Statutory  
Authority: CGS 8-68f

---

This memorandum is submitted in response to the comments on the Regulation No: 2013-13A set forth in the memorandum from the Legislative Commissioners' Office ("LCO") to the Legislative Regulation Review Committee prepared in anticipation of the February 25, 2013 meeting of the Legislative Regulation Review Committee. DOH declines to make any substantive changes to the regulation, other than as outlined in no. 5 below and the rationale for the agency's position on each of the raised matters is set forth below. It is the agency's expectation that LCO and the Department of Housing ("DOH") can move forward with the regulation.

The numbers correspond to the numbers set forth in the memorandum from LCO.

Responses to Substantive Concerns raised by LCO

1. Statutory Authority. LCO raised the concern that the proposed regulation does not establish uniform minimum standards for the adoption of procedures for soliciting tenant comment on proposed changes in housing authority policies and procedures, including changes to its lease and to its admission and occupancy policies.

DOH plans to address procedures for soliciting tenant comment and encouragement of tenant participation in housing authority operations and project management in the future in order to develop a more complete, detailed, and comprehensive regulation; but they are separate from the lease and grievance procedures contained in the present regulation and should be left to a future time. There is an urgent need for guidance from DOH (in the form of this regulation) for the handling of tenant grievances by housing authorities and other matters addressed by the regulation. This regulation provides that framework and helps ensure fair treatment for tenants in state public housing in all cities and towns.

When a statute requires the development of regulation, the agency is not required to write and adopt all provisions simultaneously. As mentioned in past correspondence which accompanied the submission of prior versions of the regulation, the regulation has been in process for years and is the product of consensus among various stakeholders representing divergent interests. DOH is committed to work on the areas identified as deficient by LOC, which areas deal with a distinct subject area, but the balance of this regulation should not be further delayed.

2. Drug-related criminal activity. LCO raised the concern that it is unclear what would constitute reasonable efforts by a tenant to assure that a fellow tenant, member of the household or guest does not engage in drug-related criminal activity off or near the premises.

A tenant makes reasonable efforts by attempting to influence the guest's behavior or, if the tenant is unaware of the conduct until after it occurs, by getting appropriate help for the guest or prohibiting the guest from returning to the dwelling unit. Keeping a community safe requires everyone's participation. A landlord must be able to take action if a tenant knowingly allows or enables drug-related criminal activity to occur on, off or near the premises. The tenant also has the right to notice and an opportunity to correct the condition under CGS § 47a-15 (which can also include removing the guest from the unit).

Representatives of both landlords and tenants participated in the development of and commented on this language in the regulation.

Therefore, DOH declines to change the language of the proposed regulation.

3. Failure to select an impartial person. LCO raised the concern that "It is unclear what standard, or who, makes a determination that the selection has failed to select an impartial person."

If both parties cannot agree on a proposed hearing officer, the failure to agree or impasse is the failure to select an impartial person. The issue that LCO has raised is relates to impartiality, but the issue really is about the failure to agree on the selection of a hearing officer within 30 days. If there is a disagreement about impartiality, it will be reflected in the failure to name a hearing officer using the method that the landlord has established under R.C.S.A. 8-68f-20(b)(2). Note that the landlord is always the appointing authority. If the tenant and the landlord cannot agree on a hearing officer within 30 days, or if the procedure used does not otherwise provide for the failure to appoint, then R.C.S.A. 8-68f-20(b)(3) is the operative provision. And in that case there is no grievance hearing, the landlord's decision becomes final, and the tenant can either (a) accept it or (b) fight it by refusing to comply. In the latter case, if the landlord attempts to enforce the decision over the tenant's objection (presumably by bringing an eviction or, perhaps, suing for a disputed dollar amount), then R.C.S.A. 8-68f-20(b)(3) preserves the right of the tenant to contest the matter in a judicial proceeding. In other words, in the absence of agreement on a hearing officer (or other timely appointment), the decision being contested becomes final and any dispute is left to procedures other than a grievance hearing. No one makes a determination and no standard is needed or applied.

In the absence of the regulation, which is presently the case, there is no grievance procedure or guidelines applicable to tenants in state public housing and their recourse is a judicial proceeding, which is why the passage of the regulation is so important.

4. "Promptly Scheduled". LCO questioned the phrase "promptly scheduled." A review of the eRegulation website generated 259 hits for "promptly" in state regulations. It is a common regulatory term in Connecticut and DOH has not changed the proposed language of the regulation.
5. Good faith effort. LCO considers the provision to be vague. Although the term "good faith" is a commonly used term, it has been replaced with the word "honest", which word is less vague. Please see the response to item no. 1 above. The agency intends to address the balance of LCO's concerns at a later date.

Responses to Technical Concerns raised by LCO

1. The citation format has been changed to be consistent throughout.
2. The word "willfully" has been changed to "wilfully" as requested. However, LCO is advised that there are twenty-one (21) instances of the word "willfully" and only two (2) of the word "wilfully" in the entire body of the Regulations of Connecticut State Agencies. Additionally, the more recently promulgated regulations use the word "willfully".
3. The comma has been inserted as requested; however, the words "such term is" have NOT been deleted as they are necessary to make clear that the term being defined is "controlled substance" and not larger parts of the definition of "Drug-related criminal activity".
4. The term "Elderly" has been changed to "Elderly persons" as opposed to the LCO recommended "Elderly person" in order to be consistent with Connecticut General Statutes § 8-113a(m) and "subsection (m) of" has been deleted as requested.
5. The suggested deletion has been made.
6. The suggested corrections have been made.
7. The suggested deletion has been made.
8. The suggested deletion has been made.
9. The agency has determined that this change is NOT technical in nature and cannot be made since it is necessary for clarity and to prevent any misunderstanding. Without the language concerning disability, a reader would otherwise assume that the term near-elderly has only an age qualification.
10. - 43. The suggested corrections have been made.
44. The suggested correction has been made; however, the word "An" has been kept as the article for the first word of the sentence.
45. - 48. The suggested corrections have been made.
49. The suggested changes have been made; however, "(30)" has been added to the suggested replacement language to ensure consistency throughout.
50. The suggested correction has been made.