

Ch. 11, pp. 3-4, subsection 11-3 B, Right to Remain:

- Where an owner refuses to recognize the right to remain by attempting to raise the rent or by refusing to accept the enhanced vouchers for one or more tenants by declining to execute a HAP contract with the PHA, it is inaccurate to state that a tenant's remedy depends only on state and local law. HUD can and should specify the federal statutory right to remain under the enhanced voucher statute (42 U.S.C. § 1437f(t)). As recognized in *Park Village Tenants' Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150 (9th Cir. 2011), under the statute, the tenant can remain and pay only their prior share of rent if an owner refuses to renew a HAP contract or accept enhanced vouchers.
- Contrary to proposed 11-4 C, HUD should eliminate a PHA's ability to re-screen affected tenants, who are under existing assisted leases being converted to voucher tenancies through no fault of their own. This is the proper policy that has been recognized by Congress and/or the Department in other conversion situations, e.g., RAD, and does not require specific statutory authority.
- If there is a delay in HUD-PHA processing of the enhanced vouchers, the Guide should clarify that, if an owner is unwilling to execute a short-term project-based renewal contract to cover the gap, the tenants' rent may not increase and HUD-PHA must make retroactive assistance available to cover any gap. Once again, HUD policy should hold the tenants' harmless from the consequences of any subsidy conversions and their programmatic bugs, since the tenants are not at fault.
- The Guide should clarify that the tenants' right to remain with their enhanced vouchers continues even if the ownership changes, consistent with HUD's previous commitments to tenant groups. A voucher lease addendum for PHAs that clarifies both the right to remain and its applicability to successor owners is also needed, and a recommended model is attached.