

North Carolina Housing Finance Agency
3508 Bush Street
Raleigh, NC 27609
(919) 877-5700

To: All Owners and Managers of Affordable Housing with a Regulatory Agreement with NCHFA

From: Paul Kimball – Manager of Rental Assets

Date: July 5 , 2016

Subject: Fair Housing and Tenant Selection

This memo is being issued to update and replace the prior related memo dated June 21, 2016.

The attached Tenant Selection Plan Policy for Properties Monitored by the North Carolina Housing Finance Agency has been updated to clarify several points that have been brought to our attention since originally issuing the memo June 21.

Specifically the following sections have been amended:

Section 3. a. iii. has been revised to clarify the Agency's position on how to address various utilities.

Section 11 has been revised to clarify the Agency's expectations regarding the Reasonable Accommodation process.

The Agency has a responsibility to affirmatively further fair housing within its housing programs. Attached is the Tenant Selection Plan Policy for Properties Monitored by the North Carolina Housing Finance Agency.

Please review your current Tenant Selection Plans for conformance with this new policy. All properties with Regulatory Agreements to which NCHFA is a party must comply with this policy and provide the Agency with a Tenant Selection Plan that conforms to the new policy.

Please provide the Agency with an updated copy of all plans no later than October 31, 2016.

To the extent a company has many properties, but only one (or several) versions of a Tenant Selection Plan, it is advisable to submit your draft plan(s) for our review and feedback before updating all similar plans for submission.

Select a property to upload the draft plan to in RCRS. If you have multiple drafts based on program or funding source, upload a draft for one property of each type. Once draft plans are approved, we will need for you to upload your conforming plans for each property into RCRS.

If you have any questions, please contact Susan Westbrook at swestbrook@nchfa.com or 919-877-5647.

Tenant Selection Plan Policy for Properties Monitored by the North Carolina Housing Finance Agency

This Tenant Selection Plan Policy provides general guidance to landlords who, because of their participation in certain programs administered by the North Carolina Housing Finance Agency (NCHFA) have properties that are monitored by NCHFA.

Properties that include financing from the Department of Agriculture Rural Development Rural Housing Service will prepare and maintain Tenant Selection Plans in accordance with Rural Development guidelines.

Properties that are regulated by HUD Multifamily or HUD Public and Indian Housing will prepare and maintain Tenant Selection Plans in accordance with applicable HUD guidelines.

To the extent the property is not subject to Rural Development or HUD guidelines or there is no guideline specifying the content of a Tenant Selection Policy, then the following policy elements must be included in the Tenant Selection Plan.

NCHFA requires the owner to have a written Tenant Selection Plan that specifies how applicants will be selected for tenancy in the housing community. All criteria used in the decision making process must be included in the plan. The plan must have enough specificity that the applicant or a third party can read it and reasonably determine the applicant's likelihood of acceptance to the property. The Tenant Selection Plan must be clearly posted in the property rental office as well as anywhere else applications are disseminated, including websites. Copies of the Tenant Selection Plan must be available to applicants upon request.

Tenant selection procedures at a minimum must:

1. Describe the population the housing is intended for. Include all regulatory restrictions:
 - a. Income restrictions
 - i. Maximum, if applicable, stated as a number of units at % of median income. Specify how the specific income limit is available – web site address, contacting the on-site office, or as an attachment to the written Tenant Selection Plan.
 - ii. Minimum, if any, must not be so restrictive as to create a barrier to housing for an applicant with a federal or state housing voucher/rent assistance. All minimum income requirements must take into account the rental subsidy/rental assistance. Landlords should either exempt households with rental assistance from the policy itself, or base the minimum income on the tenant's out of pocket rental payment and utility allowance. For example, the applicant must have monthly income that is 2.5 times the tenant paid portion of rent plus utility allowance.
 - iii. Affirm that reliance on state and federal housing vouchers will not be grounds to deny an application.
 - b. Population type (family or elderly)
 - i. The plan must state whether the property is intended to house families or the elderly.
 - ii. If elderly, cite the federal definition selected and address the number of units subject to which age restriction and describe the age restriction for the head of household and for the other household members, if any. If there are units with no age restriction, the number of such units must be stated. The age restrictions must conform to NCHFA's guidance memo dated October 7, 2013 (see below), provided the property is subject to Targeting Program requirements, regardless of the allocation year.
 - c. Student Status
 - i. Include the student rules that govern the property, if any. Either clearly define an eligible student or clearly define an ineligible student.

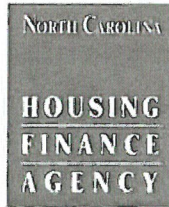
2. Describe the occupancy policy, if any.
 - a. Minimum and maximum household size by unit, if such a policy has been established.
3. Describe all screening criteria
 - a. Credit reports
 - i. Describe with enough specificity that an applicant can reasonably self-determine whether they meet the established standard for approval.
 - ii. The screening criteria must state that the criteria will be waived for applicants participating in any programs or receiving assistance which provides the landlord with the ability to recover any economic losses related to the tenancy.
 - iii. If good standing with the local utility companies used by the unit (electric, gas, and/or water) is a requirement, this must be stated. Cable and internet cannot be included in the good standing requirement.
 - b. Criminal record checks
 - i. Describe with enough specificity that an applicant can reasonably self-determine whether they meet the established standard for approval.
 - ii. The screening criteria must not be so restrictive that the criteria creates a disparate impact on minority groups protected by the federal Fair Housing Act. Further, the criminal screening criteria must generally conform to the NCHFA's guidance memo dated February 8, 2016 (see below), as well as to any applicable HUD guidance published on the subject.
 - c. Landlord references
 - i. Describe with enough specificity that an applicant can reasonably self-determine whether they meet the established standard for approval.
 - ii. To the extent that the landlord reference is negative due to unpaid rent or money owed, the screening criteria must state that this will not be held against applicants currently participating in any programs or receiving assistance which provides the landlord with the ability to recover any economic losses related to the impending tenancy.
4. Describe all preferences or priorities established for the property.
 - a. Include all local, state or federal preferences and how they impact selection from the property waiting list.
 - b. Describe the documentation required to establish that an applicant is eligible to be considered under one of the preferences.
 - c. For properties participating in North Carolina's Targeting Program, the following disclosure should be used:

The property participates in a state program in which X (*insert the actual percentage*) percent of the units in the property are set aside as they become available to house eligible applicants receiving a referral from the North Carolina Department of Health and Human Services. Until the percent of units is reached, those applicants will be offered units ahead of anyone else on the waiting list.
5. Describe the application process used at the property.
 - a. Specify how pre-applications (if applicable) and applications are taken. Any alternative methods for accepting applications should be clearly stated.

- b. Application fees may not be charged to Targeting Program applicants, including applicants from the Transition to Community Living Initiative (TCLI) program.
 - c. Application fees may be charged to cover the actual cost of checking an applicant's program eligibility criteria such as credit history, if applicable, criminal background, and landlord references. The fee may not exceed the amount required to recover the actual costs incurred by the landlord. The fee must be disclosed in the Tenant Selection Policy. A fee cannot be charged for verification of income (a free method should be utilized).
 - d. Reservation fees are prohibited, as an unacceptable barrier to affordable housing, regardless of whether they are applied toward the security deposit.
6. Describe the waiting list used for the property.
- a. Specify the number of written waiting lists used to select a tenant household for the property, their purposes, and the priority ranking between the lists.
 - b. Specify how applicants are selected from each waiting list – first come, first serve or other methodology.
 - c. Specify how preferences impact selection from the waiting list(s).
 - d. Specify how the waiting list is updated to maintain fairness and accuracy. Disclose the circumstances under which an applicant is removed from the waitlist.
 - e. Specify the methods of advertising used to announce opening and closing of the waiting list
 - f. Specify the policies on opening and closing the waiting list
7. For properties with multiple levels of income and rent targeting, address the following:
- a. Specify how applicants are selected for the various rent levels available at the property.
 - b. Specify the policy for assigning lower rent levels to in place tenants versus waiting listed applicants as they become available at the property.
8. Describe the procedure used to notify applicants of acceptance or rejection.
- a. Describe the process and timeline for notifying applicants of acceptance, what the applicant needs to do and in what timeframe to encumber the unit, and the period the unit will be held before moving to the next applicant.
 - b. Describe the process and timeline for notifying applicants of rejection, the method of notification which must include a written form of notification, appeal rights and the process and requirements for filing an appeal. The specific reasons for the rejection must be included in all communications and must be based solely on the written criteria specified in the Tenant Selection Criteria, and if based on information received from a third party, then contact information so the rejected applicant can investigate and challenge the adverse information.
 - c. Appeal rights, process and deadlines must be clearly specified in writing.
 - d. The right to a Reasonable Accommodation by an applicant with a disability must be clearly stated in the policy and in all communications with an applicant regarding rejection of the application.
9. Contain a nondiscrimination statement that lists the federal, state and local protected classes.
10. The intent to comply with all applicable federal regulations related to fair housing.
- a. For all properties this includes, but is not limited to: the Fair Housing Act, the 1988 Fair Housing Amendments Act, Title VI of the Civil Rights Act of 1964, and the Violence Against Women Act (VAWA).
 - b. For properties receiving any federal funds:

- i. In addition to complying with 10(a) above, Section 504 of the Rehabilitation Act of 1973.
 - ii. The landlord shall determine, as part of its obligation to take reasonable steps to ensure meaningful access to the property and its programs by persons with Limited English Proficiency (LEP), those Oral Language Services (i.e. Interpretation) and Written Language Services (i.e. Translation) that may be required in connection with the implementation of this Plan.
 - iii. Fair Housing and accessibility logos must appear on company documents.
- 11. Describe the process and timeline for a disabled applicant to request a reasonable accommodation and /or modification of an apartment, policy, or process and the timeline for the management agent to respond. If a reasonable accommodation request is submitted, the unit must be held until the request determination is finalized and communicated in writing to the applicant. In the event of a denial of a request for reasonable accommodation, the applicant must be afforded 3 business days to challenge the decision before the unit can be rented to another qualified applicant.
- 12. Include Unit Transfer Policies
 - a. Procedures for selecting between applicants on the waiting list and current tenants who need a unit transfer for the reasons below should be included in the plan.
 - i. Family Size
 - ii. Change in Family Composition
 - iii. Medical Reason
 - iv. Need for Accessible Unit
 - v. Need for reasonable accommodation
 - vi. Households residing in an accessible unit that do not need the accessibility features
 - 1. If you have a transfer policy, describe it.
 - 2. If you have federal funding (HOME, Project Based Section 8, Rural Development), a transfer policy must be in place. Describe the policy.
 - b. Transfer and redecorating fees are prohibited.
- 13. Disclose pet policy, if any.
- 14. Disclose smoking policy, if any.
- 15. Disclose any other mandatory policies or programs in place at the property that an applicant needs to be aware of before applying to the property (down payment assistance program, etc.)

This policy is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney that is well versed in fair housing law when making decisions regarding tenant selection criteria.



To: All Owners and Managers of Elderly Housing Subject to Targeting Plan Requirements
From: Paul Kimball – Manager of Rental Assets
Date: October 7, 2013
Subject: Definition of Elderly and Ensuring Access for Targeting Plan Applicants

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The federal Fair Housing Act provides three choices of elderly definition that allows a property owner to exclude children from residency within a property without being liable for discrimination on the basis of familial status.

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- 62 years of age and older – This is housing intended for, and occupied solely by, persons age 62 and older. A property qualifies as 62 and older housing if all occupants of the household, who become residents after September 12, 1988, in all of the units in the property, are 62 years old or older.
- 55 years of age and older – This is housing intended and operated for households in which least one person in the household is 55 years of age or older, per unit, in at least 80% of the property's units. See below for additional discussion.
- State and Federal Elderly Housing Program – This is housing operated under a federal or state housing program that the Secretary of HUD has determined is specifically designed and operated to assist elderly persons. The definition of Elderly is defined in the rules of the housing program (an example is HUD 202).

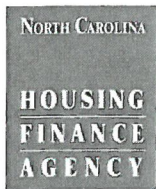
Owners of properties financed by NCHFA that are designated as Elderly, should elect the 55 and Older definition unless there is a compelling reason to select the 62 and Older definition, such as being a requirement for federal assistance. **In order to ensure access to Targeted units by otherwise eligible households, it is the policy of NCHFA to require that properties that select the 55 and Older definition accept Targeting applicants that are 45 years of age or older.**

We suggest that the following language be incorporated into the written Tenant Selection Criteria for a property utilizing the 55 and Older definition:

- In ___ units (at least 80%) one household member must be at least 55 years of age.
- In ___ units (up to 20%, but at a minimum, the number of units required for DHHS Targeting) one household member must be at least 45 years of age.
- All additional household members in the units addressed above must be at least ___ years of age.

Owners may set the age restriction on Targeting Units in properties utilizing the 55 and Older definition lower than 45, but not higher. In order to not comply with this requirement, an owner must show evidence that doing so would violate another regulatory restriction, condition of local development approval, or some other unique and compelling circumstance. In the event the property cannot accommodate the age requirement, the Agency may terminate Key assistance.

The information above is not intended as legal advice. It is recommended that an owner consult with an attorney that is well versed in fair housing law when making decisions regarding tenant selection criteria.



North Carolina Housing Finance Agency
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To: All Owners and Managers of Affordable Rental Housing with an NCHFA Regulatory Agreement

From: Paul Kimball – Manager of Rental Assets

Date: February 8, 2016

Subject: Fair Housing and Tenant Selection

The NC Housing Finance Agency has a responsibility to affirmatively further fair housing within its housing programs. Additionally, a public policy objective of the Agency is to ensure access to our programs through the application of reasonable selection criteria by our partners.

The state of North Carolina has entered into an *Olmstead* settlement with the US Department of Justice (DOJ) which in part requires the state to offer housing options and move persons with disabilities improperly housed in institutional settings into integrated housing of their choice within the community.

The state's primary tools for accomplishing this are through a tenant based rental assistance program, Transitions to Community Living Initiative (TCLI) administered by DHHS for use in rental housing regardless of financing source – much like the HUD housing choice voucher program. The state's other primary resource is the Low Income Housing Tax Credit (LIHTC) program administered by the Housing Finance Agency. The tax credit program accomplishes this through the establishment of Targeting units within tax credit properties and the use of Key assistance for the Targeting units to ensure the units are affordable for persons with disabilities.

It has been brought to our attention by DOJ that Tax Credit housing developments may have screening policies that are so restrictive they deny access to an important housing option to many persons within the *Olmstead* settlement class. We have been asked to address this issue.

To that end the Agency has taken the following steps on the related issues listed below:

Credit Screening

The Agency has created financial risk mitigation tools within the Key assistance program designed to reduce or eliminate the need for a credit evaluation of Targeting Program applicants by landlords. The tools include the following:

- Rent Assistance – The Key assistance program pays rent assistance on behalf of the Targeting Program participant reducing the portion of rent paid by the tenant;
- Security Deposits - The Key assistance program will pay deposits for program participants in Targeted units at the full Key payment standard (which is often greater than the deposit required of non-Targeting Program applicants);
- Reimburse landlords for unpaid damages incurred by Targeting Program participants;
- Reimburse landlords for unpaid tenant portion of rent incurred by Targeting Program participants;
- Reimburse landlords for vacancy loss due to tenant abandonment of unit incurred by Targeting Program participants;
- Reimburse landlords for eviction costs provided DHHS is given opportunities to work with the Targeting Program participant and landlord to correct the breach of the lease before the landlord commences eviction.

With these tools in place, we ask that management agents amend their tenant selection policies and waive credit checks for Targeting Program applicants, regardless of the source of subsidy. The Key program will cover the claim, within limits, even if the Targeting Program participant has a source of rental assistance other than Key. To the extent credit checks are not waived for Targeting Program applicants, we will expect an explanation of your policy and justification of the criteria you apply.

Criminal Background Checks

The Agency, in conjunction with the NC Justice Center, has developed the attached Model Policy on Screening Applicants with Criminal Records.

Given the concerns expressed by the DOJ and the recent Supreme Court ruling on disparate impact, NCHFA, DHHS and the NC Justice Center worked to develop a model policy that we consider fair and reasonable. Unlike credit screening, where a property owner may opt, based on advice of legal counsel, to have separate policies for Targeting Program applicants who are covered by the risk mitigation tools of the Key program and a different policy for applicants who are not, there does not appear to be a justifiable reason to have more than one policy on criminal backgrounds. Further, having a criminal screening policy too restrictive could be construed to be a fair housing violation because of its disparate impact on persons protected by the Federal Fair Housing Act.

Based on this, we ask management agents to consult with a fair housing attorney and review their criminal record policies and use our model as a guide. We ask that you consider adopting our model policy in whole. To the extent your policy is less restrictive than our model, we have no objection to you retaining your current policy. However, if your policy is more restrictive, we ask that you either modify your policy, or be prepared to justify policies that are more restrictive.

Tenant Selection Policies

We will be creating updated Agency guidance on Tenant Selection Criteria in the near future and will be asking that you review your written policies and provide us with updated copies. Primarily our concern on this topic is that all criteria used in the decision making process needs to be included in the written policy. The policy needs to have enough specificity that the applicant or a third party can read the policy and reasonably determine the applicant's likelihood of acceptance to the property. The policy also needs to include a nondiscrimination statement and describe your appeals process, if any, and state the applicant's right to request a reasonable accommodation, if they are disabled.

When we receive complaints that applicants to your property have been unfairly turned down for housing, we will contact you and ask for a summary of the facts used in your decision and review them against the Tenant Selection Policy we have on file for the property.

The information above is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney that is well versed in fair housing law when making decisions regarding tenant selection criteria.

Model Policy on Screening Applicants with Criminal Records

Screening Process

- In an addendum to the application form, the management company will explain its policies and procedures on criminal activity and will inform the applicant of his or her right to request a reasonable accommodation. The addendum will also inform the applicant of his or her opportunity to submit with the application evidence of mitigating circumstances if the admissions criteria provides for an individualized assessment of the applicant's specific criminal activity.
- The management company will conduct a criminal background check on each adult member of an applicant household. An adult means a person 18 or older.
- If the criminal background report reveals negative information about a household member and the management company proposes to deny admission due to the negative information, the subject of the record (and the applicant, if different) will be provided notice of the proposed adverse action and an opportunity to dispute the accuracy of the record. The notice will include the name, address, and telephone number of the agency that composed the criminal record report and inform the applicant of his or her right to dispute the accuracy of the criminal record report as well as his or her right to a free copy of the criminal record report.
- If the applicant does not contact the management company to dispute the accuracy of the criminal record within 10 days, the management company will send a written notice of ineligibility to the applicant stating the specific reason for denial. If the applicant did not contact the management company within the specified time period due to a disability, the management company will provide a reasonable accommodation extending the dispute period as is reasonable. .

Admissions Criteria

- If a member of an applicant household has been convicted of a felony offense involving the sale or manufacture of a controlled substance, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 5 years of application;
 - May deny admission if the conviction, or exit from incarceration, occurred more than 5 years but within 10 years of application;
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 10 years before application.
- If a member of an applicant household has been convicted of a violent felony offense, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 5 years of application; and
 - May deny admission if the conviction, or exit from incarceration, occurred more than 5 years before application.
- If a member of an applicant household has been convicted of a nonviolent felony offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within 7 years of application;
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 7 years before application.
- If a member of an applicant household has been convicted of a violent misdemeanor, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 2 years of application;

- May deny admission if the conviction, or exit from incarceration, occurred more than 2 years before application.
- If a member of an applicant household has been convicted of a nonviolent misdemeanor offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within 5 years of application; and
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 5 years before application.
- A violent felony is a Class A, B, C, D, E, F, or G felony or any felony requiring registration on the sex offender registry. A nonviolent felony is a Class H or I felony.
- A violent misdemeanor is a Class A1 misdemeanor or a misdemeanor requiring registration on the sex offender registry. A nonviolent misdemeanor is a Class 1, 2, or 3 misdemeanor.
- The management company will not consider an arrest or charge that was resolved without conviction. In addition, the management company will not consider expunged or sealed convictions. The management may deny admission if an applicant has pending charges at the time of application.
- Where the management company “may deny” admission to a household based on a criminal conviction or pending criminal charge, the management company will conduct an individualized assessment of the criminal record and its impact on the household’s suitability for admission. This individualized assessment will include consideration of the following factors: (1) the seriousness of the criminal offense; (2) the relationship between the criminal offense and the safety and security of residents, staff, or property; (3) the length of time since the offense, with particular weight being given to significant periods of good behavior; (4) the age of the household member at the time of the offense; (5) the number and nature of any other criminal convictions; (6) evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, social worker, or community leader; and (7) tenancy supports or other risk mitigation services the applicant will be receiving during tenancy.
- If the applicant’s criminal conviction was related to his or her disability, the management company will consider a reasonable accommodation.

Type of Conviction	Automatic Exclusion Period	Individualized Assessment Period	No Exclusion
Nonviolent Misdemeanor (Classes 1-3)	--	5 years	> 5 years
Violent Misdemeanor (Class A1 & sex offenses)	2 years	> 2 years	--
Nonviolent Felony (Classes H-I)	--	7 years	> 7 years
Violent Felony (Classes A-G & sex offenses)	5 years	> 5 years	--
Felony Involving Sale or Manufacture of a Controlled Substance	5 years	5 – 10 years	> 10 years

Revised: 12-10-15

NCHFA Model Criminal History Screening Policy Summary

Type of Conviction	AUTOMATIC EXCLUSION PERIOD	INDIVIDUALIZED ASSESSMENT PERIOD	NO EXCLUSION
	Will not house during this period	Will consider extenuating circumstances during this period	Will not hold criminal history against applicant if last conviction/ release from incarceration is greater than
Nonviolent Misdemeanor (Classes 1-3)	NOT APPLICABLE	0 - 5 years	> 5 years
Nonviolent Felony (Classes H-I)	NOT APPLICABLE	0 - 7 years	> 7 years
Violent Misdemeanor (Class A1 & sex offenses)	0 - 2 years	> 2 years	NOT APPLICABLE
Violent Felony (Classes A-G & sex offenses)	0 - 5 years	> 5 years	NOT APPLICABLE
Felony Involving Sale or Manufacture of a Controlled Substance	0 - 5 years	5 - 10 years	> 10 years

- Automatic Exclusion v. Individualized Assessment v. No Exclusion
- Automatic Exclusion Period is the period of time after conviction or release from incarceration that an applicant will not be considered for housing, regardless of extenuating circumstances.
- Individualized Assessment Period is the period of time after conviction or release from incarceration during which the applicant's extenuating circumstances regarding their criminal history will be considered (see attached).
- No Exclusion is the period of time after conviction or release from incarceration where the applicant's conviction will not be held against them during the screening process.
- Distinct periods based on type of conviction
- Periods begin at date of conviction or, if applicable, release from prison
- Note: violent misdemeanor convictions and violent felony convictions have automatic exclusion periods of 2 and 5 years, respectively, and may be considered indefinitely through an individualized assessment.
- An arrest or charge not resulting in conviction will not be considered, nor will an expunged conviction. A pending charge may be the basis of denial upon completion of an individualized assessment.

Individualized Assessment

☐ When the management company conducts an individualized assessment of the criminal record and its impact on the household's suitability for admission, the assessment should include consideration of the following **factors in determining whether to admit or deny** the individual:

1. the seriousness of the criminal offense
2. the relationship between the criminal offense and the safety and security of residents, staff, or property
3. the length of time since the offense, with particular weight being given to significant periods of good behavior
4. the age of the household member at the time of the offense
5. the number and nature of any other criminal convictions
6. the period of time since the last conviction/release from incarceration
7. evidence of rehabilitation
8. tenancy supports or other risk mitigation services the applicant will be receiving during tenancy