

What to Do With Last-Minute Displacees

The problematic issue of subsequent residential tenant occupants

BY DARRYL ROOT, R/W-RAC, JD

The challenge of subsequent residential tenant occupants is a complicated one. Imagine you have just successfully finished a difficult residential tenant relocation on a complex federally-funded project. You may have assisted a low-income displacee or one who was physically or mentally challenged. Feeling satisfied with your efforts and glad that the displacee is enjoying their new replacement rental, you begin working on your next file. That's when the phone rings. It's your boss telling you that the tenant you relocated from Apartment #222 wasn't the only one you needed to relocate from that unit. A new tenant, unaware of the project, has moved in.

Defining the Issue

A subsequent residential tenant occupant is one who moves into a residence after the initiation of negotiations, but before the Agency obtains control of the property. The subsequent tenant occupant scenario most often occurs in three different situations:

1. When acquisition negotiations have just begun and the landlord is unsure whether to take the offer;
2. When negotiations have gone poorly and the landlord is completely uncooperative;
3. When the landlord wishes to negotiate but the Agency is unwilling to pay rent to hold units vacant or cannot reach agreement with the landlord on the details of a lost rent agreement.

Understandably, in each situation, the landlord is interested in maintaining cash flow until the close of escrow or the Agency

obtains a court order for possession of the parcel. Often that cash flow is critical to the landlord's ability to meet mortgage payments on the property or other obligations.

Relocation professionals should also clearly note that a subsequent occupant who rents an affected unit solely for the purpose of obtaining relocation benefits is not a displaced person under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). See 49 CFR §24.2, Definitions and Acronyms:

(ii) Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part...

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

Conclusively showing that a tenant moved into the affected unit after the initiation of negotiations solely for the purpose of receiving relocation benefits is a difficult undertaking. It involves proving intent, which is complicated. As a practical matter, the tenant often occupies the property for inexpensive rent or some other reason of convenience.



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Therefore, as always, it is important to closely cooperate with the landlord after the initiation of negotiations in order to determine which tenants were present at what points in time. Obtaining an accurate rent roll as soon as possible is essential.

Preventing the Problem

The payment of lost rent or rent to hold vacant is one of the primary tools used to prevent the problem of the subsequent occupants, and is specifically authorized by the Federal Highway Administration. "In situations where the owner is concerned the tenants will move and there will be loss of rental income, the Agency may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time." (See FHWA Frequently Asked Questions for 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Question #46, http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/policy_and_guidance/uafaqs.cfm) Still, the relocation professional

should always make certain that state laws do not prohibit such a loss of rent payment before discussions with the displacee.

The payment of lost rent for a reasonable and necessary amount of time before close of escrow can be extremely cost effective when an Agency acquires a multi-unit building, especially if the occupants are low-income or the rental market in the area is tight. The amount of rental supplements paid to only a few subsequent tenants can be far more than the amount paid to hold the units vacant until close of escrow (or the granting of a court order, if necessary). Any relocation professional should be thoroughly familiar with the terms of the Agency's Agreement to Compensate for Lost Rent and work carefully with the acquisition agent to understand which units are covered, as well as when the agreement begins and ends. ☺

** This article is part one of a two-part series.*



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