YOUR RIGHTS AS A SECTION 8 TENANT:

PROJECT-BASED AND VOUCHERS
Section 8 Rules to Remember:

- Your unit must be your only residence.

- You must notify management, your landlord, and/or your Section 8 worker in writing if you will be absent from your unit. Keep a time-stamped copy for your records.

- You must report changes in income in writing to Section 8, and your landlord, within 10 days of the change. Keep a time-stamped copy for your records.

- Under federal and state law, you cannot be discriminated against by your landlord, management or Section 8 because of your race, color, religion, ancestry/national origins, sex, gender identity, sexual orientation, HIV/AIDS status, hanai children, marital status, that you have children, or because of a physical or mental disability. Please call Legal Aid for advice and counsel if you need assistance and believe that you have been or are the victim of illegal discrimination.

- The Violence Against Women Act (VAWA), and State of Hawaii protections for domestic violence victims apply to your lease, and you should not be evicted for damages or lease violations caused by an abuser. Please call Legal Aid for advice and counsel if you need assistance and believe that you have been discriminated against based on domestic violence that has occurred in your household.

“Tenants” versus “Unauthorized Occupants”, versus “Live in Aides”

**Tenants:** Only those persons listed on the lease are allowed to live in the unit. An unauthorized tenant may result in Section 8 termination and/or eviction.

Any changes in household composition (addition or subtraction of persons) must be reported to Section 8 in writing, within 10 days of the change. Changes in household composition may change your rent, failure to time report can result in an overpayment or termination of your voucher. Any new tenants are subject to the restrictions of the Section 8 program, including criminal convictions, prior evictions from a Department of Housing and Urban Development program, etcetera.

**Unauthorized Occupant** – anyone who resides in the unit more than 7 consecutive days, or 15 days in a month, within any calendar year. Whether or not the person has or claims another residence.

**Live-in aide:** A live-in aide is not considered a tenant, and should not be listed as a tenant on your lease. However, a live-in aide must still meet the same qualifications as a tenant. The income of a live-in aide is not used in determining your income.

You should not charge a live-in aide rent. If a live-in aide does pay rent, you must claim this as income. A live-in aide normally provides their services for free in exchange for free rent.

Your landlord has the right to prohibit/reject a household member (or specific person intended to be a live in aide) based on credit, criminal history or other factors based on the circumstances.
What Section 8 Program Are You On?

There are two different Section 8 programs. Both programs have income and eligibility requirements. The rules for each program are different.

You can identify which Section 8 you have by where the annual recertification takes place.

1. **Project-based Section 8 building**
   - You go to your building management each year to determine your rent.

2. **Section 8 Housing Choice Voucher program**
   - You go to a State agency (Hawaii Public Housing Authority) to have your rent determined each year.
     
     *Oahu:* The Hawaii Public Housing Authority (HPHA) is located at 1002 School Street in Kalihi (formerly known as the Housing and Community Development Corporation of Hawai‘i, or HCDCH).
     
     **OR**
     
     - You go to a County agency to have your rent determined each year, and you have a Section 8 “worker.”
     
     *Oahu:* The City and County of Honolulu is located at either 842 Bethel Street (downtown Honolulu); or 1000 Uluohia Street (Kapolei).

**PART 1:**

**PROJECT–BASED SECTION 8**

- In a project-based Section 8 building, the entire complex is subsidized (i.e., the complex receives state/federal funds or tax credits). However, some tenants may be in an “affordable apartment.”

- If you move out of your building, you do **not** take your Section 8 with you. Discuss the effect of moving from a Section 8 Project based building with your property manager, try to move to another Project based Section 8 building, or call Legal Aid for further counsel and advice. You may be able to request a tenant based voucher depending on the circumstances.

- Tenants in Section 8 Subsidized building have additional rights which do not apply not non-subsidized leases.

- It is likely that a project based Section 8 building also has funding from additional sources such as the ‘Low Income Housing Tax Credit’ program, and so tenants may have additional rights and protections under additional funding regulations.

- If you do not know if you live in a project based section 8 building, ask your management. If you are still unsure, legal Aid may able to assist with advice and counsel.
Automatic Renewal Of Your Lease

If you are a resident of a Section 8 project based building, your lease must be renewed unless the management can point to a specific set of circumstances that show that there is good cause as to why your lease should be terminated or not renewed. Management must tell you in writing (usually by mailing you a letter) that your lease will not be renewed or terminated, based on specific set of facts which must be described (in writing) to you.

Some examples of non-compliance/good cause (by household members or guests) are substantial lease violations:
- Non-payment of rent;
- Violence/ threats of violence;
- Hoarding/health and safety inspection failure;
- Damage to the property;
- Drug and/or Criminal activity;
- Repeat minor violations (noise, late payment of rent; violation of house rules, etcetera).

*Please note: this is a general list, some activities not listed here could also be considered good cause, depending on the circumstances.

If you are a resident of Section 8 Project Based building, and your lease is terminated or not renewed, please contact Legal Aid for further advice and counsel.

*Section 8 voucher holders do not have a right to an automatic renewal of lease.

You Must Attend A Yearly Recertification Meeting

At your annual “recertification” meeting you will need to verify your income, your household composition, and other information. You will be required to supply bank statements, paystubs and other financial information. You will be mailed a notice describing how much you will pay in rent each month, specifying the effective date.

It is very important to supply all required information to management during this meeting. If you do not complete the annual recertification, or failure to provide documents, you can be charged fair market value for the unit, which could be more than your total income.

If you do not agree with the amount of rent you are charged you must ask for an appeal in writing, within ten days, of the date of the notice of change of rent (which was mailed to you).

Once you request an appeal you will be scheduled for a meeting complex management. Please contact Legal Aid if you do not agree with your rent calculation following an annual meeting, as we may be able to offer you advice and counsel.
Your Unit Must Pass A Yearly Inspection

Your unit must be in a clean and safe condition. Failure to keep household standards may result in a termination or eviction. If you fail to allow an annual inspection of your unit, or fail the inspection you can be charged fair market value of the unit or even evicted.

Payment and Rent

Once you sign your lease, Section 8 pays part of the rent, and you pay the rest of the rent to management. Your share of the rent is based on your income. You cannot be penalized if Section 8 does not pay your rent on time, unless you have been terminated.

Rent calculation

You will generally pay 30% of your adjusted income. You may receive a deduction for medical expenses or a utility allowance. Go over these calculations carefully with management when you move in. If your income changes during the year, immediately report this change to management in writing. Keep a copy for yourself.

Changes in income must be reported in writing within 10 days of the date of the change.

If your income goes down, the amount you pay in rent should also go down (effective the following month). If your income goes up, your rent can go up. You must be given a 45 notice in writing of any rent increase.

If you fail to report an increase income, you could be charged a large overpayment which will be hard to pay back as it will be charged as 30% of your income + a monthly repayment amount).

Failure to correctly report changes in income or family composition to management in writing can result in termination of your Section 8 assistance.

Therefore, it is to your advantage to report as soon as possible when there is any change in household income.

Always cooperate with re-certifications and inspections, or you may become responsible for a much higher amount of rent. The higher rent will then continue until your recertification or inspection is completed.

Meeting with Management/Appeals

If you receive a notice of lease non-renewal, lease termination, or lease violation, you have the right to a meeting with your building owner.

Generally, you have only ten days to request a meeting.

If you do not agree with management’s view, put in an immediate written request for a meeting with the owner. Keep a copy of the request.

Prepare for your meeting
Your meeting with the management may seem informal but it may be the only appeal/meeting with management that you are entitled to, so it is important to be prepared and ready to state your case.

Gather proof you have about your side of the story, and why you disagree with your building’s management. For example, if you have paid your rent, take your receipts. Many disputes are settled at the owner meeting. However, if the owner still wants to terminate your lease, your landlord must still go to court to have you evicted.

**Eviction**
Your landlord must file a *Complaint for Writ of Possession* in District Court before he can lock your door or force you to leave your unit. **Your landlord must go through the court process to evict you.**

For more information on eviction, please see Legal Aid’s “Eviction: The Court Process” brochure.

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**PART 2:**

**SECTION 8 HOUSING CHOICE VOUCHERS**

The Section 8 Housing Choice Voucher Program is a federally-funded program that helps its participants with monthly rent payments. Unlike Public Housing, you rent from a private landlord. If you qualify for Section 8, then the State or County agency issues a *voucher* for part of your rent. You are responsible for paying the other part of your rent directly to your landlord.

Your landlord signs a contract with Section 8 called the Housing Assistance Payment (HAP) contract. In order to receive housing assistance payments from Section 8, your landlord promises certain things, such as keeping the apartment up to proper housing standards, or not illegally evicting you. In order for you to continue receive housing assistance payments from Section 8, you are responsible for doing certain things, such as paying your rent on time, not breaking the lease, and completing annual recertifications.

**Section 8 Rarely Opens The Waiting List For New Vouchers**

However, you should always call the Section 8 office for the most up-to-date information. Watch for announcements, and make all due dates if you would like to apply for a voucher. If you are on the waiting list, make sure Section 8 always has your current address. If Section 8 cannot locate you, you will be taken off the list. The wait for a Section 8 voucher is very long, generally a person on the waitlist can wait more than 5 to 10 years to receive a voucher.

**Unit, Landlord, And Lease Approval:**

If you have a Section 8 voucher, you must find a rental with a private landlord. A landlord does not have to accept a Section 8 voucher, and Section 8 does not have to accept a unit or landlord. Section 8 must inspect your chosen unit and must approve your lease and your landlord before you can move in. Section 8 will not approve a unit if it is an illegal unit, if it is in bad condition, or the rent is unreasonably high. If Section 8 does not approve the unit and landlord you choose, you need to look for a different unit.

**Section 8 gives you 60 days to find a unit from when your voucher is first issued.**
If you need an extension of your 60 days, you must:

- Ask for an extension **before** your 60 days expire;
- Put the request in writing and keep a copy for your records;
- Have a good reason as to why you need more time.
  - Explain in your request in detail:
    - Places that you have looked for a new unit; time spent looking for a unit;
    - Difficulties you have had looking for a unit; physical or mental impairments you may have;
- Continue looking for a suitable landlord and unit, because you still may not receive an extension.

*If you need more time to search for a unit call Legal Aid for further advice and counsel.

Section 8 Approval of a Unit:

- Once you find a landlord, Section 8 must inspect the unit and approve the lease.

If you find a unit:

1. Contact your section 8 casework and request an inspection of the unit;
2. If the unit passes inspection it will be scheduled for a “rent reasonableness” check;
3. If the rent is reasonable then Section 8 will schedule a meeting with the Landlord and you separately to sign required documents;
4. THEN you can sign a lease with your landlord and move in.

- **Do not** sign a lease until Section 8 approves the unit and the lease. **Do not** move into a unit without approval from Section 8. You will be responsible for all the rent due under the lease until Section 8 has completed its paperwork and personally told you that you can move into the unit.

- If the unit does not pass inspection, you may need to start looking for a new unit. The time that Section 8 took to inspect and approve the unit will not count towards your 60 days (be sure to keep track of your time remaining, and keep in constant contact with your Section 8 worker about the time you have left to search).

The Lease Between You And Your Landlord:

- The lease between you and your landlord is covered by the Residential Landlord-Tenant Code. Any eviction must be through District Court.
- However, you also have additional rights under the Section 8 Lease Addendum. If there are disagreements between your lease and the Section 8 Addendum, the Section 8 Addendum is that one that will be followed.

**Payment and Rent**

Once you sign your lease, Section 8 pays part of the rent, and you pay the rest of the rent to the landlord directly. Your share of the rent is based on your income. Section 8 has a cap for the maximum amount of rent a landlord can charge. Section 8 also determines what size unit you can rent, but you can rent a larger unit if you can still find one in your given price range. You cannot be penalized if Section 8 does not pay your rent on time, unless you have been terminated. If your landlord charges you for anything more than the lease amount plus the amount to fix any damage you cause, you should notify your Section 8 worker.
Rent calculation
You will generally pay 30% of your adjusted income. You may receive a deduction for medical expenses or a utility allowance. Go over these calculations carefully with your worker. **If your income changes during the year, immediately report this change to Section 8 in writing.**
Keep a copy for yourself. Your rent may be decreased if your income has decreased. If your rent decreases, the decrease in rent will be effective the first of the month after you report the decrease in income in writing. Following a decrease in rent in between annual recertifications, you must report in writing all increases in income within 10 days of the increase.

Failure to correctly report changes in income or family composition in writing to Section 8 can result in termination of your Section 8 voucher.

New Lease Approval
Section 8 must approve a new lease if there are changes that affect the amount of rent, including changes in responsibility for utilities or appliances. The landlord must notify Section 8 sixty days before a change in payments.

**Yearly Recertifications and Inspections**
1) Each year or every other year you must attend a meeting with Section 8 to prove your current income and to re-calculate your rent.
   - You will receive written notice of the meeting.
   - If you cannot make the meeting, be sure to respond to your worker in writing to reschedule the meeting.
   - Failure to attend the meeting or failure to provide the information requested may result in termination from the Section 8 program.
2) Each year your apartment must be inspected for safety.
   - You and the landlord will receive written notice of the time and date of the appointment.
   - Do your best to keep the original appointment. There are a limited number of safety inspectors, and rescheduling may delay approval of and payment for your unit.
   - If your appointment is not complete, or if violations must be corrected, your inspection may not be completed in the necessary time.

Section 8 will not make payment to a landlord if a life-threatening violation is not corrected within 24 hours, or if a routine violation is not corrected within 30 days of the inspection. You are not responsible for making an additional payment if Section 8 does not pay. The lease must be terminated if the repairs are not made. Section 8 will determine how long they will allow you to stay in the unit while awaiting repairs.

If you yourself do not make necessary repairs that Section 8 believes are your responsibility to perform, you may be terminated from Section 8.

**Portability**
Section 8 is required to inform families that they can use their voucher to lease a unit anywhere in the United States where there is a housing agency operating a housing choice voucher program. Portability allows participants to move to follow job opportunities, to select the best school districts, or to be near family members or child care providers.
Once your voucher is ported, the new Section 8 agency is in charge. Make sure that housing is available in the new area. If you are unable to secure a unit in the new area, your voucher will be terminated.

**Eviction or Lease Termination**

A Section 8 voucher tenant is evicted through the court process. An eviction causes problems with Section 8 and may result in termination of your voucher. For more information on eviction, please see Legal Aid’s “Eviction: The Court Process” brochure.

Your lease cannot be terminated by your landlord during the initial lease term except for *good cause*. Some examples of *good cause* are: serious or repeated lease violations, fraud, non-payment of rent, drug/alcohol abuse, criminal activity, or other *good cause*. The Violence Against Women Act (VAWA) applies to your lease. You should **not** be terminated for reasons that are caused by domestic violence.

1) **Termination of Lease by Tenant:**

A tenant may terminate a lease after the initial lease period. Termination during the initial lease period requires written permission of the landlord. Only in limited circumstances can a tenant terminate a lease during the initial lease period. **Be very careful entering a lease, as you cannot easily move.**

2) **Termination of Lease by Landlord:**

The landlord does not have to renew your lease at the end of the lease term, nor does the landlord have to state a reason for non-renewal. The landlord can require you move at the end of your lease period, or can give you 45 days written notice to move. **You will have to move.** Staying beyond the end of your lease is very serious - you may be responsible for paying double rent to your landlord and Section 8 may also termination your voucher. When you move to a new unit, your voucher will transfer with you, but you must have your new unit, landlord, and lease approved by Section 8.

3) **Eviction by Landlord:**

If you are in violation of your lease, your landlord may file for summary possession in District Court to ask the Court to force you to move. Your landlord must notify Section 8 of the eviction. You are responsible for notifying Section 8 that your landlord is trying to evict you, within 10 days of the receipt of any notice.

**CALL LEGAL AID IMMEDIATELY TO APPLY FOR ASSISTANCE IF YOUR LANDLORD GIVES YOU NOTICE OF EVICTION**

**Termination from the Section 8 Voucher Program**

Section 8 can terminate your participation in the program for various reasons including: failure to complete re-certification, a monetary judgment against you from a former owner, and serious or repeated violations of the lease. If you are evicted from your unit, Section 8 will probably terminate your participation in Section 8.
**Right to Notice:** Section 8 must send you a notice citing the reason for termination, the facts surrounding the reason for termination, the effective date of termination, and your right to a hearing.

**CALL LEGAL AID IMMEDIATELY IF YOU RECEIVE NOTICE OF TERMINATION FROM THE SECTION 8 PROGRAM.**

**HEARINGS**

If Section 8 makes a decision that affects your Section 8 voucher benefits

As a participant in the Section 8 Housing Choice Voucher Program, you are entitled to an “informal hearing” when Section 8 makes a decision that affects your benefits.

An “informal hearing” may be your only appeal of the Section 8 action, make sure that you are prepared as you would for any other court hearing.

The term “informal” means only that the hearing does not follow strict court rules, but this hearing does require the presentation of evidence, legal analysis, and facts to support your case.

**Examples of when you ARE entitled to a hearing:**
- When you disagree with how your family’s annual or adjusted income was calculated
- When you disagree with how your share of the rent was calculated
- When you disagree with the utility allowance you were provided
- When Section 8 threatens to terminate or does terminate your Section 8 benefits
- When you think that you have been issued a voucher for the wrong size unit
- When Section 8 refuses or threatens to refuse to issue your voucher for any reason

However, there are certain decisions that affect your benefits where Section 8 is **not** required to give you an opportunity for an informal review.

**Examples of when you ARE NOT entitled to a hearing:**
- When Section 8 determines your unit does not meet housing quality standards
- When an issue is between you and your landlord
- When your dispute is about general policy issues or class grievances
- When Section 8 refuses to grant approval of a tenancy

If you **ARE** entitled to a hearing, you must act promptly (i.e., within as little as 15 days) to dispute a Section 8 decision and to ensure your rights are not forfeited.

**The informal hearing and request for review**

How to request a hearing:
• Send a written request to your Section 8 caseworker asking for an informal hearing.
• Send the notice within 15 calendar days after the dispute arose. If there was a written notification which gave rise to the dispute, send the notice within 15 days from the date on the notice (not from the date you received the notice).
• Make sure your complaint states why you want an informal hearing (i.e., what action Section 8 took that affected your rights and why you disagree with Section 8).

Section 8 must grant you an informal hearing as soon as reasonably possible after receipt of your request for a hearing/appeal.

What to do to prepare for the informal hearing:
• You have the right to view any evidence or documents that Section 8 used in making their adverse decision against you. Requests for documents or evidence must be received no later than 7 days before the hearing.
• If Section 8 does not make a certain document available after you request to see it, they are not allowed to rely on it at the hearing.
• You are allowed a representative. This person does not have to be an attorney.
• Ask for an interpreter if you need one.
• Bring witnesses and any other evidence you can find to help prove your case.
• Develop an argument as to why you believe Section 8 was wrong in their action or decision that affected your benefits.
• Be prepared to present facts and legal analysis to overturn their decision.
• Section 8 will not rely on emotional arguments or the fact that you may be homeless if you do not have Section 8.

What to expect at the informal hearing:
• It is an opportunity for you to state why you do not agree with a decision made by your Section 8 caseworker.
• You will meet with your caseworker and a hearing officer, who is most likely your caseworker’s supervisor.
• Your caseworker will go first and outline his/her case, which involves giving a chronology of relevant events leading to the decision that you are disputing.
• You are then allowed to present your case and make your arguments. Make sure that you provide Section 8 with the evidence and witness testimony that proves your case.
• Remember to stay calm and orderly for the informal hearing.
• Remember to object if Section 8 uses any document or evidence that you did not have access to prior to the hearing (before your hearing you need to ask Section 8 to review the evidence they will be relying on for this to work).

After the informal hearing:
• The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision.
• Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.
• A copy of the hearing must be furnished promptly to the family.
• The written decision must be prepared by Section 8 within 10/15 business days of the
informal hearing.

**Procedures for Rehearing or Further Hearing**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

Within 10 business days after the date the hearing officer’s, either you or Section 8 can ask for another hearing. This request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 10 business day period.

The request must demonstrate cause, supported by specific references to the hearing officer’s report, why the request should be granted. A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

*It shall be within the sole discretion of Section 8 to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.*

This written request needs to be more detailed than the one you sent for an informal hearing. *Your written request for a “rehearing or further hearing” must contain the following information:*

- Name, address, and telephone number;
- A summary of the dispute involved and your argument;
- Clear statement of your position;
- Facts in support of your argument;
- Legal analysis in support of your argument;
- Obvious mistake of law made during the hearing;
- Obvious injustice *not* known at the time of the hearing
- What action or relief you are seeking

You should prepare for your review hearing in the same manner that you prepared for the informal hearing. If you made mistakes at your informal meeting, such as forgetting to submit all your evidence, the formal hearing is a good chance to correct those mistakes.

If you do not agree with Section 8’s decision after the formal hearing, you may still be able to obtain relief through the court process. You can contact Legal Aid to see if additional assistance may be possible.

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**Hawaii Revised Statutes Chapter 91 Appeal to Circuit Court**

The decision at the Section 8 hearing may be appealed to Circuit Court within 30 days.
An appeal to the Circuit Court is very expensive and time intensive. Legal Aid rarely represents clients in a Chapter 91 appeal to the Circuit Court. If you wish to appeal to Circuit Court you will most likely need to hire (and pay) a private attorney to assist you.

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REMEMBER:
This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.