

**National Consumer Law Center, Inc.**

**Memorandum**

To: Charlie Harak  
From: Amanda Howell  
Re: State weatherization landlord tenant agreements  
Date: June 26, 2009

**Issue:**

I. Do states' landlord tenant agreements include provisions that encourage the benefits of weatherization to flow primarily to tenants?

II. Which states provide the strongest model for safeguarding the goals and intended beneficiaries of weatherization?

**Brief Answer:**

I. Assessment of landlord tenant agreements in twenty states indicates that the majority of agreements include provisions restricting increases in rent, evictions, and sale of the rental property due to weatherization improvements.<sup>1</sup> A smaller, yet significant number of the agreements also require landlord contributions when feasible.

II. Alaska, Connecticut, New Mexico, Washington, and New York provide the strongest protections of the Weatherization Assistance Program's (WAP) goals.

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<sup>1</sup> Landlord-tenant weatherization agreements were reviewed in the following states: Alaska, California, Connecticut, Florida, Idaho, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Mexico, New York, North Dakota, Oregon, Utah, Washington, Wisconsin, and Wyoming.

**Discussion:**

**I. State landlord tenant agreements largely include rent protection, eviction protection, restrictions on sale, and landlord contribution provisions to ensure benefits of weatherization flow primarily to low-income tenants.**

The first issue is whether states' landlord tenant agreements adopt provisions that ensure the benefits of weatherization will flow primarily to low-income tenants as required by federal law. 42 U.S.C. § 6863(b)(5)(A) (2007) (stating that "the benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units"). Information from a pool of twenty states shows that the vast majority of agreements include provisions granting tenants rent protection, eviction protection, and restrictions on sale due to weatherization improvements in their landlord-tenant agreements.<sup>2</sup> Approximately half of the states examined require the landlord to contribute financially or in-kind to the weatherization work.<sup>3</sup>

**A. Rental Rate Protection**

State landlord tenant agreements ensure that the benefits of weatherization flow primarily to low-income tenants by adopting rent protection provisions. Such rent protection

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<sup>2</sup> Compiled state Rental Procedures, Landlord-Tenant, Service, and Owner Agreements. Twenty of these documents were able to be obtained from state WAP websites or directly from state weatherization contact obtained from the DOE website at [http://apps1.eere.energy.gov/weatherization/state\\_activities.cfm](http://apps1.eere.energy.gov/weatherization/state_activities.cfm)

<sup>3</sup> Id.

provisions are required by federal law. 42 U.S.C. § 6863(b)(5)(B) (2007) (stating that “for a reasonable period of time after weatherization work has been completed . . . the tenants in that unit . . . will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed”). Nineteen out of the twenty state agreements examined provide explicit prohibitions against rent increases due to weatherization improvements.<sup>4</sup> This means that landlords largely may raise rents for reasons such as actual increases in property taxes, maintenance, and operating expenses, so long as the reasons cited are demonstrably unrelated to any weatherization improvements.

Rental protections vary state by state. Washington’s agreement does not allow the landlord to raise tenants’ rent for any reason, unrelated or related to weatherization, for at least one year.<sup>5</sup> Montana may prove the most demanding, stating that landlords may not raise rent for five years due to weatherization.<sup>6</sup> Kentucky’s agreement prohibits landlords from

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<sup>4</sup> Idaho’s WAP Owner and Renter Agreement form simply provides, “As the Owner and/or Renter of the above property, I understand that no undue or excessive enhancement will occur to the value of the dwelling as a result of the weatherization measures funded by the U.S. Department of Energy.”

<sup>5</sup> Washington’s King County Housing Authority’s (KCHA) Property Owner/KCHA Weatherization Agreement for Multifamily Buildings provides, “That during a period extending through one (1) year beginning on the date of KCHA certified completion of the weatherization work, the amount of rent, as established by the rent schedule submitted, will not be raised for any reason for any building tenant.”

raising rent for thirty months due to weatherization work.<sup>7</sup> The remaining states largely fall within the range of rent protection of one to two years.<sup>8</sup> Because landlords are not allowed to raise low-income tenants' rent due to weatherization improvements under federal law, all state landlord-tenant agreements must include such a provision.

#### B. Restrictions on Evictions and Sale

State landlord-tenant weatherization agreements ensure that the benefits of weatherization flow primarily to low-income tenants by adopting restrictions on eviction. Sixteen of the twenty states prevent landlords from evicting tenants from weatherized units absent noncompliance with the rental agreement.<sup>9</sup> Provisions preventing against eviction ensure low-income tenants will receive the benefits of weatherization and that landlords cannot unjustly evict low-income tenants in an attempt to re-rent weatherized units for increased profit.

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<sup>6</sup> The Montana Department of Public Health and Human Services (DPHHS) Access Agreement provides, "That the amount of rent shall not be raised within five (5) years of the weatherization work because of any increase in value due to weatherization assistance. The amount of rent charged the tenant may, however, be raise to reflect matters other than the weatherization work performed."

<sup>7</sup> Kentucky's Landlord and Tenant Weatherization Agreement for Rental Property provides that the owner/landlord may "not increase the rent as a result of the weatherization performed for a current tenant or any other low income tenant for a period of thirty (30) months, unless the owner demonstrates that the increase is due to improvements other than weatherization . . ."

<sup>8</sup> Alaska, Connecticut, Indiana, Kansas, Massachusetts, Michigan, Nevada, New Mexico, North Dakota, Wisconsin, Wyoming. Some states, such as Idaho and Oregon, simply provide that rent may not be increased due to weatherization services.

<sup>9</sup> Alaska, California, Connecticut, Florida, Idaho, Indiana, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Mexico, North Dakota, Utah, Washington, Wyoming.

Restrictions on sale ensure that the benefits of weatherization will accrue primarily to the low-income tenants by preventing landlords from selling rental properties for habitation by non-low-income tenants after weatherization increases the value of the property. Fifteen out of the twenty states studied include restrictions on sale in their landlord-tenant agreements.<sup>10</sup> Some agreements stipulate that weatherization agreements run with the land;<sup>11</sup> many require the landlord/owner to certify that the property is not under foreclosure, currently up for sale, or planned to be put up for sale in the future;<sup>12</sup> others require the landlord to reimburse the weatherization agency the un-depreciated total amount of weatherization costs if the property is sold within a certain frame of time.<sup>13</sup>

Moreover, many states require that if the landlord does contract to sell the property, that he/she obtain the

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<sup>10</sup> Alaska, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Mexico, New York, North Dakota, Oregon, Utah, Washington.

<sup>11</sup> Alaska's WAP Landlord-Tenant Agreement (Permission to enter premises/Rental Agreement) provides that, "This agreement shall run with the land and/or weatherized unit in the case of sale or transfer to other Owner(s)/agents. The Owners is responsible to give official notice of this agreement to any subsequent Owner(s).

<sup>12</sup> Connecticut, Montana, Nevada, Oregon, Utah.

For example, Nevada's Weatherization Service Agreement stipulates that the Owner verify that the "property is neither for sale, or anticipated to be sold . . ." and that the "property has not been designated for acquisition or clearance by a federal, state, or local program within 12 months from the date the weatherization work is scheduled to be completed."

<sup>13</sup> Idaho, Kentucky.

Idaho's WAP Owner and Renter Agreement provides that the "Owner further agrees to reimburse the Agency for the undepreciated total amount of the weatherization costs if the dwelling is sold within the (12) month period beginning on the date the Job Completion Form is signed by the Owner and/or Renter and/or assignee."

purchaser's consent to assume the landlord's obligations under the weatherization agreement.<sup>14</sup> Florida, Massachusetts, New Mexico, New York, North Dakota, Washington have double protections. These states require either that the landlord affirm the property is not for sale and/or obtain purchaser's promise to comply with weatherization agreement; or that the landlord reimburse the agency for weatherization expenses when the property is sold and/or transfer the landlord's obligations to the purchaser.<sup>15</sup> State landlord tenant agreements that provide restrictions on sale ensure that low-income tenants continue to receive the benefits of weatherization into the future.

#### C. Financial Contribution of Landlord to Weatherization

Landlord contributions support adherence to the federal requirement that low-income tenants benefit from weatherization by demanding fewer program resources for multifamily units. This better enables the program to benefit tenants of both multi- and single-family units. Landlord contributions also encourage the weatherization agency to agree to weatherize the

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<sup>14</sup> For example, Michigan's Weatherization Landlord Agreement provides that if the owner "sells your building within two years, the new owner must also comply with all provisions of the Agreement."

<sup>15</sup> For example, Florida's WAP Building Owner Agreement sample form requires that, "The Owner hereby swears or affirms that the premises are not presently being offered for sale and further agrees to give the Agency thirty (30) days notification of the sale or conversion of the premises. At least (10) days prior to the sale or conversion, the Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement, or if this consent is not obtained, to pay the Agency the full cost of weatherization prorated by the number of months left under this agreement."

multifamily property. Ten out of the twenty states examined require the property owner to contribute to the weatherization work, depending on the circumstances.<sup>16</sup> Other than the ten which mandate contributions, three of the twenty states simply encourage monetary or in-kind contributions from the owner.<sup>17</sup> Some of these states strongly encourage owners to contribute, a few reserving the right to deny weatherization if an owner does not choose to contribute.<sup>18</sup> Other states require landlord contributions only when weatherization goes beyond basic improvements,<sup>19</sup> or only require contributions to certain kinds of

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<sup>16</sup>Alaska, Connecticut, Florida, Indiana, Kentucky, Michigan, New Mexico, Oregon, Washington, Wisconsin.

<sup>17</sup> Idaho, Massachusetts, North Dakota.

<sup>18</sup> North Dakota's WAP Rental Agreement provides that "the Landlord may agree to participate financially in the completion of weatherization services by contributing \$150.00 or 25% of the estimated material costs, whichever is greater. If the Landlord chooses not to contribute, the weatherization services may be denied at the discretion of Community Action Opportunities, Inc."

<sup>19</sup> Utah's Weatherization Rental Agreement states that "In order for the unit(s) to be considered for measures other than the basic procedures, at least one of the following options must be checked yes:

- (i) A 50% match for materials and labor is required on all windows and doors installed. The property owner will pay for repairs to mechanical equipment that exceeds \$100 in full except for the replacement of some 61% AFUE units with 90% AFUE units. In these cases a 50% match of the replacement cost of an 80% furnace will be required, and Weatherization will install a 90% AFUE furnace, paying 100% of the incremental cost to upgrade to the higher efficiency unit, but only if the existing unit is safe and operational. These improvements must have a savings to investment ratio (SIR) to the agency of no less than 1.0 to be eligible.
- (ii) A 50% match is required on all costs above \$100 for all rental units that are master metered. The building owner must pay for heating or cooling equipment repair or replacement costs, including water heater repair or replacement exceeding \$100 in full. These improvements must have a savings to investment ratio (SIR) to the agency of no less than 1.0 to be eligible and are based upon total cost of the improvements.
- (iii) A \$200 co-payment is required for all refrigerator replacements where the property owner owns the appliance. Only specific EPA Energy Star units will be provided and the refrigerator being replaced must be surrendered without exception. All replacement refrigerators must remain in the rental unit occupied by the Weatherization applicant. The savings to investment ratio (SIR) for this measure must be no less than 1.0 to be eligible."

improvements such as repair or replacement of heat systems.<sup>20</sup> Provisions that allow exceptions for owners who cannot afford to participate are common.<sup>21</sup> Landlord contributions help to ensure that the benefits of weatherization will flow to low-income tenants by preserving program resources and by encouraging weatherization of properties where landlords are willing and able to contribute resources.

**II. Alaska, Connecticut, New Mexico, Washington, and New York have adopted agreements that best ensure the benefits of weatherization will accrue primarily to low-income tenants.**

The second question is which states best ensure that the purposes and goals of weatherization under 42 U.S.C § 6863(b)(5)(A) (2007) are met. Of the twenty states examined, the multifamily landlord-tenant agreements of Alaska, Connecticut, New Mexico, Washington, and New York best ensure that the benefits of the weatherization work flow primarily to low-income tenants because of their provisions for rental rate protection, restrictions on evictions or sales of newly weatherized properties, and financial contributions from landlords.

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<sup>20</sup> Kentucky's Weatherization Agreement provides that the Owner "contribute for repair or replacement of a heat system amounting to: (a) Seventy-five percent of cost that exceeds \$150; (b) Fifty percent of the cost, if a family unit occupies a dwelling identified as having a child at risk; or (c) Twenty-five percent of the cost of weatherization for each dwelling of a multifamily unit."

<sup>21</sup> For example, Alaska's Rental Agreement form provides that there can be "waiver of owner contribution based on verification by the weatherization provider that the owner's gross household income does not exceed the income guidelines by more than 20%."



## A. Alaska

Alaska's landlord-tenant agreement provides that landlords may not increase rents on weatherized units for eighteen months beginning on the date that the landlord and/or tenant signs that the weatherization work is complete.<sup>22</sup> The agreement also requires that the landlord agree not to terminate or evict any tenants for a period of eighteen months unless the tenant does not comply with his/her obligations under the lease or rental agreement.<sup>23</sup> Moreover, Alaska's weatherization agreement runs with the land and/or weatherized unit.<sup>24</sup> Lastly, the landlord is asked to contribute 50% of the cost of weatherization services above the not-to-exceed limit, cash or in-kind.<sup>25</sup> The provisions of Alaska's weatherization landlord-tenant agreement offer a comprehensive model for how best to ensure that the benefits of weatherization primarily accrue to low-income tenants. At the same time, Alaska has very few large multifamily buildings that

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<sup>22</sup> Alaska's Rental Agreement states, "Commencing on the date of completion sign-off and continuing for a period of eighteen (18) months, owner agrees not to increase rents on units weatherized. If a lease in effect expires prior to the end of the eighteen month period, a new lease may be signed, but rents will remain at the previous level until the expiration of the eighteen month period, unless demonstrably related to matters other than weatherization work."

<sup>23</sup>"Owner also agrees not to terminate or evict any covered tenants or any subsequent tenants, commencing on the date of the completion sign off, and continuing for a period of eighteen (18) months. This provision is in effect *provided* the tenant complies with all obligations owed to the owner in accordance with any leases or rental agreements between the owner and tenants."

<sup>24</sup> "This agreement shall run with the land and/or weatherized unit in the case of sale or transfer to other owner/agents. The owner is responsible to give official notice of this agreement to any subsequent owners."

<sup>25</sup> "Owner will be asked to contribute 50% of the materials and labor cost of weatherization services, above the not to exceed limits. If heating systems repairs and labor exceed \$250, or need replacement, the owner must contribute 50% of that cost. The cost of building permits shall be borne by the owner of the building."

are part of the weatherization program. According to the Program Manager of the Weatherization and HOME Alaska Housing Finance Corporation, the multifamily buildings involved are mostly 2-4 plexes.<sup>26</sup>

## B. Connecticut

Connecticut's state rental procedures and weatherization agreement together provide a strong model of how to ensure low-income tenants receive the benefits of weatherization in accordance with federal law. In Connecticut, landlords who receive weatherization services cannot increase rents for two years from the date the weatherization work is completed, unless he/she can document that the increase is due to factors other than the weatherization assistance performed.<sup>27</sup> The rental agreement further specifies that eviction of tenants is only allowed in justifiable circumstances unrelated to weatherization.<sup>28</sup> Connecticut's provision restricting sale of weatherized units could be stronger; landlords only need to certify that the property is not currently under foreclosure, or

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<sup>26</sup> Email from Mimi Burbage, Program Manager Weatherization and Home, Alaska Housing Finance Corporation (Jun. 27, 2009 11:53EST) [mburbage@ahfc.state.ak.us](mailto:mburbage@ahfc.state.ak.us).

<sup>27</sup> Under 111.4 Rental Procedures § 440.22(b)(3)(i) and (ii): "Landlords shall not increase the rent paid by the eligible tenants of a rental unit that has received weatherization services for a period of two years from the date the weatherization work is completed, unless the landlord/property owner can document that the increase is due to factors other than the weatherization assistance performed."

<sup>28</sup> Connecticut's Weatherization Agreement provides, "That there will be no eviction or removal of tenants, from the date the weatherization work is completed, so long as every on-going obligation and responsibility owed to the owner is complied with."

for sale, nor will be for sale within six months of the date of the weatherization agreement.<sup>29</sup> Last of all, Connecticut property owners are asked to contribute 20% of the material cost toward the weatherization of the eligible rental unit. The maximum amount of the contribution is \$500 per eligible unit.<sup>30</sup> Unlike Alaska, large multifamily housing units are common in Connecticut's weatherization program. However, despite the program's adoption of strong tenant protection provisions, the National Consumer Law Center (NCLC) understands that Connecticut's agreement may not be consistently enforced.<sup>31</sup>

### C. New Mexico

New Mexico protects the goals of the weatherization program by including all of the aforementioned protections in its weatherization agreement. Landlords in New Mexico may not increase rent for two years after weatherization work has been completed, unless it can be demonstrated that the increases are unrelated to the weatherization work performed.<sup>32</sup> Landlords also

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<sup>29</sup> Connecticut's Weatherization Agreement provides that the Owner must "certify that the dwelling is not currently under foreclosure, or for sale, nor will be for sale within six months of the date of this agreement."

<sup>30</sup> Connecticut's Weatherization Agreement provides, "That the owner share of the cost of this work shall be 20% of the installed material cost of the building up to \$500 per eligible unit. The local agency will notify the property owner of the final amount and the measures to be installed, based on an energy audit of the dwelling unit."

<sup>31</sup> In Connecticut, the limited state resources to follow up and/or enforce the landlord-tenant agreement may be a problem, and tenants do not have a private right of action regarding violations of the weatherization agreement. Moreover, in practice, tenants may not receive a copy of the agreement, even though this is required by the state's rental procedure guidelines. The WAP agreement is not filed on land records, and tenants often do not know whom to contact in the event of Owner violations.

may not evict tenants for a period of two years after weatherization work has been completed unless tenants are not in compliance with their obligations and responsibilities under the lease agreement.<sup>33</sup> Before weatherization work is begun, landlords must affirm that the premises are not up for sale, and must further agree to give the weatherization agency thirty days notice prior to sale or conversion, and must obtain the purchaser's consent in writing to assume the landlord's obligations at least ten days prior to the sale.<sup>34</sup> Finally, the New Mexico landlord-tenant agreement ensures that the benefits of weatherization flow primarily to low-income tenants by requiring the owner to pay 60% of the total cost of weatherization.<sup>35</sup> Still, like Alaska, New Mexico does not have very many high rise or large multifamily housing units. The

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<sup>32</sup> New Mexico's Rental Agreement requires that, "The Owner agrees not to subject the Tenant(s) to rent increases for two (2) years after weatherization work has been completed unless those increases are demonstrably related to matters other than the weatherization work performed."

<sup>33</sup> "The Owner agrees not to evict or otherwise request the Tenant(s) to leave the property for two (2) years after weatherization work has been completed unless the Tenant(s) does not comply with all obligations and responsibilities under the present lease agreement."

<sup>34</sup> "The Owner hereby swears and affirms that the premises is not presently being offered for sale and further agrees to give the Agency thirty (30) days notification of the sale or conversion of the premises should it occur within the period of this Agreement. At least ten (10) days prior to the sale or conversion, the Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement or, if this consent is not obtained, to pay the Agency the full cost of weatherization services pro-rated by the number of months left under this Agreement."

<sup>35</sup> "The Owner agrees to pay sixty percent (60%) of the total . . . weatherization costs as described in the Scope of Work Summary attached."

majority of multi-family properties involved in the New Mexico weatherization program are under fifty units.<sup>36</sup>

#### D. Washington

The Washington agreement also serves as a strong model for ensuring that the benefits of weatherization accrue primarily to low-income tenants. Its agreement is often used for large multifamily units.<sup>37</sup> In Washington, landlords may not raise rents for any reason for one year.<sup>38</sup> After one year, landlords may only raise rents due to documented actual increases in property taxes, actual costs of amortizing improvements to the property outside of weatherization which are accomplished for the direct benefit of the tenant, and due to actual increase in expenses of maintaining and operating the property.<sup>39</sup> Landlords under the Washington state agreement may not evict or institute any court action for possession against any tenant for three

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<sup>36</sup> Email from Gina Martinez, New Mexico EnergySmart Program Manager (Jun. 18, 2009 3:21EST) [gmartinez@housingnm.org](mailto:gmartinez@housingnm.org) According to Ms. Martinez, “In the 3 years I have managed the program I have mostly seen units of 20 or less units.”

<sup>37</sup> Telephone Interview with Chuck Ebert, Energy Project (Jun. 24, 2009).

<sup>38</sup> The Washington Property Owner/King County Housing Authority Weatherization Agreement provides, “That during a period extending through one (1) year beginning on the date of KCHA certified completion of the weatherization work, the amount of rent, as established by the rent schedule submitted, will not be raised for any reason for any building tenant.”

<sup>39</sup> The Washington agreement provides, “That at the end of this one year period, rent shall not be raised for an additional period of one (1) year, except to reflect the Tenants’ prorated share of the following expenses actually incurred and documented by the Owner/Agent:

- (i) Actual increases in property taxes;
- (ii) Actual cost of amortizing improvements to the property (other than weatherization), which are accomplished on or after the date of this agreement and which directly benefit the Tenant; or
- (iii) Actual increase in expenses of maintaining and operating the property.”

years, except for good cause.<sup>40</sup> If the landlord sells the premises within three years of weatherization to non-low-income tenants, the landlord must either obtain the purchaser's written agreement to assume the landlord's obligations under the agreement, or the landlord must agree to repay the weatherization agency within ten days of the date of sale in an amount specified by statutory formula.<sup>41</sup> Moreover, the Washington agreement requires the landlord to make a cash contribution to the weatherization improvements.<sup>42</sup> The Washington agreement, as well as those of the aforementioned states, serves as a strong model agreement that helps to guarantee that the weatherization work complies with federal requirements by ensuring the benefits of weatherization accrue primarily to low-income tenants.

E. New York

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<sup>40</sup> The Washington agreement provides, "That from the effective date of this Agreement, and during a period extending through three (3) years following the date of completion of the weatherization work performed, the Owner/Agent will not evict, terminate, or institute any court action for possession against any Tenant or successor Tenant(s), except for good cause pursuant to the Unlawful Detainer Statute, RCW 59.12.030(3)-(5) e.g. (nonpayment of rent, committing waste, maintaining a nuisance)."

<sup>41</sup> Providing "That in the event the Owner/Agent sells the premises within three (3) years after the weatherization work is completed, the Owner/Agent will comply with one of the two following conditions:

- a. The Owner/Agent shall repay KCHA within ten (10) days of the date of sale an amount equal to the percentage of the three (3) year/month period remaining, times the full value of the material and labor as documented by Agency work records, except if sold to low-income Tenants; or
- b. The Owner/Agent shall obtain and provide to KCHA the purchaser's written agreement, in a form acceptable to the Agency, to assume the Owner/Agent's obligations under this agreement.

The Owner/Agent shall immediately upon entering into an Agreement of sale of the premises, so inform both KCHA and the Tenants by written notice."

<sup>42</sup> The Owner certifies that "I will make a cash contribution . . ."

It is generally believed that New York weatherizes more multifamily units than any other program in the country. In addition to being the state with the most multifamily units weatherized, New York's weatherization agreement is a key model of protecting low-income tenants and the goals of the weatherization program through rental protection, restrictions on sale, and landlord contributions.

New York landlords may not increase rent for weatherized units for the term of the agreement.<sup>43</sup> Landlords must also affirm that the building is not being offered for sale, and must further agree to notify the Subgrantee of state LIHEAP funds 30 calendar days prior to the sale or purchase or conversion of the property.<sup>44</sup> Additionally, if the Owner plans to sell the building, the Owner must agree to obtain the purchaser's consent in writing within 10 business days prior to the closing. Absent such consent to assume the Owner's obligations under the agreement, the Owner must pay the Subgrantee the full cost of the weatherization work scope pro rated by the number of months left under the weatherization agreement.<sup>45</sup>

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<sup>43</sup> NYS Division of Housing and Community Renewal Weatherization Assistance Program, DHCR #10, Owner Agreement, Multifamily at 3.

<sup>44</sup> Id. at 3

<sup>45</sup> Id. Section F provides that, "The Owner hereby swears or affirms that the building is not presently being offered for sale and further agrees to notify the Subgrantee 30 calendar days prior to the sale or purchase or conversion of building. At least 10 business days prior to the closing, the Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement or, if this consent is not obtained, to pay the

Provision III G of the agreement provides that Owners agree to complete certain specified weatherization work.<sup>46</sup> In practice, this provision is used in conjunction with Exhibit B and C of the agreement to require significant landlord contributions to the weatherization process. New York provides not only a strong agreement, but also demonstrates successful implementation of the agreement to best ensure that low-income tenants are the beneficiaries of the weatherization improvements.

#### F. Summary of Findings

While strong landlord tenant agreements help to ensure that weatherization benefits actually flow to low-income tenants, agencies could take additional measures to protect WAP goals. Weatherization programs may better protect low-income tenants by granting tenants enforceable legal rights. If tenants are aware of these rights and the possible avenues of recourse in the event of a landlord violation, the goals of the program will be better served. However, if tenants are unaware of their rights and their landlord's obligations, breaches of the WAP agreement are less likely to be detected and avoided. Moreover, by granting tenants a right of enforcement, WAP agencies would

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Subgrantee the full cost of the weatherization workscope pro rated by the number of months left under this Agreement.”

<sup>46</sup> Id. Section G provides that “The Owner agrees to complete or cause to be completed to the satisfaction of the Subgrantee, the work as specified in Exhibit C, if applicable.”



require fewer resources to ensure that landlords adhere to the weatherization agreement.

Many states seem to acknowledge that landlord tenant agreements alone cannot adequately enforce WAP goals. Of the twenty agreements examined, three provide tenants with some notice of their legal rights and the specific provisions of the agreement.<sup>47</sup> Seven more provide similar information and additionally grant tenants a right of enforcement.<sup>48</sup> Some states

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<sup>47</sup> California, Connecticut, New Mexico:

California's agreement simply requires the Tenant's signature on the WAP agreement.

Connecticut's Rental Procedure Guidelines section 440.22(b)(2)(i) and (ii) provides, "Tenants sign and receive a copy of the agreement, and therefore are aware of the conditions of the document." Section 440.22(b)(3)(iii) provides that if a complaint is filed regarding eviction and/or rent increases as a result of the weatherization work done, "Legal Services is available to assist low income households in ensuring that the agreement is reinforced."

New Mexico's landlord tenant agreement simply states that "the agency agrees to provide a copy of this Agreement to the Tenant(s)."

<sup>48</sup> Alaska, Massachusetts, Michigan, Montana, North Dakota, New York, Washington:

Alaska's agreement provides, "If a tenant feels they have had rents increased contrary to the provisions of this agreement, or feel they have received an eviction notice without cause, they may contact Alaska Legal Services or the Weatherization Service Provider." The agreement additionally states that, "Either party to this agreement may bring an action for specific performance of its terms. Tenants residing in dwelling units covered by this agreement are intended third party beneficiaries of any of the provisions of the agreement related to rental increases, evictions and terminations of tenancies."

Massachusetts' agreement states, "For breach of this Agreement by the Property Owner, the Property Owner shall reimburse the Agency in an amount equal to the cost, as certified by the Agency, of the weatherization materials installed and labor performed on the premises, as well as attorney's fees and court costs. The Property Owner may also be liable for damages to the Tenant in accordance with applicable law; in such instance, the Property Owner shall reimburse the Tenant for attorney's fees and court costs." It further provides: "The Parties acknowledge that this Agreement is under seal. It is intended by the Parties that the Tenant or any successor tenant is the intended beneficiary of this Agreement and shall have a right of enforcement."

Michigan's WAP agreement makes Tenant(s) third party beneficiaries to the agreement and specifically states in a Tenant Synopsis, "If your landlord tries to raise your rent within two years, you have the right to assert a claim against the landlord in court. If this happens and you need assistance in asserting your claim, call your local legal services office." Additionally, the Synopsis provides, "You have the right to see the Agreement signed by your landlord and the Local Weatherization Operator named above who weatherized your unit. You may use the Agreement document as evidence in court to prove your claim. To obtain a copy or see the agreement, you may contact the Local Weatherization Operator by telephone or write to the address as identified on this document."

Montana's weatherization agreement states, "That the present tenant, or any successor tenant is the intended beneficiary of this agreement and shall have the right of enforcement."

North Dakota requires Tenant(s)' signature and additionally states that, "Failure on the part of the Landlord to follow the terms of this agreement will result in the cost of weatherization materials installed to be reimbursed by

provide tenants a copy of the agreement,<sup>49</sup> and others deliver a synopsis to tenants with detailed explanation of rights, liabilities, and avenues of legal recourse.<sup>50</sup> Requiring tenants' signatures on the WAP agreement also helps to ensure tenants are informed parties to the agreement.<sup>51</sup> By taking these steps to inform and empower tenants, state weatherization agencies reinforce the provisions of WAP agreements in practice.

**Conclusion:**

After assessing the available information from twenty state landlord-tenant agreements and weatherization agreements, it is clear that provisions preventing rent increases, unjust evictions, and opportunistic sales are a common and prudent way to ensure compliance with 42 U.S.C. § 6863(b)(5)(A) (2007).

Low-income tenants are additionally assured the benefits from

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the Landlord to the Agency. Should the breach result from an increase in the rental rate, the tenant shall be entitled to recover all monetary amounts in excess of the rental amount contained in this agreement.”

New York's agreement states, “In return for this weatherization, the owner has agreed to several provisions that benefit you and give you specific rights. (You are called a third party beneficiary of the Agreement.) These provisions and rights are summarized for you below . . . If the Owner tries to raise your rent before the above date for any reason other than to recover actual increases in property taxes, an authorized utility surcharge, the cost of improving the building (not resulting from this Agreement), or State approved increases, you have the right to assert a claim against him/her in Court. If this happens and you need assistance in asserting your claim, call your local legal services office. You have the right to see the Agreement signed by the owner and the Subgrantee who weatherized your building. You may use the Agreement document as evidence in Court to prove your claim. To arrange to see the Agreement, you may call or write to the Subgrantee . . .”

Finally, Washington's agreement provides, “That the present Tenants, or any successor Tenants during the term of this Agreement, are the intended beneficiaries of this Agreement and shall have a right of enforcement.” Additionally, “That KCHA shall provide a copy of this Agreement and a synopsis explaining its terms to the present Tenants. That the Owner/Agent shall provide a synopsis explaining the terms of this Agreement to subsequent Tenants of the above rental units, or to the new and subsequent occupants of rental units vacant on the date of weatherization work completion.”

<sup>49</sup> Michigan, New Mexico, Washington.

<sup>50</sup> Michigan, New York, Washington.

<sup>51</sup> Alaska, Connecticut, Massachusetts, Montana, North Dakota.

weatherization work when states adopt provisions requiring landlord contributions. Of the twenty states reviewed, the agreements of Alaska, Connecticut, New Mexico, Washington, and New York provide the strongest examples of comprehensive protections of the Weatherization Assistance Program's goals. Strong agreements, however, should be paired with providing tenants with notice of the agreement, rights of enforcement, and legal recourse in order to best achieve WAP goals.