

INDIAN HOUSING
STATUTES & REGULATIONS GREEN BOOK

Native American Housing Assistance
and Self-Determination Act (NAHASDA)
and Related Authorities

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INTRODUCTION TO BOOKLET

This selection of statutes and regulations relating to the Native American Housing Assistance and Self-Determination Act (NAHASDA) has been prepared by the law firm of *Wagenlander & Heisterkamp, LLC* to assist their tribal and Indian housing clients. The enactment of NAHASDA in 1996 marked an historic change in how the U.S. government provides funding for housing in Indian Country. By recognizing the principles of tribal self-determination and government-to-government relationships, and by distributing these federal moneys in block grant form, tribes and tribally designated housing entities have more freedom to operate than they did in the previous federal housing program, the 1937 Housing Act, "public housing," which was first made available to tribes in 1961. However, with this freedom come new responsibilities and the increased importance for tribes to understand the federal legal framework within which choices and decisions must be made. Rather than viewing these laws and regulations as restricting their activities, we hope that our clients see the opportunities that they have with this form of funding.

By assembling the key legal authorities relating to the Indian housing program provided under the U.S. Department of Housing and Urban Development, we are providing a resource that is accessible and easy for our clients to use on a day-to-day basis. This Booklet is not intended to be a complete compilation of all laws, regulations, and rules governing federal Indian housing programs, but rather to provide those federal laws and regulations enacted specifically for the NAHASDA program. Tribal laws and the policies of the tribally designated housing entity will also govern the operation of NAHASDA-funded Indian housing programs.

By their very nature, the materials herein will be revised and updated. This Booklet was originally published in 1999, and this version contains all amendments and changes through November 2022. We work with our clients as changes occur and provide the best available information under which to manage their housing programs. Anyone with questions about the use or interpretation of these materials is strongly encouraged to seek the advice of legal counsel. *Wagenlander & Heisterkamp, LLC* assumes no responsibility for unsupervised use of these materials.

A VERY BRIEF EXPLANATION OF NAHASDA

One of the ways tribes receive funding for housing is through the federal government's Native American Housing Assistance and Self-Determination Act, or "NAHASDA" program. This federal program began in 1997 and is administered by the U.S. Department of Housing and Urban Development (HUD). It is primarily a block grant program for low-income members of federally recognized tribes that emphasizes tribal self-determination. It replaces a previous program that gave very limited discretion and little self-governance to tribes. Block grant money is allocated each year by a formula to tribes. If a tribe has properly complied with the program's requirements (including the submission of annual Indian Housing Plans and Annual Performance Reports), the tribe is eligible to receive funding. The NAHASDA statute and HUD regulations set out the requirements that accompany acceptance of these moneys, and that must be adhered to when using NAHASDA moneys. Of course, the tribes and their housing office or Tribally Designated Housing Entity (TDHE) must also comply with other tribal law and, where applicable, state law. They must also adhere to their own written policies for procurement, admission and occupancy, maintenance and operation of housing units, and tenant grievances, among other things. Failure to comply with applicable laws and policies can result in punitive actions against the tribe, an individual tribal office, an individual housing office, TDHE officials, and TDHE staff members. In addition, in some cases HUD can take legal action to recover money improperly spent, or determine the tribe to be ineligible for funding in subsequent years, and impose restrictions on the tribe's use of funds which are already awarded but not yet expended.

The tribe is the government to which HUD allocates this funding. By specific direction of the tribe, the tribal housing office or TDHE administers these funds. The housing office or TDHE may perform this administration by using the money to run its own programs, or it may grant some or all these funds to others (known as Grantees) for program-eligible activities. The housing office or TDHE must develop one-year Indian Housing Plans for these federal funds. These Indian Housing Plans must be reviewed by and receive the written approval of the tribe. These Plans are then submitted to HUD for a federal determination that the activities identified are eligible NAHASDA activities. The housing office or TDHE must also prepare an Annual Performance Report at the end of each year to inform the tribe, the public, and HUD of its progress in fulfilling the Indian Housing Plan. The NAHASDA program encourages tribal self-determination, but also mandates careful compliance with the HUD requirements. Instead of dictating specific programs, it allows tribes to determine their low-income housing needs and develop their own ways of addressing those needs.

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