

# **COLUMBIA HOUSING AUTHORITY**

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## **POLICY ON SCREENING AND EVICTION FOR DRUG ABUSE AND OTHER CRIMINAL ACTIVITY (formerly “One Strike and You're Out”)**

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Resolution: 06-75

## GUIDING PRINCIPLES

The guiding principles for the Policy on Screening and Eviction for Drug Abuse and Other Criminal Activity are:

- All individuals have the right to live in peace and be free from intimidation, and abuse;
- Because of the extraordinary need and demand for affordable housing, public housing should be awarded to responsible, law-abiding individuals who play by the rules at all times;
- To free Columbia Housing Authority residents from threats to their personal and family safety;
- To build a public housing community that is safer and drug-free;
- To support parents in their efforts to instill the values of hard work, personal responsibility, *and good* citizenship in families;
- To create an environment where young people, especially children, can live, learn, and grow up to be productive and responsible citizens;
- To work with local law enforcement to maintain an established living community where residents are safe and feel comfortable communicating with law enforcement to prevent and solve criminal activity that may occur in or around Columbia Housing Authority communities;
- To ensure that Columbia Housing Authority residents can pursue work and educational opportunities in an effort to attain self-sufficiency.
- To ensure compliance with and enforcement of current Department of Housing and Urban Development regarding drug abuse and/or criminal activity.

## OVERVIEW

The Department of Housing and Urban Development (HUD) published a final rule on May 24, 2001 implementing the screening and eviction for drug abuse and other criminal activity. This final rule incorporates the federal mandates expressed in several legislative actions: (1) Public Law 1 - 1 2 0 - The Housing Opportunity Program Extension Act, which amended the 1937 Housing Act implementing the applicant screening and tenant eviction procedures to make HUD assisted housing a safer place to live; (2) Public Law 104-193 - The Personal Responsibility and Work Opportunity Act amended the 1937 Housing Act and addressed the termination of tenancy for fleeing to avoid prosecution, custody or confinement after the commission of a felony or for violation of probation or parole; and (3) Public Law 105-276 - The Quality Housing and Work Responsibility Act amended portions of the 1937 Housing Act and created other statutory authority concerning crime and security provisions in most federally assisted housing.

The Columbia Housing Authority (CHA) is implementing the required statutory and regulatory requirements concerning crime and security at the Housing Authority and also formulating policy by adopting various discretionary portions of the changes. The purpose of this policy is to implement the resources available to CHA for adopting and implementing fair, effective and comprehensive policies for screening out program applicants who engage in illegal drug use or other criminal activities and for evicting or terminating assistance of persons who engage in such activity.

## **DEFINITIONS**

Definitions applicable to screening and eviction for drug abuse and other criminal activity:

**Covered person** means a resident, any member of the resident's household, a guest, visitor or another person under the resident's control or on the premises.

**Currently engaging in** means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current with respect to behavior such as illegal use of a drug, other drug-related criminal activity, or any other criminal activity.

**Drug** means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

**Drug-related criminal activity** means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug,

**Federally assisted housing** means housing assisted under any of the following programs: (1) Public Housing; (2) Housing receiving project-based or tenant based assistance under Section 8 of the U.S. Housing Act of 1937; (3) Housing that is assisted under section 202 of the Housing Act of 1959; (4) Housing that is assisted under section 811 of the National Affordable Housing Act; (5) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act; (6) Housing insured, assisted or held by HUD or by a State or local agency under section 236 of the National Housing Act; or (7) Housing assisted by the Rural Development Administration under section 514 or 515 of the Housing Act of 1949.

**Guest** means a person temporarily staying in the unit with the consent of the resident or other members of the household who has express or implied authority to grant consent on behalf of the resident.

**Household** means the family and PHA-approved live-in aide.

**Other person's under resident's control** means the person, although not staying as a guest in the unit, is or was at the time of the activity in question, on the premises because of an invitation from the resident or other member of the household who has express or implied authority to grant consent on behalf of the resident.

**Premises** means the building, complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

**Violent criminal activity** means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause or a belief that it will cause, serious bodily injury, violence must be against a person, criminal activity can be any action that is unlawful and for CHA purposes threatens the health/safety of the community, but violent criminal activity necessarily requires at least the threat of physical harm

## **DENYING ADMISSION - SCREENING OF APPLICANTS**

By Federal Regulation, the Columbia Housing Authority (CHA) **MUST** prohibit admissions:

-To an applicant family if any household member has been evicted from federally assisted housing for drug-related criminal activity for three (3) years from the date of eviction. Regulations allow CHA to extend the period of time and CHA *has* elected to prohibit applicants evicted from federally assisted housing for drug-related criminal activity for a period of five (5) years.

-To an applicant family if any household member is currently engaged in illegal use of drugs

-To an applicant family or any household member if the CHA has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other CHA residents or staff.

-To any applicant family if the CHA has reasonable cause to believe that any household member's abuse or pattern of abuse of alcohol interferes with the health, safety or right to peaceful enjoyment of the premises by other CHA residents or staff.

-To any applicant family if the CHA has reasonable cause to believe that any household member's habits and practices reasonably may be expected to have a detrimental effect on the residents, staff or the overall community environment.

-To any applicant family if the CHA has reasonable cause to believe that any household member has a record of disturbance of neighbors, destruction of property, or personal living or housekeeping habits at prior residences which may affect the health, safety or welfare of other CHA residents or staff.

-To any applicant family if the CHA has reasonable cause to believe that any household member has a history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other residents or CHA staff.

-To any applicant family if any household member is subject to a lifetime registration requirements under the State sex offender registration program. This is a lifetime prohibition.

-To any applicant family if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing. This is a lifetime prohibition.

-To an applicant family if any household member is fleeing to avoid prosecution, or custody or confinement for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees.

-To an applicant family if any household member is violating a condition of probation or parole imposed under Federal or State law.

## **TERMINATION OF TENANCY - EVICTION**

The CHA is authorized, by Federal Regulation, to terminate the tenancy of residents in accordance with the CHA lease provisions, landlord-tenant laws, other statutory directives, and established PHA policies such as the Admissions and Continued Occupancy Policy (ACOP) and this Policy on screening and Eviction for Drug Abuse and Other Criminal Activity.

### **By Federal Regulation, the Columbia Housing Authority (CHA) MUST terminate tenancy:**

- For any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other CHA residents and staff.
- For any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by persons residing in the immediate vicinity of the premises.
- For discovery that any resident or any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing. This is a lifetime prohibition.
- For discovery that any resident or any household member is fleeing to avoid prosecution, or custody or confinement for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees.
- For discovery that any resident or any household member is violating a condition of probation or parole imposed under Federal or State law.
- For resident violation of lease provisions prohibiting drug-related criminal activity engaged in on or near the premises by the resident, household member or guest, and any such activity engaged in on the premises by any other person under the resident's control
- For resident violation of lease provisions prohibiting any household members use of drugs or the pattern of illegal use of drugs which interferes with the health, safety or right to peaceful enjoyment of the premises by other residents and CHA staff.

### **By Federal Regulation, the Columbia Housing Authority (CHA) MAY terminate tenancy:**

- For residents violation of lease provisions prohibiting any household members abuse or pattern of abuse of alcohol which results in behavior that threatens the health, safety, or right to peaceful enjoyment of the premises by other CHA residents and staff.
- For residents violation of lease provisions prohibiting any household members criminal activity, regardless of whether the person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity by pursuing judicial eviction.

## **INFORMATION**

The discovery of information regarding applicant families and resident families who have committed crimes or activities reflecting disturbance of neighbors, destruction of property, or habits that adversely affect the health, safety or welfare of others will be used by CHA in the screening of applicants for suitability of tenancy and residents for the purpose of determining continued occupancy and eviction procedures.

The discovery of information regarding applicant families and resident families who have a history of criminal activity involving violent crimes, illegal use of a controlled substance, any activity resulting in a felony conviction, alcohol abuse which results in threatening behavior or any crimes that would pose a threat to the life, health, safety or peaceful enjoyment of residents and PHA staff or their contractors will be used by CHA in the screening of applicants for suitability of tenancy and residents for the purpose of determining continued occupancy and eviction procedures.

The discovery of information regarding applicant families and resident families as a result of Incident Reports filed by the Columbia Police Department, Maury County Sheriff's Department or any other reports initiated by any law enforcement entity which may come to the attention of the CHA. Any information whether written or verbal that may concern applicants and residents will be used by CHA in the screening of applicants for suitability of tenancy and used for current residents for the purpose of determining continued occupancy and eviction procedures.

The crimes considered to threaten the health, safety, or right to peaceful enjoyment of CHA residents, staff or their contractors are any and all crimes that threaten the health and safety of a CHA residence or any attempt, solicitation, or facilitation of such crimes including but not limited to the following: murder, manslaughter, rape, sexual assault, statutory rape, harassment, assault, kidnapping, abduction, malicious injury or damage by use of explosive or incendiary device or material, burglary, breaking or entering, arson or other burnings, larceny, robbery, domestic violence, criminal trespass, sexual exploitation of a minor, cyberstalking, prostitution, solicitation of prostitution, promoting prostitution, loitering for the purpose of engaging in prostitution, offenses against the public peace, gambling, concealment or engaging a deadly weapon without a permit, or public nuisance or any attempt to commit crimes or aiding in or abetting crimes. Also, any crimes of violence (e.g. murder, battery, assault, stalking, harassment, domestic violence); crimes against property (e.g. vandalism, arson); and crimes that involve disturbance of the peace (e.g. fighting, public intoxication, illegal gambling, loud noise and music resulting in police reports), as such crimes are defined and contained in Title 39 of the Tennessee Code Annotated.

Lease provisions require residents of the CHA not to display, use, or possess or allow members of the household or guests to display, use or possess any illegal firearms (operable or inoperable) or other illegal weapons as defined by the laws and courts of the State of Tennessee anywhere on the property of the CHA.

## **PROCEDURES**

Federal statutes and regulations allow, encourage and in some cases require Public Housing Authorities to perform criminal background checks to screen applicants for admission and for lease enforcement or eviction of families residing in public housing.

Each applicant family is required to submit a Consent for Release of Criminal Records

signed by each adult household member. If the CHA obtains criminal record information showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, CHA will notify the household of the proposed action to be taken based on the information and will provide the subject a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity will be provided before a denial of admission, eviction or lease enforcement action is taken on the basis of such information. CHA has established and maintains a system of records management that ensures that any criminal records received by CHA is maintained confidentially, not misused or improperly disseminated and is destroyed once the purpose for which the record was requested has been accomplished.

CHA is required to carry out background checks necessary to determine whether a member of a household applying for admissions to public housing is subject to a lifetime sex offender registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where members of the applicant household are known to have resided.

CHA will not pass along to the applicant or resident the costs of criminal records or background checks. Upon receipt of the information obtained from criminal and sex offender registration background checks, the CHA will review the information and determine the suitability of tenancy for applicants and continued occupancy for resident families. When the review contains negative information regarding the applicant or resident concerning drug use, drug-related criminal activity, violent criminal activity or other activity that would threaten the health, safety or right to peaceful enjoyment of the premises by other residents, CHA staff, contractor, subcontractor or agent of the housing authority, CHA will notify the household member of the proposed action to be taken, provide a copy of the information received and provide an opportunity to dispute the accuracy of the information

On an individual basis, the Executive Director or his/her designee will interview the household member affected and the head of household to determine if, at their discretion, an exception to the denial of admission or termination of tenancy is warranted. Felony conviction, past drug use, past drug-related criminal activity, past violent criminal activity or other criminal activity that threatened the health, safety and peace of others will not be considered if it is over five (5) years old.

Consideration will be given to the time, nature, and extent of the conduct (including the seriousness of the offense). Consideration will be *given to factors, which might indicate a reasonable probability of favorable future conduct*. For example: (1) Evidence of rehabilitation; and (2) evidence of the applicant and/or resident family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs. In determining whether to deny or continue occupancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the Executive Director or designee may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully. For this purpose, CHA may require the applicant/resident to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or

evidence of otherwise having been rehabilitated successfully. If rehabilitation is not an element of the eligibility determination, CHA may choose not to consider whether the person has been rehabilitated.

CHA is required by federal regulation to deny admission to persons evicted from federally assisted housing for three years from the date of eviction due to drug-related criminal activity. This policy will establish that CHA can and will evict the entire household for criminal and drug-related activity even if the person(s) have not been convicted. CHA may admit/retain families only if the household member in question who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the Housing Authority.

When CHA evicts an individual or family for criminal activity, the Housing Authority is required to notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit to prevent the affected individual or family from returning to the premises.

Any applicant family or resident family member who furnishes false or misleading information to CHA concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers will subject the applicant family or resident family to denial of admission or termination of tenancy.

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