

THE HOUSING AUTHORITY OF FRISCO, TEXAS

**"ONE STRIKE AND YOU'RE OUT"
Zero Tolerance Policy in Screening Applicants for Admission
And Eviction of Tenants**

Statement of Purpose—In accordance with provisions of U.S. Department of Housing and Urban Development Notice PIH 96-27 (HA) issued May 15, 1996, the Housing Authority of Frisco, Texas (herein referred to as the HA) hereby adopts the Occupancy Provisions of the Housing Opportunity Program Extension Act of 1996, which was signed into law March 28, 1996. Section 9 of this law contains requirements related to safety and security in public housing that go beyond previous requirements related to screening of applicants, lease provisions, and evictions of tenants. These new requirements are consistent with HUD's determination to take every reasonable step to help Public Housing Authorities promote safer public housing. Accordingly, the following procedures shall serve as additions, supplements, or changes, as appropriate, to the Authority's Admissions and Continued Occupancy Policies (ACOP), the Dwelling Lease, and the Grievance Procedure:

Section 1: Screening of Applicants

POLICY—It is the policy of this Housing Authority that each applicant for housing in its dwelling units shall be screened in accordance with its existing policies contained in the Admissions and Continued Occupancy Policies (ACOP), and additionally that appropriate screening shall be conducted so that admission shall be denied to a public housing applicant who:

- (1) has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents;
- (2) was evicted from assisted housing within three years of the projected date of admission because of drug-related criminal activity;
- (3) the HA determines an applicant is illegally using a controlled substance; or
- (4) the HA has reasonable cause to believe an applicant illegally uses a controlled substance or abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The term "appropriate screening" refers to the HA's applying discretion to consider all available information when making a decision to deny admission.

To implement this policy, the HA, in addition to existing screening procedures, also will utilize the following procedures:

- A. *Criminal History*—The applicant and all adults listed on the application must sign a release allowing the HA to request a copy of a criminal history report from the National Crime Information Center, the Texas Department of Public Safety, the Local Police Department, or other Law Enforcement Agencies. The HA then shall make request to the

appropriate agency for a criminal history report or local police records. In general, if applicants are known to have been residents of the local area or of the State of Texas for the past 20 years, the request shall be made to the local Police Department, which shall access its own records and the Texas Department of Public Safety to provide any available criminal history and any available record of local complaints or incidents involving the applicant. If applicants have been residing in a state other than Texas, the records of the National Crime Information Center should be accessed. If the PHA uses information contained in a criminal history report as grounds for denying housing assistance and the applicant requests an informal hearing on the denial, a copy of the criminal history will be provided to the applicant at the hearing, if permitted by local state, or federal law, and the applicant shall be allowed to dispute the accuracy or relevancy of the criminal history report.

- B. *Illegal Use of a Controlled Substance*—Admission shall be denied to any person who the HA determines is illegally using a controlled substance. In addition to any information regarding illegal use of a controlled substance that appears on the criminal history report, the HA also shall rely upon information obtained from other sources, such as local police incident reports (including references to the applicant contained in records of assigned police personnel working through the Public Housing Drug Elimination Program, Community Partnerships Against Crime, or similar records), landlords, employers, social service agencies, substance abuse centers, acquaintances (including current tenants) who may contact the HA to volunteer information, HA records of complaints received about drug activities involving any of its tenants in which the applicant is Fort Myers as a participant of such activities, or any other appropriate source. The HA shall examine carefully all such information obtained from other sources to determine that there is reasonable cause to believe that the person's pattern of illegal use of a controlled substance may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

- C. *Alcohol Abuse*—Admission shall be denied to any person when the HA determines that there is reasonable cause to believe that the person's pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. In making such determination, the HA shall rely upon relevant information obtained from local law enforcement agencies, social service agencies, landlords, employers, alcohol abuse centers, acquaintances (including current tenants) who may contact the HA to volunteer information, or any other appropriate source. The HA shall examine carefully all such information obtained to determine whether it has reasonable cause to believe that the person's pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

- D. *Waiver of Policies*—The Board of Directors of the HA may waive policies prohibiting admission if the person demonstrates to the HA's satisfaction that the person no longer is engaging in illegal use of a controlled substance or abuse of alcohol and:
 - has successfully completed a supervised drug or alcohol rehabilitation program;

- has otherwise been rehabilitated successfully; or
 - is participating in a supervised drug or alcohol rehabilitation program.
- E. *Ineligibility if Evicted for Drug-Related Activity*—Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity are ineligible for admission to public housing for a three-year period beginning on the date of such eviction. (Drug-related criminal activity is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance.) The HA shall use information contained in its own files, or information obtained from other housing agencies to make a determination that the person is ineligible. This requirement may be waived by the Board of Directors of the HA if:
- the person demonstrates successful completion of a rehabilitation program approved by the HA, or
 - the circumstances leading to the eviction no longer exist. For example, the individual involved in drugs no longer is in the household because the person is incarcerated.
- F. *Disability Not An Issue*—The purpose of the above applicant screening procedures is to prohibit admission to the HA's housing of any person that it determines to be likely to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. In considering the elements leading to the determination, the HA shall not focus on whether the applicant happens to have a disability; rather, the focus shall be on whether the person's recent behavior indicates that he or she likely would continue to engage in behavior that would be in non-compliance with the dwelling lease.

Section 2: Terminating Assistance to Tenants (Evictions)

POLICY—It is the policy of this Housing Authority to appropriately evict a public housing resident who:

- (1) engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
- (2) engages in any drug-related criminal activity on or off the HA's property; or
- (3) the HA determines is illegally using a controlled substance, or the resident abuses alcohol or uses a controlled substance in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The term "appropriately" refers to the HA's consistent application of discretion to consider all known circumstances in making its decision to evict.

The following procedures will be followed in implementing the provisions of this policy:

- A. *Applicability*—The policy of the HA is to terminate the lease and evict any person who has been documented as engaging in one or more of the following:

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA;
 - (2) Any other activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA;
 - (3) Any drug-related criminal activity on or off the premises,
 - (4) Illegal use of a controlled substance; or
 - (5) Alcohol abuse that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
- B. *Documentation of Activities*—In documenting instances of activities that may be cause for termination of tenancy and eviction, the HA shall make prompt investigation into reports from other residents, HA employees, local law enforcement officers, the general public, and published reports indicating that a tenant is in non-compliance with provisions of this policy and the dwelling lease. In order to ascertain whether to proceed with termination of tenancy and eviction, the HA shall utilize the methods contained in Section 1, Paragraphs A., B., and C., of this One-Strike policy. In considering documentation obtained during its investigations, the HA should not focus on whether the tenant happens to have a disability.
- C. *Evictions A Civil Matter*—In weighing the documentation and deciding whether to proceed with termination of tenancy and eviction proceedings in local court, the HA must determine whether sufficient grounds exist to initiate the action. Evictions are civil, not criminal, matters. The HA is not required to meet the criminal standard of "proof beyond a reasonable doubt." In order to terminate a lease and evict a tenant, a criminal conviction or arrest is not necessary. Before initiating termination of tenancy and eviction action, the HA should have sufficient documentation to prove in court that a tenant has violated his or her dwelling lease before taking eviction action.
- D. *Due Process Rights*—HUD has made a determination that the State of Texas landlord-tenant process provides the necessary pre-eviction hearing and other basic elements of due process. Therefore, the HA can exclude from its grievance procedures any cases involving termination of tenancy for any activity, not just a criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA; or any drug-related criminal activity on or off such premises, not just on or near such premises. Therefore, it shall be the policy of this HA to exclude the foregoing from the grievance procedure, and to proceed directly to court for eviction.
- E. *Notice of Termination of Tenancy and Eviction*—Once the HA has determined that there is sufficient documented justification to proceed with termination of tenancy and eviction in cases involving (a) any criminal activity or other activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the HA, or (b) any drug-related criminal activity on or off the HA's premises, the HA shall promptly issue notification to the tenant specifying: (1) that the tenant is in serious violation of the terms and conditions of the dwelling lease and are grounds for termination of tenancy; (2) the lease provisions that the tenant has violated; (3) that the

HA is terminating tenancy as of a specified date (which may be from one day to seven days from the date of the notice, depending upon the seriousness of the violation); (4) that the termination action is not subject to the grievance procedure; (5) that if the tenant has not vacated the premises by the date specified in the notice, then the HA will file eviction proceedings in court; and (6) that prior to the judicial hearing, the tenant or his counsel may request copies of any relevant documents, records (including criminal records) upon which the HA is relying as bases for the termination of tenancy or eviction.

Section 3: Modifications to the ACOP, Dwelling Lease, and Grievance Procedures

- A. The Admissions and Continued Occupancy Policies (ACOP), the Dwelling Lease, and the Grievance Procedure are being modified to incorporate the provisions of this "One Strike and You're Out" policy.
- B. The modifications referred to in A. above shall become effective following notice to tenants and the 30-day comment period.
- C. Lease modifications may be in the form of a new lease or a rider to the existing lease. Tenants will be required to execute the new lease/addendum by no later than their next reexamination.

Section 4: Other Considerations

- A. *Informing Applicants and Tenants*—At the time an applicant makes inquiry or presents himself/herself to make application for housing, the HA shall inform the applicant of the "One Strike" provisions related to the application process. When a lease is executed, the explanation of lease provisions that is given to the new tenant will include the importance of abiding by all terms of the lease, including the "One Strike" provisions. At the time of adoption of these policies, current residents will have been informed of the "One Strike" policies.
- B. *Cooperation from Residents*—Residents shall be encouraged to come forward with complaints and information regarding any residents who are in violation of any provisions of the "One Strike" policy. Residents who furnish such information should be informed that if sufficient grounds for eviction appear to exist, then their testimony may be required in court, and they must agree to testify if needed.
- C. *Cooperation from Judges*—While it is inappropriate to talk with judges about particular pending cases, it is appropriate for the Housing Authority to arrange a general meeting with local judges to discuss the issues and reasons for development of this "One Strike" policy as it relates to evictions of disruptive tenants and the need for evictions where the evidence shows serious lease violations. Concerned residents shall be encouraged to participate in any such general meeting with judges.
- D. *Cooperation from Law Enforcement Agencies*—Meetings should be arranged between the Housing Authority and the local Police Department to inform the law enforcement

agency of public housing needs and problems, and work out administrative arrangements so that full and expeditious cooperation occurs. If such an arrangement is not currently in existence, the Housing Authority should request that police: (1) promptly provide Housing Authority management with relevant incident reports for timely eviction processing; (2) help the Housing Authority expedite drug identification in serious cases; and (3) prepare for cases as needed with Housing Authority attorneys. To this end, the police personnel must know exactly what criminal activities are grounds for lease termination so they can keep the Housing Authority informed when such behavior occurs. The Police Department should be encouraged to view providing police testimony in eviction cases involving criminal and/or disruptive behavior as an important part of the department's mission. Where appropriate, the Housing Authority should use subpoenas to facilitate police testimony. Additionally, the Police Department should be requested to supply additional patrols to public housing communities with special needs, where it is economically feasible for the Police Department to do so.

- E. *Supplementation of Existing Police Services*—As opportunities may arise, the Housing Authority should investigate the feasibility of applying for additional funding from sources such as the Public Housing Drug Elimination Program, the CIAP or CGP programs, and other appropriate programs, in order to obtain funds to provide additional police services in addition to existing services.
- F. *Working with Resident Organizations*—To the maximum extent feasible, the Housing Authority shall involve its residents, through the resident organizations, in working together to further the goals of the "One Strike" policy. The Housing Authority and residents may develop an arrangement whereby a resident screening advisory committee may be established. Any such arrangement developed must be approved by the Board of the Housing Authority prior to its implementation. Any such committee that formed may advise the Housing Authority regarding the suitability of applicants; however, the Housing Authority must remain responsible for the final decision to admit or decline a potential tenant. Additionally, the Housing Authority must assure that the tenant screening advisory committee complies with privacy laws and other legal standards.
- G. *Confidentiality of Criminal Records*—In administering the provisions of the "One Strike" policy, the Housing Authority shall establish a system to ensure that any criminal record received be maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.
- H. *Tracking and Reporting Crime Related Problems*—The Housing Authority shall maintain records in a separate file that document instances of crime related problems in its developments as such problems become known to the Authority. The documentation will include the date, time and location of each reported incident, the name of participants if known, and the details of the incident. The documentation also will contain a summary of actions taken by the Authority, including reports to the local police authorities, any meetings between the Authority staff and tenants or other interested persons, any court action taken, including eviction proceedings, and the final disposition of the matter.