

LEGAL ACTION CENTER

Public Housing Policies Affecting Individuals with Criminal Records in Kentucky: Fayette County (Lexington) February 2001

I. Introduction

The following memorandum summarizes the housing policies that affect individuals with criminal records in Fayette County (Lexington), Kentucky. The federal housing laws give local housing authorities some discretion to establish local policies regarding the admission and eviction of people with histories of criminal activity. For a summary of the federal housing laws affecting individuals with criminal records, please refer to the Legal Action Center's summary entitled "Housing Laws Affecting Individuals with Criminal Convictions."

II. Statutory Authority

The relevant statutes conferring authority upon the Lexington-Fayette Urban County Housing Authority ("HA") are contained in KY. REV. STAT. ANN. § 80.020, et seq. While the statutes do not set out any admission or tenancy standards to which the local housing authority must adhere, the Fayette County Housing Authority restricts certain individuals from public housing pursuant to federal law.

III. Housing Authority Policy

A. Application for Public Housing

The HA's *Admissions and Continued Occupancy Policy* ("ACOP") states that the HA may consult landlords, employers, family social workers, parole officers, court records, drug treatment centers, clinics, physicians, and police departments when determining eligibility for public housing.¹ The HA specifically relies on landlord references from the last eighteen to twenty-four months and state police reports on any household member who is 18 years of age or over.²

The HA can deny eligibility for life to any household that contains a member who either: (1) is registered with the State's lifetime sex offender program or (2) has been convicted of manufacturing or producing methamphetamine in a public housing development or in a Section 8 assisted property.³ The ACOP also states that a family may be denied admission if any of the

¹ *Admissions and Continued Occupancy Policy* ("ACOP"), Section VII. "Eligibility for Admission," p. 23.

² Interview with Dana Tincher, Lexington-Fayette Urban County Housing Authority (September 5, 2000). She stated that a possible contact person is Peggy Burch, the Deputy Director of Operations for the Housing Authority.

³ ACOP, Section VII. at pp. 22-23.

family members: (1) have a “history of abusing alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents;” (2) “have engaged in or threatened abusive or violent behavior towards Lexington Housing Authority staff;” (3) have an unsatisfactory record pertaining to disturbance of neighbors or destruction of property; (4) had unsatisfactory living or housekeeping habits at prior residences which adversely affected the health, safety or welfare of other residents; or (5) have a history involving “crimes of physical violence to persons or property or other criminal activity including drug related criminal activity which would adversely affect the health, safety and welfare of other residents or staff or cause damage to property.”⁴ The policy does not give examples of the prohibited behavior and does not indicate how long admission could be denied. The policy does specify, however, that family members must be able to show that they have not been evicted from any program administered by the HA in the past twelve months, that they have satisfactory housing records for eighteen months, and that they have “no record of convictions for manufacture, sale, distribution, use or possession of a controlled substance or of any other illicit drug within the thirty-six months prior to application for housing.”⁵

Finally, people who have been evicted from any public housing, Indian housing, Section 23, Section 8 housing program because of drug-related criminal activity are ineligible for admission for a three-year period beginning with the date of the eviction.⁶ In cases of eviction due to drug trafficking, the family is ineligible for a five-year period.⁷

The three-year period of ineligibility is imposed regardless of whether the conviction is for a felony or a misdemeanor.⁸ Mitigation of this three-year period may be possible for people who were arrested for crimes (but not convicted) if they can obtain a certificate of completion from a drug or alcohol rehabilitation program.

All other criminal convictions are reviewed on a case-by-case basis. If the criminal offense is not drug-related, a person has access to an informal hearing to dispute housing rejections or evictions. If an informal hearing is conducted, the applicant can choose to be represented.⁹ Informal hearings are not available for applicants who are denied housing because of drug-

⁴ *Id.*

⁵ *Id.* A representative from the HA, Dana Tincher, stated that if an applicant has been evicted from public housing for something such as non-payment of rent, the applicant would have to wait twelve months before qualifying again. With respect to the eighteen month requirement, if the applicant has been homeless or living with relatives, the HA will modify the requirement and try to obtain the best information available given the prior living circumstances of the applicant.

⁶ *Id.* at 25.

⁷ *Id.*

⁸ Interview with Dana Tincher, Lexington-Fayette Urban County Housing Authority (September 5, 2000).

⁹ The HA does not provide representation but Ms. Tincher stated that counselors from Tenant Services, parole officers, and even family members sometimes represent aggrieved applicants or tenants.

related criminal offenses.

A. Evictions from Public Housing

The lease that HA residents are required to sign includes a section on “Criminal and/or Unlawful Activity & Drug-Related Criminal and/or Unlawful Activity.”¹⁰ This section prohibits criminal or unlawful activity, including drug-related activity, by the leaseholder, any member of the leaseholder’s family, or any guest. Any such activity is a cause for termination of the lease.¹¹ The lease allows management to terminate tenancy for any unlawful or criminal activity “whether such activity occurs in or near the development where Leaseholder’s Dwelling is located, or on or near other public housing premises.”¹² Management is not required to show criminal conviction for the unlawful activity, but rather is held to a “preponderance of the evidence” standard that the activity occurred.¹³ Finally, people who receive eviction notices for “criminal and/or unlawful activity or drug-related activity...will not be governed by the administrative grievance procedure of the Authority.”¹⁴ It is presumed that the lease termination procedure accords the tenant all of the procedural protections necessary.

IV. Opinions of Local Advocates

The Housing Authority’s restrictions on individuals with criminal records were described by local advocates as having a large impact in Fayette County. Generally, there is a housing shortage in the county which is compounded for individuals with criminal records and/or a history of drug activity. Volunteers for America works closely with the Housing Authority and performs background checks on applicants for drug activity or criminal convictions. A case manager at that organization explained that public housing is denied to anyone who has been charged with a drug offense in the last three years.¹⁵ The three-year rule can be waived if the applicant has a certificate showing that he or she has completed a drug rehabilitation program.

However, a representative from Tenant Services, a non-profit organization that assists low-income tenants, stated that there is a no-tolerance policy regarding drugs.¹⁶ She believes that a

¹⁰ See p. 4, Section VII. of the Lexington-Fayette Urban County Housing Authority Lease Agreement.

¹¹ “Drug-related criminal activity” is defined as “the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]), or of any other illicit drug.”

¹² See p. 4, Section VII of the Lease.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Interview with Sherry Perry, Case Manager, Volunteers of America, 1400 N. Forbes Rd., Suite D, Lexington, KY 40511 (September 7, 2000).

¹⁶ Interview with Linda Black, Tenant Services, 136 N. Martin Luther King Blvd., Lexington, KY 40507 (September 6, 2000).

family will be automatically evicted if there is any drug arrest made on the premises, including arrests for misdemeanors such as possession of drug paraphernalia. She believes many people are deterred from applying for housing at all, or from appealing a rejection, because they are aware of the Housing Authority's policies.

In an attempt to facilitate the housing search for people with criminal records, Volunteers for America has compiled a list of thirty-six landlords who accept tenants without doing criminal background or credit checks. The problem with these units, however, is that they are substandard and the rents are not based on income. Thus, even if the units are available, they are often unaffordable for those with the greatest need.¹⁷ Volunteers for America also refers applicants for day jobs where no criminal background checks are performed and where wages are paid at the end of the day. Although these jobs generally consist of minimum wage, factory work, they allow some people to stay in low-budget motels for the night.

The waiting period for a section 8 housing voucher is approximately 18 months. One advocate stated that there are two homeless shelters in the area. The Hope Center accepts only men, while the Salvation Army accepts single women (with children if they have any) and families who can show a marriage license. If families do not have a marriage license, the men must go to the Hope Center, while the women and children can remain at the Salvation Army. Volunteers for America accepts unmarried couples and their children for temporary, emergency housing but only has a total of 15 units for the approximate 400 applications it receives per year.

¹⁷ Ms. Perry stated, for instance, that while a single mother receives \$262 per month in welfare for one child, the average rent for a one bedroom apartment in Lexington is \$350.