



**Public Housing Policies Affecting Individuals
with Criminal Records in Delaware:
Sussex & New Castle Counties
February 2001**

I. Introduction

The following memorandum summarizes the housing policies that affect individuals with criminal records in New Castle and Sussex Counties in Delaware. The federal housing laws give local housing authorities some discretion to establish local policies regarding the admission and eviction of people with criminal convictions. 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 Delaware State Housing Authority (DSHA) is authorized by 29 DEL. CODE. ANN. tit. 29, § 8601 and DEL. CODE. ANN. tit. 31, § 4010. DSHA has the authority to create local county or municipal housing authorities as it deems necessary¹ and has the power “to take all actions deemed appropriate to mitigate adverse social conditions and to eliminate drug and crime problems at DSHA’s sites.”² DSHA has issued a statewide policy that is described below.

III. Housing Authority Policy for Sussex County

The Sussex County Housing Authority offers public housing assistance in accordance with DSHA policy, with one or two modifications.³

DSHA Policy (adopted by Sussex County as its own policy)

A. Application for Public Housing

The DSHA policy permits former offenders to apply for public housing and includes an anti-

¹DEL. CODE. ANN. tit. 31, § 4303.

²DEL. CODE. ANN. tit. 31, § 4013 (27).

³In addition to the Housing Authority, we spoke with a representative of the Treatment Access Center (TASC), a private non profit agency whose mission is to assist former offenders with a variety of services.

discrimination statement: “DSHA shall not automatically deny admission to a particular_group or category of otherwise eligible applicants ... Each applicant in a particular group will be treated on an individual basis in the normal processing routine.”⁴ Despite this assertion, previous tenants evicted for drug-related criminal activity are barred from applying for public housing for a specified time period.⁵

DSHA is required to verify the information provided on all public housing applications. The verification must be documented in an applicant’s file which may include, but is not limited to, reports of interviews, letters or telephone conversations with reliable sources.⁶ Sources may be the applicant (through interviews or home visits), credit reports, landlords, employers, family social workers, parole officers, court records, drug treatment centers, clinics, physicians or police departments, when necessary.⁷

The information gathered should be “reasonably related to assessing the conduct of the applicant and other family members.”⁸ Relevant information regarding habits, practices or behavior may include, but is not limited to, the following factors:

- history of criminal activity, on the part of any applicant or applicant’s family member, with respect to “crimes of physical violence to persons or property and other criminal acts including drug-related criminal activity which would adversely affect the health, safety, or welfare of other tenants;”⁹
- “reasonable cause to believe” alcohol abuse, on the part of the applicant or member of the applicant’s family who would live in the unit, that would interfere with the health, safety or rights and peaceful enjoyment of the premises to other tenants;¹⁰ and
- past evictions from public housing because of drug-related criminal activity.

⁴Statement of the Policies Governing Admission and Occupancy in Low-Rent Public Housing and Public Housing Home Ownership, Delaware State Housing Authority, § I(A), at 1 [hereinafter Policy].

⁵See *infra*, FN 11.

⁶Policy, §I(C)(1), at 3.

⁷Policy, §I(C)(2), at 3.

⁸Policy, §I(E), at 4.

⁹Policy, §I(E)(4)(c), at 5-6. According to the Sussex County Housing Authority representative, misdemeanors or crimes against property do not make applicants ineligible for public housing.

¹⁰Policy, § I(E)(4)(d), at 6.

Under the state policy, individuals who have been evicted for drug-related criminal activity are precluded from applying for a three-year period beginning on the eviction date.¹¹ Sussex County extends the three-year bar to seven years. After seven years, such individuals are allowed to go before a review panel hearing. This hearing is usually based on character testimony which may be obtained from landlords, parole officers and counselors. The panel will consider measures to correct the substance abuse problem and subsequent criminal activity.

Where there is history of criminal activity, the DSHA will consider the “time, nature, and extent of the applicant’s conduct and ... factors which might indicate a reasonable probability of favorable future conduct or financial prospects” including, but not limited to, the following circumstances:

- evidence of rehabilitation;
- evidence of applicant family’s participation in, or willingness to participate in social services or other appropriate counseling services;
- evidence of successful modification of previous disqualifying behavior; and
- evidence of willingness to increase income through available training or employment programs.¹²

Applicants who have been deemed eligible for public housing are put on a waiting list in the order of the date and time the applications are received¹³ and according to the following preferences:

- families who can certify, at the time of application, that they are eligible; such preference will be verified at the time of lease execution;¹⁴
- elderly families, but only for those units specifically designed or designated for elderly families¹⁵

¹¹Policy, § I(E)(4)(d), at 6.

¹²Policy, § I(E)(5), at 6.

¹³There is also a hierarchical order on the waiting list: (1) Residency, Employment, No Previous Moving-To-Work (MTW) Participation (this is a state created program which aids unemployed individuals receiving public assistance in obtaining employment); (2) Residency, No Previous MTW Participation; (3) Employment, No Previous MTW Participation; (4) No Previous MTW Participation; (5) Employment, Residency; (6) Employment Only; (7) Residency Only; (8) All Others. Policy, § XIV(C), at 29.

¹⁴These families are given “local preferences” which are: residency (lives, works or has been notified that they are hired to work in Kent or Sussex County); employment (one family member who has been employed for at least three months or participates in the Delaware welfare reform program, “A Better Chance”); and no previous participation in MTW Program / head of household has never participated in MTW Program or left the Program voluntarily. Policy, § XIII(U), at 23.

¹⁵An elderly family means a family whose head or spouse or whose sole member is at least sixty-two years of age, or disabled (as defined by policy) and may include two or more elderly, disabled persons living together or one or more such persons living with another person who is determined to be

- near elderly families¹⁶ only when DSHA determines that there are insufficient numbers of elderly families to fill housing units specifically designated for elderly families; and
- applicants who have been employed more than three months or are currently enrolled in “A Better Chance,” the Delaware welfare reform initiative.

A preference does *not* guarantee admission; an applicant must still meet DSHA’s tenant screening criteria for acceptance.

Applicants who are denied housing must be “promptly notified”¹⁷ with a rejection notice stating the basis for denial. Rejected applicants are given an opportunity for an informal review, but they must contact DSHA, *in writing*, within ten working days of receipt of the notice. The informal hearing is scheduled upon receipt of this request. If the applicant wishes to take this further, a formal hearing may be scheduled before a three-member panel. This panel is comprised of an individual chosen by the Housing Authority, an individual chosen by the applicant and an individual mutually agreed upon.

B. Evictions from Public Housing

When DSHA decides to evict a tenant, the individual must be given notice and the opportunity to respond.¹⁸ DSHA must convey the reason for the eviction “in a private conference or other appropriate manner.”¹⁹ DSHA must keep records of tenants it decides to evict; there must be a written record listing the reasons for eviction and an indication of whether that tenant was allowed to pursue the matter internally through DSHA grievance procedures.²⁰

IV. Housing Authority Policy for New Castle County

New Castle County Housing Authority (NCCHA) only offers Section 8 housing and operates on a

essential to his or her care and well-being. Policy, § XIII(N), at 22.

¹⁶A near elderly family is a family whose head of household, spouse, or sole member is a person who is at least fifty years of age, but below the age of sixty-two, or two or more persons, who are at least fifty years of age but below the age of sixty-two, living with one or more live-in aides. Policy, § XIII(X), at 24.

¹⁷Policy, § I(F), at 8.

¹⁸The most common evictions result from non-payment of rent. Other evictions are the result of lease violations, which include tenants’ alleged criminal behavior, regardless of whether the individual has been convicted.

¹⁹Policy, § X(A), at 16.

²⁰Policy, § X(B), at 16-17. These internal grievance procedures are the same as those available to rejected applicants, see discussion *supra*, Part III A.

voucher system. NCCHA denies program assistance for, and terminates program assistance for, participants where:

- any member of the family has ever been evicted from public housing;
- any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- any family member's drug or alcohol abuse interferes with the health, safety or peaceful enjoyment of other project residents;
- any member of the family commits drug-related criminal activity, or violent criminal activity.²¹

When making its determinations, NCCHA may use evidence obtained from police or court records, including documentation of drug raids or arrest warrants.²² NCCHA may also consider testimony from neighbors, in conjunction with other factual evidence.²³

A. “One Strike” Policy

1. *Applicant Screening*

NCCHA screens all applicant members of a household 18 years of age or older for drug-related and violent criminal behavior.”²⁴ *Drug-related criminal activity* is “the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance, *on or near* the premises.”²⁵ *Violent criminal activity* is activity being engaged in by any family member and “includes any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property.”²⁶

Where NCCHA determines there is reasonable cause to believe a program participant, or applicant for program assistance, is illegally using a controlled substance, it will deny (or terminate) participation in the program. NCCHA will also deny (or terminate) program assistance if the NCCHA determines that the individual abuses alcohol in a manner that may interfere with the health,

²¹New Castle County Housing Authority Policy, Grounds for Denial or Termination of Assistance, at 15-3 - 15-4. The policy cites to 24 CFR § 982.552(c) and refers to its One Strike Policy, to be discussed *infra*.

²²*Id.* at 15-8.

²³*Id.* at 15-8.

²⁴New Castle County Housing Authority, “One Strike” Policy [hereinafter, NCCHA “One Strike”], at 15-5.

²⁵*Id.* at 15-6. The policy uses HUD definitions.

²⁶*Id.* For purposes of *violent criminal activity*, “engaged in or engaging in” means any act within the most recent three years by applicants, participants, household members or guests, resulting in the arrest of that individual, regardless of whether or not that individual is convicted.

safety or right to peaceful enjoyment of the premises by other residents.²⁷ If any household member or guest engages in the above behavior, regardless of the applicant or participant’s knowledge of such activity, NCCHA has grounds to deny (or terminate) assistance.

Applicants for program assistance previously evicted from public housing, Indian Housing, Section 23, or any Section 8 program due to drug-related criminal activity, are ineligible for admission to the New Castle Section 8 program for a three-year period beginning on the date of the eviction.²⁸

Applicants are denied assistance if they have been “arrested, convicted, [or] evicted from a unit assisted under the Housing Act of 1937 due to violent criminal activity within three years prior to the date of the certification interview.”²⁹

2. Termination of Program Assistance

NCCHA will terminate program assistance to individuals who have been “arrested, convicted, [or] evicted from a unit assisted under the Housing Act of 1937 due to drug-related or violent criminal activity within the three-year period prior to the notice to terminate assistance, and whose activities have created a disturbance in the building or neighborhood.”³⁰

NCCHA will terminate assistance if “the family violates the lease for drug-related or violent criminal activity.”³¹ However, NCCHA has discretion to continue assistance to family members where those engaging in the proscribed activities do not reside in the unit. NCCHA may also consider specific circumstances where the violating family member is a minor, pursuant to advice from Juvenile Court officials.

Where NCCHA determines to discontinue aid to a program participant, it is obligated to provide the family with notice of termination. The notice must include the reason for the proposed termination and the effective date of the proposed termination. The notice must also state the family’s right to request an Informal Hearing to be held before actual termination, and the date by which such a request must be received by NCCHA. NCCHA will also give notice to the unit owner and such notice will be given when actual termination of assistance occurs.³²

V. Opinions of Local Advocates

²⁷*Id.* at 15-6. Included in these cases are those where NCCHA determines that there is a pattern of illegal use of a controlled substance or pattern of alcohol abuse. NCCHA determines there is a “pattern” where there is more than one incident within the most recent thirty-six months.

²⁸*Id.* at 15-7.

²⁹*Id.*

³⁰*See* NCCHA “One Strike,” *supra*, note 24 at 15-7.

³¹*Id.* at 15-7.

³²*Id.* at 15-8. Notice to the unit owner will not include details regarding NCCHA’s decision to terminate assistance.

Sussex County Housing Authority – The SCHA representative indicated that denial of housing to former offenders did not seem to be a big problem, perhaps because Delaware is “such a small state” and that there were perhaps fewer individuals with criminal records, in general. The representative also revealed that Housing Authority administrators held a training recently discussing HUD’s One-Strike policy to keep individuals with criminal records out of public housing. Sussex County is considering whether to incorporate such a provision in their own policy.

TASC – The TASC representative said that the DSHA will usually deny housing automatically when an applicant discloses a history of criminal activity, but such individuals are given the opportunity to challenge the determination through an internal review process. According to the representative, the review panel is very willing to consider evidence of rehabilitation and has on several occasions reversed its original determination of denial. Legal Aid is available to help represent these individuals at their hearings.