



**Public Housing Policies Affecting Individuals  
with Criminal Records in West Virginia:  
Grant, Mineral & Tucker Counties  
February 2001**

**I. Introduction**

The following memorandum summarizes the housing policies that affect individuals with criminal records in Grant, Mineral and Tucker Counties in West Virginia. 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**

West Virginia establishes city and county housing authorities under W. VA. CODE § 16-15-3. Two or more cities or counties are authorized to form regional housing authorities under W. VA. CODE § 16-15-3a. Furthermore, the West Virginia legislature has statutorily declared the housing authority's goal is "to provide access to decent, safe, sanitary and affordable housing to its residents."<sup>1</sup> Housing authorities "may impose and enforce occupancy standards and requirements to prohibit any criminal or other activity which threatens the health, safety or right to peaceful enjoyment of the premises or development by other residents."<sup>2</sup>

According to the statute, tenants are responsible for their own actions as well as those of other members of their household and their guests. The Code presumes that a tenant has knowledge of the actions of his household members and guests.<sup>3</sup> This presumption may be rebutted with "clear and convincing evidence that the tenant could not reasonably have known that the act would occur or that the tenant took reasonable measures to prevent the act from occurring."<sup>4</sup>

Where a housing authority decides to evict a tenant or terminate a lease or assistance, "all circumstances surrounding the individual eviction" shall be considered, including, but not limited to, "the seriousness of the offense, extent of participation by household members, and effect of eviction

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<sup>1</sup> W. VA. CODE § 16-15-17.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* Unless otherwise provided by federal law or regulation.

<sup>4</sup> *Id.*

on household members not involved.”<sup>5</sup> A housing authority may allow other household members to continue in public housing programs on the condition that offending individuals are removed from the premises.

Notwithstanding failure to prove a tenant’s knowledge, the housing authority still has the discretion to prohibit guest visitations or remove any member from the household unit who has “participated in criminal activities or other activities which threaten the health, safety or right to peaceful enjoyment of the premises or development by other residents.”<sup>6</sup>

### **III. Housing Authority Policy for Grant County**

The Grant County Housing Authority follows the federal regulations set out by the U.S. Department of Housing and Urban Development (HUD) in determining admissions and occupancy criteria for its Section 8 housing program.<sup>7</sup> These regulations are set forth in 24 C.F.R. Ch. IX, Pt. 960.

#### **A. Application for Public Housing**

Guidelines for Tenant Selection are laid out in § 960.204. The Federal regulations give the local public housing authorities the discretion to establish tenant selection criteria for their respective housing developments and/or assistance programs. We were not able to obtain information from the Grant County Housing Authority regarding its admissions and continued occupancy policy.

#### **B. Evictions from Public Housing**

The federal One-Strike Policy permits housing authorities to terminate a tenancy due to illegal drug use or alcohol abuse or other criminal activities. The housing authority may evict tenants where they determine illegal use of a controlled substance or when they believe that a tenant’s illegal use of a controlled substance, or alcohol abuse, interferes with other tenants’ right to enjoy healthy, safe and peaceful premises.<sup>8</sup> The federal policy allows, but does not require, the local housing authorities to consider rehabilitation.<sup>9</sup>

The statute permits the following types of evidence for purposes of establishing rehabilitation:<sup>10</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> W.VA. CODE § 16-15-17.

<sup>7</sup> Grant County offers only Section 8 housing.

<sup>8</sup> 42 U.S.C. 1437n(e)(1)(B)(I)-(ii). The One Strike policy was established in the Housing Opportunity Program Extension Act of 1996, Pub.L. 104-120 (March 28, 1996).

<sup>9</sup> 42 U.S.C. 1437n(e)(2).

<sup>10</sup> The statutory language does not indicate that this is an exhaustive list.

- evidence that the tenant “has successfully completed a supervised drug or alcohol rehabilitation program ... and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol”;<sup>11</sup>
- evidence that the tenant “has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol”;<sup>12</sup>
- evidence that the tenant is currently enrolled in “a supervised drug or alcohol rehabilitation program ... and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.”<sup>13</sup>

We were not able to ascertain whether Grant County permits tenants to prove rehabilitation or what would constitute rehabilitation.

#### **IV. Housing Authority Policy for Tucker County (Randolph)**

Tucker County is governed by the Randolph County Housing Authority and offers only Section 8 housing. The Housing Authority does not have a written policy outlining its tenant selection criteria but is thinking of developing one.

##### **A. Application for Public Housing**

The Housing Authority conducts criminal background checks on all applicants. There is a three-year waiting period for all individuals convicted of felonies.<sup>14</sup> After the three-year period tolls, individuals with felony convictions must present evidence of rehabilitation. There is no set guideline as to what constitutes rehabilitation; determinations are made on a case-by-case basis.

When the Housing Authority denies admission to an applicant, s/he is entitled to have his/her application informally reviewed by a Housing Authority panel that includes the Executive Director of the Housing Authority, who has final decision-making power.<sup>15</sup>

##### **B. Evictions from Public Housing**

The Housing Authority will terminate assistance if a tenant has violated the federal One-Strike Policy.<sup>16</sup> A tenant may challenge the Housing Authority’s decision to terminate assistance through

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<sup>11</sup> 42 U.S.C. 1437n(2)(A).

<sup>12</sup> 42 U.S.C. 1437n(2)(B).

<sup>13</sup> 42 U.S.C. 1437n(2)(C).

<sup>14</sup> This applies to all felonies, not just those that are related to drugs or violent crimes.

<sup>15</sup> This information was provided by the Executive Director.

<sup>16</sup> See footnote 8.

an informal hearing before the Executive Director of the Housing Authority.

## **V. Housing Authority Policy of Mineral County (Keyser)**

The Keyser County Housing Authority governs public housing in Mineral County. There is no written policy presently, but the Housing Authority has been discussing implementing one jointly with six neighboring counties.

### **A. Application for Public Housing**

Anyone can apply for public housing through the Keyser County Housing Authority. All applicants' backgrounds are checked against local police department records, court records, and the Federal Bureau of Investigation (FBI). If the applicant has lived outside the local area within the last three years of applying for housing, the Housing Authority may contact the police department where the individual lived. If the background check indicates the applicant has a history of drug-related or violent criminal activity, the Housing Authority will deny the applicant housing assistance. Convictions for shoplifting or driving under the influence of alcohol do not make an applicant ineligible for housing assistance.<sup>17</sup> There is a permanent bar against individuals identified by the State Sex Offender Lifetime Registration program.

The Housing Authority has recently implemented a One Strike Policy and requires all applicants and family members ages eighteen years or older to sign a declaration of notice. This notice stipulates that the signee understands that the Housing Authority has the discretion to deny assistance if the applicant:

- 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<sup>18</sup>;
- was evicted from housing within three years of the date of admission because of drug-related criminal activity;
- is illegally using a controlled substance;<sup>19</sup>
- gives the Housing Authority reasonable cause to believe s/he is illegally using a controlled substance or abusing alcohol in a way that may interfere with other tenants' health, safety or right to peaceful enjoyment of the premises.

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<sup>17</sup> A contact at the Housing Authority gave these example as crimes that would not make an applicant ineligible for admission.

<sup>18</sup> The ambiguity resulting from the Housing Authority checking for drug-related and violent criminal records and requiring applicants to sign a notice pertaining generally to criminal activity exists because of how the Housing Authority defines its policy.

<sup>19</sup> This determination is made by the Housing Authority.

There is a 60-day appeal period during which an applicant is entitled to challenge the Housing Authority's decision to withhold assistance. The applicant is scheduled for a hearing with a housing authority attorney who will review the criminal records with the applicant. Often, the attorney will discover that certain documents have not been filed with the FBI which serve to relieve the applicant of his "criminal" status for purposes of the Housing Authority's selection process. Evidence of rehabilitation may be supplied from various sources including treatment counselors.<sup>20</sup>

B. Evictions from Public Housing

To date, the Housing Authority has not evicted any tenants based on drug-related or criminal activity. During the past six months, a series of drug busts within public housing developments have resulted in criminal prosecutions against some tenants. The Housing Authority is waiting for the judicial decisions and court testimony before proceeding with any evictions.<sup>21</sup>

**VI. Opinions of Local Advocates**

According to the West Virginia Legal Aid Society, there does not seem to be a problem in this arena.

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<sup>20</sup> The Executive Director indicated that the Housing Authority is willing to consider evidence from a broad range of sources.

<sup>21</sup> The Housing Authority is waiting to hear whether these tenants will be convicted. A conviction, however, is not dispositive, and the Housing Authority will consider the evidence presented to the courts in making its final decision.