

Chapter 7

Challenging a Denial of Housing

Legal Tactics: Finding Public and Subsidized Housing
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Words in *italics* appear in the
Glossary in the back of this book

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If you have been denied public or subsidized housing, you have a right to challenge this decision. And people do challenge denials and win. But to challenge a denial, you need to learn the rules.

This chapter will give you information about rules for different housing programs. It will also give you practical suggestions about how to make the case that your application should be approved.

These rules are also good to know about **before you apply**. Knowing the reasons that you might be denied can help you focus your efforts on certain programs and give you ideas about how to prepare a better application.

Reasons for Denial

1. When can I be denied public housing?

The laws about public housing say that a housing authority sometimes **must** deny your application, and sometimes **may** deny your application. These laws are slightly different for state and federal public housing.

If you get a denial letter, you should read it carefully to see what the reasons for the denial are. If you have applied for both state and federal public housing at a housing authority that maintains separate waiting lists, the letter may say that one application has been denied but the other one is still being decided. If you have any questions about what your denial letter means, you should call the housing authority.

Federal public housing

If you are applying for federal public housing, a housing authority **must** deny your application if it finds that:

- A household member is currently engaged in illegal use of a drug, or the Housing Authority has reasonable cause to believe a household member's illegal use of a drug or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.¹
- The Housing Authority has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.² **Important:** before denying a person housing based on illegal drug use or alcohol abuse, a housing authority may consider evidence of rehabilitation.³
- Any member of your household is subject to a lifetime registration requirement under a state sex offender registration program.⁴
- Any household member has been convicted of the manufacture or production of methamphetamine in federally assisted housing.⁵

- Any household member has been evicted from federally assisted housing for *drug-related criminal activity* within the past three years.⁶ **Important:** a housing authority can also let your household in if the person who engaged in the *drug-related criminal activity* has successfully completed a supervised, approved rehabilitation program, or if the circumstances leading to the eviction no longer exist—for example, the household member has died or is in jail.⁷

In addition to the automatic denials listed above, a housing authority **may** deny applicants “whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment.”⁸ This means that a housing authority has wide *discretion* over whom it allows into its federal public housing programs. In general, this means a housing authority will consider your rent-paying history and will look at whether you have a record of disturbance of neighbors, destruction of property, or housekeeping habits at prior residences which may adversely affect the health, safety, or welfare of other tenants.⁹

State public housing

Massachusetts law sets out several reasons that a housing authority will deny an application for its state public housing program.¹⁰ Your application for state public housing will be denied if you or anyone in your household:

- Have disturbed a neighbor or neighbors in a prior residence and continuing that behavior would substantially interfere with the rights of other tenants to peaceful enjoyment of their units or the rights of housing authority employees to a safe and secure workplace.
- Have caused damage or destruction of property at a prior residence in a way that would, if repeated, have a serious effect on the public housing development or any of its units.
- Have displayed living habits or poor housekeeping at a prior residence which, if continued, would pose a substantial threat to your health or safety or that of other tenants or public housing employees or would adversely affect the decent, safe, and sanitary condition of all or part of the housing.
- Have engaged in criminal activity or discriminatory activity which, if repeated, would interfere with or threaten the rights of other tenants or housing authority employees.
- Have a history of nonpayment of rent. **Important:** if you paid at least 50% of your monthly income toward rent each month during a tenancy in private housing, but you could not pay the full rent, an eviction for

nonpayment of rent is not a reason to deny your application for public housing. Also, if someone other than the person with the nonpayment history can assume responsibility for rent in the new housing, there will be no disqualification.

- Have a history of failure to obey leases in a way that would be harmful to the health, safety, security, or peaceful enjoyment of other tenants or of housing authority employees.
- Have failed to provide information reasonably necessary for the housing authority to process your application.
- Have intentionally given false information as part of the current application or a prior application filed within the last three years.
- Have acted in an abusive or threatening way toward a housing authority employee during the application process or any prior application process within the last three years.
- Do not intend to occupy public housing as your primary residence.
- Are a current illegal user of one or more controlled substances.¹¹

The state regulations require a housing authority to let you show *mitigating circumstances*, to explain why you should be admitted into public housing, **before** rejecting you. This explanation can include proof that you or a household member have been rehabilitated or are in recovery, the length of time since you did anything objectionable, and many other factors.¹²

2. When can I be denied a voucher?

Section 8 vouchers

If you have applied for a Section 8 voucher, a housing agency **must** deny your application for certain reasons, and **may**—but is not required to—deny it for other reasons.

A housing authority **must** reject your application for a Section 8 voucher if it finds that you or someone in your household:

- Have not signed a required consent or verification form.¹³

- Have been evicted from housing assisted under the program for serious violation of the lease.¹⁴
- Have not submitted information about your immigration status.¹⁵ For more information, see **Chapter 9: Immigrants and Housing**.
- Are a non-disabled, non-veteran student under 24 years old at a place of higher education, do not have a dependent child, and are not otherwise eligible for a voucher.¹⁶
- Are currently engaged in use of an illegal drug.¹⁷
- Have a history or pattern of abuse of illegal drugs or alcohol that the housing authority believes may threaten the health, safety, or peaceful enjoyment of other residents.¹⁸
- Are subject to a lifetime registration requirement under a state sex offender registration program.¹⁹
- Have been convicted of the manufacture or production of methamphetamine in federally assisted housing.²⁰
- Have been evicted from federally funded housing for *drug-related criminal activity* within the past three years.²¹ **Important:** A housing authority can let your household into the program if the household member who engaged in the drug-related criminal activity has successfully completed a supervised, approved rehabilitation program, or if the circumstances leading to the eviction no longer exist—for example, the household member has died or is in prison.²² You can also try to show that the person is no longer a member of the applying household.

A housing authority **may**—but is not required to—deny your application for a Section 8 voucher if you or a member of your household.²³

- Have been evicted from federally funded housing in the last five years.
- Have ever been terminated from the Section 8 voucher program.
- Have committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- Currently owe rent or other amounts to any housing authority for a Section 8 or federal public housing tenancy.

- Have not reimbursed any housing authority for money paid to a Section 8 landlord for rent, damage to the apartment, or other amounts owed under the lease.
- Do not obey an agreement with the housing authority to pay amounts owed to the housing authority.
- Have engaged in or threatened abusive or violent behavior toward housing authority staff.
- Willfully and persistently fail to fulfill your obligations under the welfare-to-work voucher program.²⁴
- Are currently or were recently engaged in drug-related, violent, or other criminal activity that may threaten the safety or right to peaceful enjoyment of other residents, close neighbors, or employees of the housing authority.²⁵ **Important:** If the housing authority previously denied admission engaged in criminal activity, the applicant can ask the housing authority to reconsider the application if the applicant can show that the person who engaged in misconduct has not engaged in such behavior during what the housing authority thinks is a reasonable period.²⁶

Alternative Housing Voucher (AHVP)

If you have a disability and apply for an Alternative Housing Voucher, you can be denied a voucher for the same reasons that you could be denied state public housing.²⁷ See **Question 1**.

Massachusetts Rental Voucher (MRVP)

If you have applied for a voucher through the Massachusetts Housing Voucher Program (MRVP), you can be denied housing for the same reasons that you could be denied state public housing. See **Question 1**. You can also be denied MRVP if you or a member of your household:²⁸

- Owe back rent, damages, or vacancy loss payments to a housing authority and has not entered into a repayment agreement. (Vacancy loss payments are payments made by a housing authority to a landlord where a tenant vacated the unit without giving proper notice.)
- Have failed to stay current with a repayment agreement with a housing authority for back rent, damages, or vacancy loss payments.

- Have failed to comply with the terms of a repayment agreement, which includes repeated late or partial payments without a housing authority's prior approval.
- Have been evicted for *good cause* from public housing or state-funded housing through a *judgment for possession*.

Note: The *good cause* must be related to tenant behavior, and does not include situations where the owner brought the eviction case for business, economic, or personal reasons and the tenant was not at fault.

- Have failed to comply with the terms of an MRVP voucher.

3. When can I be denied private multifamily subsidized housing?

Federally subsidized housing

If you are applying for federally subsidized multifamily housing, an owner **must** reject your application if you or a member of your household:

- Are currently using illegal drugs.²⁹
- Have a history of illegal drug use or abuse of alcohol that the owner believes may threaten the safety or right to peaceful enjoyment of other residents.³⁰
- Have been evicted from federally funded housing for *drug-related criminal activity* in the past three years or possibly longer.³¹ An owner could decide to let your household in if the person involved in the activity successfully completes an approved supervised drug rehabilitation program or has passed away or is in prison.³²
- Are subject to a lifetime registration requirement under a state sex offender registration program. The owner must check to see if any household members are subject to the requirement in Massachusetts and in other states where they have lived.³³

An owner **may**—but is not required to—deny your application for reasons based on your past tenant history. The owner may also deny your application if you or a member of your household engaged in any *drug-related criminal*

activity, violent criminal activity, or other criminal activity that may threaten the safety or right to peaceful enjoyment of other residents, people living in the immediate vicinity, or the owner's employees.³⁴ The rules do not state how recently before your application these actions would have had to occur in order to disqualify you from federally subsidized housing.³⁵

The owner may also allow the family to be admitted to the housing development, but not admit the individual household member who caused the problem.³⁶

In evaluating your application, owners of federally subsidized housing must consider factors about the person who engaged in the misconduct, such as:

- How involved the person was in the bad behavior.
- How serious the offense was.
- Whether the person has gone through rehabilitation.
- What effect denying housing to an entire family will have on innocent household members.
- Whether the person has taken steps to mitigate the problem.³⁷

An owner of federal multifamily housing can also visit your apartment to evaluate your housekeeping.³⁸

State-subsidized housing

If you are applying for subsidized multifamily housing which is funded through the state agency, MassHousing (formerly Massachusetts Housing Finance Agency, MHFA), the owner or management company could reject your application if it appears that:

- There is a reasonable risk that you may be unable or unwilling to pay the rent.
- There is a reasonable risk that you or someone in your control may interfere with other residents' health, safety, security, or right to peaceful enjoyment of their apartments.
- There is a reasonable risk that you or someone under your control may intentionally damage or destroy property.
- You lied on your application for housing.³⁹

Before a MassHousing owner denies your application, the owner must consider whether the people who gave you negative references are biased against you in some way—for example, a former landlord is still angry with you because you called the board of health.

The owner must also consider how recent the information about you is, as well as whether there are any *mitigating circumstances*, that is, reasons why you should be given another chance to show that your behavior is different and better now than it was before. This would include rehabilitation efforts. If you have a history of nonpayment of rent in private-market apartments, the MassHousing owner must look at how much of your income you had to pay for rent and whether the MassHousing subsidy would help your financial situation so that you would be able to afford the rent.⁴⁰

4. Can I be denied housing because of a criminal record or a history of substance abuse?

Yes, you can be denied housing because of a criminal record or history of substance abuse. The exact reasons for denial depend on the type of housing you are applying for. In general, the following categories of behavior automatically prevent you, either permanently or for a limited time, from getting certain types of housing. In all other cases, landlords are supposed to consider whether circumstances in your life are different now or whether there is evidence that you are likely to be a good tenant. It will be up to you, however, to make your case.

Currently using illegal drugs

If you or any member of your household are currently using illegal drugs, you must be denied federally funded and state-funded housing.⁴¹ For state-funded public housing and MRVP and AHVP vouchers, a housing authority may presume that use of illegal drugs within the past 12 months demonstrates current use, unless you can persuade them that all use of illegal drugs has permanently stopped.⁴²

History of illegal drug use or abuse of alcohol

If you apply to federally funded housing, a housing agency or subsidized landlord must deny you assistance if it reasonably believes that you or any member of your household has a history of substance abuse that will interfere with the rights of other tenants.⁴³ The housing agency or subsidized landlord must, however, consider whether the abuse has stopped or whether a person

has successfully completed a supervised rehabilitation program or been rehabilitated.⁴⁴ This denial requirement does not apply to state-funded housing. Most state-funded public housing authorities will, however, screen applicants for a pattern of alcohol or drug abuse that affects other residents, and they may deny admission for this reason.

Evicted for drug-related criminal activity

If you or any member of your household has been evicted from federal housing for *drug-related criminal activity*, you are generally not eligible for (are barred from) federally funded housing for a three-year period from the time of eviction.⁴⁵ A housing authority or owner may, however, choose to have a longer period of disqualification, as long as it is “reasonable.” *Drug-related criminal activity* includes the illegal manufacture, sale, distribution, or use of any illegal drug, or possession of any illegal drug with intent to manufacture, sell, distribute or use the drug.⁴⁶ This three-year automatic bar does not apply to state housing, but state-aided housing authorities will screen applicants for any past eviction from subsidized housing.

Convicted of manufacturing speed

If you or someone in your household has been convicted of manufacturing or producing methamphetamine (speed), you are permanently not eligible for (are barred from) federal public housing, Section 8 vouchers, and developments funded through the Section 8 moderate rehabilitation program.⁴⁷ This mandatory bar does not apply to other federal multifamily housing programs or any state-funded housing programs.

Lifetime sex offender registration requirement

If anyone in your household is subject to a lifetime registration requirement under a state sex offender registration program, you are permanently ineligible for federal public housing, a Section 8 voucher, and certain federally funded multifamily housing.⁴⁸ This permanent bar does not apply to state-funded housing programs.⁴⁹

Criminal activity

Housing agencies and subsidized landlords **may**—but are not required to—deny you **federally** funded housing due to any drug-related or violent criminal activity, or any other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of other residents, people living in the immediate vicinity; or employees of the housing agency or landlord.⁵⁰ Before a housing authority or subsidized landlord can deny your application for housing, they must give you an opportunity to challenge the accuracy or relevance of your criminal record. See **Chapter 6: Tenant Screening**.

You can also be denied admission to **state**-funded housing programs for criminal activity which, if repeated, would threaten the rights of other tenants or housing authority employees to be secure in their persons or in their property.⁵¹

Note: If you are denied admission because you have engaged in certain crimes, such as prostitution or soliciting sex, you may be able to argue to the landlord that these are not crimes that threatened the health, safety, or peaceful enjoyment of tenants, neighbors, or employees.

Turning a Denial Around

5. What steps can I take to turn a denial around?

Generally, to challenge a denial of your application, you *appeal* the denial. The housing authority or landlord will then be required to hold a meeting called a *hearing* or *conference* or *informal conference* where the denial will be reconsidered. Note that even though the word “appeal” is used, you are entitled to only one hearing or conference, with different programs calling the meeting by different names. You are “appealing” the staff person’s initial decision to deny you, and the one place that appeal will be heard is at the *hearing* or *conference* or *informal conference*.

There are a few important steps to take in preparation for your hearing.

Read the denial letter carefully

Every denial letter must tell you the reasons for the denial. Although it should provide enough detail to allow you to prepare your side of the case, the letter may have only a brief statement. The letter may also tell you which law or regulation the housing agency is using to reject your application. If the notice is vague or minimal, noting simply “criminal activity” or “bad housing history,” ask for a new notice. Say you have a right to know which facts are being used to reject you. Whatever the letter says, you will need to find out as much as you can before your meeting about why you were denied housing. To find out the details about why you were denied, you should call the Tenant Selection Office for the development and ask for the information.

Request a hearing

To challenge a denial, do exactly what the notice says. You must request a *hearing* (sometimes called a *conference*) in writing by the deadline noted in your denial letter. Your request must go to the person and place noted in the denial letter. See **Questions 8 and 9**.

Ask for documents before the hearing

As soon as possible after you get a denial letter, you should ask to see the entire file that a housing authority or subsidized landlord has kept on your application. You should then make copies of everything in the file that has to do with why you were denied. The law says that housing authorities and landlords have to let you examine and copy these documents before the hearing. If you want copies, though, you may have to pay for them.⁵²

You may find when you look at these documents that there are errors. For example, there may be a CORI report (Criminal Offender Record Information) on you that contains someone else's crimes or that contains cases against you that were dismissed, which is illegal.⁵³ There may be incorrect credit information. You may find that a landlord has given you a bad reference. For more about how to deal with these issues, see **Chapter 6: Tenant Screening**.

Find the law

If the letter tells you the law or regulation that your denial is based on, contact a law library in your area or a local Legal Services office and ask for a copy of this law or regulation. For a list of law libraries and Legal Services offices, see the **Directory** in the back of the book.

- To find **state** housing laws on-line, go to: www.lawlib.state.ma.us.
- To find **federal** housing notices and handbooks on-line, go to: www.hud.gov/library/index.cfm. To find **federal** statutes (U.S. Code) and regulations, go to: www.gpoaccess.gov.

Compare the law and the denial letter

Read the denial letter again. Then read any rules that are being used as a reason to deny you housing and see whether your situation fits what the law says. If the law in the denial letter does not cover your particular situation, you need to point that out at your hearing. Bring your denial letter to the hearing, and bring the law or regulations that the denial letter refers to. Explain why the law referred to in the denial letter does not apply to you.

For example, a housing authority may deny you a Section 8 voucher under a rule that says you must be denied a voucher if you were evicted from federally funded housing for drug-related activity. But if, in fact, you were evicted from private-market housing that was not subsidized, or the person who engaged in the drug-related activity is in jail and no longer in your household, this rule does not apply to you.

Bring letters of support and witnesses to the hearing

If the denial is based on facts which are true but now outdated, the best thing you can do to challenge the denial is to bring documentation and people to a hearing to show that your circumstances have changed and that you will now be a good tenant. Make a “that was then, this is now” argument. **Letters of support or the fact that someone will take the time to come with you to a hearing can make a positive impression.** Letters from a current employer, probation officer, counselor, housing advocate, social worker, or anyone who can assure that your circumstances have changed are especially helpful. Letters from friends can be useful if they are detailed and acknowledge the former problem and describe the change in you. A housing authority will give more weight to a letter if it is in the form of an *affidavit*, meaning that it is a signed “under oath.”

If you are going to bring witnesses, prepare them for the hearing. Tell them what you will be asking them and think about what the hearing officer may ask them and go over this with them.

If you are not absolutely positive that a witness you plan to bring to the hearing will speak favorably about you, do not bring that person. Get a letter/affidavit from him or her instead. Also, it is a good idea to get letters from people you are sure will come, because sometimes they don't. Letters from a current landlord or neighbor that assure that you have been or will be a good tenant can be very helpful, too. A good tenant is someone who:

- Pays the rent on time.
- Complies with the terms of the lease.
- Keeps a dwelling unit in good condition.
- Does not disturb neighbors or damage property.
- Does not engage in criminal activity, including using illegal drugs.

The letters that you bring to your appeal hearing should specifically talk about whatever the reasons were for the denial of your application. For example, if the owner or housing authority denied you because they think you had bad housekeeping habits, you should bring letters from your landlord or a social worker who regularly visited you, saying that you kept your home in clean, good condition. If you were denied because someone told the housing authority that your children cause noise, bring a letter from a neighbor (or

bring the neighbor) saying where she lived in relation to your apartment and that she was not disturbed by your children.

If you are homeless, or have lived with someone else and not been a tenant yourself, letters from anyone who has been around you are better than nothing. For example: A shelter employee can say you were quiet and followed the rules. A neighbor of the person you stayed with can say she never heard any noise or was aware of drugs or any problems at all while you were there. And, even if the neighbor did not know you were there, a letter saying that there were no problems coming from the apartment where you say you were staying can be helpful.

Make an extra copy of each document to give to the hearing officer. Highlight the important sections. This makes it easier for the officer to read and helps keep the issues clearer in everyone's mind. **Remember to keep copies of everything for yourself.**

Make your case at the hearing

The *conference* or *hearing* is your chance to show a housing authority or subsidized landlord that you will be a good tenant. How you look and act can be as important as what you say. You are being sized up as a person and as a potential tenant, so impressions matter a lot. Dress as nicely as you can, sit up straight in your chair, and make direct eye contact with the hearing officer while you are talking. Be respectful and sincere.

You want to make your case to convince the housing agency either that it is wrong in its understanding of your situation or that there are special circumstances that it should consider when deciding whether to allow you into the program. For example, you may find out that you were denied housing because of a bad landlord reference. At the informal conference, you can show the housing authority that the landlord who gave the reference did not tell the truth about you because he was angry with you for having called the board of health to report bad conditions in the apartment. To show this, bring a copy of the board of health inspection report.

Be sure to prepare for your hearing. You want to be factual, not emotional, during your presentation. Using the Worksheets in the **Reference Materials** at the end of this chapter, list the things you need to cover to make your case. Play “devil’s advocate.” List all the arguments you can think of that the housing authority or owner may make about why they denied your application. Using the Worksheets in the **Reference Materials** at the end of this chapter, prepare your response to each one. A housing authority is more likely to believe what you say if you bring proof of every fact you are talking about. For example, you would not just say you had called the board of health, you would

bring the report to prove it. You would not just say you had completed a drug rehabilitation program, you would bring a letter or certificate from the program. You would not just say you attend AA meetings, you would bring a letter from your sponsor.

Also, it is important to give hearing officers a sense of what you currently do that is positive, and not just focus on what you don't do anymore. If you are employed, bring a letter (or at least pay stubs) from your employer. If you live on disability payments, talk about what you do during the day, such as performing volunteer work or attending day programs. If you are caring for a young child, you can highlight that. Put yourself in the hearing officer's shoes—she knows about some negative history and will be looking for information about what has changed.

6. How can I show that my circumstances have changed?

If you have been denied housing because of past misconduct by you or someone in your household, at your *hearing* or *conference* you should present information that shows special or *mitigating circumstances*—that is, why you should be given another chance to show that the past bad behavior is unlikely to be repeated in the future.

Criminal records and substance abuse

If you are denied public housing because of your criminal record, the housing authority will send you the denial in writing. If the denial was based on a criminal record, you have the right to see the record that the housing authority or subsidized owner based its decision on.⁵⁴ At the appeal hearing, you should explain to the housing authority the behavior that led to the denial. You need to show that the behavior that led to the denial is in the past. For example, your presentation could include proof that the person who engaged in the misconduct:

- Was abusing drugs or alcohol at the time of the crimes, but has since successfully completed an approved supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated or is in recovery now.⁵⁵
- Has participated in counseling and social service programs.⁵⁶
- Has passed away or is in prison.⁵⁷

- Has not engaged in such behavior for a reasonable period.⁵⁸
- Was not engaged in an offense that was serious or participated to only a minor extent in the offense.⁵⁹
- Met all probation requirements while on probation, and successfully completed probation.⁶⁰
- Has a letter from a previous landlord saying he or she was a good tenant.

Housing agencies and subsidized landlords running federal programs can also consider accepting your application and denying housing only to the household member who engaged in the misconduct.⁶¹

7. If I have been denied housing because of a disability, how can I challenge the denial?

If the reason that you were denied public or subsidized housing is related to a disability or to misconduct related to a disability, you can request a *reasonable accommodation*. In fact, the majority of reversals of denials as of this writing are based on reasonable accommodations. Both federal and state laws require housing agencies and subsidized landlords to make reasonable accommodations for people who have disabilities.⁶² This means that sometimes housing authorities and subsidized landlords need to make exceptions and do things differently in order to enable people with disabilities to participate in a housing program.⁶³ This doctrine is the opposite of other discrimination laws, which require everyone to be treated the same regardless of race and other factors. For this purpose, people with disabilities sometimes have to be treated differently in order to be equal in being able to take advantage of housing programs.

But you must still be able to obey the rules of the housing program. It is wrong to say that, because you are disabled, you must not be held to the rules. If your disability has made you, for example, too noisy to live in housing with others, too dangerous to be around others, or too immobilized by depression to pay your rent or keep your apartment reasonably clean, then you are not qualified for housing. You will have to be able to show that you have made changes or made arrangements so that the problem is taken care of. The law of reasonable accommodation gives you the right to be judged again after you have made those changes.

Mental or physical illnesses, alcohol dependency, and past drug addiction are among the disabilities that may entitle you to a reasonable accommodation. In a request for a reasonable accommodation, you will need to explain:

- That your condition interferes with a major life activity, such as working, walking, thinking, or breathing. That is what makes it a disability. A doctor's certification of your disability will be required.
- The relationship between the misconduct and your disability—in other words, how the disability caused the bad behavior; and
- The steps that you have taken to get rehabilitation, programs you have completed, and information about new treatment or support systems or medications that address the problem.

Here are some examples of people who could be found eligible for housing with a reasonable accommodation:

- A person with learning disabilities who has a poor rent-paying history should not be found ineligible for housing if she is willing to get someone else (for example, a *representative payee* who handles her SSI checks) who will pay her rent directly to the housing authority.
- A person with a disability who has a poor housekeeping history should be found eligible if she receives housekeeping services now.
- A person with a disability who has a history of fighting with former neighbors should not be found ineligible for housing if he is now in treatment, successfully medicated, in control of anger, and not likely to be involved in future fights.

For more information, see **Chapter 10: Reasonable Accommodations**.

The Appeal Process

8. Do I get a notice if I am denied housing?

Yes. If you have been denied public or subsidized housing, you must get a written notice telling you that you have been denied.⁶⁴ **Read this notice very carefully.** It must state the reason that you have been denied housing and tell you the deadline by which you can challenge this denial. **You have a right to challenge (appeal) a denial.**

This appeal is a request for a meeting that may be called a *conference*, *hearing*, or *informal hearing or review*. Whatever it is called, this meeting will be your chance to have the housing authority's or subsidized landlord's decision reconsidered. To get a hearing, **you must make your request in writing to the proper address within the time frame stated in your letter.**

9. How much time do I have to challenge a denial?

A denial letter must tell you the deadline by which you can challenge (*appeal*) the housing agency or subsidized landlord's decision. The rules about deadlines are different for different types of housing.

Important: Save the envelope the decision came in; the postmark will show when it was actually mailed and it will be assumed that you received it 3 days later.

State public housing

If a housing authority turns you down for state public housing, you have the right to request a private conference within **20 days** of the date of the denial letter.⁶⁵ If you request a private conference, it should be held within 30 days of the housing authority's receipt of your request.

Federal public housing

You must request an *informal hearing* in writing within a **reasonable time**,⁶⁶ which is usually stated in the denial letter. If there is no time specified in the letter, you should give your written request to the housing authority as soon as possible after you get the denial letter. Each housing authority's Admissions and Continued Occupancy Plan should say what the deadline is for filing appeals of denials.

Vouchers

If a housing authority denies your application for a Section 8 voucher, the denial notice must tell you how to get an *informal review*.⁶⁷ The notice should include information about the deadline. Each housing authority's Section 8 Administrative Plan should say what the deadline is for filing an appeal of a denial.

If a housing authority denies your application for an MRVP voucher or for an AHVP voucher, your rights to appeal the denial are the same as the rights of state public housing applicants (see above).

Multifamily housing

If you are denied **federal** multifamily housing, you have **14 days** to respond in writing or to request a meeting to discuss the denial.⁶⁸ If the housing is overseen by MassHousing, you may prefer to respond within **5 days**. See **Question 12** of this chapter.

If you are denied **non-federal** multifamily housing overseen by MassHousing, you can request a conference by sending the owner or management company a written letter within **5 working days** after you receive the denial letter.⁶⁹ They will then schedule a conference within 15 days from the date of the notice.

10. How do I challenge a denial of public housing?

State public housing

You can challenge (*appeal*) the denial of state public housing by requesting, in writing, an *informal conference*. In making its decision to accept or deny your original housing application, the housing authority must consider such factors as:

- The severity of the potentially disqualifying conduct.
- The amount of time that has passed since the misconduct.
- The degree of danger to the health, safety, and security of others.
- The degree of danger, if any, to other tenants, their possessions, or the housing development if the conduct recurred.
- The disruption and inconvenience which recurrence would cause the housing authority.
- The likelihood that your behavior in the future would be substantially improved.⁷⁰

In short, the housing authority must weigh your past bad conduct against any *mitigating circumstances*. If it decides to accept your application, it must be reasonably certain that you will not engage in any similar bad conduct in the future.

You must make a request for an *informal conference* within **20 days** of receiving a denial letter. At the conference, the housing authority must either tape-record the proceedings or take accurate notes.⁷¹ You can also tape-record the hearing and take notes. Within 15 working days after the conference, “or as soon thereafter as reasonably possible,” the housing authority must notify you in writing of its decision.⁷²

Before and at the conference, you have the right to examine the documents that the housing authority used in making its decision to deny you.⁷³

If the housing authority still denies your application, you can request a reconsideration of the decision, in writing, within **14 days** of the date that the decision from the conference was mailed to you. You should include in your

request any new relevant information. The housing authority will not hold a new hearing; it will look only at the new information you presented and review what it decided the first time.⁷⁴

Instead of filing a request for reconsideration, or if the housing authority still denies you after the reconsideration, you can appeal the denial to the Department of Housing and Community Development (DHCD). You must mail your written request for review and a hearing to DHCD within **21 days** of the date on when the negative decision was mailed to you.⁷⁵ DHCD will contact you and the housing authority to arrange a date for the hearing, which may be held at the local housing authority for everyone's convenience. This is a new chance for you to present your case all over again, with new witnesses and new letters of support, even if they were not presented at the housing authority level.⁷⁶

If you still lose at the DHCD level, you have the right to have the DHCD decision reviewed by the Superior Court. You must file your written request for judicial review of the agency decision within 30 days of your receipt of the DHCD decision.⁷⁷

Federal public housing

You can challenge the denial of federal public housing by requesting, in writing, an informal hearing. You must make this request within a reasonable time, which is usually stated in the letter. The housing authority must consider when the unfavorable behavior occurred and how serious it was. It can consider factors which might show that your future behavior will be better. Examples of these factors include evidence of rehabilitation and evidence of your willingness to go to appropriate social service and counseling programs.⁷⁸

If you lose your informal hearing, you have no more appeals at the housing authority level. The only way for you to challenge the denial after losing your informal hearing is to sue the housing authority in court.⁷⁹

11. How do I challenge the denial of a Section 8 voucher?

You can challenge the denial of a Section 8 voucher by requesting, in writing, an informal review. The deadline for requesting such review varies among housing authorities, and should be contained in their Administrative Plans. Your denial letter should also spell out the deadline for appealing. At this informal review, you can tell the housing agency why you disagree with its

denial of your application. You will have the opportunity to explain why you think that their information is incorrect or why you think you would be a good tenant in spite of the negative information about your tenant history.⁸⁰

The housing authority can consider the seriousness of the bad behavior, how deeply your family was involved in the bad behavior, mitigating circumstances relating to the disability of a family member, and the effects of the denial on other family members who were not involved in the bad behavior.⁸¹

If the denial was based on criminal activity, a housing authority can change the denial into an acceptance if you show *sufficient evidence* that the members of your household are not currently engaged in criminal activity and have not engaged in such activity for a “reasonable period” of time. The family member with the criminal record can give the housing authority a “certification” (sworn statement) that s/he has not engaged in, and is not currently engaging in, criminal activity, and the statement should be supported by letters from such people as a probation officer, a landlord, neighbors, social service agency workers, and by criminal records.⁸²

After the informal review, the housing authority has to send you a notice telling you its final decision. If you lose the informal review, there are no more appeals within the housing authority unless the housing authority’s Section 8 Administrative Plan specifically provides for another hearing. If you still want to try to get Section 8, you would have to bring a court case against the housing authority. You would have to be able to convince a judge that the housing authority made a legal mistake in denying you.

12. How do I challenge the denial of multifamily housing?

Federal multifamily housing

If you have been denied federally funded multifamily housing, you have **14 days** to respond in writing or to verbally request a meeting to discuss the rejection. Your request should be in writing.

If you meet with MassHousing about your denial, see the section on state multifamily housing, below. If you meet with the owner about your denial, or if you submit a written statement, the meeting or review of your statement must be conducted by a member of the owner’s staff who did not make or

approve the decision to reject you. The property owner must consider factors such as:

- How involved the applicant was in the bad behavior,
- How serious the offense was,
- Whether the person has been rehabilitated,
- What effect accepting or rejecting a family for housing will have on the innocent household members, and
- Whether the person has participated in social service programs.⁸³

If you appeal the rejection, the owner must give you a written final decision within 5 days of your written statement or meeting.⁸⁴ If you lose at this level, there is no further review by the owner. The law is very unclear about what kind of court review of the decision you might be entitled to.

State multifamily subsidized housing

If an owner or manager of multifamily subsidized housing funded through MassHousing (formerly MHFA) denies your application, the owner must send you a written notice which says why you were denied.⁸⁵ You can request a conference by sending the owner or management company a written letter within **5 working days** after you receive the denial letter.⁸⁶ They will then schedule a conference within 15 days from the date of the notice. You will get a letter telling you when and where to appear for the conference.

A MassHousing conference officer will conduct the conference. The management company will explain why they denied your application and present whatever evidence they have. They can talk only about the reasons they included in the denial letter. You should present any evidence that you have and explain why you think your application should not be denied.

If the MassHousing conference officer decides that the owner had the right to deny your application, you will get a written decision, which you can appeal in writing within **5 working days** to the Senior Management Officer at MassHousing. You will then get a written decision about this further review. There is no further administrative review (that is, review within MassHousing) of the decision. If you still want to challenge it, you will have to sue in court. **Note:** Remember that if you have a disability and you think you were denied housing because of your disability, you should request a reasonable accommodation in addition to requesting a review of the denial. The housing provider should respond to your reasonable accommodation request. See **Chapter 10: Reasonable Accommodations** for more information about this.

13. Whom do I meet with to challenge a denial?

The purpose of challenging a denial is to have someone reconsider the housing authority's or subsidized landlord's decision. This is your opportunity to address various concerns raised in the denial letter, show them that certain information was not correct, provide them with documentation that is needed, and explain why you think you would be a good tenant, despite any negative information that may have come up during the application process. Whom you will meet with during your *hearing* varies depending on what type of housing you have been denied.

Public housing

If you have applied to state or federal public housing, the *conference* is run by the housing authority's executive director or someone the director appoints.⁸⁷

Vouchers

If you have applied for a Section 8 voucher, the *informal review* is a meeting with someone at the housing agency where you applied. That person cannot be the person who made or approved the decision to deny you housing or someone who works for that person.⁸⁸ In housing agencies with very small staffs, this rule can sometimes mean that a person must be brought in from the outside to conduct the informal review.

If you have been denied an MRVP voucher or an AHVP voucher, the public housing rules apply (see above).

Multifamily housing

If you have applied for state or federal multifamily housing that is overseen by MassHousing and have requested a meeting within 5 days of receiving the denial, a MassHousing conference officer will conduct the conference. If you have applied for federal housing and have requested a hearing within 14 days, the owner will conduct the conference.

If you have applied for multifamily housing that is not overseen by MassHousing, the meeting or review of your request to reconsider a denial of housing must be conducted by a member of the owner's staff who did not make the decision to reject you. You can choose either to present your case at a hearing or to have the owner review written materials that you have sent in.

Reference Materials

14. Sample Letter to Request a Hearing

Date

Name of housing authority or owner

Address

City, State, Zip

Dear _____:

I would like to request a private conference with you to review the denial of my application for housing that I submitted on _____ (*date*) and you denied on _____ (*date*).

Please notify me of the date and time that a conference will be held.

Thank you.

Sincerely,

Your name

Your address

City, State, Zip

Your telephone number (including area code)

Control number (if applicable)

15. Worksheets to Help You Challenge a Denial of Housing

1

I was denied

- State public housing
- Federal public housing
- Section 8 voucher
- Mass. Rental Housing Voucher (MRVP)
- Alternative Housing Voucher Program (AHVP)
- State multifamily housing
- Federal multifamily housing
- Other type of housing

2

Reason for denial

What was the reason for the denial?

Was there a rule that the reason was based on? If so, what was the rule?
(Get the actual text of the rule and read it.)

3

Their evidence

What evidence does the housing authority or owner have to prove the facts on which their reason for denial is based?

4

New information or proof

What new information or other proof or letters do I have to address their reason for denial?

What circumstances have changed in my life to make me different from the person who did what the housing authority is rejecting me for?

What have I done that can show this change?

Making Your Case

Fill in this part of the worksheet to help you put all the pieces together and map out a position.

Problem	Proof	Solution
1.		
2.		
3.		
4.		

Housing Authority or Owner's Case

Use this part of the worksheet to help you respond to the housing authority or owner's case.

What arguments might the housing authority or owner make against you?	How can you respond?
1.	
2.	
3.	
4.	

16. Denial of Assistance Rules at a Glance

Federal Programs

Program	Mandatory Denials	Mitigating Circumstances
All Federal Programs (Public Housing, Section 8, and Subsidized Multifamily Housing)	A permanent ban for applicants or household members who are sex offenders subject to the lifetime registration requirement	
	A three year ban for applicants or household members previously evicted from federally assisted housing for drug-related activity	Housing may be available for other family members if the one involved in drug-related activity is excluded
	Applicants or household members who are current users of illegal drugs	
	Applicants or household members with a history of drug use or alcohol abuse Housing authorities/owners must deny housing if they have a reasonable belief that this behavior will interfere with rights of other tenants	Whether abuse has stopped or whether applicant has undergone rehabilitation; whether a reasonable accommodation is due
Public Housing and Section 8 Only	A permanent ban for applicants or household members who have been convicted of manufacturing methamphetamine in federally assisted housing	
Section 8 Only	Applicants who refuse to sign and submit forms	
	Previous Section 8 tenants evicted for serious lease violations	
	Applicants who refuse to submit information about their immigration status	
	Applicants who are full time students and fail to meet other eligibility requirements	

Program	Discretionary Denials	Mitigating Circumstances
Federal Public Housing	<p>Housing authorities may establish guidelines to deny applicant for conduct reasonably related to the tenancy, including:</p> <ul style="list-style-type: none"> • Nonpayment of rent in past tenancies • Conduct in past residence • Poor housekeeping • Drug-related activity • Violent crimes, crimes to property, or crimes threatening health or safety of others within a reasonable time of the application 	<p>Housing authorities must consider evidence of:</p> <ul style="list-style-type: none"> • Rehabilitation • Willingness to accept counseling or other services • Willingness to increase family income • Availability of training
Section 8	<p>Housing authorities may deny Section 8 applicant if evidence of:</p> <ul style="list-style-type: none"> • Eviction from public housing or Section 8 within 5 years • Previous termination from the Section 8 program • Fraud, bribery, corruption in federal housing • Rent owed to federal housing agency, or failure to obey agreement to pay back rent • Money owed to previous Section 8 landlord • Abusive/violent acts toward housing authority staff • Previous failure to comply with Family Self-Sufficiency program (FSS) • Current or recent drug-related, violent or other criminal activity which may threaten safety of other residents or employees 	<p>Housing authorities may consider:</p> <ul style="list-style-type: none"> • Seriousness of the case • Extent of participation by individual family members • how a disability affects the situation • the effect of the denial on other family members • Participation in a rehabilitation program <p>A housing authority cannot deny applicant based on:</p> <ul style="list-style-type: none"> • Where family lives/will live • Family characteristics/suitability • If refused other housing assistance • Credit problems or other debt
Subsidized Multifamily Housing	<p>Generally, owners may consider the same factors as housing authorities consider, listed above</p>	<p>Owners must consider:</p> <ul style="list-style-type: none"> • the extent of involvement • the seriousness • evidence of rehabilitation or participation in social services • effect of denial on innocent family members

State Programs

Program	Mandatory Denials	Mitigating Circumstances
State Programs (Public Housing, AHVP, and MRVP)	Housing authorities must deny housing if they determine that applicant or household member: <ul style="list-style-type: none"> • Disturbed a neighbor at previous residence, • Damaged property at previous residence, • Had poor housekeeping, or • Engaged in criminal activity, Any of which would interfere with or threaten the safety, security or rights of other tenants or LHA employees. <ul style="list-style-type: none"> • Has a history of nonpayment of rent (unless evicted and had paid more than 50% of income) • Failed to meet lease terms which resulted in threat to health and safety • Failed to give housing authority necessary information • Made misrepresentation on an application or displayed abusive or threatening behavior toward housing authority staff within three years • Does not intend to use housing as primary residence 	Housing authorities must consider evidence of: <ul style="list-style-type: none"> • Severity of the conduct • Amount of time that has passed since conduct occurred • Degree of danger to others or to property • Disruption that a recurrence would cause • Likelihood of improved behavior
	<ul style="list-style-type: none"> • Is a current illegal user of controlled substance (use within previous year creates presumption of current use) 	Housing authority may admit if applicant makes convincing showing of permanent cessation of illegal use
MRVP only	MRVP programs must deny if they determine that applicant or household member: <ul style="list-style-type: none"> • Owes rent or damages to a housing authority and does not have a repayment agreement, or has not complied with a repayment agreement • Has been evicted for good cause from state-funded housing through judgment for possession • Has failed to comply with an MRVP voucher 	
Program	Discretionary Denials	Mitigating Circumstances
MassHousing (Multifamily Subsidized Housing)	MassHousing properties may deny if there is a reasonable risk that applicant: <ul style="list-style-type: none"> • will not pay rent • will interfere with other residents' health, safety, or peaceful enjoyment • will destroy property • lied on the application for housing 	Owners must consider: <ul style="list-style-type: none"> • Whether negative references are biased • How recent information is • For non-payment, how much income was needed to pay

Endnotes

- ¹ 24 C.F.R. § 960.204(a)(2): A household member is “currently engaged in” illegal use of a drug if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.
- ² 24 C.F.R. § 960.204(b).
- ³ 24 C.F.R. § 960.203(d)(2).
- ⁴ 24 C.F.R. § 960.204(a)(4).
- ⁵ 42 U.S.C. § 1437n(f); 24 C.F.R. § 960.204(a)(3).
- ⁶ 24 C.F.R. § 960.204(a)(1). See also 24 C.F.R. § 5.100 for definition of *drug-related criminal activity*, and 21 U.S.C. § 802, which defines the term “controlled substance.”
- ⁷ 42 U.S.C. § 1366l(a); 24 C.F.R. § 960.204(a)(1).
- ⁸ 24 C.F.R. § 960.202(a)(2)(iii).
- ⁹ 24 C.F.R. § 960.203(c)(1) and (2).
- ¹⁰ 760 C.M.R. § 5.08(1)(a) through (k).
- ¹¹ According to 760 C.M.R. § 5.08(1)(k), a person’s “illegal use of a controlled substance within the preceding 12 months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances.” This disqualification does not apply to applicants for housing provided through a treatment program.
- ¹² See 760 C.M.R. § 5.08(2), which requires a housing authority to consider all relevant circumstances, including the severity of the behavior, the time since the behavior occurred, the danger and disruption to others if you engaged in that behavior in public housing, and the likelihood that your behavior has improved.
- ¹³ 24 C.F.R. § 982.552(b)(3).
- ¹⁴ 24 C.F.R. § 982.552(b)(2).
- ¹⁵ 24 C.F.R. § 982.552(b)(4); 24 C.F.R. §§ 5.500 et seq.
- ¹⁶ 24 C.F.R. § 982.552(b)(5); 24 C.F.R. § 5.612. These grounds of denial apply only to an individual student, not the entire household. An institution of higher education is defined in 20 U.S.C. § 1002.
- ¹⁷ 24 C.F.R. § 982.553(a)(1)(ii)(A).
- ¹⁸ 24 C.F.R. § 982.553(a)(1)(ii)(B).
- ¹⁹ 24 C.F.R. § 982.553(a)(2)(i).
- ²⁰ 42 U.S.C. § 1437n(f); 24 C.F.R. § 982.553(a)(1)(ii)(C).
- ²¹ 24 C.F.R. § 982.553(a)(1)(i). See 24 C.F.R. § 5.100 for definition of *drug-related criminal activity*, and 21 U.S.C. § 802(6) for definition of the term “controlled substance.”
- ²² 42 U.S.C. § 1366l(a); 24 C.F.R. § 982.553(a)(1)(i).

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- ²³ See 24 C.F.R. § 982.552(c)(1)(i) through (vii), (ix) through (xi).
- ²⁴ 24 C.F.R. § 982.552(c)(1)(x).
- ²⁵ 24 C.F.R. § 982.552(c)(1)(xi). See 24 C.F.R. § 5.100 (for definition of *drug-related criminal activity* and “violent criminal activity”). 42 U.S.C. § 1366l(c); 24 C.F.R. § 982.553(a)(2)(ii). See *124 Green Street, LLC v. Rogers*, No. 04-SP-00040 (NE Housing Court, Feb. 24, 2004) (in a Section 8 termination case, court found that the housing authority cannot terminate based on a criminal record that showed that charges against tenant were dismissed. Evidence that charges are dismissed cannot be evidence of guilt.).
- ²⁶ 42 U.S.C. § 1366l(c); 24 C.F.R. § 982.553(a)(2)(ii)(C).
- ²⁷ 760 C.M.R. § 5.08(3).
- ²⁸ 760 C.M.R. § 49.03(2).
- ²⁹ **Federal multifamily housing:** 42 U.S.C. § 13661(b)(1)(A); 24 C.F.R. § 5.854(b)(1); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(iii).
- ³⁰ **Illegal Drugs: Federal multifamily housing:** 42 U.S.C. § 13661(b)(1)(B); 24 C.F.R. § 5.854(b)(2); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(iii); **Alcohol abuse: Federal multifamily housing:** 24 C.F.R. § 5.857; **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(b)(4).
- ³¹ 42 U.S.C. § 13661(a).
- ³² 42 U.S.C. § 13661(b)(2); **Federal multifamily housing:** 24 C.F.R. § 5.854(a); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(i).
- ³³ 42 U.S.C. § 13663; **Federal multifamily housing:** 24 C.F.R. § 5.856; **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(2); **Federal sex offender registration:** 42 U.S.C. § 14071(a)(3); 42 U.S.C. § 14072(b-d); **Massachusetts Sex Offender Registry Board:** G.L. c. 6, §§ 178C-178P; 803 C.M.R. § 1.00.
- ³⁴ 42 U.S.C. § 13661(c); **Federal multifamily housing:** 24 C.F.R. § 5.855(a); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(b)(1).
- ³⁵ 42 U.S.C. § 13661(c); **Federal multifamily housing:** 24 C.F.R. § 5.855(b); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(b)(2).
- ³⁶ 24 C.F.R. § 5.852(b).
- ³⁷ **Federal multifamily housing:** 24 C.F.R. § 5.852(a); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518.
- ³⁸ *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 4.
- ³⁹ *MHFA Model Tenant Selection Plan*, REV. 9/09, Attachment 2, found at www.masshousing.com.
- ⁴⁰ *Id.*
- ⁴¹ **Federal:** 42 U.S.C. § 13661(b)(1); **Federal public housing:** (drugs) 24 C.F.R. § 960.204(a)(2), and (alcohol) 24 C.F.R. § 960.204(b); **Federal multifamily housing:** (drugs) 24 C.F.R. § 5.854(b)(1), and (alcohol) 24 C.F.R. § 5.857; **Section 8 moderate rehabilitation program:** (alcohol) 24 C.F.R. § 882.518(b)(4), and (drugs) 24 C.F.R. § 882.518(a); **Section 8 voucher program:** (drugs) 24 C.F.R. § 982.553(a)(1), and

(alcohol) 24 C.F.R. § 982.553(b)(3); **State public housing, Massachusetts Rental Voucher Program, Alternative Rental Housing Program:** 760 C.M.R. § 5.08(1)(k).

42 760 C.M.R. § 5.08(1)(k). State regulations specifically exclude housing authorities from the requirement to consider mitigating factors in making their decision to accept or deny the applicant when the basis of the denial is current use of illegal drugs. See 760 C.M.R. § 5.08(2), which cross-references 5.08(1)(a)-(j), thereby excluding (k).

43 **Federal public housing:** 24 C.F.R. § 960.204(a)(2).

44 42 U.S.C. § 13661(b)(2); **Federal public housing:** 24 C.F.R. § 960.203(d)(2). The applicable federal statute and regulations state that the agency *may* consider mitigating circumstances. However, the requirement in disability laws that housing providers make reasonable accommodations for persons with disabilities (including alcoholism and past substance abuse addiction) mandates consideration of mitigating factors.

45 42 U.S.C. § 13661(a); **Federal public housing:** 24 C.F.R. § 960.204(a)(1).

46 42 U.S.C. § 1437a(b)(9); 24 C.F.R. § 5.100. As of January, 2009, it is no longer a crime to possess less than one ounce of marijuana. See G.L. c. 94C, § 32L. It is unclear at this time how housing authorities will treat such an offense in the future.

47 42 U.S.C. § 1437n(f); **Federal public housing:** 24 C.F.R. § 960.204(a)(3); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(ii); **Section 8 voucher program:** 24 C.F.R. § 982.553(a)(1)(ii)(C).

48 42 U.S.C. § 13663(a); **Federal public housing:** 24 C.F.R. § 960.204(a)(4); **Federal multifamily housing:** 24 C.F.R. § 5.856; **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(2); **Section 8 voucher program:** 24 C.F.R. § 982.553(a)(2)(i).

49 **Federal sex offender registration:** 42 U.S.C. § 14071(a)-(b); 42 U.S.C. § 14072(b)-(d); **Massachusetts Sex Offender Registry Board:** G.L. c. 6, §§ 178C-178Q; 803 C.M.R. §§ 1.00 et seq.

50 The language varies slightly according to the particular program. **Federal:** 42 U.S.C. § 13661(c); **Federal public housing:** 24 C.F.R. § 960.203(c)(3) (only makes reference to “other tenants”); **Federal multifamily housing:** 24 C.F.R. § 5.855(a); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518 (b)(1); **Section 8 voucher program:** 24 C.F.R. § 982.553(a)(2)(ii); **State:** G.L. c. 121B, § 32; 760 C.M.R. § 5.08(1)(d). As of January, 2009, it is no longer a crime to possess less than one ounce of marijuana. See G.L. c. 94C, § 32L. It is unclear at this time how housing authorities will treat such an offense in the future.

51 G.L. c. 121B, § 32; 760 C.M.R. § 5.08(1)(d).

52 760 C.M.R. § 5.13(1)(e).

53 Some housing authorities and owners will tell you that they cannot let you copy your CORI and take it out of their office. However, state laws say that, with some exceptions, a housing authority must let you inspect and copy records it keeps on you. See G.L. c. 66A, § 2(i), and 760 C.M.R. § 8.04(6). It is a good idea to bring a pen or pencil and some paper and take notes on your CORI when you review your file at the housing authority or subsidized development.

54 If a housing authority or subsidized landlord intends to deny your application for housing based on information in a CORI report, they must give you an opportunity to challenge the accuracy or relevance of the CORI they have received before making a final decision.

State: 803 C.M.R. § 6.11; **Federal:** 42 U.S.C. § 1437d(q)(2); 24 C.F.R. § 960.204(c); 24 C.F.R. § 5.903(f). See also **Chapter 6: Tenant Screening**. These are cases which discuss whether the hearing officer can consider certain types of hearsay evidence at your hearing. *See, e.g., Ervin v. Housing Authority of the Birmingham District* (unpublished), D.C. Docket No. 06-01447-CV-H-S (11th Cir. 2008) (“In the context of an administrative proceeding, we judge the reliability and probative force of hearsay evidence by considering the following factors: “whether (1) the out-of-court declarant was not biased and had no interest in the result of the case; (2) the opposing party could have obtained the information contained in the hearsay before the hearing and could have subpoenaed the declarant; (3) the information was not inconsistent on its face; and (4) the information has been recognized by courts as inherently reliable,” quoting *Basco v. Machin*, 514 F.3d 1177, 1182 (11th Cir. 2008), quoting *J.A.M. Builders, Inc. v. Herman*, 233 F.3d 1350, 1354 (11th Cir. 2000)). *But see Costa v. Fall River Housing Authority*, 453 Mass. 614 (2009) (hearsay can be used to terminate a Section 8 voucher, although it must be reliable, and in this case, a police report was deemed reliable but a newspaper article was not).

- ⁵⁵ 42 U.S.C. § 13661. **Federal public housing:** 24 C.F.R. § 960.203(d)(2); **Federal multifamily housing:** 24 C.F.R. § 5.854(a); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(i)(A); **State:** 760 C.M.R. § 5.08(2).
- ⁵⁶ **Federal public housing:** 24 C.F.R. § 960.203(d)(1)(ii); **Federal multifamily housing:** 24 C.F.R. § 5.852(a) and (c); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(i)(A); **State:** 760 C.M.R. § 5.08(2).
- ⁵⁷ 42 U.S.C. § 13661; **Federal public housing:** 24 C.F.R. § 960.204(a)(1)(ii); **Federal multifamily housing:** 24 C.F.R. § 5.854(a)(2); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(a)(1)(i).
- ⁵⁸ 42 U.S.C. § 13661(c); **State:** 760 C.M.R. § 5.08(2)(b). There is no set answer to the question of what a reasonable period is. It appears to be several years at least, and more if the crime was very serious.
- ⁵⁹ **Federal public housing:** 24 C.F.R. § 960.203(d); **Federal multifamily housing:** 24 C.F.R. § 5.852(a); **State:** 760 C.M.R. § 5.08(2)(a).
- ⁶⁰ Good behavior after probation is the most persuasive information for a housing program.
- ⁶¹ **Federal public housing:** 24 C.F.R. § 960.203(c)(3)(i); **Federal multifamily housing:** 24 C.F.R. § 5.852(b).
- ⁶² **Federal:** 42 U.S.C. §§ 3601 et seq.; 24 C.F.R. § 100; 24 C.F.R. §§ 8 et seq.; **State:** G.L. c. 151B, § 4(6)-(7A); 804 C.M.R. § 2.03.
- ⁶³ **Federal:** 24 C.F.R. § 100.204(a); **State:** G.L. c. 151B, § 4(7A)(2). When applying for federally assisted housing, you may submit the contact information of a family member, friend, or social, health, advocacy, or other organization to the owner of the federally assisted housing “to assist in providing any services or special care” you require and help resolve any issues that may arise during your tenancy. See HUD Housing Notice 2009-13, HUD PIH Notice 2009-36 (September 15, 2009).
- ⁶⁴ **State: Public housing and Alternative Housing Voucher Program:** 760 C.M.R. § 5.05(3). **Federal public housing:** 24 C.F.R. § 960.208; **Section 8:** 24 C.F.R. § 982.554(a).
- ⁶⁵ 760 C.M.R. § 5.13(1)(b).

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- 66 24 C.F.R. § 960.208(a).
- 67 24 C.F.R. § 982.554(a).
- 68 *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 4; *MHFA Model Tenant Selection Plan*, REV: 9/09, Part D, found at www.masshousing.com.
- 69 *MHFA Model Tenant Selection Plan*, REV 9/09, Part D, found at www.masshousing.com.
- 70 760 C.M.R. § 5.08(2).
- 71 760 C.M.R. § 5.13(1)(g).
- 72 760 C.M.R. § 5.13(2).
- 73 760 C.M.R. § 5.13(1)(e).
- 74 760 C.M.R. § 5.13(3).
- 75 760 C.M.R. § 5.13(4); *Madera v. Sec’y of EOCD*, 418 Mass. 452 (1994).
- 76 See *Madera v. Sec’y of EOCD*, 418 Mass. 452 (1994), in which the Supreme Judicial Court held that applicants for state-funded public housing have a constitutionally protected property interest in their eligibility for such housing and therefore are entitled to challenge the denial of their applications in adjudicatory hearings before the Executive Office of Communities and Development (now the Department of Housing and Community Development).
- 77 G.L. c. 30A, § 14.
- 78 24 C.F.R. § 960.203(d).
- 79 Judicial review of a denial of federal housing can be brought under G.L. c. 249, §4, by means of certiorari, which has a 60-day statute of limitations, or by an action for civil rights violations under 42 U.S.C. § 1983, which has a three-year statute of limitations. If the action were by DHCD for the Section 8 program, theoretically this may be under G.L. c. 30A, and a 30-day statute of limitations applies. § 1983 can be used to challenge a decision on fair housing or due process grounds, and also sometimes on the grounds that the decision is contrary to applicable federal law. This is a field of law that is very complicated. The state certiorari statute is necessary, especially if your challenge focuses on the failure of the housing program to comply with agency procedures and policies. It is unclear whether you can use § 1983 to make a challenge that a decision lacks substantial evidence, or that the officer did not exercise discretion properly. The Massachusetts Superior Court has a standing order on administrative challenges under G.L. c. 249, § 4, which basically limits any such review to the record developed at the agency. You may have to request a transcript of the hearing or try to create your own record of what took place depending on the claim.
- 80 24 C.F.R. § 982.554(b)(2).
- 81 24 C.F.R. § 982.552(c)(2)(i).
- 82 24 C.F.R. § 982.553(a)(2)(ii)(C)(1).
- 83 **Federal multifamily housing:** 24 C.F.R. § 5.852(a) and (c); **Section 8 moderate rehabilitation program:** 24 C.F.R. § 882.518(b)(3); *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 2.

⁸⁴ *HUD Multifamily Occupancy Handbook* 4350.3 REV-1, CHG-3 (June 2009), Chapter 2.

⁸⁵ *MHFA Model Tenant Selection Plan*, REV 9/09, Part D, found at www.masshousing.com.

⁸⁶ *Id.*

⁸⁷ **Federal housing:** *informal hearing* required by 24 C.F.R. § 960.208; **State housing:** *informal conference* required by 760 C.M.R. § 5.13(1)(f).

⁸⁸ 24 C.F.R. § 982.554(b)(1).