

# Chapter 4

## Who Has Priority

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*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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- ✓ Has your apartment been condemned?
- ✓ Are you living in a shelter or on the streets?
- ✓ Do you have a severe medical emergency?
- ✓ Do you pay more than half your income for rent?
- ✓ Are you facing domestic violence?
- ✓ Are you a local resident?
- ✓ Are you being evicted through no fault of your own?

If you answer “yes” to these and other questions you may be eligible for a *preference* or *priority* for some housing programs that can help move you up a waiting list more quickly.

This chapter will help you figure out whether you fit into any preference or priority categories.



# Priorities and Preferences

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## 1. What are priorities and preferences?

Because more people apply for public and subsidized housing than there are apartments available, the law requires different housing programs to establish *preferences* and *priorities* for certain people.

Both *preferences* and *priorities* are categories for people with special status or urgent housing needs. Often these words are used interchangeably. For state housing programs, there are *priorities* to see who gets housing first, and then there may be *preferences* about who gets housing first within a *priority*. For federal housing programs, there are usually just *preferences*.

But don't worry about these terms. What is important is whether you fit into any categories that move you up a waiting list more quickly or that get you on a waiting list at all.

### Ask for preferences and priorities

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Not every housing agency or multifamily landlord provides preferences, but many do. Some preferences are required (*mandatory preferences*). Others are optional and not required (*discretionary preferences*). What preferences are required depends upon whether the housing program you apply for receives federal or state funds.<sup>1</sup> So it is important to know whether you are applying for a state- or federally funded housing program.

Some housing agencies have also been given permission from the state to use different preferences to meet the needs of their communities.<sup>2</sup> Because every housing agency and multifamily development will have different preferences, make sure you ask at each place where you apply what their preferences are.

### Proving that you qualify

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If you fit into a preference category, at some point you will need to provide a housing agency or subsidized landlord with documents proving that you qualify for a preference. They may not request these documents until you

reach the top of a waiting list and are approved for housing. But it is good to be prepared for when this happens.

### **If your situation changes**

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Even if you did not qualify for a preference when you first got on a waiting list, if your situation changes and you qualify later, you can still apply for the preference. You should immediately notify all the housing authorities and other housing agencies where you have applied for housing that you now meet the requirements for obtaining a preference. This will move you closer to the top of the waiting list

If you fit into a preference category when you applied but something changed by the time you got to the top of the waiting list, you may lose that preference. For example, if you had a preference because you were homeless when you applied but you are no longer homeless, you may lose that preference. If this happens, you should always check to see if you fit into another preference category, such as a preference for local residents.

## **2. How can I find out what preferences there are?**

If you are applying for public or subsidized housing, housing authorities and subsidized landlords are required to tell you what *preferences* are available so that you have an opportunity to show them whether you qualify.<sup>3</sup> You should ask for a written list of preferences and priorities from each place where you are interested in applying to be sure you are clear about all of the possibilities.

Preferences for all housing programs that a housing authority runs should also be posted at that housing authority's office. Some may make it available on a website, if they have one. **Remember:** Every housing agency and multifamily development will have different preferences, although they may be very similar.

### **Additional documents**

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Although a housing agency or subsidized landlord may have a handout explaining its preferences and priorities, there are documents that are required to spell these out which you can ask for (in addition to a handout). A housing authority must give you these documents if you request them. They include:



- **Admissions and Continued Occupancy Policy (ACOP)**

This is a document that housing authorities who receive federal funds have. It explains all of the policies of the housing authority regarding its federal public housing program, including the preferences for federal public housing.<sup>4</sup>

- **Emergency Case Plan**

This is a document in which a state-funded housing authority sets out an emergency plan explaining priorities for its housing programs (which includes state-funded public housing and MRVP and AHVP vouchers).<sup>5</sup> Some state-funded housing programs have their own *Emergency Case Plan*, and some follow the state's recommended plan.<sup>6</sup>

- **Section 8 Administrative Plan**

This document will tell you what preferences a housing authority or regional nonprofit housing agency has for its Section 8 vouchers.<sup>7</sup>

- **Tenant Selection Plan**

Many multifamily subsidized developments have what is called a *Tenant Selection Plan*. This spells out any *preferences* that a development may allow. If the development is state-funded, this plan should be available both from the manager of the particular development and from MassHousing. You can also find a sample Tenant Selection Plan at [www.masshousing.com](http://www.masshousing.com) in the Rental Housing section by clicking on Property Managers and then Forms and Documents.<sup>8</sup>

### **3. What preferences are allowed in federally funded housing?**

Most federally funded housing programs have no *mandatory*, or required, *preferences*. This includes federally funded public housing, Section 8 vouchers, and federal multifamily housing. For these programs, a housing agency or subsidized landlord gets to decide what preferences, if any, it will offer. Because preferences may be different, when you apply to a federal program, be sure to ask what preferences it has. You have a right to request this information.<sup>9</sup>

## Common preferences

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People who commonly receive *preference* include:<sup>10</sup>

- **Local residents**  
This preference includes people who work or have obtained employment in the area.
- **People facing domestic violence**
- **Working people**  
This preference must always include people who cannot work due to disability or age.
- **People who are homeless or who will imminently become homeless due to no-fault eviction**
- **People with disabilities**
- **Veterans**
- **Elderly or near-elderly.**

## Extremely low income set-aside

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In addition to *preferences*, housing agencies must make sure that each year a certain percentage of federal public housing apartments and Section 8 vouchers go to families who are considered *extremely low income*.<sup>11</sup>

For Section 8 vouchers, a very large portion (**75%**) of the vouchers issued each year by a housing authority must go to *extremely low-income* families. So even if you do not fit into a preference category, if you are *extremely low income*, it is possible that you may get to the top of the waiting list before some applicants who applied after you did. Federal public housing programs must ensure that **40%** of federal public housing units go to those with extremely low income. Once they have met their extremely low income set-aside each year, some federal public housing programs may choose to fill any remaining slots that year with higher-income applicants, even if those applicants are not the next names on the waiting list.<sup>12</sup>

To be extremely low income, you must be at or below 30% of the *area median income*. The chart on the next page tells you what that means for different areas in the state by household size for the year 2009.<sup>13</sup>

Extremely Low-Income Limits								
Household Size	1	2	3	4	5	6	7	8
<b>Barnstable, Berkshire County, Pittsfield, Franklin County, Springfield, Fitchburg-Leominster, Western Worcester County</b>								
30% of median	\$16,300	\$18,650	\$20,950	\$23,300	\$25,150	\$27,050	\$28,900	\$30,750
<b>Boston-Cambridge-Quincy</b>								
30% of median	\$18,950	\$21,650	\$24,350	\$27,050	\$29,200	\$31,400	\$33,550	\$35,700
<b>Brockton</b>								
30% of median	\$16,700	\$19,100	\$21,450	\$23,850	\$25,750	\$27,650	\$29,550	\$31,500
<b>Lawrence</b>								
30% of median	\$17,800	\$20,350	\$22,900	\$25,450	\$27,500	\$29,500	\$31,550	\$33,600
<b>Lowell</b>								
30% of median	\$18,550	\$21,200	\$23,850	\$26,500	\$26,700	\$28,650	\$30,650	\$32,600
<b>Easton-Raynham</b>								
30% of median	\$21,000	\$24,000	\$27,000	\$30,000	\$32,400	\$38,400	\$37,200	\$39,600
<b>New Bedford, Providence-Fall River<sup>14</sup></b>								
30% of median	\$15,350	\$17,550	\$19,750	\$21,950	\$23,700	\$25,450	\$27,200	\$28,950
<b>Taunton-Mansfield-Norton</b>								
30% of median	\$17,800	\$20,300	\$22,850	\$25,400	\$27,450	\$29,450	\$31,500	\$33,550
<b>Eastern Worcester County</b>								
30% of median	\$21,500	\$24,500	\$27,650	\$30,700	\$33,150	\$35,600	\$38,050	\$40,500
<b>Worcester</b>								
30% of median	\$16,750	\$19,100	\$21,500	\$23,900	\$25,800	\$27,700	\$29,650	\$31,550
<b>Dukes County</b>								
30% of median	\$17,200	\$19,650	\$22,100	\$24,550	\$26,500	\$28,500	\$30,450	\$32,400
<b>Nantucket County</b>								
30% of median	\$20,450	\$23,350	\$26,300	\$29,200	\$31,550	\$33,850	\$36,200	\$38,550

These figures change every year. For an update, go to: [www.huduser.org](http://www.huduser.org).

## 4. What priorities are required in state-funded housing?

For state-funded housing programs, *priorities* are set by law.<sup>15</sup> This includes state public housing, the Massachusetts Rental Voucher Program (MRVP), and the Alternative Rental Voucher Program (AHVP). Housing authorities **must** give you priority if you:

- Are homeless due to fire, natural disaster, an urban renewal project, or condemnation by a local board of health or inspectional services;
- Have a *housing emergency*. This is defined by each housing authority, but includes people who are facing domestic violence, have severe medical emergencies, or are homeless or have been evicted through no fault of their own (or under a *stay of execution* in a *no-fault eviction*);

- Have an Alternative Housing Voucher for people with disabilities and their families and need to relocate; or
- Already live in public housing and need to transfer for good cause.<sup>16</sup>

Within these priority categories, the state housing programs must also give preference to veterans and local residents.<sup>17</sup> For example, if you qualify for a housing emergency priority **and** you are a veteran, you would be given preference over non-veterans who qualify for a housing emergency priority.

If you are homeless and qualify for a state preference, you can also choose a preference for local residence either in the last community where you were a tenant or where your shelter is located.

Some housing programs must also have an affirmative action plan to admit minority applicants.<sup>18</sup>

## 5. What preferences are allowed in multifamily subsidized housing?

### Federally funded multifamily housing (not MassHousing)

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Private owners of federally funded multifamily developments who receive **funds directly from the United States Department of Housing and Urban Development (HUD)** are generally not required to have any particular *preferences* or *priorities*, but can choose what, if any, preferences or priorities they want to have.<sup>19</sup>

The only requirement is that, when establishing a priority, an owner cannot illegally discriminate.<sup>20</sup> For example, an owner can establish a priority for people who work, but cannot discriminate against elderly people or people with disabilities who cannot work. So, if there is a priority for people who work, that priority must also be for elderly people and people with disabilities.

### MassHousing multifamily housing: state or federally funded

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Owners of subsidized developments who receive **state or federal funds through MassHousing** must give you a priority if you are:

- Displaced by public action (urban renewal, condemnation) or natural disaster (fire, flood, earthquake);<sup>21</sup> or
- Displaced by domestic violence, where you have moved out of an apartment because of domestic violence or you are living in housing with a person who engages in domestic violence and the violence has occurred within the last six months or is of a continuing nature. **You must have at least one child under the age of 18 to qualify for this priority.**

To find out what preferences apply at a particular development, you can ask for a copy of the *Tenant Selection Plan*. This plan should be available at the management office and also from MassHousing. Management is required to give it to you upon request.<sup>22</sup>

## 6. What can I do if I have been denied a preference or a priority?

If you have applied for a *preference* or *priority* and are denied, you should get notice of this. You have a right to challenge this denial.<sup>23</sup> The way to challenge this decision is to:

- Write to the housing authority or subsidized landlord and request a conference to appeal the denial. Be sure to do this by the deadline stated in the denial letter you received.
- Look at the exact wording of the particular priority or preference you requested and collect evidence that shows you meet the requirements of the priority or preference. Evidence can include letters and affidavits from people who know why you should qualify, court documents about your eviction case or domestic violence restraining order, Board of Health condemnation orders, and documents from your employer or doctor.
- Bring all these documents and any witnesses or advocates who can help you to explain why you do qualify for the priority or preference to the hearing.

# Special Priorities

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## 7. For people facing domestic violence or violent crimes, is there a priority?

For most programs, the answer is yes. All housing programs funded by the **state** must give a *priority* to people facing abusive situations.<sup>24</sup> This includes state public housing, MRVP, AHVP, and state multifamily subsidized housing. In these programs, abuse can be broader than domestic violence, and could include the sexual abuse of minors.

Congress has also encouraged—but not required—housing funded by the **federal government** to establish a priority for people facing domestic violence.<sup>25</sup> Some housing authorities give people facing abusive situations or witnesses of violent crime priority for **Section 8 vouchers** because vouchers give you the ability to move to a new community and escape the violence.

### Proof of abuse

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Housing agencies and subsidized landlords may interpret requirements for this type of priority somewhat differently. But there are a few things to keep in mind if you apply for a priority based on domestic violence:

- You will need to prove that you are a victim of domestic violence and that the abuse constitutes a direct threat to your life or safety. You can use a broad range of proofs, including:
  - ✓ Medical records;
  - ✓ Police reports, calls to the police, a log of police visits to your residence, tapes of officers responding to a call;
  - ✓ Letters from a counselor, if you attended counseling;
  - ✓ Statements or reports from clergy, social workers, or other social service providers;
  - ✓ Your own written statement describing injuries you have suffered, your fears, the effect of abuse on your family;
  - ✓ Criminal records if the batterer was arrested or convicted of domestic violence or destruction of your property;
  - ✓ Other evidence confirmed (corroborated) by law enforcement or domestic violence providers.<sup>26</sup>

- It is **not** always necessary to have a *restraining order* against your batterer to prove domestic violence. This will depend on how the housing agency or subsidized owner has written the preference in their *Tenant Selection Plans*.
- For most state programs, you will have to show that you took all reasonable steps to avoid the threat including seeking assistance through the courts, law enforcement, or other enforcement agencies.
- If you have already moved out of the apartment because of abuse and are now homeless, in a shelter, or doubled-up with someone, you do not need to show that the abuse was ongoing. You should qualify for the preference as long as you moved out within a relatively short time after the abuse occurred. Some federal programs describe this as being *involuntarily displaced*, where you have the priority until you get housing under your own name that meets your household's needs.<sup>27</sup>
- If you are still living in your apartment, you may need to show that the abuse is recent or ongoing, at least for federally funded housing programs.
- A few housing authorities expressly provide for a domestic violence preference where a tenant is evicted due to non-payment of rent caused by loss of income from an abuser who is vacated from the household through a restraining order.
- You may have to prove that the abuser lived in your household. This may be difficult if the abuser was not listed on the lease or did not pay rent.
- Depending on the circumstances, you may be able to request a "reprisal preference." If you fled the apartment which you shared with the abuser and the abuser has pursued you to a new address or is stalking you but you cannot prove this, you may have to request a preference under a category called "reprisal." In order to obtain this preference, you must show that you need to be relocated because you were a victim of or a witness to criminal activity, that you have cooperated in providing information about the crime to law enforcement officials, and that you are at risk of retaliation. A law enforcement official must verify this request. A victim-witness advocate at the local District Attorney's office may be helpful in providing this verification. While the Boston Housing Authority has an express preference for reprisal, many authorities do not. Again, you would need to request information regarding the preferences at each place you apply for housing.

- Victims of other violent crimes and hate crimes may also qualify for a preference for abuse victims, depending on each housing authority's preferences.

## **Help finding housing**

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Local battered women's programs may offer help to people facing domestic violence who need assistance finding housing and getting through the application process at a very stressful time when a safe and secure place to live is very important. For a list of battered women's programs in Massachusetts, see the **Directory** at the end of this book.

## **8. For people with disabilities, are there any priorities?**

Yes. While there are housing programs that are specifically for people with disabilities, other programs may have *preferences* or *priorities* for people with disabilities. For information about programs specifically for people with disabilities, see **Chapter 1: Housing Programs in Massachusetts**.

### **State public housing**

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For state **family** public housing, a housing authority may establish a priority for people facing a severe medical emergency. You can find this out by requesting its *Emergency Case Plan*.<sup>28</sup>

For state **elderly and disabled** public housing, although this housing is specifically for seniors and people with disabilities, a housing authority may place a limit on the number of people with disabilities who are non-elderly (less than 60 years of age) who are admitted to these developments.<sup>29</sup> For more information, see **Chapter 3: Who Is Eligible**.

### **Federal public housing**

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For federal **family** public housing, the housing authority may establish a preference for families or single people who have a disability.<sup>30</sup> Also, if the housing authority has established a priority for working families or single persons, it must give the priority to persons who cannot work because of a disability.<sup>31</sup> While the housing authority may adopt a preference for persons with disabilities in general, the authority may not adopt a preference for a specific disability.<sup>32</sup>



For federal **elderly and disabled** housing, a particular development may be identified as all-elderly or all-disabled.<sup>33</sup> For more information, ask the housing authority where you are applying.

## 9. For people who are working, is there a priority?

There may be. For **federal** programs, a housing authority or subsidized owner of multifamily housing can have a *priority* for working people. The definition of “working” includes both families where the head of the household (or his or her spouse) is employed and single people who are employed.

A priority for working people, however, cannot legally discriminate against people who are unable to work because they are elderly or have a disability. If a housing authority or subsidized landlord has a priority for working people, this priority must also include families where the head of the household (or spouse) or sole member is either 62 years or older **or** has a disability (even if no one in the household is employed).<sup>34</sup>

## 10. For local residents, is there a priority?

Yes. Housing authorities and owners of multifamily subsidized housing can have a *priority* or *preference* for local residents, but there are some differences between federally funded and state-funded programs.

### **State programs, including MRVP and AHVP**

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For state-funded housing programs, a local residency *preference* is required (*mandatory*) and is applied within the priorities listed in **Question 4**. This includes state public housing, the Massachusetts Rental Voucher Program (MRVP), and the Alternative Housing Voucher Program (AHVP).<sup>35</sup>

For example, if you have a priority because you are about to become homeless under the housing authority’s *Emergency Case Plan* and you are a local resident, your name will be above other applicants who are about to become homeless who are not local residents.

If you are in a homeless shelter, you should also be able to claim a local residency preference in the city or town where the shelter is if you intend to stay in that community. You can also claim a local residency preference in the

community where you lived before becoming homeless. You must choose one community to claim residency. You cannot claim residency in both communities.<sup>36</sup>

## **Federal programs, including Section 8 vouchers**

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A housing authority can provide a *preference* for local residents in its federal public housing and Section 8 programs.<sup>37</sup> An owner of federally funded multifamily housing can also establish a local residency preference.

In either situation, a housing authority or subsidized landlord cannot make local residency a requirement for its programs. This means that you can apply at any housing authority or development regardless of where you are living or working now. Also, a housing authority or subsidized landlord cannot require you to have been a local resident for a minimum period of time before you qualify for this type of preference.<sup>38</sup>

If a housing authority or subsidized landlord chooses to have a local residency preference, you qualify for this preference if you

- Live in a certain geographic area; or
- Work in a certain geographic area; or
- Have been notified that you have been hired to work in a certain geographic area.

The local geographic area is usually defined as the area covered by the particular housing authority. This area cannot be restricted to a particular neighborhood or only some parts of the city or town.

A local residency preference can include local resident graduates and active participants in education and training programs in the geographic area if the programs are designed to prepare people to enter the job market there.

## **11. For veterans or their relatives, is there a preference?**

### **State public housing**

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Yes. For state-funded public housing, housing authorities give a *preference* to veterans.<sup>39</sup> If you are a veteran applying for elderly and disabled public housing, you can qualify for this preference if you live in the community

where the housing authority is located. The preference for veterans applies also to certain close relatives—spouse, surviving spouse, parents, and dependents.<sup>40</sup>

If you are a veteran applying for family housing, you do not have to be a local resident to qualify for this preference. But the preference is applied in the following order:

- Veterans with a service-connected disability,
- Families of deceased veterans whose death was service-connected, or
- Other veterans.

### **Federal programs, including Section 8 vouchers**

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For federal housing programs, each housing authority is allowed to set its own preferences. Some establish a preference for veterans. You should check with each housing authority where you are applying to see what their priorities are for the federal programs.

## **12. For tenants in private housing facing no-fault evictions, is there a preference?**

### **State public housing**

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Yes. Under a state program's *Emergency Case Plan*, a tenant in private housing who has been evicted in a *no-fault eviction* should qualify for the emergency preference. This includes tenants who are still in the apartment but under a *stay of execution* from the eviction.<sup>41</sup>

### **Federal programs, including Section 8 vouchers**

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For federal housing programs, each housing authority is allowed to set its own preferences. Some housing authorities provide preferences for applicants to federal housing programs who have been or are about to be evicted through no fault of their own. In some cases this preference may even be broader than the state preference.<sup>42</sup>

### **13. If I have been homeless and was given a temporary subsidy to help pay for my housing, will I lose a priority?**

In the past year, Massachusetts has been using both state and federal funding to help families and individuals in shelters avoid lengthy shelter stays by offering temporary subsidies to rent an apartment on the private market. Typically, these subsidies last between three and eighteen months.

For more information about the Housing Stabilization resources available in Massachusetts, see **Chapter 1: Housing Programs in Massachusetts**.

At the writing of this book, there is no clear guidance about how those applicants should be treated in terms of any priority for homeless applicants in any permanent housing program. The state housing agency, *DHCD*, has stated informally that it will instruct housing authorities to continue to give these applicants a preference under a homeless category. In addition, in 2006 DHCD issued a policy memorandum stating that persons in “transitional housing programs” should “in almost all circumstances” be considered to meet the definition of “homeless” for purposes of obtaining emergency status.<sup>43</sup> If you are an applicant in this situation, you may have been given a letter from DHCD to include with any application for permanent housing. This letter states that a housing program should still consider you homeless for purposes of giving you a priority.

# Setting Priorities

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## 14. How are preferences and priorities set?

### State public housing and vouchers

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*Priorities* for state-funded housing are set by statute. These priorities apply to state public housing, the Massachusetts Rental Voucher Program (MRVP), and the Alternative Housing Voucher Program (AHVP), and are required across the state.<sup>44</sup> See **Question 4** for a list of these priorities.

Each housing authority, however, has the ability to define what it considers to be an emergency priority for its *Emergency Case Plan*.<sup>45</sup> The Emergency Case Plan must include priorities for the homeless, victims of domestic violence, and medical emergencies. The governing board of each housing authority makes the final decision about what its priorities and Emergency Case Plan will be. It must then get this plan approved by DHCD.

### Federal public housing and vouchers

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Preferences for federal public housing and Section 8 are set by each housing authority.<sup>46</sup> Each year the housing authority must create an *Annual Plan* that includes its priorities and preferences. It must be done in cooperation with federal public housing and Section 8 tenants, usually through the *Resident Advisory Board* and asks for input from community organizations.

### Multifamily housing

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For federal multifamily housing, each owner must adopt a written tenant-selection plan. The owner must inform you of available preferences and must give you an opportunity to show that you qualify for a preference. An owner must get HUD approval to use any residency preference. An owner may adopt preferences required by state or local law (for example, a veterans preference) only if they are consistent with HUD requirements and have been approved by HUD. An owner can choose to rank or combine preferences.<sup>47</sup> HUD does not mandate any tenant or public involvement in the development of owner preferences; however, residents or advocacy groups may wish to push owners to have certain preferences.

For MassHousing developments, if the owner wishes to adopt preferences which are in addition to those required by MassHousing guidelines, it must seek MassHousing approval.<sup>48</sup> Here again, there is no requirement for tenant or public involvement, but tenants or advocates may be successful in pushing for certain preferences that benefit low-income applicants.

## 15. Can I have a voice in how preferences and priorities are set?

Because qualifying for a *priority* or *preference* is so important in getting public or subsidized housing, if you are applying for housing or if you are already on the waiting list, your voice is important in how priorities are set. There are several ways that you can make your ideas known. For example, if you are applying with a particular need that is not already granted a priority by a housing authority, you can work with others to have a new priority adopted. It is generally more effective when you work on this together with others in your community, such as individuals or agencies representing people with similar needs, so that you speak for as large a group as possible.

### State housing programs

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For state housing programs, the board of commissioners of a housing authority decides how to define its own Emergency Case Plan. These board meetings are open to the public.<sup>49</sup> The time and location of housing authority board meetings are public information which should be given to you upon request. You should also check your local newspaper for legal notices of upcoming public hearings on this issue.

You can attend a board meeting and urge passage of a new emergency priority. Hearing live testimony from you and others in the same situation about why you urgently need housing and why you should be given preference over other low-income families and individuals can be extremely effective. Your participation may help a housing authority decide to define an emergency applicant in a different way.

For example, all state *emergency case plans* give priority to victims of *domestic violence*. However, this preference is sometimes interpreted to apply only to applicants who are displaced due to domestic violence (go to a shelter or do not have stable housing) or who are in danger from the abuser if they remain in their homes. You could ask the board to expand its domestic violence preference to include victims facing eviction for nonpayment of rent as a result of the loss of the abuser's income.

## **Federal programs, including Section 8 vouchers**

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For federal public housing and the Section 8 program, each year the housing authority must create an *Annual Plan* that includes its *priorities* and *preferences*. It must be done in cooperation with its federal public housing and Section 8 tenants, usually through the *Resident Advisory Board*. Working with this advisory group is an excellent way to influence policy decisions.

For example, if the housing authority has a priority for working families, you may be able to convince it to include in this category people who are in job-training programs. Even if the housing authority does not agree to add a new priority category, it may agree to expand the definition of an existing priority to include your situation.

In addition, each housing authority's local preferences must be consistent with a document known as the *Consolidated Plan*.<sup>50</sup> Most cities and towns are required by law to develop a Consolidated Plan which includes a lot of information about the housing needs of residents in the area. You can go to the city or town planning department or the city or town clerk and ask for a copy of the Consolidated Plan. It is also usually available at the local public library. This plan is important. For example, if the Consolidated Plan shows that there are a large number of people with disabilities in need of housing in your city, and your city has not adopted a preference for people with disabilities, you may be able to convince the housing authority that it needs to adopt this type of preference. Often the Consolidated Plan will demonstrate that the community has a large homeless population, which can be used to convince a housing authority to add a homeless preference to their categories.

It is probably a good idea to contact your local Legal Services office or other housing advocates to work with you to make sure that you understand the priorities in your area.





# **Reference Materials**

# 16. Eligibility & Preferences at a Glance

Program	Initial Eligibility	Discretionary Preferences	Mandatory Preference/Priority
<p><b>Federal</b></p> <p>Public Housing</p> <p>Section 8 Vouchers</p>	<p><b>Family Status</b> Couples or singles with or without children</p> <p><b>Income Limits</b> <i>Public Housing:</i> 80% of area median income</p> <p><i>Section 8 vouchers:</i> 50% of area median income (generally)</p> <p><b>Immigration Status</b> Citizen or eligible noncitizen</p>	<p>Housing authorities and subsidized owners have wide discretion to give preference to particular groups. Examples are:</p> <p><b>Needs-Based Preferences</b></p> <ul style="list-style-type: none"> <li>• Displacement</li> <li>• Substandard housing</li> <li>• Homeless</li> <li>• Rent more than 50% of income</li> <li>• Domestic violence</li> </ul> <p><b>Other Preferences</b></p> <ul style="list-style-type: none"> <li>• Residents</li> <li>• Disabled</li> <li>• Veterans</li> <li>• Employed</li> </ul>	<p><b>Income Targeting</b></p> <p><i>Public Housing:</i> 40% of yearly admissions must go to applicants with 30% of area median income (extremely low income). In some instances, public housing can target the remaining open units to higher-income applicants.</p> <p><i>Section 8 vouchers:</i> 75% of the yearly subsidies must go to applicants with 30% of area median income.</p>
<p><b>State</b></p> <p>Public Housing</p> <p>Massachusetts Rental Voucher Program (MRVP)</p> <p>Alternative Housing Voucher Program (AHVP)</p> <p>MassHousing-operated multifamily developments (with state funding)</p>	<p><b>Family Status</b> Two or more people living together related by blood, marriage, law, or other stable relationship, or single people</p> <p><b>Income Limits</b> <i>Public Housing/AHVP:</i> 80% of area median income</p> <p><i>MRVP:</i> 200% of federal poverty guidelines</p> <p><i>Multifamily:</i> Usually 80% of area median income</p> <p><b>Immigration Status</b> <i>State programs:</i> No immigration restrictions</p>	<p>State housing programs have no discretionary preferences except in a few areas where the housing authorities have received a waiver from the state.</p>	<p><b>Mandatory Priorities</b></p> <p>Displacement because of natural forces, public action, urban renewal, code enforcement</p> <p>Emergency Need (related to applicants who are homeless, in abusive situations, or have medical emergencies)</p> <p>AHVP participants</p> <p>Transfers “for cause”</p> <p><b>Preferences within Priorities</b></p> <p>Affirmative action Veterans Residents</p> <p><b>Other</b></p> <p>Preference for elders in the majority of units in elder/disabled public housing</p>

Program	Initial Eligibility	Discretionary Preferences	Mandatory Preference/ Priority
<p><b>Federal Multifamily</b></p> <p>(including MassHousing developments)</p>	<p><b>Family Status</b> Depends on the type of property</p> <hr/> <p><b>Income Limits</b> Generally 50%-80% of area median income</p> <hr/> <p><b>Immigration Status</b> Citizen or eligible noncitizen</p>	<p>Depends on the development, but all MassHousing developments must follow state priorities and preferences listed above even if federally funded.</p>	<p><b>Income Targeting</b></p> <p><i>Project-Based</i> <i>Section 8 Assistance:</i> 40% of yearly admissions must go to 30% of area median income and no more than 25% of yearly admissions can go to households above 50% area median income</p>

## Endnotes

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- <sup>1</sup> **Federal public housing:** 24 C.F.R. § 960.206; **Section 8:** 24 C.F.R. § 982.207; **State public housing:** 760 C.M.R. § 5.09; **Massachusetts Rental Voucher Program (MRVP):** 760 C.M.R. §§ 5.02(1), 5.09, and 49.04(1); **Alternative Housing Voucher Program (AHVP):** 760 C.M.R. §§ 5.02(1), 5.09, and 53.04(1).
- <sup>2</sup> 760 C.M.R. § 5.15.
- <sup>3</sup> **Federal public housing:** 24 C.F.R. § 960.206(a)(4); **Section 8:** 24 C.F.R. § 982.54(b) and (d)(1); **State public housing:** 760 C.M.R. § 4.03(2); **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.
- <sup>4</sup> 24 C.F.R. § 960.202.
- <sup>5</sup> 760 C.M.R. § 5.11; *MHFA Model Tenant Selection Plan*, REV 9/09, [www.masshousing.com](http://www.masshousing.com).
- <sup>6</sup> For example, Boston, Cambridge and Somerville each have their own tenant selection plans that differ from the *DHCD Model Emergency Case Plan*, [www.mass.gov/Ehed/docs/dhcd/ph/publichousingapplications/modelcaseplan.rtf](http://www.mass.gov/Ehed/docs/dhcd/ph/publichousingapplications/modelcaseplan.rtf).
- <sup>7</sup> 24 C.F.R. § 982.54.
- <sup>8</sup> MassHousing's model tenant selection plan was updated in 2009. If you have an old plan from a particular development, you should check to see if they have revised their plan to comport with MassHousing's updated plan. See *MHFA Model Tenant Selection Plan*, REV 9/09, [www.masshousing.com](http://www.masshousing.com).
- <sup>9</sup> **Federal public housing:** 24 C.F.R. § 960.202(c)(2); **Section 8:** 24 C.F.R. § 982.54; **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.
- <sup>10</sup> **Federal public housing:** 24 C.F.R. § 960.206; **Section 8:** 24 C.F.R. § 982.207.
- <sup>11</sup> **Federal public housing:** 24 C.F.R. § 960.202(b)(1) (at least 40% of federal public housing units must go to those with extremely low income); **Section 8:** 24 C.F.R. § 982.201(b)(2) (at least 75% of Section 8 vouchers must go to those with extremely low income unless HUD approves a lower percentage in accordance with subsection (b)(2)(ii)).
- <sup>12</sup> 24 C.F.R. § 903.2(c)(1)(v)(D).
- <sup>13</sup> HUD PDR Notice 2009-09 (March 19, 2009). Available at [www.huduser.org/portal/datasets/il/il09/index.html](http://www.huduser.org/portal/datasets/il/il09/index.html).
- <sup>14</sup> There are slight differences between the median incomes of the Fall River and New Bedford areas for larger families at 30% of median income. For Fall River residents, the 30% limit for 7-person families is \$27,250 and for 8-person families is \$29,000. For New Bedford area residents, the 30% limit for 7-person families is \$27,200 and for 8-person families is \$28,950. Because all other limits are identical, the editors grouped these two areas together for purposes of this table, and used the lower amount. It is unclear whether this slight variation was intended by HUD.
- <sup>15</sup> G. L. c. 121B, § 32.

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- <sup>16</sup> 760 C.M.R. §§ 5.03, 5.09, and 5.11; DHCD Public Housing Notice 2003-08, [www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/03\\_08.pdf](http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/03_08.pdf).
- <sup>17</sup> **Veterans:** 760 C.M.R. § 5.09(2)(a); **Local residents:** 760 C.M.R. § 5.09(2)(b).
- <sup>18</sup> 760 C.M.R. §§ 5.09(2) and 5.10(3).
- <sup>19</sup> **Section 8 project-based:** 24 C.F.R. § 5.655(c); **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4. However, as discussed in the *Handbook*, Chapter 4-6, there are statutory and/or regulatory preferences in Section 221(d)(3) and Section 236 developments for persons displaced by governmental action or presidentially declared disaster.
- <sup>20</sup> **Federal:** 42 U.S.C. §§ 3601 et seq.; 42 U.S.C. §§ 1981 and 1982; 42 U.S.C. §§ 2000d et seq.; 29 U.S.C. § 794; 24 C.F.R. §§ 100 et seq.; 24 C.F.R. §§ 1.1 et seq.; 24 C.F.R. §§ 8.1 and 8.4; *HUD Multifamily Occupancy Handbook* 4350, REV-1, CHG-3 (June 2009), Chapters 2 and 4; **State:** G.L. c. 151B.
- <sup>21</sup> G.L. c. 23A, App. 1, § 1-7; *MHFA Model Tenant Selection Plan*, REV 9/09, § E, [www.masshousing.com](http://www.masshousing.com). Where priority is claimed on the basis of public action such as condemnation, the applicant will need to prove that he/she did not substantially contribute to the reasons for condemnation and that he/she has sought appropriate assistance to resolve the problem. A simple sanitary code report noting violations will be insufficient in and of itself, without condemnation, to meet this priority. If the MassHousing development is under the Section 221(d)(3) or Section 236 programs, there is also a federal statutory or regulatory preference for persons displaced by governmental action or presidentially declared emergency. *See also HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.
- <sup>22</sup> *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.
- <sup>23</sup> **Federal public housing:** 24 C.F.R. § 960.208; **Section 8 voucher program:** 24 C.F.R. § 982.201(f); **State public housing, Massachusetts Rental Voucher Program, and Alternative Housing Voucher Program:** 760 C.M.R. § 5.13. A housing authority's Tenant Selection Plan may also provide for a hearing in these cases.
- <sup>24</sup> 760 C.M.R. § 5.11.
- <sup>25</sup> **Federal public housing:** 24 C.F.R. § 960.206(b)(4); **Section 8 voucher program:** 24 C.F.R. § 982.207(b)(4); **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4. Domestic violence as defined by HUD is "actual or threatened physical violence directed against one or more members of the applicant's family by a spouse or other members of the applicant's household." *HUD Public Housing Occupancy Guidebook* (June 2003), § 19.1. *See also* HUD Housing Notice 2009-15 (October 1, 2009).
- <sup>26</sup> *See HUD Public Housing Occupancy Guidebook* (June 2003), § 19.2. Also, HUD's former federal preference regulations made it clear that these and other types of verifications of domestic violence can be used to prove displacement by domestic violence. For state programs, see DHCD memos entitled *Verification of Priority Status*, Sept. 9, 1996, and *Domestic Violence Priority Status*, Aug. 1, 2005, on file at Massachusetts Law Reform Institute.
- <sup>27</sup> This is called "standard, permanent replacement housing." It comes from the former federal regulation that mandated that persons who were "involuntarily displaced" received a preference for federal public and subsidized housing programs. 24 C.F.R. §

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5.420 (in place until April 2000). While this regulation is no longer in force, a number of housing authorities and subsidized owners may continue to use its language in their Tenant Selection Plans.

28 760 C.M.R. §§ 5.09(1)(d) and 5.11.

29 G.L. c. 121B, § 39; 760 C.M.R. § 5.10(1)(a) and (2).

30 24 C.F.R. § 960.206(b)(3) and (5).

31 24 C.F.R. § 960.206(b)(2).

32 24 C.F.R. § 960.208(b)(3).

33 42 U.S.C. § 1437e.

34 **Federal public housing:** 24 C.F.R. § 960.206(b)(2); **Section 8 voucher program:** 24 C.F.R. § 982.207(b)(2); **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.

35 760 C.M.R. § 5.09(2); **MRVP:** 760 C.M.R. § 49.04(1); **AHVP:** 760 C.M.R. § 53.04(1).

36 760 C.M.R. § 5.03 (definition of “local resident”).

37 **Public housing:** 24 C.F.R. § 960.206(b)(1); **Section 8:** 24 C.F.R. § 982.207(b)(1).

38 **Federal Public Housing:** 24 C.F.R. § 960.206(b)(1)(iv); **Section 8:** 24 C.F.R. § 982.207(b)(1)(iv).

39 760 C.M.R. § 5.09(2)(a).

40 G.L. c. 121B, § 32; see also G.L. c. 4, § 7, clause 43; DHCD Public Housing Notice 2004-04, [www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/04\\_04.pdf](http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/04_04.pdf).

41 DHCD Public Housing Notice 2003-08, [www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/03\\_08.pdf](http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/03_08.pdf).

42 For example, Cambridge, Somerville, and Boston all have homeless preferences for at least some of their federal programs.

43 [www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/06\\_11.pdf](http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/06_11.pdf), referring to selection categories found in G.L. c. 121B, § 32; **State Public Housing:** 760 C.M.R. § 5.09; **MRVP:** 760 C.M.R. § 49.04(1); **AHVP:** 760 C.M.R. § 53.04(1).

44 G.L. c. 121B, § 32; **State Public Housing:** 760 C.M.R. § 5.09; **MRVP:** 760 C.M.R. § 49.04(1); **AHVP:** 760 C.M.R. § 53.04(1).

45 760 C.M.R. §§ 5.09(1)(d) and 5.11.

46 **Federal public housing:** 24 C.F.R. § 960.206; **Section 8 vouchers:** 24 C.F.R. § 982.207.

47 **Section 8 project-based:** 24 C.F.R. § 5.655(b)(2) and (c); **Federal multifamily housing:** *HUD Multifamily Occupancy Handbook* 4350.3, REV-1, CHG-3 (June 2009), Chapter 4.

48 *MHFA Model Tenant Selection Plan* REV: 9/09, § E, available through [www.masshousing.com](http://www.masshousing.com).

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<sup>49</sup> G.L. c. 39, §§ 23A-23C; G.L. c. 66, § 10. In a few instances, housing authorities do not have a Board of Commissioners.

<sup>50</sup> 24 C.F.R. § 903.15.

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