



# HOUSING



Housing is one of the most immediate and important parts of a strong reentry. In the HOUSING CHAPTER, you will learn more about your housing options and legal rights; what kind of housing you can and cannot get into because of your criminal record; and things you can do if your legal rights are violated.

**DISCLAIMER - YOUR RESPONSIBILITY WHEN USING THIS GUIDE:** When putting together the *Roadmap to Reentry: A South Carolina Legal Guide*, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated often have difficulty getting legal information, and we cannot provide specific advice to every person who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure whether the law has changed and applies to your situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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#### WHAT WILL I LEARN IN THE HOUSING CHAPTER?

- Your housing options in reentry—both in the short-term and long-term
- The difference between private and government-assisted housing, and how this affects your rights
- What kind of housing you can and cannot get because of your criminal record
- How to present a great application when applying for housing
- Options for what you can do if you believe you were *illegally denied* housing



## I. INTRODUCTION

This Chapter explains common housing issues and questions for people with criminal records and the friends and family who live with them. This section will give you information about:

1. Your housing options in reentry;
2. What kind of housing you can and cannot live in based on your criminal record;
3. How to put your best foot forward in applying for housing; and
4. What you can do if you believe you were illegally denied housing.

### KEY TERMS IN THE HOUSING CHAPTER

**Affordable Housing**—housing that is partly funded by the government so that it is more affordable for people who make below a certain income to rent. People who live in affordable housing are expected to pay around 30% of their household income in rent.

**Blanket Ban**—a policy of not renting to any housing applicants with a criminal conviction where the landlord does not consider the individual situation of each applicant, including the circumstances of the offense, the time that has passed since the conviction, or any efforts the applicant has taken to improve their circumstances since the offense.

**Consumer Background Check**—this is the document produced by a consumer reporting agency that will include a list of certain criminal convictions and credit history information when a landlord pays a private company to run a criminal history report on someone who is applying for housing.

**Consumer Reporting Agency**—a company that runs background checks on people who are applying for housing, also called a tenant screening company.

**Conviction**—any finding of guilt by a court in a criminal case, including at trial by a jury or by plea (including both guilty and nolo contendere pleas).

**Disparate Impact**—when a renting policy has the effect of reducing access to housing for people in a protected class. This kind of discrimination is illegal under the Fair Housing Act (FHA) even if the landlord does not intend to discriminate against people based on their membership in a protected class.

**Disparate Treatment**—when a renting policy is intended to refuse housing to people because of their membership in a protected class.

**Eviction**—action by a landlord that forces you to leave the premises through a legal process, as for non-payment of rent.

**Fair Chance Housing Ordinances**—local (city or county) laws, including anti-discrimination ordinances, that attempt to reduce discrimination in housing against people with criminal records.

**Fair Credit Reporting Act (FCRA)**—federal law that created rules about what consumer reporting companies can do when running background checks and created rights for people whom the companies are running background checks on.

**Fair Housing Act (FHA)**—a federal law that prohibits discrimination in housing based on membership in a protected class.

**Housing Choice Voucher Program / Section 8 Voucher Program**—a federally assisted housing program that gives participants a tenant-based subsidy so that they can rent at a more affordable price.

**HUD (The U.S. Department of Housing and Urban Development)**—a branch of the federal government that is responsible for regulating all housing in the United States.

**Lease/Rental Agreement**—a legal document that explains the terms under which you are renting your housing.

**Market-Rate Housing**—housing that is available to anyone at the price listed by the landlord, regardless of the applicant's income.

**Owner of Government-Assisted Housing**—a private owner/landlord who receives some form of government assistance to make housing more affordable for certain categories of people.

**Private Housing**—housing that is owned and operated by an individual or a company, not the government.

**Private Landlord**—this is any owner of housing (a person, for-profit corporation, or nonprofit organization) that is not a government agency.





**Project-Based Subsidy**—funding from the government to make housing more affordable that stays with the housing when someone moves.

**Project-Based Section 8 Rental Assistance Program**—a federally assisted housing program that gives housing a project-based subsidy so that people who rent the housing can rent at a more affordable price.

**Proof of Mitigating Evidence**—evidence that shows why a conviction is less serious than it may first appear.

**Proof of Rehabilitation**—evidence that shows someone has improved their life since they were convicted.

**Protected Class**—characteristics that cannot be used when deciding whether or not to rent to someone. Under federal law, these characteristics are: race, color, national origin, religion, sex, disability, and family status. State and local governments can add more protected classes but cannot take any away.

**Public Housing Authority (PHA)**—a government organization that assists with the development and/or operation of housing for low-income individuals and families.

**Public Housing Program**—a specific program within the U.S. Department of Housing and Urban Development (HUD) that is operated within cities and counties by local housing agencies called Public Housing Authorities, or PHAs, to provide decent, safe, affordable housing for low-income households, seniors, and persons with disabilities.

**Reasonable Accommodation**—a change to a policy or practice that allows someone with a disability to use or access housing equally, unless that change in policy is an undue hardship.

**Review Hearing**—an opportunity for someone who was denied federally assisted housing to challenge their denial by presenting evidence and arguments to someone at the Public Housing Authority (PHA).

**Tenant Screening Company**—a company that runs background checks on people who are applying for housing, also called a consumer reporting agency.

**Tenant-Based Subsidy**—funding from the government to make housing more affordable that stays with the tenant when they move.



## II. LOOKING FOR & IDENTIFYING GOOD HOUSING OPTIONS

### WHAT WILL I LEARN?

- Some short-term options for housing
- Some long-term options for housing
- The difference between *privately run* & *government-assisted* housing
- Recommendations for finding government-assisted housing
- Recommendations for finding housing for people with special needs, such as women and children, domestic violence survivors, seniors, veterans, people recovering from addiction, and sex offender registrants
- Your rights—and how they are different—if you are applying to privately run vs. government-assisted housing
- Your rights if you want to move in with friends and family
- How conditions of parole, probation, or other forms of supervision can affect where you can live and who you can live with after release
- How to challenge denials from housing—whether it's private or government-assisted—based on your criminal record

### WHAT ARE THE FIRST STEPS I SHOULD TAKE IN MY HOUSING SEARCH?

*Here are the main types of housing you may consider after getting out of prison or jail:*

1. Short-term housing (staying short-term with a family member or friend, staying in transitional housing, staying in a shelter or other emergency housing)
2. Long-term permanent housing (finding an apartment, moving in with family or friends permanently)
3. Special needs housing (which could be short- or long-term)
4. Government-assisted housing

Below, we walk through some steps to help you figure out your housing plans.

### **STEP 1: SET UP SHORT-TERM HOUSING PLANS.**

First, you should figure out what type of housing is right for you in the short term and where you will be allowed to live by probation or parole (or whichever type of supervision you are on) when you first get out. There is more information about different types of short-term housing beginning on [PG. 14](#).

### **STEP 2: GET YOUR ID.**

Most housing programs will require proof of who you are, your age, and any income you receive.

### **STEP 3: SET UP LONG-TERM HOUSING PLANS.**

Later on, you can figure out what type of housing is right for you permanently—we call this “long-term housing.” You need to find housing that you can *afford*, that you *are eligible for* (meaning you meet the requirements to be accepted), and that *meets your personal needs*.

Long-term, permanent housing might mean living with family or friends; living in an affordable apartment or housing unit run by a Public Housing Authority (PHA) or a private landlord; or living in a facility for people with special housing needs (like seniors, veterans, women and children, transgender people, people with disabilities, people escaping domestic violence, or sex offender registrants). There is more information about different types of short-term housing beginning on [PG. 14](#). For more information on housing for special needs, see [PG. 14](#).



## HELPFUL TIPS AS YOU LOOK FOR HOUSING

- **KNOW YOUR RIGHTS** as a person with a criminal record *before* you apply for housing! Depending on who owns and runs the housing (private vs. government-assisted—see [PG. 22](#)), you will have different rights in the process.
- **IT'S ALWAYS A GOOD IDEA TO FIND HELP**, if you can. Find an attorney, advocate, case manager, friend or family member, or probation/parole officer who can help you find housing. It is very important to have support in this process and throughout reentry. There are lists of helpful community resources in the back of this guide in Appendix B and C, starting on [PG 77](#). if you want ideas about where to look for help.
- **FINDING HOUSING IS TOUGH BUT NOT IMPOSSIBLE**—be patient and keep looking!
- **RESEARCH YOUR DIFFERENT OPTIONS**. Depending on whether you are currently incarcerated or already out, affordability, eligibility, and whether you are looking for short-term or long-term housing, you will have different types of housing options available to you. As you move further into your reentry, these options are likely to change over time.

### CAN I FIND HOUSING WHILE I AM STILL INCARCERATED?

Yes, it is possible. First, you may want to think about (1) what you need in the short-term vs. long-term; (2) how your parole or probation (or other type of supervision) affects where you can live; and (3) whether you want to look for private housing, government-assisted housing, or both. To help with this process, read about *your housing options*, starting on [PG. 10](#).

There are additional considerations if you plan to move in with family or friends. You will want to ask them to find out everything possible about the guest policies where they live, and/or about adding someone to their apartment lease. If the housing your family or friend lives in receives *any form of government assistance*, they may also need to contact their local Public Housing Authority (PHA) to let them know they would like to add you to the household. A list of PHAs in South Carolina and their contact information can be found here: Appendix A, [PG. 71](#) or online here: [https://www.hud.gov/sites/dfiles/PIH/documents/PHA\\_Contact\\_Report\\_SC.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_SC.pdf). Learn more about moving in with family and friends beginning on [PG. 12](#).

If you want to find transitional or emergency housing, generally you or a family member, friend, or advocate will have to directly write or call the housing facility to ask about the requirements. For a list of transitional housing programs that may accept you while you are still incarcerated, see Appendix B, [PG. 77](#).

Additionally, the South Carolina Department of Corrections (SCDC) has an "Inmate Reentry Program." SCDC has hired transition coordinators (usually at least one coordinator in each prison) who should work with you once you are eligible for release to create a re-entry plan, including housing plans. As part of the re-entry planning process, the transition coordinator is supposed to develop program recommendations, which should include helping you find suitable housing.<sup>1</sup>

### WHAT ARE SOME STEPS I CAN TAKE IF I AM WORRIED ABOUT BECOMING HOMELESS?

An important step to avoid becoming homeless is to begin planning and identifying housing options *while you're still incarcerated*.

There are also agencies and nonprofits in the community working to help people find permanent housing and avoid/get out of homelessness. Here are some organizations that may be able to help:

- **The Public Housing Authority (PHA) in your area:** PHAs sometimes give preference to admitting homeless individuals into the Public Housing program or "Section 8" Housing Choice Vouchers. Visit the U.S. Department of Housing and Urban Development (HUD) website to find public housing authorities in your area: [https://www.hud.gov/states/south\\_carolina/working/localpo/pih](https://www.hud.gov/states/south_carolina/working/localpo/pih).
- **Emergency shelters and assistance:** HUD maintains a list of organizations throughout the country that provide emergency shelter and assistance to homeless individuals (visit the following website: <https://www.hud.gov/findshelter>).

<sup>1</sup> SCDC Policy PS-10.14, "Inmate Reentry Program" § 7 (June 1, 2004).



- *The National Coalition for Homeless Veterans* has an online list of organizations throughout the country that will assist homeless veterans on a variety of issues including housing (visit the following website: <https://nchv.org/helpforveterans/locate-organization>).
- *The National Coalition for the Homeless* has links to databases related to local service organizations, educating homeless children, transitional housing, drug and alcohol rehabilitation centers, and day shelters (visit the following website: <https://nationalhomeless.org/references/directory/>).

### **WILL MY PAROLE OR PROBATION OFFICER HELP ME FIND SOMEWHERE TO LIVE?**

It depends, but usually not. But it's always worth asking your supervising officer if they know of any housing resources!

#### **If you are on South Carolina state parole:**

There is very little help for housing. In some counties, some parole officers may work with local boarding houses, hotels, or motels to find you a temporary place to stay. You can also ask your correctional counselor (if you're incarcerated) or your parole officer (if you are living in the community) about what types of funding exists for transitional housing while you are on state parole. If your parole officer is unable to help you find short-term, transitional or emergency housing, you may try going to an emergency shelter (see [PG. 11](#)).

Unfortunately, South Carolina does not provide any money upon release from prison at this time. Work Release participants have the option to work at civilian jobs and a percentage of your earnings are placed in savings for release.<sup>2</sup> As a last resort, if you have earned any income through this work release option, you might consider using this money to pay for a hotel or motel until you find a more permanent living situation.

#### **If you are on South Carolina county-level supervision like probation, community supervision, or an intensive supervision program:**

Ask your probation/supervising officer about what local programs are available. Ask if they can make referrals to affordable housing agencies or nonprofits that advocate for low-income people to find housing.

#### **If you are on federal probation, supervised release, or federal parole:**

Ask your federal Probation Officer for a list of affordable housing options in the area. Federal probation officers will not normally release you from a transitional ("halfway") house unless you have a plan for permanent housing. Also, read about some of your options for long-term housing on [PG. 14](#) of this chapter.

### **WHAT ARE MY HOUSING OPTIONS AFTER RELEASE?**

Again, there are many different housing options out there—transitional housing programs, emergency shelters, special needs housing, assisted-living housing, living with family or friends, private apartments and houses, and apartments and houses that get government money to make them more affordable for their residents. To make it easier to plan and prepare, we suggest thinking about your housing options in two categories: (1) short-term housing and (2) long-term/permanent housing. Also, consider whether government-assisted housing makes sense in your situation.

**WHY WOULD I APPLY TO  
GOVERNMENT-ASSISTED  
HOUSING?**

See [PG. 24](#) to learn more about government assisted housing and the different rules that apply for them.

## **SHORT-TERM HOUSING OVERVIEW**

When you are preparing for release or first get out of prison or jail, most of your housing options will be focused on short-term and transitional housing. Examples of short-term housing include: staying with a family member; staying with a friend; staying in a shelter (shelters usually offer a bed and shower for one or more nights, and sometimes offer other free services); and living in a transitional housing program.

### **STAYING WITH FAMILY OR FRIENDS**

Here are some pros and cons to consider if you want to move in with family or friends:

<sup>2</sup> Nancy La Vigne et al., *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups* app. C at 97 (Sep. 2008).



PROS	CONS
<p>If you have friends or family in the area, staying short-term with them can be an option for immediate housing.</p> <p>Friends and family can be supportive and useful in helping you successfully reenter the community.</p> <p>A few days or weeks on someone's couch or in their spare bedroom can give you enough time to go to get social services, start looking for jobs, and arrange for longer term housing.</p> <p>You will likely have greater independence in your life.</p> <p>It will be free or at a lower cost because you are splitting the rent.</p>	<p>If you are under supervision after your release, your housing will need to be approved by your probation/parole officer or supervising agency.</p> <p>Home visits by parole/probation officers, search conditions, and other restrictions don't just affect you; they also affect your host and other household members.</p> <p>If you are a guest in someone's home or apartment, your stay could cause the family living there to violate the property's guest policy if you stay beyond the time limit allowed for guests and/or you violate another rule in the property's guest policy (see more on <a href="#">PG. 57</a>).</p>

### SHELTERS

Most shelters are free, and usually offer a bed and shower for one night or multiple nights, and sometimes services such as counseling and job-search assistance. While transitional and permanent housing options can take time to arrange, you can usually access a shelter immediately. Here are some of the main types of shelters that exist:

- **24-hour Shelters**—24-hour shelters let you stay at night and during the day and participate in the services the shelter offers (for example: meals, counseling, and job training, just to name a few). Don't let the name mislead you—a 24-hour shelter doesn't necessarily mean you have to leave after 24 hours. The key is that 24-hour shelters are open day and night. Ask the specific shelter you're interested in about any other requirements or restrictions.
- **12-hour Shelters**—12-hour shelters let you stay for a 12-hour period overnight (usually 7:00 p.m. to 7:00 a.m.) but require you to leave in the morning.
- **Day Shelters** let you come and take advantage of their services during the day, but you can't stay overnight. Services at day shelters may include showers, meals, computer access, and optional programs like case management/support services and counseling sessions.
- **Family Shelters** have places for you and the rest of your family to stay. They tend to be 24-hour shelters (see the first type of shelter listed above).
- **Domestic Violence Shelters** take women (usually not men) who are trying to find safety from someone who is abusive. They usually have confidential addresses for the safety of the residents. Many domestic violence shelters also allow women to bring their children with them.

### TRANSITIONAL HOUSING PROGRAMS

Transitional housing programs are temporary programs that offer housing and services. Keep in mind they usually have requirements you have to meet before you can move in, and there are usually waitlists.

Examples of transitional housing programs include: shared or private apartments, residential programs that allow for temporary stays (this could mean anywhere from 3 months to 2 years depending on the program) at no cost or at a low cost, and sober living environments (SLE) (read more about SLEs on [PG. 20](#)). Some transitional housing programs also have services like job training, counseling, general education development ("GED") programs, and computer classes. Some transitional housing programs are for people with specific needs such as mental health support, addiction treatment and recovery (see [PG. 20](#)), or safety from domestic violence (see [PG. 16](#)).

#### **CAN I GET INTO A TRANSITIONAL HOUSING PROGRAM IF I AM STILL INCARCERATED?**

*It depends on the program.* Unfortunately, most post-release transitional housing programs will not let you fill out an application or get on the waitlist before your release. A few let you apply from inside prison or jail, but may have other requirements or restrictions. Go to Appendix B on [PG. 77](#) for a partial list of transitional housing options in South Carolina that *may* accept residents who write to them from inside prison or jail.



**NOTE:** In recent years, SCDC has introduced pre-release transitional housing programs designed to let people carry out the last part of their sentence in a controlled community setting. These are *alternatives* to traditional incarceration that typically provide greater freedom. Participants remain under SCDC's jurisdiction and control and are NOT on parole or other post-release supervision. In that sense, these programs are very different from the posts-release housing options discussed here.

#### WHAT MAY I NEED TO GET TO BE ACCEPTED INTO TRANSITIONAL HOUSING?

*It depends*—each program has different requirements. You might need: identification; proof of homelessness; proof of any income; proof of your sobriety; police clearance; to get through the waitlist; to have an interview; etc. It's best to CALL (or if you're currently incarcerated, ask a family member or friend to call, or WRITE the program a letter with your request) to find out well in advance of when you want to move exactly what you need to do and all of the requirements.

#### HOW CAN I SHOW PROOF OF HOMELESSNESS?

For proof of homelessness, most housing providers will just need a signed statement. If the housing provider asks for further documentation, you may need to show eviction papers, a letter from a social worker, etc. Some organizations will also issue certificates of homelessness, for example.

#### SPECIAL NEEDS HOUSING—SHORT-TERM OR LONG-TERM

There are also housing programs for people with specific needs such as sober living environments that offer addiction treatment and recovery, safety from domestic violence, assisted living for people with disabilities, housing programs for women with children, veterans, and sex offender registrants. These are often transitional housing programs that are for a short term only; others are intended to be long-term/permanent housing for people with special needs. For more information on special needs housing, see below.

#### LONG-TERM HOUSING OVERVIEW

Later in your reentry, often after your stay at a short-term or transitional housing program is coming to a close, you will need to figure out what type of housing is right for you permanently. As you consider long-term and permanent housing options, you need to find housing that you can *afford*, that you *are eligible for*, and that *meets your needs*.

#### PERMANENT HOUSING

Permanent housing is a place that you can live in for multiple years. Examples of permanent housing include: apartments and homes that get money/assistance from the federal government (though these often have long waitlists that may require you to have somewhere else to live first); single-room occupancy (SRO) units where you usually have a private bedroom and bathroom, but a shared kitchen and living space; affordable apartments; and living permanently with family, friends, or other people who support you. For general tips for renters, see [PG. 65](#) of this chapter.

#### SPECIAL NEEDS HOUSING—SHORT-TERM OR LONG-TERM

Again, as mentioned under short-term housing options, there are special housing programs and units for people with specific needs such as addiction treatment and recovery, safety from domestic violence, assisted living for people with disabilities or mental health needs, housing programs for women with children, veterans, and sex offender registrants. These are often transitional housing programs that are for a short term only. Others are intended to be a long-term, permanent housing solution for people with special needs. See below for more details.

#### HOUSING FOR SPECIAL NEEDS & POPULATIONS

This section provides a brief overview of housing resources for people in reentry with special needs and who might qualify for special programs, including:

1. Women & Children ([PG. 15](#))
2. Domestic Violence Survivors ([PG. 16](#))
3. Seniors/Elders ([PG. 18](#))
4. Veterans ([PG. 18](#))
5. People Recovering from Substance Abuse/Addiction ([PG. 20](#))
6. Sex Offender Registrants ([PG. 22](#))



## WOMEN & CHILDREN

There are some special housing programs available only for women and their children. These programs may have other requirements (for example, that you are currently on supervision, participating in a substance abuse recovery program, etc.). These programs may require a referral from SCDC or another agency.

Since there are very few of these programs and they have limited space, you should contact the program and/or talk to your correctional counselor as soon as possible about contacting the housing program to find out if you meet the eligibility requirements to participate, and how to get added to the waitlist if there is one.

Below are a few programs in different areas of South Carolina for reentering women and children. Please note, this is not a complete list.

- **Midlands Healthy Start**  
 (803) 296-3780 or (888) 788-4367  
 1333 Taylor St., Suite 4-H, Columbia, SC 29201  
<https://prismahealth.org/services/other-services/healthy-start>  
 Midlands Healthy Start, a member of the national Healthy Start initiative, is a free program available to women in Richland and Sumter counties that encourages moms-to-be to begin prenatal care as soon as they become pregnant. Their team will support you throughout your pregnancy and until your child is 18 months old. Services include childbirth education classes, case management, social workers, assistance finding emergency services, support groups, and more.
- **Family Connection of South Carolina**  
 1-800-578-8750  
 1800 Julian Place, Suite 104, Columbia, SC 29204  
<https://www.familyconnectionsc.org/>  
 Family Connection strives to empower the families and individuals they serve with education, support, and resources to achieve their full potential. They connect families to professional staff, peer-to-peer support, and other resources, tools, and professionals.
- **The Nurturing Center**  
 (803) 771-4160  
 1332 Pickens St., Columbia, SC 29201  
<https://thenurturingcenter.org/>  
 The Nurturing Center provides comprehensive, family-focused services to prevent and treat child neglect and abuse. They provide various forms of therapy for families and caregivers, family reunification services, and more.
- **Samaritan's Well**  
 (803) 785-4357  
 129 Gibson Ct., Lexington, SC 29072  
<https://www.christcentralministries.org/samaritan-s-well>  
 The Samaritan's Well exists to provide a transitional shelter for homeless women and children. Samaritan's Well provides a variety of services, including counseling, case management, GED classes, budget training, and assistance with debt reduction.
- **Cherokee Rescue Mission**  
 (864) 488-0376  
 227 Henderson St., Gaffney, SC 29341  
<https://miraclehill.org/shelters/cherokee-county/>  
 Cherokee County Rescue Mission provides safe shelter for a variety of people experiencing homelessness, including men, women, and mothers with children in two different dormitory-style wings. Services include personal counseling, educational opportunities and basic life skills advice. Temporary shelter is also available for those who only need it.
- **The Haven**  
 (864) 582-6737  
 852 E. Main St., Spartanburg, SC 29302  
<https://www.havenupstate.org/>  
 The Haven's mission is to provide shelter and supportive services to families experiencing homelessness through collaborative, locally-driven programs. The Haven has an emergency shelter program for families experiencing homelessness, and also offers case management services.

### DID YOU KNOW?

75% of women incarcerated in South Carolina prisons are mothers, and the majority were the primary caretakers of their children before going to prison. See S.C. Dept. of Corrections, *Profile of Inmates in Institutional Count* (June 30, 2022), [https://www.doc.sc.gov/research/InmatePopulationStats/ASOF-FY20\\_Institutional\\_Count\\_Profile.pdf](https://www.doc.sc.gov/research/InmatePopulationStats/ASOF-FY20_Institutional_Count_Profile.pdf).





- **Angels Charge Ministry (for women)**  
(864) 529-5472  
95 Ashley St., Spartanburg, SC 29307  
<https://angelschargeministry.org/>  
Angels Charge Ministry provides transitional housing, case management, career opportunities, and advocacy in order to provide women in Spartanburg County with tools for a successful re-entry.
- **Hannah House**  
(803) 771-4357  
1726 Sumter St., Columbia, SC 29201  
<https://www.christcentralministries.org/hannah-house>  
Hannah House provides transitional shelter and basic necessities to women, with or without children, who are seeking independence and self-sufficiency. The focus of Hannah House is on rebuilding families, job placement, child care, and affordable housing.
- **Killingsworth Home**  
(803) 771-6359  
1831 Pendleton St., Columbia, SC 29201  
<https://www.killingsworth.org/>  
Killingsworth Home is a transitional home for women in crisis. Their mission is to support, empower, and advocate for women recovering from crisis within a safe, nurturing Christian environment. In addition to room and board, they offer counseling and education, spiritual development, job development and work support, life-skills training, and community re-orientation.

### **DOMESTIC VIOLENCE SURVIVORS**

If your conviction was related to the domestic violence that you experienced, this is *mitigating evidence* that helps to explain your criminal record. IF YOU FEEL SAFE DOING SO, you may want to explain the violent situation you were in at the time of your criminal conduct to a housing provider who is considering your criminal record, so that you are not penalized in your application.<sup>3</sup>

Below are a few resources that may help you to find housing:

#### • **DOMESTIC VIOLENCE SHELTERS & TRANSITIONAL HOUSING**

There are multiple shelter-based domestic violence programs throughout South Carolina. Some of these programs offer both:

1. Emergency shelters (typical stay = 30-60 days), AND
2. Transitional housing programs (typical stay = 6-24 months)

In addition to providing shelter to survivors, both types of programs often provide services such as 24-hour hotlines, legal assistance with restraining orders and child-custody disputes, advocates who can go to court appearances to support you, counseling for you and your children, and referrals to other social services.

Most emergency and homeless shelters for survivors do not conduct criminal background checks (although they are permitted to do so, as long as they follow all of the background check rules on PG. 46). In addition, most shelters are aware that survivors often face criminal charges and/or arrest warrants in connection with the violence that they have experienced. Many shelters have relationships with local law enforcement and can accommodate survivors who are under supervision (like probation, parole, etc.).

#### **STARTING IN A SHELTER**

Starting off in an emergency shelter may help you to find transitional or permanent housing and/or access other services afterward. While some run background checks and have record-related restrictions, if you are living at a domestic violence shelter, the staff may be able to write a letter or provide a referral to a transitional housing program, which can help explain your situation and get around their restrictions.

### **HELPFUL HINTS & RESOURCES**

You should keep in mind that each shelter is different, so the rules and opportunities may not be the same everywhere. There may also be some variation from county to county.<sup>4</sup>

To find a domestic violence shelter or transitional housing program in your area, contact the **National Domestic Violence Hotline** at 1-800-799-SAFE (7233) or call 211. You will have to contact each shelter or program separately to find out if you met their specific criteria.

<sup>3</sup> Nat'l Hous. Law Project, *Housing Rights for Survivors of Domestic Violence Interacting with the Criminal Justice System* (March 30, 2020), <https://www.nhlp.org/webinars/housing-rights-for-survivors-of-domestic-violence-interacting-with-the-criminal-justice-system>.

<sup>4</sup> Helping Families Save Their Homes Act of 2009, Pub. L. No.: 111-22, tit. VII, § 1003.





A list of resources in South Carolina for people experiencing DV is also available online at:

- South Carolina Dept. of Social Services:  
<https://dss.sc.gov/adult-protection/domestic-violence-program/help-for-victims/>
- National Domestic Violence Hotline Resources Page:  
<https://www.thehotline.org/get-help/domestic-violence-local-resources/> (Select “South Carolina” in the search box.)

Below are some specific programs in different areas of South Carolina for survivors of domestic violence. Please note: This is not a complete list and the resources in the “Helpful Hints & Resources” box above may help you find other housing options.

- **Killingsworth Home**  
(803) 771-6359  
1831 Pendleton St., Columbia, SC 29201  
<https://www.killingsworth.org/>  
Killingsworth Home is a transitional home for women in crisis. Their mission is to support, empower, and advocate for women recovering from crisis within a safe, nurturing Christian environment. In addition to room and board, they offer counseling and education, spiritual development, job development and work support, life-skills training, and community re-orientation.
- **Safe Harbor**  
1-800-291-2139  
429 E. Main St., Greenville, SC 29601  
<https://www.safeharborsc.org/>  
Safe Harbor offers a continuum of services for survivors of domestic violence and their children in Greenville, Anderson, Pickens and Oconee Counties. Services include a 24/7 helpline, safe emergency shelters, counseling for survivors and their children, transitional housing, and more.
- **Meg’s House**  
(888) 847-3915  
929 Phoenix St., Greenwood, SC 29648  
<https://megshouse.org/>  
Meg’s House is an organization that provides safe emergency shelter and supportive services to survivors of domestic violence in McCormick, Edgefield, and Greenwood Counties. Services include an emergency shelter, assistance with relocation and transitional housing, referrals, court advocacy, and more.
- **Hopeful Horizons**  
(843) 770-1070  
1212 Charles St., Beaufort, SC 29902  
<https://www.hopefulhorizons.org/>  
Hopeful Horizons provides survivors of domestic violence in Beaufort County with safe emergency shelter, treatment, legal services, and more.

### • **GOVERNMENT-ASSISTED HOUSING FOR DOMESTIC VIOLENCE SURVIVORS**

Read an overview of government-assisted housing and why it could be right for you on [PG. 24](#); read details about bans on people with certain convictions and criminal histories on [PG. 27](#).

First, the following federal government-assisted housing programs *do not* have any *mandatory* criminal record restrictions, and may be available to survivors of domestic violence:

- Supportive Housing Program for the Homeless
- Shelter Plus Care (for homeless people with disabilities)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Low-Income Housing Tax Credit (LIHTC)<sup>5</sup>

Second, for other government-assisted housing programs that *do* have restrictions based on criminal records, domestic violence survivors are entitled to certain additional protections. The Violence Against Women Act (VAWA) states that effectively all public housing, including Public

#### WHO DOES THE GOVERNMENT CONSIDER TO BE “HOMELESS”?

The federal government’s definition of “homeless” includes people who are escaping situations of domestic violence and have no other housing or resources available. If you are escaping domestic violence, you may be eligible for a government-assisted housing program for “homeless” people. See 24 U.S.C. § 11302(b).

<sup>5</sup> *Id.* (This is a citation used in legal documents that means “the same thing as above.”)



Housing Authorities (PHAs), *cannot deny or end your housing* because of the domestic violence that you experienced or because of a criminal conviction that is directly related to the domestic violence you experienced.<sup>6</sup> This means if your public housing application is denied based on conduct or a past conviction related to the domestic violence you've experienced, you should immediately challenge the denial and ask the PHA for an informal review hearing. At that hearing, you can explain how the conduct or conviction is related to your experience of domestic violence.<sup>7</sup> Go to [PG. 60](#) to learn how to challenge denials to government-assisted housing.

### SENIORS/ELDERS

Although there are very few housing programs created just for senior citizens in reentry, you may be eligible for housing based on your disability (see Appendix E, [PG. 86](#)), your low income (see [PG. 24](#)), or qualify for different types of transitional housing (see [PG. 13](#)).

Transitional housing programs for seniors—particularly low-income housing, homelessness prevention, and sober or residential treatment programs for seniors—may be more likely to admit seniors with criminal records because the conviction was long ago or you have physical or health needs that give you priority for the housing (it may help to mention these factors if the housing provider raises your record as an issue).

This is one program in South Carolina specifically for senior citizens. Please note: This is not a complete list and there may be other options available in South Carolina. For a more complete list of transitional housing options, see Appendix B on [PG. 77](#).

- **Greenville Housing Futures**  
(864) 370-2020  
100 Lavinia Ave., Greenville, SC 29601  
<https://greenvillehousingfutures.com/>  
Greenville Housing Futures is a private non-profit that specializes in affordable rental units for seniors. For more information about whether you qualify, you may call the number above.

### VETERANS

The U.S. Department of Veteran Affairs (VA) offers various housing programs for veterans. **If you are currently incarcerated**—whether in a state or federal facility—a “Health Care for Reentry Veterans Specialist (HCRV Specialist)” is supposed to arrange a meeting with you about your goals to determine the resources available to best meet your needs after release.<sup>8</sup>

#### ***What is a HCRV Specialist and how can I contact one to help me find housing?***

Every region of the U.S. has a HCRV Reentry Specialist who can help determine your eligibility for VA benefits, help you enroll in the VA, and connect you with local housing and services. VA Reentry Specialists have relationships with both state and federal correctional facilities to help incarcerated veterans plan and prepare for release.<sup>9</sup>

If you already met with the VA Reentry Specialist and received instructions for housing, you should continue with those arrangements. If you are just starting to arrange housing plans, the VA's Health Care for Homeless Veteran program can help you find housing in your area. If possible, you should visit your local VA, or call the National Call Center for Homeless Veterans hotline available 24/7 at 1-877-4-AID-VET (424-3838)<sup>10</sup>. There you will find a VA counselor available to help you.

Below are also some options for programs in South Carolina that specifically accept veterans:

- **Alston Wilkes Society**  
(803) 799-2490 (Corporate Office, Various Locations)  
3519 Medical Drive, Columbia, SC 29203 (Corporate Office, Various Locations)

#### **A NOTE ABOUT REQUESTING REASONABLE ACCOMMODATIONS IF YOU HAVE A DISABILITY:**

If you have a mental, physical, or developmental disability, and you must follow parole, probation, or community supervision conditions that restrict where you can live, you have the right to receive reasonable accommodations for your disability at your residence. For help, you may want to contact a legal aid provider for people with disabilities, listed in Appendix C on [PG. 81](#) or call Root & Rebound (864-546-5089) for a referral or further assistance.

<sup>6</sup> Violence Against Women Reauthorization Act of 2021 (VAWA), 34 U.S.C. § 12491(b)(C)(iii) (2021); 24 C.F.R §§ 982.553(e), 5.2005(c), 5.2001 et seq. Under VAWA, a public or subsidized housing provider can only evict you based on the domestic violence you've experienced if it proves that your tenancy creates an “actual and imminent threat” to other residents or staff. VAWA's protections apply to public housing, Section 8 vouchers and project-based assistance, LIHTC, USDA, Section 202, and Section 811 housing.

<sup>7</sup> Catherine Bishop, et al., Nat'l Hous. Law Project, *Housing Access for Domestic Violence Survivors with Criminal Records* (Sept. 7, 2011).

<sup>8</sup> See HCRV Specialist Contacts, DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/homeless/reentry.asp> (contact [david.calef@va.gov](mailto:david.calef@va.gov) for more information about the South Carolina HCRV program).

<sup>9</sup> *Id.*

<sup>10</sup> See National Call Center for Homeless Veterans, DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/homeless/nationalcallcenter.asp>.



<https://www.alstonwilkessociety.org/services/veteran-services/>

Alston Wilkes Society provides transitional housing and supportive services for veterans.

- **Upstate Warrior Solutions**  
(864) 520-2073 (Greenville, Spartanburg, Anderson, Pickens/Oconee Locations)  
3 Caledon Court, Suite A-2, Greenville, SC 29615  
<https://upstatewarriorsolution.org/>  
Upstate Warrior Solutions assists veterans with education benefits, employment services, housing services, healthcare and benefits, and family member assistance of veterans.
- The Department of Veterans Affairs also has a list of facilities for veterans in South Carolina. For more information, visit the following website:  
[https://www.va.gov/directory/guide/fac\\_list\\_by\\_state.cfm?State=SC&dnum=ALL](https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=SC&dnum=ALL)

### HELPFUL RESOURCES

- To learn more about preparing for release as a veteran, go to the VA website:  
<https://www.va.gov/HOMELESS/index.asp>
- AFTER YOU ARE RELEASED, you can visit these websites to find your local Veterans' Affairs Office:
  - <https://www.va.gov/directory/guide/state.asp?STATE=SC&dnum=ALL>
  - <https://scdva.sc.gov/county-veterans-affairs-offices>.

- **YOUR VA HOUSING OPTIONS INCLUDE THE FOLLOWING PROGRAMS:**

#### **HEALTH CARE FOR HOMELESS VETERANS CONTRACTS (HCHV)**

The HCHV program provides emergency housing, shelters, and treatment to veterans enrolled in VA Healthcare, through local community organizations and service providers. These local community organizations and service providers may offer outreach, exams, treatment, referrals, and case management to veterans who are homeless and dealing with mental health issues. For information about the HCHV program, please visit:

<http://www.va.gov/homeless/hchv.asp>

#### **SUPPORTIVE SERVICES FOR VETERAN FAMILIES GRANTS (SSVF)**

Local non-profit organizations receive funding from the VA to assist low-income veterans (and their families) who are homeless or at risk of homelessness. SSVF programs can help you transition to permanent housing, along with case management and assistance with getting other benefits and services.<sup>11</sup>

For a list of current SSVF providers, please visit the following website:

<https://www.va.gov/homeless/ssvf/ssvf-overview/>

### HELPFUL HINT

#### ***Connecting with legal services providers through an SSVF program:***

Participating SSVF programs may provide or may contract with local legal aid organizations to provide Veterans with legal services. *(Veterans ineligible for VA Enrollment may be eligible to receive SSVF assistance if available. Inquire at your VA if this option is an option for you.)*

#### **VA SUPPORTIVE HOUSING (HUD-VASH) PROGRAM**

HUD-VASH is a joint effort between HUD (US Department of Housing and Urban Development) and VA to move veterans and their families out of homelessness and into permanent housing. HUD provides Section 8 vouchers to eligible veterans, and the VA offers eligible homeless veterans clinical and supportive services through its health care system.

Veterans applying for Section 8 Housing Vouchers through the HUD-VASH program are subject to most Section 8 Housing eligibility rules (for example, your income).

<sup>11</sup> See Supportive Services for Veteran Families Program, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.va.gov/homeless/ssvf.asp>.



For more information about the HUD-VASH program, please visit the following website:

<https://www.va.gov/HOMELESS/HUD-VASH.asp>

### **THERE IS AN IMPORTANT EXCEPTION TO CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING FOR VETERANS:**

HUD-VASH applicants *are not subject to most Section 8 regulations regarding criminal and/or drug-related history*. This means that Public Housing Authorities (PHAs) cannot deny Section 8 housing to HUD-VASH applicants based off the applicant's prior drug activity or criminal record (unless you or someone in your household is subject to a lifetime sex offender registration, in which case the PHA can still deny you and your household from Section 8 housing programs).<sup>12</sup>

### **MENTAL HEALTH RESIDENTIAL REHABILITATION AND TREATMENT PROGRAMS (MH RRTPs)**

MH RRTPs provide residential rehabilitation and treatment services for veterans with multiple and severe medical conditions, mental illness, addiction, or psychosocial deficits. MH RRTPs promote rehabilitation, recovery, health maintenance, improved quality of life, and community integration, in addition to treatment of medical conditions, mental illnesses, addictive disorders, and homelessness. The residential program helps veterans to develop a lifestyle of self-care, personal responsibility, and medical health.

- For more information about MH RRTP and other residential VA programs, please visit the following website: <https://www.benefits.gov/benefit/301>
- Please note: VA Housing providers are required to verify you are free of Tuberculosis (Tb). If you have had a Tb test within the past year, you should request a copy of the results before your release from incarceration. If you do not have a recent Tb clearance, request the test so you can have this document available.

### **SUBSTANCE USE DISORDER (SUD) PROGRAM**

SUD programs are an option for veterans who suffer from past addiction or alcohol abuse. VA Medical Centers without a specific SUD Program do offer SUD Treatment. Many Vet Centers and VA Community Based Outpatient Clinics also offer SUD treatment.

- For more information about SUD programs in South Carolina, visit the following website: [https://www.va.gov/directory/guide/state\\_SUD.cfm?STATE=SC](https://www.va.gov/directory/guide/state_SUD.cfm?STATE=SC)
- If you are not sure if past substance or alcohol use would qualify as a substance use disorder, the VA has developed a questionnaire to help you identify the signs and symptoms of a substance use disorder. (The results of this questionnaire are completely confidential, and the results will not be stored or sent anywhere.) You can find the questionnaire at this website: <https://www.myhealth.va.gov/mhv-portal-web/substance-abuse-screening>

### **SUBSTANCE ABUSE TREATMENT & RECOVERY HOUSING (ALSO CALLED “SOBER LIVING ENVIRONMENTS”)**

If you suffer from past addiction or alcoholism, you may be eligible for special housing and/or funding programs that provide residential treatment for substance abuse. These are also called “Sober Living Environments” (SLEs). More information about these residential facilities can be found on the following website: <https://findtreatment.samhsa.gov/locator?sType=sa>. Search for “South Carolina” in location and under “type of care” choose “Transitional housing, halfway house, or sober living.”

Below are a few SLEs in different areas of South Carolina. Please note: This is not a complete list.

- **Oliver Gospel Mission (men only)**  
(803) 254-6470  
1100 Taylor Street, Columbia, SC 29201  
<https://www.olivergospel.org/>  
Oliver Gospel is a community-based mission that helps those experiencing homelessness, poverty, or addiction transform their lives through physical, spiritual, and relational support so that they can lead full, healthy lives. Through their Men's Center and their social enterprises, Oliver Gospel Mission provides

<sup>12</sup> Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 Fed. Reg. 17086, 17088 (March 23, 2012); DEPT OF VETERANS AFFAIRS, Guidebook for Incarcerated Veterans in South Carolina (4th ed. 2009).



holistic rehabilitation, transitional housing, and career development, always aiming for permanent housing and a solid community for each person who comes through their doors.

- **Harmony House (women only)**  
(864) 422-5005  
800 Pendleton Street, Greenville, SC 29601  
<https://turningpointofsc.org/womens-residences/>  
The Harmony House is a safe place for women to seek healing from addiction. With 26 beds, fully renovated rooms and living areas, and live-in staff who have experienced recovery, the Harmony House helps meet the high demand for a recovery solution for women in our area.
- **Turning Point of South Carolina (men only)**  
(864) 299-0090  
24 Bruce Road, Greenville, SC 29605  
<https://turningpointofsc.org/mens-residences/>  
Turning Point of South Carolina assists suffering alcoholics and drug addicts with recovery by removing obstacles and providing support. Turning Point of SC removes many obstacles through providing substance-free housing available to anyone committed to recovery, regardless of present financial status.
- **Miracle Hill Ministries (Overcomers Center for Men)**  
(864) 631-0088  
1916 N. Pleasantburg Drive, Greenville, SC 29609  
<https://miraclehill.org/shelters/overcomers-center-for-men/>  
The Overcomers Center is a 27-week residential addiction recovery program for men where educational and life skills classes, group and individual counseling, bible study, devotional services, classroom instruction, and seminars are part of the four-level curriculum. After graduation guests are encouraged to stay in a Miracle Hill Transitional House for additional support as they move toward independent living.
- **Miracle Hill Ministries (Renewal for Women)**  
(864) 242-2166  
19 Graves Drive, Greenville, SC 29609  
<https://miraclehill.org/shelters/renewal-for-women/>  
Renewal is a six-month addiction recovery program for women struggling with addiction where guests complete four levels of a Bible-based twelve step program to qualify for graduation. Group and individual counseling, life skills and educational classes, devotional services, and discipleship help these women focus on God as they learn to live a life free from addiction.
- **Oxford House**  
Multiple locations. See the following website for contact information:  
<https://www.oxfordhousesc.org/>  
Oxford House is a concept in recovery from drug and alcohol addiction. Oxford Houses are democratically self-run, self-supported recovery homes.
- **His House Ministry (Grace Men's Program)**  
(803) 791-0557  
765 Meeting Street, Columbia, SC 29169  
<https://hishousesc.org/>  
Grace Men's Program provides a residential rehabilitation program for recovering alcoholic men in a Christian environment. His House provides housing, clothing, food and rehabilitation for the program without any cost to the participant.
- **Greenville Transitions (men only)**  
(864) 404-6534  
<https://www.greenvilletransitions.com/>  
Greenville Transitions uses an integrative recovery plan to ensure each client is receiving the type of recovery support he needs, while engaging in 12 step facilitated programs and continuous peer-based recovery support. They partner with the region's best clinicians and physicians for individual, group, and family therapy to ensure that their residents get the care they need.
- **Christ Central Ministries**  
(803) 600-5803  
1711 Pendleton Street, Columbia, SC 29201 (Housing options across South Carolina)  
<https://www.christcentralministries.org/>  
Christ Central Ministries offers "mission stations" across South Carolina, a free medical center, the largest Veteran Center in South Carolina, addiction housing facilities, a children's home, women and men's transitional facilities, resource and solutions centers, food banks, thrift stores, free GED programs, and many other mission outreaches serving various needs in communities across South Carolina.



- **NOTE ON SPECIAL HOUSING:** There are transitional housing programs that focus on substance abuse treatment and/or sober living conditions for people with former addictions. Be aware that many of these programs are only available for short- or medium-term stays.

***My conviction was for past drug or alcohol use. Is past addiction considered a legally protected disability?***

Yes. Past (BUT NOT CURRENT) drug addiction and alcoholism are considered disabilities under state and federal law. This means you may have the right to request *reasonable accommodations* for your disability.<sup>13</sup> Reasonable accommodations might include an extended curfew so that you can attend treatment or AA/NA programs, permission to take methadone if prescribed by your doctor, or access to special rehabilitative services. Moreover, a landlord may not deny you housing or discriminate against you based on your past addiction or alcoholism.

For more information on asking for reasonable accommodations—where you could ask a landlord to make an exception to their policy banning former addicts from housing (since past addiction is a protected disability), go to Appendix E, [PG. 86](#).

**SEX OFFENDER REGISTRANTS & RESIDENCY RESTRICTIONS**

AS A BRIEF SUMMARY:

In South Carolina, there are strict housing restrictions on people who are required to register as sex offenders. If this law applies to you, you cannot reside within 1,000 feet of any school, daycare center, children's recreational facility, park, or public playground.<sup>14</sup> There are some exceptions to this rule, such as living somewhere before the new school was built or residing in a community residential care facility or nursing home.<sup>15</sup> If you have specific questions about exceptions, we suggest contacting one of the South Carolina legal aid providers in Appendix C on [PG. 81](#) to make sure your housing is not in violation of the distance restrictions.

Below are a few housing options in South Carolina for people required to register as sex offenders. Please note: This is not a complete list.

- **Oliver Gospel Mission** (for men only)  
(803) 254-6470  
1100 Taylor Street, Columbia, SC 29201  
<https://www.olivergospel.org>  
Oliver Gospel Mission meets the needs of their community through emergency services, rehabilitation, transitional programs, and community outreach.
- **Shield Ministries**  
(843) 860-6462  
5519 Woodbine Avenue, North Charleston, SC 29406 (physical)  
P.O. Box 61595, North Charleston, SC 29419 (mailing)  
<https://www.shieldministries.org>  
Shield Ministries offers services to MIT (Men in Transition) based on five pillars of stabilization: crisis management, regulatory compliance, workforce development, life skills education, and Christian spiritual development.
- **JumpStart**  
(888) 403-3815  
418 Old Greenville Road, Spartanburg, SC 29301  
<https://www.jumpstartvision.org>  
Offers a safe and stable environment for people in transition after incarceration.

**IMPORTANT DEFINITIONS TO KNOW FOR  
PEOPLE CONVICTED OF SEX OFFENSES:**

"DISTANCE" is measured by a straight line between the main entrance of the residence and the boundary of the nearest park or school, not the driving or walking distance. S.C. Code Ann. § 23-3-535(A)(4).

"Temporary address" or "residence" means the location of your home or other place where you habitually live or reside, or where you live or reside for a period of ten or more consecutive days. "Habitually lives or resides" means locations at which you live with some regularity. S.C. Code Ann. § 23-3-460(D).

<sup>13</sup> Americans with Disabilities Act, 42 U.S.C. § 12210(b); 24 C.F.R. § 100.204; S.C. Code Ann. § 31-21-30(7). However, current illegal drug use is not considered a disability and does not provide any legal protection against discrimination. A landlord may deny or terminate your housing based on current drug use, even if you are also previously or currently addicted.

<sup>14</sup> S.C. Code Ann. § 23-3-535(A)(4)(B).

<sup>15</sup> *Id.* at (A)(4)(C).





## **PRIVATE VS. GOVERNMENT-ASSISTED HOUSING: AN OVERVIEW**

It is very important that you understand the difference between private and government-assisted housing, because the type of housing you live in will affect your rights. There are very specific legal requirements for how a government-assisted housing provider can access, look at, and consider your criminal record, and different requirements for what a private landlord can access, look at, and consider.

**IMPORTANT NOTE ABOUT THE TERMS USED IN THE HOUSING CHAPTER:** We use the term “government-assisted” housing throughout this Chapter to refer to housing programs and owners of housing that receive money from the federal government. We do not use “public housing” to talk about any and all housing that gets government money because there is actually a specific program run by the government called the “Public Housing” program. So when we use the term “Public Housing,” we are referring to the specific Public Housing program, NOT all housing that receives government support.

### **HOW CAN I FIGURE OUT IF I AM APPLYING TO/LIVING IN PRIVATE OR GOVERNMENT-ASSISTED HOUSING?**

- Did you apply for the housing through a PHA? *If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.*
- Do you have a “Section 8” Housing Choice Voucher? *If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.*
- Do you have to report changes in your income (not just your income when you first apply) to a PHA or landlord/property manager? *If yes, then this is most likely government-assisted housing. This means that the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.*
- Look up the property online at: <https://resources.hud.gov/>. *If you still don’t know, ask the OWNER of the property.*

Sometimes it’s clear that you live in government-assisted housing because you had to apply for the housing unit or program through a local Public Housing Authority (PHA) or your landlord *is the PHA itself*. Other times, it’s unclear that you live in government-assisted housing because the owner gets a special benefit directly from the government without you knowing it. The hints above will help you figure out if you are living in government-assisted housing, but you can also ask the owner (the landlord) of the property.

## **PRIVATE HOUSING: THE BASICS**

This is a large category of housing that is owned and run by private landlords (NOT the government). Private housing could be an apartment, house, shelter, month-to-month lease, year-to-year lease, or multi-year lease. It could be owned by a single owner or by a large property management company where you only interact with the housing managers and not the owner(s) themselves.

### **WHY WOULD I BE INTERESTED IN LIVING IN PRIVATE HOUSING?**

Private housing tends to have fewer legal barriers for people with records. Instead, the landlord (owner) has more discretion and decision-making power about their background screening policies (learn more about illegal discrimination in housing on the basis of criminal records on [PG. 46](#)).

### **HOW CAN I FIND PRIVATE HOUSING?**

There are many different ways to find private housing, such as an apartment owned by a private landlord. Sometimes it is no easy task, especially when your housing needs to be approved by parole or probation, you have special rules to follow in reentry, there is a lack of affordable housing, and you might be facing discrimination. It is important to find support in the housing search!

Websites like [craigslist.com](https://www.craigslist.com), [padmapper.com](https://www.padmapper.com), and [apartmentfinder.com](https://www.apartmentfinder.com) are good places to start—you can search by location, type of housing or apartment, and budget. You can also ask for suggestions from family, friends, or other formerly incarcerated people and mentors who have figured out long-term housing options. Finally, there are some transitional housing programs and reentry programs that provide housing to people with records. You can view a list of possible transitional housing options at this website:

[https://www.doc.sc.gov/programs/south\\_carolina\\_housing\\_resource\\_list.pdf](https://www.doc.sc.gov/programs/south_carolina_housing_resource_list.pdf).



### WHO IS MY LANDLORD IF I LIVE IN PRIVATE HOUSING?

Your landlord is whoever *owns* the property. The owner could be a single person, a small group of people, or a large management company with many owners or shareholders. If you are renting a private apartment, look at your *lease* to find the name and contact information for the property's owner.

...VERSUS...

### **GOVERNMENT-ASSISTED HOUSING: THE BASICS**

If you are a low-income individual person or household and you are looking for affordable rental housing in your area, you may want to apply for government-assisted housing. The federal government funds most government-assisted housing programs. They have many rules about who can and can't live there, including a lot of rules about how a criminal record affects your ability to live there (read about those rules and exclusions on [PG. 29](#)). Government-assisted housing is designed for people with low-income.

For some government-assisted housing programs, the government runs the housing facilities and EVERYTHING about the housing application process. For other federally assisted housing programs, the government works with private companies or private owners/landlords who run their own facilities and have their own application process separate from the government.

Government-assisted housing could be short-term, long-term, an apartment, a house, a shelter, or a transitional housing program with services.

### WHY WOULD I BE INTERESTED IN LIVING IN GOVERNMENT-ASSISTED HOUSING?

Government-assisted housing is a great option for many low-income people and households. While they have many rules about who can and cannot live there, it provides you with an opportunity to have affordable rental housing in your area. See below for the resources that can help you find government-assisted housing in your area. One major down-side is that government-assisted housing programs tend to have very long wait-lists, so it is good to sign up early and check back often.

### HOW CAN I FIND GOVERNMENT-ASSISTED HOUSING?

Try the following resources to find government-assisted housing:

1. YOUR LOCAL PUBLIC HOUSING AUTHORITY (PHA), which runs some of the biggest government-assisted housing programs, including the Public Housing program and the Housing Choice Voucher program (commonly known as "Section 8" or the voucher program).
2. SEARCH ONLINE: To find your local PHA on the web, visit these websites:
  - a. [https://www.hud.gov/sites/dfiles/PIH/documents/PHA\\_Contact\\_Report\\_SC.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_SC.pdf).
  - b. <https://schousingsearch.com/>
3. SEARCH IN THE PHONE BOOK: If you don't have regular access to a computer, look in your phone book in the government or business sections for your local Public Housing Authority (PHA). Some areas have both city and county PHAs; others just have a city PHA. In the government section of the phone book, first look for the city, then look for "housing authority" or "housing department" (for example, the "Greenville Housing Authority," or the "Housing Authority of the City of Charleston"). Sometimes, the local PHA will be listed under the city's housing department.
4. OTHER GOVERNMENT-ASSISTED HOUSING, NOT THROUGH YOUR LOCAL PUBLIC HOUSING AUTHORITY (PHA):
  - a. PRIVATE AND NONPROFIT LANDLORDS operate other forms of government-assisted rental housing programs. The U.S. Department of Housing and Urban Development (HUD) maintains a searchable list of these programs online here: <https://resources.hud.gov/>
  - b. LOW INCOME TAX CREDIT HOUSING is an affordable rental housing developed through the Internal Revenue Services' (IRS) Low Income Housing Tax Credit program (LIHTC). Typically, this housing does not serve extremely low-income households, but it is less expensive than similar private housing in the community. LIHTC housing is owned and operated by private owners and nonprofit agencies and is monitored in each state by a state agency. Frequently, but not always, that agency is the state housing finance agency. Some of these agencies may have lists of persons and organizations that operate LIHTC housing in your state. Read more about these types of property in South Carolina at: <https://www.schousing.com/Home/HousingTaxCredits>
  - c. RURAL HOUSING: The U.S. Department of Agriculture (USDA) also funds government-assisted rental housing in rural areas throughout the United States and maintains a website that allows you





to search for rural government-assisted rental housing here:

[https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_state.jsp](https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp)

#### **WHO IS MY LANDLORD IF I LIVE IN GOVERNMENT-ASSISTED HOUSING?**

It depends. If you live in PUBLIC HOUSING, the local Public Housing Authority (PHA)—run by your city or county—owns your entire building and is your landlord. In rare cases, a private company may manage the building for the PHA or may be part of the ownership, but the building is still controlled by the PHA. PHAs operate in almost every city and county in South Carolina. For a list of PHA contact information, see Appendix A on [PG. 71](#).

If you live in OTHER TYPES OF FEDERAL GOVERNMENT-ASSISTED HOUSING, the PHA is *not* your landlord. This includes all of the other types of government-assisted housing discussed on [PG. 24](#) above. Even if you applied through the PHA, it will not be your landlord. Instead, your landlord will be a private owner who receives financial assistance from the federal government in exchange for renting to low-income people, or a private owner that accepts vouchers from low-income people who went through a PHA to get a reduction on their rent. Owners of government-assisted housing could be individual landlords, for-profit companies, or nonprofit organizations. You can get this type of government-assisted housing through VOUCHERS, where you get the assistance from a PHA and then have to find rental housing on the private market that will accept your voucher. OR you can get this type of government-assisted housing through “multi-family” properties where the owner gets the assistance and it stays with the property to keep it affordable for low-income tenants.



### III. APPLYING FOR & GETTING INTO HOUSING

#### WHAT WILL I LEARN?

- What it means to be eligible or ineligible for housing
- How your record might ban you from private housing
- How your record might ban you from government-assisted housing
- What types of bans are illegal and when
- When a landlord is allowed to deny you housing but does not have to

#### UNDERSTANDING HOUSING ELIGIBILITY

##### WHAT DOES IT MEAN TO BE “ELIGIBLE” FOR HOUSING?

To be eligible for housing means you meet specific criteria so that it is *possible* for you to be accepted into that housing if you apply. On the other hand, being *ineligible* for certain types of housing means there is something about you or your situation that automatically disqualifies you and prevents you from being accepted because of the housing agency’s rules.

##### WHY IS IT IMPORTANT TO UNDERSTAND THE ELIGIBILITY RULES FOR DIFFERENT TYPES OF HOUSING?

Knowing the rules and policies that different types of housing have for who can and cannot live there is important for you to understand whether or not you will want to apply and what your chances are of being accepted. Keep in mind: it’s possible for your situation to change in a way that could also change your eligibility. Continue reading to learn more.

##### WHAT ARE SOME OF THE REASONS I COULD BE ELIGIBLE OR INELIGIBLE FOR A HOUSING PROGRAM?

You could be *eligible* or *ineligible* because of (1) your income, (2) your criminal record, and/or (3) some other specific factor.

**(1) INCOME:** How much money you make will be an important factor for certain types of housing. If you are low-income, it will help you in certain contexts. For example, housing that is subsidized (paid for partially or fully) by the government, you must be low-income (earning less than a certain amount of money per month) to be eligible. The income cutoff is different for different programs (read more below), but for most private housing, you must be earning more than a certain amount of money per month to be eligible. Landlords want proof of your income being a certain amount so they know you are able to pay rent.

**(2) CRIMINAL RECORD:** For almost all kinds of housing, specific kinds of criminal convictions may disqualify you from applying, or at least make it harder for you to get accepted as a tenant.

**(3) OTHER SPECIFIC FACTORS:** Some housing programs—especially those fully or partially funded by the government—are designed for certain specific groups of people. Your age, income level, disability status, veteran status, homeless status, gender, and whether you have children are just some of the factors that could make you eligible for certain specific housing programs.

##### I WAS RECEIVING SECTION 8 HOUSING AND WAS THEN INCARCERATED. DO I NEED TO REAPPLY?

Yes. If you were the sole recipient of Section 8 vouchers and are absent for a prolonged period of time due to incarceration, you may be in violation of your local Public Housing Authority’s local policies and/or the terms of your housing contract.<sup>16</sup> If that is the case, your public housing assistance benefits are likely to be terminated.<sup>17</sup> Federal law allows individuals to be absent from Section 8 housing for a maximum of 180 consecutive days, but the maximum set by your city or county’s Public Housing Authority may be shorter.<sup>18</sup> To see contact information for local Public Housing Authority branches, go to Appendix A on [PG. 71](#), or call HUD Customer’s Service at 1-202-708-1112. Note that you may have to wait at least six months after your Section 8 benefits were terminated before reapplying, but check your original Section 8 contract for more information on the specific rules that apply to your situation. You might also consider contacting one of the South Carolina legal aid providers listed in Appendix C on [PG. 81](#).

<sup>16</sup> 24 C.F.R. § 982.312.

<sup>17</sup> *Id.* at (b).

<sup>18</sup> *Id.* at (a).



## HOW WILL MY CRIMINAL RECORD AFFECT MY ELIGIBILITY AND APPLICATION TO DIFFERENT TYPES OF HOUSING?

Whether you are looking at short-term/transitional or long-term housing, the impact of your criminal record on your application depends on whether that housing is *PRIVATE* or *GOVERNMENT-ASSISTED*. In this Chapter, when we talk about government-assisted housing, we are talking about housing that gets money from the federal government to make it more affordable for low-income people. The federal government has created many laws that control government-assisted housing, including who is allowed to live there.

In this section, we will explain how your CRIMINAL RECORD affects your application to both private housing and government-assisted housing; whether or not a Public Housing Authority (PHA) or owner can refuse to rent to you; what you can do to strengthen your application; and how you can challenge a denial that you believe is illegal.

### HOW CAN I FIGURE OUT IF I AM APPLYING TO/LIVING IN PRIVATE OR GOVERNMENT-ASSISTED HOUSING?

- Did you apply for the housing through a PHA?  
If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.
- Do you have a “Section 8” Housing Choice Voucher?  
If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.
- Look up the property online at: <https://resources.hud.gov/>
- If you still don’t know, ask the OWNER of the property.

Sometimes it’s clear that you live in government-assisted housing because you had to apply for the housing unit or program through a local Public Housing Authority (PHA) or your landlord *is the PHA itself*. Other times, it’s unclear that you live in government-assisted housing because the owner gets a special benefit directly from the government and you didn’t know. The hints above will help you figure out if you are living in government-assisted housing, but you can also ask the owner (the landlord) of the property.

## CRIMINAL RECORD BANS TO BE AWARE OF BEFORE YOU APPLY TO HOUSING

### 1. CRIMINAL RECORD BANS IN PRIVATE HOUSING

#### HOW CAN MY CRIMINAL RECORD AFFECT MY CHANCES OF GETTING PRIVATE HOUSING?

Most private landlords will run a background check on you and have a broad discretion to deny you based on past criminal involvement. However, the landlord cannot have a blanket ban on ALL people with criminal records and must treat your criminal record the same as it treats other applicants’ records. Keep reading this section to learn what landlords can and can’t do when getting and considering your criminal history information.

#### CAN A PRIVATE LANDLORD REFUSE TO RENT TO ME JUST BECAUSE OF MY CRIMINAL RECORD?

Most of the time, yes. Unfortunately, the law does not protect you from housing discrimination based on your criminal record alone. Although federal and state laws make it illegal for private landlords to discriminate against you because of your race, color, religion, sex, national origin, disability<sup>19</sup>, or family status in South Carolina, they do not provide any specific or direct protection based on having a criminal record.<sup>20</sup> Landlords have the power to choose their tenants, and judges often side with landlords who claim that banning people with criminal records is necessary to protect other residents and property.<sup>21</sup>

<sup>19</sup> Note that while South Carolina law uses the term “handicap,” Root & Rebound chooses to use the term “disability” as we feel it is more appropriate and people-centered.

<sup>20</sup> See Fair Housing Act, 42 U.S.C. § 3601 et seq.; South Carolina Fair Housing Law, S.C. Code Ann. §§ 31-21-10 - 31-21-150. It is best to bring separate claims under each law because the remedies are different. For more information on your options for filing housing discrimination claims, see Appendix H on PG 94.

<sup>21</sup> 42 U.S.C. § 3604(f)(9) (Fair Housing Act does not protect “individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others”); see *Simmons v. T.M. Assocs. Mgmt.*, 287 F.Supp.3d 600, 603 (W.D. Va. 2018) (holding a landlord cannot deny an applicant with a criminal record who is requesting a reasonable accommodation for a disability when the applicant’s disability allegedly caused the criminal record.) (Distinguishes *Evans v. UDR, Inc.*, 644 F. Supp. 2d 675 (E.D.N.C. 2009) (holding that the Fair Housing Act (FHA) did not prohibit landlords from denying a disabled tenant’s rental application based on the tenant’s criminal record; relaxation of landlord’s “no criminal history” policy was not required as a reasonable accommodation for mentally disabled tenant, even where tenant’s disability was an underlying cause of the tenant’s conviction.))



However, there are some cases where you might be protected if a private landlord rejects you because of your criminal record.

1. The Department of Housing and Urban Development (HUD)'s official stance is that landlords cannot refuse to rent to someone with a criminal record regardless of the circumstances (e.g. type of offense, age of the offense, etc.). Read more about this type of discrimination (called a "blanket ban") below.
2. Additionally, if your CONVICTION is for substance/drug abuse, your *past* substance abuse is considered a disability under state and federal law. People with disabilities enjoy greater protection against discrimination (read more about asking for a reasonable accommodation for a disability in Appendix E, [PG. 86](#)).
3. Finally, you are protected by state and federal law that limits what a private landlord can learn about you from a BACKGROUND CHECK (often called a "tenant report" when it's for a landlord who is screening you for their housing). A landlord has to tell you about the background check, give you a chance to fix mistakes, and certain information *isn't legally supposed to come up* in the background check (read more on [PG. 46](#)).

### **CAN A PRIVATE LANDLORD REFUSE TO RENT TO ME BECAUSE MY CRIMINAL RECORD WOULD INCREASE THEIR HOMEOWNER'S INSURANCE RATES?**

Maybe. Insurance companies, including those that protect homeowners, generally have broad discretion in setting their rates and premiums.<sup>22</sup> At the same time, under the Federal Housing Act, homeowner's insurance companies cannot price their policies in a way that discriminates on the basis of race, gender, or other protected characteristics.<sup>23</sup> Although having a criminal record is not specifically listed as one of these characteristics, one can make a credible argument that the same logic should apply.

### **WHEN MIGHT I BE LEGALLY PROTECTED FROM A PRIVATE LANDLORD DISCRIMINATING AGAINST ME DUE TO MY CRIMINAL RECORD?**

Below are some situations where you might be legally protected if a private landlord is discriminating on the basis of your criminal record:

#### **1) Blanket Bans:**

In 2016, the federal Department of Housing and Urban Development (HUD) issued guidelines on how housing discrimination laws apply to people with criminal records.<sup>24</sup> In 2022, HUD released a memo on the 2016 guidelines further clarifying and adding to the recommendations that housing providers not refuse to rent to someone with a criminal record regardless of the circumstances.<sup>25</sup> In HUD's view, it is a violation of federal law to refuse to rent or sell to any person with any criminal conviction on that basis.<sup>26</sup> The specific arguments for why blanket bans violate the law are covered in #2-4 below.

If you think one of these arguments applies to your situation, it may be a good idea to consult an attorney.<sup>27</sup> See the list of South Carolina legal aid providers in Appendix C on [PG. 81](#) of this guide.

#### **2) Arbitrary Discrimination:**

According to HUD, more focused policies, such as bans on people with specific types of criminal convictions, may violate federal law if they don't serve a legitimate purpose (or, in legal terms, "a substantial, legitimate, and nondiscriminatory interest"). Any policy that doesn't take into consideration how much time has passed since the conviction(s), or the nature or seriousness of the crime, is unlikely to meet this standard. On the other hand, policies aimed at preventing harm to residents' safety and/or property may be sufficient.<sup>28</sup>

If you come across a blanket ban, or discrimination that seems completely arbitrary, you should contact a lawyer. See the list of legal aid providers in Appendix C on [PG. 81](#) of this guide.

#### **WHAT IS A "BLANKET BAN" IN HOUSING?**

Here, a "blanket ban" means there is a policy that **COMPLETELY** bans or disqualifies someone—with no exceptions for any reason—from housing.

<sup>22</sup> See S.C. Code Ann. § 38-75-400.

<sup>23</sup> *Ojo v. Farmers Group, Inc.*, 600 F.3d 1205, 1208 (9th Cir. 2010) (holding that the FHA prohibits racial discrimination in both the denial and pricing of homeowner's insurance); see also 24 C.F.R. § 100.70; 42 U.S.C. § 12201(c)(1), prohibiting an insurer from administering a plan or classifying risks in a manner that is inconsistent with State law.

<sup>24</sup> U.S. DEP'T OF HOUS. & URB. DEV., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016), [https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHAStandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf).

<sup>25</sup> See U.S. DEP'T OF HOUS. & URB. DEV., Implementation of the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (June 10, 2022).

<sup>26</sup> *Id.* at 3.

<sup>27</sup> See *id.* generally.

<sup>28</sup> 42 U.S.C. § 3604(f)(9).



### **3) Unfair Treatment (also called “discriminatory treatment”):**

Even though a private landlord is legally allowed to consider your criminal record, the landlord must apply the *same standards* for screening applicants equally.<sup>29</sup> For example, a landlord can’t reject an African-American applicant based on his/her criminal record, but then accept a White applicant with a similar criminal record.

Another example is that if a private landlord conducts a background check on you, the landlord must also conduct the same background check on all other applicants.

If you come across a private landlord who you believe is treating your criminal record differently from other similar applicants, this may violate your right to equal treatment under federal and state law. You should contact a lawyer. See the list of legal aid providers in Appendix C on [PG. 81](#) of this guide.

### **4) Unfair Impact (also called “disparate impact” or “discriminatory effect”) & Blanket Bans:**

As a group, people with criminal convictions are not directly protected by the Fair Housing Act, the federal law prohibiting housing discrimination based on things like race, gender, and sexual orientation. However, in 2015, the United States Supreme Court held that a housing policy that affects people of color more than others may violate the Fair Housing Act if it isn’t supported by a legally sufficient justification.<sup>30</sup> Thus, because people of color are overrepresented in our criminal justice system, there is a strong argument that banning tenants with criminal records from private housing, without a legally sufficient justification, violates the law as well.

### **5) Past Drug or Alcohol Addiction (A Protected Disability):**

It is illegal for a landlord to deny you housing based on a *past* drug or alcohol addiction, as this is a protected disability status. Past addiction and alcoholism are considered disabilities under both federal and state law, so landlords cannot deny you housing for this reason or even ask about past drug or alcohol abuse. Landlords must also provide you with reasonable accommodations if necessary.<sup>31</sup>

However, a landlord may deny you housing if you are *currently using or selling* illegal drugs (this is the same rule that applies to current drug use in government-assisted housing properties).

If a landlord denies you housing due to *past* drug or alcohol abuse, you should request reasonable accommodations and/or challenge the denial. *It is suggested that you try and contact an attorney to help, since every individual’s circumstances and case are different. See the list of legal aid providers on Appendix C on PG. 81 of this guide for places that may be able to assist you.*

## **2. CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING**

### **HOW CAN MY CRIMINAL RECORD AFFECT MY CHANCES OF GETTING ACCEPTED INTO GOVERNMENT-ASSISTED HOUSING?**

When you apply to government-assisted housing through a Public Housing Authority (PHA) (see definition on [PG. 9](#)), the PHA runs a criminal background check on:

- You;
- Everyone currently living with you;
- Everyone 16 or older who might live with you;

The rules governing who may be denied are very broad. The PHA tries to exclude people it believes will “risk the health and safety of other tenants.” On the other hand, the PHA may choose to overlook your criminal convictions and accept your application, especially if they see evidence that you have changed since the time of your conviction.<sup>32</sup>

<sup>29</sup> See U.S. DEP’T OF HOUS. & URB. DEV., Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, at 4 (June 10, 2022).

<sup>30</sup> See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

<sup>31</sup> Fair Housing Act, 42 U.S.C. 3604(f)(3); S.C. Code Ann. § 31-21-30(7).

<sup>32</sup> 24 C.F.R. § 5.903(e)(1)(i) (PHA tenant screening, generally); 24 C.F.R. § 960.203(c) (tenant screening for applicants to public housing); 24 C.F.R. § 982.307(b) (tenant screening for applicants to the Housing Choice Voucher Program); 24 C.F.R. § 882.518 (tenant screening for applicants to the Section 8 moderate rehabilitation program); 24 C.F.R. § 983.255 (tenant screening for applicants to the Section 8 project-based certificate or project-based voucher program).



**IMPORTANT!** *There are a lot of rules about who can and cannot live in government-assisted housing. Every program has its own set of rules that you should be aware of **BEFORE** you apply. You want to know what laws or program policies might prevent you from living there because of a criminal conviction or other criminal history information, even if your family already lives there. Some bans are required by law, while others are allowed, but not required. These types of bans are up to the discretion and policies of the PHA and/or the owner of the government-assisted housing. You should look at the policies **BEFORE** YOU APPLY.*

#### **CAN A PUBLIC HOUSING AUTHORITY (PHA) REFUSE TO RENT TO ME JUST BECAUSE OF MY CRIMINAL RECORD?**

Yes, it's possible. Rules for government-assisted housing can be VERY STRICT. Your local Public Housing Authority (PHA), which runs a lot of the government-assisted housing programs like Section 8 Housing Choice Vouchers, the Public Housing program, and works with private owners that accept government assistance to keep their buildings more affordable, may reject you and your household because of certain criminal convictions.

There are two reasons that a PHA or owner of government-assisted housing will reject you—the first is when it's legally required (meaning the PHA and/or the owner of government-assisted housing don't have a choice and *must* deny you), and the second is when it's allowed but not required (meaning the PHA and/or the owner of government-assisted housing has a choice to deny you, but doesn't *have* to). It is important for you to understand both situations, and your options to challenge the bans that are allowed, but not required, or spot situations where a PHA or owner of government-assisted housing tells you that the ban is legally required, but there is a legal exception. Keep reading to learn more.

### **OVERVIEW**

#### **REQUIRED VS. ALLOWED BANS IN GOVERNMENT-ASSISTED HOUSING**

**(1) BANS THAT ARE REQUIRED:** Sometimes, a government-assisted housing provider **MUST** deny certain applicants because they have a specific type of conviction on their record. Because the law says that the rejection is required (“mandatory”), PHAs and owners of government-assisted housing do not have a choice in the matter. They must deny you if you have one of the convictions listed in the law. For all conviction-based bans that are legally required, see the chart [PG. 31](#), and the questions and answers on [PG. 33](#).

**(2) BANS THAT ARE ALLOWED, BUT NOT REQUIRED (“CATCH-ALL” BANS):** More commonly, you will likely fall into a “catch-all” ban on people with any criminal activity (which includes both arrests and convictions, even if they have been dismissed) that *threaten the health, safety, or right of peaceful enjoyment to the government-assisted property by the other residents, the property owner, or the PHA's staff or agents/contractors*. This includes *drug-related criminal activity* and *violent criminal activity* (again, both arrests and convictions, even if dismissed, can be considered). Here, the law doesn't require that you get denied from the housing program, but it allows PHAs and owners of government-assisted housing to deny you on this basis.

- See the chart summarizing these bans on [PG. 31](#), and the questions and answers on [PG. 33](#).
- See Appendix E, [PG. 86](#), for an even more detailed chart explaining which specific criminal convictions make denial mandatory (required by law) and which make denial permissive (allowed, but not required by law), including citations to the specific laws.<sup>33</sup>

#### **WHERE DO I FIND A PHA'S RULES & POLICIES ABOUT CRIMINAL RECORDS?**

The rules for criminal records are different for every government-assisted housing program and are determined locally. Even an owner of government-assisted housing **CAN HAVE DIFFERENT RULES** than the Public Housing Authority (PHA) that oversees the government-assisted housing programs. You should be able to find these rules **FOR YOUR PROGRAM**. You can look in the following places:

- The PHA's Annual Plan
- The PHA's Admission and Occupancy Plan (ACOP)
- The lease for public housing
- The Administrative Plan for the Section 8 Voucher program
- The lease and/or house rules for all other government-assisted programs<sup>34</sup>
- The PHA's website for these plans

<sup>33</sup> Nat'l Hous. Law Project, *An Affordable Home on Re-Entry: Federally Assisted Housing and Previously Incarcerated Individuals* (2018), <https://www.nhlp.org/wp-content/uploads/2018/08/Reentry-Manual-2018-FINALne.pdf>.

<sup>34</sup> This includes HUD-assisted housing, Rural Development (RD) project-based programs, and Low Income Housing Tax Credit (LIHTC) properties. Note that some PHA rules could vary for different programs.



- Ask the PHA and/or the owner for a copy as well.

### **CHART SUMMARIZING CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING**

(You can also find an overview on [PG. 30](#) and detailed explanations beginning on [PG. 34.](#))

SUMMARY OF REQUIRED VS. ALLOWED CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING					
TYPE OF BAN (Required vs. Allowed)	CONVICTION OFFENSE	LENGTH OF BAN	WHICH GOVERNMENT-ASSIS TED HOUSING PROGRAMS THIS BAN APPLIES TO	WHO IT WILL AFFECT	HOW TO CHALLENGE THE BAN (if it's appropriate--consult a lawyer for legal advice!)
REQUIRED ("mandatory" )	Methamphetamine Production on Federally-Assisted Property	BANNED FOR LIFE	Federal government-assisted housing programs run by PHAs (public housing, voucher program, Section 8 moderate rehabilitation program)	Anyone living in the government -assisted household	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show mitigating circumstances & rehabilitation.
REQUIRED ("mandatory" )	Sex Offense Convictions requiring LIFETIME Registration	BANNED FOR LIFE	Most federal government-assisted housing programs. This doesn't apply to Low-Income Housing Tax Credit (LIHTC) or Rural Development (RD) housing.	Anyone living in the government -assisted household	If you're not required to register, tell the PHA/owner and explain that their information is wrong. If you are required to register: Ask for a review hearing and contact a housing attorney for help ASAP.* Show:  1. You're not required to register for life, just a limited period of time, so ban does not apply.  2. Ban does not apply to Low-Income Housing Tax Credit (LIHTC) or Rural Development (RD) housing.





<b>REQUIRED</b> ("mandatory")	Past eviction from federally-assisted property due to drug-related criminal activity	<b>BANNED FOR 3 OR MORE YEARS</b> (from date of eviction) <i>unless person engaged in drug-related criminal activity successfully completes a supervised drug rehabilitation program OR circumstances leading to the eviction no longer exist.</i>	Federal government-assisted housing programs run by PHAs (public housing, voucher program, Section 8 moderate rehabilitation program)	Anyone living in the government-assisted household (unless person who was engaged in drug-related activity completes a supervised drug rehabilitation program)	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong.  If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.*  1. If the ban is more than 3 years, show it is unreasonably long b/c of mitigating circumstances & rehabilitation.  2. Ban does not apply to LIHTC or RD housing. Show mitigating circumstances & rehabilitation.
<b>REQUIRED</b> ("mandatory")	Current illegal drug use	While it's current  * BUT if the person stops using drugs, the PHA/owner could still reject you for a reasonable time after the illegal drug use—see permissive bans below.	ALL federal government-assisted housing	Anyone living in the government-assisted household	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong.  If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.*  If a person illegally using drugs is kicked out/incarcerated/ getting treatment, show mitigating circumstances & rehabilitation.
<b>ALLOWED, BUT NOT REQUIRED</b> ("permissive")	Criminal activity that would harm the health, safety, or right of peaceful enjoyment to the government-assisted property by other residents, the property owner, or PHA staff or agents/contractors.  <i>This applies to both convictions AND arrests that did not result in a conviction</i>	The criminal activity must be "reasonably recent"	ALL federal government-assisted housing	Check the PHA policy	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong.  If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show:  1. Significant time has passed (not reasonably recent).  2. Does not pose a risk to other residents; doesn't fall within the ban.





ALLOWED, BUT NOT REQUIRED (“permissive”)	Other drug-related criminal activity	The criminal activity must be “reasonably recent”	ALL federal government-assisted housing	Check the PHA policy	<p>If it’s a mistake, bring it to the PHA/owner’s attention and explain why the information is wrong.</p> <p>If it’s not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show:</p> <p>1. Significant time has passed (not reasonably recent).</p> <p>If the past drug crime is related to a past addiction, it may qualify for a disability and you should ask for a reasonable accommodation (see Appendix E, <a href="#">PG. 86</a>).</p>
ALLOWED, BUT NOT REQUIRED (“permissive”)	Violent criminal activity	The criminal activity must be “reasonably recent”	ALL federal government-assisted housing	Check the PHA policy	<p>If it’s a mistake, bring it to the PHA/owner’s attention and explain why the information is wrong.</p> <p>If it’s not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show:</p> <p>1. Significant time has passed (not reasonably recent).</p> <p>2. Mitigating circumstances &amp; rehabilitation.</p>

### WARNING: READ CAREFULLY

In the chart above, we summarize four situations where a Public Housing Authority (PHA) and the owners of federal government-assisted housing **MUST** reject you under law based on particular types of convictions. **BUT PLEASE NOTE:** These required (“mandatory”) bans apply only to **SOME** types of federal government-assisted housing, but not **ALL** types. **There are SOME government-assisted housing programs where these “required” bans *do not apply*.** Also, some of these required bans will last for the rest of your life, but **others are only temporary bans**. **SO PLEASE READ CAREFULLY!** Don’t assume the ban applies to you. Try to match your exact situation and conviction/criminal record with this chart to see how your criminal record will impact your ability to get into federal government-assisted housing. Refer back to [PG. 31](#) for an overview of required vs. allowed bans.

### DETAILED QUESTIONS & ANSWERS ABOUT CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING

Here we explain the information from the chart above in a question & answer format in much more detail. You will learn about the specifics of each of these criminal record bans in government-assisted housing. Later we explain how to challenge denials due to your criminal record, beginning on [PG. 60](#).

#### DO YOU NEED LEGAL HELP?

If you have legal questions, we suggest calling a housing legal aid provider from the list of legal aid providers in Appendix C on [PG. 81](#), or contact Root & Rebound at 864-546-5089 for further guidance or a referral.



### WHAT BANS ARE REQUIRED IN GOVERNMENT-ASSISTED HOUSING—FOR SPECIFIC TYPES OF CONVICTIONS AND SPECIFIC HOUSING PROGRAMS?

Here we explain the four bans that are required (“mandatory”) for SOME types of federal government-assisted housing programs, but not ALL. There might be government-assisted programs where these bans DO NOT APPLY. So *please read carefully!*

- **BAN 1: METHAMPHETAMINE PRODUCTION ON FEDERAL GOVERNMENT-ASSISTED PROPERTY - LIFETIME BAN FROM 3 FEDERAL HOUSING PROGRAMS**

Under federal law, PHAs and owners of government-assisted housing MUST PERMANENTLY DENY admission to an entire household to three of the federal government-assisted housing programs—(1) *Public Housing*, (2) the “Section 8” *Housing Choice Voucher program*, and (3) the *Section 8 Moderate Rehabilitation program*—if ANY MEMBER of the household has ever been convicted for the manufacture or production of methamphetamine ON THE PREMISES of any type of federal government-assisted housing.<sup>35</sup> Because this rule is so specific, the lifetime ban applies to only a very small number of housing applicants.

Let’s break it down further. As you apply to a PHA for government-assisted housing, this lifetime ban only applies to you if someone in your household was:

1. Convicted (meaning found guilty in a court of law),
2. Of the manufacture or production of Methamphetamine, AND
3. The criminal activity took place on the premises (on the property) of any type of federal government-assisted housing.

Lastly, this mandatory lifetime ban only applies if you are applying to one of the 3 programs that PHAs run. If you are applying to a government-assisted housing program that is *not* one of the 3 programs that PHAs run (again, those are Public Housing, the Section 8 Housing Choice Voucher program, and the Section 8 Moderate Rehabilitation program), then this mandatory lifetime ban does NOT apply to you or your household.<sup>36</sup> Instead, read about the catch-all ban on [PG. 38](#) that is allowed, but not required.

### **I was denied by the PHA or the owner of government-assisted housing, but based on the information in this legal guide, I think it was a mistake or the required ban doesn’t apply to me. How do I challenge the denial?**

If another assisted housing program—not one of the three listed above—tries to impose a lifetime ban on you due to your conviction for the manufacture or production of methamphetamine on the premises of federal government-assisted property, you can challenge the lifetime ban and present mitigating information (meaning facts that are specific to your case and circumstances showing you should not be denied the housing—see [PG. 41](#)).

- Go to [PG. 60](#) to learn how to challenge a denial by asking the PHA for an informal review hearing.
- Go to [PG. 41](#) to learn about what kinds of mitigating information you should include with your application, and as proof of mitigating circumstances & rehabilitation with any challenges you bring.
- If there was a mistake in the information the PHA or owner of the government-assisted property relied upon, you should immediately bring it to their attention.

#### *Mistakes could include:*

- Errors in your criminal records;
- Even though you were on the premises of the federal government-assisted housing, you did not actually manufacture the drugs, but you were automatically denied housing anyway; OR
- Even though you were involved in the manufacturing of the methamphetamines, you were a victim of domestic violence that led to your involvement, and you shouldn’t be punished by the PHA.

<sup>35</sup> 42 U.S.C. § 1437n(f)(1); 24 C.F.R. §§ 882.518(a)(1)(iii) (Section 8 moderate rehabilitation programs), 960.204(a)(3) (public housing), 982.553(a)(1)(ii)(C) (Section 8 voucher).

<sup>36</sup> When applying for admission, if an owner, who is not required by statute to impose a lifetime ban, seeks to impose one, an applicant may object to the policy as contrary to congressional intent as it goes beyond the statutory limits. 24 C.F.R. § 5.854. If an owner rejects such an applicant, the applicant should challenge the lifetime ban and present information regarding mitigating circumstances or rehabilitation. Mitigating circumstances might include the fact that the applicant was on the premises but did not manufacture the drugs, or was involved in the manufacturing but was a victim of domestic violence. It may also include the fact that there has been a significant lapse of time between the offense and the application for admission with no other intervening criminal activity.



- **BAN 2: SEX OFFENSE CONVICTIONS REQUIRING LIFETIME REGISTRATION - LIFETIME BAN FOR ALMOST ALL FEDERAL GOVERNMENT-ASSISTED HOUSING PROGRAMS**

Under federal law, PHAs and owners of government-assisted housing MUST PERMANENTLY DENY admission to an entire household—to almost all federal government-assisted housing programs—if ANY MEMBER of the applicant household is required to be lifetime registered under any state's sex offender registration program.<sup>37</sup>

THIS REQUIRED BAN DOES NOT APPLY TO YOU if you are required to register as a sex offender for a temporary or limited amount of time. Again, the ban only applies if you are required to register as a sex offender in any state for the *rest of your life*. Unfortunately, PHAs and owners of government-assisted property will often mistakenly apply the ban to anyone registered as a sex offender. See below for more information on what you can do if this happens.

**EXCEPTION FOR CERTAIN TYPES OF GOVERNMENT-ASSISTED HOUSING PROGRAMS (NO REQUIRED BAN):** The other exception is that owners of two government-assisted housing programs—Low-Income Housing Tax Credit (LIHTC) properties and Rural Development (RD) housing—are NOT REQUIRED to deny admission to a lifetime registered sex offender; they have discretion.<sup>38</sup>

**I was denied by the PHA or the owner of government-assisted housing because I am a registered sex offender, but based on the information in this legal guide, I think it was a mistake or the required ban doesn't apply to me. How do I challenge the denial?**

Some PHAs or owners misinterpret the rules that apply to sex offender registrants, and some apply their own criteria—which in the real world means that the PHA or owner will end up automatically banning a person who *shouldn't be automatically banned* (an example of this would be if a PHA had a policy that permanently bans all people required to register on a state's Sex Offender Registry list, even people who don't have to register for their entire lifetime). If this is your situation, you can challenge the denial by asking the PHA for an informal review hearing (see [PG. 60](#)).

Only if you meet the legal definition of a lifetime registered sex offender can you be permanently denied federal government-assisted housing without any other consideration of your individual circumstances. Thus, if you do not have a lifetime sex offender registration requirement, the PHA should analyze the *time, nature and circumstances* of the offense, as appropriate for any other criminal activity.<sup>39</sup> As an applicant, you should also be allowed to show mitigating information and/or proof of your rehabilitation (see [PG. 41](#) for explanations of what counts as mitigating information and proof of rehabilitation). For example, if you do not have to register as a sex offender for the rest of your lifetime, you should be able to establish that the criminal conduct was not violent, did not involve children, happened a long time ago, and that there have been no problems since the conviction.<sup>40</sup>

- Go to [PG. 60](#) to learn how to challenge a denial by asking the PHA for a review hearing.
- Go to [PG. 41](#) to learn about what kinds of mitigating information and proof of rehabilitation you should include with your application and/or with any challenges you bring.
- If there was a MISTAKE in the information the PHA or owner of the government-assisted housing relied upon, you should immediately bring it to their attention. Mistakes could include errors in your criminal records.

**IMPORTANT: There are other restrictions on where people who must register as sex offenders can live under South Carolina state law. It is VERY IMPORTANT to check your state and local laws regarding these requirements to know if they apply to you, and how it will affect where you can live.**

<sup>37</sup> 42 U.S.C. § 13663(a); 24 C.F.R. §§ 5.100 (definition of federally assisted housing), 5.856 (federally assisted housing in general), 882.518(a)(2) (Section 8 moderate rehabilitation), 960.204(a)(4) (public housing), 982.553(a)(2)(i) (voucher).

<sup>38</sup> See 7 C.F.R. § 3560.154(j) (RD housing). There are no regulations for LIHTC properties requiring the denial of admission of a registered sex offender.

<sup>39</sup> One could argue that the federal statute barring lifetime registered sex offenders preempts an expansion of that bar to other sex offenders. There are three general types of situations in which preemption may be established. One of the situations is that preemption may be inferred where the scheme of the federal legislation is so comprehensive that it creates the inference that Congress "left no room" for local regulation in that area. *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 281 (1987). Applying that standard, the area in question is eligible for federally assisted housing and Congress has fully defined eligibility for federally assisted housing. Imposing an absolute lifetime bar when none is required is determining eligibility in an area that Congress has not left any room for local regulation. Success on such a claim may be complicated as the party seeking preemption has the burden of proof and the presumption is against preemption. *Cipollone v. Liggett Group*, 505 U.S. 504, 518 (1992).

<sup>40</sup> Corinne A. Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 U. Tol. Rev. 545, 579 (2005) (article also lists reasons why an individual might be on a lifetime registration list, including consensual relationship with partners who are a few years younger, indecent exposure or lewd displays often related to substance abuse, mental health diagnosis, homelessness, and women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from such abuse); see also Housing Rights Watch, *No Easy Answers: Sex Offender Laws In The US* (2007).



- **BAN 3: PAST EVICTION FOR DRUG-RELATED ACTIVITY ON FEDERAL GOVERNMENT-ASSISTED PROPERTY - MINIMUM 3-YEAR BAN FOR THREE FEDERAL GOVERNMENT-ASSISTED HOUSING PROGRAMS**

Under federal law, PHAs and owners of government-assisted housing MUST DENY admission to an entire household to three of the government-assisted housing programs—(1) *Public Housing*, (2) the “*Section 8*” *Housing Choice Voucher program*, and (3) the *Section 8 Moderate Rehabilitation program*—for 3 years, if ANY MEMBER of the household has ever been **EVICTED** from any federal government-assisted housing program or property because of drug-related criminal activity.<sup>41</sup> This ban must last for a minimum of 3 years, starting from the date of eviction, but PHAs and owners can choose to extend it.<sup>42</sup>

PLEASE NOTE: This ban only applies to the three types of federal government-assisted housing mentioned above. It does NOT apply to the following types of government-assisted housing programs:

- Low-Income Housing Tax Credit (LIHTC) properties and Rural Development (RD) housing;<sup>43</sup>
- Housing applicants who were evicted for drug-related activity from any other type of housing or program that *does not receive federal government money*.<sup>44</sup>

**IMPORTANT EXCEPTION:** PHA or owner *may* admit your household if the person whose drug-related criminal activity led to the eviction *later goes on to complete an approved, supervised drug rehabilitation program*, OR if your circumstances have changed.<sup>45</sup> This is an important exception, because it gives you the power to change your situation!

By taking and completing an approved drug rehabilitation program, you could become eligible for housing again, or *if your circumstances have changed*. “Changed circumstances” could mean:

- The household member with the drug-related conviction has died or is in prison and won’t return to the household.
- The applicant household has had no contact for a period of time and does not know the whereabouts of the former household member who was evicted for drug-related activity.
- There could be other reasons the family should be allowed back into the housing if the person with the conviction is no longer in the picture or has been rehabilitated.<sup>46</sup>

My application was denied by the PHA or the owner of government-assisted housing because of a past eviction from federal government-assisted property for drug-related criminal activity, but I think it was a mistake or that the ban is unreasonably long (more than 3 years). How do I challenge the denial?

- You can challenge a denial because the ban is unreasonably long or because there was a mistake in the information the PHA or owner of the government-assisted property relied on. Go to [PG. 60](#) to learn how to challenge a denial by asking the PHA for an informal review hearing.
- We recommend that you include mitigating information and evidence of rehabilitation with any challenges you bring. Go to [PG. 41](#) to learn about what kinds of proof of mitigating circumstances & rehabilitation to include.
- If there was a mistake in the information that the PHA or owner of the government-assisted property relied on, bring it to their attention immediately - mistakes could include errors in your criminal record. Go to [PG. 53](#) to learn how to clean up errors in your criminal record.

<sup>41</sup> 42 U.S.C. § 13661(a).

<sup>42</sup> 4 C.F.R. §§ 5.852(d) (federally assisted housing), 960.203(c)(3)(ii), 966.4(l)(5)(vii)(E) (public housing). HUD guidance states that the statute sets a floor of three years, and that PHAs and owners are not violating the statute if they expand the time period. The HUD explanation in the regulations is that “[s]ince the intent of the statute was to strengthen protections against admitting persons whose presence in assisted housing might be deleterious, HUD does not interpret this new provision as a constraint on the screening authority that owners and PHAs already had.” Screening and Eviction for Drug Abuse and Other Criminal Activity, Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).

<sup>43</sup> 4 C.F.R. §§ 5.850(a) (excludes rural development housing), 5.854(a) (federally assisted housing in general), 882.518(a)(1)(I) (Section 8 moderate rehabilitation), 960.204(a)(1) (public housing), 982.553(a)(1)(I) (voucher); Screening and Eviction for Drug Abuse and Other Criminal Activity-Final Rule, H 2002-22 (Oct. 29, 2002) ¶ VI (HUD Notice applicable to HUD-assisted project-based housing, excluding Section 8 moderate rehabilitation housing and project-based vouchers or certificates). The rule is also not applicable to housing assisted with S+C, SHP or HOPWA funding.

<sup>44</sup> *Id.*

<sup>45</sup> 24 C.F.R. §§ 5.852(c)(1), 5.854(a); 42 U.S.C. § 13661(a);

<sup>46</sup> *Id.*



### HELPFUL HINT

#### ***Challenging Long Bans For Past Drug Activity on Government Housing Property:***

- If you were convicted of a less serious drug-related crime, such as mere possession, OR you have been rehabilitated (and can show you have changed, done classes, or improved yourself), these are all good reasons to challenge a ban that is significantly longer than 3 years. If you can, talk to a lawyer or advocate!<sup>47</sup> See Appendix C on [PG. 81](#) of this guide for a list of legal aid providers in South Carolina. A lawyer can explain how to gather proof that shows the housing ban shouldn't apply to you for more than 3 years. Again, go to [PG. 60](#) to learn about the procedure for challenging a denial and asking the PHA for an informal review hearing.

#### • **BAN 4: CURRENT ILLEGAL DRUG USE - REQUIRED BAN WHILE ILLEGAL DRUG USE IS "CURRENT"**

PHAs and owners of government-assisted housing must deny admission to an entire household if ANY MEMBER of the household is *currently* using illegal drugs.<sup>48</sup>

#### **QUESTIONS RELATED TO CURRENT DRUG USE:**

##### ***When does drug use or alcohol abuse disqualify me from getting into federal government-assisted housing?***

*Current drug use* on or near the property by any tenant, household member, person under the tenant's control, or guest will disqualify you.<sup>49</sup> "Current" means you used illegal drugs "recently enough to justify a reasonable belief" that you're still using.<sup>50</sup> In their written policies, PHAs and owners should spell out what they define as "recent," and must abide by that policy. Read more about "recentness" requirements on [PG. 40](#). To learn about how your past addiction could be a protected disability which allows you to ask for a "reasonable accommodation"—which means you can ask the PHA or owner of government-assisted housing to lift or relax this ban (see Appendix E, [PG. 86](#)).

##### ***How would a PHA or owner find out about my alcohol or drug use?***

A PHA or owner could learn about your drug or alcohol use directly from you (in your application) or from access to records about your criminal history or drug treatment. To learn more about how a PHA or owner accesses records related to your alcohol or drug use, read *Access to Your Drug/Alcohol Records for Government-Assisted Housing* on [PG. 49](#).

##### ***Should I try to hide my current illegal drug use from the PHA or the owner of the government-assisted housing?***

No, you should be honest on the application. You can be denied government-assisted housing—or later evicted (kicked out/terminated from the program)—for intentionally lying during the application process.

##### ***Do PHAs or owners of government-assisted housing consider whether I have participated in or completed a drug or alcohol rehabilitation program to let me into a housing program?***

Generally, they don't have to, but PHAs and owners may consider that you have participated in or have completed a drug rehabilitation program, and may ask you for documentation that you are not currently using illegal drugs.<sup>51</sup> Specifically, you may have to provide documentation of your drug rehabilitation with your application if you want to avoid or reduce the 3+ year ban on admitting people who were previously evicted from federally-assisted housing due to a drug-related crime.<sup>52</sup>

<sup>47</sup> Preemption may be inferred where the scheme of the federal legislation is so comprehensive that it creates the inference that Congress "left no room" for local regulation in that area. *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 281 (1987). Applying that standard, Congress has fully defined eligibility for federally assisted housing. Imposing an absolute lifetime bar when none is required is determining eligibility in an area that Congress has not left any room for local regulation. *Cipollone v. Liggett Group*, 505 U.S. 504, 518 (1992).

<sup>48</sup> 24 C.F.R. § 960.204(a)(2)(i).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 24 C.F.R. § 982.553(A)(1)(i)(a).

<sup>52</sup> See [PG. 36](#) for information about federally-assisted housing programs that have a 3-year ban on someone who was evicted from housing for a drug-related offense. In summary: For certain federally-assisted housing programs, including (1) public housing, (2) the voucher program, and (3) project-based Section 8 housing, there is a mandatory 3-year ban on admission for families, if any member of the applicant's household has ever been evicted from "federally assisted housing" for drug-related criminal activity. 42 U.S.C. § 13661(a). However, this ban does not apply to LIHTC and RD housing. See [PG. 36](#). This rule also does not apply to applicants who were evicted for drug-related activity from non-federally assisted housing. See [PG. 36](#).



***Can PHAs or owners of government-assisted housing screen me by using or requiring a medical exam or drug test?***

No. PHAs and owners may not require you to undergo any type of physical exam or medical testing in order to admit you to a housing program. This includes testing for HIV/AIDS, Tuberculosis (Tb), pregnancy, and, presumably, drug/alcohol screening.<sup>53</sup>

**WARNING: If you are applying to government-assisted housing, it is very important for anyone with a criminal record to read the following section!**

**WHAT BANS ARE ALLOWED, BUT NOT LEGALLY REQUIRED IN GOVERNMENT-ASSISTED HOUSING — THE “CATCH-ALL” CATEGORY OF BANS THAT APPLY TO \*ALL PEOPLE WITH CRIMINAL RECORDS\*?**

If you do not fall into one of the required (“mandatory”) bans discussed above, it’s more likely you could get denied government-assisted housing because the Public Housing Authority (PHA) or the owner of the government-assisted housing has decided based on your criminal record that you currently “pose a risk to the health, safety, or right to peaceful enjoyment of the property by other residents, the owner, or the PHA staff or agents/contractors.”<sup>54</sup>

This is a “catch-all” category and allows the PHA or owner of government-assisted property to deny applicants with criminal histories more generally. They are allowed to consider a lot of information (including past convictions) and in some cases your drug treatment records. See [PG. 48](#) for detailed information about what criminal records a Public Housing Authority (PHA) or owner of government-assisted property can access about you.

**HOW CAN I FIND OUT THE CRIMINAL RECORD POLICIES OF MY LOCAL PUBLIC HOUSING AUTHORITY (PHA) OR OF THE OWNER OF GOVERNMENT-ASSISTED HOUSING?**

**REMEMBER THAT THESE “CATCH-ALL” BANS ARE NOT REQUIRED:** This “catch-all” category is NOT a required ban. The PHA or owner is allowed to exclude you only if they can show that your criminal history poses a current threat to the health, safety, or peace of other residents, the owner, or PHA staff or agents/contractors. It’s recommended that they consider mitigating information and proof of your rehabilitation—and in the case of the Public Housing program, the PHA *must* consider this extra information!

Each local PHA and owner of government-assisted housing will have different rules about what criminal history information they will ignore and what they will consider. By law, the PHAs and owners of government-assisted housing **MUST** put their policies *in writing* and make them available to applicants.<sup>55</sup>

The rules and policies of each local PHA and owner of government-assisted housing **MUST** not violate the legal protections discussed on [PG. 48](#). Furthermore, the PHA must follow its own rules and policies.

You may want to consider talking to an advocate/lawyer about whether or not a particular PHA’s policies to exclude people with certain criminal records could be violating the law. (See Appendix C on [PG. 81](#) for a list of legal aid providers across South Carolina).

**IMPORTANT: Want to learn how to challenge a denial from a PHA or owner of government-assisted housing? Go to [PG. 60](#) to learn more!**

**UNDER THE “CATCH-ALL” BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENY ME FOR A CONVICTION THAT I HAD “EXPUNGED”?<sup>56</sup>**

It is unclear. HUD’s regulations don’t say for sure whether an expunged conviction can be used as a reason to deny someone housing. There is some guidance from HUD that suggests expunged convictions should not be used.<sup>57</sup> South Carolina law also says that the effect of an expungement is to restore a person to their legal status before the arrest or conviction.<sup>58</sup> If you are being denied housing because of an expunged conviction, it is a good idea to talk to a lawyer if possible to see if you have any legal options. For a list of organizations that may be able to help, see Appendix C on [PG. 81](#).

<sup>53</sup> See U.S. DEP’T OF HOUS. & URBAN DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-8(B)(1) (rev. November 2013) (Prohibited Screening Criteria). Typically this provision is used to prohibit owners from inquiring into an applicant’s medical/physical condition, such as pregnancy, AIDS or TB. But it also could be used to argue that an owner may not request drug testing.

<sup>54</sup> 42 U.S.C. § 13661(b)(1)(B).

<sup>55</sup> 24 C.F.R. § 960.202(a).

<sup>56</sup> “Expungement” is a way to clean up your record so that your convictions have less of a negative impact on your life. When a conviction is expunged, it will in most cases completely disappear from your record. See S.C. Code Ann. §§ 17-1-40, 17-22-1010(D).

<sup>57</sup> See U.S. DEP’T HOUS. & URB. DEV., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016).

<sup>58</sup> S.C. Code Ann. § 17-22-1010(D).





Remember, the PHA's or owner's right to reject you based on your criminal record is limited by federal<sup>59</sup> and state law.<sup>60</sup> Go to [PG. 40](#) to learn more about these protections and limitations on the kinds of denials that PHAs and owners can make.

#### **UNDER THE “CATCH-ALL” BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER DENY ME FROM GOVERNMENT-ASSISTED HOUSING FOR ARRESTS THAT DID NOT RESULT IN A CONVICTION?**

No.<sup>61</sup> A PHA or owner of government-assisted housing CANNOT deny, end assistance, or evict you based on *arrest records alone*.<sup>62</sup> Some PHAs or owners of government-assisted housing might ask about arrests, and some might not. But whatever the policy, the PHA or owner MUST be able to show that's it is more probable than not that the *conduct underlying the arrest* occurred and that such conduct could *threaten the health, safety, or right to peaceful enjoyment of the building by other residents, the owner, or PHA staff or its agents/contractors*. This means the PHA or owner of government-assisted housing will need other forms of proof (beyond just the arrest record) that the conduct underlying the arrest occurred, because an arrest is NOT legal proof that you actually committed a crime (unlike a conviction, which shows guilt).<sup>63</sup>

If you were denied government-assisted housing based on arrest records alone (without more proof), you can challenge the denial, as this practice likely violates fair housing and anti-discrimination laws and/or your right to due process.<sup>64</sup> We suggest that you contact a housing attorney or legal aid organization that can help you (see the list of legal aid providers in Appendix C on [PG. 81](#)). Whether or not you can find a lawyer to help you, you should try to get familiar with the procedure for challenging a PHA's or government-assisted owner's decision to deny you. For details on this process, see [PG. 60](#).

#### **UNDER THE “CATCH-ALL” BAN, WILL MY PARTICIPATION IN A PRE-TRIAL INTERVENTION OR DIVERSION PROGRAM MATTER?**

If the program shows up on your background check as a conviction, then the PHA or owner of the government-assisted housing can consider it, and possibly deny you.<sup>65</sup> *SO it depends on how it comes up on your background check.*

- If you are placed into a pre-trial intervention program and *you complete the program*, then the solicitor will change the charges pending against you to a “dismissal or nolle prosequere.” After your completion, you can then apply to the court to have all records related to the arrest destroyed. This would bring your record and legal status back to what it was before the initial arrest, and you are no longer required to list or acknowledge that arrest for any purpose. It CANNOT show up as a conviction in a background check, because it never was one.<sup>66</sup> If there are errors in your background check, the PHA or owner must give you an opportunity to correct them.<sup>67</sup> In addition, anyone who retains or releases information about your participation in the pre-trial intervention program is guilty of a misdemeanor.<sup>68</sup>
- If instead you are placed in a pre-trial intervention program and *you do not complete the program or violate the conditions of the program*, then the solicitor may end your participation in the program and can resume the case on the charges that were originally pending against you.<sup>69</sup>

To learn more about how private background checks work, see [PG. 47](#).

#### **UNDER THE “CATCH-ALL” BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENY MY APPLICATION BECAUSE OF THE CONVICTIONS OF FAMILY MEMBERS WHO LIVE WITH ME?**

Yes. You can be excluded from federal government-assisted housing for the convictions of family members *who are part of the current household*.<sup>70</sup>

<sup>59</sup> 42 U.S.C. § 13661(a).

<sup>60</sup> South Carolina Fair Housing Law, S.C. Code Ann. §§ 31-21-10 - 31-21-150.

<sup>61</sup> 42 U.S.C. § 13661(c); U.S. DEP'T HOUS. & URBAN DEV., PIH 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (2015); *see also Landers v. Chicago Hous. Auth.*, 404 Ill. App. 3d 568 (Ill. Ct. App. 2010).

<sup>62</sup> U.S. DEP'T HOUS. & URBAN DEV., PIH 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (2015); *see also Landers v. Chicago Hous. Auth.*, 404 Ill. App. 3d 568 (Ill. Ct. App. 2010).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> 42 U.S.C. § 13661(c); 24 C.F.R. § 5.903.

<sup>66</sup> S.C. Code Ann. § 17-22-150(a).

<sup>67</sup> 24 C.F.R. §§ 5.903(f), 960.204.

<sup>68</sup> S.C. Code Ann. § 17-22-170.

<sup>69</sup> S.C. Code Ann. § 17-22-150(b).

<sup>70</sup> 24 C.F.R. § 960.203.



If the person no longer lives with you, you should NOT be denied because of their convictions, but you may have to prove that he or she is not part of the household anymore.<sup>71</sup>

## **YOUR RIGHTS AGAINST ILLEGAL DENIALS FROM GOVERNMENT-ASSISTED HOUSING BECAUSE OF YOUR CRIMINAL RECORD**

### **HOW DOES THE LAW PROTECT ME FROM BEING DENIED GOVERNMENT-ASSISTED HOUSING BECAUSE OF MY CRIMINAL RECORD?**

The Public Housing Authority (PHA) or owner of government-assisted housing must follow certain laws and rules when considering your past convictions and criminal history information. They may only reject you for criminal activity that *threatens the health, safety, or peace of other residents or staff* AND the criminal activity must be “reasonably recent.”

- PHAs and owners of government-assisted housing may only reject you for *certain kinds of criminal activity—not everything*.

A PHA or owner may only reject you for criminal activity that is:<sup>72</sup>

- *Currently posing a threat* to the health, safety or peace of other residents;
- *Currently posing a threat* to the health, safety or peace of the owner or local PHA staff or agents/contractors;
- Drug-related;<sup>73</sup> OR
- Violent.<sup>74</sup>
- PHAs and owners of government-assisted housing may only reject you for criminal activity that is *reasonably recent*.

A PHA or owner of federal government-assisted housing can only reject you due to criminal activity that is CURRENT or is “reasonably recent.”<sup>75</sup> The length of any ban based on criminal records cannot be “unconscionable”—meaning unreasonable and excessive, drastic beyond what’s really needed, or extremely unfair.<sup>76</sup>

### ***What is considered a “reasonably recent period”?***

The U.S. Department of Housing and Urban Development (HUD), which oversees most federally-funded housing programs (such as Public Housing, the “Section 8” Housing Choice Voucher program, and others), suggests that “5 years may be reasonable for serious offenses” (like making or dealing drugs)<sup>77</sup> and suggests that PHAs and owners should set reasonable time periods for different types of criminal activity in their WRITTEN POLICIES.<sup>78</sup> HUD has also suggested that a conviction for illegal drug use that happened 1 year ago could still be considered “recent.”<sup>79</sup>

- If your criminal conviction was the result of a disability (like past substance abuse or mental illness), you can ask for an exception to the criminal record policy (called a “reasonable accommodation”).

If you can prove that your conviction was the result of a disability (which includes past drug addiction and mental illness), then you can ask the PHA or owner of government-assisted housing for an exception from their ban as a “reasonable accommodation” to accommodate your disability and give you equal opportunity to access the housing.<sup>80</sup> Read more about how to do this in Appendix E, [PG. 86](#).

<sup>71</sup> 24 C.F.R. §§ 5.854, 982.553.

<sup>72</sup> 42 U.S.C § 13661(c); 24 C.F.R. §§ 5.855(a), 882.518(b).

<sup>73</sup> 24 C.F.R. § 5.100.

<sup>74</sup> The regulations define “violent criminal activity” as “any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage” 24 C.F.R. § 5.100.

<sup>75</sup> See Marie Claire Tran-Leung, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, SARGENT SHRIVER NAT’L CTR. ON POVERTY LAW (Feb. 2015) at 8, <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>; Madison, Wis. Code Of Ordinances Ch. 39.03(1) and (4) (Renumbered by Ord. 12,039, Adopted 2-17-98) (ordinance prohibiting discrimination against individuals with a criminal record is applicable for most offenses two years after the individual has completed or complied with the penalty).

<sup>76</sup> *Thomas v. Hous. Auth. of Little Rock*, 282 F. Supp. 575, 580 (E.D. Ark 1967) (unwed mother admission policy is drastic beyond reasonable necessity); see also *United States v. Robinson*, 721 F. Supp. 1541, 1544-45 (D.R.I. 1989) (forfeiture of tenant’s apartment and her federal housing assistance payments, which were the only means by which the defendant could provide shelter for her children, was disproportionately severe to the offense of knowingly and intentionally distributing a mixture containing cocaine base); *In the Matter of Elaine Sicardo v. Peter Smith*, etc. No. 2007-03609, Index No. 219067/06 (N.Y. App. Div. March 18, 2008) (penalty in termination case so disproportionate to the offense as to be shocking to one’s sense of fairness).

<sup>77</sup> U.S. DEP’T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 4.6, (June 2003); see also 24 C.F.R. § 982.552(c)(1)(ii) (five-year ban on admission to voucher program for eviction from federally assisted housing).

<sup>78</sup> Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).

<sup>79</sup> U.S. DEP’T OF HOUS. & URB. DEV., Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 5.7, p. 5-37 (Apr. 2001); see also Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 60 Fed. Reg. 34,660, 34,688 (July 3, 1995) (codified at 24 C.F.R. § 982.553(b)) (HUD regulations formerly stated that to deny admission, drug use or possession should have occurred within prior year).

<sup>80</sup> 42 U.S.C. § 3604(f)(3)(B); Joint Statement of the Dep’t of Hous. & Urban Dev. and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, 6 (May 17, 2004).





## IMPROVING YOUR CHANCES OF GETTING INTO GOVERNMENT-ASSISTED HOUSING—OFFERING PROOF OF REHABILITATION & MITIGATING FACTORS

This section explains the types of information and evidence that you can show to strengthen your application to a PHA or government-assisted housing. You can also provide this type of information and evidence to challenge a denial from government-assisted housing. (Learn more about challenging denials from government-assisted housing beginning on [PG. 60](#))

### WHAT IS “PROOF OF MITIGATING FACTORS?”

“*Proof of mitigating factors*” is extra information and evidence that explains that the PHA or landlord should not view the offense or conduct as negatively as it might otherwise. You can submit things like:

- The period of time that has passed since your conviction or criminal activity (the crime was not very recent);
- You were convicted at a young age;
- The nature and extent of your conduct are less involved (like showing you were not as involved in the offense/ conduct as one might think);
- Physical or emotional abuse, coercion, or untreated abuse or mental illness that led to the conviction (and any of these factors might have led to the crime/offense);
- Disabilities that you or a family member has that might have led to the conviction; and
- Any additional context for the conviction (other factors that would help explain the circumstances you were in when the offense occurred and why it should be viewed with more leniency).

### WHAT IS “PROOF OF REHABILITATION?”

*Proof of rehabilitation* is information and evidence that you have changed and improved since the time of your criminal offense or conduct. You can submit things like:

- Certificates or letters from supervising officers, or court documents showing completion of parole, probation, or other supervision;
- Letters of support/recommendations from employers or others (see a list of suggestions for letters of support on [PG. 43](#));
- Certificates or diplomas for education or training you’ve received;
- Letters or certificates for completing alcohol/drug treatment programs; and
- Letters or certificates for completion of rehabilitation programs.

### DO GOVERNMENT-ASSISTED HOUSING PROGRAMS HAVE TO CONSIDER MITIGATING CIRCUMSTANCES & EVIDENCE OF REHABILITATION?

Generally, programs are not required to consider mitigating circumstances and evidence of rehabilitation,<sup>81</sup> but they are encouraged to do so.<sup>82</sup> Only the Public Housing program—run by your local Public Housing Authority (PHA)—MUST consider mitigating circumstances (that is in cases where the PHA has a criminal record ban in place that is not required by law—see [PG. 38](#) for more information on such bans that are *allowed*, but not required).<sup>83</sup>

Good news! THIS GIVES YOU AN OPPORTUNITY TO EXPLAIN THE SITUATION AND PRESENT FACTS IN A WAY THAT WILL PUT YOUR RECORD IN THE BEST POSSIBLE LIGHT—WHICH WILL IMPROVE YOUR CHANCES OF GETTING ACCEPTED.

#### WARNING ABOUT WHAT INFORMATION YOU SHARE WITH LANDLORDS:

If you are applying to private housing, be careful not to share any more information than necessary—see [PG. 47](#) to understand what criminal record information a private landlord can access, and see [PG. 28](#) to learn ways you can identify illegal discrimination by private landlords (which has a different legal standard than discrimination by Public Housing Authorities (PHA) and government-assisted owners.

<sup>81</sup> 24 C.F.R. § 960.203(d); see also *Lancaster v. Scranton Hous. Auth.*, 479 F. Supp. 134, 138 (M.D. Pa. 1979), *aff’d mem.*, 620 F.2d 288 (3d Cir. 1980) (applicant has burden of putting forth such evidence). In court cases involving eviction or termination of benefits through the government-assisted housing program, courts have sent cases back for review because of the PHA or landlord’s failure to consider mitigating circumstances. See *Hicks v. Dakota Cnty. Comm. Dev. Agency*, No. A06-1302, 2007 WL2416872 (Minn. Ct. App. Aug. 28, 2007) (“The permissive nature of the [voucher] regulation does not preclude a determination that mitigating circumstances are an important factor that must be considered in a particular case.”); *Oakwood Plaza Apartments v. Smith*, 352 N.J. Super. 467 (N.J. Super. Ct. 2002) (remanding project-based Section 8 eviction case to trial court for a determination of whether the landlord properly exercised discretion and considered relevant factors prior to deciding to evict).

<sup>82</sup> 24 C.F.R. § 982.553; *City of Charleston Hous. Auth. v. Brown*, No. 5941, 2022 S.C. App. LEXIS 100 (Ct. App. Aug. 24, 2022).

<sup>83</sup> 24 C.F.R. § 960.203(d); U.S. DEP’T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶¶ 4.6, 4.8, 4.10 (June 2003); see also *Lancaster v. Scranton Hous. Auth.*, 479 F. Supp. 134, 138 (M.D. Pa. 1979), *aff’d mem.*, 620 F.2d 288 (3d Cir. 1980) (applicant has burden of putting forth such evidence).



All PHAs and owners of government-assisted housing are ENCOURAGED to look at the following (and for the Public Housing program, PHAs *must* look at the following):<sup>84</sup>

1. Every application for housing on a case-by-case basis;
2. The seriousness of the offense;
3. The time that has passed since the offense;
4. The effect that denial of admission would have on the rest of your family;
5. The effect that denial of admission would have on the community;
6. The extent to which you have taken responsibility for your actions and taken steps to prevent or mitigate bad conduct in the future;
7. Evidence of rehabilitation;
8. Mitigating circumstances relating to your disability or the disability of any family member; *and*
9. Evidence of your family's participation or willingness to participate in social services, reentry support, or counseling programs.<sup>85</sup>

### WHEN COULD I SHOW PROOF OF MITIGATING CIRCUMSTANCES AND REHABILITATION TO THE PHA OR OWNER OF GOVERNMENT-ASSISTED HOUSING?

IF YOU PROVIDE THIS INFORMATION UPFRONT, you will likely have a better shot of getting into the government-assisted housing program. Many government-assisted housing programs that are not legally required to ask you for mitigating or rehabilitative evidence won't...so be proactive!

Similarly, if you are TRYING TO REJOIN a government-assisted housing unit, be prepared to explain why you should be accepted, despite your record. Because the PHA or owner of the government-assisted housing is likely to run a background check on you, you should be prepared—if asked—to honestly disclose your criminal record *AND* to demonstrate mitigating circumstances and evidence of your rehabilitation (see [PG. 41](#)).

Consider giving the PHA or owner additional information about *all the benefits* of having you join your family and how your joining may *positively* affect the stability of the entire housing development. *These benefits depend on the facts of your specific situation.* For example, you might include information about your relationship with the family members currently living in the household, especially a positive relationship with any children or a supportive relationship between you and your spouse. Another example is your potential to increase the income of the family unit already living there, so that you will stabilize the rent paid to the PHA or owner of the government-assisted housing. To learn more about joining family and friends—in either private or government-assisted housing—see [PG. 54](#).

*Continue reading to learn about specific types of evidence that show proof of mitigating circumstances and rehabilitation that strengthen your application to government-assisted housing!*

### SPECIFIC EXAMPLES OF EVIDENCE THAT CAN STRENGTHEN YOUR APPLICATION TO GOVERNMENT-ASSISTED HOUSING

**IMPORTANT TIP AS YOU GATHER HELPFUL EVIDENCE OF YOUR REHABILITATION & MITIGATING CIRCUMSTANCES:** Try to get *at least* one item from the following list, and as many of these forms of proof as you are able. If you cannot do so, you will have to work very hard—and creatively—at getting other evidence to overcome a criminal record ban or challenge a denial to government-assisted housing.

#### WHAT SPECIFIC TYPES OF EVIDENCE WILL STRENGTHEN MY HOUSING APPLICATION TO GOVERNMENT-ASSISTED HOUSING?

Provide proof of your rehabilitation and mitigating factors as explained above! Letters of support and certificates of successful completion of programs that improved your life are one of the key ways that can help strengthen your application to government-assisted housing. Make sure that the letters you get are detailed and very positive about you! An impersonal letter with little details about you will have almost the same effect as no letter at all.

*Below are some places you should consider getting letters of support or other documents proving your participation.*

<sup>84</sup> 24 C.F.R. §§ 982.552(c)(2), 5.852; U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-7(C)(4) (Rev. November 2013); U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶¶ 4.6, 4.8, 4.10 (June 2003); *see also* "One Strike and You're Out" Screening and Eviction Guidelines for Public Housing Authorities (HAs), PIH 96-16 (HA) (Apr. 12, 1996) 5-6; *see also* Letter from Mel Martinez, Secretary of HUD, to Public Housing Directors (Apr. 16, 2002), and Letter from Michael Liu, Assistant Secretary of HUD to Public Housing Directors (June 9, 2002) (in the eviction context HUD has urged PHAs to be guided by "compassion and common sense").

<sup>85</sup> 24 C.F.R. § 960.203(d)(1)(ii). This last factor is listed in the context of public housing but could be considered with respect to applications for other federally assisted housing.



- **EVIDENCE FROM SCHOOL:**

Show that you stayed in school for at least 6 months and have a positive school record.

- Proof could be a transcript with good grades, or a letter from a teacher or school administrator.
- Suggestion: If school administrators or teachers can say the following things truthfully, these letters should say that you:
  - Were in school for at least six months;
  - Had great attendance and were consistently on time;
  - Had excellent grades; and
  - Are motivated to learn and get ahead in life.

- **EVIDENCE FROM JOB TRAINING PROGRAMS**

Show that you stayed in a job-training program for at least 6 months and have a positive record.

- Proof could be through a letter from a program supervisor or administrator.
- Suggestion: If true, ask your teacher or the program administrator to say that you:
  - Participated for at least six months;
  - Had great attendance and were consistently on time;
  - Are motivated to learn and get ahead in life;
  - Have learned useful skills to apply to a job; and
  - Get along well with others.

- **EVIDENCE OF EMPLOYMENT**

Show that you kept a job for at least 6 months and had a positive work record:

- Proof could be a letter from a supervisor or other person at the job.
- Suggestion: These letters should not just state how long you have worked. If possible, they should also say:
  - How well you have performed your job;
  - Whether you have been promoted;
  - That you have an excellent attendance record and come to work on time; and
  - That you are motivated, responsible, and get along well with others.
- If you worked while you were incarcerated and can get a good letter from a supervisor, do it! This can be useful, especially if you went above and beyond what was required by the job.

- **EVIDENCE OF YOUR PARTICIPATION IN COUNSELING OR SOCIAL SERVICE PROGRAMS**

Show that you spent time in counseling or another social service program to deal with the problem that led you into criminal behavior. (Proof of at least 6 months is best, but proof of any amount of time can still be helpful.) If you were in drug treatment or had a drug problem, you might be required to provide a clean drug test. You also have to show that you have done well in the program.

- Proof could be a letter from your counselor, therapist, or doctor. Please note that due to confidentiality laws, your provider may request you sign a confidentiality waiver before they can write a letter with information about your treatment.
- Suggestion: These letters should do a lot more than simply state the dates you were in treatment and the fact that you completed treatment. If your counselors in social service, mental health, and/or alcohol and drug programs can say the following things truthfully, then they should also say that you:
  - Had great attendance;
  - Had clear drug tests for at least 12 months (and provide the test results);
  - Showed excellent motivation and desire to change;
  - Participated fully in programs;



- Got along well with others;
- Understand the causes of your past behaviors and are committed to positive growth;
- Are not a risk to the safety of others; and
- No longer hang out with the same peers that got you into trouble.

### ● **PROOF OF A DISABILITY**

If you have any type of disability that prevents you from going to school or working, then it can help to show any programs you have participated in to get support for your disability. If the disability is a past drug addiction (NOT a current one), alcoholism, or a mental health issue, it could be helpful to show at least six months of counseling, such as mental health treatment or drug or alcohol treatment.

Proof of this can be your counselor's letter explaining that you are unable to work (see above). You can also try to get any other proof of your disability, such as a letter from your doctor saying that you cannot work or go to school because of your disability. If you are on SSI or SSDI public benefits, you can also provide proof of those benefits. If you cannot show at least six months of counseling, work, school, or job training, then you will have a much harder time convincing the PHA to find you eligible. However, if your disability is so severe that you cannot participate in ANY of these activities (for example, you are homebound), a letter explaining this can be helpful.

### ● **PROOF OF EXPUNGEMENT, DISMISSAL, PARDON, OR REHABILITATION FOR A PAST CONVICTION**

Consider including any records of expungements, dismissals, pardons, or rehabilitation for a past conviction. You can contact our office at 864-546-5089 if you have questions about the process of record cleaning.

### ● **OTHER HELPFUL EVIDENCE**

While PHAs and owners of government-assisted housing are not as persuaded by the following types of evidence, they can still be helpful if the support letters are very detailed, very positive, and make you look like you are doing ALL YOU CAN DO to move your life in a positive direction and be a productive member of society. Consider the following other forms of helpful evidence to include in your application to government-assisted housing (OR at a hearing challenging a denial):

- **Certificates from programs in or after prison**, like anger management and drug or alcohol treatment. Remember that any programs in prison count!
- **Letter from your Parole or Probation Officer**: We suggest that if your Probation or Parole Officer can say the following things truthfully, ask him/her to comment on your:
  - Positive drug tests for at least 12 months;
  - Positive outlook;
  - Compliance with all the requirements of parole or probation; and
  - Exceptional motivation.
- **Letters from clergy**: We have found that these letters are usually most helpful if they show that you volunteer and play a leadership role in your community.
- **Letters from landlords or building superintendents**. We suggest you ask these letters to say that you:
  - Always paid your rent on time;
  - Respected your neighbors; and
  - Treated the property well.
- **Letters from neighbors**: We suggest that the letter(s) should discuss what a good neighbor you are (for example, that you are quiet, respectful, and/or helpful to the building or community.)
- **Letters from your volunteer work**: Have you helped out at your children's school? At their daycare center? Have you been a mentor to a child? Helped a senior citizen? Volunteered in any other way? Ask for a letter saying that you:
  - Are responsible;
  - Have made a major contribution; and/or
  - Are dedicated to your volunteer work.



- Also get a letter from anyone you have helped. Ask them to write what an important role you played for them. Ask the person to be specific and include examples!
- **Letters from people you have helped:** It can be very moving to read a letter from someone whose life you have touched in a positive way. Have you helped someone through your church? In your neighborhood? Through work? Consider asking them to write a letter with specific examples about the ways that you have helped them.
- **Proof about your children's successes:** If your children have done impressive things, highlight that your parenting had something to do with it. Examples of what you might give are:
  - Letter from your child's teacher about his/her great work or good grades, emphasizing your role in encouraging your child to do his/her best, making sure your child does his/her homework, etc.
  - Letter from your child's coach in sports—similar to the letter from a teacher.

### ***What about getting support letters from family?***

While it is always nice to have support from your family, these letters are not as helpful because the PHA and/or owner of government-assisted housing assumes that your family members would write anything to help you get the housing. You can certainly include such letters if you like, but letters from people outside your family will have a bigger impact.

### **IF I CAN SHOW THE PUBLIC HOUSING AUTHORITY (PHA) THAT I REALLY NEED THE HOUSING, WILL THAT HELP MY APPLICATION?**

If you need the housing badly due to a *disability* or because you are *homeless*, you should let the PHA know as those needs might help your application to be processed faster.

Beyond these situations, however, information about how you really need the housing or the fact that you can't afford other housing in the area won't hurt or help you because it's usually not enough of a reason to overcome your criminal record. If you're not sure, you can go ahead and mention the need in the application.

### **SPECIAL NOTE FOR PEOPLE WITH DISABILITIES & SPECIAL NEEDS:**

If the housing unit has unique characteristics that you need, you should request that the unit be kept open while your application is being reviewed, especially if you are challenging a denial of your application. This means that the PHA or owner agrees not to rent the unit to someone else until your application is decided. You wouldn't want to win the right to live in the unit, just to have it lost to another renter while you challenge the unlawful denial. A PHA or owner will balance such a request with the need to rent vacant units. Go to [PG. 40](#) to learn more about getting into housing if the crime you committed was caused by a disability (like mental illness or past addiction).



## IV. ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR HOUSING

### AN OVERVIEW OF THE TYPES OF CRIMINAL RECORDS THAT COULD SHOW UP AS YOU APPLY FOR HOUSING

#### WHAT WILL I LEARN?

- What could show up on a background check (also called a “tenant report”) for housing
- What private landlords can and cannot see and consider from a background check/tenant report
- What Public Housing Authorities (PHAs) and owners of government-assisted housing can and cannot see and consider from a background check/tenant report

#### WHAT CRIMINAL RECORDS COULD SHOW UP AS I APPLY FOR ANY TYPE OF HOUSING?

Here are three major categories of records that might tell a private landlord, Public Housing Authority (PHA), or owner of government-assisted housing something about your criminal history:

##### 1) CRIMINAL HISTORY RECORDS:

These include: government-produced criminal records; publicly available court records of cases involving you; police and law enforcement records including arrest records; reports produced by private background check and tenant-screening companies (see #2: “BACKGROUND CHECKS/TENANT REPORTS” below); internet research; the newspaper; and/or information received directly from you (through an application form or by asking you.)

##### 2) BACKGROUND CHECKS/“TENANT REPORTS”:

A private landlord, PHA, or government-assisted owner will MOST LIKELY get a copy of your background check from a private company—and when it’s for a housing provider, the background check report is often called a “tenant report.” Tenant reports show *credit information, employment history, certain criminal history information, entries in sex offender registries or other public databases, driving records, interviews with people who know you, and more*. These reports are created and provided by private background check companies and/or credit bureaus. (See [PG. 47](#) to better understand the rules about getting background checks, and what information can be considered for housing.)

##### 3) DRUG OR ALCOHOL TREATMENT RECORDS:

These are documents that show your enrollment in, participation in, and completion of any drug or alcohol treatment programs. In some cases, a PHA or owner of government-assisted housing, *may* be able to get records about your past drug or alcohol treatment, BUT A REGULAR PRIVATE LANDLORD CANNOT GET THESE RECORDS.<sup>86</sup>

#### DOES THIS CHAPTER COVER WHAT CAN AND CANNOT SHOW UP IN MY CREDIT REPORT?

No, not really. As a general note, whenever you apply to ANY type of housing—whether you’re applying to private housing (run by a private landlord) OR to government-assisted housing (through a Public Housing Authority (PHA) or directly to an owner of government-assisted housing)—all of these people and agencies CAN access your *credit report*, which is *different* from your criminal records, but might be combined in a “tenant report” (which is just a background for housing).

*Credit reports* include information about your past finances and credit history, such as whether you have a history of paying bills on time. Credit reports also show whether past credit problems have ended in a bankruptcy or a court proceeding for failing to pay your rent on time (called an “eviction” or an “unlawful detainer”). A credit report shows ONLY credit information, NOT criminal history information. *We included some very general rules about credit reports in Appendix G on PG. 93 of this chapter, but these rules are only a summary. This Chapter focuses on how criminal records come up as you apply for housing, not past credit issues.*

**CAN A PRIVATE LANDLORD, PUBLIC HOUSING AUTHORITY (PHA), OR OWNER OF GOVERNMENT-ASSISTED HOUSING CHARGE ME A FEE FOR RUNNING A BACKGROUND CHECK ON ME?**

<sup>86</sup> For more information on confidentiality of your medical information and treatment records, see U.S. DEP’T OF HEALTH & HUMAN RESOURCES, Your Rights Under HIPAA, HHS.gov, <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html>; see also U.S. DEP’T OF HEALTH & HUMAN RESOURCES, The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation And the HIPAA Privacy Rule: Implications for Alcohol and Substance Abuse Programs (June 2004), <https://www.samhsa.gov/sites/default/files/samhsapart2-hipaacomparison2004.pdf>.



It depends on who is running the background check. Neither PHAs nor owners of federal government-assisted housing can charge you any fees for criminal background checks.<sup>87</sup> This is different if you are applying for private housing from a private landlord—private landlords *can* charge you a fee which is usually included as part of the application fee when you apply for the private housing. See more about this below.

## **ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR PRIVATE HOUSING**

### **HOW PRIVATE LANDLORDS LEARN ABOUT YOUR CRIMINAL RECORD**

#### **HOW DO PRIVATE LANDLORDS LEARN ABOUT MY CRIMINAL RECORD?**

A private landlord can learn about your criminal record from any of the following sources:

- Private background checks (also called “tenant reports”) (*see the next question for more information*);
- Publicly available court records of cases involving you;
- Internet research;
- The newspaper; and/or
- Information received directly from you—through an application form or by asking you.

### **YOUR RIGHTS WHEN A PRIVATE LANDLORD RUNS A CRIMINAL BACKGROUND CHECK**

As an applicant to private housing, you have legal rights related to the information that comes up in a private background check and how a private landlord may use that information. The law protects you by making it illegal for certain types of information to be included in a criminal background check on you. However, there are a lot of laws that limit what a private background check company creating a background report for a landlord can share with them.

#### **WHAT MUST A PRIVATE LANDLORD DO IF THEY WANT TO GET A BACKGROUND CHECK ON ME?**

Under federal law, if a private landlord wants to run a background check on you, they must give you “notice” & get written permission to run a background check. This means that you must receive a written document (“notice”) from the landlord saying that they wish to conduct a background check on you. The landlord must get your written permission before running the background check.<sup>88</sup>

#### **DO PRIVATE BACKGROUND CHECK COMPANIES HAVE TO MAKE SURE THE INFORMATION THEY REPORT TO A LANDLORD IN A BACKGROUND CHECK IS TRUE AND ACCURATE?**

Yes. Private background check companies CANNOT include “public record” information unless it has been double-checked for accuracy in the past 30 days. Public record information includes arrests, convictions, civil actions, tax liens, and outstanding judgments.<sup>89</sup>

#### **DOES A PRIVATE LANDLORD HAVE TO TELL ME THAT THE CRIMINAL RECORD INFORMATION THAT SHOWED UP IN A PRIVATE BACKGROUND CHECK IS THE REASON I AM NOT GETTING THE APARTMENT/HOUSING?**

**Yes! It is important to note that *the landlord has to tell you if your criminal history is the reason you are not getting the apartment.*** If there is a negative action taken—like not renting you the apartment—because of a background report, the landlord must follow this 2-step procedure:

**STEP 1:** The landlord must provide you with a copy of the report and a copy of the *Federal Trade Commission Summary of Rights* before the negative action is taken—giving you an opportunity to clear up any inaccuracies in the report.

**STEP 2:** If the landlord goes forward with the negative action, it must provide you notice about the adverse decision, the contact information of the reporting agency, a statement that the landlord (and not the screening company) made the adverse decision; and your right to dispute the accuracy or completeness of the report.<sup>90</sup>

<sup>87</sup> 24 C.F.R. §§ 5.903(d)(4); 5.905(b)(5); U.S. DEP’T OF HOUS. & URB. DEV., Handbook 4350.3, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-7(E)(2) (rev. November 2013); U.S. DEP’T OF HOUS. & URB. DEV., Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002) ¶ X, p. 9, ¶ XIII, p. 11; *see also* 24 C.F.R. § 5.100 (definition of federally assisted housing).

<sup>88</sup> 15 U.S.C. § 1681d(a).

<sup>89</sup> 15 U.S.C. § 1681d(d)(3).

<sup>90</sup> 15 U.S.C. § 1681m(a).





## **YOUR RIGHTS WHEN A PRIVATE LANDLORD DIRECTLY ASKS YOU ABOUT YOUR CRIMINAL RECORD**

**CAN A PRIVATE LANDLORD ASK ME ABOUT OLDER CONVICTIONS OR ARRESTS THAT HAPPENED MORE THAN 7 YEARS AGO?**

Yes and no. A landlord can ask about convictions that happened more than 7 years ago, but not arrests that happened more than 7 years ago.<sup>91</sup> Also remember, if the landlord is asking you about past convictions, criminal conduct or activity, he or she must be *asking everyone equally*.<sup>92</sup>

## **YOUR RIGHTS TO CONFIDENTIALITY WHEN A PRIVATE LANDLORD GATHERS CRIMINAL RECORD INFORMATION ON YOU**

**DOES THE LANDLORD HAVE TO PROTECT AND KEEP CONFIDENTIAL MY CRIMINAL RECORD AND OTHER PERSONAL INFORMATION?**

Yes. When a landlord collects information in the background check process—like credit reports and criminal background checks, the landlord CANNOT use those reports for any other purpose than the one they originally asked for. Also, when a landlord is done using the information, federal law requires that he/she get rid of it (whether in paper or electronic form).<sup>93</sup>

## **ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR GOVERNMENT-ASSISTED HOUSING**

When you apply to PHAs and/or owners of government-assisted housing, they can research you to decide whether you should be accepted or rejected. To do this research, they are allowed to access different kinds of records. There are rules for how they can access and use these records, described below, so keep reading!

PLEASE NOTE: There are different rules for how PHAs and owners of federal government-assisted housing can access and use your criminal history records. As a summary, the PHA can get more information about your criminal history than an owner of government-assisted housing. We will explain how each gets access to your criminal history information below.

## **YOUR RIGHTS WHEN A GOVERNMENT-ASSISTED HOUSING PROVIDER RUNS A CRIMINAL BACKGROUND CHECK**

### **(1) PUBLIC HOUSING AUTHORITIES' (PHAs) ACCESS TO YOUR CRIMINAL & DRUG TREATMENT RECORDS**

**WHAT CRIMINAL RECORDS CAN A PUBLIC HOUSING AUTHORITY (PHA) ACCESS, AND WHO GIVES THE PHA MY CONVICTION RECORDS?**

Most PHAs get criminal history information about you from private background check companies that gather lots of criminal history information from different public sources and put them in one report to the PHA (see more on [PG. 51](#)).

PHAs can also get your criminal history information directly from ALL OF THE PUBLIC SOURCES listed on [PG. 47](#), such as internet searches and adult criminal court records.

If you apply to a PHA for one of the three major federal government-assisted-housing programs (Public Housing, “Section 8” Housing Choice Vouchers, and project-based Section 8 Housing), PHAs can ask for criminal records on you from the National Crime Information Center, state and local police departments, and other law enforcement agencies, and it’s required to give them to the PHA.<sup>94</sup>

**REMEMBER:** There is a DIFFERENT RULE FOR OWNERS OF GOVERNMENT-ASSISTED HOUSING. Owners of federal government-assisted housing CANNOT get your conviction records directly from the National Crime Information Center or law enforcement agencies—but the PHA might share some of this information with them. See the next question below.

**CAN A PUBLIC HOUSING AUTHORITY (PHA) REQUIRE ME TO SIGN A RELEASE TO GET MY CRIMINAL HISTORY INFORMATION?**

<sup>91</sup> 15 U.S.C. 1681c. Note that this law only applies if the landlord is running a background check through a Credit Report Agency (CRA).

<sup>92</sup> Fair Housing Act, 42 U.S.C. § 3601 et seq.; U.S. DEP’T HOUS. & URBAN DEV., Memorandum on Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (June 10, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>.

<sup>93</sup> 15 U.S.C. § 1681w(a)(1).

<sup>94</sup> 42 U.S.C. § 1437d(q)(1)(A); 24 CFR § 5.903.



Yes. PHAs can legally require you to SIGN A RELEASE FORM so that they can get this criminal history information for these housing programs.<sup>95</sup>

**IF I AM MOVING INTO GOVERNMENT-ASSISTED HOUSING IN A DIFFERENT CITY OR COUNTY, CAN MY CURRENT PUBLIC HOUSING AUTHORITY (PHA) SHARE MY CRIMINAL HISTORY RECORDS WITH THE NEW PHA WHERE I AM APPLYING?**

Most likely. Your current PHA is encouraged (but not required) to send criminal background check information about you to the new PHA.<sup>96</sup>

**CAN A PUBLIC HOUSING AUTHORITY (PHA) ACCESS MY DRUG TREATMENT RECORDS, AND IF SO, UNDER WHAT CIRCUMSTANCES?**

The law is still unclear for most government-assisted housing programs. The short answer is that a PHA can get limited access to your drug/alcohol treatment records if you are applying to or currently living as a tenant in the Public Housing program (which is a specific type of government-assisted housing program). There are no similar rules for the other government-assisted housing programs (like “Section 8” Housing Choice Vouchers or the Section 8 Moderate Rehabilitation Program).<sup>97</sup> Therefore, unless you are applying to the Public Housing program, it is still unclear if PHAs can legally request or obtain information about you from drug/alcohol treatment facilities. This rule is further explained below.

**I AM AN APPLICANT OR TENANT FOR THE PUBLIC HOUSING PROGRAM. WHAT INFORMATION CAN A PUBLIC HOUSING AUTHORITY (PHA) GET ABOUT ME FROM A DRUG/ALCOHOL TREATMENT FACILITY?**

If you are applying to the Public Housing program, the local PHA is allowed to request and get information about you from drug treatment facilities,<sup>98</sup> but the PHA is limited to asking only one question relating to your eligibility for the housing, which is:

“Does the drug abuse treatment facility have reasonable cause to believe that the household member is currently engaging in illegal drug use?”<sup>99</sup>

That is the only question that can be asked and the PHA cannot seek any additional information from the drug treatment facility!

**WHAT IS THE PROCESS THAT A PUBLIC HOUSING AUTHORITY (PHA) MUST FOLLOW WHEN REQUESTING INFORMATION ABOUT ME FROM A DRUG TREATMENT FACILITY?**

When requesting information from a drug treatment facility about an applicant or tenant for the public housing program, The PHA *must*:

- Get your signature on a release form (also called a written consent form) before asking the drug treatment facility about you.<sup>100</sup> The release automatically expires right after the PHA makes a final decision to approve or deny your application to the government-assisted housing program.<sup>101</sup>
- Have a system to protect your confidentiality (your privacy).<sup>102</sup> When a PHA or landlord collects information in credit and criminal background checks, it cannot use the information it collects for any purpose other than to decide whether or not to admit you into the housing unit. The PHA and owner must keep this information confidential, even when throwing it out.<sup>103</sup>
- Have and follow a nondiscriminatory policy (a document that outlines a policy in regards to discrimination and management practices) that applies equally to anyone applying to public housing.<sup>104</sup> This policy must be written down in the PHA’s official plans and policies.

<sup>95</sup> 42 U.S.C. § 1437d(s).

<sup>96</sup> U.S. DEP’T OF HOUS. & URB. DEV., Voucher Program Guidebook, Housing Choice, HUD Handbook 7420.10G, ¶ 13.4 (Apr. 2001).

<sup>97</sup> The argument against such adoption of those rules (for other federally-assisted housing programs, not including public housing, which already has these rules in place) is that Congress intentionally limited the applicability of the statutory provision to public housing and did not extend it to the other programs. However, if a PHA (for the voucher program) or an owner (for other programs) adopts a policy that seeks to obtain records from drug treatment facilities, it should also be argued that the public housing statutory protections or their equivalent must be incorporated, as the statute is designed to avoid a violation of fair housing laws and claims of discrimination based upon disability.

<sup>98</sup> 42 U.S.C. § 1437d(t)(1); 24 C.F.R. § 960.205.

<sup>99</sup> 42 U.S.C. § 1437d(t)(2); 24 C.F.R. § 960.205(d)(1).

<sup>100</sup> 42 U.S.C. § 1437d(t)(2); 24 C.F.R. § 960.205(c)(1).

<sup>101</sup> 42 U.S.C. § 1437d(t)(2)(C); 24 C.F.R. § 960.205(c)(2).

<sup>102</sup> 42 U.S.C. § 1437d(t)(2)(B); 24 C.F.R. § 960.205(f).

<sup>103</sup> 42 U.S.C. § 1437d(t)(2)(B); 24 C.F.R. § 960.205(f).

<sup>104</sup> 24 C.F.R. § 960.205(e).



## WHAT CAN I DO IF A PUBLIC HOUSING AUTHORITY (PHA) VIOLATES MY RIGHTS IN ACCESSING AND USING MY DRUG TREATMENT INFORMATION?

If you believe you were denied housing because of illegal access to your records, or because of incorrect or illegal information, you should IMMEDIATELY ask for a [review hearing](#)! A review hearing is an informal procedure in which you can present corrections to your record, evidence of rehabilitation, and other mitigating information (see [PG. 41](#)) to challenge a denial to government-assisted housing. Go to [PG. 60](#) of this HOUSING CHAPTER to learn about the procedure for challenging denials and how to request an informal review hearing.

## (2) GOVERNMENT-ASSISTED OWNERS' ACCESS TO RECORDS

### WHAT CAN OWNERS OF FEDERAL GOVERNMENT-ASSISTED HOUSING SEE? HOW DO THEY GET MY CRIMINAL RECORDS?

Most owners of government-assisted housing—just like most private landlords—get your criminal records from background check reports run by private background check companies, public records and internet searches, or by asking you directly in your application or interview.

- Unlike PHAs, owners of government-assisted housing CANNOT get records about you directly from the National Crime Information Center, state and local police departments, or other law enforcement agencies.<sup>105</sup>
- Also, owners of government-assisted housing CANNOT get your criminal records directly from the PHA. In fact, PHAs are not allowed to disclose information about your criminal conviction history to owners of government-assisted housing. If an owner wants details about your record, s/he must do his/her own research to get them (with one exception).<sup>106</sup>

**\* THERE IS ONE EXCEPTION TO THIS RULE:** Owners of Project-Based Section 8 housing (which is a government-assisted program where the financial subsidy for the housing *stays with the unit*, as opposed to the traditional Section 8 voucher that moves around with the person) can ask the PHA about your criminal history information BUT *cannot* get copies of the actual records from the PHA.<sup>107</sup> The PHA may disclose information to the owner only to the extent necessary to help him/her decide whether you can be denied or evicted from the assisted housing unit.<sup>108</sup> Lastly, if the PHA is screening your criminal history information for an owner of Project-Based Section 8 housing, the PHA must apply the property owner's own policy, not the PHA's policy, in making that determination.<sup>109</sup> So if the owner doesn't or can't consider something, the PHA cannot either. *In practice*, most owners of project-based Section 8 housing units are *not* using PHAs to obtain criminal history information; instead, these owners are using private background check companies to get information on applicants.<sup>110</sup>

## (3) LIMITS ON BOTH PUBLIC HOUSING AUTHORITIES (PHAs) AND OWNERS OF GOVERNMENT-ASSISTED HOUSING

### CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING GET RECORDS OF MY ARRESTS THAT DIDN'T LEAD TO CONVICTIONS?

Under the Fair Credit Reporting Act, background checks can include records of arrests within the last 7 years.<sup>111</sup> When you get a copy of your report, check to make sure there are no arrests older than that on your record. If you see any, you can contact the company and demand that it remove that information immediately!

### CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING GET MY JUVENILE RECORDS?

No. In South Carolina, “juvenile records of adjudication” (or a record from a decision in a case where you were tried as a minor) are treated differently than adult convictions. It is against the law for police or other law enforcement agencies to share your juvenile record with third-party background check companies or with Public Housing Authorities.<sup>112</sup>

<sup>105</sup> E.g., 28 C.F.R. § 20.33(a) (listing which law enforcement agencies may obtain criminal history information in certain federal systems).

<sup>106</sup> 24 C.F.R. § 5.903(d); 42 U.S.C. § 1437d(q).

<sup>107</sup> 42 U.S.C. § 1437d(q)(1)(B); 24 C.F.R. § 5.903(d); HUD Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-27(E)(4)(a); see also 42 U.S.C. § 13663(c); 24 C.F.R. § 5.905 (sex offender registration information).

<sup>108</sup> 24 C.F.R. §§ 5.903(e)(2)(i)(b), 5.905(b)(5).

<sup>109</sup> 42 U.S.C. § 1437d(q)(1)(B); 24 C.F.R. § 5.903(d), (e), 5.905(b)(2)(ii); see also Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002).

<sup>110</sup> See U.S. DEP'T OF HOUS. & URBAN DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-27(E)(4)(b) (rev. Nov. 2013) (referencing other types of screening services or sources of information that an owner may use); Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002) (same).

<sup>111</sup> 15 U.S.C. § 1681c(a)(2). Note that it is possible that a landlord (whether in South Carolina or not) does not obtain criminal history information from a consumer reporting agency and therefore has no restrictions of the 7-year rule on arrest records under 15 U.S.C. 1681c. (For example, a non-CRA source could be the S.C. State Law Enforcement Division (SLED).)

<sup>112</sup> 42 U.S.C. 1437d(q)(1)(c); S.C. Code Ann. § 63-19-1419(C), 63-19-2030.



## YOUR RIGHTS WHEN A GOVERNMENT-ASSISTED HOUSING PROVIDER RUNS A CRIMINAL BACKGROUND CHECK—THE RULES THEY MUST FOLLOW

**IMPORTANT:** The most common way that most PHAs AND owners of government-assisted housing (as well as private owners) access your criminal history information is by ordering private background check companies to run tenant screening reports.

### WHAT ARE TENANT SCREENING REPORTS?

A tenant screening report is a background check done by a private company or credit bureau on a housing applicant. It reports credit information, employment history, certain criminal history information, entries on sex offender registers and/or other public databases, driving records, and more. A tenant screening report may also include information gathered from personal interviews with your neighbors, former landlords, or coworkers.

### WHO CONDUCTS TENANT SCREENING CHECKS & PROVIDES THE REPORTS TO PUBLIC HOUSING AUTHORITIES (PHAs) & OWNERS OF GOVERNMENT-ASSISTED HOUSING?

Many private background check companies provide tenant reports, including the 3 national credit bureaus: Experian, TransUnion, and Equifax.

### DO YOU HAVE TO PAY FOR A TENANT SCREENING REPORT? IF SO, HOW MUCH DOES A REPORT COST?

No, not if you are applying to government-assisted housing—neither a PHA nor an owner can charge you to run a criminal background check/tenant screening report.<sup>113</sup>

### DO I HAVE ANY RIGHTS IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING REJECTS MY RENTAL APPLICATION BECAUSE OF A BACKGROUND CHECK?

**Yes! The PHA or landlord must give you an “adverse action” notice, including a copy of the background check, letting you know it plans to take an action that could harm you based on information that showed up in your background check.**<sup>114</sup> If the background check is not correct, the PHA must also give you the opportunity to prove it needs to be corrected before making a final decision.<sup>115</sup> The notice must include the following information:

- The name and contact for the company that supplied the report;
- A statement that the landlord, not the screening company, made the adverse decision; *and*
- Notice of your right to dispute the accuracy of the report and to receive a free copy of your report within 60 days.<sup>116</sup>

### EXTRA PROTECTIONS FOR THE PUBLIC HOUSING PROGRAM AND THE “SECTION 8” HOUSING CHOICE VOUCHER PROGRAM ONLY:

*ONLY for these two government-assisted programs, PHAs must follow certain extra rules (set forth below).*

- **The PHA must make sure the criminal records are true and accurate.** After the PHA has you sign a *release* of criminal records information and submits that release to the law enforcement agency that holds the criminal records, it may receive a response that there is a match based on your name, date of birth, and social security number. The PHA cannot deny admission based on this information alone; the PHA must verify the match with a positive fingerprint comparison.<sup>117</sup>

<sup>113</sup> 24 C.F.R. §§ 960.204(d), 982.553(d)(3).

<sup>114</sup> 24 C.F.R. § 5.903(f); 24 C.F.R. § 960.204(c); 42 U.S.C. § 1437d(q)(2); *What should I do if my rental application is denied due to a tenant screening report?*, CONSUMER FIN. PROT. BUREAU (last rev. Jul. 1, 2021), <https://www.consumerfinance.gov/ask-cfpb/what-should-i-do-if-my-rental-application-is-denied-due-to-a-tenant-screening-report-en-2105/>.

<sup>115</sup> *Id.*

<sup>116</sup> 42 U.S.C. § 1437d(q)(2); *What should I do if my rental application is denied due to a tenant screening report?*, CONSUMER FIN. PROT. BUREAU (last rev'd. Jul. 1, 2021), <https://www.consumerfinance.gov/ask-cfpb/what-should-i-do-if-my-rental-application-is-denied-due-to-a-tenant-screening-report-en-2105/>.

<sup>117</sup> Instructions for Obtaining Federal Bureau of Investigation Criminal History Information, PIH 2003-11(HA) (Apr. 11, 2003) ¶ 7.



- The PHA must give you notice of any proposed action that could harm you. A PHA must notify the household of any proposed action that could harm you (called an “adverse action” notice). The PHA must also provide a copy of the criminal record information to the person who was the subject of the record—as well as to the applicant, if that’s a different person.<sup>118</sup>
- The PHA must give you an opportunity to challenge the criminal record information. The person whose information was relied on must be given an opportunity to dispute the proposed negative action.<sup>119</sup> NOTE: Even if you don’t have an automatic legal right to a review hearing, you can always ask for one! To learn more about challenging a denial to government-assisted housing, please go to [PG. 60](#).
- The PHA must protect the confidentiality of your records:<sup>120</sup> Under federal law, PHAs must have a system to: (1) Protect the confidentiality of applicants’ criminal records; (2) Guard against improper sharing of those records; AND (3) Destroy the records once their purpose has been achieved. There are criminal penalties for the improper release of this information.<sup>121</sup>

### **YOUR RIGHTS AGAINST ILLEGAL ACCESS OF YOUR CRIMINAL RECORDS AS YOU APPLY FOR GOVERNMENT-ASSISTED HOUSING:**

**WHAT ARE MY LEGAL RIGHTS IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING ILLEGALLY ACCESSES OR USES MY CRIMINAL RECORD INFORMATION?**

**The General Rule:** In general, if you believe you were denied housing because of illegal access to your records, or because of incorrect or illegal information, you should IMMEDIATELY ask for a [review hearing](#)! A review hearing is an informal procedure in which you can present corrections to your record, evidence of rehabilitation, and other mitigating information (see [PG. 41](#)) to challenge a denial to government-assisted housing. Go to [PG. 60](#) of this Chapter to learn about the procedure for challenging denials and how to request an informal review hearing.

**Special Rule for the Public Housing & “Section 8” Housing Choice Voucher Programs:** If you applied through a PHA for Public Housing or “Section 8” Housing Choice Vouchers, there is a special rule that says PHAs and owners of the government-assisted housing cannot take any “negligent or knowing action that is inconsistent with” the laws and regulations governing access to your criminal records.<sup>122</sup> A negligent action is one where the PHA or owner of the government-assisted housing knew or should have known that their access to your records violated the law. A knowing action is one where the PHA or owner of the government-assisted housing *actually knew* that its access to your records violated the law.

A PHA or owner MAY BE LIABLE for negligence if they do any of the following:<sup>123</sup>

- Improperly disclose a criminal record;
- Improperly use a consent form (a.k.a. a “release” form);
- Fail to *notify you* of the criminal history information collected;
- Fail to *provide you* with a copy of the information collected (whether you are an applicant or a current tenant); *and/or*
- Fail to *allow you the right to dispute* the information.

<sup>118</sup> 42 U.S.C. § 1437d(q)(2). There are conflicting interests involved in providing the criminal record to both the applicant and the member of the family subject to the criminal record. The FBI “commented that dissemination of criminal records is limited to those with authorization (such as the PHA) and the person who is the ‘subject’ of the record, not to other persons in the household.” 66 Fed. Reg. 28,776, 28,789 (May 24, 2001). HUD disagreed, contending that under its statutory authority, it is required to provide the information to the applicant or tenant so that the applicant or tenant may dispute the determination.

<sup>119</sup> 42 U.S.C. § 1437d(q)(2); 24 C.F.R. § 5.903(f); *see also* 24 C.F.R. §§ 960.204(c), 966.4(l)(5)(iv) (public housing), 982.553(d) (voucher). The notice and opportunity to contest must also be provided in the case of an eviction or lease enforcement action.

<sup>120</sup> Special Note for Advocates: The statutory language shows a policy concern that PHAs maintain the confidentiality of criminal records obtained through the federally authorized process. However, the regulation states that it is not applicable to public information or to criminal records information obtained from law enforcement agencies if the information was not sought pursuant to the regulations. 24 C.F.R. §§ 5.901(c). This exemption may be too broad. The meaning and full effect of the exclusion and its consistency with the statute has not been tested. The concern is that this may mean that if a PHA obtains information from a private consumer reports agency, it may not have to abide by the confidentiality provisions of the statute. 15 U.S.C. §§ 1681-1681u. Additionally, the confidentiality provisions of the statute most likely do not cover information the PHA or owner obtains from other sources, such as police blotters and newspaper reports. Nevertheless, advocates should argue that any information obtained from law enforcement agencies that is not otherwise publicly available should be subject to the statutory protections. 24 C.F.R. § 5.901(c). With respect to the management of the records, the statute references “any criminal records received,” whereas other provisions of the statute are limited to information received under the subsection. 42 U.S.C. §§ 1437d(q), 13663(f); *see also* 24 C.F.R. § 982.307(b)(2) (PHA may provide voucher landlords information in PHA files).

<sup>121</sup> 42 U.S.C. § 1437d(q)(4); 24 C.F.R. § 5.903(h).

<sup>122</sup> 42 U.S.C. § 1437d(q)(7).

<sup>123</sup> The broad scope of the PHA’s or owner’s liability may provide leverage for an applicant harmed by the negligence. The threat of litigation costs and attorney’s fees may encourage settlement and the admission of the applicant.



In this situation, it's best to talk to a lawyer! You could recover attorney's fees and other litigation costs as part of the relief you get in court.<sup>124</sup> See the list of legal aid providers in Appendix C on [PG. 81](#) to contact an organization that may be able to provide you legal assistance.

## **ERRORS IN YOUR BACKGROUND CHECK REPORT & HOW TO CORRECT THEM—AN OVERVIEW**

### **COULD THERE BE ERRORS IN THE BACKGROUND CHECK THAT A HOUSING PROVIDER RUNS ON ME?**

Likely, yes. Unfortunately, errors in background check reports are an incredibly common problem.

### **HOW CAN I CORRECT ERRORS IN MY BACKGROUND CHECK?**

The law that covers background checks and background check companies is very specific about how you can challenge mistaken, incomplete, or missing information in your background check report. If you think there is something wrong, you can tell the landlord, call the background check company that ran the report, and try to get it fixed.

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<sup>124</sup> 42 U.S.C. § 1437d(q)(7).



## V. JOINING FAMILY & FRIENDS IN HOUSING

### WHAT WILL I LEARN?

- Important tips if you are looking to move in with family or friends in their housing
- Suggestions and considerations if you want to move in with family or friends into their private housing
- Suggestions and considerations if you want to move in with family or friends into government-assisted housing
- Rules and policies if you are a guest in a family member or friend's government-assisted housing
- Rules and policies if you are a live-in aide to someone with special needs or disabilities in government-assisted housing

This section will discuss tips and important steps you should take if you want to join a family or friend's household after your release. In addition to these considerations, you always need to think about any restrictions based on your supervision status (probation, parole, etc.). Continue reading to learn more.

### JOINING FAMILY OR FRIENDS IN PRIVATE HOUSING

Here are some general tips if you want to join someone in private housing (meaning neither the family or friends living there nor the landlord who owns the housing receive any government money):

1. You can look at the lease/rental agreement and see what it says about the maximum number of occupants/residents and any guest policies (these will usually be in the written lease);
2. You can ask the landlord about guest policies and for permission to add a new person to the lease if that is what you would like to do (sometimes a landlord will say it's allowed but may be able to increase the rent);
3. If the person you are living with OWNS their housing, you don't have to worry about landlord policies, but you may still want to consider the pros & cons of living with family and friends on [PG. 13](#) above.

### JOINING FAMILY OR FRIENDS IN GOVERNMENT-ASSISTED HOUSING

#### I HAVE A CRIMINAL RECORD AND WANT TO JOIN A HOUSEHOLD LIVING IN FEDERAL GOVERNMENT-ASSISTED HOUSING. CAN I?

It depends on your conviction and the requirements of the government-assisted housing program. Unfortunately, the laws and policies for adding an individual with a criminal record to an existing household can be complex, and sometimes the interests of other family members who are living in the government-assisted housing unit will conflict with your interests in joining them.

Here are some COMMON QUESTIONS that often come up, which we will address in this section.

1. Can I join my family members in their government-assisted housing unit?
2. Does my family have to tell the PHA or owner that I am joining their assisted household? How do they do that?
3. Can we challenge a denial if the PHA or owner rejects my application to join the household? How do we do that?
4. Do I have any rights if I am rejoining my household in government-assisted housing?
5. What are the rules if I just want to be a guest of someone living in government-assisted housing and I have a record?
6. What are the rules if I am a live-in aide for someone living in government-assisted housing and I have a record?

#### I WANT TO JOIN SOMEONE IN THEIR GOVERNMENT-ASSISTED HOUSING. CAN I?

*It depends on your background and on the policies of the PHA or owner.* The same eligibility and exclusion rules apply if you want to *join a family living in government-assisted housing* as those that would apply if you were applying on your own—see [PG. 26](#). As with new applicants there

are a few limited situations in which a PHA or owner *must* reject the new family member (see [PG. 29](#) for screening criteria relating to individuals with criminal records). But in the vast majority of situations, the PHA or owner has *BROAD DISCRETION* to accept or reject you as an additional household member, just like for new applicants.

The rules for adding family members to an assisted household are different for every assisted housing program and are determined locally. You should be able to find these rules FOR YOUR PROGRAM. You can look in the following places:

#### FIRST, LEARN ABOUT THE CRIMINAL BANS IN GOVERNMENT-ASSISTED HOUSING.

Return to the section above about bans to understand when there are *required bans* vs. when the PHA or owner of government-assisted housing *has discretion* (meaning is allowed, but not required) to ban you from a government-assisted household. You can also learn how to challenge a denial on [PG. 60](#).





- The PHA's Annual Plan
- The PHA's Admission and Occupancy Plan (ACOP)
- The lease for public housing
- The Administrative Plan for the Section 8 Voucher program
- The lease and/or house rules for all other government-assisted programs<sup>125</sup>
- The PHA's website for these plans
- By asking the PHA and/or owner for a copy.

**IMPORTANT:** Depending on the type of criminal activity and whether or not it happened on the government-assisted property, it could disqualify not just you, but your entire family from meeting the eligibility requirements of the assisted housing program! (Again, read [PG. 26](#) to better understand eligibility requirements.)

#### DOES THE FAMILY IN THAT HOUSEHOLD HAVE TO REPORT THE ADDITION TO THE HOME?

Yes. In general, if a family is adding an adult member to the household, they must (1) tell the PHA and landlord AND (2) in most cases, receive the PHA's and owner's approval to add

someone new.<sup>126</sup> Ask the PHA and owner what the rules are for reporting a new household member, and ask when you have to report the change. Follow the rules so your family member doesn't risk losing their housing!

#### I WANT TO GO BACK TO MY GOVERNMENT-ASSISTED HOUSING UNIT AFTER A BRIEF PERIOD IN JAIL OR PRISON. CAN I DO THAT?

It depends on the program. And it depends on the criminal activity. As always, anyone joining or returning to government-assisted housing **MUST** meet ALL of the eligibility requirements for that housing program, for that PHA, and for the owner (if there is one).

For exclusions (bans) based on your criminal record, read [PG. 30](#) of this chapter to understand when there are *required bans* vs. when the PHA or owner of government-assisted housing *has discretion* (meaning is allowed, but not required) to ban you from a government-assisted household. You can also learn how to challenge a denial on [PG. 60](#) of this Chapter.

For most federal government-assisted housing programs, the local PHA and owner of the government-assisted housing may develop rules and policies regarding temporary absences, and many do have such policies. You need to check with the PHA and the owner that oversee the housing unit you want to join about their policies.<sup>127</sup>

**IMPORTANT:** Since your return could harm the entire family's ability to stay in government-assisted housing, it's a good idea for the family to discuss these issues with the PHA and/or owner of the government-assisted housing **BEFORE** you return from your brief absence. If that is not possible, there are legal defenses to an eviction action if it is brought against the entire family in court. This **HOUSING CHAPTER** only includes a brief section about avoiding potential eviction (see [PG. 67](#)), so you may also want to contact a legal aid organization that specializes in eviction defense. Go to Appendix C on [PG. 81](#) for a list of legal aid organizations that may be able to help.

#### SPECIAL RULE FOR SECTION 8 VOUCHERS:

The PHA is actually required to have a written policy in its "Administrative Plan" about temporary absences for anyone in the "Section 8" Housing Choice Voucher program, so if you are in that program, there will definitely be a local policy! 24 C.F.R. § 982.54(d)(10). The Voucher program's temporary absence policy must state whether or when the family may be absent—including for imprisonment; the amount of time you are allowed to be absent for; and how to resume your housing assistance. 24 C.F.R. § 982.312(e).

<sup>125</sup> This includes HUD-assisted housing, Rural Development (RD) project-based programs, and Low Income Housing Tax Credit (LIHTC) properties.

<sup>126</sup> 24 C.F.R. §§ 966.4(a)(1)(v), 982.516(c), 982.551(h)(2). Because tenants generally are not aware of the rules set forth in HUD Handbooks, and the lease does not require interim reporting, tenants without notice of the obligation to report should not be penalized for failing to report interim changes in family composition. Compare U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 7-10(A)(2) (rev. November 2013) (requiring that all tenants notify the owner when a family member proposes to move a new member into the unit), with U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs, App. 4-A the model lease, ¶ 16a (does not require interim reporting of changes in family composition).

<sup>127</sup> In the Rural Development (RD) programs, the owner must include a number of policies in the lease with the tenant, which must be approved by the agency. RD regulations require that the lease include information regarding the tenant's duty to notify the owner of an extended absence. 7 C.F.R. § 3560.156(c)(18)(xiii).



### IF I AM JOINING A HOUSEHOLD, WILL THE PHA OR OWNER OF THE GOVERNMENT-ASSISTED HOUSING RUN A CRIMINAL BACKGROUND CHECK ON ME?

Most likely. Most government-assisted housing programs will check the members of a family every year, and some programs will require mid-year reporting as well. This process is called *recertification*. When the recertification process is happening, the PHA or owner will be checking all new household members to make sure they meet *all of the eligibility criteria for move-in*. Most PHAs and owners will check the criminal background of any NEW family members at this time. *They could* re-check the criminal background of current tenants at this time, but it's unlikely.<sup>128</sup> The criminal background check on any tenant could lead to the PHA or owner threatening to evict or end the assistance to an entire household.<sup>129</sup> Again, this HOUSING CHAPTER only briefly covers evictions on PG. 67, but see Appendix C on PG. 81 for a list of legal aid organizations that may be able to help you if you are facing an eviction.

#### BE PREPARED TO EXPLAIN WHY YOU SHOULD BE ACCEPTED INTO HOUSING, DESPITE YOUR RECORD.

Because the PHA or owner is likely to run a criminal background check on you, you should be prepared—if asked—to honestly disclose your criminal record *and* to demonstrate mitigating circumstances and evidence of your rehabilitation (see PG. 41). Consider giving the PHA or owner additional information about *all the benefits* of having you join the family and how your joining may *positively* affect the stability of the entire housing development. *These benefits depend on the facts of your specific situation*. For example, you might include information about your relationship with the family members currently living in the household, especially a positive relationship with any children or a supportive relationship between you and your spouse. Another example is your potential for increasing the income of the family members that are already living in the assisted housing unit, and therefore stabilizing the rent paid to the PHA or owner.

#### WHY DO THESE RULES ABOUT JOINING HOUSEHOLDS EXIST?

These policies exist because PHAs and owners have an interest in knowing who is living in their units. They may want to review current information to assess how you may act as a tenant; whether you will obey the lease; and whether you pose a threat to other residents, the housing development, or their staff. The PHA or owner may also need to know who is residing in the unit to calculate the amount of rent owed and/or to determine the correct family size for the specific unit.

### IF I AM BEING INCARCERATED FOR A NEW OFFENSE, DOES MY FAMILY HAVE TO REPORT THAT I MOVED OUT?

Generally, yes. PHAs and owners of government-assisted housing usually have policies that require family members to report when a family member moves out. The family's duty to report an absence generally depends on whether your absence is temporary, and whether you intend to continue to reside in the unit after your return. Whether or not you have to re-apply will depend on how long you are gone. In South Carolina, the PHAs have individual rules specific to their county, but most consider you to have *permanently moved out* if you're absent from the rental unit from somewhere between 14 to 30 or more consecutive days.<sup>130</sup> Keep in mind that depending on the terms of your lease/rental agreement, the PHA may be able to evict your family for failing to report any changes in the number of people living there (called "occupants").

Therefore, even if your absence is temporary (for example, less than 14 days), your family should *still report* that you've temporarily moved out to the PHA and owner of the government-assisted housing unit, to avoid breaking any rules in the lease. There is a chance that if it's just a short, temporary absence, it won't change your family's ability to stay in the government-assisted housing unit, BUT if you know you are going to be absent from the unit for 14-30 or more days (depending on the rules of the PHA you live in), then your family should declare you permanently absent, meaning that you have permanently moved out. Again, it is important to look at the rules for your specific PHA because different regions have different rules.

<sup>128</sup> U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 12.2 (June 2003) (PHA may conduct criminal background check of current residents at the annual review "although this is not a HUD requirement"); cf. U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs, ¶¶ 7-4(A)(7) (rev. November 2013) (owners may conduct criminal background checks at annual recertification). If the owner does require a background check on current tenants at recertification, the HUD rules for project-based HUD-assisted housing state that the owner must conduct the background check on all tenants. See U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 7-4(A)(7); cf. U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 12.2 (June 2003) (PHA may conduct criminal background check at the annual review "although this is not a HUD requirement").

<sup>129</sup> Defending a family from eviction is beyond the scope of this Guide. For more information regarding defending such evictions, see Na'tl Hous. Law Project, *HUD Housing Programs Tenants' Rights*, Chapter 14 (3d ed., 2004 and 2006-2007 Supp.); Lawrence R. McDonough & Mac McCreight, *Wait a Minute: Slowing Down Criminal-Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REV. 55 (May-June 2007).

<sup>130</sup> See *Rules to Live By*, Spartanburg Hous., <https://www.shasc.org/rules-to-live-by> (stating that families must supply information relating to absence from the unit for more than 30 days); S.C. Hous. AUTH., 2016 House Rules, <http://scrha3.org/wp-content/uploads/2017/06/HOUSE-RULES-2016.pdf> (any resident who is away from their unit for more than 15 days must notify management); Hous. AUTH. OF DARLINGTON, Resolution No. 2018-3 (June 28, 2018), [https://www.darlingtonha.org/plugins/show\\_image.php?id=118](https://www.darlingtonha.org/plugins/show_image.php?id=118) (tenants must notify the PHA of the absence of any family member for more than 14 calendar days); Approval of the Housing Authority of City of Columbia, S.C. HOUSING, Resolution No. 2020-007 (Feb. 20, 2020), [https://www.columbiahousing.org/plugins/show\\_image.php?id=161](https://www.columbiahousing.org/plugins/show_image.php?id=161) (temporarily absent is defined as away from the unit for more than 30 days).



In addition, if you intend to return to the unit after your incarceration, you will have to re-apply and meet ALL of the eligibility requirements (see [PG. 26](#) to understand how your criminal record could affect your being re-admitted to federal government-assisted housing).

### **GUEST POLICIES IN GOVERNMENT-ASSISTED HOUSING**

**I HAVE A RECORD AND WANT TO TEMPORARILY VISIT OR STAY OVERNIGHT AS A GUEST WITH MY FAMILY IN THEIR GOVERNMENT-ASSISTED HOUSING UNIT. WILL MY VISIT IN ANY WAY RISK MY FAMILY’S GOVERNMENT ASSISTANCE?**

Unfortunately, it could—depending on the policies of the PHA or owner. Below we explain the general rules for staying with family or friends as a guest in their government-assisted housing and suggested steps to avoid putting their housing assistance at risk.

**I HAVE A RECORD AND WANT TO TEMPORARILY VISIT OR STAY OVERNIGHT AS A GUEST WITH MY FAMILY IN THEIR GOVERNMENT-ASSISTED HOUSING UNIT. WHAT ARE SOME SUGGESTED STEPS I CAN TAKE TO AVOID PUTTING MY FAMILY OR FRIEND’S HOUSING ASSISTANCE AT RISK?**

#### **(1) If you are planning to stay for only 1 night as a guest:**

People living in government-assisted housing *are usually allowed* to have overnight guests. For federal government-assisted housing, federal regulations define the term “guest” as “a person temporarily staying in the unit with the consent of a tenant.”<sup>131</sup> The person living in the government-assisted housing unit should not be required to register or seek prior approval for an overnight guest unless that guest is otherwise banned from being there (see below “warning”). The owner of the government-assisted housing should allow the tenant to host guests for a “reasonable” amount of time,<sup>132</sup> which is usually 14 to 30 days, depending on the PHA or owner’s policy.<sup>133</sup>

**WARNING:** Sometimes an individual CANNOT stay as a guest or visit government-assisted property AT ALL. For example, if someone committed a criminal offense on the property, the PHA and owner of the housing may be legally allowed to ban that person from ever returning. Someone could also have a parole or probation condition that forbids them from being on the property. For this reason, you want to be careful to know the rules of that PHA or owner AND know your rules of probation or parole.

#### **(2) If you are planning to stay for longer than 1 night as a guest:**

You want to be careful to know the rules of that PHA or owner about “unauthorized occupants.” There are situations where, instead of being seen as a “guest”—even if that’s what you and your family consider you to truly be—the PHA or owner might classify you as an “unauthorized occupant,” a resident living in that housing unit without permission of the PHA or owner and against the rules. Being seen as an unauthorized occupant is a big problem for many reasons:

- Your income and/or assets (for example, any savings or major property you own) could affect the amount of rental assistance that your family receives. The total income might be too high for the family to qualify for any assistance at all. This could lead to your family being evicted from the unit or losing its financial assistance for the housing unit.
- Just by being in the apartment, you might be violating the lease or the owner’s or PHA’s guest policies and subject your family to eviction.

<sup>131</sup> 24 C.F.R. § 5.100.

<sup>132</sup> See, e.g., *McKenna v. Peekskill Hous. Auth.*, 647 F.2d 332 (2d Cir. 1981) (a PHA’s two-week visitation rule was reasonable); *Lancor v. Lebanon Hous. Auth.*, 760 F.2d 361 (1st Cir. 1985); see also 42 U.S.C. § 1437d(l)(2) (PHAs “must utilize leases that do not contain unreasonable terms and conditions”); *Ritter v. Cecil Cty. Office of Hous. & Comm. Dev.*, 33 F.3d 323 (4th Cir. 1994) (upholding, against First Amendment association and privacy claims, PHA’s two-week visitation rule for Section 8 tenant-based recipients as reasonable under HUD regulations prohibiting residency by nonfamily members); 12 U.S.C. § 1715z–1b(b)(3). Some state courts have also invalidated unreasonable guest policies imposed by subsidized owners. See *Messiah Baptist Hous. Dev. Fund Co. v. Rosser*, 400 N.Y.S.2d 306 (N.Y. City Ct. 1977) (occasional overnight visitor does not violate subsidized housing lease provisions requiring reporting of changes in income and family composition and prohibiting accommodations for boarders); *Ashley Ct. Enters. v. Whittaker*, 249 N.J. Super. 552 (N.J. App. Div. 1991) (refusing eviction of tenant-based Section 8 recipient because lease provision barring recurring visits was unreasonable and so vague as to be unenforceable); cf. *New Boston Kiwanis Hous. Dev. Corp. v. Sparks*, No. 1957, 1992 WL 79561 (Ohio Ct. App. Apr. 14, 1992) (lease provision requiring tenant to report changes in family composition does not constitute unlawful attempt to legislate morality; if guest stays long enough to become household member, tenant can be evicted for failing to report).

<sup>133</sup> See, e.g., *Ritter v. Cecil Cty. Office of Hous. & Cmty. Dev.*, 33 F.3d 323 (4th Cir. 1994) (Section 8 tenant-based recipient violated two-week guest rule and had notice that violation could result in termination); *Zajac v. Altoona Hous. Auth.*, 626 A.2d 1271 (Pa. Commw. Ct. 1993), appeal denied, 537 Pa. 627 (PHA policy provided that no one other than a resident could reside in the unit other than on a temporary basis not to exceed 30 days).



If you want to stay as a guest for a longer period, you need to know the PHA or owner's time limit on the number of back-to-back days OR number of total days in a year that a guest may stay in the government-assisted housing unit and still be considered a "guest."



**IMPORTANT!** Again, find out the PHA's and owner's rules and do not break them. Check the lease and the PHA and owner's policies. There is usually a period of time stated in the lease and/or in the PHA's or owner's policies that defines when a guest becomes an "unauthorized occupant."

### ***Special Guest Policy Rules for Specific Government-Assisted Housing Programs: Section 8 Vouchers and Rural Development Housing***

**Section 8 Vouchers programs:** Some PHAs have established guest policies for Section 8 voucher participants, limiting the time period that persons not listed as household members can stay with a tenant.<sup>134</sup> If these policies are violated, it could lead to losing the voucher.<sup>135</sup> PHAs should inform participants of these policies and give them an opportunity to request that anyone living there for a longer period be added to the household.

**Rural Development (RD) programs:** Federal regulations require that all RD leases "include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification."<sup>136</sup> Also, the owner of the property must post this same information in its occupancy rules.<sup>137</sup> That means that although there is no standard amount of time required by law, the owner still *must include* its guest policies in the agency-approved lease used with tenants. As with the other programs, pre-approval and registration of guests should not be required and the amount of time that a tenant may have a guest should be a reasonable period. However, if the guest was a former tenant who committed a drug violation and was evicted, then the owner may require that the tenant obtain approval before the guest may visit.<sup>138</sup>

**IF I AM PLANNING TO STAY AS A GUEST WITH FAMILY OR FRIENDS UNTIL I AM ADDED TO THEIR HOUSING LEASE, WHAT ARE SOME SUGGESTED STEPS I CAN TAKE TO MAKE SURE WE ARE FOLLOWING ALL THE GUEST POLICIES?**

You can try to negotiate with the PHA or owner of the government-assisted property.

For example, if your family is seeking to add you to the lease—but the screening process to add you to the lease *TAKES LONGER* than the amount of time the family is allowed to have you as a guest—your family, or an advocate working on your behalf, may be able to negotiate with the housing provider at the start to extend the period of time that you are allowed to stay as a guest in that government-assisted household.<sup>139</sup> If your family can negotiate a policy that allows you to stay longer as their guest, this helps avoid problems later on if the PHA or owner of the government-assisted housing accuses your family of exceeding the time limits for guests, in violation of their lease agreement.

**IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENIES MY REQUEST TO BE ADDED TO MY FAMILY OR FRIEND'S LEASE, WHO CAN CHALLENGE THE DENIAL AND HOW?**

Your family member (whomever is listed on the lease) can request a REVIEW HEARING (sometimes call a grievance hearing, informal review, informal hearing, or conference)! Go to [PG. 60](#) to learn about how to challenge a denial to government-assisted housing and request a review hearing.

### **POLICIES FOR LIVE-IN AIDES IN GOVERNMENT-ASSISTED HOUSING**

**WHAT IS A "LIVE-IN AIDE?"**

A live-in aide is a person who *resides with* one or more elderly, near elderly, or disabled persons, and who is *essential to the care* and well-being of that individual. The live-in aide is not obligated to support the person and would not be living in the unit except to provide the required services.<sup>140</sup>

<sup>134</sup> See, e.g., *Ritter v. Cecil Cty. Office of Hous. & Cmty. Dev.*, 33 F.3d 323 (4th Cir. 1994) (Section 8 tenant-based recipient violated two-week guest rule and had notice that violation could result in termination); *Zajac v. Altoona Hous. Auth.*, 626 A.2d 1271 (Pa. Commw. Ct. 1993), appeal denied, 537 Pa. 627 (PHA policy provided that no one other than a resident could reside in the unit other than on a temporary basis not to exceed 30 days).

<sup>135</sup> See 24 C.F.R. 982.551(h)(2).

<sup>136</sup> 7 C.F.R. § 3560.156(c)(8).

<sup>137</sup> 7 C.F.R. § 3560.157(b)(10).

<sup>138</sup> 7 C.F.R. § 3560.156(c)(15).

<sup>139</sup> See SOMERVILLE (MASSACHUSETTS) Hous. AUTH., Add-a-Member Policy ¶ 5 (June 22, 2022), <https://sha-web.org/documents/policies/AddAMember2022.pdf>.

<sup>140</sup> 24 C.F.R. § 5.403.



A live-in aide is NOT a household member. If you are a live-in aide, your income will be *excluded* from calculating the rent for the assisted unit. However, the family that lives in the unit could request an extra bedroom for the live-in aide and then be required to pay the standard amount for the larger bedroom size.<sup>141</sup>

**CAN I BE SOMEONE'S LIVE-IN AIDE IN GOVERNMENT-ASSISTED HOUSING IF I HAVE A CRIMINAL RECORD?**

Maybe. If you have a criminal record, you may be able to reside in a government-assisted housing unit as a *live-in aide*, but you will need to be screened (see next question).

Depending on the policies of the PHA or owner, the criminal background check conducted for a live-in aide may be less strict than the one used for admitting a new tenant because a live-in aide is *not* considered a true household member.

**WILL THE PHA OR OWNER SCREEN ME FOR MY CRIMINAL BACKGROUND IF I AM SOMEONE'S LIVE-IN AIDE?**

Yes. The PHA and owner can screen you for issues related to your being present in the assisted unit. Most PHAs and owners will screen live-in aides for their criminal background using the same or similar criteria as they use for admissions (read [PG. 30](#) for the criminal record-related bans in federal government-housing, including which ones are *required* versus which ones are *allowed*).<sup>142</sup>

**WILL THE PHA OR OWNER SCREEN ME FOR MY CREDIT HISTORY IF I AM SOMEONE'S LIVE-IN AIDE?**

No. The *PHA or owner should not screen you for your credit history if you are a live-in aide*. Your credit history has nothing to do with the family's ability to pay for the unit—so you should not be screened for credit.<sup>143</sup>

**I WAS EXCLUDED FROM BEING SOMEONE'S LIVE-IN AIDE BASED ON MY CRIMINAL RECORD. WHAT CAN I DO?**

The person requiring aid should ask for a review hearing. Go to [PG. 60](#) to learn how (s)he can challenge this denial of you as his/her live-in aide. There may be situations in which the disabled or elderly resident needing the care has great difficulty finding a live-in aide, or that you meet some unique need of that individual requiring care. In such situations, the disabled/elderly individual needing the live-in aide may request a *reasonable accommodation* for a disability by asking the PHA or owner *to waive its strict screening criteria, and allow the person with the criminal record to reside in the unit as a live-in aide due to the special function he or she plays in the tenant's life*.

**WHAT MAKES A REQUEST FOR A REASONABLE ACCOMMODATION SUCCESSFUL?**

Whether the request for reasonable accommodation is successful will depend upon the facts and an interpretation of reasonable accommodation rules, discussed in Appendix E on [PG. 86](#).

**I AM A LIVE-IN AIDE IN A GOVERNMENT-ASSISTED UNIT, BUT THE PERSON WHO I WAS CARING FOR HAS LEFT THE UNIT. DO I HAVE A RIGHT TO STAY?**

No. If you are a live-in aide, you have NO RIGHT to continue living in the assisted unit if the tenant needing the assistance leaves.<sup>144</sup>

<sup>141</sup> 24 C.F.R. §§ 982.316, 986.402.

<sup>142</sup> U.S. DEP'T OF HOUS. & URBAN DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶¶ 4-7(B)(6), 7-10 (rev. November 2013) (stating that the owner must apply screening criteria for criminal activity to persons added to the lease, including a live-in aide).

<sup>143</sup> *Id.* at ¶¶ 3-6(E)(a)(2)(d), 4-7(B)(6).

<sup>144</sup> *See Id.* at ¶¶ 3-6(E)(a)(2)(c); 24 C.F.R. §§ 5.403, 982.316.





## VI. CHALLENGING DENIALS FROM HOUSING

### WHAT WILL I LEARN?

- Tips and guidance for challenging an illegal denial to private housing
- Tips and guidance for challenging an illegal or unfair denial to government-assisted housing (either through a Public Housing Authority (PHA) or an owner of government-assisted housing units)

### CHALLENGING DENIALS TO PRIVATE HOUSING

If you believe you have been illegally discriminated against in applying for private housing from a private landlord, you can challenge that discriminatory denial. Read about the bases for challenging an illegal discriminatory denial below, and which government agencies you should contact.

#### WHAT ARE MY MAIN OPTIONS FOR CHALLENGING A DENIAL TO PRIVATE HOUSING?

- Blanket bans against all people with criminal records
- Treating your criminal record differently than others (arbitrary discrimination)
- Landlord violated your right to notice of a background check and/or your right to fix errors (go to [PG. 47](#))

Go to Appendix H on [PG. 94](#), to learn about how to file a discrimination complaint with a government agency. Try to get a lawyer to help if you can. See Appendix C on [PG. 81](#) of this guide for a list of legal aid providers across South Carolina.

As a summary, your main options for challenging an illegal denial from private housing are the following:

1. You could file an administrative complaint with the South Carolina Human Affairs Commission (SCHAC- the state housing protection agency);
2. You could file an administrative complaint with HUD (the federal housing protection agency);
3. You could file a civil lawsuit in state or federal court; OR
4. You could allow HUD (the federal housing agency) or the U.S. Department of Justice to file a lawsuit on your behalf.

#### HOW DO I FIGURE OUT WHICH OPTION TO CHOOSE IF I WANT TO CHALLENGE A DENIAL FROM PRIVATE HOUSING?

Talk to a lawyer or an advocate at a nonprofit legal services organization if possible—they can help advise you! Also, you can always file a complaint with *both* HUD & SCHAC, but talking to a lawyer is important. More on each of these 3 options below.

For general instructions on how to file a complaint against a private landlord, go to Appendix H, [PG. 94](#).

### CHALLENGING DENIALS TO GOVERNMENT-ASSISTED HOUSING

This section will help you understand how to challenge a denial from a federal government-assisted housing program, and what to expect in the process.

If you are denied government-assisted housing, you have the right to receive notice of the denial with the SPECIFIC REASONS for the denial—including anything that came up in your criminal records (see [PG. 48](#) for what PHAs and government-assisted owners can access). You also have the right to a review of the denial—which could be a very informal meeting or hearing (see [PG. 60](#) about what those look like) and the right to receive information on how to prepare for that informal hearing/review. You also have rights during the review hearing process AND the right to challenge the decision if you still disagree. Continue reading to learn more.

#### WHEN WOULD I CHALLENGE A DENIAL FROM A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING?

**RECALL—Important Information about the “Catch-All” Ban:** Under the “CATCH-ALL” ban (described in detail on [PG. 38](#)), there are many situations in which a PHA and/or owner of government-assisted housing is allowed BUT NOT REQUIRED to deny you. In fact, the law limits the ways that PHAs and owners of government-assisted housing can exclude you based on your past criminal history.

If the PHA or owner of the government-assisted housing discriminated against you in a way that was illegal, or abused their discretion in denying you the housing—either for something in your criminal record, a disability, OR because they relied on mistaken information—then you will want to challenge that denial by asking for a review of

#### HELPFUL HINT:

Language of Notice: If there are a lot of non-English speakers served by the PHA or owner, the notice may have to be written in the language used by the applicant. If you need the notice to be translated, ask the PHA or owner for a copy in your native language.



the decision. YOU WILL ALSO WANT TO GATHER AS MUCH INFORMATION AS POSSIBLE (see PG. 41 about mitigating circumstances and proof of your rehabilitation) to prove that you should not have been denied.

The PHA or owner of government-assisted housing must follow certain laws and rules when considering your past convictions and criminal history information. They may only reject you for criminal activity that *threatens the health, safety, or peace of other residents or staff* AND the criminal activity must be “reasonably recent.”<sup>145</sup> For more information on these protections, go to PG. 40.

#### IF I WAS DENIED GOVERNMENT-ASSISTED HOUSING, HOW WILL I KNOW THE REASON WHY?

If you were denied housing due to **information that showed up in your criminal record**, then the PHA also **MUST give you a copy of the criminal record it used**. This will help you to understand why you were denied.<sup>146</sup>

Also, if you are denied admission to federal government-assisted housing, you have the right to WRITTEN *detailed notice of the denial*—THIS SHOULD EXPLAIN THE SPECIFIC REASON(S) YOU WERE DENIED!<sup>147</sup> Sometimes, PHAs and owners will give you a general notice just telling you that you were denied, but not the specific conduct or offense that was the basis for the decision. If you get a general notice without the important details, you should ask for the detailed notice—which you have the right to! The PHA or owner of government-assisted housing **MUST** provide you with a detailed notice by law.<sup>148</sup>

#### HELPFUL HINT:

Challenging the rejection may give you the necessary time to improve or gather information to clarify your criminal history. If you haven't already done so, you can request a copy of your criminal record (RAP sheet) and try to correct any mistakes. This is also a good time to gather evidence of rehabilitation and mitigating evidence.

#### WHAT IS THE TIMELINE FOR CHALLENGING A DENIAL TO GOVERNMENT-ASSISTED HOUSING?

In terms of timing, if you want to challenge a denial, you should request a “review hearing” *in writing* as soon as you receive notice of the denial. There are strict time deadlines for requesting a review hearing, and they are different for every housing program. You must stick to the deadline, so READ THE NOTICE of denial. You may have *as little as 1 week* (7 days) to request a review hearing! If you miss the deadline, you will not only lose the housing unit, but will also be taken off the waitlist and will have to reapply. If you request a review hearing on time, the housing unit will be held for you until there is a final decision.

#### WILL I DEFINITELY GET INTO GOVERNMENT-ASSISTED HOUSING IF I AM SUCCESSFUL IN CHALLENGING THE INITIAL DENIAL?

No, not necessarily. If you are successful, you could get admitted into housing, but you might just get another review of the facts or another hearing. This could help you get in or could still result in denial.<sup>149</sup> What you will get, if successful, is a fairer hearing.

#### HOW CAN I FIGURE OUT THE SPECIFIC PROCEDURES FOR CHALLENGING A DENIAL TO GOVERNMENT-ASSISTED HOUSING?

The notice will tell you the specific procedure for challenging the denial for that particular housing program. The first step in challenging any denial, however, is always to submit a WRITTEN request for a review hearing, where you can fight the denial. By law, you *almost always* have the right to a review of denial from government-assisted housing.<sup>150</sup>

Although not required, the denial letter (rejection notice) should also state the legal services offices nearest to you. If it does, call that office for extra help!

<sup>145</sup> 24 C.F.R. §§ 982.553(a)(2)(ii)(A)(3)-(4).

<sup>146</sup> Fair Credit Reporting Act, 15 U.S.C. § 1681m(a); 24 C.F.R. § 960.204(c).

<sup>147</sup> 42 U.S.C. § 1437d(c)(3) (public housing); 24 C.F.R. §§ 880.603(b)(2) (Section 8 new construction), 882.514(f) (Section 8 moderate rehabilitation), 960.208(a) (public housing), 982.201(f)(1) and 982.554(a) (voucher); U.S. DEP'T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-9(C) (rev. November 2013); U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 4.9 and App. III (June 2003) (sample ACOP) (the ACOP and Notices are models; nevertheless, they should be persuasive); U.S. DEP'T OF HOUS. & URB. DEV., Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 5.7 (Apr. 2001) (voucher); *Holmes v. N.Y. City Hous. Auth.*, 398 F.2d 262 (2d Cir. 1968) (PHA's failure to inform applicants of denial or reasons violated due process); 7 C.F.R. §§ 3560.160(e), 3560.154(h) (RD Section 515 Rental Housing) (applied to Section 514 and 516 farmworker housing through §§ 3560.551, 3560.601), 3560.255(b) (comparable notice requirements in the USDA Rural Development housing program).

<sup>148</sup> See, e.g., 7 C.F.R. § 3560.154(h) (requiring that the credit report relied upon to deny admission to an applicant under the USDA Rural Development housing programs be attached to Notices of Ineligibility or Rejection in accordance with the Fair Reporting Credit Act); U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 4.9 (June 2003); see also *Edgcomb v. Hous. Auth. of Vernon*, 824 F. Supp. 312 (D. Conn. 1993) (termination of subsidy); *Driver v. Hous. Auth. of Racine*, 713 N.W.2d 670 (Wis. Ct. App. 2006) (sustaining tenants' § 1983 claim challenging adequacy of notice and hearing decision in a termination case as a matter of both due process, per *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Edgcomb*, and public policy).

<sup>149</sup> Special Note for Advocates: This section cites cases involving denial or termination from federally assisted housing. There may be cases from other social welfare programs that also may be used to build an applicant's case. Such cases are not included in this discussion, as they are beyond the scope of this manual.

<sup>150</sup> See, e.g., 42 U.S.C. § 1437d(c)(3) (public housing); 24 C.F.R. §§ 882.514(f) (Section 8 moderate rehabilitation), 960.208(a) (public housing), 982.554 (voucher) 880.603(b)(2) (Section 8 new construction); 7 C.F.R. § 3560.160(f)-(g) (rural development program); U.S. DEP'T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook, ¶ 4-9 (June 2003) (informal hearing is distinct from a public housing grievance hearing); see also *Ressler*





The notice of denial will tell you who to send the written request for a review hearing to AND when you need to do it (the timing deadline by which you have to challenge the denial).<sup>151</sup> The time frames must be “reasonable”—which usually means within 10-30 days.<sup>152</sup> Follow the deadlines that you are given!

In sum, if you were denied housing because of your record and you want to fight it, your first step will be to request a review hearing in writing. **ALWAYS ASK FOR A HEARING WITHIN THE DEADLINE LISTED ON YOUR DENIAL NOTICE—and follow all of the procedures the notice gives you!**

**IMPORTANT! ASK YOUR SUPPORTERS TO COME TO THE HEARING WITH YOU! If there are individuals who are willing to accompany you to your hearing and testify (talk about how your circumstances have changed and to support your housing application), their attendance can help!**

### **REVIEW HEARINGS: THE WAY TO CHALLENGE A DENIAL TO GOVERNMENT-ASSISTED HOUSING**

Requesting a review hearing is one of the most important avenues for challenging a denial to most types of government-assisted housing (whether it was a denial by the Public Housing Authority (PHA) or an owner of government-assisted housing).

Of course, if you can, it's best to find a lawyer or advocate who can help you through this process. It's tough to find lawyers who do this, but it's worth a try. See Appendix C on [PG. 81](#) for a list of legal aid organizations that may be able to help advise you as you challenge your denial from government-assisted housing. If you cannot find a lawyer to help you, do not despair! It's possible to do this on your own!

#### **WHAT CAN I EXPECT AT THE REVIEW HEARING? AND HOW CAN I PREPARE?**

##### **THE HEARING:**

After you have sent in a written request for a review hearing, it is important to prepare. At the informal hearing or review, it is important to show the PHA or owner of the government-assisted housing that they should not have denied you the housing because of mitigating circumstances and/or proof of rehabilitation (see [PG. 41](#)), a disability that requires a reasonable accommodation (see Appendix E, [PG. 86](#)), or a mistake in the criminal records that the PHA or owner used. Before the informal hearing/review, you should:

1. Ask the PHA or owner for *all* documents and information regarding the denial of your housing application, including a copy of the criminal records it relied upon to deny you.<sup>153</sup>
2. Get a copy of your criminal record yourself to make sure it is correct.
  - Compare your criminal record with the information the PHA or owner used to deny you.
  - At the same time, you will want to work on fixing any mistakes in the records used by the PHA or owner (or showing documentation of the errors). Records often have mistakes and you shouldn't be denied housing for an error.<sup>154</sup> This can take time, so focus on this step as quickly as possible, and ask the PHA

*v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982) (applicants for project-based Section 8 had a sufficient property interest to give rise to due process procedural safeguards); *Holmes v. N.Y. City Hous. Auth.*, 398 F.2d 262, 265 (2d Cir. 1968) (due process requires ascertainable standards for admission); *Eidson v. Pierce*, 745 F.2d 453 (7th Cir. 1984) (applicants for Section 8 new construction projects lack sufficient property interest for due process protections).

<sup>151</sup> *Holmes v. N.Y. City Hous. Auth.*, 398 F.2d 262, 264 (2d Cir. 1968); *Billington v. Underwood*, 613 F.2d 91 (5th Cir. 1980); see also *Vance v. Hous. Opportunities Comm'n*, 332 F. Supp. 2d 832 (D. Md. 2004) (mentally disabled tenant challenged a termination from Supportive Housing program and denial of reinstatement based on various procedural deficiencies; court preliminarily ordered reconsideration of reinstatement request and new hearing on termination with other procedural protections); see also SPARTANBURG HOUS., *Grievance Procedures*, [https://www.shasc.org/grievance\\_procedures](https://www.shasc.org/grievance_procedures); HOUS. AUTH. OF THE CITY OF COLUMBIA, *Admissions and Continued Occupancy Policy* at 22 (July 1, 2019), [https://www.columbiahousing.org/plugins/show\\_image.php?id=38](https://www.columbiahousing.org/plugins/show_image.php?id=38).

<sup>152</sup> See, e.g., 24 C.F.R. § 5.514(e)(1) (applicants for federally assisted housing rejected because of rules regarding immigration statutes have 30 days from notice to request grievance hearing); 7 C.F.R. § 3560.154(h) (Rural Development housing notice must be delivered by certified mail return receipt requested or hand-delivered letter with signed receipt by applicant and inform denied applicant of the right to respond within 10 calendar days after date of notice and right to hearing available upon request), whereas, 7 C.F.R. § 3560.160(h) states notice must be given of the right to respond within 10 days after receipt of notice; U.S. DEP'T OF HOUS. & URB. DEV., *Occupancy Requirements Of Subsidized Multifamily Housing Programs* ¶ 4-9(C)(2)(b) (rev. November 2013) (notice must inform applicant of right to respond in writing or to request a meeting within 14 days of rejection); U.S. DEP'T OF HOUS. & URB. DEV., *Public Housing Occupancy Guidebook*, App. VIII (Applicant Notice of Rejection) (June 2003) (request informal hearing within 10 days); see also *Samuels v. District of Columbia*, 669 F. Supp. 1133, 1140 (D.D.C. 1987) (10-day period for a tenant to seek grievance hearing is unreasonably short).

<sup>153</sup> For the USDA rural housing programs, applicants who have been denied housing and choose to file grievances are entitled to examine the records that a borrower plans to rely upon to defend the admission decision. 7 C.F.R. § 3560.160(g)(4) (Rural Development housing); see also U.S. DEP'T OF HOUS. & URB. DEV., *Public Housing Occupancy Guidebook*, App. VIII (sample Applicant Notice of Rejection) (June 2003) (offers applicant the opportunity to review applicant file). See Chapter 3 for a discussion of special federal rules regarding access to criminal records by PHAs and owners. In the event that the denial is based upon criminal record information obtained by a PHA (including lifetime sex offender registration) in accordance with the federal statute, the PHA has an obligation to provide the applicant a copy of that record.

<sup>154</sup> Sharon M. Dietrich, *When “Your Permanent Record” Is a Permanent Barrier: Helping Legal Aid Clients Reduce the Stigma of Criminal Records*, 41 CLEARINGHOUSE REV. 139 (July-Aug. 2007).



and/or owner of the government-assisted housing to hold the unit while you collect the documents you need.

3. Review your application & be prepared to talk about any differences between your record and what you wrote on your application.
  - Make sure you know what you wrote on your application about your criminal record, illegal drug use, or whatever it was that made you get denied for the housing. For example, what did you say in response to the question about your convictions? What did you say about your illegal drug use? Whom did you say would live in your household? If the answer you gave on your application is not exactly the same as the answer you would give today, you must be able to explain why. If you didn't include certain information about your criminal record in your application to the PHA or owner, you will have to explain why it was left out. Also, if you said that a certain relative would be living with you who is not, you need to explain what has changed.

**IMPORTANT:** If you were denied under a ban that is allowed but not required, you will want to prove to the PHA or owner that there are mitigating circumstances or evidence that you have changed and rehabilitated since the time of your offense.

If you were denied because of your criminal history, you should present evidence of rehabilitation to show the PHA you are *not* a threat to the health or safety of other residents, PHA, staff, or contractors. This includes all the letters and documents you can think of that will show how you have changed and grown since the time of the offense. You should also get letters of support.<sup>155</sup> Ask people who have supported you through reentry—like your current employer, a teacher, probation officer, social worker, neighbors, current or prior landlords, and community leaders—to write a letter of support on your behalf. The letters should emphasize:

- How your circumstances have changed since the negative conduct/offense,
- That you are a good person who gets along well with others,
- That you are motivated to improve your life, *and*
- Your good performance or attendance record if you are in school or working.

#### WHAT CAN I EXPECT FROM THE REVIEW HEARING?<sup>156</sup> WHAT IS IT LIKE?

Every hearing is different, *but generally*, the hearing is likely to be very informal (more details about these informal hearings below). It is *very different* from a court proceeding, and formal evidence rules do NOT apply. For example, the PHA or owner may introduce newspaper reports, police blotters, declarations or criminal records, with no one to authenticate or testify about the records.<sup>157</sup> You are also allowed to bring in any evidence showing why your criminal record should not bar you from getting into the housing program.

You are allowed, *and it's recommended*, that you bring a friend or family member who can be supportive and can also be a witness to what is happening and what is said at the hearing.

#### WHAT RIGHTS DO I HAVE IN A REVIEW HEARING?

#### IMPORTANT!

You have the opportunity to tell the hearing officer why the decision he/she made is wrong!

#### TIPS:

Try to explain clearly what they missed, made mistake on, or why their decision was wrong.

Be as composed and clear as possible.

Bring a friend, witness, and/or lawyer or advocate if you can.

<sup>155</sup> See LEGAL ACTION CTR., *How to Get Section 8 or Public Housing Even with a Criminal Record: A Guide for New York City Housing Authority Applicants and their Advocates*, App. H (2006), [https://www.reentry.net/nv/library/item.111164-How to Get Public Housing Section 8 Even With a Criminal Record Legal Act](https://www.reentry.net/nv/library/item.111164-How_to_Get_Public_Housing_Section_8_Even_With_a_Criminal_Record_Legal_Act) (provides examples of letters of recommendation); N.Y.C. Hous. AUTH., Division of Applicant Appeals, Public Housing Hearing, Report of Informal Hearing (Aug. 7, 2007), No. 113-52-7732.

<sup>156</sup> See *Jaimes v. Toledo Metro. Hous. Auth.*, 758 F.2d 1086 (6th Cir. 1985); *Billington v. Underwood*, 613 F.2d 91, 93 (5th Cir. 1980); *Neddo v. Hous. Auth. of Milwaukee*, 335 F. Supp. 1397 (E.D. Wis. 1971); cf. *Spady v. Mount Vernon Hous. Auth.*, 341 N.Y.S.2d 552 (N.Y. App. Div. 1973), *aff'd mem.*, 310 N.E.2d 542 (N.Y. 1974), *cert. denied*, 419 U.S. 983 (1974); *Sumpter v. White Plains Hous. Auth.*, 278 N.E.2d 892 (N.Y. 1972), *cert. denied*, 406 U.S. 928 (1972) (distinguishing evidentiary hearing required before termination of benefits from procedures required before denials of eligibility); see also S. K. Morris, Note, *The New Leased Housing Program: How Tenatable a Proposition?* 26 HASTINGS L.J. 1145, 1201 (1975).

<sup>157</sup> See *Billington v. Underwood*, No. 81-7978, 1983 WL 855694 (11th Cir. 1983) (discussion of the burden of proof and use of hearsay in hearing for denial of admission). The following cases set aside hearing decisions based solely on hearsay in the context of subsidy terminations or proposed evictions: *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008); *Edgecomb v. Hous. Auth. of Vernon*, 824 F. Supp. 312 (D. Conn. 1993) (in decision involving termination of tenant-based assistance, court held that conclusory statement was insufficient); *Kurdi v. DuPage County Hous. Auth.*, 514 N.E.2d 802 (Ill. App. Ct. 1987); *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725 (Minn. Ct. App. 1998); *Chase v. Binghamton Hous. Auth.*, 458 N.Y.S.2d 960 (N.Y. App. Div. 1983). Hearsay rules, if used, will likely apply to all parties. Therefore, an applicant should be prepared to have whatever hearsay rules are adopted apply to the evidence that he or she presents. *Broughton v. Hous. Auth. of Pittsburgh*, 755 A.2d 105 (Pa. Commw. Ct. 2000) (tenant's hearsay evidence excluded in judicial setting).



1. **You have the right to a hearing before an impartial, unbiased hearing officer.**<sup>158</sup> That means the hearing officer should be independent, with no stake in the outcome of the hearing, and ready to hear both sides. He/she *should not* be the same person who made the original decision to deny you or anyone *who works for* the person who made the original decision to deny you.<sup>159</sup>
  2. **You have the right to an opportunity to make an argument (called a “rebuttal”) to challenge the information the PHA or owner relied upon in denying you.**<sup>160</sup>
  3. **You have the right to explain why you pled guilty to a past conviction.**<sup>161</sup> The hearing’s decision maker may find your explanation important and relevant.
  4. **You have the right to a written transcript and an audio recording of the review hearing (the “record”).** If the hearing officer won’t provide you this, you can ask to bring in your own recording device (many cell phones have this function).
  5. **You have the right to question witnesses, and to ask that they testify under oath.**<sup>162</sup>
  6. **You have the right to a written decision after the review hearing (for most government-assisted housing programs).**<sup>163</sup> The written decision must be given to you within a *reasonable period of time* (usually 10-30 days), state the *reasons* for the decision, and state the *evidence* the hearing officer relied upon in making a decision.<sup>164</sup>
  7. **If you are in Public Housing & Voucher housing programs, you have extra rights:** In addition to the requirements above, for public housing and the voucher program ONLY, there is the additional protection that the subject of the hearing can *only go into the issues that were presented in the rejection notice*.<sup>165</sup> At the hearing, no information should be presented if it was not the basis for the rejection, because otherwise you don’t have an opportunity to investigate ahead of time and challenge that new information at the hearing.
- NOTE: The rules for Rural Development (RD) hearings are different.** Read more in Appendix I on [PG. 99](#).

#### WHAT CAN I DO IF I AM UNHAPPY WITH THE WRITTEN DECISION BY THE REVIEW HEARING?

If you are unhappy with the decision made at the review hearing and want to challenge it, ask your lawyer and/or the hearing officer how to challenge the decision. Usually, if you lose your informal hearing, you cannot continue to challenge the denial of government housing at the Public Housing Authority (PHA) level. Most likely, the only way for you to continue to challenge the denial after losing your informal review hearing is to sue the Public Housing Authority in court.<sup>166</sup> This is a complex decision—contact a lawyer for help (see a list of legal aid offices that may be able to assist you in Appendix C on [PG. 81](#)).

<sup>158</sup> 24 C.F.R. § 966.53(e); *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980); see also *Piretti v. Hyman*, No. 79-622-K, 1979 WL 422350 (D. Mass. 1979), vacated as moot without opinion, 618 F.2d 94 (1st Cir. 1980) (in a case regarding termination of tenant-based assistance, decision-maker not impartial when the attorney presenting the PHA’s case also advised the hearing officer).

<sup>159</sup> See 24 C.F.R. § 982.554(b)(1); U.S. DEP’T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook ¶ 4.9 and App. VIII (Applicant Notice of Rejection) (June 2003); U.S. DEP’T OF HOUS. & URB. DEV., Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 16.5 (Apr. 2001) (voucher program); U.S. DEP’T OF HOUS. & URB. DEV., Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-9(D)(1) (requiring that any meeting with the applicant to discuss the applicant’s rejection must be conducted by a member of the owner’s staff who was not involved in the initial decision to deny admission or assistance); see also *Davis v. Mansfield Metro. Hous. Auth.*, 751 F.2d 180, 185 (6th Cir. 1984); *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980).

<sup>160</sup> *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980); see also *Edgecomb v. Hous. Auth. of Town of Vernon*, 824 F. Supp. 312, 314-16 (D. Conn. 1993) (in a termination of benefits case, the hearing decision could not be based wholly on hearsay; hearing decision inadequate because no reasons given; participant was entitled to cross-examine witness); *Kurdi v. Du Page County Hous. Auth.*, 514 N.E.2d 802, 806 (Ill. App. Ct. 1987) (setting aside a termination decision based wholly on hearsay); see also 7 C.F.R. § 3560.160(h) (2007) (rural development housing).

<sup>161</sup> *Gibson v. Gibson*, 15 Cal. App. 3d 945 (Cal. Ct. App. 1971); see also *Costa v. Fall River Hous. Auth.*, 881 N.E.2d 800 (Mass. Ct. App. 2008).

<sup>162</sup> *Neddo v. Hous. Auth. of City of Milwaukee*, 335 F. Supp. 1397, 1400 (E.D. Wisc. 1971); see also 7 C.F.R. § 3560.160(h) (Rural Development housing).

<sup>163</sup> See, e.g., N.Y.C. Hous. AUTH., Division of Applicant Appeals, Public Housing Hearings, Report of Informal Hearing, August 6, 2007, No. 113-52-7732 (applicant with felony convictions found to have made significant positive changes and improved since the offenses).

<sup>164</sup> 24 C.F.R. §§ 882.514(f) (Section 8 Moderate Rehabilitation), 982.552(b)(3) (voucher program); U.S. DEP’T OF HOUS. & URB. DEV., Public Housing Occupancy Guidebook ¶ 4.9 (public housing); U.S. DEP’T OF HOUS. & URB. DEV. Handbook 4350.3, REV-1, CHG-2, ch. 4-9D (June 2007) (final decision must be given to applicant within five business days of meeting); *Neddo v. Hous. Auth. of City of Milwaukee*, 335 F. Supp. 1397 (E.D. Wisc. 1971); see also *Edgecomb v. Hous. Auth. of Town of Vernon*, 824 F. Supp. 312 (D. Conn. 1993) (in a termination of benefits case, hearing decision could not be based wholly on hearsay; hearing officer decision inadequate because no reasons given; participant entitled to cross-examine witness); *Powell v. D.C. Hous. Auth.*, 818 A.2d 188 (D.C. 2003) (reversing PHA’s termination decision for alleged fraudulent underreporting of income because hearing officer failed to make findings with respect to each contested material allegation of fact as required by due process and applicable local Administrative Procedure Act; see also *Hicks v. Dakota Cty. Cmty. Dev. Agency*, No. A06-1302, 2007 WL 2416872 (Minn. App. Ct. Aug. 28, 2007) (the record must be sufficient to facilitate meaningful review and where there are no findings or credibility determinations, the court could not conduct a meaningful review); see, e.g., N.Y.C. Hous. AUTH., Division of Applicant Appeals, Public Housing Hearing, Report of Informal Hearing, August 6, 2007, No. 113-52-7732 (copy available as Exhibit 3 to this Chapter). For Rural Development housing, the notice must be served within ten days of the hearing. 7 C.F.R. § 3560.160(i)(2). As noted above, the decision also should not be based wholly upon uncorroborated hearsay.

<sup>165</sup> See *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974); *Billington v. Underwood*, 613 F.2d 91, 93-95 (5th Cir. 1980); *Singleton v. Drew*, 485 F. Supp. 1020, 1024 (E.D. Wisc. 1980); *McNair v. N.Y.C. Hous. Auth.*, 613 F. Supp. 910, 914-15 (S.D.N.Y. 1985).

<sup>166</sup> You could bring an action for federal civil rights violations under 42 U.S.C. § 1983, which has a three-year statute of limitations, 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. 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 state certiorari statute is necessary, especially if your challenge focuses on the failure of the housing program to comply with agency procedures and policies.



## VII. MAINTAINING MY HOUSING

### WHAT WILL I LEARN?

- General tips for renters
- Your rights and responsibilities as a renter
- Tips and guidance about your options if you are facing an eviction

### GENERAL TIPS FOR RENTERS

#### I AM PLANNING TO RENT AN APARTMENT (PRIVATE OR GOVERNMENT-ASSISTED). WHAT ARE SOME GENERAL TIPS FOR RENTERS?

These tips can help you prepare for the process of renting an apartment, and avoid problems related to background checks!

#### ORDER YOUR FREE CREDIT REPORT BEFORE YOU APPLY FOR AN APARTMENT.

The landlord will almost certainly order your credit report before letting you live as a tenant in his/her unit. Even though this Chapter does not go into all of the rules and laws that govern credit checks, it's still important to understand that this is part of what most landlords will be looking at. Before you apply to ANY type of housing, you can order your own credit report to make sure that all the information is accurate and up-to-date. You can order your credit reports free once every 12 months from each of the three national credit bureaus: (1) Experian, (2) TransUnion, and (3) Equifax. To learn more, see the Federal Trade Commission's information on Free Annual Credit Reports on its website: <http://www.ftc.gov/bcp/edu/microsites/freereports/index.shtml> (Note: this is a trusted government website about credit reports).

#### LEARN ABOUT BACKGROUND CHECKS/TENANT SCREENING REPORTS.

Most landlords use background checks specifically for the purposes of housing and renting apartments to screen housing applicants. As discussed on PG. 51, these reports can include both credit history and non-credit information such as your criminal record; court cases related to past evictions; references from former landlords; information from local, state and national databases (such as sex offender registries); and more. If you learn that the landlord is going to order a background check/tenant screening report on you, you could save yourself a lot of time and trouble by simply asking the landlord the name and contact information for the screening company so that you can find the background check report yourself and make sure the information is accurate and up-to-date.

#### UNDERSTAND YOUR RIGHTS & RESPONSIBILITIES AS A RENTER.

If you live in government-assisted housing, a good place to start is the U.S. Department of Housing and Urban Development's (HUD) website about renting in South Carolina: [https://www.hud.gov/states/south\\_carolina/renting](https://www.hud.gov/states/south_carolina/renting).

Carefully review any lease or rental agreement before you sign it. Be sure that any WRITTEN agreements include VERBAL conversations you had with the landlord or property management company—so that those agreements will be legally enforceable later on. As well as general rules about rent payments, utilities, and the time period covered, a lease or rental agreement should cover anything you have discussed together (for example: pets, visitors, roommates, or subletting.) If you know there is something in the lease or agreement that limits your basic legal rights, bring that up with the landlord.

#### WHAT ARE SOME OF MY GENERAL RIGHTS AS A RENTER IN SOUTH CAROLINA?

Generally, your basic rights as a tenant in South Carolina (no matter what the lease or rental agreements says) include the following:

- Limits on the landlord's ability to increase rent if you report a building or property issue.
- Limits on the landlord's right to enter the rental unit.
- The right to a refund of the security deposit, or a written accounting of how it was used, after you move.
- The right to sue the landlord for violations of the law or your rental agreement or lease.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances.
- The right to withhold rent under appropriate circumstances.



- Rights under the warranty of habitability (“warranty of habitability” means that a landlord has to maintain the rental unit and ensure the conditions are safe and sanitary enough that people can live there).
- Protection against retaliatory rent increases or eviction<sup>167</sup>.

These and other rights will be discussed throughout the rest of this chapter.

### **KEEP RECORDS OF YOUR LEASE & OTHER DOCUMENTS RELATED TO YOUR APARTMENT.**

Keep a file with your signed lease or rental agreement and any other important documents. The file should include notes of any conversations you have with your landlord or apartment manager regarding repairs, disturbances, disputes, or any other event or incident that may affect your rights as a tenant. It should also include any mail, emails, repair orders, and even notes left on your door. Keep and maintain a separate file for each rental unit you live in.

### **AVOID SCAMS.**

Avoid rental scams by recognizing warning signs. Online resources such as Craigslist ([www.craigslist.com](http://www.craigslist.com)) are a popular way to search for available rental units. However, scammers also use these sites to place phony rental listings or to hijack a valid listing to attempt to steal your money or identity. If you are asked to wire money—it’s probably a scam! If you are asked to pay a security deposit or an advance on your rent *before signing a rental agreement*, that is a red flag too. You should also be aware of *foreclosure scams* targeting unsuspecting renters and upset homeowners. To learn how to spot and avoid foreclosure scams, check out the following website:

<https://myhome.freddiemac.com/getting-help/avoiding-fraud>.

### **REVIEW ALL NOTICES YOU RECEIVE FROM YOUR LANDLORD OR RENTAL AGENCY.**

Small problems can become big problems if you ignore them. **A landlord’s notice to evict you may give you only a certain number of days to respond.** If you do not respond within the given time, the landlord may seek a court order to evict you. Notice of court actions give only a certain number of days to respond! Learn more about notices and evictions in South Carolina on [PG. 67](#). If you have questions about what a notice means, see the list of housing legal aid providers in Appendix C on [PG. 81](#) to try and speak to a lawyer who may be able to help you.

### **KNOW WHERE TO COMPLAIN OR SEEK HELP IF PROBLEMS COME UP.**

Understand that no single law covers all rental situations. And no single federal, state, or local government agency has the ability or authority to investigate every type of problem you might encounter. This guide suggests ways you might make a complaint or challenge a discriminatory act based on your criminal record. But also know that sometimes, private landlords *are allowed* to make decisions on the basis of your criminal conviction history. Learn more on [PG. 27](#).

### **PREPARE THE INFORMATION YOU WILL NEED FOR A RENTAL APPLICATION:**

A rental application may require you to provide any of the following information:

- Current and past addresses of where you have lived, your employers, your personal references, and your previous/current landlords.
- Your Social Security Number (SSN) and driver license or state ID number.
- The number of people expected to live in the unit.
- Questions about how much you earn and where your income comes from will almost certainly be on the rental application. Often you will be asked to attach 1-2 recent pay stubs to verify your income.

### **BE PREPARED TO PAY MOVE-IN COSTS.**

You will likely have to pay an application fee when you apply for a place to live from a private landlord, and this application cost might be different depending on the property and owner or management company. You will also likely have to pay a security deposit and 1-2 months’ worth of rent after you sign the lease agreement. This can be expensive—be prepared!

### **PROTECTIONS FOR ACTIVE MILITARY MEMBERS:**

If you are in the military, the Service Members Civil Relief Act gives active duty members the right to terminate a lease when they are ordered to a new permanent location or any change of location that amounts to more than 90 days.<sup>168</sup> Also, a landlord may not evict you from your housing due to active military duty.<sup>169</sup>

<sup>167</sup> See South Carolina Fair Housing Law, S.C. Code Ann. §§ 31-21-10 - 140.

<sup>168</sup> 50 U.S.C. § 3955(a)(1).

<sup>169</sup> 50 U.S.C. § 3951(a).





## **EVICCTIONS: JUST THE BASICS**

The HOUSING CHAPTER does NOT go into the specifics of eviction law—but we realize it is an issue you may come across and need help with. Below we include some very basic know-your-rights information if you are facing an eviction or received a written notice from your landlord to do something (like pay rent). It is also important to know that if you engage in any “new criminal activity,” like committing a new crime, you and your entire household could face eviction.<sup>170</sup>

### **GET HELP!**

If you need a lawyer to help with defending against an eviction, please see the list of housing legal aid providers in Appendix C on [PG. 81](#), who may be able to assist you. If you are facing eviction, it’s important to ACT FAST to respond to the notice of eviction, so get in touch with a housing lawyer as soon as possible.

### **WHAT IS AN EVICTION?**

*Eviction* is a process that a landlord can use to remove a tenant from a rental unit. To “be evicted” means (1) you were the defendant (the renter who is being accused of unlawfully staying in the rental unit) in this type of lawsuit, (2) you lost the lawsuit, and (3) the court then ordered you to move out of the apartment or rental unit. If you leave a rental unit because the landlord asks you to do so, but you are never served with eviction court papers, then you have not been evicted in the legal sense of the word.<sup>171</sup>

### **I AM FACING AN EVICTION. WHAT ARE MY OPTIONS?**

**Since responding to an eviction notice can be VERY time-sensitive, it’s important to respond and act fast!** Keep reading this section to learn more. It can also be VERY HELPFUL to have a lawyer assist you. *If you need a lawyer to help with defending against an eviction, see the list of housing legal aid providers in Appendix C on [PG. 81](#) for organizations that may be able to assist you.*

### **I RECEIVED A WRITTEN NOTICE TO DO SOMETHING FROM MY LANDLORD. WILL I BE EVICTED?**

There are different reasons why you may receive a written notice. Most written notices can be corrected without having to actually move out of your apartment or home. The most common written notice is a notice to pay rent.<sup>172</sup> Another example is a written notice that says the tenant (the person living in the apartment who is on the lease) has created a nuisance or has done something which is not allowed under the rules of the lease agreement.<sup>173</sup> All of these notices must be *in writing*, except in the case where a notice of late rent payments was already included in the lease (see more details about this situation below).<sup>174</sup>

## **THE WRITTEN NOTICE TO PAY RENT**

If your rent is late or not paid in full, the landlord may give you a written notice telling you to pay rent within 5 days or they may try to evict you. The landlord cannot give you this notice until the rent is late. This notice must be in writing and must contain the following language: “IF YOU DO NOT PAY YOUR RENT ON TIME. This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit.”<sup>175</sup>

**IMPORTANT NOTE:** If this language was included in the lease you signed for your rental agreement, it will count as “written notice.” The landlord is not required to give you additional written notice for late rent beyond the notice that was included in the lease.<sup>176</sup> If this is the case, your landlord can file for eviction if your rent payment is five or more days late.

### **WHAT ARE MY OPTIONS IF I GET A WRITTEN NOTICE TO PAY RENT?**

(1) **One choice** is to pay the rent. If you offer the full amount asked for within the 5 days, the landlord will usually accept the money from you. If you decide to pay, you should pay the ENTIRE AMOUNT that the notice asks for, before the five days are up. Make sure that you get a receipt. If you think the landlord might refuse your money, take along a friend to be a witness just in case.

<sup>170</sup> S.C. Code Ann. §§ 27-40-540, 27-40-710; 24 C.F.R. § 982.310 (Section 8).

<sup>171</sup> *Thomas v. Hancock*, 271 S.C. 273, 275 (S.C. 1978).

<sup>172</sup> S.C. Code Ann. § 27-40-710(B).

<sup>173</sup> *Id.* at (A).

<sup>174</sup> S.C. Code Ann. § 27-40-710.

<sup>175</sup> *Id.* at (B).

<sup>176</sup> *Id.*; S.C. Code Ann. § 27-37-10 - 27-37-20.



If you cannot pay the full amount, you may be better off not paying anything—unless you can agree on a payment schedule with the landlord. If you reach such an agreement, make sure it is in writing and keep a copy of the agreement.

If you decide to try to pay the landlord after the 5 days are up, you should get a RECEIPT and ask the landlord to agree IN WRITING not to evict you. If the landlord refuses to agree to that, the landlord may still try to evict you.

(2) **Another choice** is that you can move out during the 5 days. If you move out at this time, technically, the landlord CANNOT file a court eviction against you. However, some landlords try to do so anyway. If this happens, you should call a legal aid office immediately; see a list of legal aid providers across South Carolina in Appendix C on [PG. 81](#) that may be able to assist you. IMPORTANT NOTE: Even if you move out within the 5 days, the landlord can later sue you for past rent due as well as additional damages.<sup>177</sup>

### WHAT COULD HAPPEN IF I DO NOT PAY MY RENT WITHIN THE 5 DAYS NOTICE?

The landlord may go to court to evict you. After the 5 days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The 5 day written notice is only the *first step* in the eviction process. The landlord must go to court and get a judge's order to get the rent and the house or apartment back.<sup>178</sup> For a short explanation of the eviction process, continue reading below.

## OTHER TYPES OF WRITTEN NOTICES

### ARE THERE OTHER REASONS I MIGHT RECEIVE A WRITTEN NOTICE BESIDES NOT PAYING MY RENT ON TIME?

Yes. If you or someone else living in your household violates the lease or rental agreement in some way, the landlord may give you a “14-day notice to cure.” This notice must inform you that you have 14 days to fix the violation or they will begin the eviction process. If you fix the violation listed in the notice within the 14 days, the landlord may not move forward with an eviction.<sup>179</sup>

In addition, if you or another member of your household participates in an illegal activity on the property, the landlord can send you a written notice telling you that they are immediately terminating the lease because of the illegal action and filing an eviction.<sup>180</sup>

## THE EVICTION PROCESS

### WHAT IS THE PROCESS OF AN EVICTION IN SOUTH CAROLINA?

If the landlord takes you to court to evict you, you will get legal papers called a “Summons” and a “Rule/Order to Show Cause.”<sup>181</sup> Make a note of what day you receive these papers. You have 10 days from the day you receive the Summons and Rule/Order to Show Cause to respond to the court.<sup>182</sup>

**IMPORTANT NOTE:** This process can be different in different counties in South Carolina. While some counties require you to respond or request a hearing within 10 days, other counties will automatically schedule a hearing when the landlord files for the Rule/Order to Show Cause. Make sure to follow the rules provided for your specific county.

If you want to fight the eviction, you should contact a legal aid lawyer immediately. Do NOT wait until the end of the 10th day to call! If you wait until the last minute, they may not be able to help you. For a list of legal aid providers in South Carolina, see Appendix C on [PG 81](#).

If you choose to respond, you have 10 days to request a hearing or file a written response to the landlord's Summons and Rule/Order to Show Cause explaining why you should be allowed to remain in the unit instead of being evicted. You should include here any legal defenses to the eviction. If a hearing date is scheduled, plan to arrive early that day at the courthouse so that you can find parking, get through the security check, and find the courtroom. If you are late and the judge has already called your case, you will lose your case.

### WHAT COULD HAPPEN IF I IGNORE THE SUMMONS AND COMPLAINT AND DO NOTHING?

<sup>177</sup> S.C. Code Ann. § 27-40-750.

<sup>178</sup> S.C. Code Ann. §§ 27-40-540, 27-40-710.

<sup>179</sup> S.C. Code Ann. § 27-40-710(A).

<sup>180</sup> *Id.* at (B).

<sup>181</sup> S.C. Magistrate Court Rules, Rule 6 (2019).

<sup>182</sup> S.C. Code Ann. § 27-37-40.





After the 10 days are up, if you have not filed a written answer to challenge the eviction or requested a hearing, the judge will rule in favor of the landlord and grant the eviction. If this happens, you will NOT go before a judge. This means that the landlord automatically wins the case and gets the property back from you.<sup>183</sup>

#### **WHAT COULD HAPPEN IF I LOSE IN COURT OR AFTER A JUDGMENT AGAINST ME?**

If the landlord wins or is automatically granted the eviction if you do not respond to the Summons and Rule/Order to Show Cause, the landlord will get a form called a “Writ of Ejection” within 5 days of the decision. A sheriff must then bring the Writ of Ejection to give you notice that you have 24 hours to leave before they will come back to remove you from the property.<sup>184</sup> If you move out before the 24 hour notice period ends, the eviction process will end. If you are still in the unit after the 24 hour notice, the sheriff can come back to remove you from the property.<sup>185</sup>

Even if you are not completely moved out, the sheriff can prevent you from re-entering the house to get your stuff after the time and date listed on the notice. If you cannot get all of your belongings out in time, at least remove your important papers, medications, valuables, and clothing. If you leave things at the property past the 24 hour notice after the Writ of Ejection is created, South Carolina law says that the landlord has the right to remove and/or throw away your belongings.<sup>186</sup>

#### **HOW LONG DOES THE EVICTION PROCESS TAKE?**

If you do not file an “Answer” to the eviction notice, the sheriff may be out to evict you as soon as 11 days after you receive the Summons and Rule/Order to Show Cause.<sup>187</sup> If you file an Answer to the lawsuit, the process will most likely take between 4 to 9 weeks, but could take longer depending on the reason for eviction or court delays.<sup>188</sup> Contrary to some popular belief, you can be evicted even if you are pregnant, have small children, have an unexpected financial hardship (like losing your job), if you’ve never been late with the rent before, or if you have nowhere else to move.

## **VIII. CONCLUSION**

Where you live is critical to your well-being. Unfortunately, it can also be one of the most challenging aspects of reentry. Hopefully this Chapter has helped you understand your housing options and given you the tools to help you to find appropriate housing and recognize illegal discrimination when it occurs.

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<sup>183</sup> *Id.*

<sup>184</sup> S.C. Code Ann. § 27-37-100.

<sup>185</sup> S.C. Code Ann. § 27-37-160.

<sup>186</sup> S.C. Code Ann. § 27-40-710(D).

<sup>187</sup> S.C. Code Ann. § 27-37-40.

<sup>188</sup> Elizabeth Souza, *South Carolina Eviction Process*, IPROPERTY MGMT. (last updated Sep. 19, 2022), <https://ipropertymanagement.com/laws/south-carolina-eviction-process#timeline>.



## HOUSING APPENDIX

- APPENDIX A. A List of PHAs in South Carolina and their Contact Information - [PG. 71](#)
- APPENDIX B. A list of transitional housing that may accept your application while you are still incarcerated - [PG. 77](#)
- APPENDIX C. A list of legal aid organizations that may be able to help you with certain housing cases - [PG. 81](#)
- APPENDIX D. NHLP Chart—Federally Assisted Housing Programs: Admissions For Applicants With Certain Criminal Backgrounds - [PG. 82](#)
- APPENDIX E. Disabilities & Requesting Reasonable Accommodations on Any Housing Application- [PG. 86](#)
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- APPENDIX G. Housing Owners’/Landlords’ Access to Credit Reports- [PG. 93](#)
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## APPENDIX A

### A List of PHAs in South Carolina and their Contact Information

PHA NAME, PHONE & FAX NUMBER	ADDRESS	TYPE (Section 8, low-rent, or both)
<a href="#">Abbeville</a> Housing Authority Of Abbeville Phone: (864) 366-4549 Fax: (864) 366-4341 Email: Lhaqq@Yahoo.Com	508 Haigler Street Abbeville Sc 29620	Low-Rent
<a href="#">Aiken</a> Housing Authority Of Aiken Phone: (803) 649-6673 Fax: (803) 643-0069 Email: Dawton@Aikenhousing.Com	100 Rogers Terrace Aiken Sc 29802	Both
<a href="#">Anderson</a> Housing Authority Of Anderson Phone: (864)260-5120 Fax: (864)260-5118 Email: Jefft@Andersonha.Org	1335 E River Street Anderson Sc 29624	Both
<a href="#">Barnwell</a> Sc Regional Housing Authority No 3 Phone: (803)259-3588 Fax: (803)259-4628 Email: Info@Scrha3.Com	10938 Ellenton St Barnwell Sc 29812	Both
<a href="#">Beaufort</a> Housing Authority Of Beaufort Phone: (843)525-7059 X224 Fax: (843)525-7090 Email: Achilders@Beaufortha.Com	1009 Prince Street Beaufort Sc 29902	Both
<a href="#">Bennettsville</a> Housing Authority Of Bennettsville Phone:(843)479-3857 Fax:(843)479-2311 Email: Bennha@Bellsouth.Net	253 Fletcher Street Bennettsville Sc 29512	Both

# ROADMAP TO REENTRY



<b>Charleston County</b>  Charleston Co Hsg & Redev Auth Combined Phone: (843) 628-0728 Fax: (843) Email: fscott@cchra.net	2106 Mt. Pleasant Street Charleston SC 29403	Both
<b>Charleston City</b>  Housing Authority Of The City Of Charleston Phone: (843) 720-3970 Fax: (843) 720-3977 Email: rg@chacity.org	550 Meeting St Charleston SC 29403	Both
<b>Cheraw</b>  Housing Authority Of Cheraw Phone: (843) 669-4163 Fax: (843) 679-2626 Email: celmore@hafsc.org	1345 Dizzy Gillespie Drive Cheraw SC 29520	Both
<b>Chester</b>  Housing Authority Of Chester Phone: (803) 581-6981 Fax: (803) 581-2541 Email: tutankhmaatkeda@yahoo.com	2678 Dawson Drive Chester SC 29706	Both
<b>Marlboro</b>  Marlboro Co Hsg & Redev Authority Phone: (843) 669-4163 Fax: (843) 679-2626 Email: celmore@hafsc.org	100 Woods Avenue Clio SC 29525	Both
<b>Cayce</b>  Housing Authority Of The City Of Cayce Phone: (803) 254-3886 X211 Fax: (803) 376-6114 Email: ybean@columbiahousingsc.org	1917 Harden Street Columbia SC 29204	Low-Rent
<b>Columbia</b>  Housing Authority Of The City Of Columbia Phone: (803) 254-3886 X206 Fax: (803) 376-6114 Email: ybean@columbiahousingsc.org	1917 Harden Street Columbia SC 29204	Combined
<b>Conway</b>  Housing Authority Of Conway Phone: (843) 248-7327 Fax: (843) 248-6234 Email: conwayha@sccoast.net	2303 Leonard Avenue Conway SC 29527	Combined



<a href="#">Darlington</a> Housing Authority Of Darlington Phone: (843)393-0436 Fax: (843)393-0443 Email: jsteen@darlingtonha.org	324 Bacote Street Darlington SC 29532	Combined
<a href="#">Easley</a> Housing Authority Of Easley Phone: (864)855-0629 Fax: (864)855-0864 Email: dalston@easleyhousing.org	101 Wallace Drive Easley SC 29640	Low-Rent
<a href="#">Florence</a> Housing Authority Of Florence Phone: (843)669-4163 Fax: (843)679-2626 Email: celmore@hafsc.org	400 East Pine St. Florence SC , 29506	Combined
<a href="#">Fort Mill</a> Housing Authority Of Fort Mill Phone: (803)547-6787 Fax: (803)548-2125 Email: cchoward@comporium.net	105 Bozeman Drive Fort Mill SC 29715	Combined
<a href="#">Gaffney</a> Housing Authority Of Gaffney Phone: (864)489-3193 Fax: (864)487-9460 Email: gafha@bellsouth.net	125 Beltline Road Gaffney SC 29341	Low-Rent
<a href="#">Georgetown</a> Housing Authority Of Georgetown Phone: (843)546-9621 X24 Fax: (843)527-7536 Email: ghamgt2@gtownhousing.org	1 Lincoln Street Georgetown SC 29440	Combined
<a href="#">Greenville</a> The Greenville Housing Authority Phone: (864)467-4250 Fax: (864)467-3088 Email: shawnw@tgha.net	122 Edinburgh Court Greenville SC 29607	Combined
<a href="#">Greenwood</a> Housing Authority Of Greenwood Phone: (864)227-3670 X30 Fax: (864)227-8270 Email: pprince@gwdscha.com	315 Foundry Road Greenwood SC 29646	Combined

# ROADMAP TO REENTRY



<b>Greer</b> Housing Authority Of Greer Phone: (864) 877-5471 X4 Fax: (864) 848-1331 Email: jfowler@greerha.com	103 School Street Greer SC 29651	Combined
<b>Hartsville</b> Housing Authority Of Hartsville Phone: (843) 332-9244 X11 Fax: (843) 383-9250 Email: tberry@hartsvilleha.org	1301 S 5th Street Hartsville SC 29550	Combined
<b>Kingstree</b> Housing Authority Of Kingstree Phone: (843) 355-7516 X101 Fax: (843) 355-7517 Email: ktha@ftc-i.net	1022 Lexington Ave. Kingstree SC 29556	Low-Rent
<b>Lake City</b> Housing Authority Of Lake City Phone: (843) 374-3541 Fax: (843) 374-3542 Email: mfountain@lakecityha.net	398 N Matthews Road Lake City SC 29560	Combined
<b>Lancaster</b> Housing Authority Of Lancaster Phone: (803) 285-7214 X23 Fax: (803) 283-2049 Email: veronica.williams@lancasterha.org	3502 Caroline Court Lancaster SC 29720	Combined
<b>Laurens</b> Housing Authority Of Laurens Phone: (864) 984-0578 Fax: (864) 984-0931 Email: briang@scrha.net	218 Spring Street Laurens SC 29360	Low-Rent
<b>Lexington</b> Sc State Housing Authority Phone: (803) 896-8888 Fax: (803) 896-9012 Email: section8@schousing.com	300-C Outlet Pointe Boulevard Columbia SC 29210	Section 8
<b>Marion</b> Housing Authority Of Marion Phone: (843) 423-5242 X7 Fax: (843) 423-7256 Email: anneburr42@aol.com	826 Walnut Street Marion SC 29571	Combined



<a href="#">Mullins</a> Housing Authority Of Mullins Phone: (843)464-9822 Fax: (843)464-4371 Email: mullinshousing@aol.com	244 Blanton Court Mullins SC 29574	Combined
<a href="#">Myrtle Beach</a> Housing Authority Of Myrtle Beach Phone: (843)918-1525 Fax: (843)918-1538 Email: mbha@mbhaonline.org	605 10th Avenue N Myrtle Beach SC 29577	Section 8
<a href="#">Newberry</a> Housing Authority Of Newberry Phone: (803)276-1049 X5 Fax: (803)276-1056 Email: fchilds@scrha3.org	3589 Grant Avenue Newberry SC 29108	Combined
<a href="#">North Charleston</a> Housing Authority Of N Charleston Phone: (843)747-1793 Fax: (843)744-3466 Email: jerling@nchashousingauthority.com	6327 Rivers Avenue North Charleston SC 29406	Combined
<a href="#">Myrtle Beach</a> Housing Authority Of Atlantic Beach Phone: (803)617-7976 Fax: (803)643-0069 Email: clawton@aikenhousing.org	1020 30th Avenue S North Myrtle Beach SC 29582	Low-Rent
<a href="#">Regional</a> Sc Regional Housing Authority No 1 Phone: (864)984-0578 X276 Fax: (864)984-2669 Email: briang@scrha.net	460 Church Street Laurens SC 29360	Combined
<a href="#">Rock Hill</a> Housing Authority Of Rock Hill Phone: (803)324-3060 Fax: (803)324-5857 Email: dalford@rhha.org	467 S. Wilson St. Rock Hill SC 29730	Combined
<a href="#">Spartanburg</a> Spartanburg Housing Phone: (864)598-6000 Fax: (864)598-6155 Email: sevans@spartanburghousing.org	170 Arch St. Spartanburg SC 29303	Combined



# ROADMAP TO REENTRY



<a href="#">Sumter</a> Housing Authority Of Sumter Phone: (803)775-4357 Fax: (803)778-2315 Email: melina.hodges@sumterha.org	P.O. Box 1030 Sumter SC 29150	Combined
<a href="#">Union</a> Housing Authority Of Union Phone: (864)427-9679 Fax: (864)429-0731 Email: dmaness@unionhousing.org	201 Porter St. Union SC 29379	Combined
<a href="#">Woodruff</a> Housing Authority Of Woodruff Phone: (864)476-7043 Fax: (864)476-8969 Email: dmarshallwha@yahoo.com	110 Miller Drive Woodruff SC 29388	Low-Rent
<a href="#">York</a> Housing Authority Of York Phone: (803)684-7359 x123 Fax: (803)684-0895 Email: jhammond@yorkhousing.net	221 California Street York SC 29745	Combined



## APPENDIX B

### A list of transitional housing that may accept your application while you are still incarcerated

The following chart is a list of transitional housing options for individuals who are currently incarcerated and are being proactive about lining up housing for post release or are looking to provide documentation to the parole board that they have transitional housing that will accept them if they receive a parole date.

For more information on the different programs, you can write the address listed or call the phone number.

Please note that this chart does not include every transitional housing option in South Carolina. There may be places that accept applications from people currently incarcerated who are not on this list.

Name	Address	City	Phone	Other/Notes
Greenville Rescue Mission	575 W. Washington St.	Greenville, SC 29601	(864)-242-6933	Emergency shelter for men
Salvation Army	417 Rutherford St.	Greenville, SC 29609	(864) 235-4803	
Salvation Army	3024 Farrow Rd.	Columbia, SC 29203	(803) 765-0260	
Salvation Army	4228 Dorchester Rd.	North Charleston, SC 29405	(843) 747-5271	Contact: Maj. Charles Powell
Salvation Army	2135 Ashley Rd.	Charleston, SC 29407		
Soteria Community Development Center	210 Shaw St.	Greenville, SC 29609	(864) 272-0681	<a href="https://soteriacdc.org">https://soteriacdc.org</a> Soteria's mission is to empower low-income individuals in the Greenville communities and neighborhoods to be self-sufficient and sustaining through transitional housing, financial budgeting, counseling and more.
Turning Point of South Carolina (men)	24 Bruce Rd.	Greenville, SC 29605	(864) 299-0090	<a href="https://turningpointofsc.org">https://turningpointofsc.org</a> Non-profit organization that assists persons suffering from alcohol and drug addictions.
Turning Point of South Carolina (Harmony House, women)	800 Pendleton St.	Greenville, SC 29601	(323) 292-9971	<a href="https://turningpointofsc.org">https://turningpointofsc.org</a> Non-profit organization that assists persons suffering from alcohol and drug addictions.
Band of Brothers Ministry, Inc.	24 Pine Valley Rd.	Piedmont, SC 29673	(864) 567-9919	<a href="https://www.bandofbrothersministry.org">https://www.bandofbrothersministry.org</a> Fee: \$125 per week; \$150 deposit required. Transitional housing ministry focused on assisting the formerly incarcerated with successfully reentering society.

## ROADMAP TO REENTRY



Oliver Gospel Mission (men)	1100 Taylor St	Columbia, SC	(803) 254-6469	The Mission assists those in need by providing food, shelter, clothing, chapel services, and addiction recovery and employment programs.
Shield Ministries	5519 Woodbine Ave.	Charleston, SC 29406	(843) 860-6462	<a href="https://www.shieldministries.org">https://www.shieldministries.org</a> The mission of Shield Ministries is to teach men how to think, choose, and build correctly which promotes healing; to teach life skills to help men overcome obstacles by using Christian biblical based principles and mentorship; to promote accountability and responsibility; and to provide residential stability, all which reduce recidivism.
Star Gospel Mission	474 Meeting St.	Charleston, SC 29403	(843) 722-2473	Contact: Rev. Gene Boone <a href="https://stargospelmission.org">https://stargospelmission.org</a> The mission provides transitional housing for homeless men and responds to the needs of the community by offering food, rental assistance, utility assistance, emergency medical and transportation assistance.
Miracle Hill Ministries	490 S. Pleasantburg Dr. *** This address is the main office	Greenville, SC 29607		<a href="https://miraclehill.org">https://miraclehill.org</a> Nonprofit organization in the Upstate of South Carolina dedicated to providing extensive services to adults in the form of food, shelter, clothing, counseling, personal development, and addiction recovery.
Miracle Hill Renewal	19 Graves Dr.	Greenville, SC 29609	(864) 242-2166	Women's recovery
Miracle Hill Overcomers			(864) 242-2166	Men's recovery
Spartanburg Rescue Mission (men)	189 N. Forest St.	Spartanburg, SC 29301	(864) 583-1628	Contact: Calvin Vinson
Cherokee Rescue Mission	227 Henderson St.	Gaffney, SC 29341	(864) 488-0376	Contact: Andy Cooper (men, women & mothers with children)
Shepherd's Gate	11 Regency Hill Dr.	Greenville, SC 29607		Shelter for women and mothers with young children experiencing homelessness.
United Ministries	600 Pendleton St.	Greenville, SC 29601	(864) 232-6463	<a href="https://united-ministries.org">https://united-ministries.org</a> Provides homeless day shelter, weekdays, 8-11



Haven of Rest Ministries, Inc.	219 West Whitner St.	Anderson, SC 29622	(864) 226-6193 ext. 104	Contact: Wes Bramlett <a href="https://www.havenofrest.cc">https://www.havenofrest.cc</a> Haven of Rest provides food, shelter and assistance to men and women who are facing homelessness and addictions.
His House Ministry	764 Meeting St.	West Columbia, SC 29169	(803) 791-0557	Provides a residential program for up to 50 men recovering from alcohol addiction. Provides housing, food, clothing and alcohol recovery services
One80 Place	35 Walnut St.	Charleston, SC 29403	(843) 723-9477	<a href="https://www.one80place.org">https://www.one80place.org</a> Non-profit organization that assists people experiencing homelessness.
Alston Wilkes Society	3519 Medical Dr. (Corporate Office)	Columbia, SC 29203	(803) 799-2490	<a href="http://www.alstonwilkessociety.org">http://www.alstonwilkessociety.org</a>
Alston Wilkes Society	614 Pendleton St.	Greenville, SC 29601	(864) 372-3952	
The Haven	852 E. Main St.	Spartanburg, SC 29302	(864) 582-6737	<a href="https://www.havenupstate.org">https://www.havenupstate.org</a> Offers assistance to women in crisis situations such as homelessness
Step by Step Ministry	P.O. Box 553	Greenville, SC 29602	(864) 991-1388	Chaplain pre-release referrals preferred; non-Violent offense and minimum of 6 months of incarceration
New Beginnings Ministries	102 Fowler St.	Fountain Inn, SC 29644	(864) 862-4498	Contact: Rev. Henley
Fresh Start Ministries	1935 Clements Ave.	North Charleston, SC 29405	(843) 284-7139	Contact: Tim Terry <a href="https://freshstartvisions.org">https://freshstartvisions.org</a>
Good Samaritan House	205 S. Congress St.	Winnsboro, SC 29180	(803) 223-1707	<a href="https://www.christcentralministries.org/good-samaritan-house/">https://www.christcentralministries.org/good-samaritan-house/</a>
Jumpstart House	418 Old Greenville Rd.	Spartanburg, SC 29301	(888)403-3815	Contact: Mark Pitta at (864) 814-9640 <a href="https://www.jumpstartvision.org">https://www.jumpstartvision.org</a> Offers a safe and stable environment for people in transition after incarceration.
Angels Charge Ministry	95 Ashley St.	Spartanburg, SC 29307	(864) 327-8778	<a href="https://www.angelschargeministry.org">https://www.angelschargeministry.org</a> Offers transitional housing for women.
The Well of Hope & Restoration Ministries	101 Moolah Dr.	Columbia, SC 29223	(803) 851-5757	

## ROADMAP TO REENTRY



Greenville Transitions, LLC	3415 State Park Rd.	Greenville, SC 29609	(864) 404-6534	<a href="https://www.greenvilletransitions.com">https://www.greenvilletransitions.com</a> Provides a safe, sober environment and clinical services for men.
Our Lady of Mercy Community Services Neighborhood House	77 America St.	Charleston, SC 29403	(843) 805-8064	<a href="https://www.olmoutreach.org">https://www.olmoutreach.org</a>



## APPENDIX C

A list of legal aid organizations that may be able to help you with certain housing cases

<p><b>South Carolina Legal Services</b> They help with individual civil cases for people who meet certain income restrictions. You should call SCLS first, particularly with eviction issues. Offices located in Charleston, Columbia, Conway, Florence, Greenville, Greenwood, Orangeburg, Rock Hill, and Spartanburg telephone intake line at 1-888-346-5592 <a href="http://sclegal.org">sclegal.org</a></p>	<p><b>Root &amp; Rebound</b> Contact us if you have a housing issue that arises out of the use of a criminal record. Location: Statewide Phone: 864-546-5089 <a href="http://www.rootandrebound.org">www.rootandrebound.org</a></p>
<p><b>ACLU of South Carolina</b> They help with civil liberty issues. Location: Columbia Phone: 803-594-6077 <a href="http://www.aclusc.org">www.aclusc.org</a></p>	<p><b>SC Appleseed Legal Justice Center</b> They fight for low income people to overcome social, economic, and legal injustice. They do not take individual cases but have excellent resources available online. Location: Columbia Phone: 803-779-1113 <a href="http://www.scjustice.org">www.scjustice.org</a></p>
<p><b>Disability Right South Carolina</b> They help people with disabilities understand and defend their rights. Location: Columbia Help Line 866-275-7273 Office 803-782-0639 TTY (text line) 866-232-4525 <a href="http://www.disabilityrightssc.org/">www.disabilityrightssc.org/</a></p>	<p><b>Catholic Charities of South Carolina</b> They provide immigration legal services. You should contact them if you have a housing issue related to immigration. Offices Located in Charleston, Hilton Head, Berea, Greenville, and Rock Hill Greenville Phone: 864-331-2629 <a href="http://charitiessc.org/immigration-legal-services">charitiessc.org/immigration-legal-services</a></p>



## APPENDIX D

### NHLP Chart—Federally Assisted Housing Programs: Admissions For Applicants With Certain Criminal Backgrounds

See next page.





## Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds\*

	Convicted of producing meth at federally-assisted housing <sup>^</sup>	Lifetime registered sex offender	Prior eviction from federally-assisted housing <sup>^</sup> for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
<b>Public Housing</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 960.204(a)(3).	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 960.204(a)(4).	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661(a) and 13664; 24 C.F.R. § 960.204(a)(1).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 960.204(a)(2).
<b>Voucher Program</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 982.553.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 982.553.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 982.553.
<b>Section 8 Mod Rehab</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 882.518.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 882.518.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 882.518.
<b>Section 8 SRO Mod. Rehab. for homeless</b>	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.518 and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.805(c); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may deny admission. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.
<b>Project-based Section 8</b>	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854

## ROADMAP TO REENTRY



\* There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603). Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514. *CHART CONTINUES ON NEXT PAGE...*



(CONTINUED FROM PREVIOUS PAGE)

### Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds\*

	Convicted of producing meth at federally-assisted housing^	Lifetime registered sex offender	Prior eviction from federally-assisted housing^ for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
Sections 202, 811, 221(d)(3), 236	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854.
USDA Housing	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13663 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13661 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>see also</i> 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).
HOME	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).

\* There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603). Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.



## APPENDIX E

### Disabilities & Requesting Reasonable Accommodations on Any Housing Application

#### AS SOMEONE APPLYING FOR HOUSING (PRIVATE OR GOVERNMENT-ASSISTED), WHAT DO MY DISABILITIES HAVE TO DO WITH MY CRIMINAL RECORD?

If you can prove that your criminal conviction was *the result of a disability*—for example, due to mental illness and/or past drug addiction you may be able to get a “reasonable accommodation” when applying for ANY type of housing. However, a PHA, owner, or other housing provider is not required to grant a reasonable accommodation to an individual with a disability *if that person would be a “direct threat” to the health, safety or property of others*, unless the requested reasonable accommodations can actually *eliminate or significantly reduce such a threat*.

Under the law, housing providers cannot treat persons with disabilities exactly the same as other housing applicants or residents if doing so denies people with disabilities an equal opportunity to use and enjoy a dwelling.<sup>189</sup> Therefore, by law, a PHA or owner *must* make reasonable accommodations to its *rules, policies, practices, or services* when it may be necessary to provide applicants with disabilities an equal opportunity to use and enjoy a living space<sup>190</sup>—even if that accommodation results in a preference for disabled individuals over similar, non-disabled individuals.<sup>191</sup> This rule applies to ALL types of housing—public and private.

**WARNING:** Just because you committed a criminal offense as a result of a disability does not mean you automatically have the right to a reasonable accommodation for housing. It can be very difficult to prove that your disability CAUSED your criminal offense, AND that the disability is the type that qualifies you for a reasonable accommodation.<sup>192</sup>

#### IF MY CRIMINAL CONVICTION WAS THE RESULT OF A DISABILITY, WHAT IS A REASONABLE ACCOMMODATION THAT I CAN ASK FOR?

A “reasonable accommodation” is a *change, exception, or adjustment* to a rule, policy, practice, or service that may be necessary to give an applicant with a disability an *equal opportunity to use and enjoy a living space*.<sup>193</sup> There is no limit or restriction to the type of accommodation that you can request, as long as the accommodation is *reasonable*. As a general rule, an accommodation will be considered *reasonable* so long as it does NOT:

1. Pose an undue financial burden on the PHA or owner, and/or
2. Require the PHA or owner to fundamentally change its housing program<sup>194</sup>

It’s recommended that you ask a Public Housing Authority (PHA), owner, or housing provider to look at your criminal record using a different standard, or to make an exception to its criminal history policy altogether as a reasonable accommodation. Keep reading to learn about approaches for asking your PHA or landlord for a reasonable accommodation.

#### WHAT IS CONSIDERED A DISABILITY IN SOUTH CAROLINA?

South Carolina law defines a disability<sup>195</sup> as “a physical or mental impairment which substantially limits one or more major life activities including, but not limited to caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”<sup>196</sup>

#### WHAT IS NOT CONSIDERED A DISABILITY IN SOUTH CAROLINA?

- Current illegal drug or narcotic use;
- Currently alcohol abuse;

<sup>189</sup> 42 U.S.C. § 3604(f)(3)(B); S.C. Code Ann. § 31-21-70(G)(2); see also U.S. DEP’T OF HOUS. & URB. DEV., U.S. DEP’T OF JUST., Joint Statement on Reasonable Accommodations Under the Fair Housing Act, question 6 (May 17, 2004).

<sup>190</sup> 42 U.S.C. § 3604(f)(3)(B).

<sup>191</sup> See *Evans v. UDR Inc.*, 644 F. Supp. 2d 675, 682 (N.C. E.D. 2009) (citing *U.S. Airways v. Barnett*, 535 U.S. 391, 397 (2002)).

<sup>192</sup> See *Simmons v. T.M. Assocs. Mgmt.*, 287 F.Supp.3d 600, 603 (W.D. Va. 2018).

<sup>193</sup> U.S. DEP’T OF HOUS. & URB. DEV., U.S. DEP’T OF JUST., Joint Statement on Reasonable Accommodations Under the Fair Housing Act, question 6 (May 14, 2004).

<sup>194</sup> S.C. HUM. AFF. COMM’N, *Disability Discrimination*, <https://schac.sc.gov/housing-discrimination/discrimination-types/disability-discrimination>; see also U.S. DEP’T OF HOUS. & URB. DEV., U.S. DEP’T OF JUST., Joint Statement on Reasonable Accommodations Under the Fair Housing Act, question 7 (May 17, 2004); 24 C.F.R. § 8.33; *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397, 410, 412 (1979).

<sup>195</sup> Note that while South Carolina law uses the term “handicap,” Root & Rebound chooses to use the term “disability” as we feel it is more appropriate and people-centered.

<sup>196</sup> S.C. Code Ann. § 2-7-35. This law also includes any other definition “prescribed by federal law or regulation for use by agencies of state government which serve handicapped persons.”



- Mental illness that does not qualify as a “mental impairment” under South Carolina’s definition of a protected disability.<sup>197</sup>

## DOES DRUG ADDICTION QUALIFY AS A DISABILITY?

Technically, yes, if it is *PAST* drug use and you have permanently stopped using illegal drugs, it does qualify as a disability under both federal and state law. BUT If you are *currently using illegal drugs*, then you are *not considered disabled*.<sup>198</sup> See the next question for what is considered a disability in South Carolina.

**IMPORTANT!** There are no reported South Carolina cases where a rehabilitated applicant with a history of substance abuse, or an applicant with mental impairment, and a history of criminal acts arising from the substance abuse or mental illness has been granted a reasonable accommodation from a PHA’s criminal activity restrictions. Courts have generally been unreceptive to these arguments. Specifically, courts have been hesitant to accept arguments that a housing applicant’s criminal convictions were the result of mental illness and/or past substance abuse. Again, since it may be difficult to prove that your criminal conviction was the result of your mental illness and/or drug addiction, it is important that you offer as much evidence as possible.<sup>199</sup>

## HOW CAN I PROVE MY PAST DRUG USE QUALIFIES AS A DISABILITY?

Under this rule, it can be tricky to prove that you are not a current illegal drug user, especially if there was drug use or convictions for drug use in your recent past. The law doesn’t clearly define what counts as “current” illegal drug use, and there are no reported South Carolina court decisions defining “current” illegal drug use.<sup>200</sup> Some courts outside of South Carolina have said a person is NOT a current illegal drug user if that person has *permanently stopped using illegal drugs* for periods of time ranging from a few months to a year.<sup>201</sup> Outside of South Carolina, courts have said that someone is still a “current” user if they have stopped using for only a few weeks.<sup>202</sup>

Based on the different ways courts are treating this issue, we recommend that you *provide evidence* that you are *not a current user* by showing any proof that:

- You have successfully completed a supervised substance abuse/drug rehabilitation program;
- You are not currently using illegal drugs (meaning any proof that you have permanently stopped using illegal drugs); and/or
- You are currently participating in a supervised substance abuse/drug rehabilitation, treatment, or self-help program.<sup>203</sup>

### REMEMBER:

It may be difficult to prove that your criminal conviction was the result of your mental illness and/or drug addiction. It is important that you submit as much evidence as possible!

<sup>197</sup> S.C. Code Ann. §§ 31-21-30(7), 43-33-560.

<sup>198</sup> 42 U.S.C. § 3602(h); 24 C.F.R. § 9.103; S.C. Code Ann. § 31-21-30(7). Federal HUD regulations define “handicap” to include drug addiction. Similarly, the ADA states that a person with a disability includes “someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.”

<sup>199</sup> See *Simmons v. T.M. Assocs. Mgmt.*, 287 F.Supp.3d 600, 603 (W.D. Va. 2018) (holding a landlord cannot deny an applicant with a criminal record who is requesting a reasonable accommodation for a disability when the applicant’s disability allegedly caused the criminal record.). This is one example of a case where the court did rule in the housing applicant’s favor; see also *E. Carolina Reg’l Hous. Auth. v. Lofton*, 774 S.E.2d 311 (N.C. 2015); *City of Charleston Hous. Auth. v. Brown*, 878 S.E.2d 913 (S.C. Ct. App. 2022).

<sup>200</sup> 42 U.S.C. § 3602(h)(3); S.C. Code Ann. § 31-21-30(7).

<sup>201</sup> *U.S. v. S. Mgmt. Corp.*, 955 F.2d 914 (4th Cir. 1992) (holding that one-year period of abstinence could not constitute current use); *Herman v. City of Allentown*, 985 F. Supp. 569, 578-79 (E.D. Pa. 1997) (holding that nine-month period of abstinence could not constitute current use); *Baustian v. Louisiana*, 910 F. Supp. 274, 276 (E.D. La. 1996); *McDaniel v. Miss. Baptist Med. Ctr.*, 877 F. Supp. 321, 327-28 (S.D. Miss. 1994) (finding that “seven weeks simply does not satisfy the [ADA’s] requirement of long term abstinence from illegal drug use”).

<sup>202</sup> See *Zenor v. El Paso Healthcare Sys.*, 176 F.3d 847, 857 (5th Cir. 1999) (finding five-week period of abstinence insufficient); *Shafer v. Preston Memorial Hosp. Corp.*, 107 F.3d 274, 278 (4th Cir.1997) (finding periodic use of drugs during weeks and months prior to termination from employment as current use); *Collings v. Longview Fibre Co.*, 63 F.3d 828, 833 (9th Cir. 1995) (same); *Baustian v. Louisiana*, 910 F. Supp. 274, 277 (E.D. La. 1996) (finding seven-week period of abstinence insufficient); *McDaniel v. Mississippi Baptist Med. Ctr.*, 877 F. Supp. 321, 328 (S.D. Miss. 1995) (finding six-week period of abstinence insufficient).

<sup>203</sup> 42 U.S.C. § 12210(b)(2).



## IF I CAN SHOW THAT I'M DISABLED, HOW CAN I REQUEST A REASONABLE ACCOMMODATION AS I APPLY FOR HOUSING?

Send a *written letter* requesting a reasonable accommodation to the PHA, housing provider, or owner (the one making the decision) that clearly explains *ALL* of the following:

- That you have a disability, and what that disability is.
- That the disability caused the offense. Attach as much documentation as you can. For example:
  - Letters from service providers showing that you experienced a mental illness and/or a drug addiction at the time of the offense; or even better, a letter from a doctor confirming the existence of your disability;<sup>204</sup>
  - In the case of past addiction, explain that you no longer suffer from addiction. Attach any documentation you have, such as letters from service providers showing successful completion of a rehabilitation program or effective or ongoing treatment for your addiction; and/or letters from service providers that show you are no longer using substances.
- What your requested accommodation is, clearly stated:
  - Ask for what you want directly! You could ask a PHA, owner, or housing provider to look at your criminal record using a different standard, or to make an exception to its criminal history policy altogether.
- Why the accommodation you are requesting is **NECESSARY** and **REASONABLE**.:
  - Here, you should say that *an exception* from criminal history policy is **NECESSARY** to give you an *equal opportunity to access the housing*.
    - Explain how your criminal conduct *was the result* of the disability—showing the *relationship* (also called a “nexus”) between your disability and your requested accommodation.<sup>205</sup>
    - It is more persuasive if you have a doctor or service provider submit a letter explaining why the accommodation is necessary.
  - You must also show that the requested accommodation is **REASONABLE**. A requested accommodation may be found reasonable if:
    - It's necessary for you to have an equal opportunity to enjoy the living space.
    - It's not too expensive for the landlord.
    - The administrative burden is not too great.
    - It doesn't fundamentally change the PHA's, housing provider's, or owner/landlord's operations.
    - A landlord or PHA accommodation that gives you “preference” over similar non-disabled people *may be reasonable under the circumstances*.<sup>206</sup>

### EXAMPLES OF REASONABLE ACCOMMODATIONS INCLUDE:

An exception (“a waiver”) to a PHA, owner, or housing provider's policy that bars housing to applicants with criminal records, if your criminal conviction was caused by your disability;

An owner or housing provider agreeing to admit a tenant with a mental illness that causes the tenant to sometimes become loud or confrontational, so long as the tenant agrees to seek treatment for his or her mental illness;

An owner or housing provider allowing a tenant suffering from mental illness to have a live-in aide; or

A PHA, owner, or housing provider accepting a reference from an applicant's social worker or service provider if an applicant has no recent rental history.

**“THE DIRECT THREAT EXCEPTION:”** Remember that the law *does not require* that reasonable accommodations be granted to an individual with a disability if that person would be a “direct threat” to the health or safety of other individuals or if that person's residency would result in substantial physical damage to the property of others *UNLESS* the reasonable accommodations requested can actually *eliminate or significantly reduce such a threat*.<sup>207</sup> This is known as the “direct threat” exception. **You have some protections if the PHA, housing provider, or landlord is arguing you are a “direct threat”:**

- First, a PHA or owner **MUST** perform an *individualized assessment* of you.
- Second, if a reasonable accommodation can significantly reduce the “direct threat” posed by a recognized disability, then the PHA, housing provider, or owner *must* make it.
- Third, if the PHA, housing provider, or owner finds that you pose a direct threat to other tenants or property, this should be based *only* on **actual examples** of you causing harm or other factual, objective evidence—not their own fears or assumptions about what *could* happen.
- Fourth, a finding of a direct threat cannot be based on assumptions, stereotypes, or fears about mental illness,

<sup>204</sup> For more information about obtaining a reasonable accommodation, see FAIR HOUS. CTR. FOR RTS. & RSCH., *Obtaining and Maintaining Housing: Fair Housing for People with Mental Health Disabilities* (rev. Jan. 2020), <https://www.thehousingcenter.org/wp-content/uploads/2020/02/Obtaining-and-Maintaining-Housing-Fair-Housing-for-People-with-Physical-and-Mental-Health-Disabilities.pdf>.

<sup>205</sup> See *Simmons v. T.M. Assocs. Mgmt.*, 287 F.Supp.3d 600, 603 (W.D. Va. 2018); U.S. DEP'T OF HOUS. & URB. DEV., U.S. DEP'T OF JUST., Joint Statement on Reasonable Accommodations Under the Fair Housing Act, question 6 (May 14, 2004).

<sup>206</sup> See *Evans v. UDR Inc.*, 644 F. Supp. 2d 675, 682 (N.C. E.D. 2009) (citing *U.S. Airways v. Barnett*, 535 U.S. 391, 397 (2002)).

<sup>207</sup> U.S. DEP'T OF HOUS. & URB. DEV., U.S. DEP'T OF JUST., Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 14, 2004).



drug addiction, or other disabilities.<sup>208</sup>

## ONCE I HAVE SENT MY REQUEST FOR A REASONABLE ACCOMMODATION, WHAT HAPPENS?

There are several phases of a reasonable accommodation request:<sup>209</sup>

1. **Initial Request:** (see PG. 88). This is when you first send your letter informing the PHA, owner, or housing provider that you have a disability and are requesting a reasonable accommodation.<sup>210</sup>
2. **Verification:** Once you make your initial request for a reasonable accommodation, the PHA, owner, or housing provider will want to verify that you are indeed disabled.
  - If your disability is obvious or known, and the need for a reasonable accommodation is known, then the housing provider should not ask you for any more information.
  - If your disability is known and obvious, but your need for the accommodation is not well-known or obvious, then the housing provider should ask only for information necessary to verify the need for a reasonable accommodation—for example, notes explaining your need from a doctor or clinician.
  - If your disability or need for an accommodation is unknown or not obvious, the housing provider may ask for verification of both your disability and your need for a reasonable accommodation.<sup>211</sup>
3. **The Decision:** After reviewing your request, the PHA, owner, or housing provider will decide whether or not to grant your reasonable accommodation request.
4. **The “Interactive” Process:**
  - If the PHA, owner, or housing provider refuses to grant you a reasonable accommodation, you should try to engage them in an informal “interactive process” in which you discuss alternative solutions that might meet both of your needs. HUD guidelines encourage you to try this informal route first, before starting the formal grievance procedure, because it is more flexible and often leads to quicker resolutions.<sup>212</sup>
  - If after the “interactive process,” the PHA, owner, or housing provider still refuses to grant you a reasonable accommodation, you may have to file a formal complaint with HUD or SCHAC.<sup>213</sup>

## HOW CAN I CHALLENGE MY DENIAL FOR A REASONABLE ACCOMMODATION?

**OPTION 1: YOU CAN FILE A COMPLAINT.** If you believe that a PHA, owner, or housing provider denied your request for a reasonable accommodation due to your disability and/or your past drug use, you may file a complaint with HUD (federal housing protection agency) or with SCHAC (South Carolina’s state housing protection agency). After you file a complaint, if HUD determines that you were discriminated against (they find your complaint has “merit”), then HUD will file a civil lawsuit against the PHA, owner, or housing provider on your behalf. If the SCHAC determines you have the basis for a complaint, they will schedule a hearing or give you the option to elect for a civil case to be filed on your behalf. Go to Appendix H on PG. 94 to learn how to file a complaint with HUD or SCHAC.

**OPTION 2: YOU CAN TRY TO SUE IN COURT.** To sue a housing provider under the federal Fair Housing Act (FHA) or South Carolina’s Fair Housing Law, you must show that your status as an individual with a disability or drug history was a *motivating factor* in the owner’s or PHA’s decision to deny your reasonable accommodation request.<sup>214</sup> You must also provide sufficient evidence that the requested accommodation is reasonable, and that you are a

<sup>208</sup> See *Reasonable Accommodation in Federally Assisted Housing*, NAT’L HOUS. L. PROJECT (Oct. 27, 2008), <https://nhlp.org/files/New%20Orleans%20Reasonable%20Accommodation2.pdf>; see also Jennifer L. Dolak, Note, *The FHAA’s Reasonable Accommodation & Direct Threat Provisions as Applied to Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their Housing Environment*, 36 IND. L. REV. 759, 762-67 (2003).

<sup>209</sup> See *Reasonable Accommodation in Federally Assisted Housing*, NAT’L HOUS. L. PROJECT (Oct. 2012), <http://www.fairhousingnc.org/wp-content/uploads/2014/10/NHLP-Reasonable-Accommodation-Outline-Current-10-2012.pdf>.

<sup>210</sup> U.S. DEP’T OF HOUS. & URB. DEV., Handbook 4350.3: Occupancy Requirements Of Subsidized Multifamily Housing Programs, REV-1, CHG-3, 2-39; see also *Reasonable Accommodation in Federally Assisted Housing*, NAT’L HOUS. L. PROJECT (Oct. 2012), <http://www.fairhousingnc.org/wp-content/uploads/2014/10/NHLP-Reasonable-Accommodation-Outline-Current-10-2012.pdf>.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See U.S. DEP’T OF HOUS. & URB. DEV., U.S. DEP’T OF JUSTICE, Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 14, 2004), [http://www.justice.gov/crt/about/hce/jointstatement\\_ra.php](http://www.justice.gov/crt/about/hce/jointstatement_ra.php); see also *An Advocate’s Guide to the Fair Housing Act*, S.C. APPLESEED JUST. CTR. (June 2012), <https://www.scjustice.org/wp-content/uploads/2012/11/an-advocates-guide-to-fair-housing-act-2012.pdf>.

<sup>214</sup> See *Head v. Glacier Northwest Inc.*, 413 F.3d 1053 (9th Cir. 2005) (holding that the ADA outlaws adverse employment decisions motivated, even in part, by animus based on a plaintiff’s disability or request for an accommodation); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); see also *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 916 (4th Cir. 1992) (finding a private apartment complex to have violated the FHA by refusing to rent units to a community drug and alcohol rehabilitation board for its participants who had remained drug-free for one year); *Campbell v. Minneapolis Pub. Hous. Auth.*, 168 F.3d 1069 (8th Cir. 1999) (remanding a matter in which the local PHA had rejected a former substance abuser’s application to public housing because of insufficient evidence). *Campbell* demonstrates the importance of housing applicants providing documentation that he or she is a recovering substance user, not a current substance user.





former/recovering substance user (and not a current substance user), or that you are receiving treatment for your mental illness.<sup>215</sup>

### **WHAT IS THE PHA, OWNER, OR LANDLORD LIKELY TO ARGUE TO DEFEND ITS DECISION TO DENY MY REASONABLE ACCOMMODATION?**

The PHA or owner will likely argue that you do not have a protected disability.

They might argue that you are a “current user” of illegal drugs or substances, and therefore you are not disabled under the law, OR that you have not sought adequate treatment for your mental illness, and therefore are not disabled under the law.<sup>216</sup>

If you go to court, you can attempt to disprove these arguments by providing *treatment records* establishing that you have not used illegal substances for the relevant period of time, or that you receive treatment for your mental illness.<sup>217</sup> Your argument will be even stronger if you can provide evidence of your participation in or completion of a drug/substance abuse treatment program, or proof that you receive treatment for your mental illness. Go to [PG. 60](#) to learn more about challenging denials from both federal government-assisted housing and from private housing.

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<sup>215</sup> 42 U.S.C. § 12112(b)(5)(A); 24 C.F.R. § 960.203(d)(2); 42 U.S.C. § 3602(h)(3).

<sup>216</sup> S.C. Code Ann. § 31-21-30(7); see *Campbell v. Minneapolis Pub. Hous. Auth.*, 168 F.3d 1069 (8th Cir. 1999) (“The MPHA indicated it was denying [Campbell’s] application for the following reasons: . . . you have recently used illicit drugs and have a problem with alcohol.”).

<sup>217</sup> See *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 916 (4th Cir. 1992) (finding a private apartment complex to have violated the FHA by refusing to rent units to a community drug and alcohol rehabilitation board for its participants who had remained drug-free for one year).



## APPENDIX F

Sample Consent Form that Your Drug or Alcohol Treatment Program Could Use to Disclose  
Information About Your Treatment

See next page.





## APPENDIX G

### Housing Owners' /Landlords' Access to Credit Reports

#### WHAT IS A CREDIT REPORT?

Your *credit report* includes information about creditworthiness, such as your record of paying bills on time. A credit report will show information dating back 7 years (or 10 years in the case of a bankruptcy), including the following

- history of paying bills and loans on time or record of late payments;
- open accounts and level of indebtedness;
- collection actions;
- bankruptcies or tax liens; and
- civil court judgments, including housing-related court actions filed by a previous landlord that may or may not have led to a past eviction.

HOWEVER, a credit report does NOT include criminal history information like a tenant report would.

#### WHO CAN ACCESS MY CREDIT REPORT?

Anyone who is evaluating your ability to pay for housing can order your credit report in South Carolina. That means that private owners, PHAs, AND owners of government-assisted housing can order a credit report to see if you have good credit and will be a reliable tenant.

#### DOES MY CONSISTENTLY PAYING RENT ON TIME IN THE PAST HELP MY CREDIT STANDING?

Maybe, but most likely not. The companies that collect information about your credit standing are only just beginning to collect this information in a systematized way.

A credit report will show whether or not you've ever been evicted, your ability to pay credit card bills, utility bills, and other bills on time, and any success you've had paying back loans.<sup>218</sup>

#### CAN SOMEONE FIND OUT ABOUT PAST LATE PAYMENTS ON RENT FROM A CREDIT REPORT?

Maybe. Generally, late rent payments are not a part of your credit history unless the landlord or management company is reporting them. If the matter was referred to a collection agency or a civil court (like an eviction case started against you), it is possible it would show up on your credit report.

#### HELPFUL HINT:

If you are looking for a rental, it is best to check your credit reports before the PHA or owner does—so you know what they will find. You can go online and order FREE credit reports from the three national credit bureaus: Experian, TransUnion, and Equifax. If there's an error, it's a good idea to file a dispute with the bureau rather than try to explain it at the last minute.

<sup>218</sup> *What is a Credit Report?*, CONSUMER FIN. PROT. BUREAU (last rev. Sept. 1, 2020), <http://www.consumerfinance.gov/askcfpb/309/what-is-a-credit-report.html>.



## APPENDIX H

### Filing a Complaint for Illegal Discrimination in Private Housing

If you believe you have been illegally discriminated against in applying for *private housing* from a *private landlord* (meaning neither the owner, you, nor the property receive federal government money to assist in making the housing more affordable), you can challenge that discriminatory denial. Read about how to challenge an illegal discriminatory denial below, and which government agencies you should contact.<sup>219</sup>

#### WHAT GOVERNMENT AGENCIES ARE IN CHARGE OF INVESTIGATING HOUSING DISCRIMINATION COMPLAINTS?

##### FEDERAL HOUSING AGENCY:

The U.S. Department of Housing and Urban Development (HUD) is a *federal agency* that enforces the federal Fair Housing Act (FHA).<sup>220</sup> HUD has to refer the complaints of housing discrimination it receives to the fair housing enforcement agency in the state where the discrimination occurred *if* that state's fair housing agency is certified by HUD as having mostly the same laws, procedures, remedies, and judicial review.<sup>221</sup>

AND

##### STATE HOUSING AGENCY:

In South Carolina, our state fair housing enforcement agency is the South Carolina Human Affairs Commission (SCHAC), and it is *certified by HUD* to enforce, investigate, conciliate, and litigate discriminatory housing practices in South Carolina.<sup>222</sup>

#### I BELIEVE A PRIVATE LANDLORD ILLEGALLY DISCRIMINATED AGAINST ME DUE TO MY CRIMINAL RECORD. WHAT ARE MY OPTIONS?

Your main options are:

- You could file an administrative complaint with South Carolina Human Affairs Commission (the state housing protection agency);
- You could file an administrative complaint with HUD (the federal housing protection agency);
- You could file a civil lawsuit in state or federal court; OR
- You could allow HUD (the federal housing agency) or SCHAC (the state housing agency) to file a lawsuit on your behalf.

#### HOW CAN I FIGURE OUT WHICH OPTION TO CHOOSE?

Talk to a lawyer or an advocate at a nonprofit legal services organization if possible—they can help advise you! See Appendix C on [PG. 81](#) for a list of legal aid organizations who may be able to help. Also, you can always file a complaint with *both* HUD & SCHAC. More on each of these 4 options below.

You can file an administrative complaint in South Carolina through SCHAC or the federal agency HUD, or both. This may lead to a lawsuit in civil court (possible with both SCHAC or HUD) or an administrative hearing (HUD only). Read about how to file a state administrative complaint and a federal administrative complaint below.

##### OPTION 1: FILING A STATE ADMINISTRATIVE COMPLAINT WITH THE SOUTH CAROLINA HUMAN AFFAIRS COMMISSION (SCHAC).

You can file an administrative complaint with SCHAC *within 180 days* of the discriminatory act.<sup>223</sup> Continue reading on [PG. 95](#) for a step-by-step overview of the process of filing a housing complaint in South Carolina.

<sup>219</sup> For a more detailed explanation of each of the options contained in Appendix H, see *An Advocate's Guide to the Fair Housing Act*, S.C. APPLESEED LEGAL JUST. CTR. (June 2012), <https://www.scjustice.org/wp-content/uploads/2012/11/an-advocates-guide-to-fair-housing-act-2012.pdf>.

<sup>220</sup> 42 U.S.C. § 3601-3619.

<sup>221</sup> 42 U.S.C. § 3610(f).

<sup>222</sup> *Id.*; 24 C.F.R. § 103.100; see also U.S. DEP'T OF HOUS. & URB. DEV., *Fair Housing Assistance Program (FHAP) Agencies*, [https://www.hud.gov/program/offices/fair\\_housing\\_equal\\_opportunity/partners/FHAP/agencies#SC](https://www.hud.gov/program/offices/fair_housing_equal_opportunity/partners/FHAP/agencies#SC).

<sup>223</sup> S.C. Code Ann. § 31-21-120(B).



### ***Under what circumstances will South Carolina's Human Affairs Commission (SCHAC) accept my complaint?***

The SCHAC is supposed to be very generous in accepting your complaint. However, in some cases, the SCHAC may decide that you cannot file a complaint—for example, your complaint doesn't allege housing discrimination, the landlord's conduct happened more than 180 days ago, or you already filed a complaint with HUD regarding the same discrimination. If you did file a complaint with HUD, HUD will often refer these complaints back to SCHAC for investigation.

### ***What happens after I meet with a SCHAC housing investigator?***

After your initial conversation with a SCHAC housing investigator, the information you provided will be reviewed to determine if you have a basis for filing a discrimination complaint. If the SCHAC does decide you have a basis for filing a complaint, a complaint will be prepared for you to sign and return to the SCHAC. Before signing, read the complaint carefully to make sure all of the information in the prepared complaint is correct. Once the signed complaint has been received, it will be assigned to an Investigator.<sup>224</sup>

### ***How long will it take to file a housing complaint with SCHAC?***

The average processing time for filing a complaint with SCHAC is 100 days. If the SCHAC cannot complete their administrative decision within 100 days, they must notify you in writing and explain the reasons for the delay.<sup>225</sup>

## **HERE IS A STEP-BY-STEP OVERVIEW OF THE SCHAC HOUSING COMPLAINT PROCESS IN SOUTH CAROLINA:<sup>226</sup>**

### **STEP 1: Intake.**

First, to file a housing discrimination complaint, you should contact the SCHAC by phone, in writing, or in person to speak with a Housing Intake Investigator. This must be done within 180 days of when the discriminatory act you are reporting took place.<sup>227</sup>

Contact Information:

- *By phone:* (803) 737-7800
- *By mail or in person:*
  - SC Human Affairs Commission
  - 1026 Sumter Street, Suite 101
  - Columbia, SC 29201

The Housing Intake Investigator will explain the process further and will help determine if you have a basis to file a complaint.

Additionally, as a part of this initial intake process, you will need to file a Pre-Complaint Questionnaire with the SCHAC. The questionnaire can be found online at the following website: <https://sc.accessgov.com/humanaffairs/Forms/Page/humanaffairs/fairhousing/0>. At this time, there is no mail-in option for the questionnaire, but you can contact the SCHAC with questions at (803) 737-7800.

**NOTE:** It is very important that you provide an up-to-date phone number where you can be reached!

### **STEP 2: File the Formal Complaint.**

If your complaint is accepted for investigation, the SCHAC investigator will draft the complaint and ask for you or your representative to sign the complaint. This formal complaint is then served on the "Respondent" (the person or entity that you have made the allegation against) with information about their rights and obligations under the law.<sup>228</sup> The Respondent (or "responding landlord") may file an answer to the complaint to be included in the record.<sup>229</sup>

If there is also federal law that would protect you, then the formal complaint is also filed with the United States Department of Housing and Urban Development (HUD). Note: HUD usually accepts SCHAC's findings with respect to the alleged discrimination.

<sup>224</sup> *How to File a Housing Complaint*, S.C. HUM. AFFAIRS COMM., <https://schac.sc.gov/housing-discrimination/how-file-housing-complaint>.

<sup>225</sup> S.C. Code Ann. § 31-21-120(E).

<sup>226</sup> *See How to File a Housing Complaint*, S.C. HUM. AFFAIRS COMM., <https://schac.sc.gov/housing-discrimination/how-file-housing-complaint>.

<sup>227</sup> S.C. Code Ann. §§ 31-21-120(A), (B).

<sup>228</sup> *Id.* at (A).

<sup>229</sup> *Id.* at (B).



### STEP 3: Investigation Period.

SCHAC must begin investigating within 30 days of receiving your complaint and decide within 100 days if it will file a lawsuit on your behalf.<sup>230</sup>

SCHAC has the authority to take depositions, issue subpoenas and interrogatories and seek Temporary Restraining Orders when appropriate.<sup>231</sup>

If the investigative findings do not show a violation of the law, the SCHAC will close the case. If the SCHAC finds a violation, continue to STEP 4.

**NOTE:** If at any time there are other local housing rights equivalent to the rights and remedies of the South Carolina Fair Housing Law, the SCHAC must notify the related local agency of the complaint/violation. This, however, does not apply to complaints that were referred to the SCHAC by HUD.<sup>232</sup>

### STEP 4: Mediation (a.k.a. “Conciliation”)

If the SCHAC’s investigation shows that *there was a violation of fair housing law*, then it will try to schedule formal mediation/conciliation conferences between the SCHAC’s representatives, you, and the responding landlord.<sup>233</sup>

During the mediation/conciliation conference, the SCHAC presents information supporting its belief that there has been a violation and explores options to resolve the complaint.

If formal mediation/conciliation fails, the SCHAC will then have to decide whether or not to order a hearing.<sup>234</sup>

- Possible Outcome #1: If the SCHAC determines that you have been discriminated against (that your complaint has “merit”), and that the discrimination cannot be resolved through mediation, the SCHAC will order a hearing and will require the Respondent to respond to the complaint. Either you or the Respondent may elect to have the case decided by civil action (lawsuit) instead. If this happens, the SCHAC will have 30 days to file and maintain a civil case on your behalf.<sup>235</sup> (Continue to STEP 5 below).
- Possible Outcome #2: If the SCHAC decides not to file a lawsuit (or takes longer than 100 days to file the lawsuit), the SCHAC must give you a written notice with the following information: (1) SCHAC’s decision regarding your complaint, and (2) the reasons for the SCHAC’s decision. You have the right to then bring your case to court within 90 days or within one year of the original discriminatory action, whichever date is later.<sup>236</sup>

### STEP 5: Commission Hearing or Civil Litigation

If you or the responding landlord elect to litigate the case, it will be heard in civil court.<sup>237</sup>

If neither you or the responding landlord make the election to litigate in civil court, the Commission will elect a hearing panel of 3 SCHAC Commission members to hear the complaint.<sup>238</sup> Your case must be represented by SCHAC or by a lawyer you might choose to represent you in the hearing.<sup>239</sup> (For a list of legal aid organizations in South Carolina that specialize in housing cases, see Appendix C on [PG 81](#).) The hearing panel will make a decision based on majority vote, and the party that wins the hearing can apply for an award of reasonable attorneys fees and costs.<sup>240</sup> If you are not happy with the outcome of the hearing, you can apply for a review of the hearing, and introduce new evidence to the hearing panel within 14 days of the decision, or you can appeal the decision in an Administrative Law Court within 30 days of receiving the decision.<sup>241</sup>

### STEP 6: Court Remedies & Possible Outcomes.

If the lawsuit is successful (meaning the court finds that the landlord discriminated against you), you may be awarded some or all of the following remedies:

1. *actual money damages* (to compensate you for your losses);
2. *punitive damages* (to punish the landlord for committing illegal discrimination);
3. *injunctive relief* (ordering the landlord to stop discriminating or take some other action, such as changing its screening procedures or providing you with housing); AND/OR

<sup>230</sup> *Id.* at (A), (E).

<sup>231</sup> S.C. Code Ann. § 31-21-110.

<sup>232</sup> S.C. Code Ann. § 31-21-120(C).

<sup>233</sup> S.C. Code Ann. § 31-21-120(A).

<sup>234</sup> S.C. Code Ann. § 31-21-130(A).

<sup>235</sup> *Id.* at (C).

<sup>236</sup> *Id.* at (B).

<sup>237</sup> S.C. Code Ann. § 31-21-140(A).

<sup>238</sup> S.C. Code Ann. § 31-21-130(G).

<sup>239</sup> *Id.* at (H).

<sup>240</sup> *Id.* at (M).

<sup>241</sup> *Id.* at (O).





4. *attorneys fees and costs* (to reimburse the SCHAC or a private attorney for the costs of the lawsuit).<sup>242</sup>

Remember: if HUD (the federal fair housing agency, see [PG. 8](#)) also has jurisdiction (legal authority) over your housing complaint, then the SCHAC will also file your complaint with HUD at the same time.

## **OPTION 2: FILING A FEDERAL ADMINISTRATIVE COMPLAINT WITH HUD.**

The procedures and potential relief of filing an administrative complaint with HUD are basically the same as filing an administrative complaint with SCHAC (see [PG. 95](#) on how to file state housing discrimination complaint with the SCHAC). For more information on filing a housing discrimination complaint with HUD, visit the following website: <https://www.hud.gov/fairhousing/fileacomplaint>.

### ***How much time do I have to file a complaint after the discriminatory act occurs?***

You have *1 year* after the discriminatory practice occurs to file your complaint with HUD.<sup>243</sup>

### ***How long does HUD have to respond and investigate?***

HUD has *100 days* to determine if there is “reasonable cause” to believe the discrimination occurred.<sup>244</sup> Within these 100 days, HUD *must try to facilitate a conciliation agreement* (meaning an agreement that solves the problem) between you and the landlord who discriminated.<sup>245</sup>

### ***Will HUD ever give special treatment to my housing discrimination complaint over other ones?***

HUD gives special treatment in 2 types of cases:

- **Special Case #1:** If HUD decides that a court must act quickly, it can refer your case to the U.S. Department of Justice (U.S. DOJ), which must then file a civil enforcement action for temporary or permanent injunctive relief pending a final disposition on the case.<sup>246</sup> This civil action doesn’t stop the administrative proceedings; it just tries to create a solution more quickly when it’s deemed necessary.
- **Special Case #2:** If your complaint has to do with the legality or illegality of any *zoning or other land use law*, then HUD must refer it to the U.S. DOJ for civil prosecution.<sup>247</sup> HUD must then file either a charge against the respondent, or dismiss the complaint.<sup>248</sup>

## **OPTION 3: YOU CAN FILE A CIVIL LAWSUIT DIRECTLY IN STATE OR FEDERAL COURT—DEPENDING ON WHAT KINDS OF LEGAL VIOLATIONS YOU ARE ALLEGING.**

You may file a civil state or federal lawsuit under *either* or *both* federal law (e.g., the FHA) and state law (e.g., the South Carolina Fair Housing Law).

1. Under federal Law: Under the FHA, you must file your lawsuit within 2 years of the discriminatory act itself OR within 2 years of the landlord violating a mediation/conciliation agreement that HUD or SCHAC had facilitated for you (refer back to [PG. 96](#) above).<sup>249</sup>
2. Under state law: South Carolina Fair Housing Law, you must file your lawsuit within 1 year of the discriminatory act.<sup>250</sup> If you are able to do so, talk to an attorney about your options and timelines as soon as possible after the discrimination occurs (see a list of housing legal aid providers in South Carolina in Appendix C on [PG. 81](#)).

### ***What remedies are available to me in a state or federal lawsuit?***

If the lawsuit is successful (meaning the judge finds that the landlord discriminated against you), you may be awarded some or all of the following remedies:

- *actual money damages* (to compensate you for your losses);
- *punitive damages* (to punish the landlord for committing illegal discrimination);

<sup>242</sup> S.C. Code Ann. § 31-21-140(B).

<sup>243</sup> 42 U.S.C. § 3610(a)(1)(A)(i).

<sup>244</sup> *Id.* at (a)(1)(B)(iv), (g)(1).

<sup>245</sup> *Id.* at (b).

<sup>246</sup> *Id.* at (e).

<sup>247</sup> *Id.* at (g)(2)(C).

<sup>248</sup> *Id.* at (g)(3).

<sup>249</sup> 42 U.S.C. § 3613(a).

<sup>250</sup> S.C. Code Ann. § 31-21-140(A).



- *injunctive relief* (ordering the landlord to stop discriminating or take some other action, such as changing its screening procedures or providing you with housing); AND/OR
- *attorney's fees and costs* (to reimburse the SCHAC or a private attorney for the costs of the lawsuit).<sup>251</sup>

**OPTION 4: The U.S. Department of Justice (U.S. DOJ) may also file a complaint—on the behalf of their government agencies OR on your behalf.**

The U.S. DOJ may file a civil lawsuit in federal court if there is reasonable cause to believe that:

1. any person or group is engaged in a pattern or practice of unlawful acts,
2. or (2) the denial of federal or state housing rights is an issue of “general public importance.”<sup>252</sup>

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<sup>251</sup> 42 U.S.C. § 3613(c); S.C. Code Ann. § 31-21-140(B).

<sup>252</sup> 42 U.S.C. § 3614(a).



## APPENDIX I

### Rural development (RD) grievance procedures

The grievance procedures for Rural Development (RD) housing are different from most other government-assisted housing programs. Here is an overview of how it works if you live in RD housing:

- When a grievance is filed, regulations require the owner of the multifamily property (or owner's representative) to offer to meet informally with the denied applicant within 10 calendar days to resolve the grievance.<sup>253</sup>
- If the informal meeting fails to resolve the issue, the owner must file a report summarizing the problem to the United States Department of Agriculture (USDA) and the applicant within 10 calendar days.<sup>254</sup>
- The applicant (you) may submit a summary of the problem to USDA.<sup>255</sup>
- After you get a summary of the problem, you must file a written request for an informal review hearing within 10 calendar days.<sup>256</sup>
- After you request the informal review hearing, a hearing panel will be selected. You and the owner of the multifamily property may agree on a hearing officer, *or* you may each appoint one member of a 3-person panel, and those two hearing officers choose the third officer. If you and the owner *cannot agree within 30 days* on the two hearing officers, USDA will give you notice and appoint a person to act as the sole hearing officer. The USDA may not choose a hearing officer that was selected by either you or the owner so that the hearing remains fair.<sup>257</sup> If you prefer not to go through the process of selecting the hearing panel, you may instead request that the USDA approve the hearing panel.<sup>258</sup>
- After the hearing panel is selected, the hearing will be scheduled within 15 days.<sup>259</sup>
- The hearing officer or panel must prepare a written decision based on the facts presented in the hearing within 10 calendar days after the hearing.<sup>260</sup>
- After the decision is made, the hearing officer or panel must send a copy of the decision to you, the property owner, and the USDA.<sup>261</sup>
- Unless the USDA replies that the decision is not in line with USDA's policies, the decision is final and both you and the owner must follow or stop any actions written in the final written decision.<sup>262</sup>

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<sup>253</sup> 7 C.F.R. § 3560.160(f).

<sup>254</sup> *Id.* at (f)(3).

<sup>255</sup> *Id.*

<sup>256</sup> *Id.* at (g)(1).

<sup>257</sup> *Id.* at (g)(2).

<sup>258</sup> *Id.* at (g)(3).

<sup>259</sup> *Id.* at (g)(5).

<sup>260</sup> *Id.* at (h)(5)(i)(2).

<sup>261</sup> *Id.* at (h)(5)(i)(3).

<sup>262</sup> *Id.* at (h)(5)(i)(4)-(5).