

MASSHOUSING
REQUIRED MODIFICATION TO TENANT SELECTION PLAN

June 1, 2015

TO: Multi-Family Owners and Management Agents:

If you own or manage an affordable housing development financed by MassHousing and currently subject to a MassHousing Regulatory Agreement:

Pursuant to the attached notice, you are required to execute and submit to MassHousing for approval a Modification to Tenant Selection Plan, in the attached form, for each MassHousing-financed development.

Briefly, the Modification prescribes additional ways in which application forms must be made available to potential applicants. The Modification further requires, in connection with the reopening of a waiting list, that a lottery or other random selection procedure be used to determine resident selection or waiting list placement. Such lottery or random selection procedure must be conducted in accordance with DHCD Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines, and/or by any applicable state and federal guidelines for the administration of lotteries for multifamily affordable rental housing units, subject to applicable Fair Housing requirements. Procedures for a lottery and the application period must be developed by the Agent and submitted to MassHousing for approval at least sixty (60) days prior to reopening of the waiting list. The use of a lottery or random selection procedure for placement of applicants may be waived if determined by MassHousing, in advance, to be unduly burdensome or impracticable.

If you own or manage an affordable housing development receiving project-based Section 8 rental subsidy for which MassHousing is Section 8 contract administrator, but without a MassHousing mortgage loan and not subject to a MassHousing Regulatory Agreement:

The attached notice contains important guidance concerning problems relating to availability of applications and the re-opening of waiting lists. MassHousing strongly recommends that each development modify its tenant selection plan to require (i) adequate notice and availability of applications, and (ii) in connection with the re-opening of waiting lists, the use of an extended application period, followed by a lottery or other random selection process through which applicants will be placed on the waiting lists, unless it is found to be unduly burdensome or impracticable.

Should you have any questions concerning this requirement, please contact your MassHousing Asset Manager.

EMAIL BLAST

PROCEDURES FOR RESIDENT SELECTION FOLLOWING RE-OPENING OF WAITING LISTS

June 1, 2015

Dear Multi-Family Owners and Management Agents:

Over the past few years, MassHousing has become increasingly aware of problems with the use of chronologically based (or “first-come, first-served”) application procedures and waiting lists at housing developments in circumstances where waiting lists are closed and then re-opened. This typically occurs with developments receiving project-based Section 8 or other “deep” rental subsidies. In these instances, because of the underlying demand for such units, there is a race among applicants to file their applications early in order to secure a more favorable place on the waiting list. Also, there is often a limited acceptance period for applications, usually as a result of the overwhelming response anticipated following public notices that a development will begin accepting applications. In addition, there is often little effort to make applications readily available to potential applicants except by personal visit to the development’s management office. These practices serve to create substantial hurdles for persons with disabilities (including and together with elders, working families, families with children and others), who are generally at a significant disadvantage in obtaining applications and filing them quickly enough to secure a reasonable place on the waiting list for selection as a tenant.

On November 28, 2014, the Assistant Secretary for Housing, Federal Housing Commissioner issued the attached HUD Notice H 2014-16 (Waiting List Administration) (the “HUD Guidance”) to provide guidance to Contract Administrators, Multifamily Owners and Management Agents on this issue. By its terms, the HUD Guidance, applicable to most of the HUD multifamily affordable housing programs, “does not mandate new practices but rather provides additional options for owners in their waiting list administration to further ensure fair housing compliance.”

The HUD Guidance, after noting an owner’s obligation to establish an application process that treats applicants equitably, reminds owners that any re-opening of waiting lists requires notice in compliance with the development’s HUD approved Affirmative Fair Housing Marketing Plan, as well as HUD fair housing requirements. The HUD Guidance cautions against opening waiting lists and accepting applications for limited periods, and suggests “the use of a lottery or other random choice technique to select which applicants will be placed and to determine the order of these applicants will be placed on a waiting list.”

In addition, the Massachusetts Department of Housing and Community Development (“DHCD”), as part of its Affirmative Fair Housing Marketing and Resident Selection

Plan Guidelines (updated May 2013, copy attached) (the “DHCD Guidelines”)¹, generally requires resident selection based on a lottery following an extended application period. A “first-come, first serve” procedure is not allowed under the DHCD Guidelines unless it can be shown that a “lottery or other random selection procedure would be unduly burdensome or impracticable.”

The DHCD Guidelines further specify the need for advertising and outreach efforts to identify locations where the application can be obtained, and that applications must be made available at wheelchair accessible locations, which must also be public unless otherwise approved, including one that has some night hours; such as a public library. The Guidelines require that advertisements and other marketing materials shall include a telephone number, as well as the TTY/TTD telephone number, that persons can call to request an application by mail, and forbid any requirements that applicants appear in person in order to receive or submit applications or indications that they will have an advantage over applicants who do not appear in person.

If you own or manage an affordable housing development financed by MassHousing and currently subject to a MassHousing Regulatory Agreement:

In response to this issue, and in order to avoid the potential for fair housing violations, all MassHousing-financed developments must execute the attached Modification to Tenant Selection Plan to require (i) adequate notice and availability of applications, and (ii) in connection with the re-opening of waiting lists, the use of an extended application period, followed by a lottery or other random selection process through which applicants will be placed on the waiting lists, unless otherwise determined by the Director of Rental Management to be unduly burdensome or impracticable.

These new requirements are in addition to existing obligations under the MassHousing model Tenant Selection Plan, which require Agents (i) to obtain written approval from MassHousing prior to closing a waiting list; and (ii) to publish and post notices stating that the list will be closing and that applications will no longer be accepted. Also, the status of waiting lists (i.e. whether open or closed) must be reported to (i) the Massachusetts Accessible Housing Registry (MassAccess) and (ii), if the development is located within the Boston Metropolitan Statistical Area, to the Boston Fair Housing Commission’s Metrolist (Metropolitan Housing Opportunity Clearing House).

Completed Modifications should be submitted to the MassHousing Asset Manager for approval not later than August 1, 2015. All tenant selection plans approved by MassHousing after this date must include these same provisions.

¹ The DHCD Guidelines are applicable to privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (“SHI”), which include developments receiving (i) federal or state low income housing tax credits under the Qualified Allocation Plan, (ii) funds under one of the Commonwealth’s subordinate financing programs for affordable housing (i.e. HOME Investment Partnership Program, Housing Stabilization Fund (HSF), Affordable Housing Trust Fund (AHTF), Community Based Housing (CBH), Housing Innovation Fund (HIF), etc.)

If you own or manage an affordable housing development receiving project-based Section 8 rental subsidy for which MassHousing is Section 8 contract administrator, but without a MassHousing mortgage loan and not subject to a MassHousing Regulatory Agreement:

In response to this issue, and in order to avoid the potential for fair housing violations, MassHousing strongly recommends that each development modify its tenant selection plan to comply with the DHCD Guidelines or otherwise to require (i) adequate notice and availability of applications, and (ii) in connection with the re-opening of waiting lists, the use of an extended application period, followed by a lottery or other random selection process through which applicants will be placed on the waiting lists, unless it is found to be unduly burdensome or impracticable.

Should you have any questions concerning this notice, please contact your MassHousing Asset Manager.