

PUBLIC HOUSING BARRING HYPOTHETICAL

Ms. Johnson, the sole person on the public housing lease, is a 76 year old resident in a one-bedroom apartment at Pleasant Trees, a family development. Ms. Johnson has a 21 year old grandson named Mike who lives with his girlfriend across town in a luxury apartment. Mike is Ms. Johnson's favorite grandson because he visits her at least once a week and brings her groceries and prescription that he picks up for her from the pharmacy.

Most days after visiting his grandmother, Mike will hang around the Pleasant Trees Development. While hanging around Pleasant Trees, Mike is engaging in the sale of illegal drugs on the development. Over a three month period, the local police department observes Mike engaging in his illegal trade.

One summer day at the beginning of the month, the police stop Mike while he is hanging out in the entryway to a multi-family building at Pleasant Trees. The police perform a "pat down" and recover 9 ziplock bags of crack cocaine. Mike is arrested and charged with Possession With Intent to Distribute Cocaine and he is released on bond awaiting his criminal trial. The police advise the local Public Housing Authority of Mike's arrest.

The Saturday after Mike's arrest, the manager of Pleasant Trees observes Mike walking towards Ms. Johnson's apartment with grocery bags and serves him with a Bar Notice. The Bar Notice states that Mike is permanently barred from the Pleasant Trees development including Ms. Johnson's apartment because he was arrested for a drug crime on public housing property.

Ms. Johnson and Mike are upset about the issuance of the Bar Notice. The Public Housing Authority wants to increase public safety at Pleasant Trees and is utilizing Bar Notices as a tool to reduce drug crimes at the development. Public Housing Authority supports the issuance of the Bar Notice to Mike.

**PUBLIC HOUSING BARRING HYPOTHETICAL
Legal Issues**

What authority, if any, does a Public Housing Authority have to bar people from public housing developments?

How long should Mike be barred from Pleasant Trees?

Should Mike be barred if he is acquitted of the drug crime?

What appeal rights should Mike have concerning the Bar Notice?

What appeal rights should Ms. Johnson have concerning the Bar Notice?

Does Ms. Johnson have a reasonable accommodation request?

What responsibilities does the Public Housing Authority have to the residents of Pleasant Trees?

Should Mike be barred from Pleasant Trees if he was selling drugs on the public sidewalk?

What notice from the Public Housing Authority, if any, should Ms. Johnson receive concerning the Bar Notice?

Should the Public Housing Authority publish a public list of persons barred from Pleasant Trees?

Public Housing Barring Case Law

Virginia v. Hicks, 123 S. Ct. 2191 (2003)

Virginia v. Hicks, 596 S.E.2d 74 (Va. 2004)

De La O et al. v. Housing Authority of the City of El Paso, 316 F. Supp.2d 481 (W.D. Tex, 2004)

State of Ohio v. Scott, 2004 WL 103175 (Ohio App. 2. Dist. Jan. 23, 2004)

Thompson v. Ash, 250 F.3d 399 (6th Cir. 2001)

City of Bremerton v. Widdell, 51 P.3d 733 (Wash. 2002)

Daniel v. City of Tampa, 38 F.3d 546 (11th Cir. 1994)

Diggs v. Housing Authority, 67 F.Supp.2d 522 (D. Md. 1999)

Underwood v. Greater Gadsden Housing Authority, 789 So.2d 867 (Ala.Civ. App. 2000)

Public Housing Barring Articles

Kept Out: Responding to Public Housing No Trespass Policies, 38 Harvard Civil Rights-Civil Liberties Review 215 (2003)

If you have any questions, please contact Mitzie Smith at msmith@dchousing.org.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of District of Columbia Housing Authority (“DCHA”) hereby gives notice of its intent to adopt the following amendment to Chapter 96 of Title 14 DCMR, “Public Housing: Barring Policy,” in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The new chapter will be an instrumental tool in providing safe and secure communities for DCHA residents by permitting unauthorized non-resident persons to be barred from DCHA properties and permit any individual who violates a Bar Notice to be arrested for unlawful entry. This action is based on DCHA’s statutory authority, found at D.C. Code § 6-203, to bar unauthorized persons from DCHA property.

Proposed Amendment: Delete the present language of Chapter 96 in its entirety and replacing it with the new Chapter 96 to read as follows:

CHAPTER 96 PUBLIC HOUSING: BARRING POLICY

9600 BARRING POLICY

- 9600.1 The DCHA’s mission is to provide properties that are safe, decent, and sanitary dwelling units in which families may live. In addition, DCHA has the right to refuse entrance or access to any of its properties to any unauthorized person as defined in § 9600.2.
- 9600.2 No person may enter upon a DCHA property unless that person is authorized to be on the DCHA property. The only persons authorized to be on a DCHA property are:
- (a) Residents of the DCHA property;
 - (b) Members of the resident’s household;
 - (c) A resident’s guests, except as provided in § 9600.5;
 - (d) Persons authorized under § 9600.3;
 - (e) Organizations with a license to use a portion of a DCHA property for specified purposes, and including the invitees of a licensee;
 - (f) Persons employed by or doing business with DCHA at the DCHA property;
 - (g) Persons engaged in the legal or law enforcement community who are engaging in activities directly related to civil or criminal

matters, such as process servers, investigators, attorneys or other individuals legitimately on a DCHA property for such purpose; and

- (h) Persons authorized after consultation with the Resident Council as provided under § 9600.3 below.

9600.3 Any person, not otherwise authorized under § 9600.2, seeking access to a DCHA property for legitimate business or social purposes shall be admitted as follows:

- (a) Any such person or organization shall submit a written request to the property management office of the respective DCHA property to which the person is seeking access.
- (b) DCHA, in consultation with the resident council of the respective DCHA property, shall review the request and respond to the request in writing within ten (10) business days of the request stating approval or disapproval of the request. If DCHA has not responded within ten (10) business days, the request is deemed approved.

9600.4 Any person not identified in § 9600.2 as an authorized person may be subject to the issuance of a Bar Notice for the period of time specified in the Bar Notice, not to exceed five years.

9600.5 Resident's guests may be subject to the issuance of a Temporary or Extended Bar Notice barring them from a specified DCHA property pursuant to the following:

- (a) Any resident's guest who engages in any activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents or DCHA employees or violates DCHA policy is an unauthorized person and may be barred for a Temporary or Extended period of time as specified in sub-sections (b) and (c) below.
- (b) A Temporary Bar Notice shall remain in effect for the first infraction for sixty (60) days, a second infraction for six (6) months, and third infraction for one (1) year for the following infractions:
 - (1) Entering DCHA property without presenting identification or properly signing the visitor log, unless identified as a guest by the resident they are visiting;

- (2) Being on DCHA property at a location or unit not specified on the guest pass or visitor log, unless the person is on the most direct route to or from such location, or accompanied personally by the resident being visited;
 - (3) Residing as an unauthorized occupant in a DCHA dwelling unit; or
 - (4) Engaging in excessively loud or disruptive conduct or otherwise disturbing the peace of DCHA residents or DCHA employees.
- (c) An Extended Bar Notice shall remain in effect for five (5) years for the following infractions:
- (1) Persons issued more than four (4) bar notices for activities identified in § 9600.5(b);
 - (2) Engaging in conduct that is dangerous to the health or safety of DCHA residents or DCHA employees;
 - (3) Engaging in activities involving illegal drugs, violence, weapons, theft, assault, and serious damage to property; and
 - (4) Persons evicted from DCHA property on the basis of such person's criminal or illegal activity.
- (d) Nothing contained in this Chapter shall prevent a guest of a DCHA resident from access or entry to the resident's dwelling unit for legitimate business or social purposes except as they may have been barred as provided in § 9600.5(b) or (c).
- (e) For purposes of this Chapter, a resident's guest is any individual who is an invitee of, and can identify by name and unit number, an individual who is a member of a household under lease with DCHA, and such individual is available and willing to accept the guest.

9600.6

Bar Notices shall be applicable at the following:

- (a) Bar Notices issued to unauthorized persons under § 9600.4 or Temporary or Extended Bar Notices issued to guests under § 9600.5 may only be issued to bar such individuals from a particular DCHA property.

- (b) Bar Notices may not be issued to bar persons from public streets or sidewalks, or from private property adjoining DCHA property.

9600.7 Bar Notices shall be served to persons pursuant to the following:

- (a) Personal delivery or attempted delivery in writing of Bar Notices shall be made to each person barred from a DCHA property.
- (b) The Bar Notice shall identify the basis for the issuance of the Bar Notice and the time period for which the person is barred from DCHA property. The Bar Notice shall reflect the date, method and manner of delivery upon the barred person. The Bar Notice does not have to be delivered to the person on DCHA property.
- (c) A copy of the Bar Notice issued to a resident's guest shall be provided to the resident, if the guest has identified the unit number and name of the resident. A resident may file a grievance pursuant to the provisions of Chapter 63 of this Title if the resident's guest has been barred.

9600.8 Bar Notices shall only be issued by the following persons:

- (a) Members of the DCHA Office of Public Safety including sworn officers and special police officers;
- (b) Members of the Metropolitan Police Department;
- (c) Members of cooperative law enforcement task forces as may be authorized by the Chief of DCHA Office of Public Safety; and
- (d) Private security providers contracted by DCHA or DCHA's agent.

9600.9 Bar Notices and Barring Policy information shall be made available as follows:

- (a) The DCHA Office of Public Safety shall keep copies of all Bar Notices and records of the expiration dates thereof;
- (b) A copy of the Barring Policy, as set forth in this Chapter, shall be provided to each applicant upon signing a lease with DCHA;
- (c) A copy of the Barring Policy, as set forth in this Chapter, shall be provided to the Resident Council for the DCHA property; and
- (d) A copy of the Barring Policy, as set forth in this Chapter, shall be available at the management office for each DCHA property.

- 9600.10 The issuance of a Bar Notice requires the following:
- (a) The barred person shall immediately leave the DCHA property from which the person was barred and not return to that DCHA property for the period the Bar Notice remains in effect.
 - (b) Should the barred person fail to leave the DCHA property after the issuance of the Bar Notice, or later returns to the DCHA property noted on the Bar Notice at any time while the Bar Notice is in effect, the person may be arrested for “unlawful entry” pursuant to D.C. Code § 22-3302 (2001 ed.) as amended.
- 9600.11 Any barred person may submit a written request for a temporary lift of a Extended or Temporary Bar Notice to the Chief of the DCHA Office of Public Safety.
- (a) The written request shall state the specific location and time period during which the barred person is seeking access, and the reason for the request of the temporary lift, including any documentation of a request for a reasonable accommodation.
 - (b) A temporary lift shall be for a period of not more than eight hours during one calendar day.
 - (c) A barred person may only be granted two (2) temporary lifts during any particular year of the imposition of a Bar Notice.
 - (d) Any barred person who commits a subsequent infraction on DCHA property during a period of a temporary lift shall be prohibited from requesting additional requests for temporary lifts during the remaining term of the Bar Notice.
 - (e) The Chief of DCHA Office of Public Safety shall review the request of temporary lift and respond in writing within ten (10) days of the submission.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599. Copies of these proposed rules may be obtained from the DCHA at that same address.

ANSWERS TO PUBLIC HOUSING BARRING HYPOTHETICAL

What authority, if any, does a Public Housing Authority have to bar people from public housing developments?

In Hicks, the Supreme Court upheld that a Public Housing Authority (PHA) may have a notice/barment policy. Specifically, the Court held that the Richmond Redevelopment and Housing Authority's notice/barment policy did not violate the First Amendment right to free speech and the notice/barment policy was not overbroad. In the Hicks' remand case, the Court concluded upon further review that the notice/barment policy did not impair the right to intimate association with family members. In Thompson, the Court even upheld the barment of an individual even though the PHA did not have a written barment policy (no formal set of written criteria).

In De la O and Daniels, the Courts held that the purpose of public housing is to offer affordable housing to the low income community, not to provide non-residents with a place to dispense political ideology. The First Amendment does not guarantee access to the property simple because it is owned or controlled by the government. There are types of government public property and public housing is a non-public forum which the First Amendment does not guarantee access.

How long should Mike be barred from Pleasant Trees?

There is no case law or U.S. Department of Housing and Urban Development (HUD) regulation which governs the content of a public housing barring policy including time limits for Bar Notices. PHAs and state and local legislatures have adopted various forms of public housing barring policy. Some examples of public housing barring policy time limits include the following:

District of Columbia Housing Authority - temporary bar notices (60 days – 1 year) and extended bar notices (5 years)

New York Housing Authority – permanent bar notices

Revere Housing Authority – bar notices (1 year)

Richmond Redevelopment and Housing Authority – permanent bar notices

What appeal rights should Mike have concerning the Bar Notice?

In Thompson, the Court held that the barred person had no protected liberty to visit family and friends on the PHA's premises and therefore had no right to procedural due process. Notwithstanding that there is no right to procedural due process for persons who have received a Bar Notice, some public housing barring policies have included appeal rights for the barred person such as the Knoxville Community Development Corporation. At the District of Columbia Housing Authority, a barred person may request temporary lifts of a Bar Notice under certain limited circumstances but has no right to appeal the issuance of the Bar Notice.

What appeal rights should Ms. Johnson have concerning the Bar Notice?

In State of Ohio, a tenant cannot validly invite a person to his/her PHA home in contravention of the PHA's trespass notice to a barred person. A public housing resident may not simply ignore a Bar Notice issued to a barred person if the resident has knowledge of the Bar Notice. However, pursuant to 24 CFR 966 Subpart B, a public housing resident may file a grievance concerning a PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status. It could be argued that a public housing resident could file a grievance concerning the issuance of Bar Notice to a resident's guest.

At the Revere Housing Authority, the PHA must consult with the resident prior to the issuance of a Bar Notice to the resident's guest. At the Kansas City MO Housing Authority and Frederick MD Housing Authority, a resident may request removal of relatives and guests from the barring list.

Does Ms. Johnson have a reasonable accommodation request?

Because Mike provided Ms. Johnson with her medication, there is a likelihood that she can request a reasonable accommodation. The PHA would have to review her request for reasonable accommodation and even if she is eligible for a reasonable accommodation, the PHA does not have to allow Mike to be the person to deliver the medication.

What responsibilities does the PHA have to the residents from Pleasant Trees?

In City of Bremerton, the PHA is mandated to provide affordable, sanitary, and safe housing to low income individuals pursuant to the U.S. Housing Act of 1937, 42 USC 1437 et seq. The government, no less than a private owner, "may control use of its property so long as the restriction is for a lawful non-discriminatory purpose." By excluding non-residents who engage in illegal or offensive conduct, the PHA is merely furthering its mandate by protecting the safety and well being of PHA residents which is legitimate government purpose.

Should Mike be barred from Pleasant Trees if he was selling drugs on the public sidewalk?

Public housing barring policy can only limit access to PHA property, not public space. PHAs and local governments have implemented unique measures to assist PHAs in combating criminal activity within public space of PHAs' premises. In Hicks, the City of Richmond transferred the streets within the public housing development to the PHA. The City of Richmond passed an ordinance to "privatize" the streets in a particular public housing development to combat crime and drug dealing which much of such activities were committed by non-residents. The ordinance also provided to close the streets for public use and the City of Richmond abandoned the streets. The deed from the City of

Richmond to the PHA also required that the streets be given “the appearance of closed streets, particularly at entrances, by posting signs.” Also, in Thompson, the City of Knoxville, leased the streets and sidewalks within the PHA developments to the PHA for one dollar a year.

What notice from the PHA, if any, should Ms. Johnson receive concerning the Bar Notice?

In Diggs, it mentioned that the PHA had a policy of notifying residents if their guest were issued a Bar Notice. This notice provision becomes instrumental if the PHA plans to pursue a lease violation against a resident for permitting entry on the PHA premises of a barred person. A resident would have to be notified that his/her guest is barred from the PHA premises prior to initiating any lease enforcement action against the resident. Notice to the public housing resident of the issuance of Bar Notices to his/her guest including the form of the notice can be addressed in the public housing barring policy.

Should PHA publish a public notice of persons barred from Pleasant Trees?

The publication of barred persons can also be addressed in the public housing barring policy. The following includes different approaches that PHAs have taken concerning public notice of barred persons:

- Frederick, MD Housing Authority** – post monthly updates of barred person log
- Kansas City, MO Housing Authority** - post monthly updates in the management office redacting the reason for the bar notice
- Revere Housing Authority** – requires posting of public housing barring log
- New York Housing Authority** – publishes barred person in monthly resident newsletter