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# Housing and Criminal Records

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# Presenter Contact Information

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614-241-2001  
Monday-Friday, 9:30 a.m. – 3:30 p.m.

# Topics Covered

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- Finding housing with a criminal record
- Housing subsidies and effect of criminal conviction on eligibility
- Evictions for criminal activity



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# **Finding Housing With a Criminal Record**

# Challenges

- Affordable rental housing shortage
  - More than 54,000 Central Ohioans pay more than half their income for housing costs
- Landlords disincentivized to make repairs
  - More demand than supply means landlords can find a new tenant who won't complain about bad conditions
- Eviction record/bad credit
  - The mere filing of an eviction is a barrier

# In not so shocking news...

Criminal convictions are a barrier to finding rental housing

- Background checks
- No prohibitions against refusing to rent to someone with a criminal conviction
- Some caselaw that refusal to rent to someone based on criminal charge without conviction is a violation of the Fair Housing Act
  - Race-based disparate impact
  - VERY difficult to prove in individual cases

# Certificate of Qualification?

- While CQEs help restored citizens access employment, no statutory scheme for Certificate of Qualification for Housing
- Record sealing/expungement might help but...
- Still may have to report conviction depending on wording of rental application
  - Lying on application could be cause for termination of tenancy or offer of tenancy in some circumstances





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**Housing Subsidies:  
Eligibility with a criminal  
conviction**

# Major Types of Subsidized Housing

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- Public Housing (PHA)
- Housing Choice Voucher (Section 8 voucher)
- Section 8 Project Based Housing
- Low Income Tax Credit Housing

In most federally subsidized housing, rent is based on tenant's income. Tenants generally pay 30% of income towards housing costs. Rent changes as income changes.

# Public Housing

- Rental unit owned and operated by PHA
  - Management may be contracted to private company
- First step in getting into public housing: Sign up to get on waitlist at local PHA
  - Some PHA waitlists only open at certain times. *Once on list, can take years to get called.*
- Once called from waitlist, must qualify to be placed
  - Lookback periods don't start until called from waitlist
- Periodic recertification & inspections through PHA

# Housing Choice Voucher

- Rent is partially paid by tenant, partially by a voucher issued by PHA.
- PHAs have a finite number of vouchers
- First step in getting a voucher: Sign up to get on waitlist at PHA. Waitlist is only open certain times.
- Once on waitlist, tenant may wait several years before getting called by PHA. If someone loses a voucher, next person on waitlist gets called.

# Housing Choice Voucher

- When called from waitlist, PHA makes sure the tenant qualifies for the voucher.
- Tenant then must find a landlord willing to rent to them and accept voucher payments.
- Rental unit must pass a PHA housing quality standards inspection.
- Tenant enters lease with private landlord. Voucher pays a portion of the monthly rent.
- Tenant must go to PHA periodically (usually once a year) to recertify that they are eligible.

# Specialty Vouchers

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- Shelter Plus Care vouchers – substance abuse recovery/mental health
- VASH – vouchers for veterans
- Some relaxed requirements, but generally follow Housing Choice Voucher Rules

# Section 8 Project Based Housing

- Privately owned apartment complexes that are required to rent units to low-income tenants.
- Complexes receive subsidy directly from HUD.
- Apply directly at the complex or with the management company.
- Eligibility and periodic recertification all done by the complex.

# Low Income Tax Credit Housing

- Funded by IRS through Ohio Housing Finance Agency.
- Privately owned apartment complexes agree to rent certain units in their buildings to lower-income tenants at set rental rates but **do not** offer subsidies.
- Required to accept Section 8 vouchers and follow certain restrictions regarding tenancies.
- In exchange for doing this, the owner of the building is awarded federal tax credits.
- Tenants can apply directly at the apartment community to get on waitlist.
- No rules from IRS on barring individuals with criminal records. Complex sets own rules.



# Applying for Subsidized Housing

- First step is to get on the waitlist, which is only open at certain times.
  - Different waitlists for different programs
- When a tenant is called from the waitlist they “apply” to be admitted into the subsidized program.
- The federal government and the local PHA and local subsidized complexes all have rules about when someone with a criminal conviction can be admitted or denied admission.

# Criminal History

- Very few absolute bars to accessing public housing/housing choice voucher due to criminal history
  - Conviction for the manufacturing of methamphetamines
  - Lifetime registration as sex offender through state
  - Household members *currently* using drugs and the pattern of illegal drug use threatens peaceful enjoyment of other residents

# Drug use in subsidized housing

- A public housing authority (PHA) must deny admission if tenant was previously evicted from federally assisted housing for drug-related criminal activity
  - Exception: if PHA determines that person who was evicted has successfully completed a supervised drug rehabilitation program
- PHA may prohibit admission if household member engaged in drug-related criminal activity during a “reasonable time” before admission

# Criminal Activity Lookback

- The Federal Government gives subsidized housing providers a wide range of latitude in setting rules for admission based on past criminal **convictions**
- Project Based Section 8 and LITC Complexes each have their own rules
  - A prohibition against criminal activity that disproportionately affects black or Hispanic applicants may be a Fair Housing violation

# Criminal Activity Lookback Public Housing

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Each PHA sets its own rules.

Columbus Metropolitan Housing Authority's  
Rules:

- Automatic denial for most criminal convictions within **one year** of applying
  - 5 years from date of conviction for certain crimes or eviction from PHA for drug related criminal activity
  - Distribution of drugs from PHA is an indefinite bar

# Criminal Activity Lookback Public Housing

CMHA will withdraw an application for public housing if there has been a conviction or guilty plea within the past five years for:

- Murder
- Child Molestation
- Arson
- Drug Related Crimes
- Resisting Arrest
- Rape
- Aggravated Threats/Menacing
- Domestic Violence
- Child Endangering
- Assault
- Petty Theft
- Recurring Prostitution

Involvement in a rehabilitation program can trigger reconsideration of withdrawal for convictions in column on right after 6-18 months

# Criminal Activity Lookback Housing Choice Vouchers

- Columbus Metropolitan Housing Authority  
HCV Administrative Plan
  - Automatic denial for drug-related and violent criminal convictions (from date of final eligibility determination) within last 3 years
  - Private landlords may have different requirements. Just because someone is eligible for a voucher doesn't mean a private landlord will rent to them.

# Shelter Plus Care Voucher

- Selection and Administration not always by PHA alone
- Relaxation of some criminal activity regulations
- For example, in Columbus
  - 3 year period of ineligibility for drug and violent criminal activity reduced to 1 year
  - Sex offender bar still stands, but all other prohibitions based on criminal activity waived





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# Evictions for Criminal Activity

# Relevant Statutes

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- R.C. 5321 – Landlord-Tenant Law
  - Rights, duties, and obligations of landlords and tenants in Ohio
- R.C. 1923 – Forcible Entry and Detainer
  - Eviction procedure

# Duties of tenants with criminal activity implications

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R.C. 5321.05

- Don't damage the property.
- Don't disturb the neighbors.
- Don't allow drug use in the rental unit.

Leases may impose additional tenant duties.

# Persons subject to eviction for criminal violation

- Landlord has actual knowledge or reasonable cause to believe tenant is committing drug offense on premises R.C. 1923.02(A)(6)(a)(i)
  - Warrant or conviction related to violation of R.C. 2925
  - Police letter to landlord re: drug distribution creating nuisance
- Registered sex offenders residing within 1,000 feet of a school. R.C. 1923.02(A)(14) and (15)

# Burden of Proof

- If no conviction, Plaintiff must prove that defendant engaged in criminal activity by a preponderance of the evidence
  - Criminal charge is not proof
- If tenant has already been convicted of committing crime on the property, entering conviction into evidence satisfies burden – no need to retry the criminal case

# Notice to Tenant

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- All landlords must give notice to leave premises at least three days before instituting eviction action – R.C. 1923.04
- Tenants with housing subsidies tied to the property have additional notice rights under federal law

# Three Day Notice to Leave and Criminal Activity

- Only notice requirement for private landlord
  - Section 8 voucher holders only get 3-day notice
- Landlord not required to state reason for eviction on 3-day notice
- If landlord does state reason, is limited to those reasons at eviction trial
  - Landlord can't give notice for non-payment only and then attempt to evict for criminal activity

# Project Based Subsidized Housing Termination

- Criminal activity by tenant, household member, guest or person under tenant's control
- May terminate for criminal activity that:
  - Threatens the health, safety or right of peaceful enjoyment of other residents or staff
  - Threatens the health, safety or right of peaceful enjoyment of persons residing in the immediate vicinity of premises.



# Project Based Subsidy

## Ten Day Notice to Leave

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- Federal regulations require that 10-day notices state with specificity the reason for eviction
  - Specificity = enough detail to enable the tenant to prepare a defense
  - Must include references to specific instances of conduct
- Tenants have right to request meeting with property management within 10 days to try and resolve issue before eviction filing

# Public Housing Termination for Criminal Activity

- Criminal activity that threatens the health, safety or peaceful enjoyment of other tenants, staff, or persons residing in immediate vicinity of premises
- Violent criminal activity
- Fugitive felons and parole violators
- Drug related crimes
  - Household member currently engaged in illegal drug use on or near premises
  - Pattern of illegal drug or alcohol use by household member that interferes with other residents enjoyment of premises
  - Any member of household has been convicted of manufacture/distribution of methamphetamine on the premises of any federally subsidized housing

# Public Housing

## Fourteen Day Notice to Leave

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- Federal regulations require that the 14-day notice state with specificity the reason for termination
- Generally, public housing residents have administrative hearing and grievance rights when served with a notice of termination of tenancy
  - Hearing and grievance rights do not apply in terminations for criminal activity, including drug related criminal activity