

QUINAULT INDIAN NATION QUINAULT HOUSING AUTHORITY

Criminal Policy



Quinault Housing Authority Criminal Policy

SECTION I. PURPOSE

- A. The purpose of this policy is to assure a safe environment for all persons residing in housing assisted by the Quinault Housing Authority.
- B. It is the intent of this policy to bar participation from all Quinault Housing Authority programs of all persons engaged in drug-related criminal activity, criminal activity involving the use or attempted use or threat of use of physical force or other violence, including sexually violent crimes, whether on or off Quinault Housing Authority premises.
- C. This policy is incorporated by reference into all Quinault Housing Authority leases and all Quinault Housing Authority homebuyer agreements.

SECTION II. APPLICABILITY

This policy applies to all QHA programs and to all QHA premises, whether rental units or homebuyer units, wherever situated.

SECTION III. DEFINITIONS

- A. "QHA" means the Quinault Housing Authority.
- B. "Nation" means the Quinault Indian Nation.
- C. "Sexually violent crime" means a felony under Title 18 of the U.S. Code, Chapter 109A (including aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, abusive sexual contact, sexual abuse resulting in death), as now enacted or hereafter amended. It shall not be necessary that the individual who committed such an offense be an Indian or that the offense have been committed in Indian country in order for the offense to be a "sexually violent crime."
- D. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession of a controlled substance, whether on or off QHA premises. "Drug-related criminal activity" includes offenses for which only a civil penalty may be assessed but does not include the manufacture, sale, distribution, use or possession of a controlled substance that has been legalized pursuant to a law of the Nation. "Drug-related criminal activity" includes the illegal manufacture, sale, distribution, use or possession of a controlled substance by a homebuyer, tenant or participant in the rental assistance program or by a resident other than a homebuyer, tenant or participant in the rental assistance program, whether on or off QHA premises. "Drug-related criminal activity" also includes the illegal manufacture, sale, distribution, use or possession of a controlled substance by a visitor or guest on Quinault Housing Authority premises or the premises of a rental assistance unit, or such an individual being under the influence of a controlled substance while on QHA premises.
- E. "Controlled substance" is a substance included in Schedules I, II, III, IV or V of the Controlled Substance Act, 21 U.S.C., 801, et seq. These controlled substances include but are not limited to cocaine, opiates, amphetamines and phencyclidine (PCP). A copy of the schedules of controlled substances as of April 1, 2009, is attached hereto. Any modifications to such schedules shall be considered to be a modification of this policy.

- F. "QHA premises" includes all housing units, whether rental or homebuyer, all common areas, all administrative areas and all lands, buildings and grounds owned by or leased to the QHA or any homebuyer under any QHA housing program.
- G. "Date of application for admission" shall mean the date application is made for an available rental unit or homebuyer unit, whether or not constructed, and shall not include any period in which a person is on a waiting list for housing. "Date of application for admission" shall also mean the date application is made for available assistance under the rental assistance program.

SECTION IV. INELIGIBILITY FOR ADMISSION

A. Eviction or Termination or Prior Conviction

1. Any person who has been who has been convicted in any jurisdiction of a sexually violent crime is ineligible for admission to any QHA program at any time. Any such person is also ineligible to reside in QHA housing at any time.
2. Any person who was a member of a household evicted by any Tribally Designated Housing Entity or any public housing authority, or terminated from any Section 8 or other housing voucher or rental assistance program, or whose homebuyer, lease agreement, Section 8 agreement or rental assistance agreement with any Tribally Designated Housing Entity or any public housing authority has been terminated because of drug-related criminal activity, criminal activity involving the use or attempted use or threat of use of physical force or other violence (other than a person who has been convicted of a sexually violent crime under section 1 above), is ineligible for admission to any QHA program for a seven-year period beginning on the date of such eviction or termination. Any such person is also ineligible to reside in QHA housing for a seven-year period beginning on the date of such eviction or termination.
3. Any person who has been convicted in any jurisdiction of an offense (including levy of a civil assessment) because of criminal activity involving the use or attempted use or threat of use of physical force or other violence (other than a person has been convicted of a sexually violent crime under section 1 above), is ineligible for admission to any QHA program for a seven-year period beginning on the date of such conviction. Any such person is also ineligible to reside in QHA housing for a seven-year period beginning on the date of such conviction.

B. Positive Test Results or Failure or Refusal to Take Test

1. Any person who is required to take drug tests required under this policy, and who fails or refuses to take any such test or tests, shall be ineligible for admission to or participation in any QHA program for a seven-year period beginning on the date that any such test was to have been taken. Any person with a verified positive test result for a controlled substance (other than as could have resulted from a legally prescribed medication as determined by a licensed physician or for a substance that has been legalized pursuant to a law of the Nation) shall be ineligible for admission to or participation in any QHA program for a seven-year period beginning on the date that such test was taken.
2. Any homebuyer or tenant and any other person living with a QHA program participant with a verified positive test result for a controlled substance (other than as could have resulted from a legally prescribed medication as determined by a licensed physician or for a substance that has been legalized pursuant to a law of the Nation) shall be considered to have engaged in drug related criminal activity during the term of the tenancy of the homebuyer or tenant.

SECTION V. MANDATORY DRUG TESTING

- A. Drug testing shall be required of every applicant for QHA housing and every individual who is eighteen years of age or older who will be living with the applicant. Drug testing shall also be required of every individual who is eighteen years of age or older and who joins an established household living in housing assisted by the QHA. These testing requirements shall apply on any occasion when any one or more persons in an existing QHA household applies for transfer to a QHA program other than the program in which the household is currently participating.
- B. Drug testing may also be required of any homebuyer or tenant, and any other person living with a QHA program participant where the QHA has reasonable suspicion to believe that such individual has been in engaging in or is engaging in drug related criminal activity during the term of the tenancy of the homebuyer, tenant or participant. No reasonable suspicion testing shall take place without the written concurrence of one of the following:
 - (a) legal counsel for the QHA,
 - (b) legal counsel for the Nation,
 - (c) the Tribal prosecutor or a deputy or associate prosecutor for the Nation, or
 - (d) a judge of the Quinault Tribal Court.
- C. Both the timing of the testing and the specific tests to be required shall be at the sole discretion of the QHA.

SECTION VI. WAIVER OF INELIGIBILITY

- A. The Board of Commissioners of the QHA may waive the ineligibility of any person who is ineligible for admission to or participation in a QHA program if:
 - 1. The person demonstrates successful completion of a supervised drug rehabilitation program or other rehabilitation program approved by the QHA, including successful completion of any required follow-up treatment plan or other follow-up requirements;
 - 2. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drug use is no longer in the household.
- B. Any person desiring to have his or her ineligibility waived shall have the burden of showing that the requirements for waiver have been met.
- C. Nothing in this section shall require waiver of ineligibility under any circumstances.
- D. The Board of Commissioners, by separate resolution or board action may delegate the authority to waive the ineligibility for admission to any one or more of its members, to the Executive Director of the QHA, to any other suitable employee of the QHA or to any combination of the foregoing.

SECTION VII. EVICTION OR TERMINATION

- A. Eviction - Tenants
 - 1. Any tenant who has engaged in drug-related criminal activity, criminal activity involving the use or attempted use or threat of use of physical force or other violence or a sexually violent crime during the term of his or her tenancy, whether on or off QHA premises, or who has a resident of his or her household who has engaged in such activity on or off QHA premises, or

who has had a visitor or guest who has engaged in such activity on the premises or who has been under the influence of a controlled substance (other than as could have resulted from a legally prescribed medication as determined by a licensed physician or for a substance that has been legalized pursuant to a law of the Nation) on the premises shall be evicted.

2. Any tenant who has failed or refused to take any test or tests required under this policy or who has a resident of his or her household who has failed or refused to take any such test or tests shall be evicted.

B. Termination - Homebuyers

1. The homebuyer agreement of any person who has engaged in drug-related criminal activity, criminal activity involving the use or attempted use or threat of use of physical force or other violence or a sexually violent crime during the term of the agreement, whether on or off QHA premises, or who has a resident of his or her household who has engaged in such activity on or off QHA premises, or who has had a visitor or guest who has engaged in such activity on the premises or who has been under the influence of a controlled substance other than as could have resulted from a legally prescribed medication as determined by a licensed physician or for a substance that has been legalized pursuant to a law of the Nation) while on the premises shall be terminated.
2. The homebuyer agreement of any person who has failed or refused to take any test or tests required under this policy or who has a resident of his or her household who has failed or refused to take any such test or tests shall be evicted.

C. Removal of Resident, Visitor or Guest

In the case of a household resident or visitor or guest, no tenant shall be evicted and no homebuyer agreement shall be terminated if the tenant or homebuyer has promptly secured the removal of the offending resident, visitor or guest from the premises; provided, that such resident, visitor or guest shall be ineligible to make application to or participate in any QHA housing program for a period of seven years from the date of removal.

SECTION VIII. FORBEARANCE REGARDING EVICTION OR TERMINATION

- A. The Board of Commissioners may forbear in the eviction of any person or the termination of any homebuyer agreement under this policy if:
1. The person demonstrates successful completion of a supervised drug rehabilitation program approved by the QHA or other rehabilitation program approved by the QHA, including successful completion of any required follow-up treatment plan or other follow-up requirements;
 2. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drug use is no longer in the household; or
 3. The Board of Commissioners determines that there are extraordinary circumstances (such as the welfare of a minor child) which warrant forbearance;
 4. And, the person completes or agrees to complete any other requirements that the Board of Commissioners, at its sole discretion, may impose, including but not limited to periodic drug tests or other tests.

5. The Board of Commissioners may also forbear if the person is participating in a supervised drug rehabilitation program approved by the QHA or other program approved by the QHA and continues in full compliance with such program and any required follow-up treatment plan or other requirements, and the person completes or agrees to complete any other requirements imposed by the Board of Commissioners, including but not limited to periodic drug tests or other tests.
- B. Any person desiring forbearance regarding eviction or termination shall have the burden of showing that the requirements for forbearance have been met.
- C. Nothing in this section shall require forbearance regarding eviction or termination under any circumstances.
- D. The Board of Commissions by separate resolution or board action may delegate the authority to forebear regarding eviction or termination to any one or more of its members, to the Executive Director of the QHA, to any other suitable employee of the QHA or to any combination of the foregoing.

SECTION IX. GRIEVANCES

- A. Except as specified in the following paragraphs B. and C., any grievance arising under this policy shall be resolved in accordance with the Grievance Policy procedure of the QHA.
- B. In any grievance arising under this policy, any period of notification or other period of time required under the policies of the QHA, or any agreement entered into with the QHA, may be shortened to three (3) working days.
- C. There shall be no right to a hearing other than a court hearing in the case of an eviction or termination where there is an allegation regarding a sexually violent crime or the manufacture, sale or distribution of a controlled substance on QHA premises; provided, that the Board of Commissioners, at its sole discretion may, but shall not be required to provide, a hearing to any person so accused and requesting a hearing.

SECTION X. MISCELLANEOUS PROVISIONS

A. Criminal History

Any criminal record received in order to administer this policy must be maintained confidentially, must not be misused or improperly disseminated, and must be destroyed once the purpose for which it was requested is fully accomplished.

B. Copy of Criminal Conviction or Civil Penalty Record

A certified copy of a criminal conviction record or of a civil penalty record shall be conclusive proof of a drug related criminal activity, criminal activity involving the use or attempted use or threat of use of physical force or other violence or a sexually violent crime identified in the record; provided, that before any adverse action based on such a record can be taken, the person must be provided with a copy of the record and an opportunity to dispute the accuracy or relevancy of the record. In the case of an eviction or termination for which no opportunity for a hearing is required prior to the court hearing, a

copy of the record shall be filed with the court and served on the tenant or homebuyer with the Summons and Complaint.

C. No Requirement for Criminal Conviction or Civil Penalty

In no instance, shall a criminal conviction be required to have been entered or a civil penalty be required to have been assessed in order for a person to be ineligible for admission to QHA programs or be subject to eviction or termination from a QHA rental or homebuyer unit.

D. Other Requirements

Any applicant for QHA housing (including applicants for transfer to another QHA program) and any other prospective resident shall be required to sign such release forms, and to provide such other information, as may be necessary to assure full compliance with this section.