



## MODEL LIMITED ACCESS AND BARRING POLICY

**DISCLAIMER:** The Housing and Development Law Institute offers the following model Limited Access and Barring Policy in an effort to assist HDLI members in creating individual trespass and barring policies of their own. HDLI strongly urges each PHA to consult legal counsel for advice in creating limited access and barring policies and procedures that comply with individual local and state laws and meet your individual needs. The following policy and procedures are intended only to be a model. While the following Policy and Procedures were developed in consultation with pertinent statutory, regulatory, and common law, HDLI does not represent or imply that said policy and procedures comply with any particular federal, state or local law or regulation. Do not adopt any provision that conflicts with your local law.

**(NOTE: THIS POLICY DOES NOT APPLY TO  
TENANTS OR HOUSEHOLD MEMBERS)**

HOUSING AUTHORITY OF \_\_\_\_\_ [PHA]

### **LIMITED ACCESS AND BARRING POLICY**

(Adopted by Board of Commissioners on \_\_\_\_\_)

WHEREAS, [PHA]'s mission, pursuant to the terms of its lease agreement and state and federal law, is to provide safe, secure, and decent housing, to combat drug-related and other crime within its developments, and to safeguard the quiet enjoyment of its property for its residents and employees, and

WHEREAS, [PHA] has a significant interest to prevent the commission of trespass, vandalism, criminal, drug-related and other harmful and improper behavior within and adjacent to its property, and

WHEREAS, the elimination from [PHA] property of persons with no legitimate business on [PHA] property and/or who commit criminal, drug-related, or other harmful

or improper behavior is a reasonable means to combat drug and other crime and safeguard the quiet enjoyment of its property, and

WHEREAS, [PHA] desires to adopt a limited access and barring policy that effectuates its mission and interests while permitting constitutionally protected expression.

NOW THEREFORE, pursuant to the powers vested in [PHA] pursuant to Section \_\_\_\_\_ of the \_\_\_\_\_ Code [PHA enabling legislation], and in accordance with Section \_\_\_\_\_ of the \_\_\_\_\_ Code [criminal trespass ordinance], [PHA] hereby adopts the following Limited Access and Barring Policy (the Policy) effective the date approved by the [PHA] Board of Commissioners:

Section 1. Purpose. **[PHA] developments are for the exclusive use and enjoyment of [PHA] employees, [PHA] residents and members of their households, [PHA] resident guests and visitors, and such other persons who have legitimate business on the premises. All other persons will be regarded as trespassers subject to prosecution as allowed by state or municipal ordinance. The purpose of this Policy is to limit access and use of [PHA] property to the persons listed in the first sentence of this Section 1.** A person who does not have a specific legitimate purpose to be on [PHA] property shall not be permitted on the property.

Section 2. Application. This Policy applies to all public housing developments owned and/or managed by [PHA], and applies retrospectively and prospectively to all tenants living in units within those developments.

Section 3. **Legitimate purpose.** The following persons are presumed to have a specific legitimate purpose on [PHA] property and are not subject to barment from [PHA] property, unless otherwise mandated by [PHA] policy or by law:

3.1 Invited guests of [PHA] tenants who are accessing the development within the scope of their invitation, and who have not committed any of the acts enumerated in Section 4, below;

3.3. [PHA] employees, commissioners, representatives, agents, contractors, and law enforcement officials carrying out official PHA or law enforcement business on PHA property; and

3.4. Persons, not aforementioned, who are on [PHA] property with [PHA] express permission and who are not otherwise violating PHA policy or law on the property. In this regard, [PHA] shall develop procedures that ensure that constitutionally protected expression and association are appropriately permitted.

Section 4. **Non-Legitimate purpose.** The following persons are presumed not to have a specific legitimate purpose on [PHA] property and are subject to temporary or permanent barment from [PHA] property:

4.1. All persons who are not [PHA] employees, commissioners, representatives, agents, contractors, and law enforcement officials carrying out official PHA or law enforcement business, and also are not [PHA] tenants or invited guests of [PHA] tenants;

4.2. All persons who commit the following acts on or within \_\_\_\_\_ [1 mile] of PHA property, whether or not they are included in the categories set forth in Section 3, above:

4.2.1. assault, battery, arson, robbery, vandalism, malicious destruction of property, disturbing the peace, murder, manslaughter, rape, sexual assault, prostitution and/or the solicitation thereof, abduction, kidnapping, illegal gambling, harassment, stalking, violation of protective, restraining, or peace order, domestic violence, the commission of any crime set forth in the \_\_\_\_\_ Code [criminal code], the attempt to commit any of the aforementioned crimes, or engaging in any other physical behavior that injures, or threatens to injure, the health of PHA tenants, employees, commissioners, representatives, agents, contractors, any law enforcement official, or other member of the public;

4.2.2. engaging in any illegal behavior involving illegal drugs and/or illegal drug paraphernalia, including, but not limited to, possession and/or distribution of said drugs and/or paraphernalia;

4.2.3. engaging in any illegal behavior involving firearms or other deadly weapon, including, but not limited to unlawful possession, concealment or use of a said firearm or deadly weapon;

4.2.4. public urination, public nuisance, and other disorderly, lewd or lascivious conduct on [PHA] property;

4.2.5. damaging, destroying, vandalizing, defacing, or otherwise reducing the value of the real and/or personal property of PHA, its employees, commissioners, representatives, agents, tenants, contractors, any law enforcement official, or other member of the public;

- 4.2.6. loitering, or otherwise failing to have any legitimate business, on PHA property;
- 4.2.7. significant littering on PHA property;
- 4.2.8. engaging in any illegal behavior involving automobiles or other vehicles including, but not limited to, reckless driving, joy riding, destruction, and theft;
- 4.2.9. engaging in any gang-related activity, including, but not limited to, grouping, or using hand signals, gestures, and/or clothing to show gang affiliation for the purpose of threatening or intimidating rival gangs, [PHA] tenants, [PHA] employees, commissioners, representatives, agents, contractors, and law enforcement officials carrying out official PHA or law enforcement business;
- 4.2.10. theft of the property of PHA, its employees, commissioners, representatives, agents, tenants, contractors, any law enforcement official, or other member of the public;
- 4.2.11. a minor child's violation of any local, state, or national curfew;
- 4.2.12. any other behavior that substantially interferes with the right, comfort, convenience and/or safe and peaceful enjoyment of PHA property by PHA employees, commissioners, representatives, agents, tenants, contractors, any law enforcement official, or other member of the public.

[PHA] reserves the right to add or delete from the acts set forth in Section 4, as appropriate

Section 5. Exclusion and Barment.

5.1. Non-tenants. Only non-tenants (persons other than those listed on the lease) with a specific legitimate purpose for being on [PHA] property are permitted on the property. Whether a non-tenant has a specific legitimate purpose to be on any particular [PHA] property shall be determined by the [PHA], as confined by the terms of this Policy and [PHA]'s procedures. **Any person who desires access to any [PHA] development, including any person located on or in the buildings, walks, ways, grasses, playgrounds, parking lots, drives and other common areas of any [PHA] development, will be required by any law enforcement or [PHA] personnel to identify himself or herself by showing appropriate written identification, and to prove a specific legitimate purpose to be on the development premises.** Persons determined to be without a specific legitimate purpose on [PHA] property shall be asked to leave the property immediately, and shall be issued an appropriate "Trespass Warning" in accordance with [PHA] procedures. Warned persons who return to the property without a specific legitimate purpose are subject to temporary or permanent barment from the property.

5.2. Barment Notice. Barred persons shall be provided written notice of their barment in accordance with [PHA] procedures (the Barment Notice). Among other things, the Barment Notice shall advise the person that he/she will be trespassing if he/she knowingly returns to [PHA] property, state the reasons for denying entry, specify the time period that the barment is effective, and reference appropriate grievance procedures. The duration of the barment is within the discretion of the [PHA], and may be renewed at expiration, depending upon the specific circumstances. However, except

in special circumstances, no initial temporary barment period shall exceed a period of \_\_\_\_\_ [1 year]. The [PHA] shall make its best efforts to enforce this Policy, and levy barment durations, uniformly and in accordance with [PHA] procedures.

5.4. Tenant Notice. In the event that the barred person is a household member, family member, friend, guest, or otherwise is connected with, a [PHA] tenant, [PHA] shall provide written notice to the tenant that said person has been barred from [PHA] property and shall state the duration of the bar, as well as the possible penalties for the tenant's failure to cooperate with the barment, which may include eviction.

5.5. Emergencies. In extraordinary circumstances involving an emergency or other unusual circumstance, for good cause shown, the PHA Executive Director, in his/her discretion, may decide to dispense with any or all notice requirements of this Policy.

Section 6. Barment Lists. In accordance with its procedures, [PHA], in cooperation with law enforcement, shall maintain and regularly update a list of persons who have been issued Barment Notices (the Barment List). The Barment List shall be posted conspicuously for public viewing at the management office or other appropriate place within the development, and all residents shall be informed of the location of the Barment List. All pertinent [PHA] staff shall receive copies of the initial and updated Bar Lists, as shall law enforcement.

6.1. [PHA] shall develop reasonable procedures for the removal of persons from the Barment List, as well as procedures governing a grievance process for persons wishing to contest their inclusion on the Barment List.

Section 7. Enforcement/Law Enforcement. [PHA] shall enforce this Policy consistent with the criminal trespass provisions of \_\_\_\_\_ [criminal trespass ordinance], and in accordance with [PHA] procedures. [PHA] shall take steps to enter into a memorandum of understanding with \_\_\_\_\_ [law enforcement agency] regarding each party's responsibilities with regard to the enforcement of this Policy (the MOU). The MOU shall, among other things, authorize \_\_\_\_\_ [law enforcement agency] to make inquiries of persons on PHA property and to inform any person without specific legitimate business that he/she may be subject to arrest for trespass if they remain on [PHA] property. Pursuant to \_\_\_\_\_ [criminal trespass ordinance], \_\_\_\_\_ [law enforcement agency] shall be authorized to arrest and remove all barred persons who have returned to [PHA] property in violation of this Policy.

Section 8. Training and Accountability. [PHA] shall train all housing managers and other pertinent personnel, and the law enforcement agency, if possible, on the proper implementation of this Policy so that the Policy is carried out thoroughly and uniformly. The [PHA] Executive Director shall appoint a [PHA] staff member to coordinate and oversee all barring pursuant to this Policy (the Trespass Coordinator). Based on actual experience in implementing this Policy, the Trespass Coordinator shall make recommendations to the Executive Director as to updates and/or changes to this Policy. The Trespass Coordinator further shall maintain records of all Trespass Warnings, Barment Notices, and Bar Lists, shall purge names from the Bar Lists as appropriate, and shall appear in court proceedings related to the enforcement of said warnings, notices and lists. To the extent practicable, "read only" copies of Trespass

Warnings, Barment Notices, and Barment Lists shall be maintained and disseminated among [PHA] staff and law enforcement via computer, with appropriate confidentiality safeguards in place.

Section 9. Communication and Advertisement. [PHA] shall develop and disseminate appropriate brochures, flyers, “no trespassing” signage, and/or other methods to communicate the terms of this Policy to [PHA] residents and non-residents who enter [PHA] property.

Section 10. Tenant Leases. A tenant’s assistance in the violation of this Policy by another tenant, or by a non-tenant, shall constitute a material lease violation, the penalty of which may include eviction. This Policy shall be incorporated, through appropriate language, in all tenant leases or addendums, in accordance with notice and comment procedures and other legal requirements.

Section 11. Procedures. [PHA] shall develop procedures that effectuate the terms of this Policy.

Section 12. Nothing in this Policy is intended to waive, replace, supercede, or otherwise limit [PHA]’s ability to exercise any and all other rights or options available to it by law. A decision by any employee of [PHA] in one circumstance relating to one person shall not constitute a waiver of [PHA]’s rights or options under this Policy relating to another person.

**Section 13. In no case does [PHA] allow door-to-door sales solicitations in person, or through the use of notices or flyers. If a resident desires to distribute other types of notices or flyers in his or her development, the resident must provide the development’s housing manager with a copy of the proposed notice or flyer and**

**obtain advance approval of the housing manager. [NOTE: PHA should keep in mind the requirements of 24 CFR 115 regarding protected resident activities]. A resident may not distribute a notice or flyer before 9:00 a.m. or after 8:00 p.m. Under no circumstances may a notice or flyer be left in plain view on a resident's door or unit if a resident of the unit does not want the notice or flyer, is not at home, or declines to answer the door. A resident distributing such notices or flyers must ensure that the notices or flyers do not become litter or otherwise disrupt the peaceful use and enjoyment of the development by other residents.**

**[END OF POLICY – CHECKLIST FOLLOWS]**

## LIMITED ACCESS AND BARRING POLICY CHECKLIST

1	Perform legal due diligence re: policymaking– consult state enabling statute, state constitution & PHA powers.
2	Urge the enactment of anti-trespass ordinance/legislation that will withstand a “void for vagueness” challenge.
3	Draft written limited access and barring policy and procedures; ensure they comply with federal, state, and local law (including Section 6 of the U.S. Housing Act). Specifically look for local statutory “tenant knowledge” requirements.
4	Consider consulting tenant advisory boards, as appropriate.
5	Secure Board of Commissioners Resolution to adopt Limited Access and Barring Policy.
6	Create forms: Trespass Warning, Barment Notice w/ grievance hearing provisions, Tenant Notice, Bar List, Resident Consent, <b>Flyer/Notice distribution form</b> , etc.
7	Execute Memorandum of Understanding with law enforcement agency re: enforcement.
8	Conduct adequate staff and law enforcement training. Appoint a Trespass Coordinator.
9	Create and disseminate easy-to-read property signage, tenant brochure, flyer, and/or use other advertising tools.
10	Draft and execute tenant lease provision/addendum.
11	If in litigation, draft and execute Stipulation and Order.