

Guidelines on Handling of Termination Cases, Exclusion of Violent or Dangerous Individuals and the Lifting of Exclusions

Introduction

These Guidelines are designed to assist NYCHA staff in their decision-making on cases involving safety and security risks to the NYCHA community. These Guidelines support staff in applying existing policy, procedures, laws and regulations relating to Termination of Tenancy matters and the remedies of Permanent Exclusion and Termination of Tenancy of Justice Involved Individuals (JII) for certain non-desirable conduct occurring on or off NYCHA grounds (*non-desirability* is defined generally in paragraph III.B.8 of Chapter IV of NYCHA's Management Manual and in NYCHA's public housing lease).

Permanent Exclusion is a strategy used by NYCHA to promote the safety and security of its residents. Permanent Exclusion happens when NYCHA brings a "termination of tenancy" action against a NYCHA tenant for dangerous conduct that violates the tenant's lease agreement. A member of the household or someone else under the tenant's control may have committed the dangerous conduct. Instead of terminating the lease (which would mean evicting the whole family), NYCHA can save the residents' tenancy by excluding only the dangerous person or persons. An excluded person is barred from residing in or visiting the apartment as long as the Permanent Exclusion is in place. NYCHA has a program that allows a tenant to request that an exclusion be lifted, either because sufficient crime free time has elapsed or because of positive evidence of change. A decision to lift a Permanent Exclusion means that a previously excluded individual may then visit the apartment from which he or she was excluded.

These Guidelines are applicable to drug, violence, and property offenses that may create a risk of harm on or off NYCHA grounds, cause NYCHA residents or staff to feel intimidated or unsafe, or degrade the quality of life at NYCHA. These Guidelines are applicable to NYCHA tenants, members of the household, anyone who holds him or herself out to reside in such household, guests and/or any other person under the tenant's control. These Guidelines do not cover other non-desirable conduct that could result in administrative action against the tenancy including, but not limited to, fraud, or other conditions, for example, nuisance (e.g., excessive noise, improper garbage disposal or graffiti/vandalism), unsanitary conditions, and other threats to health and safety. While these Guidelines provide guidance to NYCHA staff, NYCHA's decisions to initiate administrative action and seek a remedy continue to be discretionary and are determined on a case-by-case basis.

NYCHA's mission is to increase opportunities for low- and moderate-income New Yorkers by providing safe, affordable housing and facilitating access to social and community services. NYCHA is neither law enforcement nor the criminal justice system, but a landlord that carefully considers when eviction makes sense and when it does more harm than good to the community and the city at large. NYCHA staff should balance the safety and security risk with the penalty of termination of tenancy and other remedies, such as permanent exclusion. NYCHA staff balances the interest of its residents in light of NYCHA's mission and role as a provider of affordable housing, and the importance of stable housing and family support.

These Guidelines do not supersede the *Escalera*, *Tyson-Randolph* or any related consent decree, NYCHA's Management Manual or other policy and procedures, or any federal regulations or requirements; rather they provide guidance to staff on the factors that should be examined in applying existing policy and procedures. Nor do these Guidelines alter NYCHA's burden of proving its case in Termination of Tenancy proceedings by a preponderance of the evidence. NYCHA will examine the evidence in each case and consider the disposition of any criminal court charges, where applicable, including a reduction or dismissal during the pendency of the matter.

These Guidelines do not limit NYCHA's discretion concerning whether to proceed with a hearing based on the dangerous conduct of a JII associated with that household or offer to settle with alternative remedies, including, for example, the Permanent Exclusion of the JII, probation, or withdrawal of the case.

Part I - Guidance on Termination, Exclusion and Other Remedies Available to NYCHA for Violent or Dangerous Offenses

I. Assessing Risk Factors and Mitigating Evidence

Overview

This section provides guidance on performing risk assessments for acts or conduct covered by these Guidelines: (1) when determining whether to initiate or continue with Termination of Tenancy proceedings based on non-desirability and (2) which settlement options to seek should NYCHA seek settlement in administrative proceedings.

In all cases where a JII may be considered for Permanent Exclusion, NYCHA conducts an individualized risk assessment. Risk assessments are a two-step process. Initially, NYCHA bases its decision whether to bring a Termination of Tenancy proceeding on an analysis of **Risk Factors, discussed in A.1 below**. As part of this initial assessment, NYCHA investigates the conduct that initiated opening the file and assesses the sufficiency of the evidence, including the connection between the JII and the subject apartment, the risk the JII poses to the NYCHA community, and whether a particular remedy would advance the safety and security of the NYCHA community.

The second step of risk assessment is to examine **Mitigating Factors, discussed in A.2. below**. Mitigating evidence is typically not available to NYCHA prior to bringing charges against the tenant and must be produced by the Tenant of Record on their own behalf or on behalf of the JII. NYCHA considers the totality of the circumstances, including the sources and quality of mitigating evidence presented by the tenant as well as the tenant's credibility in determining whether to proceed to a hearing, offer a settlement, or defer or withdraw the case. **Deferral is discussed in C below**.

NYCHA may consider whether the New York City Police Department (NYPD) has designated a Case for Legal Action (CFLA) as High Priority when conducting its Risk Assessment. CFLAs are matters involving violent or dangerous conduct that the NYPD reports to NYCHA for further investigation. Such investigation may lead to Termination of Tenancy proceedings. The NYPD may designate a CFLA as High Priority, which generally means NYCHA will process the case faster. However, even if NYPD designates a CFLA as High Priority, NYCHA maintains its discretion and is not required to commence Termination of Tenancy proceedings based on that CFLA, nor is it required to bring an expedited Termination of Tenancy proceeding.

A. Risk Factors

The list of risk factors below is intended to help guide NYCHA in conducting its individualized assessment of the JIIs brought to its attention and whose conduct may warrant the commencement Termination of Tenancy proceedings. The risk factors that follow are not an exhaustive list of what NYCHA may consider in bringing a proceeding; rather, they are illustrative of the types of factors NYCHA considers when assessing whether the individual poses a threat to the NYCHA community and the level of that potential threat. The tenant will have an opportunity to dispute whether a conviction shows the individual poses a threat to the NYCHA community.

For every offense, NYCHA evaluates the extent and nature of the offense, the JII's and/or the tenant's level of involvement, how recent the offense was, and the JII's past and current conduct. For every individual alleged to have committed undesirable conduct, NYCHA assesses whether the individual poses a risk to the NYCHA community and the level of that risk. Behavior that indicates a risk to the NYCHA community includes, but is not limited to: intimidating, menacing and/or hostile interactions with residents, staff or visitors; or other behavior that otherwise reasonably makes residents feel insecure in their homes, on NYCHA grounds or in their vicinity; or behavior which degrades the quality of life at NYCHA – such types of risk apply in all of the following scenarios:

1. *Violence.* Preventing acts of violence is NYCHA's top priority. NYCHA will consider whether the non-desirable act could be categorized as an act of violence, the nature and circumstances of the violence and the extent of the individual's involvement in such act. Guns and other weapons offenses are considered violent under these Guidelines.
2. *Drug dealing.* Drug dealing can directly and/or indirectly threaten the safety of the NYCHA community. Evidence of treatment of addiction can be considered a mitigating factor for drug sale allegations. Relevant factors in helping NYCHA to assess the risk associated with the drug dealing include, but are not limited to:
 - a. *Extent and nature of conduct.* The presence of weapons or use of violence in connection with the offense; the frequency of the dealing; the quantity or quantities of the substance being dealt; the type of substance being dealt; and money or other contraband or materials connected to the operation.
 - b. *JII's level of involvement.* The individual's level of involvement may indicate their level of risk.
 - c. *Where it took place.* The nexus between the drug dealing and NYCHA property or in its vicinity, for example, whether the dealing took place on or near NYCHA grounds, or if the NYCHA apartment in question was used for some or part of the sale or sales (e.g., as a stash house for drugs, money or other contraband or materials connected to the operation, or the apartment was used for organizing the operation).
3. *Illegal drug use or possession.* Illegal drug use or possession that poses a risk to the NYCHA community may be grounds for termination or exclusion.
4. *Gang/crew involvement charges.* NYCHA shall take gang or crew involvement into account where there is evidence that the JII was or is a participant in or associated with a gang or crew. The following factors are illustrative of the types of considerations NYCHA makes when assessing the risk associated with an individual's gang involvement. They include, but are not limited to:
 - a. *Nature of the conduct in which the gang is involved.* For example, NYCHA may consider whether the gang is or was engaged in violent conduct (including but not limited to, stick-ups or violent initiation rites) or drug dealing; whether the gang has a history of intimidating, hostile or destructive interactions; and/or whether the gang is involved in a turf war or other altercation with another gang or gangs.
 - b. *JII's level of involvement.* For example, NYCHA may consider the extent and nature of the individual's involvement with the gang in terms of whether the individual is a key player or a minor participant in any alleged conspiracy.
 - c. *Location.* Generally, gang activity that takes place on NYCHA grounds or in the vicinity of NYCHA grounds is of more concern to NYCHA than gang activity that takes place elsewhere.
5. *Property offenses.* A property offense or offenses that take place on or near NYCHA grounds that pose a risk to the NYCHA community may be grounds for termination or exclusion.
6. *Prior convictions and contemporaneous conduct.* NYCHA may consider relevant non-sealed prior convictions and the number of such prior convictions in assessing the JII's level of risk. NYCHA may also consider any conduct that occurs after the conduct for which the Tenant of Record was initially administratively charged.
7. *Prior proceedings brought by NYCHA.* In assessing the JII's level of risk, NYCHA may consider prior proceedings relating to health, safety and quality of life brought by NYCHA against the Tenant of Record or involving the individual, including Termination of Tenancy proceedings for non-desirability.

B. Mitigating Evidence

NYCHA examines mitigating evidence provided by the Tenant of Record on their own behalf or on behalf of the JII to assess the risk posed by the individual and his or her non-desirable conduct. Mitigating evidence tends to show the JII does not pose a risk of danger or harm to the community and includes (1) evidence that demonstrates the individual's good conduct or character, or (2) evidence about the offense, including information about the extent and nature of the individual's conduct in the offense. A criminal conviction precludes the tenant from re-litigating the conduct established by the conviction; however, it does not preclude the tenant from producing evidence to dispute the conviction and/or whether it shows the individual poses a risk to the NYCHA community. The tenant has the burden of bringing mitigating evidence to NYCHA's attention for consideration. Accordingly, mitigating evidence is not typically examined until after the tenant is charged.

Figure A below contains a list of the types of mitigating evidence residents may submit for NYCHA's consideration in determining whether, despite the JII's conduct, he or she does not pose a danger to the NYCHA community. **Figure A** is not an exclusive list; residents may submit any evidence they wish. Documents from family members or friends will likely not be accorded as much weight as documents from third parties. As with all evidence, NYCHA assesses its credibility, relevance and probative value. Generally, evidence of good conduct or positive circumstances postdating the offense(s) is more relevant and probative in determining whether the risk of harm is mitigated than conduct predating the offense. NYCHA will take into consideration a reduction or dismissal of charges in criminal court.

Figure A – Examples of Mitigating Evidence

- Completion of or documented active participation in any of the following:
 - Probation
 - Diversion program
 - Alternative to Incarceration
 - Educational or vocational program
 - Restorative justice program
 - Anger and aggression training
 - Mental health counseling or trauma recovery services
 - Substance abuse disorder program
 - Programs or certifications while incarcerated with the New York City Department of Corrections.
- Evidence of addiction and/or substance use disorder treatment (for drug sale allegations).
- Employment or holding of a position of meaningful responsibility (for example, volunteering, mentoring or service to the community) for at least one year.
- Transcripts showing steady school attendance or GED/diploma.
- Letters of support from community groups, parole or probation officers, employers, supervisors, mentors or other responsible parties in a position to provide a character reference for the excluded person.
- Information from a prosecutor's office that the offender individual did not commit the offense underlying NYCHA's Termination of Tenancy proceeding.

II. Deferring Termination Proceeding

A. General

In its discretion, NYCHA may decide to defer a termination proceeding. Deferral occurs after NYCHA has brought a Termination of Tenancy proceeding based on non-desirability but holds off on settling the case and/or bringing the case to a hearing. Deferral may give the Tenant of Record the opportunity to show that the case should not be pursued or that a certain outcome (for example, probation) should be sought, while preserving for NYCHA the opportunity to proceed if and when it sees fit. Deferral also may give NYCHA the additional opportunity to confer with the Tenant of Record to obtain status updates on the JII's criminal case (if any) and his or her rehabilitation or to gain other relevant information about the case and individual. NYCHA's decision to defer need not be in writing. The Law Department may meet with the Tenant of Record periodically to get status updates and to assess whether to defer, proceed or drop the case.

Grounds for Deferral. Grounds for deferral may include, but are not limited to:

1. Likelihood that the JII may be eligible for and may complete a program facilitated by the criminal justice system, participation in which provides clear evidence that the risk to the NYCHA community is mitigated. If the criminal case is still pending without disposition, and the individual may be eligible for incarceration programs offered by community-based organizations or substance abuse treatment programs, NYCHA staff may defer the proceeding until the individual receives a decision from the criminal court about program eligibility.
2. The individual is involved in an educational, employment, community service, social service or other structured activity that would indicate this participation is supportive of and facilitates maintaining a crime-free life.
3. If the JII is participating in a court-mandated diversion program, or is under community supervision, NYCHA may defer a termination proceeding until the individual has an opportunity to complete the program, obtain its salutary benefits, or otherwise show evidence of the rehabilitation it has produced.

B. Individuals with Criminal Cases in Family Court or the Youth Part of Criminal Court

If NYCHA receives a case involving an individual whose criminal matter is transferred or tried in Family Court, NYCHA will not charge the case, or may charge the case but will only seek probation of the tenancy.

If the individual remains or is tried in the Youth Part of Criminal Court, NYCHA may charge the case, but will defer the case until it is finally litigated.

Part II - Guidance on Lifting Exclusions for Violent or Dangerous Offenses

Introduction

Permanent Exclusion is a condition imposed on a tenancy (either by a hearing office decision or by agreement between the Tenant of Record and NYCHA) whereby an individual is excluded from the subject apartment. Tenants of Record can apply to lift the Permanent Exclusion of someone excluded from the apartment at any point after exclusion. This section provides guidance with regard to NYCHA's review of, and decision to lift, Permanent Exclusions resulting from acts or conduct covered by these Guidelines.

I. Applying to Lift Exclusions – Grounds and Guidance

Overview

NYCHA may lift a Permanent Exclusion based on: (1) Evidence of Positive Change ("Path 1"); and (2) Passage of Time/Crime-Free Waiting Period ("Path 2"). Path 1 allows Tenants of Record the opportunity to demonstrate at any point that the excluded person's circumstances have changed, that his/her risk is mitigated and that the bar on visiting should be removed. Path 2 relies on the passage of time, along with the absence of further criminal involvement, to justify lifting the exclusion.

A. Path 1 - Evidence of Positive Change

For Path 1, the Tenant of Record can apply to lift the Permanent Exclusion for someone who has changed his/her life in a sustained and clear way that shows he/she no longer poses a risk of danger to the NYCHA community.

Figure B below contains a sample list of the types of mitigating evidence that residents may submit with the application for NYCHA's consideration in determining whether, despite the individual's past conduct, he or she no longer poses a danger to the NYCHA community. The information in **Figure B** is not an exclusive list, nor is providing any of this information dispositive (or even relevant in every instance); NYCHA retains discretion to evaluate the evidence provided and make a determination based on the individual circumstances and evidence of each case. Documents from family members or friends where they demonstrate prosocial involvement, or strong social supports and bonds will be considered.

Figure B – Lifting Permanent Exclusion - Examples of Evidence of Positive Change for Path 1

B. Path 2 – Passage of Time/Crime-Free Waiting Period

A Tenant of Record can instead apply to have the Permanent Exclusion lifted on the basis that enough “crime-free” time has passed since the release of the excluded person from jail or prison or after a final court decision—whichever is later—to warrant the lifting of the exclusion. “Crime-Free Waiting Period” means that there are no relevant convictions between this post release/disposition time period or at any time leading up to the application to lift the exclusion and the Hearing Office’s decision thereon. NYCHA will conduct a criminal background check at application to determine if the individual meets the criteria of Crime Free Waiting Period. A relevant conviction is a crime which could have formed the basis for exclusion in the first place.

The Crime-Free Waiting Periods are based on two factors: the **type of crime** (violent, drug or property) and the **number of prior convictions**. “Prior convictions” means any convictions that occurred before commission of the offense that was the basis for exclusion. **Figure C** contains the Crime-Free Waiting Periods.

Figure C: Lifting Permanent Exclusion - Crime-Free Waiting Periods for Path 2

Excluded Offense - Property		Excluded Offense - Drug		Excluded Offense - Violence	
# of Prior Convictions	Waiting Periods (Years)	# of Prior Convictions	Waiting Periods (Years)	# of Prior Convictions	Waiting Periods (Years)
0 priors	2	0 priors	2	0 priors	4
1 prior	3	1 prior	3	1 prior	5
2-3 priors	3	2-3 priors	4	2-3 priors	6
4-7 priors	5	4-7 priors	5	4-7 priors	8
8+ priors	7	8+ priors	7	8+ priors	10

If the excluded person was excluded on the basis of multiple crimes, the most serious crime dictates which crime type by which the Crime-Free Waiting Period is controlled.

Denial of Path 2 Applications: While NYCHA’s decision will be guided by the above Crime-Free Waiting Periods, there are instances where NYCHA may deny the application despite the waiting period having passed. Thus, even if the excluded person has met the suggested Path 2 Crime-Free Waiting Period, NYCHA can nonetheless deny an application made on the basis of passage of time alone. Grounds for denying such an application include:

1. Evidence of continued risk for non-desirable behavior other than a conviction. For example, evidence of continued gang involvement or other dangerous conduct, or evidence that the excluded person poses a risk to resident health or safety.
2. The offense or conduct that originally led NYCHA to exclude the individual was so serious that it requires a longer Crime-Free Waiting Period.

C. Application Procedure – Process Steps in Applying to Lift a Permanent Exclusion

Application – Path 1 or 2. The Tenant of Record (“Applicant”) fills out an application to lift a permanent exclusion. If an Applicant applies using “Path 1” (Evidence of Positive Change), NYCHA will automatically consider the application under “Path 2” (Passage of Time) as well. An applicant should use Path 1 to lift an exclusion for someone who has changed his/her life in a sustained and clear way that shows s/he no longer poses a risk of danger to the NYCHA community. An applicant should use Path 2 to lift an exclusion for someone who has spent enough “crime-free” time since release from incarceration or after a final court decision—whichever is later. This means the person has no relevant convictions between their release/disposition and the Hearing Office’s decision.

Submitting the Application. The application to lift Permanent Exclusion may be made in one of two ways: it can be delivered in person to the Office of Impartial Hearings (OIH) or can be mailed to the Office of Tenancy Administrator (OTA). If the application is received by OTA, OTA forwards the application to OIH.

Process for Application, Review, Final Decision, and Reapplying to Lift a Permanent Exclusion:

1. Initial Review.
 - a. When the Office of Impartial Hearings (OIH) receives an application from a Tenant of Record (“Applicant”), it docket the application and sends it to the Law Department for initial review.
 - b. The Law Department reviews the application and checks the excluded person’s criminal background. It may also contact references or conduct further investigation. Based on its review, the Law Department issues an “Objection” or a “No Objection” letter and mails it to OIH.
2. Objection/No Objection by the Law Department.
 - a. If the Law Department does not object to the application, it writes a statement saying it does not object. It sends the statement and the application to OIH for a final decision.
 - b. If the Law Department objects to the application, it must take two steps.
 - i. First, it must notify the Applicant in writing by mail that they have 30 days to submit additional information to support the application.
 - ii. Second, the Law Department must send the opposition letter to OIH, which will hold the case for 35 days to allow the Applicant to respond with more information.
3. Applicant Response to Law Department Objection
 - a. If the Applicant chooses to submit new information within 30 days, they must write a response to the Law Department and submit it to the OIH. The response should include: 1) the case file number, and 2) information that responds to, corrects a misunderstanding in, or rebuts the objection.
 - b. If the Applicant sends such information to OIH, OIH forwards a copy to the Law Department. The Law Department may use the new information to amend its statement to OIH. It also has an opportunity to rebut the new information within 10 business days of receiving it. The Law Department’s failure to rebut any additional information provided shall not be taken as assent to, agreement with or failure to object to such response.
4. Hearing Office Review
 - a. A Hearing Officer makes a final decision on the case after considering the Application, the Law Department’s Objection or No Objection letter, and any additional information provided by the Tenant of Record or the Law Department.

- b. A Hearing Officer may request an in-person hearing. If so, the OIH will issue a Notice of Hearing to the tenant after coordinating a hearing date with the Law Department. The Hearing Officer can review new information in the file and any further evidence provided by the Applicant and/or the Law Department at the hearing.
- c. If there is a hearing but the Applicant does not attend, the Hearing Officer will deny the application on default. If the Applicant would like to reapply after a denial on default, the standard reapplication time limits apply as explained in “Reapplying to Lift the Exclusion and Time Restrictions” below.
- d. OIH will mail the decision letter to the Applicant.
- e. If the Hearing Office grants the application, the Permanent Exclusion is lifted. If the application is denied, the Permanent Exclusion remains in place.

5. Reapplying to Lift the Exclusion and Time Restrictions

- a. If the Hearing Office denies the application, the Tenant of Record may reapply to have the exclusion lifted, but certain time restrictions apply:
- b. A tenant may only reapply to lift an exclusion one time every 6 months under Path 1. If an Applicant applies under Path 1 and is denied, the applicant must wait another 6 months before they can apply under Path 1 OR Path 2. This is because all Path 1 applications are automatically reviewed for eligibility under Path 2 as well.
- c. However, if an Applicant applies under Path 2 and is denied, they may reapply under Path 1 at any time. They may only reapply under Path 2 when their ineligibility date expires.

d. Examples of Reapplication Time Restrictions:

- i. Ms. Smith’s son was excluded in 2005 for a drug offense. At the time, he had no prior convictions. He was released from prison in 2010. His Crime-Free Waiting Period is 2 years (drug offense + 0 priors) so Ms. Smith could likely apply to lift the exclusion in 2012. Ms. Smith applies under Path 2 (Passage of Time) in 2016. If the application is denied, she may reapply under Path 1 (Evidence of Positive Change) at any time.
- ii. Ms. Martinez’s grandson was excluded in 2005 for a drug offense. At the time, he had no prior convictions. He was released from prison in 2010. His Crime-Free Waiting Period would be 2 years (drug offense + 0 priors) so he would likely be eligible in 2012. But, if her grandson was convicted of a violent offense in 2015 (violent offense + 1 prior), he may not be eligible until at least 2020 depending on whether he was incarcerated for the 2015 offense. Ms. Martinez can still apply to have the Permanent Exclusion lifted under Path 1 even before this time is up. Once she applies, NYCHA will automatically review her grandson for Path 2 eligibility as well. If the application is denied, Ms. Martinez must wait 6 months before reapplying under Path 1 or Path 2.