

# **CRIMINAL & DRUG –RELATED ACTIVITY POLICY**

**The Authority Board of Commissioners adopted the forgoing policy for the following programs:**

## **Programs funded by NAHASDA**

The Salish and Kootenai Housing Authority is governed by the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. The Act states in Public Law 104-330-October 26, 1996, 25 USC 4137, Section 207. (a) (b) LEASE REQUIREMENTS AND TENANT SELECTIONS: 6(c) is criminal activity (including drug-related criminal activity) on or off premises.

## **Other Authority programs:**

**Maggie Ashley Trailer Park I & II  
Low Income Tax Credit Units  
Rural Development Units  
Transitional Living Center  
Home Improvement Program**

## **Section 1**

### **Applying for Salish and Kootenai Housing Authority Services**

When an application is received for housing or any other assistance program with the Salish and Kootenai Housing Authority and the head-of-household or a member of the household composition, has engaged in Drug-Related Criminal Activity, as defined below under Section 3- Definitions, Criminal Possession of Drug Paraphernalia, as defined below under Section 3-Definitions, or other Criminal Activity as defined below under Section 3-Definitions, the following policies shall apply:

#### **Drug-Related Criminal Activity or Criminal Possession of Drug Paraphernalia**

If the Authority has a preponderance of evidence documentation that the applicant or a member of the applicant's household composition is/was engaged in drug-related criminal activity or criminal possession of drug paraphernalia within the last five (5) years, the applicant cannot apply for services with the Housing Authority for one (1) year from the date of occurrence. Applicant must provide written documentation from a professional source that all person(s) listed on the applications that were involved in the drug-related criminal activity or criminal possession of drug paraphernalia, has successfully completed an approved rehabilitation program, or did not require rehabilitation. The applicant must also provide a court order or written documentation from his/her probation officer or professional counselor that all person(s) listed on the applications that

were involved in the criminal activity have; 1) successfully completed all requirements of the court; 2) is in good standing with his/her probation or parole officer; 3) has a parole plan in place deemed acceptable by the Department of Corrections parole analyst or Board of Pardons and Parole; 4) if in an outpatient treatment program, must be in good standing with his/her treatment provider.

### Criminal Activity

If the Authority has a preponderance of evidence documenting that the applicant or a member of the applicant's household composition is/was engaged in criminal activity within the last five (5) years, the applicant must provide a court order or written documentation from his/her probation officer or professional counselor that all person(s) listed on the applications that were involved in the criminal activity have successfully completed all requirements of the court.

### Medical Use of Marijuana

Per Federal Law, use of marijuana for medical or medical treatment purposes is an illegal use of marijuana. Because the Housing Authority receives Federal funding and grants, the Housing Authority will follow Federal Law concerning the use of medical marijuana.

## **Section 2**

### **Termination of Salish and Kootenai Housing Authority Services**

#### A. Thirty-Day (30) Notice to Terminate Services

The Authority may terminate services by providing a termination notice not to exceed thirty- (30) days, if the Authority has a preponderance of evidence that a tenant, any member of the tenants household, or a guest or other person under the tenant's control has engaged in criminal activity as defined below under Section 3 Definitions, that:

1. Threatens the right to peaceful enjoyment of the Authority premises by other tenants or employees of the Authority.
2. Threatens the peaceful enjoyment of their premises by person(s) residing in the immediate vicinity of the Authority's premises.

#### B. Seven-day (7) Eviction

The Authority may terminate services by providing a seven- day (7) termination notice if the Authority has a preponderance of evidence that a tenant, any member of the tenant's household, or a guest or other person under the tenant's control was involved in the following:

1. Drug-related criminal activity, as defined below under Section 3- Definitions;
2. Criminal Possession of Drug Paraphernalia, as defined below under Section 3- Definitions; or
3. An act that threatens the health or safety to other tenants, employees or property of the Housing Authority
4. Threatens the health or safety of their premises by person(s) residing in the immediate vicinity of the Housing Authority's premises.

Tenant is in violation of the Criminal and Drug-Related Activity Policy whether or not the tenant has knowledge of the illegal activity. However, if the reporting party is a member of the household composition and is not the person committing the act, and action is being taken to ensure the activity will not reoccur, termination action may or may not be enforced at the discretion of the Board of Commissioners.

### **Section 3** **Definitions**

- A. "Drug-Related Criminal Activity" means the illegal possession, manufacture sale, distribution, or use of a controlled substance as defined in Section 102 of the controlled substance act (21 U.S.C. 802) or fraudulently obtaining or attempting to obtain a controlled substance, that occurs on or off properties under the management of the Housing Authority. The standard of proof used to determine "drug related criminal activity" has occurred is a preponderance of the evidence that the activity has occurred. A specific criminal conviction is not required.
- B. "Criminal Possession of Drug Paraphernalia" means the unlawful use or possession with the intent to use drug paraphernalia that occurs on or off properties under the management of the Housing Authority. This will include all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug, that occurs on or off properties under the management of the Housing Authority. The standard of proof used to determine "possession of drug paraphernalia" is preponderance of the evidence. A specific criminal conviction is not required.
- C. "Criminal Activity" means activity that threatens/threatened the health, safety, or right to peaceful enjoyment of others including the Housing Authority employees, including but not limited to the following activities:

**1. Criminal Activity that occurs on or off Salish Kootenai Housing Authority premises is as follows:**

Homicide, aggravated assault, stalking, indecent exposure, elder/ child abuse, kidnapping, aggravated kidnapping, terrorism, designated as a Sexual Offender, designated as a violent offender, sexual assault and Sexual assault abuse of children, obstructing a law enforcement officer, obstruction of justice, weapons offense.

a. Designated Sexual Offender

Definition: Per Montana Code Annotated 2005, 46-23-502

“Department” means the department of corrections provided for in 2-15-2301 of the Montana Code Annotated 2005.

“Sex offender evaluator” means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

“Sex Offender” means:

- i. any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-4-504(1) (if the victim is 18 years of age and the offered is 18 years of age or older), 45-5-504(2)©, 45-5-507 (if victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or
- ii. any violation of a law of another state or the federal government that is reasonable equivalent to a violation listed in subsection (6)(a) or for which the offender was required to register as a sex offender after conviction.

“Sexual or violent offender” means a person who has been convicted of a sexual or violent offense.

“Sexually violent predator” means a person who has been convicted of a sexual offense and who suffers from mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

Applicants or Tenants that are designated as a sexual offender by a rulemaking authority i.e. the “Department” or a “Sexual Offender Evaluator”, assign one of three levels. The higher the level the higher the threat the sex offender is to public safety.

**Level I** – The risk of a repeat sexual offense is low;

Applications from Level I Sex Offenders will be accepted on the condition that the applicant provides documentation that they have successfully completed a certified treatment program.

If already receiving Housing Authority services or a current Tenant, the person receiving the services or Tenant must provide documentation that they have successfully completed a certified treatment program. This designation may not have any bearing on their tenancy or services

**Level II** – The risk of a repeat sexual offense is moderate;

Applications from Level II Sex Offenders will be accepted as follows:

- i. Applications from Level II Sex Offenders will be accepted on the condition that the applicant provides documentation that they have successfully completed a certified treatment program.
- ii. Low Rent units: when placed in a unit the applicant has to agree to be placed on a renewable Housing Authority Probationary Dwelling Lease.
- iii. If already receiving Housing Authority services or a current Tenant is designated as a Level II the Housing Authority may proceed with termination of the services or Tenant's dwelling lease for violation of the section C(1) (above).

**Level III** – The risk of a repeat sexual offense is high, there is a threat to public safety and the sexual offender evaluator believes that the offender is a sexually violent predator.

Applications from Level III Sex Offenders will not be accepted, as Level III are subject to lifelong registration requirements..

If a current tenant is designated as a Level III Sex Offender, after move In, the Housing Authority will proceed with termination of the Tenant's dwelling lease for violation of the section C(1) (above).

- b. Notification: If a client is already receiving services then designated a Sex Offender or a Sex Offender is granted Housing Authority services the Housing Authority will distribute information obtained from the Sexual & Violent Offender Registry and/or the Department of Corrections web site

and any other pertinent information to the surrounding Housing Authority Community in regards to this designation. This notification is to inform and protect all beneficiaries of Housing Authority's services.

**2. Criminal Activity that occurs on properties under the management of Salish Kootenai Housing Authority as follows:**

Assault, intimidation, domestic situations, robbery/burglary/theft unlawful restraint, contributing to the delinquency of an underage person, arson, trespass, harboring runaway(s), custodial interference, verified stolen property, driving under the influence or other crimes against persons or personal property, to include BB guns, air rifles, sling shots and paint guns.

Approved by the Board of Commissioners of the Salish and Kootenai Housing Authority at a Regular Meeting held November 15, 2016.