

SENECA NATION HOUSING AUTHORITY

“RENTAL DRUG & ALCOHOL POLICY”

SECTION I. PURPOSE

- A. The purpose of this drug and alcohol policy is to assure a drug free environment for all Seneca Nation Housing Authority (SNHA) residents.
- B. It is the intent of this policy to provide for the eviction or termination of any and all tenants who engage in drug-related criminal activity, whether on or off SNHA premises and to any and all persons who distribute alcohol to a minor on SNHA premises.
- C. This policy is incorporated by reference into all SNHA Rental Leases

SECTION II. APPLICABILITY

This policy applies to all SNHA rental units, wherever situated.

SECTION III. DEFINITIONS

- A. “Applicant” is defined to include all occupants of the unit
- B. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession of a controlled substance, whether on or off SNHA premises, and includes offenses for which only a civil penalty may be assessed. "Drug-related criminal activity" also means the illegal manufacture, sale, distribution, use or possession of a controlled substance by a visitor or guest on SNHA premises or such an individual being under the influence of a controlled substance while on SNHA premises.
- C. "Controlled substance" has the same meaning as defined in Title 21 of the United States Code.
- D. "Minor" shall mean any person under the age of 18 years.
- E. “NAHASDA” means Native American Housing Assistance and Self-Determination Act.
- F. "Shall" for the purposes of this policy the word "shall" is always mandatory and not merely advisory.

- G. "SNHA premises" includes all housing units, whether rental or homebuyer, all common areas, all administrative areas and all lands and buildings included in any lease of property to the SNHA.
- H. "Date of application for admission" shall mean the date for which application is made for an available rental unit or homebuyer unit.

SECTION IV. INELIGIBILITY FOR ADMISSION

A. Prior Alcohol or Drug-Related Incidents

1. Persons evicted by any Tribally Designated Indian Housing Authority, any Indian Housing Authority, public housing, Section 23, or any Section 8 program or whose homebuyer agreement with any Tribally Designated Housing Authority or any Indian Housing Authority has been terminated because of drug-related criminal activity are ineligible for admission to any SNHA Rental program for a 3-year period beginning on the date of such eviction or termination.
2. Persons evicted from SNHA property for distribution to a minor are ineligible for admission to any SNHA program for a 1-year period beginning on the date of such eviction or termination.
3. Persons who were found to have been criminally convicted for substance abuse-related activity are ineligible for admission to any SNHA housing unit.

B. Other Requirements

Any applicant for SNHA housing and any other prospective residence shall be required to sign such release forms and to provide such information, including a background check, as required by the SNHA to assure compliance with this section.

SECTION V. WAIVER OF INELIGIBILITY

- A. The Executive Director of the SNHA may waive the ineligibility of any family/person who is ineligible for admission to a SNHA program if:
 1. The family demonstrates successful completion of a supervised drug or alcohol rehabilitation program approved by the SNHA, or
 2. The family can provide clinical documentation indicating that they have otherwise been rehabilitated successfully, or
 3. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drugs or alcohol use is no longer an occupant of the unit or a member of the household.

4. The family agrees to random drug testing at the family's expense.
- A. Any person desiring to have his or her ineligibility waived shall have the burden of showing that the requirements for waiver have been met.
- B. Nothing in this section shall require waiver of ineligibility under any circumstances.
- C. The Executive Director may seek counsel from any individuals or agencies to make a determination.

SECTION VI. EVICITION OR TERMINATION

A. Eviction

1. Any tenant who has engaged in drug-related criminal activity during the term of the tenancy, whether on or off SNHA premises, or who has a resident of his or her household who has engaged in such activity on or off SNHA premises, or who has had a visitor or guest who has engaged in such activity on SNHA premises or who has been under the influence of a controlled substance while on SNHA premises, shall be subject to eviction.
2. Any tenant who has distributed alcohol to a minor on SNHA premises, or who has a resident of his household or had a visitor or guest who has distributed alcohol to a minor on SNHA premises shall be subject to eviction.
3. The SNHA has the authority to drug test the unit for any illegal substance based on the illegal drug activity as identified. This test can be administered while tenant is still occupying the unit and if found to be positive, the tenant will be subject to eviction.

B. Termination

1. The Lease Agreement of any tenant who has engaged in drug-related criminal activity during the term of the agreement, whether on or off SNHA premises, or who has a resident of his or her household who has engaged in such activity on or off SNHA premises, or who has been under the influence of a controlled substance while on Housing Authority premises, shall be subject to termination and the resident evicted.
2. The Lease Agreement of any Tenant who has sold or distributed alcohol to a minor on SNHA premises or who has a resident of his or her household or has had a visitor or guest who has distributed alcohol to a minor on SNHA premises shall be subject to termination and eviction.

C. Procedure upon Violation

In the event of a violation hereof, tenant shall receive a written notice from the Executive Director of the SNHA to immediately vacate the premises or as outlined in the revised SNHA

Renter's EAO policy (1/11/17 adopted). Said notice will provide that should the tenant fail to execute and deliver the compliance agreement or vacate the premises, the SNHA will seek their forcible eviction for such failure as outlined in the SNI Eviction and Foreclosure Law.

D. Removal of Resident, Visitor or Guest

In the case of a household resident or visitor or guest, no tenant shall be evicted if the tenant has promptly secured the removal, other than the temporary removal, of the offending resident, visitor or guest from the premises. The SNHA may randomly inspect the unit to ensure program and policy compliance.

SECTION VII. FORBEARANCE REGARDING EVICTION OR TERMINATION

A. The SNHA may forbear in the eviction of any person or the termination of any agreement under this policy. The Executive Director will have sole discretion to develop a compliance plan if there are mitigating circumstances and it is in the best interests of the SNHA. Any compliance plan must include the following:

- Corrective Action on the part of the Tenant;
- Compliance with all terms of the lease agreement.
- Immediate eviction in the event of a breach of any terms of the lease or the compliance plan.

SECTION VIII. DUE PROCESS

Appeal rights must be exercised through the Seneca Nation Housing Authority Board of Commissioners.

SECTION IX. SNI ANNUITY GARNISHMENT

In those cases in which the tenant(s) facing eviction proceedings is an enrolled Seneca Nation tribal member and the reason for eviction involves noncompliance with this policy, then garnishment of any annuity payments made by the Seneca Nation of Indians to the tenant(s) will be subject to garnishment for any of the following as defined by Council Resolution CN: R-05-10-03-33 (2003):

A. Vacated damages, including but not limited to:

1. Delinquent amounts owed.
2. Testing of home for drug use.
3. Clean up costs

4. Repair costs
 5. Administrative costs associated with bringing the vacated home to livable condition.
- B. Any garnishment for this purpose will adhere to the following:
1. The Seneca Nation Housing Authority (SNHA) is authorized to implement Garnishments of tribal annuity payments for the collection of debt as outlined in Section IX, 1 of this Policy. Garnishments will continue until the total outstanding balance is cleared and will only be subject to limitation by tribal ordinance.
 2. After determining that a tenant meets the requirements of this section, the SNHA Executive Director will notify the vacated tenant of the action to be taken with regard to annuity garnishment for satisfaction of the entire balance owed to the SNHA.
 3. The debtor will have 10 working days from the date of SNHA's written notice to pursue the following options:
 - a. make payment in full or some other satisfactory arrangement.
 4. Notification: Notice will be mailed to the tenant's forwarding address. In the event no forwarding address is available, the SNHA will post the written notice in the SNI Newsletter.
 5. After determining that a tenant meets the requirement for annuity garnishment and completion of Section IX.A., the SNHA will obtain a Tribal Council Resolution authorizing the SNHA to transmit a written administrative order regarding the garnishment to the Seneca Nation Tribal Finance Department at least 30 days prior to the disbursement date of said annuity payment(s).
 6. The SNHA will also provide written notice to the debtor directly or by posting of the action being taken at least 30 days prior to the disbursement date of said annuity payment(s). The debtor will have 10 working days from the date of their written notice to make payment in full or file an appeal to the Seneca Nation Tribal Courts.

SECTION X. MISCELLANEOUS PROVISIONS

A. Criminal History

Any criminal record received in order to administer this policy must be maintained confidentially and in compliance with requirements set forth the Native American Housing Assistance and Self-Determination Act.

B. Use of Criminal Background Information

The SNHA shall use criminal background information only for applicant screening, lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of the SNHA.

C. 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 the drug-related criminal activity identified in the record or of the alcohol-related offense specified 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 tenant with the Summons and Complaint.

D. Maintenance of Criminal Conviction Records

1. The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in Sec. 1000.150 in files separate from all other housing records.
2. These criminal conviction records will be kept under lock and key and be under the custody and control of the SNHA Executive Director and/or his designee for such records.
3. These criminal conviction records may only be accessed with the written permission of the SNHA's Executive Director and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and this policy.

E. 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 SNHA programs or be subject to eviction or termination from a SNHA rental unit.

SECTION XI. SOVEREIGN IMMUNITY

The Seneca Nation Tribe does not, by adoption of this drug and alcohol policy, waive, in whole or in part, its sovereign immunity from suit. The Seneca Nation Tribe's sovereign immunity from suit extends to the Seneca Nation Housing Authority and also extends to Tribal officers, employees and/or authorized agents acting on behalf of the Tribe and within the scope and authority of such officer, employee and/or authorized agent.