



# Martinez Consent Order Updates

Joseph Martinez, et al., Plaintiffs,

v.

Rhode Island Housing and Mortgage Finance  
Corp., et al., Defendants.

Civ. A. No. 83-0319-S.



# Case Background

- In 1983, Plaintiffs brought this class action on behalf of all “very low-income” present and future applicants of certain federally-funded low-income housing in Rhode Island.
- Plaintiffs brought claims under the United States Housing Act, 42 U.S.C. § 1437 et. seq., and the due process clause of the Fourteenth Amendment of the United States Constitution.
- Protracted settlement discussions, with the Court’s assistance, resulted in the entry of the 1985 Consent Order.



# 1985 Consent Order Terms



- To improve its oversight and supervision of state agency financed Section 8s, RIHousing would establish new policies and practices contained in a Resident Selection Plan
- The Resident Selection Plan would be adopted as a regulation and RIHousing would use its best efforts to get managing agents and owners of covered state agency financed Section 8s to implement those requirements.



# Resident Selection Plan Terms

- Eligibility pamphlet defines family narrowly as persons related by blood, marriage, operation of law, or long-term commitment.
- Specifies paper-based application procedures.
- Specifies criteria and timing for eligibility determinations.
- Requires estimated waitlist number and move-in date on eligibility notice.
- Limits admission to very low-income applicants.
- Establishes informal hearing notice requirements and procedures, including RIHousing as hearing officer.



# Resident Selection Plan Terms (cont'd)

- Requires four, separate, paper-based waiting lists differentiated by income level.
- States that HUD regulations regarding admission preferences have not been implemented.
- Allows applicant selection outside waiting lists, appears to establish demographic quotas for admission, and certain special admission categories.
- Details applicant data collection for monitoring purposes; inconsistent with local practice.



# Feedback Received from Owners/Agents

- Definition of family is outdated. HUD now uses the term to describe individuals, persons with non-marital relationships, etc.
- Resident Selection Plan envisions only paper/ink applications. This is now outdated as it does not account for electronic records of any kind.
- Developments report difficulty/expense performing full background checks at multiple junctures.
- Eligibility notice requirements for waitlist number and estimated move-in date have no analogous Section 8 requirement; speculative; confusing/frustrating to tenants.
- Limitation to very-low-income applicants is at odds with current HUD income-targeting for extremely low-income applicants.



# Feedback Received from Owners/Agents (cont'd)

- Inconsistent hearing notice timing (14 v. 10); generally, owners/managers are equipped to meet with applicants to discuss rejections.
- Development should have a single waiting list.
- HUD regulations regarding selection preferences have now been implemented.
- Public posting of waitlist raises Violence Against Women ("VAWA") and privacy concerns. May discourage qualified persons from applying.
- HUD permits owners to update waitlist more frequently than every other year; risks obsolete waiting list entries.
- Applicant selection outside of the waiting list would violate HUD rules for selection of tenants.



# Feedback Received from Owners/Agents (cont'd)

- Apparent quotas for racial minorities present potential fair housing concerns; violate waiting list selection procedures; and provide outdated definitions.
- Special admission for participants in other state programs, such as Ladd School, is potentially inconsistent with waiting list selection procedures.
- Requirement to submit a list of applicants to RIHousing annually is unnecessary, as HUD mechanism for monitoring waiting list management (Management Occupancy Review (MOR)) is sufficient.





# Updates to the 1985 Consent Order



- RIHousing is seeking to modify certain terms of the 1986 Consent Order in the Martinez v. RIHousing case.
- Rhode Island Center for Justice has stepped in as putative successor class counsel for the plaintiff class and the parties have had extensive sessions and discussions relating to the modifications to the Consent Order sought by RIHousing.
- The parties have developed a mutually acceptable Amended Consent Order after these extensive negotiations.



# Major Changes in Proposed Consent Order

1. Clarifies covered developments.
2. Brings language in alignment with current HUD rules and regulations.
3. Clarifies the existing law around exclusions for use of criminal background checks in screening applicants.
4. Clarifies that owners will do their own hearings, with the option to have a desk review by RIHousing at one of the parties' requests.
5. Owners are no longer required to post the waitlist publicly so long as there is some way for tenants to find out their status.



# Proposed Procedures for Waiting Lists

- Covered Developments must provide accessible, reasonable methods for applicants to check their own waiting list positions, including **at least** by telephonic system, web posting, in-person request at a management office, **or** list posted in a public area at the Covered Development.
- Each Covered Development should maintain **one (1) single** waiting list.
- Waitlist position information must be updated no less frequently than **monthly**.



# Proposed Procedures for Waiting Lists (continued)

- If a Covered Development uses public posting, on the web or in a public area at the Covered Development, to satisfy this requirement, **personally identifiable information** of applicants, as defined by the Rhode Island Identity Theft Protection Act, as amended, **may not appear on the list**; Covered Developments must instead assign random identification numbers or use another method designed to protect the privacy of applicants.
- The applicant must be afforded the opportunity to add, remove, or change the information at any time during their application process or tenancy.



# Proposed Terms for Review Process

- New Consent Order states an informal hearing before an impartial agent or officer regarding an applicant's rejection must be **performed by the owner, or and authorized designee of the owner**, consistent with application HUD regulations and handbooks regarding owner meetings.
- The owner shall issue its final written decision within 5 days of completion of hearing. Owner shall send its final written decision to the applicant by US mail or electronic mail (if requested by the applicant) no later than 1 business day of its date of issuance. The written decision should inform the applicant of the **right to seek review by RIHousing** within 14 days of the written decision.



# Proposed Terms for Review Process (continued)



- Upon notification of applicant's request for review of the final written decision, the owner must transmit to RIHousing the complete official record promptly, but in no event more than 7 business days, following RIHousing's notification of the review request.
- RIHousing's written determination shall be issued within 45 calendar days after its receipt of the official record.





# Proposed Terms for Tenant Selection Plans

- All Covered Developments must comply with the requirements of state and federal Fair Housing laws and regulations and the then-prevailing HUD requirements for **Affirmative Fair Housing Marketing Plans**.
  - targeted enrollment of applicants eligible for very low-income and low-income preferences and applicants from underrepresented groups



# Proposed Terms for Tenant Selection Plans (continued)



- All Covered Developments shall annually collect the demographics, including race and disability, of their residents. It shall be voluntary for residents to provide demographic information to the management of the Covered Development and demographic data shall be requested only from residents, not applicants, annually in a survey clearly introduced to tenants as voluntary.





# Proposed Terms for Tenant Selection Plans (continued)



- Owners may not adopt terms for criminal background checks and criminal activity screening in the tenant selection plan that are **more restrictive** than the then-prevailing mandatory HUD eligibility and screening requirements for criminal background.
  - Must have a writing criminal background screening policy
    - Policy should consider the nature, severity, and recency of criminal conduct
  - May not deny solely based on arrest records
  - Must not violate Fair Housing Act
    - Provide applicant with criminal record and provide opportunity to correct inaccurate information or explain extenuating circumstances.



# Major Changes in Proposed Consent Order

1. Clarifies covered developments.
2. Brings language in alignment with current HUD rules and regulations.
3. Clarifies the existing law around exclusions for use of criminal background checks in screening applicants.
4. Clarifies that owners will do their own hearings, with the option to have a desk review by RIHousing at one of the parties' requests.
5. Owners are no longer required to post the waitlist publicly so long as there is some way for tenants to find out their status.



# What to Expect Next

- The court will be asked to approve Rhode Island Center for Justice (“RICFJ”) as successor to Rhode Island Legal Services and new class representatives will be named.
- RIHousing will work with the court and RICFJ on a version of a revised consent decree to get final court approval.
- RIHousing will seek to repeal the regulation that contains the original Resident Selection Plan and revise our loan documents.



# Questions?

---



# Contact Information

*Program Questions:*

**Hope Lanphear**

*Assistant Director, Leased Housing & Rental  
Services*

**401-429-1409**

**hlanphear@rihousing.com**

*Legal Questions:*

**Shayla Simmons**

*Deputy General Counsel*

**401-450-1315**

**ssimmons@rihousing.com**

