

PROCEDURES FOR SERVING A NO TRESPASS NOTICE

I. INTRODUCTION

The Framingham Housing Authority (FHA) is committed to providing a safe environment for our residents and employees, and this often requires dealing with nonresidents. Section 9 and 10 demonstrate two tools that may effectively assist the FHA in successfully keeping nonresidents who are dangerous or interfere with the quiet enjoyment of FHA, residents out of FHA developments. One tool is to serve a No Trespass Notice (Attachment 1), and the second is a 121B Restraining Order. Each method has its own unique requirements and consequences. This section discusses the necessary steps to successfully secure a No Trespass Notice.

II. NO TRESPASS NOTICE

By law, a No Trespass Notice can be verbal or written notification to a nonresident that informs the individual that he/she must stay off FHA property. Pursuant to these procedures, notice should be in writing. The notice (Attachment 1) is given to the nonresident by the FHA or its designee pursuant to M.G..LL. Ch. 266, § 120. This notice can subject the individual to arrest and prosecution if he/she refuses to leave or stay off FHA property.

A. Deciding to Serve a No Trespass Notice

It is FHA policy that only FHA employees, FHA contractors, and their employees, and FHA residents are allowed on FHA common areas. Also permitted on FHA common areas are the invited guests of these stated individuals, as well as those required to be allowed on FHA property to exercise their First Amendment free speech rights. However, in certain cases it is appropriate to reinforce that policy by giving explicit notice to a nonresident that he/she is not welcome on FHA common areas.

FHA needs a valid reason to serve an individual with a No Trespass Notice. Reasons for FHA to serve a No Trespass Notice include any acts that would constitute a lease violation if the individual were a resident. Such an example of a reason to serve a No Trespass Notice is the individual is disturbing the quiet enjoyment of FHA residents. Service of a No Trespass Notice is also warranted if the FHA is aware that the individual has engaged in criminal activity on or off FHA property, or if the FHA has received an enforceable permanent or long-term restraining order (other than under 121B, §32C) prohibiting contact with an FHA resident or employee. The FHA can also issue a No Trespass Notice to a squatter (See Squatter Eviction Section 11). A Framingham police officer may serve a No Trespass

Notice on a nonresident in the same circumstances that the FHA can. If a Framingham police officer does so, he/she must give copies of the notice to the FHA.

A space has been provided in Attachment 1, indicating the FHA's reasons for serving the notice, and must be filled out before anyone serves the individual. Once Attachment 1 is complete, it must be served on the individual, and service is crucial. It is important to emphasize that the FHA must fill out the certificate of service.

It is important to stress that only nonresidents are subject to No Trespass Notices. If the individual is a resident or an authorized member of the Resident's family composition he/she may not be served with a No Trespass Notice. If such person's conduct amounts to a lease violation the issue must be dealt with by the FHA procedures for cause evictions (See Chapter II for the relevant cause section).

B. Grievance Possibilities

Individuals served with a No Trespass Notice **do not** have a right to grieve the notice, nor is the FHA required to meet with the individual. If the individual requests to meet with the FHA it would be prudent to do so. The meeting can serve to strengthen any future case against the individual or the FHA may come to a mutually acceptable compromise with the individual. The FHA should keep in mind that any meeting is strictly discretionary. If the FHA determines to have a meeting with the individual, the FHA should take notes of the meeting including the time, date, place, individuals present, and decision as to how to proceed. The meeting will be attended by two (2) representatives of the FHA. All notices and notes regarding No Trespass Notices, should be kept by the FHA in a separate, easily accessible file.

C. Violation of the No Trespass Notice

Once an individual has been *served* with a No Trespass Notice and he/she refuses to leave the premises or he/she returns to the property, he/she is in violation of the No Trespass Notice, and has committed a crime. If the FHA is uncertain whether the individual has received the written notice, the FHA should give the individual a verbal notice and a new written No Trespass Notice. The individual must be told to leave the premises or risk of being treated as a trespasser. FHA will contact the police department to enforce the No Trespass Notice.

There are several potential outcomes once the police are called. If the police come to the scene and the individual is still on the property, the police may arrest him/her immediately. The police may also ask the individual to leave the area and issue a summons to him/her to appear in District Court at a future date. If the police do not arrest the individual, the FHA may complete a formal criminal complaint to have the matter prosecuted. The criminal complaint form can be obtained at the local District Court. If the individual is not on the premises when the police arrive, the police

cannot arrest the individual unless there has been a felony committed along with the trespass. The FHA must then file a criminal complaint to insure prosecution for the trespass.

Prosecuting a No Trespass Notice is a criminal matter, and would be handled by the local District Attorney's *office*. The FHA must be prepared to provide the District Attorney's office with all the reasons a No Trespass Notice was issued, and names of witnesses to the trespass and the service of the No Trespass Notice. The FHA and/or the witness(es) must be prepared to testify if the individual is to be kept off of FHA property. This may take several court appearances, with very limited results the first few times. However, if the FHA is persistent the District Court will eventually incarcerate the individual.

D. Limitations to the No Trespass Notice

A defense an individual may use to avoid prosecution is to claim he/she has a lawful reason to be on the property. The most common reason given is he/she is visiting a resident.

The nonresident **does not** have the right to see anyone, but a resident **does** have the right to invite any individual not barred by a restraining order as a guest. Therefore, when an individual who has been served with a No Trespass Notice has been invited to visit by a resident, he/she has a lawful reason to cross the common areas of FHA property solely for the purpose of access to and egress from the resident's apartment.

It is best for the FHA to discuss with the resident the concerns about why he/she wants the nonresident to stay of FHA property. The resident may agree with the FHA and not allow the person to visit. However, if he/she does not agree and insists on allowing the individual to visit, the FHA's meeting with the resident will be strong evidence to evict the resident if his/her nonresident guest continues his/her disruptive behavior. The FHA should keep notes of any meeting with a resident in regard to an individual served with a No Trespass Notice. The notes should indicate time, date, place, individuals present, and any decisions as to how to proceed. One copy of the notes should be kept in the resident's file and the other copy kept with the nonresident's No Trespass Notice.