

PEEKSKILL HOUSING AUTHORITY
BAN POLICY

Revised September 16, 2011

Policy:

It is the policy of the Peekskill Housing Authority to make every effort to provide a safe and decent living environment for all tenants of public housing. In so doing it is necessary to ban persons from the premises whose, past or present actions and behavior disrupts or threatens the health and safety of the PHA residents, PHA personnel and PHA commissioners.

Acts which will result in a person being banned from Housing Authority Property include, but are not limited to:

1. Person(s) involved in murder will be banned for life
2. Person(s) involved in incest or rape will be banned for life,
3. Person (s) involved in child molestation will be banned for life,
4. Person (s) involved in the possession, sale or distribution, and/or manufacturing of any illegal/controlled substance will be banned for life,
5. Person (s) involved in a weapon-related activity/possession,
6. Person (s) found residing without authorization in a PHA unit,
7. Person (s) causing a disturbance, disorderly and/or lewd conduct as defined by the Penal Code of the State of New York,
8. Person (s) involved in assault, battery or other threatening behavior requiring public safety intervention,
9. Person (s) involved in vandalism on PHA property,
10. Person (s) involved in robbery/theft ,
11. Person (s) involved in arson or related activities,
12. Person (s) involved in domestic/dating violence on PHA property,
13. Person (s) who assault an employee of PHA verbally or physical with the incident being documented and corroborated,
14. Person (s) found driving any motorized vehicle that endangers the health and safety of resident, employees, resident's guest and the public on the grounds of PHA,
15. Any minor violating any local, state or national curfew may be banned,
16. Person (s) found to be criminal trespassing,
17. Person (s) involved in "gang activity" (a gang is a group of individuals who engage in criminal activity and identify themselves with a common name or sign) which includes but not limited to:
 - a. Group of persons to show gang affiliation or to intimidate rival gangs, residents, and/or employees and/or commissioners of the PHA, and

- b. Person (s) who exhibits through the use and/or signals/signs/gestures for the purpose of intimidation or for the purpose or provoking a violent response, and
18. Person (s) whose conduct substantially interferes with any right, comfort or convenience of any PHA resident, employee, or commissioner or any conduct that threatens the health, safety, or peaceful enjoyment of PHA property by other residents of the PHA, PHA employee residing in the immediate vicinity of the dwellings, representatives, contractors, agents, law enforcement official and/or the public.

Notification:

Persons banned from the premises are notified by letter informing them of the violation of section 140.00 (5) of the Penal law of the State of New York by mail and or personally given their notice by Housing Authority Security Personnel and/or the City of Peekskill Police Department. The Ban List will be posted in the lobby of Bohlmann Towers and in the common areas at all other PHA sites.

Ban List:

Names of persons banned will be maintained in a "Banned List File" in the PHA office as well as given to the PHA Security and the Chief of Police. Persons banned are subject to arrest if they enter upon any of the PHA property sites.

Removal from Ban List:

Persons may be considered for removal from the ban list by written request to the PHA stating the reasons for the request and the period of time if requesting temporary permission to visit a relative; signing a "Release of Information Form", and a permission to the PHA to receive a "Police Conduct Report Form". After review by the Executive Director and or the Board of Commissioners, the requesting party will be given a written response to their request.

Persons who are removed from the Ban List for an indefinite period of time will be banned permanently if their continued actions and/or behavior disrupt or threaten the health and safety of the PHA residents, PHA personnel and PHA commissioners.

Revisions to this Policy

Revisions and/or changes to this policy will be by Board of Commissioners' Resolution.

THE LAW: SECTION 140.00 - (5) NY STATE PENAL LAW

Definitions of terms:

Enter or remain unlawfully. A person “enters or remains unlawfully” in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner or such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. A person who enters or remains in or about a school building without written permission from someone authorized to issue such permission or without a legitimate reason which includes a relationship involving custody of or responsibility for a pupil or student enrolled in the school or without legitimate business or a purposes relating to the operation of the school does so without license and privilege.

Unlawfully enter or remain

Key to whether one’s presence on the premises of another is lawful is whether one was “licensed or privileged” to enter or remain in or upon the premises [Penal Law 140.00(5)]. “In general, a person is ‘licensed or privileged’ to enter private premises when he has obtained the consent of the owner or another whose relationship to the premises gives him the authority to issue such consent.” *People v. Graves*, 76 NY.2d 16, 20, 556 N.Y.S.2d 16, 555 N.E.2d 268 (1990). In the absence of such license or privilege, a person will generally be deemed to have entered or remained unlawfully on the premises. The People, of course, bear the burden of proving the absence of such license or privilege. See *People v. Brown*, 25 NY.2d 374, 306 N.Y.S.2d 449, 254 N.E.2d 755 (1969).

The statutory definition of “enter or remain unlawfully” includes five sentences. The first sentence of the definition states the general rule that a person enters or remains unlawfully in or upon premises when that person is not licensed or privileged to enter or remain. Law and social convention [see, e.g., Restatement (Second) of Torts, Chapter 8, “Privileged Entries on Land”] as well as the remaining sentences of the definition, define the boundaries of license and privilege. Thus, for example, employees who enter their place of employment and invited guests are licensed or privileged to enter or remain upon premises. A child is normally licensed or privileged to enter a parent’s home, but not necessarily when parent and child are estranged. See *People v. Bell*, 131 A.D.2d 859, 517 N.Y.S.2d 219 (2nd Dept. 1987). Police officers and firefighters in the lawful performance of their public duties may be privileged to enter premises irrespective of the consent of the owner.