

Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Chrystal Komegay, Undersecretary

Public Housing Notice 2016-15

MEMORANDUM

TO: Local Housing Authority Board Members
Local Housing Authority Executive Directors

FROM: Sarah Glassman, Associate Director for
Division of Public Housing & Rental Assistance

SUBJECT: Update on DHCD Risk Management and Insurance Programs for Massachusetts
State-Aided Housing Programs

DATE: May 20, 2016

DHCD has recently added a full-time Risk Management Specialist to the Legal Department, who is charged with working closely with the public housing staff to oversee DHCD's program of risk management to assist LHAs in addressing both property damage and general liability risks and claims. In her new role with DHCD, Sarah O'Leary will be located in the Division of Public Housing and working closely with the public housing staff to provide risk management guidance as early as possible in order to manage or prevent problems before they escalate. Another member of the DHCD Legal Department, Adrian Walleigh, is also working with Sarah on the Risk Management Program and can be contacted in her absence.

DHCD aims to move beyond simply implementing insurance and retained risk programs for casualty and general liability coverage toward also providing guidance and directives regarding risk management in operations and housing construction, and helping LHAs to implement best practices in areas such as confidentiality, security and warnings. The Risk Management Program will also continue to assist in property insurance claims, manage litigation involving liability claims against housing authorities, and work with Regional Counsel and litigation counsel assigned by DHCD. The Risk Management Specialist will also be able to assist in claims for emergency funding through FEMA, investigations by OSHA, or the State Fire Marshall, and in employment claim matters.

DHCD'S OVERALL RISK MANAGEMENT PROGRAM – REVIEW & RECOMMENDATIONS

Over the next several months, DHCD will be reviewing the property insurance and retained risk pool program for state-aided housing to ensure that the program provides the comprehensive coverage needed to ensure appropriate stewardship of the portfolio. Working with the Salem Housing Authority, DHCD has engaged a consultant to assist in this task. This project will entail a review of the property damage coverage currently provided to LHAs, claims experience and the insurance marketplace to ensure that the insurance program is adequate to meet the needs of LHAs and their residents and to protect the state-aided housing portfolio. We will be reaching out to LHAs in the upcoming months with requests for information, and to hear your suggestions and concerns regarding these programs. DHCD is also developing risk management recommendations and protocols that will help to avoid risk and provide direction for LHAs regarding what to do when unanticipated incidents occur which could lead to future legal claims and potential liability.

PROCESS FOR CLAIM COMMUNICATION & HANDLING

While DHCD is crafting improvements to our Risk Management Program, we need your cooperation in ensuring that good risk management and communication practices are followed. Please review and follow the processes and guidelines listed below in the interim as we solicit review of our operations. All executive directors are asked to forward and share this PHN with your program and maintenance staff.

RISK REDUCTION: WHAT YOU SHOULD DO

Losses can be reduced when claims are recognized and reported promptly, whether they be property damages or liability matters. With prompt notification of an occurrence or claim, DHCD's Risk Management Program has the opportunity to ensure the claim is properly evaluated. Good practices would necessitate that you do at least the following:

- Establish a file and maintain it securely;
- Prepare a list of witnesses including contact information and an explanation of the reason they were there and what they saw;
- Obtain photographs of the location in question, if possible before conditions changed and in similar time of day and lighting conditions;
- Document the Who, What, Where, When and How of your photographic documentation;
- Document and estimate any financial damages;
- Save any records and documents that can help determine liability.

Prompt evaluation of property claims will allow the Risk Management Program the opportunity to resolve claims promptly and to evaluate whether a third-party bears any financial responsibility for the damage. Early notification of potential liability claims creates the opportunity for early resolution of claims for which LHAs are legally liable, to defend those claims for which LHAs are not legally liable and will reduce the amount of money spent on legal settlements, judgements and attorneys' fees.

RISK MANAGEMENT PROCESS & GUIDANCE

Your assigned housing management specialist should be your first point of contact when you become aware of an injury, accident, legal claim, or property damage and report it to DHCD. Your housing management specialist will interact with DHCD's Risk Management Specialist and legal team to assist you, help manage the situation, and answer any questions you have. We have provided claim information and reporting instructions below for the different types of issues that are frequently encountered.

Property damage

Coverage for property damage, as well as coverage for boiler and machinery and crime, are provided through a combination of insurance policies and a retained risk pool administered on behalf of all of the LHAs. A property loss claim happens when a building is damaged by a cause such as fire, weather, collision, water leak, crime or vandalism. While boiler breakdowns and electrical failures may be insured, regular wear and tear and maintenance deficiencies are not covered by insurance. Currently, LHAs have a sliding scale deductible ranging from \$1,000 to \$2,500, based on each LHA's number of units.

Claims for insured damage to LHA housing sites are a priority. Damage to buildings and the LHA's contents must be reported promptly. Prompt reporting allows the insurer to inspect the property, document the damage, determine the cause and origin of the loss, determine coverage, and develop a plan for the property to be repaired quickly.

All property loss and damage claims for values greater than \$1,000 should be reported to Beth Grenier at The Sullivan Group, who will work with you to prepare and report a claim.

You can reach Beth at:
Beth Grenier, Commercial Claims Manager
The Sullivan Group
1 Mercantile Street - Suite 710
Worcester, MA 01608-2804
508-471-9022 or bgrenier@sullivangroup.com

Please also fax or email the loss report to your housing management specialist. Additional documentation and information may be forwarded after the initial report.

LHA automobile accidents

LHAs are responsible for acquiring their own automobile insurance. It is critical that the insurance policy is kept up to date regarding vehicle and personnel information. Failure to provide accurate information could lead to denial of insurance claims, which will result in liability claims against the LHA. Any automobile accidents, auto damage claims or personal injury claims related to automobiles should be promptly reported in accordance with the procedure required by your automobile insurer.

Automobile accidents involving an LHA vehicle that cause serious injury to a passenger or third party must be reported to your housing management specialist within 24 hours. A Motor Vehicle Crash Operators Report must be filed with both the local police department where the accident occurred and the Massachusetts Registry of Motor Vehicles within 5 days of an accident involving a fatality, injury or damage in excess of \$1,000. Before completing this report, please contact Sarah O’Leary directly at sarah.oleary@state.ma.us or 617-573-1229.

Workers’ injury claims

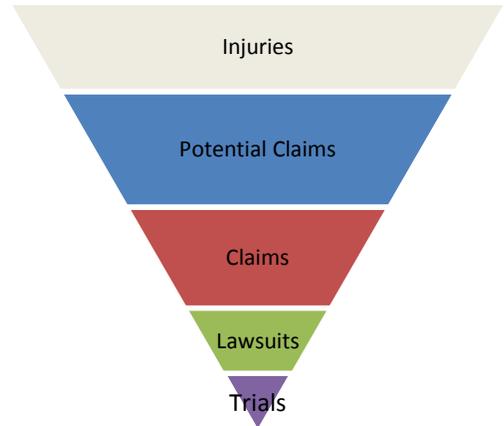
LHAs are responsible for maintaining workers’ compensation insurance which provides protection for employees who are injured on the job. If you have a workers’ compensation claim, contact your insurer directly. Any cases of worker injury should also be reported to your housing management specialist.

OSHA has strict requirements requiring employers to report certain on-the-job injuries. Worker fatalities must be reported by the employer within 8 hours. Injuries of a significant nature involving inpatient hospital care must be reported to OSHA within 24 hours. Further information can be found in OSHA’s factsheet on the employer reporting rule at <https://www.osha.gov/recordkeeping2014/OSHA3745.pdf>. If you have questions about this please work with your worker’s compensation insurer or contact Sarah O’Leary directly at sarah.oleary@state.ma.us or 617-573-1229.

Personal injuries, lawsuits, discrimination and civil rights complaints

Lawsuits that are filed against an LHA for personal injury, property damage, employment matters, defamation, confidentiality violations, discrimination or denial of civil rights are referred to as general liability matters. The legal liability for these claims is not insured by a third-party. Claims involving state-aided housing are administered through DHCD’s General Liability Retained Risk Program.

It is helpful to understand the difference between potential claims, claims and lawsuits. A potential claim occurs when an LHA learns that someone has been injured or aggrieved by an event. When you hear of a potential claim, you should open a file and gather the necessary information to evaluate the matter if it ripens into a claim. Many of these potential claims will not be pursued for various reasons, however some will be pursued with a claim for redress or financial compensation. This claim could be made by the injured person, a family member, an insurance company which incurred costs due to the event, or by a litigation attorney.



It is extremely important that all “claims” are reported as soon as they arise. Every event which is likely to lead to a legal claim, every communication about a legal claim and every lawsuit should be reported to your housing management specialist immediately. The claim notification or paperwork should be faxed or e-mailed to your assigned housing management specialist as soon as possible.

Do not send originals or important evidence by mail. Copies of original documents, together with any additional supporting materials created when you discovered a potential claim, should be sent by mail. Do not destroy or dispose of physical evidence which could help determine how an accident occurred. It is essential to provide DHCD with complete and accurate facts regarding the claim.

LEGAL PROCESS NOTIFICATION

Any time an LHA board member or employee is served with legal process, whether it be a lawsuit, writ of summons and/or other court order, it should immediately be reported to DHCD. Please provide the following information with the paperwork:

- Date lawsuit was served upon each defendant named in the lawsuit;
- How service of process was made (private process server, mail); and
- Who received the legal process documents when they were served.

The time for responding to a lawsuit or other legal process begins to run from the date it is served. Because of the time-lag involved in these type of issues, it is important to notify DHCD when new activity occurs on a previously reported matter. Failure to respond to certain legal notices in a timely manner could negatively impact the outcome of the case.

A claim may or may not progress into a lawsuit depending on the merits of the facts, evidence available and potential early resolution of the case. Similarly a lawsuit may or may not proceed to a trial. In fact, only a small number of the lawsuits filed ever go to a courtroom trial. The attorneys selected to represent LHAs under the DHCD Risk Management Program will work with you to defend your case, and prepare you for any legal events which require your attendance.

[Confidential matters](#)

Some claims such as employment law and sexual harassment or discrimination complaints involve allegations of a confidential and sensitive nature. If you have a legal claim that involves highly confidential information, you may contact Sarah O'Leary directly by email sarah.oleary@state.ma.us or telephone at 617-573-1229.

COMMUNICATIONS WITH ADVERSE PARTIES

From time to time, LHA staff and board members will be asked for information about injuries or claims by injured residents, visitors or their legal counsel. All information requests should be handled discretely and referred to DHCD. It is very important that in their communication LHA employees who deal with any other LHA employee, resident or visitor on the premises follow the communication advice below.

- Any statement you make could impact your claim. Please do not volunteer information involving a potential claim to any third party, including an attorney, insurance adjuster, family member or other representative for an injured party.
- You may need to communicate with the claimant in the ordinary course of your business, but you should refrain from speaking to a claimant about the claim.
- It is natural to feel sympathetic to a resident or another person's injuries or problems, however, that does not mean that the LHA is responsible for the person's situation. LHAs and their employees should never say that DHCD or "our insurance company" will take care of the claimed damages.

FUTURE DEVELOPMENTS

Stay tuned for tips, guidance, checklists and more helpful information to come as our Risk Management Program gets underway.

Contact information for DHCD's Risk Management staff is below:

Sarah O'Leary, Esq.	Sarah.OLeary@state.ma.us	617-573-1229
Adrian Walleigh, Esq.	Adrian.Walleigh@state.ma.us	617-573-1504