Massachusetts Department of Housing and Community Development
Division of Housing Stabilization

To: DHCD Field Staff
From: Robert Pulster, Associate Director
Date: June 22, 2012
RE: Housing Stabilization Notice 2012-05, Guidance on Eligibility Issues Relating to Housing before Homelessness

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Introduction

This Housing Stabilization Notice explains the concept of "intervening housing" and supplements Department of Transitional Assistance (DTA) Field Operations Memorandum (FOM) 2006-04, EA – Frequently Asked Questions Regarding EA Eligibility, Question No. 2, *What if instead of an eviction, the legal paper presented was an agreement for judgment?* and Question No. 5, *What exactly do we mean by feasible alternative housing.* This Housing Stabilization Notice supersedes HSN 2010-02.

Summary

- When a homeless family applies for Emergency Assistance (EA) temporary emergency shelter, the Division of Housing Stabilization (DHS) homeless coordinator determines the cause of homelessness based on the reason that the family lost its last safe, permanent housing.
- If a homeless family secures safe, permanent housing, the family has obtained "intervening housing" that breaks the cycle of homelessness. DHS considers the reason that the intervening housing was lost to be the reason for homelessness for purposes of eligibility for EA temporary emergency shelter. This prevents DHS from considering the reason for a prior episode of homeless as grounds for denial of eligibility.
- A family establishing a new tenancy after homelessness is considered to have obtained intervening housing.
- Staying with a friend without establishing a tenancy is not considered intervening housing unless a subtenancy or co-tenancy is established, but the friend's home is considered feasible alternative housing.
- Being added to another family's household composition will be considered intervening housing and feasible alternative housing.
- Becoming a landlord-approved roommate or subtenant with another person will be considered intervening housing and feasible alternative housing.
- When a family leaves rented housing after a notice to quit is served on them, the family is considered to have been evicted. The reasons stated on all legal

paperwork are to be considered as evidence of the reason for the eviction, but that evidence may be rebutted.

- A homeless coordinator should always verify whether the family may return to the housing it formerly occupied if it remains vacant and they were not forcibly removed by the constable pursuant to a levy on a court-issued execution.
- When a family is facing eviction, typically the date that the family is considered to become homeless for EA purposes is 48 hours from the date that they are required to vacate.

Discussion: Meaning of "Intervening Housing"

A number of similar situations have arisen recently in the evaluation of applicant eligibility. EA regulations provide that "[a] household shall not be eligible for EA temporary emergency shelter benefits if it became homeless" because of one of the reasons listed in 106 C.M.R. § 309.040 (B): (1) to make itself eligible for EA; (2) to obtain a subsidy; (3) because it abandoned public or subsidized housing within the past year; (4) it was evicted from public or subsidized housing for nonpayment or fraud in the past three years; (4) because it was evicted from public, subsidized, or private housing for criminal activity or destruction of property; (6) because it failed to cooperate with housing assistance program services; or (7) because a teen parent was asked to leave three teen living programs.

These reasons for ineligibility are not categorical. In other words, the household is ineligible only if they became homeless specifically because of a listed reason, not simply because the stated reason occurred at some time in the past, but is not the current cause of homelessness. Homeless Coordinators doing EA intake have raised questions about (i) which living situations after an incident listed in 106 C.M.R. § 309.040 (B) constitute continuing homelessness, and (ii) which situations constitute intervening housing (and therefore the cause of homelessness is the reason for leaving the intervening housing).

A family is considered to have obtained intervening housing (breaking the "became homeless because" cycle) only when it obtains "safe, permanent housing," as defined in 106 C.M.R. 309.040 (D) (2) (a):

> Safe, permanent housing is housing which:
> 1. complies with the Sanitary Code;
> 2. takes into consideration the critical medical needs of the members of the EA household and any domestic violence issues; and
> 3. the EA household is capable of maintaining indefinitely, considering the totality of the household's circumstances, including the household's income from all sources (including food stamp benefits and child support) in relation to the cost of rent and utilities for the housing, and the cost of meeting the household's nonshelter needs

"Safe, permanent housing," is essentially equivalent to housing that provides a "fixed, regular, and adequate nighttime residence for the family," which is the definition used in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11435 (2). Massachusetts Department of Elementary and Secondary Education Advisory 2002-1 provides some guidance on the meaning of the McKinney-Vento definition, which may

be useful in determining whether a family has obtained intervening safe, permanent housing for EA purposes. A fixed residence is one that is stationary, permanent, and not subject to change, with the legal possibility of long-term stay, as with ownership of a condominium unit, signing a lease, or establishing a month-to-month tenancy or subtenancy. A regular residence is one which is used on a regular (*i.e.,* nightly) basis in the same place for at least one month. An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments, is in compliance with the State Sanitary and Building Codes, and is away from any domestic violence situation.

The situation is more difficult to analyze when the family is not able to obtain its own tenancy in a new apartment after an eviction, but is not sleeping in a clearly make-shift situation either. In these cases that fall in the middle of the spectrum, the Homeless Coordinator must determine whether a new living situation constitutes safe, permanent housing, in which case it is "intervening housing," and the reason for termination of that arrangement is the reason for homelessness. The examples below discuss the most frequently occurring situations.

1. New Tenancy

When a family that has been evicted establishes a new tenancy, either by signing a lease or by paying rent regularly as a tenant at will (typically on a month-to-month tenancy), it has established intervening housing.

Example 1. A mother and her five-year-old child are living together and are evicted from public housing for nonpayment of rent in January, 2009, but immediately obtain a lease for a new market-rate apartment in private housing. This private apartment is intervening housing. If the family is then evicted from the private apartment in June, 2009, for nonpayment, the reason for homelessness is that the family was evicted from private housing for nonpayment of rent. The family then applies for EA benefits. Eviction from private housing for nonpayment of rent does not affect eligibility. Even though the family was evicted from public housing for nonpayment of rent within the past year, the family became homeless for a permissible reason (eviction from private housing for nonpayment of rent) and is therefore eligible.

2. Alternative Feasible Housing Available

The opposite end of the spectrum is a situation where a family clearly remains homeless after it leaves the last stable situation, but they are living temporarily with friends or family, often on a couch or in a spare room. In this case, the EA Program distinguishes between having feasible alternative housing (which renders an otherwise homeless family ineligible for EA assistance) and obtaining safe, permanent housing, which qualifies as "intervening housing" between separate episodes of homelessness.

Example 2. A mother and her five-year-old child are living together and are evicted from public housing for nonpayment of rent in January, 2009. The mother's best friend has a couch in an enclosed rear porch and will let the mother and child sleep there for as long as they need to. In this case the family will remain homeless, but be ineligible for EA because it has feasible alternative housing so as long as its friends or relatives allow them to stay. *See* 106 C.M.R. § 309.040 (A) (2), (5) (h). When the family has feasible

alternative housing, the reasons that the family became homeless do not matter, although the reason for homelessness may be an *additional* basis for ineligibility.

3. Added to Another Family's Household Composition

Sometimes the family is able to obtain a more stable position when the primary tenant adds the homeless family to the primary tenant's family composition as recognized by the landlord. In this case, the family is no longer homeless, as its residential situation is recognized by the landlord. The family members have legal rights in the apartment unless the primary tenant changes his or her mind and tells the landlord to remove the family from the household composition. Unless the landlord removes the family from the recognized household composition, the landlord will permit the family to reside in and have access to the apartment.

Example 3. A family consisting of a mother and her 5 year-old child lost its housing due to an eviction from public housing for nonpayment of rent in January, 2009. The mother and child are immediately added to the family composition of the mother of the head of household (the child's grandmother) residing in another public housing unit. The family has obtained intervening housing, just as if it had a lease or month-to-month tenancy in its own apartment.

Example 3a. The primary tenant (the grandmother) fights continually with her daughter about enforcing household rules. In June, 2009, she requests the landlord to remove her child and grandchild from her household composition. After the landlord has formally processed the change in the grandmother's household composition, the mother and child no longer have a legal right of residence in the apartment. In that case, the family is again without safe, permanent housing after they are removed from the grandmother's household composition. In this case, they had intervening housing with the prospect of a long-term placement and were asked to leave by the primary tenant in a manner that restricts the family's rights in the apartment as recognized by the landlord. If the grandmother then puts her daughter and granddaughter out on the street, they may be eligible for EA. *See* 106 C.M.R. § 309.040 (A) (5) (g). On the other hand, the grandmother may allow her daughter and granddaughter to continue to reside with her, even after formally removing them from her household composition. If that is the case, the daughter and granddaughter are ineligible because they have feasible alternative housing, even if that housing no longer qualifies as safe, permanent housing.

Example 3b. The mother and child choose to leave the situation with the grandmother voluntarily because the daughter does not want to have to live by her mother's rules. The grandmother, however, is willing to allow them to stay with her. If the grandmother is willing to continue the mother and grandchild on her registered household composition, the mother and child will be considered to have abandoned public housing and therefore be ineligible for EA. *See* 106 C.M.R. § 309.040 (B) (3).

4. Roommate Situation as a Co-Tenancy or Subtenancy

Sometimes a family member or friend lets a family stay with him or her in a roommate situation. If the homeless family establishes a co-tenancy or subtenancy, then its situation has become stable and they cannot be removed by the landlord or primary tenant without court action. In the case of a co-tenancy or subtenancy, the family is no longer homeless and the co-tenancy or subtenancy counts as "intervening housing."

A co-tenancy must be recognized by the landlord. Typically in a co-tenancy a landlord in private property will add the names of all the adults to the lease as tenants or lessees. (Often, this will add a new roommate to an existing tenancy.) That means that at least two different adults are listed as lessees or tenants on the lease. The tenants do not need to both pay the same amount to the landlord to be co-tenants. Technically, they are both legally obligated to pay the full rent, and the way that the rent is split up is for the convenience of the parties. In a tenancy at will, a co-tenancy can be established if the rent is shared between two or more adults and those adults each pay their portion to the landlord directly. Another way to establish a co-tenancy in a tenancy at will is when the landlord requires the tenants to sign a tenancy-at-will agreement or set of terms and conditions, and lists more than one adult as lessees or tenants.

If a co-tenancy is not established, the original tenant may have taken on the previously homeless family as subtenants. The regular payment of a portion of the rent means that the family has established a subtenancy, just as if it had a lease or month-to-month tenancy in its own apartment. There is are exceptions: (a) if the primary tenant's lease specifically provides (i) that the landlord prohibits subtenancies, or (ii) that the landlord must approve all subtenancies and the landlord does not approve, or (b) if the homeless family cannot legally occupy the unit because the long-term residence of the homeless family there would violate the State Sanitary Code for overcrowding or other reasons, or violation of other state or local requirements.

Example 4. A family consisting of a mother and her 5 year-old child lost its housing due to an eviction from public housing for nonpayment of rent in January, 2009. The family moves in as "roommates" with the mother's sister, who resides in private housing. The formerly homeless family pays a set portion of the rent every month and a portion of the utilities. The landlord then decides to evict both the primary tenant and the subtenant for noisy parties in June, 2009.

Example 4a. If the landlord allows the subtenancy and the homeless family is not overcrowded, the family is eligible for housing because they had intervening housing as subtenants and were evicted from private housing for a reason other than criminal activity or destruction of property. *See* 106 C.M.R. § 309.040 (B) (4), (5).

Example 4b. If the landlord's lease prohibits subtenancies, the homeless family has no long-term prospects of remaining in the unit and jeopardizes the primary tenant's own tenancy by remaining there. Although the homeless family has feasible alternative housing so long as it remains with the primary tenant and the landlord does not press for eviction, they remain homeless. The landlord stops turning a blind eye in June, 2009, because of the noisy parties and tells the primary tenant that the homeless family has to leave. The homeless family is ineligible for EA because it was made homeless by eviction from public housing for nonpayment of rent (a prohibited reason) and has

remained continuously homeless while staying with the sister's family contrary to the provisions of the sister's lease. *See* 106 C.M.R. § 309.040 (B) (3).

Example 4c. If the landlord's lease permits subtenancies, but the State Sanitary Code deems the unit overcrowded (too small for the families of both the primary tenant and the homeless family), the homeless family has no long-term prospects of remaining in the unit without violating the law. Although the homeless family may continue to stay as guests and has feasible alternative housing so long as it remains with the primary tenant, they remain homeless. If, in June, 2009, a neighbor calls the Housing Inspector who determines that the unit is overcrowded and the homeless family can no longer stay as guests, the homeless family is ineligible for EA because it was made homeless by eviction from public housing for nonpayment of rent (a prohibited reason) and has remained continuously homeless while staying with the sister's family contrary to the State Sanitary Code. *See* 106 C.M.R. § 309.040 (B) (3).

Sometimes it is not clear when a situation is a formal roommate situation (establishing a subtenancy) and when it is a more informal relationship, and does not establish a subtenancy. In case of subtle differences, please contact the DHCD Legal Office. Often, however, it is clear that the homeless family has not established any right in the place where they are staying—even if they stay in the same location for many months—because the situation remains irregular.

Example 5. The family lost its housing due to an eviction from public housing in January, 2009, for nonpayment of rent and moves in as "roommates" with the family of the sister of the head of household, who resides in private housing. The homeless family occasionally helps out with the rent, food, utilities, and babysitting. The arrangement is not regular and the homeless family simply helps out the primary tenant to the extent that it can, whenever it can, in varying amounts. A subtenancy is not established because of the irregularity of the arrangement. If the landlord stops turning a blind eye in June, 2009, because of noisy parties and tells the primary tenant that the homeless family has to leave, the homeless family is ineligible for EA because it was made homeless by eviction from public housing for nonpayment of rent (a prohibited reason) and has remained continuously homeless while staying with the sister's family on an irregular basis as guests. *See* 106 C.M.R. § 309.040 (B) (3).

5. Determining the Cause of Homelessness after Eviction Proceedings Begin

After the following are determined: (i) what was the last actual housing (safe, permanent housing), (ii) that the family lacks feasible alternative housing, and (iii) that it is otherwise EA eligible, then the cause of homelessness must be determined. This is the reason that the family lost its last safe, permanent housing. Often the reason for leaving is clear and one of the specific reasons listed in 106 C.M.R. § 309.040 (A) (5)—fire, eviction, threat to health or safety, mistreatment, or medical condition—is the obvious cause. Sometimes, however, it is not obvious. For example, when a family is living in private housing, abandoning that housing is not, in and of itself, a basis of ineligibility.

If, however, the family leaves voluntarily sometime during the eviction process, after a notice to quit has been served, but before the constable actually forcibly removes the family, that family has left its prior housing because of the eviction. *See* FOM 2006-04, Question 5 ("The notice to quit as to why they were evicted must still be verified

[when a family leaves its prior housing after service of a notice to quit and before an agreement for judgment is signed or an execution is levied on]. The family may be ineligible because of the reason they were asked to leave."). The family cannot make itself eligible for shelter by choosing a permissible reason for becoming homeless (*e.g.,* voluntarily abandoning private housing) after it has already received notice that it is being evicted for a reason that would make it ineligible for shelter (*e.g.,* eviction for destruction of property in private housing, 106 C.M.R. § 309.040 (B) (5)). Once the eviction process has begun, the reason that the family loses its housing is the reason or reasons underlying the landlord's decision to terminate the tenancy. *See* FOM 2006-04, Question 2 ("[I]f an agreement for judgment was signed by both the landlord and the applicant and the *underlying reason for the dispute* was nonpayment of rent from subsidized or public housing, destruction of property or criminal activity, the applicant would be ineligible for EA shelter benefits." (emphasis added)). *See also* FOM 2006-04, Question 5.

In determining the reason(s) for the eviction, the grounds stated in a notice to quit and the summary process summons and complaint shall constitute evidence of the reasons for the eviction and will raise a presumption that the reasons stated in the notice to quit and the summary process summons and complaint are the reasons underlying the eviction. This presumption is rebuttable by the presentation of sufficient evidence to demonstrate that one or more of the reasons stated in the notice to quit or summary process complaint were not the actual reasons for the eviction. If the reasons stated for the eviction in the notice to quit and the summary process summons and complaint are disputed, a determination shall be made of the actual reason or reasons for the eviction based on the totality of the evidence, including but not limited to, any information obtained from the prior landlord and the tenant. When there are several different reasons for an eviction, the family is ineligible if any one of the actual reasons underlying the eviction is a disqualifying reason.

When the evidence of the reasons underlying an eviction is considered, the factual findings of the court should be relied upon if the eviction follows a trial or court hearing in which the court issued factual findings. In addition, if the tenant makes any factual admissions in a court document—such as an answer, pre-trial discovery, an affidavit, or an agreement for judgment—those admissions may be considered to bind the tenant.

Sometimes, determining the cause of the eviction can be difficult when a tenant has entered into an agreement for judgment as part of the summary process eviction proceeding in court. There are many different types of terms that can be included in an agreement for judgment. Sometimes, an agreement for judgment will include a specific date as the last date by which the tenant must leave the apartment. This is often called a "move-out" or "vacate" agreement. Other times, when a tenant has committed a minor violation of his or her lease, the tenant may enter into an agreement for judgment to remain in the apartment and comply with certain conditions, such as re-paying back rent owed or properly supervising minor family members. This is often called a "be good" agreement if it involves conduct or a "repayment" agreement if it involves repayment of back rent. Sometimes one family member has caused problems and the landlord will agree to let the family stay if the problematic family member agrees to reside elsewhere. This type of agreement is often called a "stay away" agreement. Often a term of a "be

good," "repayment," or "stay away" agreement or a "vacate" agreement with a vacate date set more than a few weeks afterwards is that the tenant abide by all the terms of the lease. A violation of the agreement for judgment in that case may result in the court issuing an execution allowing the family to be evicted by the constable. In cases where an agreement for judgment has been entered into and the landlord claims a violation, the landlord must go back to court on a motion for issuance of execution. *See* G.L. c. 239, § 10, ¶ 2. If the landlord prevails on the motion, the court will issue the execution, which allows the constable to evict the tenant.

Evictions pursuant to an agreement for judgment should be treated the same way as evictions pursuant to a post-trial judgment. *See* 106 C.M.R. § 309.040 (B) (6); FOM 2006-04, Question 2. Whenever a tenant is evicted pursuant to violation of an agreement for judgment, both the reason stated for the initial summary process action in the notice to quit and summary process summons and complaint and the reason stated for the motion for issuance of execution provide evidence for the reasons for homelessness and establish rebuttable presumptions that the stated reasons were the actual reasons for the eviction. If it is then determined that either the actual basis for the original eviction or the actual basis for an allowed motion for issuance of execution constitutes a disqualifying reason for homelessness, then the family is ineligible. Even though many agreements for judgment include explicit exculpatory clauses (provisions saying that the tenant does not acknowledge liability or the validity of the grounds for eviction stated in the notice to quit and summons and complaint), the grounds stated in the notice to quit and summons and complaint and in the motion for issuance of execution are evidence of the actual reasons for the eviction and constitute a rebuttable presumption that the stated reasons are the actual reasons underlying the eviction. *See* FOM 2006-04, Question 2.

Whenever a tenant is evicted after an agreement for judgment, the Homeless Coordinator should review all the standard post-eviction intake information—notice to quit, summons and complaint, judgment, execution, and notice of levy on execution. In addition, if there has been an agreement for judgment, verification includes (1) a copy of the agreement for judgment and, if the agreement for judgment does not include a specific date for the tenant to vacate, (2) the motion for issuance of execution, and (3) the court's ruling on the motion for issuance. Whenever the time between the summons and complaint and the execution are particularly long (over 3 months), the homeless coordinator should specifically ask if the family was party to an agreement for judgment and, if so, request these additional documents for verification of the cause of eviction. Dockets in Housing Court, where most eviction actions are filed, are not yet available online. If a Homeless Coordinator has questions about whether an agreement for judgment has been filed, or the interpretation of the agreement for judgment or motion for issuance of execution, the Homeless Coordinator should contact the DHCD Legal Office.

Example 6a. A private housing landlord brought an eviction action against a family in January, 2009, for nonpayment of rent. The landlord and tenant enter into a "repayment" agreement for judgment, which requires the family to abide by all the terms of the lease. The family pays the current rent and back rent according to the repayment plan in the agreement for judgment. The family, however, starts hosting parties to help pay the back rent. The parties get out of hand and cause damage to the apartment. The landlord then

files a motion in court for issuance of execution on the basis of destruction of property, which is a lease violation. The family is ineligible if it is determined that destruction of property was the reason for the court's allowance of a motion for issuance of execution. Review of the court documentation will indicate that the original reason for the eviction was nonpayment of rent in private housing, which does not affect EA eligibility. The motion for issuance of execution, however, reveals that the execution was issued because of destruction of property, which is a basis for ineligibility. *See* 106 C.M.R. § 309.040 (B) (5). Unless the evidence provided by the motion for issuance of execution is successfully rebutted, the family shall be determined to have become homeless for a reason that renders them ineligible.

Example 6b. A private housing landlord brought an eviction action against a family January, 2009, because the teenage children in the family have been drawing graffiti on the walls of the apartment and hallways. The landlord and tenant enter into a "be good" agreement for judgment, which requires the family to abide by all the terms of the lease. The family is able to control its children better in the future and there are no further graffiti incidents. After paying the expenses of cleaning up the graffiti, however, the family is not able to keep up with its rent. The landlord then files a motion in court for issuance of execution on the basis of the nonpayment of rent, which is a lease violation. The family is ineligible if it is not able to rebut successfully the presumption that the reason for the original eviction was for destruction of property. Review of the court documentation, together with any additional evidence submitted, will indicate the original reason for the eviction. If the original eviction was due to destruction of property and the evidence demonstrates that there was destruction of property, the application should be denied on the basis of 106 C.M.R. § 309.040 (B) (5). The motion for issuance of execution, however, reveals that the execution was issued because of nonpayment of rent in private housing, which does not affect eligibility. Unless the evidence provided by the notice to quit and summary process summons and complaint is successfully rebutted, the family therefore is presumed to have become homeless for a reason that renders them ineligible, because the original summons and complaint was issued for destruction of property, a reason that makes the family ineligible. The family would not be homeless but for the original complaint.

6. Ability to Return to Prior Housing

Particularly in situations when the family leaves its housing pending eviction, the Homeless Coordinator must review the case carefully to determine whether the family may return to the prior housing (feasible alternative housing is available) or not. *See* 106 C.M.R. 309.040 (A) (5) (g) (verification required that immediate prior housing is no longer available). This issue is discussed in FOM 2006-04, Question 5.

Sometimes, in cases when the grounds for the eviction do not effect eligibility (for example, eviction from private housing for nonpayment of rent), the family can actually return to its prior housing if it left voluntarily pending eviction. In that case, the housing remains available to them. For example, the family may leave because its members are legally unsophisticated and think that they are required to leave at the end of the notice to quit period. (14-day notices to quit are used in nonpayment of rent cases and 30-day notices to quit are used for other situations. A landlord cannot start an eviction action in court until the expiration of that period. The tenant may stay, however, throughout the

court eviction process.) If the family then shortly afterwards applies for EA, the apartment may still be vacant.

The family should be required to ask the landlord to return to the apartment until the completion of the court eviction process. In many cases, the landlord may have been willing to let the tenant stay under an agreement for judgment. Depending on the circumstances, if the landlord has not yet rented out the apartment and the tenant applies quickly, the tenant may also be able to obtain court relief through a temporary restraining order allowing the tenant to return to the apartment until the completion of the court eviction process. In either of those cases, the family continues to be able to reside in its apartment and is therefore not homeless. They should be considered ineligible because of the continuing availability of their immediate prior housing. *See* 106 C.M.R. § 309.040 (5) (g).

7. Determining the Date of Homelessness

When a family is facing eviction, typically the date that the family would actually become homeless is the date that the constable schedules for the levy on the execution, which is included in the notice of levy. The family may choose to move out voluntarily on that date, or may have to be removed physically by the constable. Until that date, the family is considered to have feasible alternative housing. Nevertheless, for purposes of EA eligibility, in order to prevent families who are certain to become homeless from being forced onto the street, a family is considered homeless for purposes of EA eligibility when it is clear that the family will become homeless within 48 hours.

A family is within 48 hours of certain actual homelessness only:

(1) after the notice of levy on execution has been served and less than 48 hours remain until the date set for the levy in the notice, or

(2) if the head of household signed a "vacate" agreement for judgment, when the date set for move-out or issuance of execution (whichever is later if both dates are set) is less than 48 hours in the future.

If a family abandons housing pending eviction (at any time after the notice to quit has been served and before the levy on execution) and either (1) the landlord allows a new family to move in, or (2) the tenant is unsuccessful in requesting the landlord or petitioning the court to return, then the date that the family became homeless is the date that it voluntarily left the apartment.

The reason for homelessness in such cases is (i) the reason stated on the notice to quit (which may or may not be a basis of ineligibility) and, (ii) in the case of public or subsidized housing, abandonment as well. *See* 106 C.M.R. § 309.040 (B) (3); FOM 2006-04, Question 5. In many of these cases, the public or subsidized landlord may have been willing to enter into an agreement for judgment allowing the family to stay. By abandoning the apartment pending eviction, the family makes itself homeless when a feasible alternative could have been available.

Sometimes a family facing eviction enters into an agreement for judgment requiring the family to leave by a specific date, to avoid facing a trial. For EA program purposes, an agreement for judgment is the equivalent of a judgment after trial. *See* 106 C.M.R. § 309.040 (B) (6); FOM 2006-04, Question 2. A "vacate" agreement will often

state that execution will issue on or shortly after the date that the tenant has agreed to vacate voluntarily. Sometimes in these cases the landlord still has to go to court to request issuance of the execution. The execution is the court document that allows the constable to evict the family physically (called levying on the execution).

In cases when the landlord and tenant agree in a "vacate" agreement approved by the court that the tenant will leave by a particular date, the agreement for judgment is a judgment of the court. The tenant is technically in contempt of court if the tenant stays longer than that date. Because the tenant can technically be held in contempt of court and out in jail for failure to vacate on that date, the tenant is not considered to have alternative feasible housing after the vacation date. In the case of a "vacate" agreement, it is clear that the landlord will not make further compromises with the tenant allowing the tenant to stay. Therefore, the date of homelessness is the date that the family agrees to leave the apartment voluntarily under the agreement for judgment. DHCD should not force the EA applicant and the landlord to go through the process of physical eviction when it will merely delay the date of homelessness for a few days, while costing the landlord considerable time and money for the physical eviction process. EA regulations acknowledge and encourage the public benefits of voluntary agreements for judgment over the more contentious, time consuming, and costly trial procedure. *See* 106 C.M.R. § 309.040 (B) (6).

Example 7. A private housing landlord brought an eviction action against a family in January, 2009, for nonpayment of rent. The tenant recently lost her job and acknowledges that there is no way that she will be able to continue to pay the rent. The landlord and tenant enter into a "vacate" agreement for judgment, which requires the family to leave the apartment by March 31, 2009, and provides that execution will issue on April 1, 2009. On March 31, the family appears at the TAO and requests shelter. The family should be placed. The basis for the eviction was nonpayment of rent in private housing, a reason that does not affect eligibility. The date of homelessness is March 31, the date that is 48 hours before the date set for issuance of execution in the agreement for judgment,[1] even though the execution has not yet been issued.

Conclusion

Evictions can involve serious complications on standard fact patterns affecting EA eligibility. When a family becomes homeless because of an eviction, or for some other reason, DHS determines the cause of homelessness based on the reason that the family lost its last safe, permanent housing. A housing situation that occurs after that time may be feasible alternative housing, even though it is not safe, permanent housing. Only when a family secures safe, permanent housing does the family obtain intervening housing that breaks the cycle and prevents DHS from considering the reason for a prior episode of homeless as grounds for denial of eligibility.

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[1] In this case, the agreement for judgment sets both a date to vacate the apartment and a date for issuance of execution. The later of the two dates is used for calculating the 48-hour period before actual homelessness for purposes of EA eligibility.