



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

Charles D. Baker, Governor ◆ Karyn E. Polito, Lieutenant Governor ◆ Jennifer D. Maddox, Undersecretary

PHN 2022-05

TO: All Local Housing Authorities

FROM: Ben Stone, Director, Division of Public Housing

DATE: February 24, 2022

RE: 760 CMR 4.00 GENERAL ADMINISTRATION OF LOCAL HOUSING AUTHORITIES
Guidance to LTO Officers who also serve as Housing Authority Board Members
and Tenant Board Members

DHCD regulation at 760 CMR 4.03(4) *Tenant Board Members* provides guidance to tenants of LHAs who also serve on the LHA Board (a "Tenant Board Member"). 760 CMR 4.03(4) prohibits Tenant Board Members from:

- Pursuant to [M.G.L. c. 121B](#), participating in a decision that affects the Tenant Board Member's personal interests; and
- Pursuant to [M.G.L. c. 268A](#), participating in a matter that affects the Tenant Board Member's financial interests.

In some instances, a Tenant Board Member may also be an officer of a Local Tenants' Organization ("LTO"). DHCD regulations provide additional guidance to Tenant Board Members who also serve as officers of LTOs ("LTO Board Member"). 760 CMR 4.03(2)(m) *Limitations on a Board Member Who is an Officer of an LTO..* prohibits an LTO Board Member from:

- Acting on behalf of the LTO before the LHA;
- Participating as a Board member on any matter directly involving the LTO; and
- Contacting the LHA or appearing at any LHA meeting on behalf of the LTO.

Note that all LHA Board members, whether or not a Tenant Board Member or LTO Board Member, are subject to Massachusetts' State Ethics Law, M.G.L. c. 268A, which governs conduct of public officials and employees.

As noted in 760 CMR 4.03(4)(a): "The Ethics Law should not be read to prevent full and effective participation of a tenant member on an LHA board so long as he or she does not use his or her position to derive some direct personal benefit, financial or otherwise, to the board member (or to a family member or to a business or potential employer described in 760 CMR 4.04(2))." 760 CMR 4.03(4)(c) also

provides assistance in determining when Tenant Board Member or LTO Board Member participation is appropriate:

First: Determine whether a decision would have a direct or other reasonably foreseeable effect on a personal interest. Would the decision result in some actual benefit to the Tenant Board Member or LTO Board Member or a family member or a business or potential employer, as more particularly described in 760 CMR 4.04(2)? A benefit is something of more than minimal value which the Board member or family member or business or potential employer might receive depending on the Board's vote.

Second: If the answer is yes, the Tenant Board Member or LTO Board Member must abstain, **unless the matter is one of general application to all tenants in a housing program.**

In instances in which a Tenant Board Member's or LTO Board Member's recusal may impact the Board's ability to obtain a quorum for a vote on that topic, the LHA is encouraged to consult with the Massachusetts State Ethics Commission for possible resolutions.

Examples:

The Board is voting on providing office space to the LTO Board Member's LTO. The LTO Board member cannot vote on providing the space as it benefits the LTO Board Member's LTO specifically.

The Board is voting on a rent policy for all tenants that would benefit the LTO Board Member or Tenant Board Member. The LTO Board Member or Tenant Board Member can vote on this measure even though it benefits them financially because it benefits all tenants equally.

The Board is voting on a project to install new cabinets in all units. A subsequent vote will be taken to start the project in Building 1, where the LTO Board Member or Tenant Board Member lives.

The LTO Board Member or Tenant Board Member can participate in the vote to install new cabinets in all units. However, the LTO Board Member or Tenant Board Member cannot participate in the vote to start the project in building 1, the LTO Board Member or Tenant Board Members' building.

The Board is voting to award a plowing contract to a local company. The LTO Board Member's or the Tenant Board Member's brother-in-law works for the plowing company. The LTO Board Member or Tenant Board member cannot participate in the vote.

In summary, an LTO Board Member or Tenant Board Member cannot participate in discussions or votes regarding any matters which will:

- Affect his or her tenancy or housing unit exclusively, or
- Benefit a number of tenancies or housing units, including the LTO Board member or Tenant Board Member's unit, but exclude other similar tenancies or housing units, or,
- Confer a benefit on himself or herself (or a family member or to a business or potential employer) to the exclusion of other potentially eligible tenants.

When in doubt, the LTO Board Member or Tenant Board Member should consult the State Ethics Commission for guidance. An LTO Board Member or Tenant Board Member may contact the State Ethics Commission Attorney for the Day for an advisory opinion by calling (617) 371-9500 or by filling out the State Ethics Commission's [Advice Request Form](#) available on the [State Ethics Commission's website](#).