

Creating a Memorandum of Understanding

A Know Your Rights Guide for Public Housing Tenants in Massachusetts



Acknowledgments

This booklet was produced by Massachusetts Law Reform Institute and based on a booklet originally prepared by the Massachusetts Union of Public Housing Tenants (MUPHT) entitled *How to Create Memos of Understanding: Training Materials for Public Housing Tenant Organizations in Massachusetts*. MUPHT is a statewide resident organization that works with public housing residents in all types of developments—large, small, federal, and state.

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Because laws and regulations change, make sure you have the most up-to-date version of the booklet by checking: www.MassLegalHelp.org.



4. What steps are involved in creating an MOU?

It is important to understand that in most cases it is not up to the housing authority whether it wants to negotiate an MOU. It is required to do so by law.⁹ See **Question 8**. While there is no one recipe for how to put together an MOU, it helps to understand where to start and what the process commonly involves. In general, there are four major steps recommended in creating an MOU:

1. Tenant group drafts its own MOU.
2. Tenant group gives its draft MOU to the housing authority.
3. Tenant group and housing authority meet to negotiate the terms of the MOU.
4. Tenant group and housing authority agree on final MOU.

What follows are some ideas about how to carry out these four major steps.

Tenant group drafts its own MOU

1. It is better for your tenant group to give the housing authority the first draft of an MOU than for the housing authority to give you the first draft. This way, the tenants establish the terms of the MOU and are “in the driver’s seat.”
2. You don’t have to start from scratch. You can use the sample MOU at the end of this booklet as a starting point. It will give you ideas about what to include. You can also find other sample MOUs on-line at www.MassLegalHelp.org. In addition, the Mass. Union of Public Housing Tenants can e-mail you the sample MOU or send it to you on a disk to save you lots of typing.
3. It is helpful to spend time polling tenants about what issues they care most about and weave these issues into the MOU. But keep in mind that because MOUs are very

detailed and technical, it is hard to involve lots of tenants in the nitty-gritty of putting an MOU together. The process of developing an MOU, however, is a real opportunity to develop a more active tenant group.

4. Create an **MOU committee** of tenants who have the time and interest to read through the sample MOU and work on drafting. Then go through the sample MOU one section at a time. Add and delete provisions and talk about how to change it to best suit your situation. Take good notes so you remember what you talked about and agreed to. Make sure the issues that people care most about are in your MOU.
5. Draft your MOU with the changes people wanted to make. It is very helpful to have an attorney help you draft an MOU and be part of the MOU committee. An attorney can also review an MOU to make sure it complies with state and federal laws, covers the details that are important, and is clear in terms of enforcement. Every word matters in this kind of contract. To find a list of local legal aid offices, see the **Directory** at the end of this book.
6. Once the committee has drafted an MOU, meet again with the larger tenant group to review the proposed document. While it is time-consuming to keep people in the loop, it is worth it. Being inclusive keeps everyone more informed and involved, and establishes a good foundation for a strong tenant group.
7. Before you submit your draft to the housing authority, you may want to invite all tenants represented by the tenant organization to a meeting and go over the basic outline of the MOU. Be sure to allow time for questions and feedback.

Send your MOU to the housing authority

1. Hand deliver or mail your draft of the MOU to the Executive Director of your housing authority. Include a short cover letter requesting a meeting to discuss it. See the sample letter in this booklet. Always remember to keep copies of everything you submit.
2. Be patient. Housing authorities rarely move quickly on MOUs.
3. If the Director does not respond within a reasonable time, call and ask to set up a meeting. Be polite, but persistent. Convey your determination to have a meeting. Most directors should be responsive.

Prepare to meet with the housing authority

1. Before you meet with the housing authority, make sure your group is prepared.
2. Decide who will go to the meeting and who will lead your negotiating team. Usually only one or two people act as speakers. Try to have a lawyer or other representative

or advocate on your negotiating team. Having an outside person as part of the negotiation process can make a housing authority more accountable.

3. When or after you set up a time to meet with the housing authority, call to go over certain details that will help you be more prepared. For example, ask them who will be coming to the negotiating meeting so you can be prepared. Your housing authority may have whoever they want on their negotiating team. Ask them whether they can record the meeting so that everyone has a record of what was said. Make sure everyone is clear about the time and place for the meeting.

Begin to negotiate with the housing authority

1. Before you go to the meeting, talk about how you want to approach it. Often groups work through the draft MOU with the housing authority, paragraph by paragraph, exchanging ideas and concerns. This will likely require a series of meetings. That's OK. Remember, this is also about developing a relationship. You might want to start the meeting by talking about your overall goals, or about how state and federal regulations encourage housing authorities to work cooperatively with tenant organizations and how this can make your community better.¹⁰
2. During any meeting with the housing authority, have one or more people take notes. Write down what the housing authority staff say, what you agree about, what you disagree about, and why. These notes will be important as a record of what was said and to help your group think through next steps. You may also share your notes with the housing authority to make sure there is agreement about what was covered.
3. Expect to compromise. Be clear about which items are your main concerns so you don't lose sight of them. If you can, decide ahead of time which items you would be willing to change or give up. Make sure if you agree to a compromise or to work toward a compromise that it is clear who will re-draft the new proposed language. As stated above, it is usually better for you to do the re-drafting than to leave it to the housing authority. This gives you more control over how the compromise is crafted. The housing authority will often agree to this as it is less work for them.
4. During negotiations, don't say "yes" and don't say "no" to any final changes. Tell the housing authority that you will bring their requests for changes back to the tenant group for consideration. This gives your group time to figure out what to do. It shows the housing authority that there are more people involved than those in the room. And it prevents a small group of tenants from making decisions without consulting the larger tenant group.
5. At the end of your first meeting, set up your next meeting, and, if you can, a schedule of future meetings to continue to negotiate the MOU. This will keep the process moving and will later save a lot of time just trying to agree on when to meet.
6. For helpful tips on negotiating, see **Questions 5 and 12**.

Agree on the final version

1. As changes are agreed on, offer to make the actual changes on the document. If you have an attorney, ask him or her to make the changes. This will save the housing authority time and will continue to keep tenants in the driver's seat.
2. Make sure the MOU is written in a way that will automatically renew each year unless either party requests new negotiations.¹¹
3. Let the tenant group approve the final MOU. Call a meeting of all tenants and review the changes made. Remember, as well as getting their OK, you are helping all residents know their rights, feel more comfortable participating in housing authority business, and take ownership in the MOU.
4. The final MOU should be signed by the president of the tenant organization, the Executive Director of the housing authority, and any tenant leaders, such as a Vice President, Treasurer, or any Board member, who wish to sign.
5. Celebrate! Have a gathering to announce the new MOU and recognize all those who worked on it. Distribute a flyer to all residents announcing that the tenant group and housing authority have successfully negotiated a Memorandum of Understanding which will enable the resident organization to be more involved in matters that affect the community. Invite all tenants to the gathering and make a copy of the MOU available to all.

Negotiating a Memo of Understanding

5. What is the key to successfully negotiating an MOU?

The key to negotiating an MOU with your housing authority is having a strong tenant group. While many tenants shy away from participating in negotiations with the housing authority because they are afraid to challenge or disagree with them, if you have a group of resident leaders who support one another and the housing authority sees that you are united, **your unity can move mountains.**

In addition to developing a strong tenant group—which takes time and patience—other keys to successfully negotiating an MOU are:

1. Know what key laws and regulations say. They define what your rights are and give you a point of reference for evaluating and measuring proposals.
2. Make a list of which issues are most important to the group. Keep looking at this list. It will keep you focused throughout the negotiation process on what really matters to tenants as a group.
3. Try to have a realistic sense of the amount of work your tenant organization is able to do. Do not spend a lot of time arguing over things you won't be able to follow through on. For instance, before requiring that the tenant organization see every bid for all modernization proposals, think about whether you will have the ability to review the bids in a meaningful way. Find out how many bids the housing authority receives for what types of projects. Maybe your tenant organization will want to review some types of bids and not others.
4. Explore the concerns and interests of your housing authority. This will give you a better sense of how an agreement might be reached.
5. Keep asking questions. By asking questions, you will learn more about what the housing authority's concerns are.
6. Figure out what resources your tenant organization needs to become more effective and ask for those resources. If you don't ask, you don't receive.
7. When negotiations get difficult, be positive. Set a tone that projects your feelings that an agreement is possible or give concrete examples of why a provision is important.

Try to get the tenant team and the housing authority to look for a place where parties can agree.¹²

8. Be open-minded. Explore alternatives. Try to imagine what the housing authority's viewpoint is.
9. Stay cool and don't personalize. Don't personally attack the housing authority staff. Keep focused on the issues and why you see them differently.

6. What makes for a good negotiating team?

You can have as many people on the negotiating team as you want. Generally, at each session one or two people are the spokespeople, someone takes notes, and others give moral support and help the speaker by passing along written suggestions. You can also have other tenants observe negotiating sessions as a way to train them.

Good negotiating teams have people who are:

- Prepared
- Flexible
- Good listeners
- Respectful of others
- Patient
- Persistent
- Effective communicators
- Trustworthy
- Positive
- Cool
- Even-keeled
- In control of emotions

Spokespeople should be people who can express the ideas of the tenant group—not just their own ideas. Spokespeople should be people who can keep their cool if a member of the housing authority's negotiating team says something negative or insulting.

If you can, have a lawyer or someone from the Massachusetts Union of Public Housing Tenants or another advocate be on your negotiating team. You might want to invite a local person or leader who cares about your community, such as a minister or a member of a church action committee. Their presence may keep the housing authority more open and responsive. If you do have a lawyer or advocate on your team, think through whether you want the lawyer to present the tenant association's positions, or whether you want the tenants to be the lead negotiators with the lawyers there for technical support. You may

decide you want to have tenants present some issues and your lawyer or advocate present others.

To prepare, it is helpful to role-play a negotiating session before meeting with the housing authority. Have several people act as the housing authority negotiators and several others be negotiators for the tenants. Pick out an important part of the MOU. Have the housing authority actors argue against the provision and have the tenant negotiators argue why that provision should be kept as written. Practice staying cool, even if the discussion gets hot.

7. How long does it take to negotiate an MOU?

How long it takes to negotiate an MOU depends entirely on your local situation, the strength of your group, and the willingness of your housing authority to work collaboratively. Once a process gets going, some tenant groups have met with a housing authority every other week to work through the document. Some meet once a month. Expect to have a series of meetings. Some tenant groups have negotiated an MOU in only two sessions; others have taken a year or 6 months to reach their final agreement.

Be prepared to be flexible and persistent.

8. Is the housing authority required to negotiate an MOU?

Your housing authority must negotiate an MOU if your tenant organization represents either state public housing tenants or federal public housing tenants where the housing authority has 250 units or more of federal public housing.¹³ Your tenant organization must be *recognized* by your housing authority as the official local or jurisdiction-wide tenant organization (also called a tenant council) and a housing authority must *recognize* a tenant organization if it was *duly* or democratically elected. To negotiate an MOU, your tenant group does not have to be a non-profit organization.

If the housing authority has fewer than 250 federal public housing units, it is required under regulations to support tenant participation activities.¹⁴ It is not required, however, to negotiate an MOU. But tenants in smaller housing authorities have negotiated MOUs, especially MOUs on a particular issue. Don't let the fact that the law does not require a housing authority to negotiate an MOU stop you from trying to negotiate one.

9. What are housing authorities’ common concerns about MOUs?

As you go through your negotiations, it is important to find out what concerns your housing authority has, especially as you find areas of disagreement—which you will. What follows are some common concerns.

Tenants are out to get the housing authority

Reassure the housing authority that you are not “out to get them” or out to “make them look bad,” but that your goal is to protect public housing and the residents. Offer to work with them on issues of joint concern, such as contacting elected officials about the need to adequately fund public housing. For information on national housing issues, go to www.NLIHC.org. For information on state housing issues, go to: www.CHAPA.org.

Tenants want instant change

Reassure the housing authority that the tenant organization understands that change is a process and that it happens over time and not instantly. Set goals with the housing authority and evaluate them periodically to see whether these goals are being met.

Tenants will micromanage and make lots of demands

Reassure the housing authority that tenants are not interested in making demands for the sake of making demands or micromanaging the housing authority. Make it clear that you want to let the housing authority do its job and that your job is to focus on priority concerns.

Working with tenants slows down the process

While working collaboratively always requires extra steps, reassure the housing authority that in the long run it will save time, money, and hassles. There will be fewer arguments with the tenant organization. Tenant input may also prevent housing authorities from making costly mistakes. For example, a tenant group did research and found that a potential contractor had botched jobs in other housing authorities. Their discovery saved the housing authority far more hassle than the “hassle” of involving tenants in modernization decisions.

Tenants are difficult to work with

It is true that some people (both tenants and housing authority staff) are extremely hard to deal with. Since the MOU requires a housing authority to deal with the tenant organization, your authority may fear being stuck trying to make decisions with difficult people. This can be very touchy. What you call “persistent,” someone else may call “unreasonably stubborn.” Reassure the housing authority that the tenant organization wishes to be reasonable and businesslike and will handle personality difficulties within its

own membership. You can also request that the housing authority provide the tenant group with training on organizational issues to help you be more effective.

No need to restate the law and regulations

Some housing authorities may have little patience for long MOUs that appear to restate what laws and regulations say. You may be able to make your MOU shorter by focusing on what needs to be clarified and not restating what is in the regulations. But what is included in an MOU offers tenant groups another and more detailed layer of protection, so restating regulations is also a good thing. It serves to get the housing authority and tenant organization in agreement about what the regulations mean.

10. How does the housing authority benefit from an MOU?

When you negotiate an MOU, it will be up to tenants to talk about how the MOU can benefit a housing authority. Here are some benefits:

Looking good

Negotiating an MOU will make your housing authority look good in the eyes of *HUD* and *DHCD*, the federal and state agencies that oversee public housing in Massachusetts.

Less disagreement

If there is an agreement with a tenant organization about how tenant participation funds are going to be spent, it could avoid long disputes about whether the housing authority is spending tenant participation funds properly.

Simplicity

If there are both state and federally subsidized public housing, an MOU can provide that certain state rules apply to federal tenants and certain federal rules apply to state tenants. This may make it simpler for the housing authority to administer the development.

Better development

Ultimately, an MOU will help create a better development. Since the MOU spells out everyone's roles and expectations, it will help the housing authority and your tenant organization develop a better partnership and a more cooperative relationship. Working together will produce better results. For example, residents may have much better ideas about what safety strategies would work and would not work to make their development more secure.

Provide a process

An MOU can benefit a housing authority by providing a clear process for tenant participation. If the housing authority follows the process and tenants don't participate, the housing authority can't be faulted for not trying.

Makes tenants responsible

An MOU can help housing authorities accomplish their goals by making tenants responsible for assisting the housing authority. For example, when the housing authority is required to get tenant input on modernization, tenants can be responsible for surveying residents.

11. What if your housing authority refuses to negotiate an MOU?

Be calm

Be calm at first. Housing authority directors usually have a lot on their plate. Public housing is not adequately funded, older housing needs constant attention, and housing authorities are scrambling for funds to preserve the housing they have. Express your understanding of the challenges they face, but stay collected and try to move them toward working with you.

Stay focused on your goals

If you are the leader responsible for contacting the housing authority on behalf of the tenant group, be careful not to let your emotions get the better of you and say things that will jeopardize what your group wants. Keep your eyes on the prize.

Request a meeting in writing

If your director refuses to respond to your initial request for a meeting and you have called several times, write a letter requesting a meeting. If you are working with an attorney, ask the attorney to do this. It may be more effective at getting the housing authority's attention and response.

Go to the board

If the housing authority director still refuses to negotiate with the tenant group, send another letter to the director and "cc" it (send a copy) to the chair of the housing authority board. If this doesn't work, then contact the chair of the housing authority board and ask the board to take action. You may also want to *lobby* individual board members and think of ways that they could be influenced. For example, there is usually a labor representative, or a DHCD appointed representative, or a tenant representative on the housing authority board. Each may have a special interest because of the way in which he

or she was appointed. Board members may also be responsive to contact by local politicians.

Go to DHCD or HUD

If the board does not take action, if you live in state public housing, write a letter to the Division of Public Housing, Department of Housing and Community Development (DHCD), at 100 Cambridge St., Suite 300, Boston, MA 02114. If you live in federal public housing, write a letter to [HUD—fill in right place]. Tell DHCD or HUD what has happened and request their help.

12. What are some negotiation tips?

Negotiate with the right staff

- Make sure housing authority staff at the negotiations have the power to negotiate. Or make sure that housing authority negotiators have the ear of the Director.
- When discussing a particular issue, request that staff who have relevant information be present. For instance, if you are discussing what type of equipment will be provided to the tenant association, ask that the person in charge of the equipment be at the meeting.

Have examples

- Bring real-life examples to your negotiating sessions that support your requests.
- Examples will help persuade the housing authority that your concerns are real.
- Survey tenants to get examples that support your position.

Listen and ask questions

- Do not make assumptions about what a person is thinking.
- Ask questions to understand a person's point of view.
- There are no stupid questions.
- If you do not understand something, other people probably don't understand either.
- Try to determine the underlying reason for his or her position.
- Acknowledge the other person's point of view.
- Take notes. This can help you "hear" the other person more accurately.

Don't be intimidated

- As a tenant, you know about the needs of tenants.
- Don't let a housing authority intimidate you by throwing out statistics or legal jargon.
- Don't be intimidated by irrational, angry, or threatening behavior.
- Use your knowledge and experience to challenge the housing authority.

Don't take no for an answer

- Never accept blanket statements, such as “its against the rules” or “there’s no money.”
- Ask to see the regulations in writing. Often people interpret the same rule differently.
- Ask to see the budget. Just because money has been spent a certain way in the past doesn’t mean it must be spent that way in the future.

Take time out

- If emotions get too hot or you don’t know what to do next, ask for a “time out.”
- A time-out is a standard practice in negotiating and is called a *caucus*.
- A *caucus* is when people meet with their own group to privately discuss something.
- Even a five-minute caucus can clear your head and set a better direction.
- Ask for a caucus at any time. You don’t need to be “on the spot.”

Be prepared to give up something

- Don’t give something up unless asked.
- If you give something up, let the other party know this is a compromise.
- Get something in return for compromising.
- Walk away from the table to *caucus*.
- Caucus privately when you come to an impasse and cannot agree on something.

Pick your battles

- Be realistic about what to fight for.
- Stay focused on what’s most important to residents.
- Be sure that the tenant group has the capacity to carry out its end of the bargain.

14. Sample Letter to Housing Authority

This is a sample letter you can use to request a meeting with your housing authority.

Your name
Your group's name

Date

Executive Director's Name
Your Housing Authority
Address

Dear Director:

My name is _____, and I am the _____ [*state your title and if you have no title, say you're a member*] of the _____ [*name of your tenant organization*]. As the duly elected tenant organization of _____ [*name of your development*], _____ [*name of your tenant organization*] exists to protect public housing and to serve the tenant community. Our goal is to work with tenants and _____ [*name of your housing authority*] on issues of mutual concern.

Over the past several weeks, we have been working to draft a Memorandum of Understanding (MOU) between our association and _____ [*name of your housing authority*]. We believe that working with you to create an MOU will help us develop a partnership that will ultimately create a better development.

We would appreciate the opportunity to meet with you and your staff to discuss the draft Memorandum. I can be reached at the above address, or at (999)-999-9999.

I look forward to discussing our mutual goals.

Sincerely,

Your Name (signed)

Your Name (typed or printed)

Title and Name of Group

Endnotes

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- ¹ See *Fall River Housing Joint Tenants Council, Inc. v. Fall River Housing Authority, et al.*, 15 Mass. App. Ct. 992, 448 N.E. 2d 70 (1983). The court found that an MOU between the tenant council and the housing authority was written in a way that made it an enforceable agreement or contract.
- ² **Federal:** 24 C.F.R. 964. **State:** 760 C.M.R. 6.09.
- ³ 24 C.F.R. 964.18(a)(8). This applied to housing authorities with 250 units or more of federally funded public housing.
- ⁴ 24 C.F.R. 964.18(a)(8). This applied to housing authorities with 250 units or more of federally funded public housing.
- ⁵ To see Boston Housing Authority’s local tenant organization tenant participation policy, go to: www.bostonhousing.org/pdfs/CSD2003LTOParticipation.pdf.
- ⁶ It is important for a tenant group to set up a good accounting procedure because HUD regulations require tenant associations to account for the use of housing authority funds and allow the housing authority to inspect and audit the tenant association’s financial records. 24 C.F.R. 964.150(b)(3).
- ⁷ Currently, the state provides \$6 per unit (occupied or available for occupancy by tenants represented by the tenant council) per year or a total of \$500, whichever is more, for residents’ participation.
UPDATED AS OF NOVEMBER 2017

Under federal regulations, a housing authority is required to request \$25 per occupied unit per year for tenant participation when it submits its operating budget request to HUD. 24 C.F.R. 990.108(e). The amount that a housing authority must request can be found in Part D, lines 12 and 13 of HUD Form 52723, “Calculation of Operating Subsidy” form, which is the form the housing authority uses to request its operating subsidy. If the total amount of operating subsidy that a housing authority requests is reduced because of insufficient funds from Congress, the tenant participation funds are pro-rated and reduced proportionately. A housing authority must use funding allocated for tenant participation for tenant participation. It is also required to negotiate an MOU with the tenant organization about how tenant participation funds are to be used. For more about how these funds can be used, see HUD’s Notice 2001-3. For more information about tenant participation, see information produced by the National Housing Law Project in its Questions and Answers on Public Housing Resident Participation Fund, available at www.NHLP.org.

Note: Federal rules also provide that a housing authority may use its Capital Grant Program money to fund “capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to **improve resident participation.**” (Emphasis added.)

24 C.F.R. 905.10(k)(1)(viii). Housing authorities may also use money from the Capital Grant Program for “reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation, and monitoring process” in preparing the Comprehensive Plan, 5-Year Action Plan, and Annual Submission. 24 C.F.R. 968.112(a)(1)(iv).

- ⁸ **Federal:** 24 C.F.R. 964.135 (for housing authorities with fewer than 250 federal units). 24 C.F.R. 968.315, 320, 330, and 335 (for housing authorities with more than 250 federal units). Resident council members should be fully involved in all management operations, including modernization. See also 24

C.F.R. 964. **State:** 760 C.M.R. 11.10. A tenant organization must be given the opportunity to give input on a housing authority’s application for modernization funds and bidding documents.

⁹ 760 C.M.R. 6.09 and 24 C.F.R. 964.18.

¹⁰ **Federal:** 24 C.F.R. 964.11. **State:** 760 C.M.R. 6.09(1).

¹¹ **Federal:** 24 C.F.R. 964.18(a)(10) says that MOUs must be reviewed every 3 years. **State:** 760 C.M.R. 6.09(3) says that MOUs must be reviewed every 5 years. UPDATED AS OF NOV 2017

¹² For more about negotiating, see *Getting to Yes*, by Roger Fisher et al., Penguin Books, New York (2nd edition 1991). See pages 97-106 for how to negotiate with someone more powerful than yourself.

¹³ Under state law, 760 C.M.R. 6.09(3) states that “[t]he LHA and each LTO shall negotiate an agreement regarding resident participation.” Under federal law, 24 C.F.R. 964(a)(10), (18), housing authorities with 250 units or more “shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement....”

¹⁴ 24 C.F.R. 964.18(b)(2)(i).

¹⁵ See *Fall River Housing Joint Tenants Council, Inc. v. Fall River Housing Authority, et al.*, 15 Mass. App. Ct. 992, 448 N.E. 2d 70 (1983). The Mass. Appeals Court found that a memorandum agreement between the tenant council and the housing authority was written in a way that made it an enforceable agreement or contract.

¹⁶ See *Fall River Housing Joint Tenants Council, Inc. v. Fall River Housing Authority, et al.*, 15 Mass. App. Ct. 992, 448 N.E. 2d 70 (1983).