



DEPARTMENT OF THE NAVY
COMMANDER, NAVY INSTALLATIONS COMMAND
716 SICARD STREET, SE, SUITE 1000
WASHINGTON NAVY YARD, DC 20374-5140

CNICINST 3070.1
N3
13 Dec 2011

CNIC INSTRUCTION 3070.1

From: Commander, Navy Installations Command

Subj: BASE ACCESS TO UNAFFILIATED CIVILIANS FOR THE PURPOSE OF
OCCUPYING PUBLIC PRIVATE VENTURE HOUSING

Ref: (a) CNIC e-mail EXORD 3070 Ser N3 of 24 Oct 2011
(b) CNICINST 5530.14

Encl: (1) Checklist for Determining Whether to Grant Access to
Unaffiliated Civilians to Live in Privatized Housing
(2) CNIC Public Affairs Guidance - Public Private Venture
Housing Leased to Unaffiliated Civilians

1. Purpose

a. To formalize the interim guidance, outlines in reference (a), regarding the management of unaffiliated civilians occupying Public Private Venture (PPV) housing.

b. To ensure efficient and effective implementation of the Navy Housing Privatization program in compliance with Commander, Navy Installations Command (CNIC) security, law enforcement and anti-terrorism policy and procedures.

2. Background. Under the provisions of the Navy's privatized housing initiative, unoccupied and available PPV housing units may be offered to unaffiliated civilians for rent. Unaffiliated civilians are individuals who are not associated with the Department of Defense (DoD) by military service, military dependency or civilian/contract employment and do not hold current valid base access credentials.

a. A number of DoD and Department of Navy (DoN) policies exist that do not contemplate the myriad of scenarios that military housing privatization has created. There is a limited

amount of case law regarding the validity of applying military legal authorities to civilians living in privatized housing.

b. The first step to properly understanding and analyzing the requirements and attendant legal and financial obligations and risks is to determine the legislative jurisdiction of the federally owned land where all housing is located.

(1) Proprietary Jurisdiction. State and local laws and regulations have full effect; law enforcement is the responsibility of state and local authorities; DON law enforcement personnel have no legal authority.

(2) Concurrent Jurisdiction. Both federal and state/local laws and regulations apply; law enforcement is the responsibility of either or both federal and local authorities; the assignment of responsibility for law enforcement is frequently the subject of a written Memorandum of Agreement (MOA).

(3) Federal Exclusive Jurisdiction. Only federal laws apply (with very limited exceptions); law enforcement is the sole responsibility of DON and the federal courts.

3. Policy. The presence of unaffiliated civilians living on installations requires resolution of multiple issues including base access, eviction, vehicle control, law enforcement, arrest, detention and incarceration, and prosecution. Region Commanders (REGCOMS) and Installation Commanding Officers (COs) will grant access to unaffiliated civilians in those locations where these issues have been satisfactorily resolved or mitigated. In those locations where these issues cannot be satisfactorily resolved or mitigated, REGCOMS will seek any required policy waivers via the chain of command. Enclosure (1) provides a checklist that shall be used by Installation COs when determining whether to grant installation access to unaffiliated civilians for the purpose of occupying PPV housing.

4. Responsibilities

a. REGCOMS and Installation COs are responsible for making the determination to grant base access to unaffiliated civilians consistent with the provisions of this instruction.

b. CNIC HQ Office of General Counsel and Force Judge Advocate are responsible for providing legal support to REGCOMs and Installation COs in determining to grant base access to unaffiliated civilians consistent with the provisions of this instruction.

5. Action

a. REGCOMs shall ensure installation compliance with reference (b) and this instruction, including, as necessary, developing PPV Housing instructions specific to their region.

b. Installation COs shall:

(1) Determine whether to grant base access to unaffiliated civilians for the purpose of occupying PPV housing, following the guidance in enclosure (1). Installation COs shall be proactive in assessing the issues set forth in enclosure (1) and shall make determination in advance of receiving requests for base access. In all instances, assessments and determinations should be made within 45 days of the date of this instruction.

(2) Determine the type of jurisdiction based upon the location of the housing, i.e. proprietary, concurrent or federal exclusive.

(3) Ensure PPV partners conduct a criminal history check on all unaffiliated personnel and provide sufficient information for the Installation Security Officer to conduct a National Crime Information Center check. The PPV partner has the authority to make the final determination on whether to enter into a lease agreement based upon these checks; however, the Installation CO has the authority to make the final determination on who will be granted access to the installation. The Installation CO may agree to grant access to individuals with minor infractions (such as bad check charges), however a person will be denied access if they have a felony conviction within the past 10 years; membership within the previous 10 years in any organization that advocates the overthrow of the U. S. Government; any conviction of an offense meeting the sexual offender criteria; and any person barred from a Navy installation.

(4) Develop and implement a vehicle registration process for unaffiliated persons, including issuance of DoD decals, as appropriate.

(5) Coordinate with Installation visitor control centers to ensure all approved unaffiliated personnel above the age of ten (10) are issued an Installation Photo Identification (ID) Card, which authorizes access only to the installation where they have leased PPV housing. ID card expiration will be the PPV lease termination date. Access should be permitted to these unaffiliated persons at all times unless a condition exists on the installation which may cause injury or death.

(6) Confirm PPV leasing representatives are validated and provide the Installation Security Officer all information related to occupancy on base PPV housing for each unaffiliated resident. PPV leasing representatives will report any changes to the PPV lease for all unaffiliated civilians on base to both installation housing offices and installation security officers.

(7) Establish and provide a "welcome aboard" package to the unaffiliated family explaining the Installation's rules and regulations with respect to living on base within a military community.

(8) Collect all ID cards and decals issued to unaffiliated tenants upon lease termination.

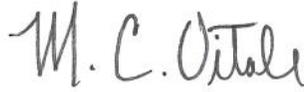
(9) Develop PPV Housing instructions for the Installation to provide procedures for housing, law enforcement officials, and leadership to address the unique challenges presented by leasing PPV housing to unaffiliated personnel and their guests. PPV Housing Standard Operating Procedures should be in place so PPV occupancy/revenue is not negatively impacted due to delays in establishing these procedures.

(10) Follow the guidance of enclosure (2) when receiving media queries regarding unaffiliated civilians leasing PPV housing.

c. Installation Security Officers shall conduct a National Crime Information Center check for use in determining whether to

CNICINST 3070.1
DEC 13 2011

grant access to unaffiliated civilians to live in privatized housing.



M. C. VITALE
Vice Admiral, U.S. Navy

Distribution:

Electronic only, via CNIC Gateway 2.0

<https://g2.cnic.navy.mil/CNICHQ/Pages/Default.aspx>

**Checklist for Determining Whether to Grant Access to
Unaffiliated Civilians to Live in Privatized Housing**

The purpose of this checklist is to provide Region Commanders and Installation Commanding Officers (COs) with a tool to use when making the decision to grant base access to unaffiliated civilians for the purpose of occupying PPV housing. In some instances, waivers to existing regulations may be required; additionally, some of the existing legal tools that are used by COs to meet their obligations under U.S. Navy Regulations may not be available for use in dealing with unaffiliated civilians in housing areas. Commander, Navy Installations Command or Region Office of General Counsel and Judge Advocate General (JAG) attorneys are available to assist in addressing legal issues.

1. Law Enforcement (LE). Depending upon the type of jurisdiction, the Navy may or may not be obligated to provide law enforcement to the housing area. If it is concurrent jurisdiction, an Memorandum of Agreement (MOA) with local authorities may be established/modified to allow local authorities to perform law enforcement thereby potentially reducing Department of Navy (DON) costs and risks.

	<u>Is it possible to shift LE to locals?</u>
Proprietary	Not necessary—they already have it.
Concurrent	Yes, by establishing or changing MOA.
Exclusive	Yes, through change of legislative jurisdiction

2. Incarceration. Navy brigs cannot be used to house civilians. Arrangements must be made with U.S. Marshals Service. Contracts can be awarded to local jurisdictions to obtain jail services on reimbursable basis.

	<u>Are Alternate Incarceration Arrangements Required?</u>
Proprietary	No.
Concurrent	Yes, if Navy has law enforcement responsibility for housing area.
Exclusive	Yes.

3. Evictions. This is a civil matter between the Limited Liability Company (LLC)(the landlord) and the tenant. Evictions are the enforcement of a court order carried out by the authority of the court issuing the eviction order.

	<u>Can Assistance be Provided to the PPV LLC?</u>
Proprietary	None required since state/local authorities have full authority.
Concurrent	None required since state/local authorities have full authority.
Exclusive	Ensure eviction is based upon a federal court order and not a state court order. If eviction is based upon federal court order, provide assistance as requested by federal court authorities (e.g. US Marshal). State/local authorities do not have legal authority to enforce an eviction order on federal exclusive and should not be permitted.

4. Prosecution Support. Federal prosecutors have complete control over which offenses are prosecuted. To ensure the fullest amount of cooperation with federal prosecutors, Installation COs should ensure their JAG attorneys apprise US Attorney Offices that unaffiliated civilians may be moving into housing. Consideration should be given to appointing Special Assistance U.S. Attorneys and Magistrates.

	<u>Prior Coordination with US Attorney?</u>
Proprietary	No.
Concurrent	Yes, if MOA requires DoN to provide LE.
Exclusive	Yes.

5. Barring Orders

a. Under certain circumstances, Installation COs have the legal authority to bar individuals from entering the installation. This authority has legal and practical limitations, but in some circumstances may be used against unaffiliated civilians.

b. Barring a tenant from access to housing areas that are outside the fence line, contain no Navy-owned facilities and are potentially not contiguous to the installation has major impediments from an enforcement point of view. The Installation COs legal authority to issue a barring order in that situation is very limited and will require consultation with CNIC attorneys.

<u>Reason:</u>	<u>May Barring Order be Issued?</u>
Non-payment of Rent	No. It is a civil matter between LLC and tenant.
Disruptive Behavior (housing within fence line)	Yes, if it is determined to be reasonably necessary to maintain good order and discipline to protect installation personnel and property. Consult with attorney.
Disruptive Behavior (housing outside fence line)	Not likely. Requires showing of military purpose that is greater than individual's protected property rights (leasehold). In most PPV housing areas outside the fence line there is no military interest.
Violation of lease terms	No. It is a civil matter between LLC and tenant.
Violation of Base Regulations (e.g. parking, leash laws, speeding, etc)	No (unless it necessary to maintain good order and discipline to protect installation personnel and property as described above). Violations by civilian renters must be treated the same as violations by other civilians on installation.

6. Exercise of Command Authorities

	<u>Authorized?</u>
Command Search (housing area inside the fence line)	Commanding Officer may issue probable cause search order provided area is under military control.
Command Search (housing area outside the fence line)	Not likely. Consult with JAG attorney.
Health and Comfort Inspections	No.
Safety Inspections	Not likely. Consult with JAG attorney.

Require compliance with base gun registration rules?	Yes
Require one spouse to temporarily vacate house in response to domestic violence call?	No
Offer or require domestic violence counseling by FFSC in response to domestic violence call?	No
Require motorcycle safety training before issuance of decals	Yes. Commanding Officer cannot waive this requirement.
Require ATV and Dirt Bike safety training before use on base	Yes. Commanding Officer cannot waive this requirement.
Prohibit use of headphones or other listening devices while running, walking, driving, skating, bicycling or skateboarding on base	Yes. Commanding Officer cannot waive this requirement.

7. Juvenile Offenders. There is no federal juvenile offender program. Federal prosecution of juvenile offenders may be limited. Minor drug or mischief infractions by juveniles may not be prosecuted. Installation COs should assess the likelihood and ramifications of such eventualities prior to opening up housing in federal exclusive jurisdiction areas to unaffiliated civilians.

	Need to assess risk of limited ability to enforce laws against juvenile offenders.
Proprietary	None.
Concurrent	Yes, if Navy provides LE and cannot be shifted to local authorities under MOA.
Exclusive	Yes.

CNIC Public Affairs Guidance
Public Private Venture Housing Leased to Unaffiliated Civilians

Reference (a): CNICINST 3070.1

Purpose: To provide further public affairs guidance in addition to reference (a) in the event Region or Installation PAOs receive media queries regarding unaffiliated civilians leasing Public Private Venture Housing (PPV).

PAO Posture: Passive; Response to Query.

In Response to Query, Region and Installation PAOs should use the following statement and Q's and A's:

QUOTE: Under the provisions of the Navy's PPV partnership, the PPV partner is authorized to lease housing to non-Department of Defense (DoD) affiliated civilians when there is not enough demand for housing from military families and other "preferred referrals". The Navy's PPV Partner must offer housing to a priority list of "preferred referrals" comprised of DoD-affiliated personnel prior to offering to non-DoD affiliated civilians. Processes are in place at the installations to address jurisdiction, security and access issues for a non-DoD affiliated individual should the housing unit be located inside the installation perimeter. **UNQUOTE**

Q1. Who are the "preferred referrals"?

A1. PPV Preferred referrals are in order of priority: Active-duty families, unaccompanied military members; active-duty Guard and Reserve (Title 32); civil service employees; military retirees; civil service retirees.

Q2. Where are these units located, on base or off base?

A2. Depending on location the PPV housing units may be located on base, behind the perimeter fence, or off base.

Q3. What authorizes the PPV partner to lease vacant homes to unaffiliated civilians?

A3. In 1996 the Military Housing Privatization Initiative, 10 U.S.C. § 2871-2884 was enacted to provide suitable housing for military members. ASN (I&E) memo of 12 Jan 98 authorizes the PPV partner to lease to unaffiliated civilians once the preferred referral list has been exhausted.

Q4. How long must a house be vacant before the PPV partner can offer the house to an unaffiliated civilian?

A4. If no preferred referrals are available after a period of thirty (30) days, the PPV partner may lease vacant homes to unaffiliated civilians. (Note: For Flag or Commanding Officer housing units, the timeframe can be up to 60 days.)

Q5. How does an unaffiliated civilian get approved for a vacant PPV housing unit?

A5. They would apply to the PPV partner. The PPV partner would then conduct a credit check and a criminal history check on all unaffiliated civilians. The PPV Partner would then make a final determination to approve a lease based on this background check.

Q6. If a housing unit is located behind a base's fence line, how does an unaffiliated civilian get onto the base?

A6. Installations have a vehicle registration process in place for unaffiliated civilians. They will be issued a DoD vehicle decal as appropriate. Additionally, all approved unaffiliated civilians above the age of ten (10) will also receive an Installation Photo Identification Card which will authorize access only to the installation where they have leased PPV housing.

Q7. Are there different rules to living in PPV on base or off base housing?

A7. Like most civilian housing communities there are rules and regulations specific to that PPV housing location. There are also laws and regulations that exist with respect to living on federal government land within a military community. Each unaffiliated civilian will receive a Welcome Aboard package that includes all pertinent information about that Navy installation's rules and regulations.