

## COMPLAINTS, GRIEVANCES AND APPEALS

### INTRODUCTION

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of the PHA. This Chapter describes the policies to be used when families disagree with a PHA decision. It is the policy of the PHA to ensure that all families have the benefit of all protections due them under the law.

### A. COMPLAINTS

The PHA will respond promptly to complaints from families. Each complaint regarding physical condition of the units may be reported by phone to the Housing Manager or Maintenance Department. Anonymous complaints re checked whenever possible. The PHA requires that complaints be put in writing.

Complaints from families. If a family disagrees with an action or inaction of the PHA,

- Complaints from families will be referred to the Housing Manager.

Complaints from staff. If a staff person reports a family is violating or has violated a lease provision or is not complying with program rules:

- Complaints from staff will be referred to the Housing Manager.

Complaints from the general public. Complaints or referrals from person in the community in regard to the PHA or a family:

- Complaints from the general public will be referred to the Housing Manager.

### B. APPEALS BY APPLICANTS.

Applicants who are determined ineligible, who do not meet the PHA's admission standards, or where the PHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination.

Ineligible applicants will be promptly provided with a letter detailing their individual status, stating the reason for their ineligibility, and offering them an opportunity for an informal hearing.

Applicants must submit their request for an informal hearing in writing to the PHA within 15 working days from the date of the notification of their ineligibility.

If the applicant requests an informal hearing, the PHA will provide an informal hearing within 15 working days of receiving the request. The PHA will notify the applicant of the place, date and time of the informal hearing.

An impartial hearing officer will conduct informal hearings. The person who is designated as the hearing officer cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes and that evidence, along with the data compiled by the PHA, will be considered by the hearing officer.

The hearing officer will make a determination based upon the merits of the evidence presented by both sides. Within 15 working days of the date of the hearing, the hearing officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

**The grievance procedures for Public Housing tenants do not apply to PHA determinations that affect applicants.**

#### **C. APPEALS BY TENANTS**

Grievance or appeals concerning the obligations of the tenant or the PHA under the provisions of the lease shall be processed and resolved in accordance with the Grievance Procedure of the PHA, which is in effect at the time such grievance or appeal arises.

#### **D. HEARING AND APPEAL PROVISION FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS".**

Assistance to a family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on an INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

#### **E. INS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA will notify the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in the “Grievance Procedures” section of this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members the PHA will:

- Deny the applicant family.
- Defer termination if the family is a participant and qualifies for deferral.
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide documentation or certification, the family will be denied or terminated for failure to provide said documentation or certification.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Tenant Rent and Total Tenant Payment.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

## **F. GRIEVANCE PROCEDURES.**

### **1. Definitions**

- a. Grievance – Any dispute which a tenant may have with respect to a Housing Authority action or failure to act in accordance with the individual tenant’s

lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status.

- b. Complainant – Any tenant whose grievance is presented to the PHA or at the site/management office informally or as part of the informal hearing process.
- c. Hearing Officer/Hearing Panel - A person or person selected in accordance with this grievance procedure to hear grievances and render a decision with respect thereto.
- d. Tenant – A lessee or the remaining head of household of any tenant family residing in housing accommodations owned or leased by the PHA.
- e. Elements of Due Process – An eviction or a termination action in a State or local court in which the following procedural safeguards are required:
  - (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for the eviction;
  - (2) Opportunity for the tenant to examine all relevant documents, records, and regulations of the PHA prior to the trial for the purpose of preparing a defense;
  - (3) Right of the tenant to be represented by counsel;
  - (4) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and
  - (5) A decision on the merits of the case.

## 2. Applicability

This Grievance Procedure applies to all individual grievances, except any grievance concerning a termination of tenancy or eviction that involves:

- Any activity, not just criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or PHA employees, or
- Any drug-related criminal activity **on** or **off** such premises.

## 3. Pre-Hearing Procedures

- Informal Grievance Procedures

Any grievance shall be presented orally or in writing to the PHA office or to the complainant's office. Written grievances must be signed by the complainant. The grievance must be presented within a reasonable time, which is the basis for the grievance. It may be simply stated, but shall specify:

- The particular grounds upon which it is based;
- the action requested; and
- the name, address, and telephone number of the complainant, and similar information about the complainant's representative, if any.

The purpose of the initial discussion is to discuss and to resolve the grievance without the necessity of a formal hearing.

Within five working days, a summary of this discussion will be given to the complainant by a PHA representative. One copy will be filed in the tenant's file.

The summary will include: names of participants, the date of the meeting, the nature of the proposed disposition, and the specific reasons for the disposition. The summary will also specify the steps by which can be obtained.

b. Dissatisfaction with Informal Meeting

- If the complainant is dissatisfied with the proposed disposition of the grievance, s/he shall submit a written request for a hearing within the 15 working days of the date/delivery of the summary of the informal meeting.
- The request for a hearing must be presented to the Complainant's Housing site office or to the PHA's office.
- The request for a hearing will be date-stamped.
- The request must specify the reason for the grievance request and the relief sought.

c. Failure to Request a Formal Hearing

If the complainant does not request a hearing within 15 working days, s/he waives his/her right to a hearing, and the PHA's proposed disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to contest the PHA's disposition in an appropriate judicial proceeding.

d. Rights to a Hearing

After exhausting the informal procedures outlined above, a complainant shall be entitled to a hearing before a hearing official or panel.

**The head of household or other adult household member must attend the hearing.**

**If rescheduling of the hearing is necessary, the hearing must be rescheduled at least 48-hours in advance of the scheduled hearing time or the complainant waives their right to a hearing.**

**If the complainant fails to appear within 15 minutes of the scheduled time, the complainant waives their right to a hearing**

The PHA will provide reasonable accommodation for persons with disabilities to participate in the hearing. The PHA must be notified within 48-hours of the scheduled time if special accommodations are required.

4. Selection of Hearing Officer or Panel

A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA other than the person who made or approved the PHA action under review, or a subordinate of such person.

5. Procedures to Obtain a Hearing

a. Informal Prerequisite

(1) All grievances must be informally presented as a prerequisite to a formal hearing.

(2) The hearing official or panel may waive the prerequisite informal hearing, if and only if, the complainant can show good cause why s/he failed to proceed informally.

b. Escrow Deposit

(1) Before a hearing is scheduled in any grievance involving an amount of rent the PHA claims is due, the complainant shall pay to the PHA all rent due and payable as of the month preceding the month in which the act or failure to act took place.

- (2) The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account each month until the complaint is resolved by decision of the hearing official or panel.
- (3) The PHA may waive these escrow requirements in extraordinary circumstances.
- (4) Unless so waived, failure to make the required escrow payments shall result in termination of the grievance procedure.
- (5) Failure to make such payments does not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

c. Scheduling

- (1) If the complainant complies with the procedures outlined above, a hearing shall be scheduled by the panel within 15 working days at a time and place reasonably convenient to the complainant and the PHA.
- (2) A written notification of the date, time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

6. Hearing Procedures

- a. The hearing shall be held before a hearing officer or a hearing panel.
- b. The complainant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

- The opportunity to examine and to copy before hearing, at the expense of the complainant, all documents, records and regulations of the PHA that are relevant to the hearing. Any document not so made available after request by the complainant may not be relied upon by the PHA at the hearing.

The PHA shall also have the opportunity to examine and top copy at the expense of the PHA, all documents, records and statements that the family plans to submit during the hearing to refute the PHA's inaction or proposed action. Any documents not so made available to the PHA may not be relied upon at the hearing.

- The right to a private hearing unless otherwise requested by the complainant.

- The right to be represented by counsel or other person chosen as a representative.
  - The right to present evidence and arguments in support of the complaint, to controvert evidence presented by the PHA, and to confront and cross-examine all witnesses upon whose testimony or information other PHA relies; and
  - The right to a decision based solely and exclusively upon the facts presented at the hearing.
- c. If the panel determines that the issue has been previously decided in another proceeding, a decision may be rendered without proceeding with the hearing.
- d. If the complainant or PHA fail to appear at the scheduled hearing, the panel may **make a determination that the party has waived his/her right to a hearing.**

Such a determination in no way waives the complainant's right to appropriate judicial proceedings in another forum.

- e. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.
- f. The hearing shall be conducted by the panel in such a way as to be:
- (1) Informal: Oral and documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings;
  - (2) Formal: The hearing official/panel shall require the PHA, complainant, counsel, and other participants and spectators to conduct themselves in an orderly manner. The failure to comply with the directions of the hearing official/panel to maintain order will result in the exclusion from the proceedings, or a decision adverse to the interest of the disorderly party and granting or denial of the relief sought, as appropriate.
- g. The complainant or the PHA may arrange, in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

7. Decisions of the Hearing Official /Panel

- a. The panel shall give the PHA and the complainant a written decision, including the reasons for the decision, within 15 working days following the hearing. The PHA will place one copy in the tenant files.
- b. The decision of the panel shall be binding on the PHA which shall take all actions necessary to carry out the decision, unless the PHA Commissioners determine, within 15 working days, and so notifies the complainant that:
  - The grievance does not concern the PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations that adversely affect the complainant's rights, duties, welfare or status;
  - The decision of the panel is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and the PHA.
- c. A decision by the panel, or PHA Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or part shall not constitute a waiver of, nor affect in any matter whatever, the rights of the complainant to a trial or judicial review in any proceedings, which may thereafter be brought in the matter.

8. Housing Authority Eviction Actions

- a. If a tenant has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a PHA notice termination of tenancy, and the panel upholds the PHA action, the PHA shall not commence an eviction action until it has served a notice to vacate on the tenant.
- b. In no event shall the notice to vacate be issued prior to the decision of the panel having been mailed or delivered to the complainant.
- c. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date as stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant. The complainant may be required to pay court costs and attorney fees.