

GRIEVANCE PROCEDURE

I. Definitions applicable to the grievance procedure: (§966.53)

- A. Grievance: Any dispute a Tenant may have with respect to PHA action or failure to act in accordance with the individual Tenant's lease or PHA regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. Complainant: Any Tenant (as defined below) whose grievance is presented to the PHA (at the central office or the development office) in accordance with the requirements presented in this procedure.
- C. Elements of due process: An eviction action or a termination of tenancy 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 eviction:
 - (2) Right of the Tenant to be represented by counsel:
 - (3) 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 defence which the Tenant may have;
 - (4) A decision on the merits of the case.
- D. Hearing Officer: A person selected in accordance with **24 CFR § 966.550** and this procedure to hear grievances and render a decision with respect thereto.
- E. Hearing Panel: A three member panel selected in accordance with **24 CFR § 966.55** and this procedure to hear grievances and render a decision with respect thereto.
- F. Tenant: the adult person (or persons other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) Who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.
- G. Resident Organization: An organization of residents, which also may include a resident management corporation.

II. Applicability of this grievance procedure (966.51)

In accordance with the applicable Federal regulations (**24 CFR § 966.50**) this grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between Tenant and the PHA with the following two exceptions:

- A. Because HUD has issued a due process determination that the law of the State that requires that a Tenant be given the opportunity for a hearing in court which provides the basic elements of due process (as defined above) before eviction from the dwelling unit, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or
 - (2) Any violent or drug-related criminal activity on or off such premises; or
 - (3) Any criminal activity that resulted in felony conviction of a household member.[966.51 (2)(i) (A)(B) and (C)]
- B. The PHA grievance procedure shall not be applicable to disputes between Tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners. [966.51 (b)]

This grievance procedure is incorporated by reference in all Tenant dwelling leases and will be furnished to each Tenant and all resident organizations. [966.52 (b) and (d)]

Any changes proposed in this grievance procedure must provide for at least 30 days notice to Tenants and Resident Organizations, setting forth the proposed changes and providing an opportunity to present written comments. Comments submitted shall be considered by the PHA before any revisions are made to the grievance procedure. [966.52 (c)]

III. Informal settlement of a grievance [966.54]

Any grievance must be personally presented, either orally or in writing, to the PHA's central office or the management office of the development in which the complaint resides **within ten days after the grievable event**.

Grievances related to complaints about operational matters that are received by the PHA's central office will be referred to the person responsible for the management of the development in which the complainant resides. Grievance involving complaints related to discrimination, harassment, or disability rights will be referred to the Civil Rights Administrator or Director of Operations.

As soon as the grievance is received, it will be reviewed by the management office of the development or the Civil Rights Administrator (if applicable) to be certain that neither of the exclusions in paragraphs II.A or II.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the PHA's grievance procedure, with the reason therefore.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time **within ten working days** to meet so the grievance may be discussed informally and settled without a hearing. At the informal hearing the complainant will present the grievance and the person in charge of the management office or the Civil Rights Administrator will attempt to settle the grievance to the satisfaction of both parties.

Within five working days following the informal discussion, the PHA shall prepare and either hand deliver or mail to Tenant a summary of the discussion that must specify the names of the participants, the dates of the meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary shall also be placed in Tenant's file. A receipt signed by the complainant or a return receipt for delivery of certified mail, whether or not signed, will be sufficient proof of time of delivery for the summary of the informal discussion. [966.55 (a)]

IV. Formal Grievance Hearing

If the complainant is dissatisfied with the settlement arrived at in the informal hearing, the complainant must submit a written request for a hearing to the management office of the development where Tenant resides **no later than five working days after the summary of the informal hearing is received**.

The written request shall specify:

The reasons for the grievance

The action of relief sought from the PHA; and

Several dates and times **in the following ten working days** when the complainant can attend a grievance hearing.

If the complainant requests a hearing in a timely manner, the PHA shall schedule a hearing on the grievance at the earliest time possible for the complainant, PHA and the hearing officer or hearing panel, **but in no case later than ten working days** after the PHA received the complainant's request.

If the complainant fails to request a hearing within five working days after receiving the summary of the informal hearing the PHA's decision rendered at the informal hearing becomes final and the PHA is not obligated to offer the complainant a formal hearing unless the complainant can show good cause why he failed to proceed in accordance with this procedure. [966.55 (c) and (d)]

Failure to request a grievance hearing does not affect the complainant's right to contest the PHA's decision in a court hearing. [966.54 (c)]

V. Selecting the Hearing Officer or Hearing Panel [966.55 (b) (2) (ii)]

A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA after consultation with resident organizations, as described below:

- A. The PHA shall nominate a slate of impartial persons to sit as hearing officers or hearing panel members. Such persons may include PHA Board members, PHA staff members, residents, professional arbitrators, or others. The initial slate of nominees should be at least nine persons.

The PHA will check with each nominee to determine whether there is an interest in serving as a hearing officer or panel member, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.

Nominees will be informed that they will be expected to disqualify themselves from hearing grievances that involve personal friends, other residents of developments in which they work or reside, or grievances in which they have some personal interest.

Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical will be withdrawn and other names will be substituted.

- B. A slate of potential hearing officers or hearing panel members nominated by the PHA shall be submitted to PHA's Resident Organizations. Written comments from the organizations shall be considered by the PHA before the nominees are appointed as hearing officers or panel members.
- C. When the comments from Resident Organizations have been received and considered, the nominees will be informed that they are the PHA's official grievance hearing committee.

The PHA will subsequently contact committee members in random order to request their participation as hearing panel members or hearing officers.

VI. Escrow deposit required for a hearing involving rent [966.55 (e)]

Before a hearing is scheduled in any grievance involving the amount of rent which the PHA claims is due under this lease, the complainant shall pay to the PHA an amount equal to the rent due, and payable as of the first of the month preceding the month in which the act of failure to act took place. The complainant shall, thereafter, deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer or hearing panel.

This requirement will not be waived by the PHA unless the complainant is paying minimum rent and the grievance is based on a request for a hardship exemption or the tenant's welfare benefits have been reduced for welfare fraud or failure to comply with economic self sufficiency requirement. **In these cases only**, rent need not be escrowed.

VII. Scheduling hearing [966.55 (f)]

When a complainant submits a timely request for a grievance hearing, the PHA will immediately contact three members of the hearing committee to schedule the hearing within the following ten working days on one of the dates and times indicated by the complainant. If three committee members can agree on a date and time for the hearing, the complainant will be so notified.

If two of the panel members can meet on a date convenient for the complainant, the PHA will approach another member of the hearing committee to find a third member to complete the panel.

If only one member of the hearing committee can meet on a date named by the complainant, that single committee member shall serve as the hearing officer.

Once the hearing panel or hearing officer have agreed upon the hearing date and time, the complainant, the manager of the development in which the complainant resides, and hearing panel members or officer shall be notified in writing. Notice to the complainant shall be in writing, either personally delivered to complainant or sent by mail, return receipt requested.

The written notice will specify the time, place and procedures governing the hearing.

VIII. Procedures governing the hearing [966.56]

The hearing shall be held before a hearing panel or hearing officer as described above in Section VII. The complainant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any PHA document, including records and regulations, that are directly relevant to the hearing.

The Tenant shall be allowed to copy any such document at the Tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHS may not rely on such document at the grievance hearing.
- B. The right to be represented by counsel or other person chosen as the Tenant's representative and to have such person make statements on the Tenant's behalf.
- C. The right to a private hearing unless the complainant request a public hearing. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the PHA or project management, and to confront and cross examine all witnesses upon whose testimony or information the PHA or project management relies; and
- D. A decision based solely and exclusively upon the fact presented at the hearing. [966.56 (b)]

The hearing panel or officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding. [966.56 (c)]

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. [966.56 (e)]

The hearing shall be conducted informally by the hearing panel or officer. Oral or 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. [966.56 (f)]

The hearing panel or officer shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing panel or officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate. [966.56 (f)]

The complainant of the PHA may arrange in advance, at expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript. [966.56 (g)]

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the Tenant is visually impaired, any notice to the Tenant which is required under this procedure must be in an accessible format. [966.56 (h)]

If a hearing panel member or officer fails to disqualify himself/herself as required in Section V.A., the PHA will remove the panel member or officer from the hearing committee, invalidate the results of the hearing and schedule a new hearing with a new hearing panel or officer.

IX. Failure to appear at the hearing

If the complainant or the PHA fails to appear at the scheduled hearing, the hearing panel or officer may make a determination to postpone the hearing **for not to exceed five business days**, or may make a determination that the party has waived his right to a hearing. [966.56 (d)]

Both the complainant and the PHA shall be notified of the determination by the hearing panel or officer; Provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in court. [966.56(d)]

X. Decision of the hearing panel or officer [966.57]

The hearing panel or officer shall prepare a written decision, together with the reasons for the decision **within ten working days** after the hearing. A copy of the decision shall be sent to the complainant and the PHA.

The PHA shall retain a copy of the decision in the Tenant's folder. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing panel or officer.

The decision of the hearing panel or officer shall be binding on the PHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA's Board of Commissioners determine within ten working days, and promptly notifies the complainant of its determination that:

- A. The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affect the complainant's rights, duties, welfare or status.
- B. The decision of the hearing panel or officer 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 hearing panel or officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the complainant to a trial or judicial review in any court proceedings which may be brought in the matter later. [966.57]