

GRIEVANCE PROCEDURE

1. RIGHT TO A HEARING

Upon filing of a written request as provided herein, a complainant shall be entitled to a hearing before the Hearing Official.

2. DEFINITIONS

- a. Complainant is defined as any resident (or applicant) whose rights, duties welfare or status are or may be adversely affected by local housing authority (LHA) action or failure to act and who files a grievance or complaint with the local housing authority with respect to such action or failure to act.
- b. Grievance or Complaint is defined as any dispute with respect to LHA action or failure to act in accordance with lease requirements, or any LHA action or failure to act involving interpretation, or application of the LHA's regulations, policies or procedures which affects the rights, duties, welfare or status of the complainant.

3. PROCEDURE PRIOR TO A HEARING

- a. Any grievance or complaint must be personally presented to the LHA office so that the grievance may be informally discussed and settled without a hearing. The grievance or complaint must be signed by the complainant and filed in the office by him/her or a representative within a reasonable time, not in excess of 15 days of the LHA action or failure to act which is the basis for the grievance. It may be simply stated, but shall specify: (1) the particular ground(s) upon which it is based; and (2) the action requested.

A copy of the complaint shall be retained by the complainant and a copy should be filed with the housing director. All complaints and/or copies must be date-stamped at time of receipt by the LHA.

- b. An answer in writing to each complaint, dated and signed by the housing director, or other appropriate official, shall be delivered or mailed to the complainant within a reasonable time (generally within five (5) working days). A copy of the answer shall be filed with the complainant in the office. The answer shall specify:
 1. The proposed disposition of the complaint and the specific reasons thereof;
 2. The right of the complainant to a hearing; and

3. the procedure by which a hearing may be scheduled.
- c. If the complainant is dissatisfied with the proposed disposition of this complaint, as stated in the housing director's or other LHA official answer, he/she may submit a written request, to the LHA office, for a hearing. This written request shall be made within a reasonable time of the date of the answer to his/her complaint (generally ten (10) working days). The written request for a hearing must be date-stamped and filed in the LHA office along with the complaint and answer. The Hearing Official shall be advised promptly of the request by the appropriate LHA official; shall schedule the hearing as promptly as possible for a date, time and place reasonable convenient to the complainant; and shall inform the complainant thereof in writing.
- d. If the complainant does not request a hearing within the time period allowed in Subsection c above, he/she waives his/her right to the hearing, and the LHA's proposed disposition of the grievance will become final. This shall not, however, constitute a waiver of the complainant's right thereafter to contest the LHA's disposition of his/her grievance in an appropriate judicial proceeding.

4. **HEARING OFFICIAL**

The Hearing Official shall be a person chosen by the Commission from a list submitted to the Commission by the residents. The official shall not be a relative of the complainant nor any LHA officer or employee whose duties and responsibilities involve him/her in any way with the grievance at issue.

5. **THE HEARING**

- a. The parties shall be entitled to a fair hearing before the Hearing Official and may be represented by counsel or another person chosen as a representative.
- b. The hearing shall be private unless complainant requests and the Hearing Official agrees to a public hearing. This shall not be construed to limit the attendance of persons with a valid interest in the proceedings.
- c. Complainant may examine before the hearing and, at his/her expense, copy all documents, records and regulations of the LHA that are relevant to the hearing. Any document not made available, after request therefore by the complainant, may not be relied on by the LHA at the hearing. The complainant may request, in advance and at his/her expense, a transcript of the hearing.
- d. If the dispute is over the amount of rent or other charges which the local housing authority claims is due, the complainant shall deposit the amount in dispute in an

escrow account pending settlement of the dispute by the Hearing Official. If the complainant fails to do so, the Official may determine that the complainant has waived his/her right to the Hearing. Such determination shall not constitute waiver of complainant's right to thereafter contest the local housing authority's disposition of his/her grievance in an appropriate judicial proceeding.

- e. If a complainant fails to appear at a Hearing, the official may postpone the Hearing for five working days, or may make a determination that the complainant has waived his/her right to the Hearing. Such a determination shall not constitute a waiver of complainant's right to thereafter contest the LHA's disposition of his/her grievance in an appropriate judicial proceeding.
- f. At the hearing the complainant must make a prima facie case and then the burden of proof is on the LHA to justify the action or inaction proposed by it in its answer to the complaint. The complainant may present evidence and arguments in support of his/her complaint, controvert evidence relied on by the LHA or Housing Director, and confront and cross-examine all witnesses on whose testimony or information the LHA relies. Hearings conducted by the Hearing Official shall be informal, and any oral or documentary evidence, as limited however, to the facts and issues raised by the complaint and answer, may be received by the Hearing Official without regard to whether that evidence would be admissible under rules of evidence employed in judicial proceedings.

6. **DECISIONS OF THE HEARING OFFICIAL**

- a. The decision of the Hearing Official shall be based solely and exclusively upon facts presented at the hearing and upon applicable LHA and HUD regulations. To the extent that the decision is not inconsistent with State law, the United States Housing Act of 1937, as amended, HUD regulations and requirements promulgated thereunder, or the Annual Contributions Contract, and to the extent provided in subsection f below, the decision of the Hearing Official shall be binding on the LHA.
- b. If both parties agree to prepare a proposed decision to the Hearing Official, each party shall submit same to the Hearing Official for his/her consideration.
- c. The Hearing Official shall prepare his/her written decision, including a statement of findings and conclusions; as well as the reasons or basis therefore, upon all material issues raised by the parties. This shall be done within a reasonable time after the date of the hearing. Copies thereof shall be mailed or delivered to the parties and/or their representatives.
- d. The written decision of the Hearing Official, with all names and identifying

references deleted, shall be maintained on file by the LHA and made available for inspection by a prospective complainant or his/her representative.

- e. Any judicial decision or related settlement pertaining to the decision of the Hearing Official shall also be maintained on file by the LHA and made available for inspection.
- f. If the decision is in favor of the complainant, the LHA shall promptly take all actions necessary to carry out such decision or refrain from any action prohibited by such decision unless the Board of Commissioners of the LHA determines and notifies the complainant in writing within 30 days that the Hearing Official has acted arbitrarily or exceeded his/her authority. In such event the Hearing Official's decision may be judicially reviewed.

7. **APPEALS FROM THE HEARING OFFICIAL DECISION**

A decision by the Hearing Official, which is in favor of the LHA and/or denies the complainant his/her requested relief in whole or in part, shall not constitute a waiver of, nor effect in any manner, whatever rights the complainant may have to a trial de novo in judicial proceedings which may thereafter be brought in the matter. In such judicial proceedings, the LHA shall, by stipulation or other appropriate means, be limited to invoking against the complainant the grounds originally relied on by the LHA in its proposed disposition of the complaint or grievance.

8. **NOTICE TO VACATE PREMISES**

- a. At the time of the private conference required by Low-Rent Housing Handbook RHM 7454.1, the Resident must be informed in writing of:
 - 1. The specific reasons for the proposed eviction; and
 - 2. His/her right to request a hearing upon the proposed eviction within five working days from the date of the conference.
- b. If the Resident has requested a hearing on the proposed eviction and the Hearing Official by his/her decision upholds the LHA's proposal to evict, an action to regain possession may not be commenced until after the Resident's right to use and/or occupy the premises has been terminated by lawful notice. Such notice to vacate may not be given prior to the date on which the Hearing Official's decision upholding the proposed eviction is delivered or mailed to the Resident.
- c. When such notice to vacate is given to the Resident, he/she must be informed in writing that:

1. If he/she fails to quit the premises within three days, appropriate legal action (dependent on state law) will be brought against him;
 2. If suit is brought against him/her, he/she may be required to pay court costs and attorney fees incurred;
 3. If he/she chooses to contest the legal action, the LHA must prove that the reasons upon which it originally relied constituted good cause for eviction under the applicable law, rules and regulations.
9. **EVICTIONS** that are a result of criminal activity (i.e. drug related criminal activities) cannot be grieved.

For purposes of the paragraph above, the term "drug related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use of a controlled substance, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).