

G R I E V A N C E P R O C E D U R E

PURPOSE

This grievance procedure has been adopted to provide the standards and procedures to assure residents the opportunity for a hearing within a reasonable time if the resident disputes, within a reasonable time, the action or failure to act involving the resident lease with the Public Housing Authority (PHA) or HUD regulations which adversely affect the individual resident's rights, duties, welfare or status.

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

- A. CFR: The code of Federal Regulations, which contains the federal regulation governing this grievance procedure.
- B. Grievance: Any dispute a Resident may have with respect to PHA action or failure to act in accordance with the individual Resident's lease or PHA regulations that adversely affects the individual Resident's rights, duties, welfare or status.
- C. Complainant: Any Resident (as defined below) whose grievance is presented to the PHA in accordance with the requirements presented in this procedure.
- D. 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 Resident of the grounds for terminating the tenancy and for eviction;
 - (2) Right of the Resident to be represented by counsel;
 - (3) Opportunity for the Resident 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 Resident may have;
 - (4) A decision on the merits of the case.
- E. Hearing Officer: An impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

- F. HUD: The United States Department of Housing and Urban Development.
- G. Resident: 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 Resident family residing in the dwelling unit.
- H. Resident Organization: An organization of residents, which also may include a resident management corporation.

II. Applicability of this grievance procedure (966.50)

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 Resident and the PHA with the following ~~three~~ **two** exceptions:

- A. Because HUD has issued a due process determination that the law of the State that requires that a Resident 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. **[966.53 (d)(1)(2)]**
- B. The PHA grievance procedure shall not be applicable to disputes between Residents 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 Residents and the PHA's Board of Commissioners. **[966.51 (b)]**

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

Any changes proposed in this grievance procedure must provide for at least 30 days' notice to Residents 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 office **within five days after the grievable event so that the grievance may be discussed informally and settled without a hearing.**

Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Executive Director, or designee.

As soon as the grievance is received, it will be reviewed by the project manager of the development 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 therefor.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time **within five 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 project manager will attempt to settle the grievance to the satisfaction of both parties.

Following the informal discussion, the PHA shall prepare and either hand deliver or mail to Resident a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, 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 Resident's file.

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 PHA's main office **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 **within the following five 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, **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 as a result of the 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. **[966.56 (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.

V. Selecting the Hearing Officer [966.53 (e)]

The policy for selection of a Hearing Officer is outlined in the PHAs Lease (966.4).

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 or 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.

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 Resident's welfare benefits have been reduced for welfare fraud or failure to comply with economic self-sufficiency requirements. **In these cases only**, rent need not be escrowed.

VII. Failure to appear at the hearing

If the complainant or the PHA fails to appear at the scheduled hearing, the 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)]**

VIII. Scheduling hearings [966.56]

Upon complainant's compliance with sections IV and VI of this document, a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place

and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

IX. Procedures governing the hearing [966.56]

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

- A. The opportunity to examine before the hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. The Resident shall be allowed to copy any such document at the Resident's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.
- B. The right to be represented by counsel or other person chosen as the Resident's representative and to have such person make statements on the Resident's behalf.
- C. The right to a private hearing unless the complainant requests a public hearing.
- D. The right to present evidence and arguments in support of the Resident'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
- E. A decision based solely and exclusively upon the fact presented at the hearing. **[966-56 (b) (5)]**
- F. The hearing 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)]**
- G. 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 (d)]**
- H. The hearing shall be conducted informally by the hearing 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)]**

- I. The hearing 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 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)]**
- J. The complainant or 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 (e)]**
- K. 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 Resident is visually impaired, any notice to the Resident which is required under this procedure must be in an accessible format. **[966.56 (f)]**
- L. If a hearing officer fails to disqualify himself/herself as required in Section V.A., the PHA will remove the officer from the hearing committee, invalidate the results of the hearing and schedule a new hearing with a new hearing officer.

Both the complainant and the PHA shall be notified of the determination by the hearing 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 officer [966.57]

The hearing 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 Resident'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. The decision of the hearing 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 determines 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 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 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]**

XI. Notices

All notices under this grievance procedure shall be deemed delivered: (1) upon personal service thereof upon the complainant or an adult member of the complainant's household, (2) upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail, or (3) on the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail.

Concurrent Notice: If a resident has filed a request for grievance hearing hereunder in a case involving the PHA's notice of tenancy, the complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law run concurrently. Therefore, if the hearing officer upholds the PHA's action to terminate the tenancy, the PHA may commence an eviction action in court upon the sooner of, the expiration of the date for termination of tenancy and vacation of premises stated in the notice of termination delivered to complainant, or the delivery of the report of decision of the hearing officer to complainant.

XII. Modification

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the PHA present at a regular meeting or a special meeting called for such purposes. Further, in addition to the foregoing, any changes proposed to be made to this grievance procedure must provide for at least thirty (30) days advance notice to residents and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the PHA before final adoption of any amendments hereto.