



## GRIEVANCE PROCEDURE

### I. PURPOSE AND SCOPE

The Housing Authority of the City of York Grievance Procedure is established to assure that a Housing Authority tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any Housing Authority action, or failure to act, involving the tenant's lease with the Housing Authority or Housing Authority regulations which adversely affect the individual tenant's rights, duties, welfare or status.

### II. APPLICABILITY

- A. The Grievance Procedure shall be applicable to all individual grievances as defined in subsection III A below which are between the Housing Authority of the City of York and a tenant.
- B. These grievance procedures are not applicable to disputes between Tenants not involving the Authority nor to class grievances. These grievance procedures are not intended to be used as a forum for initiating or negotiating policy changes between a group or groups of Tenants and the Authority's Board of Commissioners.
- C. The term due process determination means a determination by HUD that law of the jurisdiction requires that the Tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in 966.53(c) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:
  - (A) 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
  - (B) Any drug-related criminal activity on or near such premises. If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

### III. DEFINITIONS

For the purpose of these grievance procedures the following definitions are applicable:

- A. Grievance - "Grievance" shall mean any dispute which a Tenant may have with respect to the Authority's action or failure to act in accordance with the individual Tenant's lease or the Authority's regulations which adversely affect the individual Tenant's rights, duties, welfare or status.
- B. Complainant - "Complainant" shall mean any Tenant whose grievance is presented to the Authority in accordance with Section IV and V below.

- C. Elements of Due Process - "Elements of Due Process" shall mean, in an eviction action or a termination of tenancy in a State or local court the following required procedural safeguards:
1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
  2. Opportunity for the Tenant to examine all relevant documents, records and regulations of the Authority 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 Authority including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  5. A decision on the merits.
- D. Tenant shall mean 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 household of the tenant family residing in the dwelling unit.
- E. Resident organization includes a resident management corporation.
- F. Hearing Officer - "Hearing Officer" shall mean a person selected in accordance with Section V of these procedures to hear grievances and render a decision with respect thereto.

#### IV. INFORMAL SETTLEMENT OF GRIEVANCE

Any grievance shall be personally presented, either orally or in writing, to the Authority's central management office or to the management office of the housing project in which the Complainant resides, within 10 calendar days after the occurrence giving rise to the grievance, so that the grievance may be discussed informally and an attempt made to settle it without a hearing. The Authority, at the time of presentation or within 10 business days after such presentation, shall informally discuss the grievance with the Complainant or his representative. Within a reasonable time, not in excess of 15 working days after presentation of the grievance, a summary of the informal discussion shall be prepared by the Authority, and a copy thereof shall be provided to the Complainant and a copy retained in the Authority's tenant file. The summary shall be in writing and shall specify the names of the participants in the discussion, the date of the discussion, the nature of the proposed disposition of the grievance and the specific reasons therefore, and shall specify the procedures by which the Complainant may obtain a formal hearing if he/she is not satisfied by the proposed disposition of the grievance.

#### V. PROCEDURE TO OBTAIN A FORMAL HEARING

- A. Request for Hearing - If the Complainant is not satisfied with the results of the informal conference, the Complainant may submit a written request for a formal hearing to the project office not later than 10 calendar days after receipt of the summary of discussion provided for in Section IV above. The written request shall specify the reasons for grievance, and the action or relief sought. For a grievance under the expedited grievance procedure (when Section IV is inapplicable) the Complainant shall submit such request within 10 calendar days for a grievance under the expedited grievance procedure.

- B. Selection of Hearing Officer - (1) A grievance hearing shall be conducted by an impartial person appointed by the Housing Authority, other than a person who made or approved the action under review or a subordinate of such person. (2) The method of selection will consist of appointment of the Hearing Officer(s) by the Board of Commissioners (by resolution of an impartial individual(s) willing to serve). Residents will be contacted for comment and recommendations regarding appointments and these will be considered by the Housing Authority.
- C. Failure to Request a Hearing - If the Complainant does not request a hearing in accordance with subsection V-1, the Authority disposition of the grievance under Section IV shall become final: provided, that failure to request a hearing shall not constitute a waiver by the Complainant of his right thereafter to contest the Authority's action in disposing of the complaint in appropriate judicial proceeding.
- D. Hearing Prerequisite - All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Section IV as a condition precedent to a hearing under this section; provided, that if the Complainant shall show good cause why he failed to proceed in accordance with Section IV to the Hearing Officer the provisions of this subsection may be waived by the Hearing Officer.
- E. Escrow Deposit - Before a hearing is scheduled in any grievance involving the amount of rent as defined in the Dwelling Lease Agreement which the Authority claims is due, the Complainant shall pay to the Authority an amount equal to the amount of 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. These requirements may be waived by the Authority in extenuating circumstances, except where the payment history of the Tenant shows substantial and repeated delinquencies. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure; provided, that failure to make payment shall not constitute a waiver of any right the Complainant may have to contest the Authority's disposition of his grievance in any appropriate judicial proceeding.
- F. Scheduling of Hearings - Upon Complainant's compliance with paragraphs A, D and E of this section, a hearing shall be scheduled by the Hearing Officer promptly for a time and place reasonably convenient to both the Complainant and the Authority. A written notification, specifying the time, place and the procedures governing the hearing shall be delivered to the Complainant and the appropriate Authority official.
- G. Exclusions from Grievance Procedure:
1. The grievance procedure shall not be applicable to the following circumstances and, therefore, no informal or formal grievance shall be held before evicting a public housing tenant for:
    - a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Housing Authority's public housing premises of other residents or employees of the Housing Authority, or
    - b) Any drug-related criminal activity on, or near, such premises.
  2. The tenant shall be afforded a hearing before the appropriate District Magistrate, or before the Court of Common Pleas of York County.

## VI. PROCEDURES GOVERNING THE HEARING

- A. The hearing shall be held before a Hearing Officer.
- B. The Complainant shall be afforded a fair hearing, which shall include:
  - (1) The opportunity to examine before the grievance hearing any Housing Authority documents 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 Housing Authority does not make the document available for examination upon request by the Complainant, the Housing Authority may not rely on such document at the grievance hearing.
  - (2) 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;
  - (3) The right to a private hearing unless the Complainant requests a public hearing;
  - (4) 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
  - (5) A decision based solely and exclusively upon the facts presented at the hearing.
- C. The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding.
- D. If the Complainant or the Authority fails to appear at a scheduled hearing, the Hearing Officer may make a determination to postpone the hearing for a period not to exceed 5 business days, or may make a determination that the Complainant has waived his right to the hearing. Complainant and the Authority 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 Authority's disposition of the grievance in an appropriate judicial proceeding.
- E. At the hearing, the Complainant must first make a showing or an entitlement to the relief sought and thereafter the Authority must sustain the burden of justifying the Authority action or failure to act against which the complaint is directed.
- F. The hearing shall be conducted informally by the Hearing Officer and 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. The Hearing Officer shall require the Authority, 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, appropriate.
- G. The Complainant or the Authority 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.
- H. Accommodations of persons with disabilities. (1) The Housing Authority 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. (2) If the tenant is visually impaired, any notice to the tenant which is required must be in accessible form.

## VII. DECISION OF THE HEARING OFFICER

- A. The Hearing Officer shall prepare a written decision, together with the reasons therefore, within a reasonable time not to exceed 7 working days after the hearing. A copy of the decision shall be sent to the Complainant and the Authority. The Authority shall retain a copy of the decision in the Tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and made available for inspection by a prospective Complainant, his representative, or the Hearing Officer.
- B. The decision of the Hearing Officer shall be binding on the Authority which shall take all action, or refrain from any actions, necessary to carry out the decision unless the Authority's Board of Commissioners determines within 30 working days and promptly notifies the Complainant of its determination that:
  - 1. The grievance does not concern Authority action or failure to act in accordance with or involving the Complaint's lease or Authority regulations, which adversely affect the Complainant's rights, duties, welfare or status;
  - 2. 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 Authority.
- C. A decision by the Hearing Officer, or Board of Commissioners in favor of the Authority or which denies the relief requested by the Complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

## GRIEVANCE PROCEDURE AMENDMENT

On the 26th day of January 1993, the Housing Authority hereby amends its grievance procedure as follows:

1. Paragraph V. (G) titled Expedited Grievance Procedure shall be completely eliminated including all sub-paragraphs.
2. The following paragraph (G) shall be substituted for the previously eliminated paragraph (G):
  - G. Exclusions from Grievance Procedure:
    1. The grievance procedure shall not be applicable to the following circumstances and, therefore, no informal or formal grievance shall be held before evicting a public housing tenant for:
      - a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Housing Authority's public housing premises by other residents or employees of the Housing Authority, or
      - b) Any drug-related criminal activity on or near such premises.
    2. The tenant shall be afforded a hearing before the appropriate District Magistrate or before the Court of Common Pleas of York County.