

HOUSING AUTHORITY AND URBAN RENEWAL AGENCY OF POLK COUNTY
Db a West Valley Housing Authority

PUBLIC HOUSING
GRIEVANCE PROCEDURE

[Title 24 Code of Federal Regulations (CFR) 966 Subpart B]

I. Definitions applicable to the grievance procedure: [§966.53]

- A. Grievance: Any dispute which a Resident may have with respect to a Public Housing Authority's action or failure to act in accordance with the individual's Resident's rights, duties, welfare or status.
- B. Complainant: Any Resident (as defined below) whose grievance is presented to the Public Housing Authority (PHA) (at the central office in Dallas or the development office where the resident lives) 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 of 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.
- D. Hearing Officer: A person selected in accordance with §966.55 and this procedure to hear grievances and render a decision with respect thereto.
- E. Hearing Panel: A three member panel selected in accordance with §966.55 and this procedure to hear grievances and render a decision with respect thereto.
- F. 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.
- G. Resident Organization: An organization of residents, which also includes a resident management corporation.

II. Applicability of this grievance procedure [§966.51]

In accordance with the applicable Federal regulations §966.51 this grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between Resident and the PHA with the following two exceptions:

- A. Because HUD has issued a due process determination that the law of several states requires that 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 [§966.51 (a) (2)(i)]:
 - (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;
 - (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.

- 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 Resident dwelling leases and will be furnished to each Resident 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 Residents and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments which will be considered before adoption of any grievance procedure changes by the PHA. [§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 in Dallas or the management office of the development in which the complainant resides within ten days after the grievable event. Grievances received by the PHA's central office in Dallas will be referred to the person responsible for the management of the development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

As soon as the grievance is received, it will be reviewed by the management office of the development to be certain that neither of the exclusions in paragraphs II.A or II.B above apply 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 ten working days to meet so the grievance may be discussed informally and settled without a hearing. At the informal settlement meeting the complainant will present the grievance, and the person

in charge of the management office 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 give 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.

If the grievance issue is related to an eviction action proposed by the development manager, the grievance can proceed to the formal grievance hearing without an informal settlement meeting with the development manager.

IV. Formal Grievance Hearing [§966.55]

If the complainant is dissatisfied with the decision arrived at in the informal settlement meeting, the complainant must submit a written request for a hearing to the management office of the development where Resident resides or to the central office in Dallas no later than five working days after the summary of the informal settlement meeting is received. [§966.55 (a)] Receipt of the summary shall be considered as four days following the date of the summary or the postmark of the envelope in which it was mailed, whichever is later.

The written grievance hearing request shall specify:

- The reasons for the grievance; and
- The action of relief sought from the PHA.

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 and no further adverse action can proceed against the resident until after the grievance hearing is held.

If the complainant fails to request a hearing within five working days after receiving the summary of the informal settlement meeting, the PHA's decision rendered at the informal settlement meeting becomes final, and the PHA is not obligated to offer the complainant a formal grievance hearing unless the complainant can show good cause why he/she failed to proceed in accordance with this procedure. [§966.55 (c)] Such failure to request a hearing shall not constitute a waiver by the complainant of his/her right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

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, other than a person who made or approved the PHA action under review or a subordinate of such person. A hearing panel is not intended to be used, unless the complainant disagrees with the use of a single person hearing officer and specifically requests a hearing panel. If a hearing panel is to be used, the panel members will be

selected and appointed in accordance with the following options.

- A. In most cases, the PHA's Asset Manager will be the Hearing Officer, unless the Asset Manager participated in the PHA's proposed action which is the issue of dispute. In those cases, the PHA's Executive Director shall be the Hearing Officer. If the Executive Director participated in the PHA's proposed action which is the issue of dispute, the hearing officer would be appointed as follows under item B.
- B. If the complainant disagrees as to the designated Hearing Officer identified in A. above, the PHA shall locate and appoint an outside party, as agreed upon by the complainant. The outside party may be a current or prior employee of a neighboring PHA, non-profit housing agency, or the local government. The person must have prior experience in operation/management of housing or in the judicial field.
- C. The PHA shall also consult with resident organizations before appointment of hearing officers as noted above. Any comments or recommendations submitted by the resident organizations shall be considered by the PHA before the appointment. In consideration that time is of the essence in appointing a hearing officer and scheduling hearings, the consultation meeting held prior to adoption of this Grievance Procedure will satisfy the consultation requirements for appointment under A above unless the resident organization submits a written disagreement prior to any future grievance hearing being scheduled.

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 or hearing panel. This requirement will be waived by the PHA only where required by §5.630 (financial hardship exemption from minimum rent requirements) or §5.615 (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

VII. Scheduling hearings [§966.55 (f)]

When a complainant submits a timely request for a grievance hearing which is not exempted under Section II above, a hearing is scheduled by the appropriate hearing officer as identified in Section V above. The hearing is scheduled promptly for a time and place reasonably convenient to both the complainant and the hearing officer. A written notification specifying the time, place and procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

VIII. Procedures governing the hearing [§966.56]

The hearing shall be held before a hearing officer as described above in Section V. 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, which would be \$.10 per page as noted in the Public Housing Admissions and Continued Occupancy Policy. 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. (For a grievance hearing concerning a termination of tenancy or eviction, if the PHA does not make the documents available for examination upon request of the resident, the PHA may not proceed with the eviction.)

- 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 facts presented at the hearing, which can include the resident's tenancy file including documents contained within. [§966.56 (b)]

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)]

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's action or failure to act against which the complaint is directed. [§966.56 (e)]

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)]

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)]

The complainant or the PHA may arrange in advance, and 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)]

IX. Accommodation of persons with disabilities [§966.56 (h)]

The PHA will 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 complainant is visually impaired, any notice to the tenant which is required by this Grievance Procedure must be in an accessible format.

X. Failure to appear at the hearing [§966.56 (d)]

If the complainant or the PHA fails to appear at the scheduled hearing, the hearing 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 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 an appropriate judicial proceeding. [§966.56 (d)]

XI. Decision of the hearing panel or 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, his representative, or any hearing officer/panel.

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.

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 *de novo* or judicial review in any court proceedings, which may thereafter be brought in the matter.
[§966.57 (c)]