

## PUBLIC HOUSING GRIEVANCE PROCEDURE

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### 1.0 PURPOSE AND SCOPE

These procedures are established and shall be implemented for the purpose of assuring that Residents are afforded an opportunity for a hearing if a Resident disputes, within a reasonable time, any Wilkes-Barre Housing Authority ("Authority") action or failure to act involving the Resident's lease or Authority regulations which adversely affect the individual Resident's rights, duties, welfare, or status. These procedures are to be incorporated in all dwelling leases to which the provisions of Title 24 of the Code of Federal Regulations apply.

### 2.0 DEFINITIONS

For the purpose of this Grievance Procedure, the following definitions are applicable:

- A. **"Grievance"** shall mean any dispute which a Resident may have with respect to the Authority's action or failure to act in accordance with the individual Resident's lease or Authority regulations which adversely affect the individual Resident's rights, duties, welfare, or status. Grievance does not include any dispute a Resident may have with the Authority concerning a termination of tenancy or eviction that involves:
1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other Residents or employees of the Authority;
  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.

These grievance procedures are not applicable to disputes between Residents not involving the Authority or to class grievances.

- B. **"Complainant"** shall mean any Resident whose grievance is presented to the Authority or at the development management office in accordance with Sections 3.0 and 4.0 of this procedure.
- C. **"Elements of Due Process"** shall mean 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 Authority including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Resident may have; and
  4. A decision on the merits.
- D. **"Hearing Officer"** means an impartial person or persons selected by the Authority, 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.
- E. **"Resident"** 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 Authority as lessee of the premises, or, if no such person now resides in the premises,
  2. Who resides in the unit and who is the remaining head of household of the Resident family residing in the unit.
- F. **"Resident Organization"** includes a Resident management corporation.
- G. **"Promptly"** (as used in Sections 3.0 and 4.0), shall mean within the time period indicated in a notice from the Authority of a proposed action which would provide the basis for a grievance if the Resident has received a notice of a proposed action from the Authority.

### 3.0 INFORMAL SETTLEMENT OF THE COMPLAINT

Any grievance shall be promptly and personally presented, either orally or in writing, to the Wilkes-Barre Housing Authority Administrative Office located at 50 Lincoln Plaza, Wilkes-Barre, PA, or to the property management office of the housing project in which the Complainant resides, so that the grievance may be discussed informally with the property manager or another designee and settled without a hearing. The request for informal settlement must be received at the Wilkes-Barre Housing Authority Administrative Office located at 50 Lincoln Plaza, Wilkes-Barre, PA, or to the property management office of the housing project in which the Complainant resides within ten (10) business days of the occurrence or non-occurrence of the event. A summary of such discussion shall be prepared within ten (10) business days. One copy shall be given to the Complainant and one retained in the Authority's Resident file. The summary shall specify the names of the participants, 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 hearing under these procedures may be obtained if the Complainant is not satisfied.

#### **4.0 PROCEDURES TO OBTAIN A HEARING**

##### **4.1 *REQUEST FOR HEARING***

The Complainant shall submit a written request for a hearing to the Wilkes-Barre Housing Authority Administrative Office located at 50 Lincoln Plaza, Wilkes-Barre, PA, or to the property management office of the housing project in which the Complainant resides within ten (10) business days from the date of the mailing of the summary of the discussion pursuant to Section 3.0. The written request shall specify:

- A. The reasons for the grievance; and
- B. The action or relief sought.

##### **4.2 *SELECTION OF A HEARING OFFICER***

A grievance hearing shall be conducted by an impartial person appointed by the Authority's Executive Director, other than a person who made or approved the action under review or a subordinate of such person.

##### **4.3 *FAILURE TO REQUEST A HEARING***

If the Complainant does not request a hearing within ten (10) business days, then the Authority's disposition of the grievance under Section 3.0 shall become final. However, failure to request a hearing does not constitute a waiver by the Complainant of the right thereafter to contest the Authority's action in disposing of the complaint in an appropriate judicial proceeding.

##### **4.4 *HEARING PREREQUISITE***

All grievances shall be promptly presented in person, either orally or in writing, pursuant to the informal procedure prescribed in Section 3.0 as a condition precedent to a hearing under this Section. However, if the Complainant can show good cause why there was a failure to proceed in accordance with Section 3.0 to the Hearing Officer, the provisions of this subsection may be waived by the Hearing Officer.

##### **4.5 *SCHEDULING OF HEARINGS***

Upon the Complainant's compliance with Sections 4.1 and 4.4, the Hearing Officer shall promptly schedule a hearing 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 agency official.

## 5.0 PROCEDURES GOVERNING THE HEARING

The Complainant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine, before the grievance hearing, any Authority documents, including records and regulations that are directly relevant to the hearing. The Complainant shall be provided a copy of any such document at the Complainant's expense. If the Authority does not make the document available for examination upon request by the Complainant, the Authority may not rely on such document at the grievance hearing.
- B. The right to be represented by counsel or other person chosen as the Complainant's representative and to have such person make statements on the Complainant'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 Complainant's complaint, to challenge evidence relied on by the Authority or development management, and to confront and cross examine all witnesses upon whose testimony or information the Authority or development management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.
- F. The Complainant or Authority can arrange in advance, at their own expense, for a transcript of the hearing. Any interested party can purchase a copy of the transcript.

The Hearing Officer may render a decision without holding a hearing if the Hearing Officer determines that the issue has been previously decided at another hearing.

If either the Complainant or Authority fails to appear at a scheduled hearing, the Hearing Officer may postpone the hearing for up to five (5) business days or determine that the missing party has waived their right to a hearing. Both the Authority and the Complainant shall be notified of the Hearing Officer's decision. This decision shall not waive a Complainant's right to contest the disposition of the grievance in an appropriate judicial proceeding.

At the hearing, the Complainant must first make a showing of an entitlement of 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.

The hearing shall be conducted informally by the Hearing Officer and oral and 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, 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.

The following accommodation will be made for persons with disabilities:

- A. The Authority shall provide reasonable accommodations for persons with disabilities to participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants.
- B. If the Complainant is visually impaired, any notice to the Complainant that is required by these procedures must be in an accessible format.

If the Complainant is a person with limited English proficiency, the Authority will comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons."

## **6.0 DECISION OF THE HEARING OFFICER**

The Hearing Officer shall prepare a written decision, together with the reasons therefore, within ten (10) business 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 Complainant's folder. The Authority must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.

The decision of the Hearing Officer shall be binding on the Authority who shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Authority's Board of Directors determines at its next meeting, and promptly notifies the complainant of its determination, that:

- A. The grievance does not concern Authority action or failure to act in accordance with or involving the Complainant's lease or Authority 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 the Authority and the U.S. Department of Housing and Urban Development.

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 whatsoever, 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.

## 7.0 AUTHORITY EVICTION ACTIONS – NOTICE TO VACATE

- A. **The Notice to Vacate.** The Notice to Vacate (also known as a Notice to Quit), required by the Pennsylvania Landlord Tenant Act to initiate an eviction action, will be combined with, and run concurrently with, the notice of lease termination issued by the Authority. The Notice to Vacate shall contain the following elements:
1. A positive demand that the Resident vacate the premises by a specific date allowed by statute.
  2. If the Resident fails to vacate the premises by the date specified, the Authority will commence an eviction action by filing a Landlord/Tenant complaint with the District Magistrate.
  3. If the District Magistrate decides in favor of the Authority, the Resident may also be required to pay court costs and any attorney's fees incurred by the Authority in order to bring such action.
- B. If a Resident who has been served with a letter notifying him/her that the Authority is terminating their lease does not request a hearing under these grievance procedures, the Authority shall not commence an eviction action under State law until the period of time to vacate has expired.
- C. If a Resident who has been served with a letter notifying him/her that the Authority is terminating their lease has requested a hearing under these grievance procedures, and the Hearing Officer has upheld the Authority's action to terminate, the Authority shall not commence an eviction action under State law until the Hearing Officer's written decision has been received by the Authority.