

COMPLAINTS, GRIEVANCES AND APPEALS PROCEDURES

INTRODUCTION

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of the PHA. This Chapter describes the policies to be used when families disagree with a PHA decision. It is the policy of the PHA to ensure that all families have the benefit of all protections due to them under the law.

Grievances shall be handled in accordance with the PHA's approved Grievance Procedures. The written grievance procedure is incorporated into this document by reference and is the guideline to be used for grievances and appeals.

A. COMPLAINTS

The PHA will respond promptly to complaints from families. Each complaint regarding physical condition of the units may be reported by phone to the **management**. Anonymous complaints are checked whenever possible. The PHA **does** require that complaints be put in writing.

Complaints from families. If a family disagrees with an action or inaction of the PHA,

Complaints from families will be referred to the Executive Director or designee.

Complaints from staff. If a staff person reports a family is violating or has violated a lease provision or is not complying with program rules:

Complaints from staff will be referred to the Executive Director or designee.

Complaints from the general public. Complaints or referrals from persons in the community in regard to the PHA or a family:

Complaints from the general public will be referred to the Executive Director or designee.

B. APPEALS BY APPLICANTS

Applicants who are determined ineligible, who do not meet the PHA's admission standards, or where the PHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination.

Ineligible applicants will be promptly provided with a letter detailing their individual status, stating the reason for their ineligibility, and offering them an opportunity for an informal hearing.

Applicants must submit their request for an informal hearing in writing to the PHA within **ten (10)** working days from the date of the notification of their ineligibility.

If the applicant requests an informal hearing, the PHA will provide an informal hearing within **ten (10)** working days of receiving the request. The PHA will notify the applicant of the place, date, and time.

Informal hearings will be conducted by an impartial hearing officer. The person who is designated as the hearing officer cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes and the evidence along with the data compiled by the PHA will be considered by the hearing officer.

The hearing officer will make a determination based upon the merits of the evidence presented by both sides. Within **ten (10)** working days of the date of the hearing, the hearing officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

The grievance procedures for Public Housing tenants do not apply to PHA determinations that affect applicants.

C. APPEALS BY TENANTS

Grievances or appeals concerning the obligations of the tenant or the PHA under the provisions of the lease shall be processed and resolved in accordance with the Grievance Procedure of the PHA, which is in effect at the time such grievance or appeal arises.

*** NOTE: Further information is provided in the PHA's Grievance Procedure.**

D. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

INS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA notifies the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in the "Grievance Procedures" section of this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members the PHA will:

- Deny the applicant family.
- Defer termination if the family is a participant and qualifies for deferral.
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Tenant Rent and Total Tenant Payment.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

E. GRIEVANCE PROCEDURES

1. Definitions

- a. Grievance. Any dispute which a tenant may have with respect to a Housing Authority action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status.
- b. Complainant. Any tenant whose grievance is presented to the PHA or at the site/management office informally or as part of the informal hearing process.
- c. Hearing Officer/Hearing Panel. A person or persons selected in accordance with this grievance procedure to hear grievances and render a decision with respect thereto.
- d. Tenant. A lessee or the remaining head of household of any tenant family residing in housing accommodations owned or leased by the PHA.
- e. 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 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 PHA 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 PHA 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 of the case.

2. Applicability

This Grievance Procedure applies to all individual grievances, except any grievance concerning a termination of tenancy or eviction that involves:

- a. Any activity, not just criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or PHA employees, or
- b. Any drug-related criminal activity *on* or *off* such premises.

3. Pre-Hearing Procedures

a. Informal Grievance Procedures

- (1) Any grievance shall be presented orally or in writing to the Kingsport Housing & Redevelopment Authority offices located at 906 E Sevier in Kingsport, Tennessee. Written grievances must be signed by the complainant. The grievance must be presented within five (5) working days of initiation of the adverse action, which is the basis for the grievance. It shall specify:
 - The particular grounds upon which it is based,
 - The action requested; and
 - The name, address, and telephone number of the complainant, and similar information about the complainant's representative, if any.
- (2) The purpose of the initial discussion is to discuss and to resolve the grievance without the necessity of a formal hearing.
- (3) Within **ten (10)** working days, a summary of this discussion will be given to the complainant by a PHA representative. One copy will be filed in the tenant's file.

(4) The summary will include: names of participants, the date of the meeting, the nature of the proposed disposition, and the specific reasons for the disposition. The summary will also specify the steps by which a formal hearing can be obtained.

b. Dissatisfaction with Informal Meeting

(1) If the complainant is dissatisfied with the proposed disposition of the grievance, s/he shall submit a written request for a hearing within **ten (10)** working days of the **date** of the summary of the informal meeting.

(2) The request for a hearing must be presented to the Complainant's housing site office or to the PHA's offices.

(3) The request for a hearing will be date-stamped.

(4) The request must specify the reason for the grievance request and the relief sought.

c. Failure to Request a Formal Hearing

If the complainant does not request a hearing within **ten (10)** working days, s/he waives his/her right to a hearing, and the PHA's proposed disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to contest the PHA's disposition in an appropriate judicial proceeding.

d. Right to a Hearing

After exhausting the informal procedures outlined above, a complainant shall be entitled to a hearing before a hearing official or panel.

4. **Selection of Hearing Officer or Panel**

All grievance hearings shall be conducted by an impartial person or persons appointed by KHRA after consultation with resident organizations, in the manner described below:

b. The permanent appointments of persons who shall serve as hearing officers and hearing panel members shall be governed by the following procedures:

(1) KHRA shall nominate a slate of persons to sit as permanent hearing officers or hearing panel members. These persons may include, but will not necessarily be limited to, members of the KHRA Board of Commissioners, KHRA staff members, residents or other responsible persons in the community. No persons shall be listed on the slate of

members unless such person has consented to serve as a hearing officer or on a hearing panel.

- (2) The slate of potential appointees shall be submitted to all KHRA resident organizations, including but not limited to KITE, Inc, for written comments. Written comments from the resident organizations shall be considered by KHRA before appointments are finally made. Objection to the appointment of a person as a hearing officer or panelist must be considered but is not dispositive as to the proposed appointment with respect to which objection is made.
- (3) On final appointment of the persons appointed the resident organizations shall be informed in writing of the appointments. A list of all qualified hearing officers and panelists will be kept at the central office of KHRA and be made available for public inspection at any time.

The persons who are presently appointed to serve as hearing panelists for grievances brought under this procedure are listed on Exhibit 1 attached hereto and hereby incorporated herein by reference. Additional appointments shall be made in the manner set forth in this section.

- b. The designation of hearing officers or panel members for particular grievance hearings shall be governed by the following provisions:
 - (1) All hearings shall be held before a single hearing officers unless the complainant (at the time of the initial request for the hearing) or KHRA requests that the grievance be heard by a hearing panel.
 - (2) Appointments to serve as a hearing officer or panelist with respect to a particular grievance shall be made by KHRA in random order, subject to availability of the hearing officer or panelist to serve in each such case. KHRA may employ any reasonable system for random order choice.
 - (3) No member of the KHRA Board of Commissioners or staff may be appointed as hearing officer or panelist in connection with the grievance contesting an action which was either made or approved by a proposed appointee, or which was made or approved by a person under whom the proposed appointee works or serves as a subordinate.
 - (4) No person shall accept an appointment, or retain an appointment, once selected as a hearing officer or hearing panelist, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers or panelists must disqualify themselves from hearing grievances that involve personal friends, relatives, persons with whom they have any business relationship or grievances in which they have some personal interest. Further, such persons are expected to disqualify themselves if the circumstances are such that a significant perception of partiality exists and is reasonable under the circumstances. If a complainant fails to object to the designation of the hearing officers or panelists on the grounds of partiality, at the commencement or before the hearing, such objection is deemed to be waived and may not thereafter be made.

In the event that a hearing officer or panel member fails to disqualify himself or herself as required in this grievance procedure, KHRA will remove the panel member or officer from the list of persons appointed for such purposes, invalidate the results of the grievance in which such person should have, but did not disqualify himself or herself and schedule a new hearing panel officer.

5. Procedures to Obtain a Hearing

a. Informal Prerequisite

- (1) All grievances must be informally presented as a prerequisite to a formal hearing.
- (2) The hearing official or panel may waive the prerequisite informal hearing if, and only if, the complainant can show good cause why s/he failed to proceed informally.

b. Escrow Deposit

- (1) Before a hearing is scheduled in any grievance involving an amount of rent the PHA claims is due, the complainant shall pay to the PHA all rent due and payable as of the month preceding the month in which the act or failure to act took place.
- (2) The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account each month until the complaint is resolved by decision of the hearing official or panel.
- (3) The PHA may waive these escrow requirements in extraordinary circumstances.
- (4) Unless so waived, failure to make the required escrow payments shall result in termination of the grievance procedure.
- (5) Failure to make such payments does not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

c. Scheduling

- (1) If the complainant complies with the procedures outlined above, a hearing shall be scheduled by the **hearing official** promptly within **ten (10)** days at a time and place reasonably convenient to the complainant and the PHA.
- (2) A written notification of the date, time, place, and procedures governing

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

6. **Hearing Procedures**

- a. The hearing shall be held before a hearing officer.
- b. The complainant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

- (1) The opportunity to examine and to copy before the hearing, **at the expense of the complainant**, all documents, records and regulations of the PHA that are relevant to the hearing. Any document not so made available after request by the complainant may not be relied upon by the PHA at the hearing.

The PHA shall also have the opportunity to examine and to copy **at the expense of the PHA**, all documents, records and statements that the family plans to submit during the hearing to refute the PHA's inaction or proposed action. Any documents not so made available to the PHA may not be relied upon at the hearing.

- (2) The right to a private hearing unless otherwise requested by the complainant.
 - (3) The right to be represented by counsel or other person chosen as a representative.
 - (4) The right to present evidence and arguments in support of the complaint, to controvert evidence presented by the PHA , and to confront and cross-examine all witnesses upon whose testimony or information the PHA relies; and
 - (5) The right to a decision based solely and exclusively upon the facts presented at the hearing.
- c. If the **hearing official** determines that the issue has been previously decided in another proceeding, a decision may be rendered without proceeding with the hearing.
 - d. If the complainant or PHA fail to appear at the scheduled hearing, the hearing official may make a determination to **make a determination that the party has waived his/her right to a hearing**.

Such a determination in no way waives the complainant's right to appropriate judicial proceedings in another forum.

- e. 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.
- f. The hearing shall be conducted by the **hearing official** in such a way as to be:
 - (1) Informal: 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;
 - (2) Formal: The **hearing official** shall require the PHA, complainant, counsel, and other participants and spectators to conduct themselves in an orderly manner. The failure to comply with the directions of the hearing official/panel to maintain order will result in the exclusion from the proceedings, or a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.
- g. Transcript: The complainant or the PHA may arrange, in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may request a copy of such transcript.

7. Decisions of the Hearing Official/Panel

- a. The **hearing official** shall give the PHA and the complainant a written decision, including the reasons for the decision, within **ten (10)** days following the hearing. The PHA will place one copy in the tenant files.
- b. The decision of the **hearing official** shall be binding on the PHA which shall take all actions necessary to carry out the decision, unless the PHA Commissioners determine, within **thirty (30)** days, and so notifies the complainant that:
 - (1) The grievance does not concern the 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;
 - (2) The decision of the **hearing official** 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 official** or PHA Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or part shall not constitute a waiver of, nor affect in any manner whatever, the rights of the complainant to a trial or judicial review in any proceedings which may thereafter be brought in the matter.

8. Housing Authority Eviction Actions

- a. If a tenant has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a PHA notice of termination of tenancy, and the **hearing official** upholds the PHA action, the PHA shall not commence an eviction action until it has served a notice to vacate on the tenant.
- b. In no event shall the notice to vacate be issued prior to the decision of the **hearing official** having been mailed or delivered to the complainant.
- c. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date as stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant. The complainant may be required to pay court costs and attorney fees.