

# **GRIEVANCE PROCEDURE**

## **NEWPORT HOUSING AUTHORITY**

### **I. PURPOSE**

This grievance procedure has been adopted to provide a forum and procedure for tenants to seek the just, effective and efficient settlement of grievances against the Newport Housing Authority (NHA).

### **II. GOVERNING LAW**

The law governing the grievance procedure is Section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. Sec. 1437d (k) and subpart B of 24 CFR part 966 (24 CFR Secs. 966.50 – 966.57).

### **III. APPLICABILITY**

In accordance with applicable federal regulations, this grievance procedure shall be applicable to all individual grievances (as defined in Section IV below) between Tenant and NHA with the following two exceptions:

- A. This grievance procedure is not applicable to disputes between Tenants not involving the NHA, or to class grievances involving groups of Tenants. Also, this grievance procedure is not intended as a forum for initiating or negotiating policy changes between Tenants, or groups of Tenants, and NHA's Board of Commissioners.
- B. HUD has issued a due process determination that the law of the State of Tennessee requires that Tenant to be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in Section IV below) before eviction from a dwelling unit. Therefore, the NHA has elected to determine that this 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 tenants or employees of the NHA; or
  - 2) Any drug-related criminal activity on or near such premises.

### **IV. DEFINITIONS**

The following definitions of terms shall be applicable to this grievance procedure.

- A. *Grievance*: Any dispute which a Tenant may have with respect to any action or a failure to act by the NHA in accordance with the individual Tenant's lease or the NHA regulations, which adversely affects the individual Tenant's rights, duties, welfare or status.
- B. *CFR*: The code of federal regulations, which contains the federal regulation governing this grievance procedure.

- C. *Complainant*: Any Tenant (as defined in this section below) whose grievance is presented to the central office or the NHA in accordance with the requirements set forth in this procedure.
- D. *Drug-related criminal activity*: The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance, as defined in Sec. 102 of the Controlled Substances Act (21 U.S.C. Sec. 802) as from time to time amended.
- E. *NHA or “Authority”*: The Newport Housing Authority, a body corporate organized and existing under the laws of the State of Tennessee.
- F. *Elements of due process*: The following procedural safeguards are required to be followed in an eviction action or a termination of tenancy in a state or local court:
  - 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 NHA prior to the trial for the purpose of preparing a defense; Right of the Tenant to be represented by council;
  - 3) Opportunity for the Tenant to refute the evidence presented by the NHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  - 4) A decision on the merits.
- G. *Hearing Officer*: An impartial person selected in accordance with 24 CFR Sec. 966.55 and this grievance procedure (Section VII) to hear grievances and render decisions with respect thereto.
- H. *Hearing Panel*: A three-member panel composed of impartial persons, selected in accordance with 24 CFR Sec. 966.55 and this procedure (Section VIII) to hear grievances and render decisions with respect thereto.  
NOTE: The words “Hearing Officer” and “Hearing Panel” shall be used interchangeably.
- I. *HUD*: The United States Department of Housing and Urban Development
- J. *Notice*: As used herein, the term notice shall, unless otherwise specifically provided, mean written notice. (See Section XII)
- K. *THE “Regulations”*: The HUD regulations contained in subpart B of 24 CFR part 966.
- L. *Resident Organization*: An organization of tenants, which includes any tenant management corporation, and specifically includes the Newport Housing Authority Resident Council.
- M. *Tenant*: The adult person (or persons) other than a live-in aide:
  - 1) Who resides in the unit and who executed the lease with the NHA as lessee of the dwelling unit, or, if no such person resides in the unit,

- 2) The person who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling.

N. *Business Days*: Monday through Friday of each week, except for legal holidays recognized by the federal government.

O. *Hearing Panel Selection*: NHA and Complainant each choose one member and these two choose the 3<sup>rd</sup> member, all from the slate of potential appointees.

## **V. INCORPORATION IN LEASES**

This grievance procedure shall be incorporated by reference in all public housing dwelling leases between Tenants and the NHA, whether or not so specifically provided in such leases.

## **VI. INFORMAL SETTLEMENT OF GRIEVANCES**

- A. *Initial Presentation*: Any grievance must be personally presented, either orally or in writing, to the NHA's main office, within fourteen (14) calendar days after the date the Tenant is notified of the occurrence of an event giving rise to the grievance. Within seven (7) calendar days of receipt of the request the NHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.
- B. *Informal Settlement Conference*: If the grievance is not determined by the NHA to fall within one of the two exclusions mentioned in Section III B (1) and III B (2) above, the NHA will, within seven (7) calendar days after the initial presentation of the grievance, informally discuss the grievance with the complainant or his/her representatives in an attempt to settle the grievance without the necessity of a formal hearing. If the informal settlement conference cannot occur at the time the grievance is initially presented by the complainant, then the complainant will promptly be notified in writing of the time and place for the informal settlement conference.
- C. *Written Summary*: Within seven (7) calendar days after the informal settlement conference, a summary of the informal discussion shall be prepared by the NHA and a copy thereof shall be provided to the complainant. The summary shall be in writing and sent return receipt certified to the complainant via first class mail with and shall specify the names of the participants in the discussion, the date of the discussion, the date of the disposition, the nature of the proposed disposition of the grievance, and the specific reasons for such disposition. This written summary will also specify the procedures by which the complainant may obtain a formal hearing if not satisfied by the proposed disposition of the grievance. A copy of the written summary shall also be placed in the complainant's tenant file.

## **VII. FORMAL GRIEVANCE HEARING**

The following procedures apply to the request for a formal grievance hearing under this grievance procedure:

A. Request for hearing: If the Complainant is not satisfied with the results of the informal settlement conference, the Complainant must submit a written request for a formal hearing to the NHA's main office no later than fourteen (14) calendar days from the date of the summary of the informal discussion was sent to the Complainant as required under Section VI above.

Complainant's written request for a formal hearing must specify:

- 1) The reasons for the grievance; and
- 2) The action or relief sought by the complainant; and
- 3) If the complainant so desires, a statement setting forth the times at which the complainant will be available for a hearing during the next fourteen (14) calendar days; and
- 4) Complainant's preference, if any, concerning whether the grievance should be heard by a single hearing officer or by a hearing panel; and
- 5) If the complainant has failed to attend an informal discussion conference, a request that the hearing officer or panel waive this requirement.

B. Failure to Request Hearing: If the complainant fails to request a hearing within fourteen (14) calendar days after the date of the summary of the informal discussion was sent to the complainant, the NHA's decision rendered at the informal hearing becomes final and the NHA is not thereafter obligated to offer the complainant a formal hearing.

## **VIII. SELECTION OF HEARING OFFICER OR PANEL**

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

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

- 1) The NHA shall nominate a slate of persons to sit as hearing panel members. These persons may include, but will not be necessarily limited to, members of the NHA Board of Commissioners, NHA staff members, tenants, 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 NHA resident organizations, including but not limited to the Newport Housing Authority Resident Council, for written comments. Written comments from the residents' organizations shall be considered by the NHA 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, the persons appointed and 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 the NHA and be made available for public inspection at any time.

The persons who are presently appointed to serve as hearing panelists for grievances 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 will be held before a single hearing officer unless the complainant (at the time of the initial request for the hearing) or the NHA 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 the NHA in random order, subject to availability of the hearing officer or panelist to serve in each such case. The NHA may employ any reasonable system for random order choice.
- 3) No member of the NHA 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 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 panelists, 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 officer 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, the NHA will remove the panel member or officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such person should have, but did not, disqualify himself or herself, and schedule a new hearing with a new hearing panel or officer.

## **IX. SCHEDULING OF HEARINGS**

A. Hearing Prerequisites: A complainant does not have a right to a grievance hearing unless the complainant has satisfied the following prerequisites to such a hearing:

- 1) The complainant has requested a hearing in writing.
- 2) The complainant has completed the informal settlement conference procedure or has requested a waiver for good cause.

- 3) If the matter involves the amount of rent which the NHA claims is due under the complainant's lease, the complainant shall have paid to the NHA an amount equal to the amount due and payable as determined by the NHA as of the first of the month preceding the month in which the complained of act or failure to act took place. And, in the case of situations in which hearings are, for any reason delayed, 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 and shall notify NHA in writing of the location of said account and the account number. Unless waived by the NHA in writing, no waiver will be given by the NHA except in case of extreme and undue hardship to the complainant, determined at the sole and absolute discretion of the NHA.

B. Time, Place, Notice

- 1) Upon Complainant's compliance with the prerequisites to hearing set forth above, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the NHA, not later than seventh (7<sup>th</sup>) calendar day after Complainant has completed such compliance. (In the case of a panel, if all three appointed members of the panel are not able to agree upon a date and time convenient to all panelists, on or before that last date before the hearing permitted under this procedure they shall immediately so inform the NHA. If two panelists can agree upon a date and time, the NHA shall reappoint)
- 2) a third panelist who shall be available at the time agreed upon by the two who can agree. If none of the panelists can agree upon a time, a new panel shall be appointed.)
- 3) A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate NHA official, who, unless otherwise designated, shall be the Executive Director.

**X. PROCEDURES GOVERNING HEARING**

A. Fair Hearings

The hearings shall be held before a hearing officer or hearing panel or described above in Section VIII. The complainant shall be afforded a fair hearing, which shall include:

- 1) The opportunity to examine before the hearing any NHA documents, including records and regulations that are directly relevant to the hearing.  
The Complainant will be allowed to copy any such document at the complainant's expense. Th the NHA does not make the document available for examination upon request by the complainant, the NHA may not rely on such document at the grievance hearing.
- 2) The right to be represented by counsel or other person chosen as the complainant's representative, at complainant's expense, and to have such person make statements on the complainant's behalf.
- 3) The right to a private hearing unless the complainant requests a public hearing. The right to present evidence and arguments in support of the complainant's complaint, to controvert

evidence relied on by the NHA and to confront and cross examine all witnesses upon whose testimony or information the NHA or its management relies; and

- 4) A decision solely and exclusively upon the facts presented at the hearing.

**B. Prior Decision in Same Matter**

The hearing panel or officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding.

**C. Failure to Appear**

If the complainant or the NHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for a period not to exceed seven (7) calendar days or may make a determination that the party failing to attend has waived the right to a hearing. In such event, the hearing officer or hearing panel shall notify the complainant and the NHA of the determination.

The failure to attend a grievance hearing shall not constitute a waiver of any right for which the complainant may have to contest the NHA's disposition of the grievance in an appropriate judicial proceeding.

**D. Required Showing of Entitlement to Relief**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the NHA must sustain the burden of justifying NHA's action or failure to act against which the complaint is directed by a preponderance of the evidence.

**E. Informality of Hearing**

The hearing shall be conducted informally by the hearing officer or hearing panel, 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 proceeding.

**F. Orderly Conduct Required**

The hearing officer or hearing panel shall require the NHA, 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 or hearing panel 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.

**G. Transcript of Hearing**

The complainant is entitled to have the hearing recorded by audiotape at his/her expense. However, the PHA will not provide a transcript of an audio taped informal hearing.

## H. Accommodations to Handicapped Persons

The NHA must provide reasonable accommodations for persons with disabilities to participate in grievance hearings. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendant.

## XI. DECISION OF THE HEARING OFFICER OR HEARING PANEL

At or subsequent to the completion of the grievance hearing, the hearing officer or panel shall make a determination as to the merits of the grievance and the following provisions shall govern:

### A. Written Decision

The hearing panel or officer shall prepare a written decision, together with the reasons for the decision within seven (7) calendar days after the completion of the hearing.

- 1) A copy of the decision shall be sent certified via first class mail with return receipt request to the complainant and the NHA. The NHA shall retain a copy of the decision in the complainant's tenant folder.
- 2) A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the NHA and made available for inspection by any prospective complainant, his representative, or the hearing panel or hearing officer.

### B. Binding Effect

The written decision of the hearing officer or hearing panel shall be binding upon the NHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision. When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated below, it will present the matter to the NHA's Board of Commissioners within the next scheduled board meeting of the date of the hearing officer's decision. The Board has until the next scheduled board meeting to consider the decision. If the Board decides to reverse the hearing officer's decision it must notify the complainant within 7 calendar days of this decision. This notice will be sent certified via first class mail with return receipt request.

- 1) The grievance does not concern the NHA action or failure to act in accordance or involving the complainant's lease, or NHA's regulations, which adversely affect the Complainant's rights, duties, welfare or status, or
- 2) The decision of the hearing officer or hearing panel is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the NHA.

### C. Continuing Right of Complainant to Judicial Proceedings

A decision by the hearing panel or officer or Board of Commissioners in favor of the NHA 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 judicial proceedings, which may thereafter be brought in the matter.

## **XII. 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 received 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.

If a Tenant is visually impaired, any notice hereunder delivered to such Tenant shall be in an accessible format.

## **XIII. MODIFICATION**

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

## **XIV. MISCELLANEOUS**

- A. **Captions:** Captions or paragraph headings set forth in the grievance procedure are for the convenience of reference only and shall not be construed or interpreted to affect the substance of the paragraphs or sections so captioned.
- B. **Concurrent Notice:** If a Tenant has filed a request for grievance hearing hereunder in a case involving the NHA's notice of termination 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 or hearing panel upholds the NHA's action to terminate the tenancy, the NHA 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 or panel to complainant.

C. In a drug-related criminal activity or criminal activity on or near NHA's public housing premises that threatens the health, safety or right peaceful enjoyment of the NHA's public housing premises by other Tenants or NHA employees the following procedures will be followed by the NHA in connection with grievances brought by complainants:

When the NHA is not required to afford the Complainant the opportunity for hearing under the grievance procedure and the NHA has decided to exclude such grievance from the grievance procedure, the notice of lease termination shall state the following:

- 1) Notice of lease terminations for violations of drug-related criminal activity or criminal activity on or near NHA's public housing premises that threatens the health, safety or right peaceful enjoyment of the NHA's public housing premises by other Tenants or NHA employees shall state that the tenant is not entitled to a grievance hearing due to violations of Section 5101 of the Anti-Drug Abuse Act of 1988 or other criminal activities defined in the Grievance Procedure and the eviction will be pursued through the local court.
- 2) That HUD had determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic element of due process as defined in HUD regulations.
- 3) Judicial eviction procedures will be in the Sessions Court of Cocke County, Tennessee.