

# Community Development Authority

## GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

### REQUIREMENTS [24 CFR 966.52]

The CDA grievance procedure will be incorporated by reference in the tenant lease.

Residents and resident organizations will have 30 calendar days from the date they are notified by the CDA of any proposed changes in the CDA grievance procedure, to submit written comments to the CDA.

### DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing authority (PHA) grievance procedures, which take on specific meanings different from their common usage:

- **Grievance** – any dispute which a tenant may have with respect to PHA 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
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office
- **Due Process Determination** – 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 before eviction from the dwelling unit
- **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:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - 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
  - A decision on the merits
- **Hearing Officer** – an impartial person selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - 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,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

## **APPLICABILITY [24 CFR 966.51]**

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

The CDA is located in a due process state. Therefore, the CDA will exclude from its grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

## **INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

The CDA will accept requests for an informal settlement of a grievance either orally or in writing, to the CDA office, by the close of the business day, no later than 10 business days from the date of the grievable event.

Grievances related to complaints about operational matters that the CDA's Central Office receives will be referred to the property manager responsible for management of the development in which the tenant resides. The CDA will refer grievances involving complaints related to discrimination, harassment, or disability rights to the CDA Housing Operations Director (or his/her designee).

Upon receiving a timely request for an informal settlement of a grievance, the CDA will schedule and hold the meeting, by the close of the business day, no later than 10 business days from the date on which the tenant requested an informal settlement.

The informal settlement may be conducted remotely as required by the CDA, or may be permitted to be conducted remotely upon request of the tenant.

If a tenant fails to attend the scheduled informal settlement meeting, the CDA will reschedule the meeting only if the tenant provides written proof of a verifiable medical emergency

The CDA will prepare a summary of the informal settlement; one copy will be given to the tenant and one copy will be retained in the CDA's tenant file.

## **PROCEDURES TO OBTAIN A HEARING**

### **Requests for Hearing and Failure to Request**

The tenant must submit a written request for a grievance hearing to the CDA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the tenant does not request a hearing, the CDA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the tenant of the right to contest the CDA's action in disposing of the complaint in an appropriate judicial proceeding.

### **Scheduling of Hearings [24 CFR 966.55(f)]**

Upon receiving a timely request for a grievance hearing, The CDA will schedule and send written notice of the hearing to the tenant.

The CDA will schedule and hold the grievance hearing, by the close of the business day, no later than 10 business days from the date of the tenant's request for a grievance hearing.

If the grievance hearing will be conducted remotely, the CDA will inform the tenant in the notice of hearing of the following items:

- The processes involved in a remote grievance hearing;
- That the CDA will provide technical assistance prior to and during the grievance hearing if needed. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform; and
- That if the tenant or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote grievance hearing, the tenant may inform the CDA and the CDA will allow the tenant to participate in an in-person grievance hearing, as it deems reasonable and appropriate given the totality of circumstances.

If the tenant fails to attend the grievance hearing, the CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.

### **SELECTION OF HEARING OFFICER [24 CFR 966.55(b)]**

CDA grievance hearings shall be conducted by a single, CDA appointed hearing officer who is neither the person who made or approved the decision nor a subordinate of that person.

If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The CDA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

The CDA will appoint hearing officers who are persons with experience in conflict resolution, property management, administrative hearings, and/or knowledgeable about the Public Housing program.

The method of designating staff and appointing hearing officers will be presented to the CDA's Resident Advisory Board.

### **REMOTE HEARINGS**

The CDA will conduct remote hearings in accordance with due process requirements and in compliance with HUD regulations.

The CDA has the sole discretion to require or permit hearings to be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the CDA will conduct a hearing remotely upon the tenant's request as a reasonable accommodation for a person with a disability, if a tenant does not have childcare or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The CDA will consider other reasonable requests for a remote hearing on a case-by-case basis.

## **Discovery of Documents Before the Remote Hearing**

If the hearing will be conducted remotely, the CDA will compile a hearing packet, consisting of all documents the CDA intends to produce at the hearing. The CDA will mail copies of the hearing packet to the hearing officer at least three (3) days before the scheduled remote hearing. The original hearing packet will be in the possession of the CDA representative and retained by the CDA.

If the hearing is to be conducted remotely, the CDA will require the tenant to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail or via email. If the CDA Site Office is open to the public, documents may be provided in person to the Site Office. The CDA will scan and email copies of these documents to the hearing officer and the CDA representative the same day they are received.

Documents will be shared electronically whenever possible.

The rights of the tenant and the tenant's representatives to review CDA documents directly relevant to the hearing prior to the hearing are outlined below in "**PROCEDURES GOVERNING THE HEARING.**"

## **Conducting Hearings Remotely**

In conducting any hearing remotely, the CDA shall ensure due process. The CDA will conduct remote hearings via telephone conferencing call-in or via a video conferencing platform when available. If the hearing will be conducted via a video conferencing platform, the CDA will ensure that all tenants, tenant's representatives, advocates, witnesses, CDA representatives, and the hearing officer can adequately access the platform (i.e., hear, be heard, see, and be seen) by providing technical assistance to that extent, if needed, before the hearing. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform.

If any tenant, tenant representative, advocate, witness, CDA representative, or the hearing officer is unable to effectively utilize the videoconferencing platform, the hearing will be conducted by telephone conferencing call-in. Witnesses may testify by telephone call-in.

Whether the CDA is to conduct the hearing via videoconferencing or telephone call-in, the CDA will provide all parties login information and/or telephone call-in information before the hearing.

## **PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70. The family must request discovery of CDA documents no later than 12:00 p.m. on the business day prior to the hearing.
- 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. Hearings may be attended by the following applicable persons:
  - A CDA representative(s) and any witnesses for the CDA
  - The tenant and any witnesses for the tenant
  - The tenant's counsel or other representative
- The right to a private hearing unless the complainant requests a public hearing.

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

**Decision without Hearing [24 CFR 966.56(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.

**Failure to Appear [24 CFR 966.56(d)]**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the CDA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.

**General Procedures [24 CFR 966.56(e), (f), and (g)]**

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the CDA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence based not on a witness’ personal knowledge. Specifically, it is a statement, other than one made by a witness testifying at a hearing, that is offered to prove the truth of the matter asserted. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If the CDA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine CDA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the CDA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

If the complainant would like the CDA to record the proceedings by audiotape, the request must be made to the CDA by 12:00 p.m. on the business day prior to the hearing.

The CDA will consider an audio tape recording of the proceedings as a transcript.

### **Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

The PHA 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. If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

### **Limited English Proficiency (24 CFR 966.56(g))**

The PHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

### **DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the CDA's decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with CDA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusive and it is not argument. The hearing officer will evaluate the facts to determine if they support the CDA's conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and CDA policies. If the grounds for termination are not specified in the regulations or in compliance with CDA policies, then the decision of the CDA will be overturned.

The hearing officer will issue a written decision to the family and the CDA no later than, by the close of the business day, 10 business days after the date of the hearing. The report will contain the following information:

#### **Hearing information:**

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer
- Name of the CDA representative(s)
- Name of family representative (if any)
- Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the CDA's decision.

**Order:** The hearing report will include a statement of whether the CDA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the CDA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the CDA to restore the family's status.

### **Procedures for Further Hearing**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the CDA will take effect and another hearing will not be granted.

### **Final Decision [24 CFR 966.57(b)]**

The CDA Board of Commissioners designates the CDA Executive Director to countermand the decision of a hearing officer when the CDA considers the decision of the hearing officer to be invalid due to the reasons stated above.