



## Residential Lease Attachment 9

# GRIEVANCE PROCEDURE POLICY

### I. **Purpose** (24 CFR §966.50)

Public Housing applicants and tenants, who dispute any Housing Authority of the City of Cumberland, hereafter referred to as HACC, action or failure to act in accordance with the individual tenant's lease or HAAC regulations, which adversely affect the individual tenant's rights, duties, welfare or status have the right to an administrative review by filing a grievance. The purpose of this policy is to set forth the requirements, standards and criteria of a Grievance Procedure which is provided to assure a tenant of the Housing Authority of the City of Cumberland, hereafter HACC, is afforded an opportunity for a review and/or hearing.

### II. **Applicability of this Grievance Procedure** (24 CFR §966.51)

The HACC Grievance Procedure shall be applicable (except as provided in the following paragraph) to all individual grievances as defined in the definitions section of this policy between the tenant and the HACC.

The term due process determination means a determination by HUD that law of the State requires that a 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. If HUD has issued a due process determination, the HACC may exclude from the Grievance Procedure any grievance concerning a termination of tenancy or eviction. HACC excludes the following four criminal behaviors from the review process:

- A. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or HACC employees;
- B. Any violent criminal activity committed on or off such premises;
- C. Any drug-related criminal activity committed on or off such premises; or
- D. Any criminal activity that resulted in felony conviction of a household member which occurred on or off public housing premises.

HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination.

If HUD has issued a due process determination, the HACC may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, HACC is not required to provide the opportunity for a hearing under the HACC's Grievance Procedure

The HACC Grievance Procedure shall not be applicable to disputes between Tenants not involving the HACC 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 HACC's Board of Commissioners.

### **III. Requirements** (24 CFR §966.52)

The HACC Grievance Procedure shall be included in, or incorporated by reference in all Tenant dwelling leases.

The HACC shall provide at least 30 days notice to Tenants and Resident Organizations, setting forth the proposed changes in the HACC Grievance Procedure, and providing an opportunity to present written comments. Comments submitted shall be considered by the HACC before adoption of any Grievance Procedure changes by the HACC.

The HACC shall furnish a copy of the Grievance Procedure to each tenant and resident organizations.

### **III. Definitions Applicable to the Grievance Procedure:** (24 CFR §966.53)

- A. Grievance shall mean any dispute which a Tenant may have with respect to a HACC action or failure to act in accordance with the individual Tenant's lease or HACC regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. Complainant shall mean any Tenant whose grievance is presented to the HACC at the project management office.
- 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 Tenant of the grounds for terminating the tenancy and for eviction;
  - 2. Right of the Tenant to be represented by counsel;
  - 3. Opportunity for the Tenant to refute the evidence presented by the HACC, 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.
- D. Expedited grievance means a procedure established by the HACC for any grievance 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 Housing Authority premises of other residents or employees of the HACC; or
  - 2. Any drug-related or violent criminal activity on or off such premises.
- E. Hearing Officer means an impartial person or persons selected by the HACC, 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. The selection of a hearing officer is described in the residential lease.
- F. Tenant 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 Housing Authority of the City of Cumberland 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 Tenant family residing in the dwelling unit.

- G. Resident Organization: An organization of residents, which also may include a resident management corporation.
- H. Tenant Representative shall mean a family member, attorney, friend, Advocate, case worker or other person whom the tenant acknowledges is representing them. The representative can speak on the tenant's behalf but not testify. The representative can also pose questions, make objections, and make arguments.

### III. Informal Settlement of a Grievance (24 CFR §966.54)

Any grievance shall be personally presented, either orally or in writing, to the HACC's central office or the management office of the development in which the complainant resides **within ten calendar days after the grievable event** so that the grievance may be discussed informally and possibly settled without a hearing.

The complainant will be contacted to arrange a mutually convenient time to meet so the grievance may be discussed informally and an attempt is made to settle the grievance without proceeding to a hearing. Attendance at the informal settlement conference will consist of the complainant, any representative of the complainant, the employee who was responsible for issuing the grieved action and a hearing officer with no direct connection to the action taken. The complainant will present the grievance and the HACC will listen to the reasons advanced by the complainant, consider any testimony, documents, or other evidence offered by the complainant and witnesses and then attempt to settle the grievance to the satisfaction of both parties.

**Within ten calendar days** A summary of the informal settlement conference will be prepared with one copy hand delivered to the tenant or sent by mail with return receipt and one copy retained in the tenants file. The summary shall specify the names of all participants at the conference, the dates of the conference, the nature of the proposed disposition of the complaint, the specific reasons for the disposition, and shall specify the procedures for requesting a hearing if the complainant is not satisfied.

If the complainant fails to request a hearing within ten calendar days after receiving the summary of the informal settlement, the HACC's decision rendered at the informal settlement becomes final and the HACC is not obligated to offer the complainant a hearing.

### IV. Procedures Governing the Hearing (24 CFR §966.56)

- A. The complainant must submit a written request for a Grievance Hearing to the HACC's central office or the management office of the development in which the complainant resides no later than ten calendar days after the summary of the informal settlement is received. The written request shall specify:
  1. The reasons for the grievance;
  2. The action of relief sought from the HACC; and
  3. Several dates and times in the following ten working days when the complainant can attend a meeting.

The HACC shall promptly schedule a hearing on the grievance at a time and place reasonably convenient to the complainant and the HACC and held before a hearing officer. A written notification specifying the time, place and the procedures governing the hearing will be either personally delivered to the complainant and/or the tenant representative, sent by electronic mail or USPS with a return receipt requested.

- B. The complainant shall be afforded a fair hearing, which shall include:
1. The opportunity to examine before the grievance hearing any HACC documents, including records and regulations that are directly relevant to the hearing. The Tenant shall be allowed to copy any such document at the Tenant's expense. If the HACC does not make the document available for examination upon request by the complainant, the HACC may not rely on such document at the grievance hearing;
  2. 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;
  3. The right to a private hearing unless the complainant requests a public hearing;
  4. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the HACC or project management, and to confront and cross examine all witnesses upon whose testimony or information the HACC or project management relies; and
  5. A decision based solely and exclusively upon the fact presented at the hearing.
- C. If the complainant or the HACC fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days, or may make a determination that the party has waived his right to a hearing.
- Both the complainant and the HACC must be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing will not constitute a waiver of any right the complainant may have to contest the HACC's disposition of the grievance in an appropriate judicial proceeding.
- D. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and, thereafter, the HACC must sustain the burden of justifying the HACC action or failure to act against which the complaint is directed.
- E. The complainant or the HACC may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- F. The HACC will provide reasonable accommodations for persons with disabilities for mobility, visual, hearing or other impairments to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, interpreters and/or advocates, etc. If the Tenant is visually impaired, any notice to the Tenant which is required under this procedure must be in an accessible format.
- G. Limited English proficient (LEP) persons are defined as those who as a result of national origin do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. The HACC will make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the HACC's programs and activities. Language assistance may be provided to LEP persons in the manner of: Oral interpretation services; Telephone service lines interpreter; translated documents and/or Referrals to community liaisons proficient in the language of LEP persons.
- H. 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.

- I. The hearing officer shall require the HACC, 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.
- J. The order of events in the hearing is as follows:
  1. Introduction of all parties present
  2. Explanation of hearing decorum and process
  3. Confirmation that nobody has any conflicts
  4. Explanation about presentation of evidence
  5. Order of Presentation
    - a) Complainant
    - b) HACC
  6. Expected transmittal of decision after hearing

**V. Decision of the Hearing Officer (24 CFR §966.57)**

The hearing officer will prepare a written decision, including the reasons for the HACC decision within a reasonable time after the hearing. A copy of the decision will be sent to the complainant and the HACC. The HACC will retain a copy of the decision in the Tenant's folder.

HACC will 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 log will contain:

- The date of the hearing decision;
- The general reason for the grievance hearing
- Was the decision in favor of the complainant or the HACC.

The decision of the hearing officer will be binding on the HACC, unless the HACC's Board of Commissioners determines that:

- A. The grievance does not concern the HACC action or failure to act in accordance with or involving the complainant's lease or the HACC regulations, which adversely affect the complainant's rights, duties, welfare or status; or
- 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 HACC.

If either of the circumstances above applies, the Board of Commissioners can disregard the Hearing Officers decision. The Board will then notify the complainant that it does not intend to be bound by the decision. This will be the end of the administrative review process.

The HACC maintains the following considerations for disregard of the Hearing Officer decision:

- A. HACC is not required to provide an opportunity for a hearing;
- B. The decision exceeds the authority of the person conducting the hearing under HACC hearing procedures; and
- C. The decision is contrary to applicable to federal, state or local law, HUD regulations or HACC policy.

A decision by the hearing officer or Board of Commissioners in favor of the HACC or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor affect in any manner whatever, 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.

## **VI. Selecting the Hearing Officer**

The HACC will develop and maintain a list of Hearing Officers in which to select from to mediate informal discussions and to preside at requested hearings. Individuals selected as officers may include HACC senior staff members, residents, professional arbitrators, or others knowledgeable or experienced in the duties and role of a hearing officer. This list is formulated by the Chief Executive Officer and approved by the Board of Commissioners.

- A. Informal Settlements will be mediated by a Department Director or senior staff of a department other than the one associated with the grievance.
- B. Hearings will be heard by one or more Hearing Officers from the approved list.

Hearing officers will be informed that they will be expected to be capable of impartiality, disqualify themselves from hearing grievances that involve personal friends, other residents of developments in which they work or reside, or grievances in which they have some personal interest. If a hearing officer fails to disqualify himself/herself the HACC will remove the officer from the hearing, invalidate the results of the hearing and schedule a new hearing with a new hearing officer.

Approved by the Board of Commissioners on January 16, 2019 by Resolution 2019-8