



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 CHG, action or failure to act in accordance with the individual tenant's lease or CHG 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 CHG, is afforded an opportunity for a review and/or hearing. Public Housing applicants do not have the same grievance rights as tenants. For applicants' grievance procedures, please refer to the Rejected Applicant Procedures policy.

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

The CHG 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 CHG.

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 CHG may exclude from the Grievance Procedure any grievance concerning a termination of tenancy or eviction. CHG 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 CHG 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 CHG may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, CHG is not required to provide the opportunity for a hearing under the CHG's Grievance Procedure

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

III. Requirements (24 CFR §966.52)

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

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

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

The CHG shall provide a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act. The notice and self-certification form must accompany the written notification if a Notice to Vacate has been issued.

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 CHG action or failure to act in accordance with the individual Tenant's lease or CHG 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 CHG 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 CHG, 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 CHG 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 CHG; 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 CHG, 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 (including emailed requests), to the CHG's central office or the management office of the development in which the complainant resides **within ten business days after the grievable event** so that the grievance may be discussed informally and possibly settled without a grievance hearing.

The complainant will be contacted to arrange a mutually convenient time to meet and confirm such meeting in writing to the complainant. The informal settlement may be conducted remotely as required by the CHG or if made by request of the complainant. 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 CHG 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 five business 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 tenant's 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 grievance hearing if the complainant is not satisfied. If the complainant fails to appear at the Informal Settlement and does not contact CHG to reschedule within the time limits described in this policy, they will not have a right to a grievance hearing.

If the complainant fails to request a grievance hearing within ten business days after receiving the summary of the informal settlement, the CHG's decision rendered at the informal settlement becomes final and the CHG is not obligated to offer the complainant a grievance hearing. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the CHG's action in disposing of the complainant in an appropriate judicial proceeding.

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

A. The complainant must submit a written request for a Grievance Hearing to the CHG's central office or the management office of the development in which the complainant resides no later than ten business 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 CHG; and
3. Several dates and times in the following ten working days when the complainant can attend a meeting.

The CHG shall promptly schedule a hearing on the grievance at a time and place reasonably convenient to the complainant and the CHG and held before a hearing panel. The Grievance Hearing may be conducted remotely as required by the CHG or if made by request of the complainant. 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 CHG 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. Copies of the documents will be charged based on the rate on the Copy, Scan, Fax policy. There will be no charge for documents emailed by the CHG. The tenant must request discovery of the documents no later than 12:00 p.m. on the business day prior to the hearing. If the CHG does not make the document available for examination upon request by the complainant, the CHG 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 have any other person present, who has been approved by the CHG as a reasonable accommodation for a person with a disability.
5. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the CHG or project management, and to confront and cross examine all witnesses upon whose testimony or information the CHG or project management relies; and
6. A decision based solely and exclusively upon the fact presented at the hearing.

C. If the complainant or the CHG fails to appear at a scheduled hearing, the hearing officer may make a determination to reschedule the hearing. Please see the *Rescheduling of an Informal Settlement/Grievance Hearing* requirements section.

Both the complainant and the CHG 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 CHG'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 CHG must sustain the burden of justifying the CHG action or failure to act against which the complaint is directed.

E. The complainant or the CHG 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. If the complainant would like the CHG to record the proceedings by audiotape, the request must be made to the CHG by 12:00 p.m. on the

business day prior to the hearing. The CHG will consider that an audio tape recording of the proceedings is a transcript.

- F. The CHG 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 CHG will make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the CHG'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 by the hearing panel. 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. Any evidence to be considered by the hearing panel must be presented at the time of the hearing. There are four categories of evidence:
 - 1. Oral evidence: the testimony of witnesses
 - 2. Documentary evidence: a writing which is relevant to the case, for example, a letter written to CHG. Evidence includes all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.
 - 3. 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.
 - 4. Real evidence: A tangible item relating directly to the case.
- I. Hearsay Evidence is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing panel 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 panel 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.
- J. If CHG fails to comply with the discovery requirements (providing the tenant with the opportunity to examine CHG documents prior to the grievance hearing), the hearing panel will refuse to admit such evidence.
- K. Other than the failure of CHG to comply with discovery requirements, the hearing panel has the authority to overrule any objections to evidence.
- L. The hearing panel shall require the CHG, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the 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.

M. 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) CHG
6. Expected transmittal of decision after hearing

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

The hearing panel will prepare a written decision, including the reasons for the CHG decision within **5 business days** after the hearing. A copy of the decision will be sent to the complainant and the CHG. The CHG will retain a copy of the decision in the Tenant's folder. In rendering a decision, the hearing panel will consider the following matters:

Notice to the Family: The hearing panel will determine if the reasons for the CHG's decision are factually stated in the notice.

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

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

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

The written decision will contain the following information:

Hearing information included on the written decision:

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer(s)
- Name of the CHG representatives
- 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 panel will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

Findings of Fact: The hearing panel 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 show 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 panel 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 CHG's decision.

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

The hearing panel 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 panel, the action of CHG will take effect and another hearing will not be granted.

CHG will maintain a log of all hearing panel 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 CHG.

The CHG maintains the following considerations for disregard of the Hearing Officer panel:

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

A decision by the hearing officer or panel in favor of the CHG 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/ Panel

The CHG will develop and maintain a list of Hearing Officers in which to select from to mediate informal settlements and to preside at requested grievance hearings. Individuals selected as officers may include CHG 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. Grievance Hearings will be heard by one or more members of a Hearing Panel 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 CHG will remove the officer from the hearing, invalidate the results of the hearing and schedule a new hearing with a new hearing officer/panel.

IV. Rescheduling of an Informal Settlement/ Grievance Hearing

If the tenant does not appear at the scheduled time of the settlement/hearing, the hearing officer/panel will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the settlement/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 settlement/hearing in advance, the tenant must contact the CHG within 24 hours of the scheduled settlement/hearing date, excluding weekends and holidays. The hearing officer will reschedule the settlement/hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

“Good cause” is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

Tenants who fail to attend two scheduled settlements/hearings will not be given another opportunity for a settlement/hearing, and the CHG’s original decision will stand.

Approved by the Board of Commissioners on November 20, 2024 by Resolution ?