

## Chapter 14

### COMPLAINTS, GRIEVANCES AND APPEALS

[24 CFR Part 966 Subpart B]

#### **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 all complaints.**

**Complaints from families.** If a family disagrees with an action or inaction of the PHA, complaints will be referred to the **Manager**. Complaints regarding physical condition of the units may be reported by phone to the **Manager**.

**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, the complaints will be referred to the **Manager**.

**Complaints from the general public.** Complaints or referrals from persons in the community in regard to the PHA or a family will be referred to the **Manager**.

**Anonymous complaints will be checked whenever possible.**

#### **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** 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** 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** 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.

**(See the PHA's Grievance Procedure contained in this chapter.)**

### **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 tenant 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.

Terminate the participant.

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 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. RESIDENT GRIEVANCE PROCEDURE**

### **1. SCOPE**

A. This grievance procedure is applicable to all residents with dwelling leases entered into directly by the Housing Authority of the City of Omaha (OHA), with the exception of leases for Section 23 leased housing developments, Section 8 Housing Assistance Payments Program, where the owners enter into leases directly with residents.

B. By reference therein, this Grievance Procedure shall become a part of all applicable

resident leases, as designated above.

2. RIGHT TO A HEARING

Upon filing a written request as provided herein, a complainant shall be entitled to a Hearing before a Hearing Panel.

3. HEARING PREREQUISITES

A. Informal Settlement of Grievance: Any grievance shall be personally presented, either orally or in writing, to the Manager of the development in which the complainant resides, and in cases where no development office exists, to the Central Office of OHA, so that the grievance may be discussed informally and settled without a Hearing. In an appropriate case, the Manager may refer the resident to another office of OHA.

B. In all cases arising out of a Notice of Termination, the resident shall present the grievance to the Manager within one (1) working day after service of the Notice of Termination upon him/her. If a resident having a grievance arising out of a Notice of Termination has not presented such grievance within said one (1) working day after service of the Notice of Termination upon him or her, he or she shall be deemed to have waived the provisions of the grievance procedure and said Notice of Termination shall be valid and said resident shall either remedy the situation within the time specified by said Notice of Termination or quit the premises within the time set forth in said Notice. In all other cases, in the event the grievance cannot be discussed immediately when presented, an appointed date and time shall be agreed upon, not to exceed five (5) working days from the date the grievance was presented. Failure to present a grievance for informal settlement within the time mentioned in this subparagraph shall not constitute a waiver by resident of his/her right to contest any action of OHA in any appropriate judicial proceeding to which he/she may be entitled by law.

C. A summary by management of such discussions shall be prepared within one (1) working day and one copy shall be given to the resident personally or by mail and one retained in the resident's file. Summaries shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing may be obtained if the complainant is not satisfied. In cases arising out of a Notice of Termination, the summary shall also indicate whether said Notice of Termination remains in effect or is revoked. If the resident is not fluent in English, a copy of the summary shall be prepared in the resident's native language. In the event Management has decided to take any corrective action, the summary shall include the date upon which said action is expected to be taken or completed.

4. APPLICABILITY

- A. This grievance procedure shall be applicable to all individual grievances as defined in Section 5 hereof, excluding, however those matters mentioned in subparagraph B.
- B. This grievance procedure shall not be applicable to any grievance concerning an eviction or termination of residency based upon a tenant's creation or maintenance of a threat to the health or safety of other residents not involving OHA or to class grievances. Further, a grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the Board of Commissioners of OHA.

5. DEFINITIONS

For the purpose of this grievance procedure policy, the following definitions are applicable:

- a. "Grievance" shall mean any dispute a resident may have with respect to an action of OHA or its failure to act in accordance with the individual resident's lease or with OHA regulations and which adversely affect the individual resident's rights, duties, welfare or status.
- b. "Complainant" shall mean any resident whose grievance is presented to OHA in accordance with Sections 3 and 6 hereof.
- c. "Hearing Panel" shall mean the Hearing Officers selected in accordance with Section 6 hereof, specifically to hear grievances and render a decision with respect thereto.
- d. "Resident" shall mean any lessee, or remaining head of household of any resident family residing in housing accommodations covered by the lease, in accordance with Section 1 hereof.
- e. "Working days" are weekday, Monday through Friday, but excluding holidays that Management observes.

6. PROCEDURES TO HOLD A HEARING

- a. Hearing Prerequisite: All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure described in Section 3 hereof, as a condition precedent to a Hearing under this Section; provided, however, that if the complainant show good cause why he/she failed to proceed in accordance with Section 3, the provisions of this subsection may be waived by Management.
- b. Request for a Hearing: The complainant shall submit a written request for a Hearing to the development office in which the complainant resides, or the Resident

Services/Drug Education Manager at 540 South 27<sup>th</sup> Street, Omaha, NE 68105. The grievance or complaint must be signed by the complainant and filed in the office by him/her or his/her representative within three (3) working days of the receipt of the summary of discussion mentioned in Section 3 hereof. The request may be simply stated but shall specify the following:

1. The reasons for the grievance; and
2. The action or relief sought.

A copy of the complaint shall be retained by the complainant and a copy shall be filed with the Manager of the development in which the complainant resides. All complaints and/or copies must be date-stamped at time of receipt by OHA.

- c. Escrow Deposits: In the event that the grievance involves the amount of rent as defined in the lease between the resident and OHA, which OHA claims is due, the complainant, within the time period mentioned in Subparagraph 6B above, shall pay to OHA an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act on which the grievance is based, took place before a Hearing will be scheduled. The complainant shall thereafter deposit the same amount of the monthly rent in escrow with OHA monthly until the complaint is decided by the Hearing Panel, and acted upon by OHA. Acceptance of such escrow deposit by OHA shall not be deemed a waiver of any Notice of Termination. All such escrow deposits shall be made by cash or cashier's checks. These requirements may be waived by OHA in extenuating circumstances upon written request by the complainant. Unless so waived, the failure to make such payments shall result in the termination of the grievance procedure, provided that failure to make payments shall not constitute a waiver of any right the complainant may have to contest OHA's disposition of his/her grievance in any appropriate judicial proceeding.
- d. Composition and Selection of Hearing Panel: Grievances shall be presented before a Hearing Panel consisting of five (5) impartial and disinterested individuals selected by OHA as follows:
  1. Two (2) panel members shall be selected from among the officers of the various Resident Councils, provided however, no officer of the resident council for the development in which a complainant resides shall serve on any hearing panel concerning that complainant's grievance.
  2. Two (2) panel members shall be selected from the Outreach Coordinators working for OHA.
  3. One (1) panel member shall be selected from a local social service agency, such as Family Service, National Conference of Christians and Jews, Urban League, or

other similar agency.

OHA shall select and promptly notify those individuals who are to serve on a particular Hearing Panel.

- e. Schedule of Hearings: Upon complainant's compliance with Section 3 and Subparagraphs A and B, and in a non-payment of rent situation, Subparagraph C of this Section 6, a hearing shall be scheduled by the Hearing Panel within three (3) working days after the receipt of a formal request for a hearing by a complainant, as set forth in Subparagraph B hereof, and selection of the Hearing Panel as set forth in Subparagraph D hereof, which hearing shall be at a time and place reasonably convenient to both the complainant and OHA. Written notification specifying the time, place and procedures governing the Hearing shall be delivered to the complainant, the Resident Services/Drug Education Manager of OHA, and to the Manager of the development in which the resident resides, and copies of such notification shall be given to each member of the Hearing Panel.

7. FAILURE TO REQUEST A HEARING

If the complainant does not request a Hearing in accordance with Section 6 above and within the time provided herein, then OHA's disposition of the grievance under Section 3 shall become final, and any Notice of Termination that may have been served shall stand as originally issued, unless revoked by the procedures set forth in Section 3; provided, however, that failure to request a Hearing shall not constitute a waiver by the complainant of his/her right thereafter to contest OHA's action in disposing of the complaint in an appropriate judicial proceeding.

8. PROCEDURES GOVERNING THE HEARING

- a. A Hearing shall be held before the Hearing Panel as provided in Section 6 hereof.
- b. The complainant shall be afforded a fair Hearing providing the basic safeguards of due process which shall include:
  1. The opportunity to examine before the Hearing and, at the expense of the complainant, copy all documents, records and regulations of OHA that are relevant to the Hearing. Any document not made available, after written request therefore by the complainant, may not be relied upon by OHA at the Hearing;
  2. The right to be represented by counsel or other person so designated by the complainant as his/her representative;
  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 his or her complaint, to controvert evidence relied upon by OHA, and to confront and cross-examine all witnesses upon whose testimony and information OHA relies; and
  5. A decision based solely and exclusively upon the facts presented at the Hearing.
- c. The Hearing Panel may render a decision without proceeding with the Hearing if the Hearing Panel determines that the issue has been previously decided in another proceeding.
  - d. The Hearing may continue at the request of either OHA or the resident for good cause such as illness or unavoidable absence of a party or witness or by agreement between OHA and the resident. On its own motion, the Hearing Panel may continue the Hearing if either the resident or OHA fails to appear at the scheduled time for the Hearing or it may determine that the resident has waived his/her right to a Hearing or that OHA has waived its right to proceed with the proposed eviction or to present evidence in support of its position. Except for circumstances beyond the control of the resident, no continuance may be granted for more than one (1) working day unless both parties have agreed to a longer day. Both parties shall be notified of the determination by the Hearing Panel. A determination that the resident has waived his/her right to a Hearing shall not constitute a waiver of any right of the resident may have to contest OHA's disposition of the grievance in an appropriate judicial proceeding.
  - e. A quorum of any hearing panel shall be sufficient to hear all grievances. A quorum shall consist of at least three (3) members. All actions of the Hearing Panel shall be by majority vote of the members of said panel.

9. THE HEARING

- a. At the Hearing, the complainant must first make a showing of an entitlement to the relief sought, and thereafter, OHA must sustain the burden of justifying OHA's action or failure to act against which the complaint is directed.
- b. The Hearing shall be conducted informally by a presiding officer chosen from among the members of the Hearing Panel by the members themselves.
- c. Oral or documentary evidence as limited to the facts raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- d. The Hearing Panel shall require OHA, the complainant, counsel and other participants or other spectators to conduct themselves in an orderly fashion. Failure to

comply with the direction of the Hearing Panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interest of the disorderly party in granting or denial of the relief sought, as appropriate.

- e. The complainant or OHA may arrange in advance and, at the expense of the party making the arrangements, for a transcript of the Hearing. Any interested party may purchase a copy of such transcript.

## 10. DECISION OF THE HEARING PANEL

- a. Within three (3) days of the Hearing, the Hearing Panel shall prepare a written decision together with the reasons therefore. The decision shall be based solely and exclusively upon the facts presented at the Hearing and upon applicable OHA and Department of Housing and Urban Development (HUD) regulations. A copy of the decision shall be sent to the complainant and Manager of the development in which the complainant resides. OHA shall retain a copy of the decision in the resident's folder. A copy of such decision with all names and identifying references deleted shall also be maintained on file by OHA and made available for inspection by a prospective complainant, his/her representative, or by any member of the Hearing Panel. All decisions shall be signed by the presiding Officer.
- b. The decision of the Hearing Panel shall be binding upon OHA, which shall take all action or refrain from any actions necessary to carry out the decision unless the Board of Commissioners of OHA determines within thirty (30) days and promptly notifies the complainant of its determination, that one of the following should apply:
  - 1. The grievance does not concern OHA action or failure to act in accordance with or involving the complainant's lease or OHA regulations and which adversely affect the complainant's rights, duties, welfare or status; or
  - 2. The decision of the Hearing Panel is contrary to applicable federal, state or local laws, HUD regulations or requirements of the Annual Contributions Contract between HUD and OHA.
  - 3. In the event OHA determines the decision of the Hearing Panel is improper, OHA shall specify the precise nature of its objection and the laws and regulations it believes are contravened.
- c. The decision by the Hearing Panel or Board of Commissioners in favor of OHA, which denies the relief requested by the complainant in whole or in part, shall 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 proceeding, which may thereafter be brought in the matter.

11. JUDICIAL RELIEF FROM THE DECISION OF THE HEARING PANEL

- a. If the decision denies the complainant his/her requested relief, in whole or in part, and the complainant elects to seek such relief as may be provided under state law through judicial proceedings, the complainant shall be free to raise any issue permitted by the court and OHA shall be free to counter the same.
- b. Any judicial decision or related settlement pertaining to the original Hearing shall also be maintained on file by OHA in the resident's folder.

12. EVICITION ACTIONS BASED ON DECISION OF HEARING PANEL

If a resident has requested a Hearing, as provided herein, involving a Notice of Termination of a residency, and the Hearing Panel upholds OHA's action of terminate the resident, OHA shall not commence an eviction action in an appropriate court of law until it has served a Notice to Vacate on the resident, and in no event shall the Notice to Vacate be issued prior to the decision of the Hearing Panel having first been mailed or delivered to the complainant. Such Notice to Vacate must be in writing and specify that if the resident fails to vacate the premises within the time indicated, appropriate action will be brought against him and he may be required to pay court costs and attorney fees. The Notice to Vacate shall indicate one of the following:

- a. If the decision of the Hearing Panel has been mailed prior to three (3) days before the resident must quit the premises according to the original Notice of Termination, then the Notice to Vacate shall indicate that the original Notice of Termination is valid and in effect and the resident shall quit the premises within the time specified in the original Notice of Termination;

-OR-

- b. If the decision of the Hearing Panel is sent to the complainant after three (3) days prior to the date specified in the original Notice of Termination, then, in such an event, the Notice to Vacate shall indicate that the original Notice of Termination is valid and in effect, but that the resident has three (3) days from the time the Notice to Vacate (required by this section) is served upon him to quit the premises.

13. MISCELLANEOUS PROVISIONS

- a. Amendments: No substantive amendments to these rules or significant changes in procedures may be made without first posting said amendments for a period of

thirty (30) days as set forth in Subsection B herein, and providing the residents an opportunity to present written comments which shall be taken into consideration by OHA prior to the amendment becoming effective.

- b. Posting of Procedures: A copy of these procedures and of any revisions hereto shall be posted in a conspicuous place in every development and shall be available at every development, from OHA's Central Office and from the officers and representatives of the local resident organizations.
- c. Notice: All notices, answers or decisions required under these procedures to be sent to the resident must be delivered in person to an adult member of the resident's household or mailed, postage prepaid, to the resident.

14. ADMINISTRATION

The Manager of Housing and Review Services shall have the overall responsibility for the supervision and administration of these procedures.

Reserved