

SEPTEMBER 1, 1996

**LAFAYETTE HOUSING AUTHORITY
GRIEVANCE PROCEDURES**

I. PURPOSE

This grievance procedure has been adopted to provide the standards and procedures to assure tenants the opportunity for a hearing within a reasonable time if the tenant disputes the action or failure to act involving the tenant lease with the Public Housing Authority (PHA) or regulations which adversely affect the individual tenant's rights, duties, welfare or status.

II. GOVERNING LAW

The law governing this grievance procedure is section 6 (k) of the U.S. Housing Act of 1937 (42 U.S.C. sec. 1437 d(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 the PHA with the following two exception:

- A. This grievance procedure is not applicable to disputes between Tenants not involving the PHA, 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 the PHA'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 PHA has elected to determine that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - 1. Any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA or;
 - 2. Any drug-related criminal activity on or off of the 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 an action or failure to act by the PHA in accordance with the individual Tenant's lease or the PHA 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 of the PHA 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. 8022) as from time to time amended.
- E. **PHA or "Authority":** The 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 at 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. Right of the Tenant to be represented by counsel;
 - 3. 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;
 - 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 to hear grievances and render decisions with respect thereto.
- H. **Hearing panel:** A three-member group of impartial persons, selected in accordance with 24 CFR sec. 966.55 and this procedure to hear grievances and render decisions with respect thereto.

- 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 residents, which includes any resident management corporation, and specifically includes the Lafayette Housing Authority Resident Council.
- M. **Tenant:** The adult person (or persons) other than a live-in aid:
 - 1. Who resides in the unit and who executed the lease with the PHA 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 unit.
- N. **Business Days:** Monday through Friday of each week, except for legal holidays recognized by the federal government.

V. INCORPORATION IN LEASES

This grievance procedure shall be incorporated by reference in all public housing dwelling leases between Tenants and the PHA, 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 PHA’s main office, within (5) business days after the occurrence of the event giving rise to the grievance.
- B. **Informal Settlement Conference:** If the grievance is not determined by the PHA to fall within one of the two exclusions mentioned in section III B(1) and III B(2) above, then the PHA will, within five (5) business days after the initial presentation of the grievance, informally discuss the grievance with the complainant or his 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 five (5) business days after the informal settlement conference, a summary of the informal discussion shall be prepared by the PHA and a copy thereof shall be provided to the complainant. The summary shall be in writing and shall specify the names of the participants in the discussion, the date of the discussion, 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 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 PHA's main office no later than five (5) business days after the date Complainant receives the summary of discussion delivered 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. Statement setting forth the time at which the complainant will be available for a hearing during the next five (5) business days; and
4. If the complainant has failed to attend an informal discussion conference, a request that the hearing officer may waive this requirement.

- B. **Failure to Request Hearing:** If the complainant fails to request a hearing within five (5) business days after receiving the written summary of the informal settlement conference, the PHA's decision rendered at the informal hearing becomes final and the PHA is not thereafter obligated to offer the complainant a formal hearing.

VIII. SELECTION OF HEARING OFFICERS

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

- A. The permanent appointments of persons who shall serve as hearing officer shall be governed by the following procedures:
 1. The PHA shall nominate a slate of persons to sit as permanent hearing officers. These persons may include, but will not be necessarily limited to, members of PHA Board of Commissioners, PHA staff members, residents, 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.
 2. The slate of potential appointees shall be submitted to all PHA resident organizations for written comments. Written comments from the resident organization shall be considered by the PHA before appointments are finally made. Objection to the appointment of a person as a hearing officer must be considered but 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 will be kept at the central office of PHA and be made available for public inspection at any time.
- B. The designation of hearing officers for particular grievance hearings shall be governed by the following provisions:
 1. All hearings will be held before a single hearing officer.
 2. Appointments to serve as a hearing officer with respect to a particular grievance shall be made by the PHA in random order, subject to availability of the hearing officer to serve in each such case. The PHA may employ any reasonable system for random order choice.
 3. No member of the PHA Board of Commissioners or staff may be appointed as hearing officer in connection with the grievance contesting an action which was either made or appointed by

proposed appointee, or which was made or appointed 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, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers 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 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 fails to disqualify himself or herself as required in this grievance procedures, the PHA Board of Commissioners will remove that hearing officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such persons should have, but did not, disqualify himself or herself, and schedule a new hearing with a new hearing 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 PHA claims is due under the complainant's lease, the complainant shall have paid to the PHA an amount equal to the amount due and payable 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. Unless waived by the PHA in writing, no waiver will be given by the PHA except in cases of extreme and undue hardship to the complainant, determined in the sole and absolute discretion of the PHA.

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 as selected by section VIII. B, promptly for a time and place reasonably convenient to both the complainant and the PHA, no later than five (5) business days after Complainant has completed such compliance.
2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official, who, unless otherwise designated, shall be the Executive Director.

X. **PROCEDURES GOVERNING HEARINGS**

A. **Fair Hearing:** The hearings shall be held before a hearing officer as described in Section VIII. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any PHA 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. If the PHA does not make the document available for examination upon request by the complainant, the PHA may no 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 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.
4. The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by the PHA and to confront and cross examine all witnesses upon whose testimony or information the PHA or its management relies; and

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

- B. **Prior Decision in Same Matter:** The hearing officer may render a decision without proceeding with the hearing if her or she determines that the issue has been previously decided in another proceeding.
- C. **Failure to Appear:** If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) business 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 shall notify the complainant and the PHA 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 PHA'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 PHA must sustain the burden of justifying PHA's action or failure to act against which the complaint is directed.
- E. **Informality of Hearing:** The hearing shall be conducted informally by the hearing officer, 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 shall require the PHA, 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.
- G. **Transcript of Hearing:** The complainant or the PHA 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.
- H. **Accommodations to Handicapped Persons:** The PHA 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 attendants.

XI. DECISION OF THE HEARING OFFICER

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

- A. **Written Decision:** The hearing officer shall prepare a written decision, together with the reasons for the decision within five (5) business days after the completion of the hearings.
 - 1. A copy of the decision shall be sent to the complainant and the PHA. The PHA 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 PHA and made available for inspection by any prospective complainant, his representative, or the hearing officer.

- B. **Binding Effect:** The written decision of the hearing officer shall be binding upon the PHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA's Board of Commissioners determines, within five (5) business days, and properly notifies the complainant of its determination, that:
 - 1. The grievance does not concern the PHA action or failure to act in accordance or involving the complainant's lease, or PHA's regulations, which adversely affect the Complainant's rights, duties, welfare or status; or
 - 2. 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 PHA.

- C. **Continuing Right of Complainant to Judicial Proceedings:** A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor effect 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 receipted 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 procedures may not be amended or modified except by approval of a majority of the Board of Commissioners of the PHA present at a regular meeting or a special meeting called for such purposes. Further, in addition to the foregoing, any changes proposed to be made to this grievance procedures must provide for at least thirty (30) days advance notice to tenants and resident organizations, setting forth proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the PHA before final adoption of any amendments hereto.

XIV. MISCELLANEOUS

- A. **Captions:** Captions or paragraph headings set forth in this 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 PHA's notice of termination of tenancy, the complainant should 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 upholds the PHA's action to terminate the tenancy, the PHA 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 to complainant.