

# **HOUSING AUTHORITY OF ALAMEDA COUNTY**

## **Conventional Public Housing Grievance Procedure**

### **SECTION 1. PURPOSE AND SCOPE**

The purpose of this grievance procedure is to assure that tenants are afforded an opportunity for a hearing if the tenant disputes, within a reasonable time, any Housing Authority action or failure to act involving the tenant's lease or Housing Authority regulations which adversely affect the individual tenant's rights, duties, welfare or status. This grievance procedure is incorporated in the dwelling lease and is a part thereof.

### **SECTION 2. APPLICABILITY**

- (a) This grievance procedure is applicable to all individual grievances as defined in Section 3 between the tenant and the Authority, except that this procedure shall not apply to any grievance concerning an eviction or termination of tenancy based upon a tenant's creation or maintenance of a threat to the health or safety of other tenants or Housing Authority employees.
- (b) This grievance procedure shall not be applicable to disputes between tenants not involving the Authority or to class grievances, nor is this procedure intended to be a forum for initiating or negotiating policy changes between a group or groups of tenants and the Authority's Housing Commission.

### **SECTION 3. DEFINITIONS**

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

- (a) "Grievance" shall mean any dispute which a tenant may have with respect to the Authority's action or failure to act in accordance with the individual tenant's lease or Authority regulations which adversely affect the individual tenant's rights, duties, welfare, or status.
- (b) "Complainant" shall mean any tenant whose grievance is presented to the Authority in accordance with Sections 4 and 5.
- (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 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.
- (d) “Authority” and “Housing Authority” shall mean the Housing Authority of Alameda County.
- (e) “Hearing Officer” shall mean a person selected in accordance with Section 5 of this procedure to hear grievances and render a decision with respect thereto.
- (f) “Hearing Panel” shall mean a panel selected in accordance with Section 5 of this procedure to hear grievances and render a decision with respect thereto.
- (g) “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 PHA 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 household of the tenant family residing in the dwelling unit.
- (h) “Resident organization” includes a resident management corporation.

#### **SECTION 4. INFORMAL SETTLEMENT OF GRIEVANCES**

- (a) Any grievance shall be personally presented either orally or in writing (telephone calls will not be accepted), to the Authority main office so that the grievance may be discussed informally and settled without a hearing. The grievance must be presented within seven (7) working days of the Authority’s act or failure to act, which is the basis of the grievance.
- (b) A written summary of such discussion shall be prepared within ten (10) working days of the meeting, and one copy shall be given to the tenant and one copy shall be retained in the Authority’s tenant file. The summary shall specify:
1. The names of the participants;
  2. Date(s) of the meeting(s);
  3. The nature of the proposed disposition of the complaint;
  4. The specific reasons therefore; and
  5. The procedures by which a formal hearing under Section 5 may be obtained if the complainant is not satisfied with the proposed disposition.

## **SECTION 5. PROCEDURE TO OBTAIN A HEARING**

- (a) Request for Hearing. The complainant shall submit a written request for a formal hearing to the Authority's main office within seven (7) working days after receipt of the summary of discussion pursuant to Section 4 of this procedure. The written request shall specify:
1. The reasons for the grievance, and
  2. The action or relief sought.

- (b) Selection of Hearing Officer or Hearing Panel. Grievances shall be presented before a hearing officer or hearing panel. A hearing officer or hearing panel shall be selected as follows: The hearing officer shall be an impartial, disinterested person selected jointly by the Authority and the complainant. If the Authority and the complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel, and the members so appointed shall select a third member.

If the members appointed by the Authority and the complainant cannot agree on a third member, such member shall be appointed by an independent arbitration organization or by any other third party agreed upon by the Authority and the complainant.

- (c) Failure to Request a Hearing. If the complainant does not request a hearing in accordance with this section, then the Authority's disposition under Section 4 shall become final. Failure to request a hearing does not constitute a waiver by the complainant of his/her right thereafter to contest the Authority's action in disposing of the complaint in an appropriate judicial proceeding.
- (d) Hearing Prerequisites. All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Section 4 as a condition precedent to a hearing under this section. However, if the complainant shall show good cause why he/she failed to proceed in accordance with Section 4 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.
- (e) Escrow Deposit. Before a hearing is scheduled in any grievance involving the amount of rent which the Authority claims is due, the complainant shall pay to the Authority 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 took place. 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 or hearing panel.

These requirements may be waived by the Authority in extenuating circumstances. Unless so waived, the failure to make such payments shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of his/her grievance in any appropriate judicial proceeding.

- (f) Scheduling of Hearings. Upon complainant's compliance with paragraphs (a), (d), and (e) of this Section, and unless there are extenuating circumstances, a hearing shall be scheduled by the hearing officer or panel for a time and place reasonably convenient to both the complainant and the Authority. A written notification specifying the time, place and procedures governing the hearing shall be delivered to the complainant and the appropriate Housing Authority official.
- (g) Discovery. Both the complainant and the Authority have the right to discovery. This means that both parties shall have the right to review physical evidence that will be presented in the Grievance Hearing. The Authority shall notify the tenant of their right to discovery. Requests for discovery must be made in writing and shall be made no later than two (2) days prior to the scheduled Hearing. If the complainant requests discovery under the provisions of this section, the Authority must provide copies of physical evidence, at the complainant's cost, or give access to such evidence at least two working days before the Hearing. At the Hearing, neither the Authority nor the tenant shall present evidence that has not been made available through discovery.

#### SECTION 6. PROCEDURES

- (a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.
- (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, to copy all documents, records and regulations of the Authority that are relevant to the hearing. Any documents not so made available after request therefore by the complainant may not be relied on by the Authority at the hearing.
  - 2. The right to be represented by counsel or other person chosen as his or 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 on by the Authority, and to

confront and cross-examine all witnesses on whose testimony or information the Authority relies; and

5. A decision based solely and exclusively upon the facts presented at the hearing.
- (c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determine that the issue has been previously decided in another proceeding.
- (d) If the complainant or the Authority fails to appear at the scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five (5) working days, or may make a determination that the party has waived his/her right to a hearing.

Both the complainant and the Authority shall be notified of the determination by the hearing officer or hearing panel. Such determination shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

- (e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought, and thereafter the Authority must sustain the burden of justifying the Authority's action or failure to act against which the complaint is directed.
- (f) The hearing shall be conducted informally by the hearing officer or hearing panel. Oral or documentary evidence pertaining to the facts and issues raised by the complaint must be received without regard to admissibility under the rules of evidence applicable to judicial proceedings, with the exception of discovery provisions outlined in Section 5 (h). The hearing officer or hearing panel shall require the Authority, 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 or 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 of or denial of the relief sought, as appropriate.

- (g) The complainant or the Authority may arrange, in advance and at the expense of the party making the arrangement, for a tape recording of the hearing. Any interested party may purchase a copy of such recording.
- (h) Accommodation of persons with disabilities. (1) The Authority will 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.

- (2) If the tenant is visually impaired, any notice to the tenant, which is required under this subpart, will be in an accessible format.

**SECTION 7. DECISION OF THE HEARING OFFICER OR HEARING PANEL**

- (a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefore, within fourteen (14) working days after the hearing is concluded. A copy of the decision shall be sent to the complainant and the Authority who shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and made available for inspection by a prospective complainant, his/her representative, or a hearing panel or hearing officer.
- (b) The decision of the hearing officer or hearing panel shall be binding on the Authority which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Housing Authority Housing Commission determines within twenty (20) working days, and promptly notifies the complainant of its determination, that
1. The grievance does not concern the Authority's action or failure to act in accordance with or involving the complainant's lease or Housing Authority regulations, which adversely affect the complainant's rights, duties, welfare or status.
  2. The decision of the hearing officer or hearing panel is contrary to applicable federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and the Authority.
- (c) A decision by the hearing officer, hearing panel or Housing Commission in favor of the Authority, or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatsoever 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.

***Grievance Procedure Public Housing***  
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