

HOUSING AUTHORITY OF THE CITY OF BAYONNE

TENANT GRIEVANCE PROCEDURE

I. PURPOSE

This procedure has been adopted to ensure that a resident is afforded an opportunity to seek the settlement of individual Grievances (as defined in Section V hereof) against the Housing Authority of the City of Bayonne, hereinafter referred to as the "BHA" and/or the "Authority."

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. 1437d (k) and Subpart B of 24 CFR part 966 (24 CFR secs. 966.50-966.57) or as amended subsequently.

III. APPLICABILITY

In accordance with the applicable federal regulations, this grievance procedure shall be applicable to all individual grievances between tenants of low-income housing and the BHA with the following two exceptions:

- A. This procedure is not applicable to disputes between tenants not involving BHA or to class disputes involving groups of tenants. Also, this procedure is not intended as a forum for initiating or negotiating policy changes between tenants or groups of tenants and BHA Board of Commissioners.
- B. The United States Department of Housing and Urban Development ("HUD") has issued a due process determination that the law of the State of New Jersey requires that tenants be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in Section V below) before eviction from a dwelling unit. Therefore, the BHA has determined that this grievance procedure shall not be applicable to any termination of tenancy eviction that involves:
 - (1) Any activity that threatens the health, safety or right to peaceful enjoyment of the BHA's premises by other tenants or employees of BHA; or
 - (2) Any drug-related criminal activity on or off BHA's premises, after the expiration of the tenancy termination date set forth in the notice.

IV. RIGHT TO A HEARING

Upon the filing of a written request as indicated in these procedures, a tenant shall be entitled to a hearing before a hearing officer.

V. DEFINITIONS

The following definitions of terms shall be applicable to this grievance procedure:

- A. **Administration Office:** 549 Avenue A, P.O. Box 277, Bayonne, NJ, 07002.
- B. **Authority:** The Housing Authority of the City of Bayonne, a body corporate and politic, organized and existing under the laws of the State of New Jersey.
- C. **BHA:** The Authority.
- D. **CFR:** The Code of Federal Regulations which contains the federal regulations governing this Grievance procedure.
- E. **Complainant:** Any tenant (as defined in this section below) whose grievance is presented to the Administration Office of BHA in accordance with the requirements set forth in this procedure.
- F. **Drug-related criminal activity:** Means the illegal manufacture, sale, distribution or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.
- G. **Elements of due process:** The following procedural safeguards are required to be followed in an eviction action or a 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 BHA including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and
 - 4. A decision on the merits.
- H. **Grievance:** Any dispute which a tenant may have with respect to an action or a failure to act by BHA in accordance with the individual tenant's lease or BHA regulations which affect adversely the individual tenant's rights, duties, welfare or status. Grievance does not include any dispute a tenant may have with the BHA concerning a termination of tenancy or eviction that involves any activity that may threaten the health, safety, or right to peaceful enjoyment of the BHA's public housing premises by other tenants or employees of the BHA, or any criminal activity or drug-related criminal activity on or off such premises. A grievance also does not include disputes between tenants.

V. DEFINITIONS (Continued)

- I. **Hearing Officer:** An impartial person or persons selected by the BHA, other than the person who made the decision under review, or a subordinate of that person. Can include a single hearing officer or a panel of hearing officers.
- J. **HUD:** The United States Department of Housing and Urban Development.
- K. **Notice:** As used herein, the term shall, unless otherwise specifically provided, mean written notice.
- L. **Promptly:** means within five (5) business days from the date of mailing the adverse action or grievable complaint.
- M. **The “Regulations”:** The HUD regulations contained in Subpart B of 24 CFR Section 966, as may be amended subsequently.
- N. **Tenant:** The adult (or persons 18 years of age or older) (other than a live-in aide):
 - 1. Who resides in the premises and who executed the lease with the BHA as a lessee of the premises; or
 - 2. If no such person now resides in the premises, then the person who resides in the premises and who is the remaining head of household of the tenant family.
- O. **Tenant Organization:** The one representative organization at each BHA development.

VI. INCORPORATION INTO LEASES

This grievance procedure shall be incorporated by reference in to all leases between tenants and BHA whether or not so provided specifically in such leases.

VII. PROCEDURES PRIOR TO A HEARING

- A. **Initial Presentation:** Any grievances shall be presented promptly, in writing, to BHA's Administration office, so that the grievance may be discussed informally and settled without a hearing. This action shall occur promptly (as defined in Section V, paragraph L).
- B. **Informal Settlement of Grievance:** If the grievance is not determined by BHA to fall within one of the two exclusions mentioned in Section III, B (1) and III, B (2) above, the BHA will, within a reasonable time frame after the initial presentation of the grievance, discuss informally the grievance with the complainant or his/her representative in the attempt to settle the grievance without the necessity of a formal hearing.

VII. PROCEDURES PRIOR TO A HEARING (Continued)

- C. **Written Summary:** After the informal settlement conference, a written summary of the informal discussion shall be prepared within a reasonable time by BHA and a copy thereof shall be provided to the complainant and one (1) copy retained in the BHA's tenant file. The summary shall specify the names of the participants in the discussion, the date of the discussion, the nature of the proposed disposition of the complaint, and the specific reasons for such disposition.

The summary shall specify the procedures by which a hearing under these procedures may be obtained if the tenant is not satisfied. The purpose of this informal settlement of grievance is to allow the tenant and the BHA to discuss informally an issue without the need for third parties, including witnesses or representatives to be involved. At any time that a third party, including a witness or representative, becomes or should become involved in the process, the informal settlement conference shall become a "hearing" and the procedures found in Section VIII hereof shall apply. The BHA shall notify the tenant of the date and time that the hearing will take place.

VIII. PROCEDURES TO OBTAIN A HEARING

- A. **Request for a Hearing:** If a complainant is not satisfied with the results of the informal settlement of grievance provided for in Section VII, the complainant must submit a written request for a formal hearing to BHA's Administration Office within five (5) business days from date of mailing of the summary of discussion pursuant to Section VII. The written request shall specify:
1. The reasons for the grievance; and
 2. The action or relief sought.
- B. **Selection of Hearing Officer:** A grievance hearing shall be conducted by an impartial person appointed by the BHA other than a person who made or approved the BHA action under review or a subordinate of such person.
- C. **Failure to Request a Hearing:** If the complainant fails to request a hearing in accordance with this section, the BHA's decision rendered at the informal hearing shall become final and BHA is not obligated thereafter to offer the complainant a formal hearing. However, failure to request a hearing shall not constitute a waiver by the tenant of the right thereafter to contest the BHA's action in disposing of the complaint in an appropriate judicial proceeding.

VIII. PROCEDURES TO OBTAIN A HEARING (Continued)

- D. **Hearing Prerequisites:** All grievances shall be presented promptly, in writing, pursuant to the informal procedure prescribed in Section VII as a condition precedent to a hearing under this section. However, if the tenant shows good cause why there was failure to proceed in accordance with Section VII to the hearing officer, the provisions of this subsection may be waived by the hearing officer.
- E. **Escrow deposit:** Before a hearing is scheduled in any grievance involving the amount of rent, as defined in the lease which the BHA claims is due, the tenant shall pay to the BHA an amount equal to the amount of the 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 tenant shall thereafter deposit monthly the same amount of the monthly rent in an escrow account held by the BHA until the complaint is resolved by decision of the hearing officer. Amounts deposited into the escrow shall not be considered as acceptance of money for rent during the period in which the grievance is pending.
- The BHA will waive the requirement for an escrow deposit as required under 24 CFR Section 5.616 concerning financial requirements or 24 CFR Section 5.618 concerning reduction in welfare benefits related to work requirements or if it is requested in connection with a minimum rent hardship exemption under 24 CFR Section (966.55 (e) (2). Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure. However, failure to make payment shall not constitute a waiver of any right the tenant may have to contest the BHA's disposition of his/her grievance in any appropriate judicial proceeding.
- F. **Scheduling of Hearings:** Upon the tenant's compliance with this Section, or upon the BHA notifying the tenant or his/her representative that a hearing will be held, a hearing shall be scheduled promptly by the hearing officer for a time and place mutually convenient to both the tenant and the BHA. A written notification specifying the date, time, place and the procedures governing the hearing shall be delivered by regular and certified mail to the tenant and the appropriate BHA official.

IX. PROCEDURES GOVERNING HEARINGS

Fair hearings: The hearings shall be held before a hearing officer as described in Section VIII above.

A. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any BHA documents, including records and regulations that are directly relevant to the hearing. Any and all requests for records and regulations shall be requested in writing no later than two (2) business days prior to the scheduled hearing. The complainant will be allowed to copy such documents at the complainant's expense. The cost of any copies shall be twenty-five (25) cents per copy, if the BHA does not make the document available for examination upon request by the tenant, the BHA may not rely on such document at the grievance hearing;

A. The complainant shall be afforded a fair hearing, which shall include (Continued)

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 tenant requests a public hearing;
4. The right to present evidence and arguments in opposition to evidence relied on by BHA and to confront and cross-examine all witnesses upon whose testimony or information the BHA relies; and
5. A decision based solely and exclusively upon the facts presented at the hearing.

B. Accommodation to Handicapped Persons:

1. The BHA shall 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 that is required by these procedures must be in an accessible format.

C. 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, BHA must sustain the burden of justifying BHA's action or failure to act against which the complaint is directed.

D. Prior Decision in Same Matter: The hearing officer may render a decision without proceeding with the hearing if he/she determines that the issue has been decided previously in another proceeding.

E. Failure to Appear: If the complainant fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing or may make a determination that the complainant has waived the right to a hearing. In such event, the hearing officer shall notify the complainant and BHA of the determination.

F. 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 proceedings.

G. Orderly Conduct Required: The hearing officer shall require BHA, 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 maintain order may result in the 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.

IX. PROCEDURES GOVERNING HEARINGS (Continued)

- X. Transcript of Hearing:** The complainant or the BHA 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 at twenty-five (25) cents per page.

X. DECISION OF THE HEARING OFFICER

- A. Subsequent to the completion of the grievance hearing, the hearing officer shall make a determination as to the merits of the grievance and shall prepare a written decision, together with the reasons for the decision, not to exceed ten (10) calendar days after the completion of the hearing. A copy of the decision shall be sent to the BHA. A copy of such decision, shall also be maintained on file by the BHA and made available for inspection by a prospective complainant, his representative, or the hearing officer.
- B. The decision of the hearing officer shall be binding on the BHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the BHA's Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that:
1. The grievance does not concern the BHA action or failure to act in accordance with or involving the tenant's lease or BHA regulations, which adversely affect the tenant's rights, duties, welfare or status; or
 2. The decision of the hearing officer is contrary to applicable federal, state, or local law, BHA regulations or requirements of the Annual Contributions Contract between the BHA and the U.S. Department of Housing and Urban Development.
- C. The decision by the hearing officer or Board of Commissioners in favor of the BHA or which denies the relief requested by the tenant in whole or in part shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the tenant may have to a trial de novo or judicial review in any judicial proceeding, which may thereafter be brought in the matter.

XI. 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, which personal service may include, if necessary, affixing said notice to complainant's unit door;
2. Upon the date receipted for or refused by the addressee, in the case of verified 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.

XII. MODIFICATION

This grievance procedure may not be amended or modified except by approval of the BHA's Board of Commissioners present at a regular meeting or a special meeting. Further, in addition to the foregoing, any changes proposed to this grievance procedure must provide for at least thirty (30) calendar days advance written notice to tenants and tenant organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by BHA before final adoption of any amendments thereto.

XIV. MISCELLANEOUS

- A. **Concurrent Notice:** If a tenant has filed a request for a grievance hearing hereunder in a case involving BHA's notice of termination of tenancy, the complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law run concurrently.

I / We have received a copy of this amended Tenant Grievance procedure and have had an opportunity to ask questions about the procedure.

All adult (anyone 18 years of age or older) household members must sign below.

Tenant (Head of Household) Signature

Date

Tenant (18 years of age or older) Signature

Date

Tenant (18 years of age or older) Signature

Date

Tenant (18 years of age or older) Signature

Date

Tenant (18 years of age or older) Signature

Date

Tenant (18 years of age or older) Signature

Date

Housing Authority of the City of Bayonne

By: _____
John T. Mahon, Executive Director

THIS DOCUMENT IS BEING EXECUTED IN 2 (TWO) ORIGINALS