

## **ADMINISTRATIVE GRIEVANCE PROCEDURES**

### **A. Purpose and Scope.**

The purpose of this policy is to assure that the Housing Authority of the City of El Paso Texas (hereinafter referred to as HACEP) residents are afforded an opportunity for a hearing if the resident disputes within a reasonable time any HACEP action or failure to act, involving the resident's lease or HACEP regulations which adversely affect the individual resident's rights, duties, welfare or status. Additional areas covered by these procedures include the Community Service requirements, minimum rent hardship exemptions, and income changes resulting from welfare program requirements. Escrow deposits are not required for grievances related to minimum rent hardships and welfare reductions. These procedures also cover grievances related to improper disclosure or inappropriate use of information obtained by HACEP through criminal records, sex offender registration records, drug abuse treatment facility records and domestic violence records.

These procedures, by reference, are incorporated into and become a part of HACEP's Dwelling Lease.

### **B. 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 966.50 - 966.57).

### **C. Definitions,**

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

1. "Authority": The Housing Authority of the City of El Paso,, a body corporate organized and existing under the laws of the State of Texas.
2. Grievance: Any dispute which a resident may have with respect to an action or a failure to act by HACEP in accordance with the individual resident's lease or HACEP regulations, which adversely affects the individual resident's rights, duties, welfare or status.
3. CFR: The Code of Federal Regulations, which contains the federal regulations governing this grievance procedure.
4. Complainant: Any resident (as defined in this section below) whose grievance is presented to HACEP in accordance with the requirements set forth in this procedure.
5. 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 section 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
6. 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:
  - a. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
  - b. Right of the resident to be represented by counsel;
  - c. Opportunity for the resident to refute the evidence presented by HACEP, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and
  - d. A decision on the merits.
7. Hearing officer: An impartial person selected in accordance with 24 CFR Sec 966.55 and this grievance procedure to hear grievances and render a decision with respect thereto.

**HACEP does not discriminate against persons with disabilities. If you require a specific accommodation in to fully participate in the hearing process, please contact the HACEP Equal Opportunity Compliance Officer at 915-849-3742.**

8. HUD: The United States Department of Housing and Urban Development.
9. Notice: As used herein, the term notice shall, unless otherwise specifically provided, mean written notice.
10. The "Regulations": The HUD regulations contained in subpart B of 24 CFR sec. 966.
11. Resident organization: An organization of residents, which includes any resident management corporation.
13. Resident: The adult person (or persons) other than a live-in aide:
  - a. Who resides in the unit and who executed the lease with HACEP as lessee of the dwelling unit, or, if no such persons reside in the unit,
  - b. The person who resides in the unit, and who is the remaining head of household of the resident family residing in the dwelling unit.
14. Business Days: Monday through Friday of each week, except for legal holidays recognized by the federal government and/or local city government.

#### D. Incorporation in Leases

This grievance procedure shall be incorporated by reference in all leases between residents and HACEP whether or not so specifically provided for in such leases.

#### E. Exceptions

These procedures are applicable to all individual grievances, as defined in HACEP's Definitions section of these procedures, between the resident and HACEP with the following exceptions:

1. The procedures are not applicable to disputes between residents not involving HACEP, or to class grievances. The procedures are not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the Board of Commissioners: and
2. HUD has issued a due process determination that the law of the State of Texas requires that the resident be given the opportunity for a hearing in court that provides the basic elements of due process (as defined in the Definition section of these policies) before eviction from a dwelling unit. Therefore, HACEP has elected to determine that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
  - a. Any criminal activity that is cause for eviction even in the absence of conviction or arrest;
  - b. Any drug-related criminal activity on or off such premises;
    1. Alcohol abuse that interferes with the health, safety and right to peaceful enjoyment of the premises by other residents;
    2. Any activity, not just criminal, that threatens the health; safety, or right to peaceful enjoyment of the premises by other residents, or HACEP employees.

#### F. Processing Grievances

The primary objective of this process is to settle grievances at the lowest level and as quickly as possible, and minimize impact upon HACEP's operations. Except as stated in paragraphs A. and B. above, HACEP's procedures shall afford each resident an opportunity for a hearing on a grievance, in accordance with the requirements, standards, and criteria contained in these procedures, with such modifications as are required by State law. The process for handling grievances is outlined below.

1. Informal Settlement of Grievance.

- a. Grievances shall be personally presented, either orally or in writing, to the respective area supervisor at HACEP's central office at 5300 E. Paisano, or to the office of the Assistant Asset Manager of the community in which the complainant resides, so that the grievance may be discussed informally and settled without a hearing, if possible. The grievance must be given within ten (10) business days after the occurrence giving rise to the grievance.
- b. A summary of such discussion shall be prepared within five (5) business days. One copy shall be given to the resident and one shall be retained in HACEP's resident file.
- c. The summary 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 the procedures by which a hearing may be obtained if the resident is not satisfied.
- d. HACEP shall specifically include notice to the resident of the following:
  - (1) the time limit to request a formal grievance hearing;
  - (2) that the grievance can be heard by a hearing officer, and what the procedure is for selecting the officer;
  - (3) what specifically must be included in the complainant's written request for a grievance, as provided in paragraph 2.a.(2) of HACEP's Procedures to Obtain a Hearing;
  - (4) that if the complainant fails to request a hearing within the required time period (5 business days) after receiving the summary, HACEP's decision rendered at the informal conference becomes final. However, the complainant does not waive the right to contest HACEP's action in an appropriate judicial proceeding;
  - (5) that the resident has a right to be represented by counsel or other representative at a formal grievance hearing; and
  - (6) that the resident requesting a hearing has a right to examine any HACEP documents relevant to the hearing, including records and regulations. The resident shall be allowed to obtain a copy from HACEP of any such documentation at the resident's expense, as stated in the "Schedule of Maintenance and Other Charges".

## 2. Procedures to Obtain a Hearing

### a. Request for a Hearing

- (1) The resident shall submit a written request for a hearing to HACEP, or to the community's office, within five (5) days after receipt of the written summary of the informal discussion
- (2) The written request shall specify:
  - The reasons for the grievance;
  - The action or relief sought;
  - the complainant's statement setting forth the times at which the complainant will be available for a hearing during the next ten (10) business days;
  - complainant's preference, if any, concerning whether the grievance should be heard by a single Hearing Officer or by a hearing panel.

### b. Selection of a Hearing Officer.

- (1) Grievances shall be presented before a Hearing Officer.
- (2) A Hearing Officer shall be selected as follows:
  - (a) The Hearing Officer(s) shall be an impartial, disinterested (cannot be a party related to the grievance) person(s)
  - (b) Selected by the Director of the Housing Choice Voucher Program (Section 8).
- (3) If the resident fails to request a hearing within five (5) business days after receiving the written summary of the informal settlement conference, HACEP's decision rendered at the informal conference becomes final and HACEP is not thereafter obligated to offer the complainant a formal hearing. Delivery of the written summary will be made in person or attached to the door of the resident's unit and by certified mail. Should the resident fail to request a hearing such failure shall not constitute a waiver by the resident of his/her right thereafter to contest HACEP's action in disposing of the complaint in an appropriate judicial proceeding.

### c. Hearing Prerequisite:

- (1) All grievances shall be personally presented, either orally or in writing pursuant to the informal procedure prescribed in the paragraph on Informal Settlement of Grievance, above, as a condition precedent to a hearing under this section.
- (2) If the complainant shows good cause why he/she failed to proceed in accordance with the paragraph on

informal settlement, above, the provisions of this subsection may be waived by the Hearing Officer.

d. Escrow Deposit:

- (1) Before a hearing is scheduled in any grievance involving the amount of Tenant Rent which HACEP claims the resident shall pay into an escrow account, an amount equal to the amount of the Tenant Rent due and payable as of the first of the month preceding the month in which the act or failure to act took place.
- (2) The resident shall thereafter deposit, the same amount of the Tenant Rent into that escrow account monthly, until the complaint is resolved by decision of the Hearing Officer.
- (3) HACEP may waive these requirements in extenuating circumstances. Unless waived, failure to make such payments shall result in termination of the grievance procedures.
- (4) Failure to make payment shall not constitute a waiver of any right the resident may have to contest HACEP's disposition of the resident's grievance in any appropriate judicial proceeding.

e. Scheduling Hearings:

- (1) The Hearing Officer shall promptly schedule the hearing (within 10 days of the receipt of request for hearing), for a time and place reasonably convenient to both the resident and HACEP, upon a resident's compliance with the above requirements.
- (2) A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the resident via in person or attached to the door of the tenant's unit and by certified mail, and the and the appropriate PHA official.

3. Procedures Governing the Hearing.

a. Official: The hearing shall be held before a Hearing Officer.

b. Safeguards of Due Process: The resident shall be afforded a fair hearing providing the basic safeguards of due process, which include the following:

- (1) The opportunity to examine documents before the hearing, and to copy all documents, records and regulations in possession of HACEP that are relevant to the hearing at the expense of the complainant. Any requested document not made available to the resident may not be relied on by HACEP at the hearing.
- (2) The right to be represented by counsel or other person chosen as the resident's representative.
- (3) The right to a private hearing unless the resident requests a public hearing.
- (4) The right to present evidence and arguments in support of the resident's complaint, to controvert evidence relied on by HACEP or community management, and to confront and cross-examine all witnesses on whose testimony or information HACEP or development management relies.
- (5) A decision based solely and exclusively upon the facts presented at the hearing.

c. Previous Decision: The Hearing Officer may render a decision without proceeding with the hearing, if the Hearing Officer determines that the issue has been previously decided in another proceeding.

d. Failure to Appear:

- (1) If the resident or HACEP 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 make a determination that the party has waived his or her right to a hearing.
- (2) The Hearing Officer shall notify both the resident and HACEP of the determination.
- (3) A determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the resident may have to contest HACEP disposition of the grievance in an appropriate judicial proceeding.
- (4) In making a determination to postpone or that the party has waived his/her right to a hearing, the Hearing Officer should consider any extenuating circumstances

e. Entitlement and Justification:

- (1) At the hearing, the resident must first make a showing of an entitlement to the relief sought.
- (2) Thereafter, HACEP must sustain the burden of justifying HACEP's action or failure to act against which the complaint is directed.

f. Conduct of the Hearing:

- (1) The hearing shall be conducted informally by the Hearing Officer.
- (2) Oral or documentary evidence pertinent to the facts and issues raised by the resident may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(3) The Hearing Officer shall require HACEP, the resident, legal 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:

(1) The resident or HACEP may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing.

(2) Any interested party may purchase a copy of such transcript.

G. Accommodation of Persons with Disabilities

HACEP will provide reasonable accommodation for persons with disabilities throughout the grievance process. This includes, but is not limited to, accommodating tenants with disabilities by accepting grievances at alternate sites or by mail, having HACEP staff reduce an oral request for a grievance to writing for a tenant with a disability who cannot write due to the disability, and providing accommodations in the grievance hearing itself by providing qualified sign language interpreters, readers, accessible locations, or attendants.

H. Decision, Reasons, Copies and Files:

a. Decision:

- (1) The Hearing Officer shall prepare a written decision, together with the reasons therefore, within a reasonable time after the hearing (usually within 10 business days).
- (2) A copy of the decision shall be sent to the resident and HACEP.
- (3) HACEP shall retain a copy of the decision in the resident's folder.
- (4) A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by HACEP and made available for inspection by a prospective complainant, his/her representative, or the Hearing Officer..

b. Subsequent Actions

The decision of the Hearing Officer shall be binding on HACEP which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Board of Commissioners determines within ten (10) business days, and promptly notifies the resident of its determination, that:

- (1) The grievance does not concern HACEP action or failure to act in accordance with or involving the resident's lease or PHA regulations, which adversely affect the resident's rights, duties, welfare or status; and
- (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 HACEP.

c. Judicial Proceedings

A decision by the Hearing Officer or Board of Commissioners in favor of HACEP or which denies the relief requested by the resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the resident may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

I. HACEP Notice

Notices under this grievance procedure shall be deemed delivered:

- a. Upon personal service thereof to the complainant or an adult member (18 years of age or older) of the complainant's household;
- b. Upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail; or
- c. On the second business day after first class mailing, with the U.S. Postal Service.

J. Concurrent Notice

If a resident has filed a request for grievance hearing in a case involving HACEP'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 can run concurrently.

If the hearing officer upholds HACEP's action to terminate the tenancy, HACEP may commence an eviction action in court by the later of:

- a. The expiration of the date for termination of tenancy and vacation of premises stated in the delivered termination notice, or
- b. The delivery of the report of decision of the Hearing Officer or panel to complainant.

K. Modification

This grievance procedure may not be amended or modified except by approval of a majority of the HACEP Board of Commissioners present at a regular meeting or a special meeting called for such purposes.