



# HOUSING AUTHORITY Of The TOWNSHIP OF BERKELEY

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## Grievance Procedure



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# THE HOUSING AUTHORITY OF THE TOWNSHIP OF BERKELEY

## GRIEVANCE PROCEDURE

### I. Purpose

This grievance procedure has been adopted to provide a forum and procedure for tenants to seek the just, effective, and efficient settlement of grievances against the Housing Authority of the Township of Berkeley.

### 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. 1437d(k) and subpart B of 24 CFR 966 (24 CFR 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 Authority with the following two exceptions:

- A. This grievance procedure is not applicable to disputes between Tenants not involving Authority 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 Authority's Board of Commissioners.
- B. HUD has issued a due process determination that the laws of the State of New Jersey provide Tenants the basic elements of due process (as defined in Section IV below) before eviction from a dwelling unit. Nevertheless, HUD regulations require the Authority to offer Tenants the opportunity to grieve eviction or any other adverse action, except that the regulations permit the Authority not to offer a grievance hearing in connection with an eviction action based upon:
  - 1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the premises of other residents or employees of the Authority, or
  - 2. Any drug-related criminal activity on or near such premises.

In accordance with the regulations, the Authority will not offer Tenants a grievance hearing in an eviction, in which the basis for the eviction is one of the above causes.

#### 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 a failure to act by the Authority in accordance with the individual Tenant's lease or Authority 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 Authority 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. 802) as from time to time amended.
- E. ***HA or "Authority":*** The Housing Authority of the Township of Berkeley, a public bode, corporate and politic, organized and existing under the laws of the State of New Jersey.
- F. ***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 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 Authority, 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 966.55 and this grievance procedure to hear grievances and render decisions with respect thereto.
- H. **Hearing Panel:** A three-member panel composed of impartial persons, selected in accordance with 24 CFR 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 shall, unless otherwise specifically provided, mean written notice.
- K. **The "Regulations":** The HUD regulations contained in subpart B of 24 CFR part 966.
- L. **Resident Organization:** An organization of residents.
- M. **Tenant:** The adult person (or persons) other than a live-in aide:
  - 1. Who resides in the unit and who executed the lease with the Authority 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. **Informal Settlement of Grievances**

A. ***Initial Presentation***

Any grievance must be personally presented, either orally or in writing, to the Authority's main office, within five (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 Authority to fall within one of the two exclusions mentioned in section III B (1) and III B (2) above, then the Authority 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 be promptly 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 Authority 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 the complainant is not satisfied by the proposed disposition of the grievance. A copy of the written summary shall also be placed in complainant's tenant file.

VI. **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 Authority'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.

Complainants 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. If the complainant so desires, a statement setting forth the times at which the complainant will be available for a hearing during the next ten business days; and
4. Complainant's preference, if any, concerning whether the grievance should be heard by a single hearing officer or by a hearing panel; and
5. If the complainant has failed to attend the informal discussion conference, a request that the hearing officer or panel 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 Authority's decision rendered at the informal hearing becomes final and the Authority is not thereafter obligated to offer the complainant a formal hearing.

**VII. Selection of Hearing Officer or Panel**

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

- A. The permanent appointments of persons who shall serve as hearing officers and hearing panel members shall be governed by the following procedures:
1. The Authority shall nominate a slate of persons to sit as permanent hearing officers or hearing panel members. These persons may include, but will not be necessarily limited to, members of the Authority's Board of Commissioners, Authority 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 or an a hearing panel. Currently, the appointed Hearing Officers are: Madeline Cook, Mary Spoon, Mary Jo Grauso, Sandra Niemiec and Lynne Nutley.
- B. The designation of hearing officers or panel members for particular grievance hearings shall be governed by the following provisions:
1. All hearings will be held before a single hearing officer unless the Authority requests that the grievance be heard by a hearing panel.
  2. Appointments to serve as a hearing officer or panelist with respect to a particular grievance shall be made by the Authority in random order, subject to availability of the hearing officer or panelist to serve in each such case. The Authority may employ any reasonable system for random order choice.
  3. No member of the Authority's Board of Commissioners or staff may be appointed as hearing officer or panelist in connection with the grievance contesting an action which was either made or approved by proposed appointee, or which was made or approved by a person under whom the proposed appointee works or serves as a subordinate.



4. No person shall select an appointment, or retain an appointment, once selected as a hearing officer or hearing panelist, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers or panelists 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 or panelists on the grounds of partiality, at the commencement or before the hearing, such objection is deemed to be waived, and may not be made thereafter.

In the event that a hearing officer or panel member fails to disqualify himself or herself as required in this grievance procedure, the Authority will remove the panel member or officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such person should have, but did not, disqualify himself or herself, and schedule a new hearing with a new hearing panel or officer.

## VIII. Scheduling of Hearing

### 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 Authority claims is due under the complainant's lease, the complainant shall have paid to the Authority 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 or hearing panel. Unless waived by the Authority in writing, no waiver will be given by the Authority except in cases of extreme and undue hardship to the complainant, determined in the sole and absolute discretion of the Authority.

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 or hearing panel promptly for a time and place reasonably convenient to both the complainant and the Authority, not later than the tenth (10th) business day after complainant has completed such compliance. (In the case of a panel, if all three appointed members of the panel are not able to agree upon a date and time convenient to all panelists, on or before the last date before the hearing permitted under this procedure, they shall immediately so inform the Authority. If two panelists can agree upon a date and time, the Authority shall reappoint a third panelist who shall be available at the time agreed upon by the two who can agree. If none of the panelists can agree upon a time, a new panel shall be appointed.)
2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate Authority official, who, unless otherwise designated, shall be the executive director.

IX. Procedures Governing Hearings

A. *Fair Hearings*

The hearings shall be held before a hearing officer or hearing panel as described above in Section VIII. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any Authority 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 Authority does not make the document available for examination upon request by the complainant, the Authority may not 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. The right to present evidence and arguments in support of the complainant's complaint. to controvert evidence relied on by the

Authority and to confront and cross examine all witnesses upon whose testimony or information the Authority or its management relies; and

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

**B. *Prior Decision in Same Matter***

The hearing panel or officer may render a decision without proceeding with the hearing, if it/they determine that the subject of the grievance has been previously decided in another proceeding.

**C. *Failure to Appear***

If the complainant or Authority fails to appear at a scheduled hearing, the hearing officer or hearing panel 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 an event, the hearing officer or hearing panel shall notify the complainant and Authority of the determination.

**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 Authority must sustain the burden of justifying the Authority'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 or hearing panel, 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 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 or denial of the relief sought, as appropriate.

G. *Transcript of Hearing*

The complainant or the Authority may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Either party may purchase a copy of such transcript from the party which arranged to have the transcript made.

H. *Accommodation to Handicapped Persons*

The Authority must provide reasonable accommodation for persons with disabilities to participate in grievance hearings. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

X. **Decision of the Hearing Officer or Hearing Panel**

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

A. *Written Decision*

The hearing panel or officer shall prepare a written decision, together with the reasons for the decision within then (10) business days after the completion of the hearing.

1. A copy of the decision shall be sent to the complainant and the Authority. The Authority 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 redacted, shall also be maintained on file by the Authority and made available for inspection by any prospective complainant, his representative, or the hearing panel or hearing officer.

B. *Binding Effect*

The written decision of the hearing officer or hearing panel shall be binding upon the Authority, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Authority's Board of Commissioners determines, within ten (10) business days, and properly notifies the complainant of its determination, that:

1. The grievance does not concern Authority action or failure to act in accordance or involving the complainant's lease, or Authority's

regulations, which adversely affect the complainant's rights, duties, welfare, or status, or

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. *Continuing Right of complainant to Judicial Proceedings*

A decision by the hearing panel or officer or Board of Commissioners 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 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.

XI. **Notices**

- A. 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 received 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.
- B. If a Tenant is visually impaired, any notice hereunder delivered to such Tenant must be in an accessible format.

XII. **Modification**

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the Authority, 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 procedure must provide for a least thirty (30) days advance notice to tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the Authority before final adoption of any amendments hereto.

XIII. **Miscellaneous**

A. *Captions*

Captions or paragraph heading set forth in this grievance procedure are for 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 Authority'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. Therefore, if the hearing officer or hearing panel upholds the Authority's action to terminate the tenancy, the Authority 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 or panel to complainant.

XIV. **Incorporation in Leases**

This grievance procedure shall be incorporated by attachment to and by reference in all leases between Tenants and Authority at all public housing dwelling leases between Tenants and Authority, whether or not so specifically provided in such leases.