

Tenant Grievance Procedures

1. RIGHT TO A HEARING.

Upon filing a written request, as provided in these procedures, any Resident who is aggrieved by any Boston Housing Authority (BHA) action or failure to act in accordance with the lease or any statute, regulation, policy or procedure which affects the Resident's status, rights, duties, or welfare shall be entitled to a grievance hearing, except in certain eviction proceedings as set forth in the second paragraph below. Resident shall mean the adult person(s) (or emancipated minor) who resides in the Apartment and who executed the lease with BHA or, if no such person now resides in the Apartment, (a) the remaining head of Resident's Household residing in the apartment who has been listed on the Tenant Status Review form, or, (b) a caretaker relative who seeks to assume guardianship over the remaining minor member(s) of the Resident's household.

Reasonable Accommodation

Boston Housing Authority is required by federal and state law to make adjustments in the grievance process to accommodate the needs of individuals with handicaps. While the BHA is not required to make adjustments that will change the fundamental nature of the grievance process or that create an undue financial burden the BHA will make adjustments in the process when necessary to permit individuals with handicaps to participate in, or attend a Grievance Hearing. Requests for reasonable accommodation shall be made in writing, if possible, shall be directed to the BHA Grievance Hearing Coordinator and shall state specifically the nature of the accommodation requested. For individual seeking an accommodation that will permit them to attend or participate in a specific grievance panel hearing, the request for accommodation shall be made sufficiently in advance of the hearing to permit the Grievance Hearing Coordinator to make appropriate arrangements.

A resident shall not be entitled to a grievance hearing in cases of eviction if there is reason to believe that Resident, or a member of the resident's household, has:

1. Unlawfully caused serious harm to another BHA resident or employee, or any other person lawfully on the premises of the BHA;
2. Threatened to seriously physically harm another BHA resident or BHA employee or any person lawfully on the premises of BHA;
3. Destroyed, vandalized or stolen property of a Resident or BHA or any person lawfully on the premises of the BHA which thereby creates or maintains a serious threat to the health or safety of a BHA resident or BHA employee or any person lawfully on the premises of the BHA;

4. On or adjacent to BHA property, possessed, carried or illegally kept a weapon in violation of M.G.L. c. 269, § 10 or possessed or used an explosive or incendiary device or has violated any other provisions of M.G.L. c. 266, §§ 101-102B;
5. On or adjacent to BHA property, unlawfully possessed, sold or possessed with intent to distribute a controlled substance as defined in classes A, B, or C of M.G.L. c. 94C, § 31;
6. Engaged in other criminal conduct which seriously threatened or endangered the health or safety of a BHA resident, BHA employee or any other person lawfully on the premises of the BHA;
7. For any reason set forth in M.G.L. c. 139, § 19, or,
8. A guest of a Resident or of a household member engages in any such behavior listed in clauses one (1) through (7), inclusive, where the Resident knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

2. PROCEDURE FOR PRIVATE CONFERENCE IN NON-EVICTION CASES

- A. In non-eviction cases Resident's grievance shall be presented initially, either orally or in writing, to the management office at the development in which Resident resides so that the grievance may be discussed informally and settled without a hearing. In the case of Residents who reside in scattered site or condominium housing that does not have a local management office, such grievances shall be presented initially to the BHA office or management company office that manages such housing. Alternatively, any Resident may personally present or mail a written request for a grievance hearing to the BHA's Grievance Hearing Coordinator, 52 Chauncy Street, Boston, MA 02111. The Grievance Hearing Coordinator shall check with appropriate BHA personnel regarding hearing requests to determine if a private conference has been held regarding the grievance. If no private conference has been held, the Coordinator shall forward the request to the appropriate BHA personnel so that a private conference may be held.
- B. If the grievance is based on a written Notice of Proposed Adverse Action by BHA it must be presented by Resident or his/her representative within thirty (30) days of Resident's receipt of BHA's written Notice of Proposed Adverse Action unless Resident presents evidence of compelling circumstances which prevented Resident from presenting the grievance within such thirty (30) day period, in which case the period for presenting the grievance shall be extended a reasonable time considering all the circumstances. In cases where delay will be prejudicial to BHA, Resident shall present his/her grievance within ten (10) working days from Resident's receipt of BHA's written Notice of Proposed Adverse Action. If a grievance is based on grounds other than resident's receipt

of a BHA notice of proposed adverse action then resident must present his/her grievance within a reasonable time. Any written Notice of Proposed Adverse Action shall advise Resident of the time period for presenting a grievance.

- C. If the grievance is not resolved at the private conference, a summary shall be prepared within a reasonable time and one copy shall be given to Resident and one retained in Resident's file. The summary shall specify the names of the participants, dates of the meeting, the nature of the proposed disposition of the grievance and the specific reasons therefor, the procedures by which a hearing may be obtained if the Resident is not satisfied, and the time period for requesting a hearing. BHA will also provide with the summary a form by which Resident may request a grievance hearing. Agreements reached at the private conference shall be put in writing and signed by the parties. A copy shall be provided to Resident and a copy shall be kept in Resident's file.
- D. If dissatisfied with the proposed disposition of the grievance, Resident shall submit a written request for a hearing within ten (10) working days after Resident's receipt of the summary pursuant to paragraph 2C, unless resident presents evidence of compelling circumstances which prevented Resident from submitting the hearing request within such ten (10) day period, in which case the time period for requesting a hearing shall be extended to a reasonable time considering all the circumstances.

3. PROCEDURES FOR A PRIVATE CONFERENCE IN EVICTION CASES

- A. In eviction cases, the local housing manager or management staff will present Resident with a written statement which includes the following:
 - 1. Specific reasons for termination, the facts upon which they are based, and the source of these facts;
 - 2. A date, time and place for a private conference between Resident and the housing manager or management staff;
 - 3. A statement that Resident has the right to request a hearing under the grievance procedure and the method of making the request;
 - 4. The names, addresses, telephone numbers of the nearest Legal Services office and local tenant's organization representative; and
 - 5. Except in nonpayment of rent cases, a statement that anything Resident says in the private conference is not confidential, may be used in any subsequent proceeding, and the Resident may remain silent if he/she chooses.
- B. At the private conference, management and Resident shall discuss any aspect of the proposed termination, and Resident may make such explanation or reply as

he/she may wish. If the grievance is not resolved at the private conference, a summary shall be given to Resident and one retained in Resident's file. The summary shall specify the names of the participants, dates of the meeting, the nature of the proposed disposition of the grievance and the specific reasons therefor, the procedures by which Resident may request a hearing, and the time period for making such request, if management decides to proceed with termination. A summary shall be prepared and delivered to the Resident and a copy retained in the Resident's file even when the Resident fails to attend the private conference. BHA will also provide with the summary a form by which Resident may request a grievance hearing, except in cases where Resident does not have a right to a grievance hearing. Agreements reached at the private conference shall be put in writing and signed by the parties. One copy shall be provided to Resident and one copy shall be kept in Resident's file.

- C. Resident must file a hearing request within: (a) five (5) working days after service of the Notice of Termination/Notice to Quit, in the case of creation or maintenance of a threat to health or safety of another BHA resident, BHA employee, or any person lawfully on the premises of BHA; (b) fourteen (14) days after service of the Notice of Termination/Notice to Quit in the case of nonpayment of rent; and, (c) in all other cases, within thirty (30) days after service of the Notice of Termination/Notice to Quit.

4. SCHEDULING A GRIEVANCE HEARING

- A. To request a grievance hearing, Resident may file a written request for a grievance hearing with the appropriate local housing manager who shall promptly forward the hearing request to the Grievance Hearing Coordinator. Alternatively, Resident may personally present or mail a written request for a grievance hearing to the BHA's Grievance Hearing Coordinator.
- B. The Grievance Hearing Coordinator shall schedule a hearing as promptly as possible. All requests for hearings shall be heard as soon as reasonably practicable from the time the Resident files his complaint or request for hearing. The Resident shall have at least ten (10) days advance written notice of the date, time and place of the hearing. If Resident requires a change in the date of the hearing, Resident must contact the Grievance Hearing Coordinator at least forty-eight (48) hours (if possible) in advance of the scheduled hearing. Upon Resident's showing of good cause, the Grievance Hearing Coordinator shall arrange an alternate date and time for the hearing and notify all parties.

5. SELECTION OF THE HEARING OFFICER

The BHA shall appoint a hearing officer who shall serve for a term not to exceed seven years and shall serve all residents of BHA state-aided and federally assisted public housing and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by

the BHA, except for those residents or participants who are subject to a different grievance procedure.

1. From time to time the BHA shall publicly advertise for candidates to fill vacant hearing officer positions. Upon receiving resumes the BHA shall interview the most qualified candidates and select from among them the candidate(s) best suited to fill the position.
2. Impartiality of the Hearing Officer. A hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as hearing officer, whether or not he has been requested to do so.
3. Removal of the Hearing Officer. A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The BHA Administrator, with notice to LTO(s), may remove a hearing officer after notice and the opportunity for him or her to be heard.
4. Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the BHA or the grievant, the BHA with notice to the affected LTO(s) may appoint an interim Hearing Officer.

An interim hearing officer shall have all the powers and duties of a Hearing Officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be evaluated by the BHA to be hearing officer in the manner set out herein.

6. HEARING AND DECISION

- A. If Resident or the BHA fails to appear at a scheduled hearing, the Hearing Officer may decide to postpone the hearing or may determine that the party has waived his or her right to a hearing. The Hearing Officer may reschedule the hearing if it is determined that there is good cause for either party failing to appear.

- B. The hearing shall provide the basic safeguards of due process, including:
1. The opportunity to examine before the hearing and to copy all documents, records, and regulations of BHA that are relevant to the hearing. BHA may charge a reasonable fee if Resident requests copies of more than fifty pages of documents.
 2. The right to be represented by counsel or other person chosen as Resident's representative.
 3. The right to a private hearing unless Resident 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 BHA or development management, and to confront and cross-examine all witnesses on whose testimony or information BHA or development management relies; and
 5. A decision based solely and exclusively upon the facts presented at the hearing.
- C. At the hearing, in cases not involving evictions, Resident must explain the reason or reasons why he/she is requesting a hearing and why he/she is entitled to relief. Thereafter, the BHA must justify the BHA action or inaction against which the complaint is directed. In eviction cases, the BHA must show that it is justified in proceeding forward with an eviction action on the grounds stated. Resident will be given the opportunity to show that the eviction is not justified on the grounds stated or that he/she has other defenses to the eviction.
- D. The hearing shall be informal, and oral or documentary evidence pertinent to the facts and issues raised by the controversy may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. No evidence may be used by the panel against a Resident or in any way affect the decision of the panel unless the evidence has been introduced at the time of the hearing. If BHA or Resident denies the other party access to documents prior to the hearing, those documents may not be used against BHA or Resident.
- E. Grievance panel hearings shall be tape recorded. The BHA shall keep the tapes in a confidential manner and only the BHA, Hearing Officer and Resident or Resident's authorized representative shall have access to the tapes. Resident and 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.
- F. Within forty-five (45) days after the hearing, the Hearing Officer shall prepare a written decision, which shall include a statement of findings of fact and specific

reasons for the results. A copy of the decision shall be mailed or delivered to the parties or their representatives and a copy shall be kept in Resident's file.

7. APPEALS

- A. Except in grievance hearings for evictions, if the decision is in favor of BHA, Resident may appeal the decision to the BHA Administrator (or the Administrator's designee) in writing within fourteen (14) days of the mailing of the decision.
- B. If the decision is in favor of Resident, BHA shall take all actions necessary to carry out such decision unless BHA determines and notifies Resident in writing within fourteen (14) days of the mailing of the decision that all or any part of the decision is arbitrary, is in excess of the authority of the Hearing Officer or violates federal, state, or local law or regulations and BHA will seek to have the Administrator (or Administrator's designee) review the decision.
- C. In either case the Administrator (or Administrator's designee) shall schedule and hold a hearing as soon as reasonably practical after receipt of the request and in the case of an appeal by Resident, may reverse all or any part of the decision of the Hearing Officer and/or may modify any assessment of money damages against Resident and, in the case of an appeal by the BHA, reverse the decision if the Administrator (or Administrator's designee) finds that the Hearing Officer acted arbitrarily, exceeded its authority or violated state, federal or local law or regulations.
- D. The Administrator (or Administrator's Designee) shall notify Resident in writing of his or her decision and of the specific reasons for the decision within 45 days of the hearing.

8. FURTHER APPEAL IN STATE-FUNDED DEVELOPMENTS

If the Administrator (or Administrator's Designee) reverses a decision of the Hearing Officer which was favorable to Resident, a Resident in a state-funded housing program may file an appeal with the Executive Office of Communities and Development within fifteen (15) working days of receipt of the Administrator's (or Administrator's Designee's) decision. Resident's appeal must be in writing, must set forth the reasons why the decision of the Hearing Officer should be affirmed or why the Administrator (or Administrator's Designee) acted arbitrarily, exceeded his or her authority, or violated state law or DHCD regulations. A copy of Resident's appeal must be served on the BHA, concurrently.

9. AMENDMENT AND CHANGES

No changes or additions to this Grievance Procedure shall be made except by written agreement of the BHA and the LTOs or Residents or where Resident is given written notice thirty (30) days in advance of the effective date, that such changes or additions are required to comply with Federal or State statutes, HUD and/or DHCD regulations or waivers granted by HUD or DHCD pursuant to such regulations.

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