

BEVERLY HOUSING AUTHORITY

UNIFORM GRIEVANCE POLICY & PROCEDURE

1. PURPOSE

This Grievance Policy & Procedure is intended to assure that Beverly Housing Authority residents are afforded an opportunity for a fair and complete Hearing if the head of household disputes any BHA action or failure to act involving the resident's lease with the BHA or other BHA rules or regulations which adversely affect the individual resident's rights, duties, welfare, or status.

It is developed to conform to the requirements of 24 CFR 966 Subpart B, which covers federal public housing, and 760 CMR 6.08, which covers state-aided public housing. Given the substantial overlap in intent and language between the regulations of the federal and state-aided programs on their approach, definitions and standards, a Uniform Grievance Policy & Procedure has been determined by the BHA to be an appropriate and suitable means to assure the greatest degree of equal and uniform treatment for all public housing program participants. In those instances where the requirements of the two programs differ in an explicit sense, the applicable regulatory definitions or requirements for the specific program will apply.

The Grievance Procedure is not intended as a forum for initiating or negotiating policy changes with the Authority's Management or Board of Commissioners. Issues of a policy nature may be addressed directly to the Management of the Authority whose decisions may be raised to the BHA Board of Commissioners. The Board of Commissioners meets on a frequent basis and the meeting is open to the public.

2. DEFINITIONS

A. BHA -- Beverly Housing Authority

B. Head of Household/Resident -- adult person (or persons) (other than a Personal Care Attendant or live-in aide):

1. Who resides in the unit, and who executed the lease with the BHA as lessee of the dwelling unit, or if no such person continues to reside in the unit,
2. Who resides in the unit, and who is now the remaining head of household with the legal status to execute a lease.

C. Grievance -- Except as noted below, any dispute which:

1. a resident may have with respect to an BHA action or failure to act in accordance with the individual resident's lease or BHA regulations which adversely affect the individual resident's right, duties, welfare or status, and
2. a resident declares in writing to be a grievance.

3. Exclusions:

- a. Non-payment of rent
- b. Disputes between tenants.
- c. Class grievances.
- d. Any grievance concerning a termination of tenancy or eviction that involved:

- (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the BHA,
- (2) Any drug-related criminal activity on or off such premises; or
- (3) Any criminal activity that resulted in felony conviction of a household member.

D. Grievant -- Any resident whose grievance is presented in writing to the BHA office in accordance with 3 and 4a below, and whose dispute is grievable under this procedure (see 2c).

3. INFORMAL SETTLEMENT OF GRIEVANCE

Any grievance shall be personally presented within the time specified by the BHA's written notice of the adverse action, or, if no such time is specified in a written notice of an adverse action, within thirty (30) days of the BHA's action or failure to act giving rise to the dispute. The grievance must be presented in writing and be fully legible. The presentation of the grievance shall be made directly to the BHA at its main office.

For state-aided public housing, a Grievance Hearing must be submitted within seven (7) days in the case of an eviction notice that is based on a "for cause" reason. Evictions for non-payment of rent are not covered by the rights provided under 760 CMR 6.08. All other matters that can be grieved under state regulations must be raised within 14 days of the head of household becoming aware or should have become aware of the matter.

Federal regulations do not specify a specific time limit on notification of a grievance. Therefore the BHA is adopting the same time frames specified for the state-aided housing programs for its federal public housing program.

An attempt will be made to settle the matter informally, by discussion and without a formal Hearing. The BHA will notify the resident of a time and place for this informal review of the basis of the grievance. The resident may bring legal counsel to an informal review.

If the resident avails themselves of the informal process, a summary of the discussion shall be prepared within ten (10) work days. One copy shall be given to the Grievant and one retained in BHA's resident file. The summary shall specify:

1. The names of the participants;
2. Date(s) of meeting;
3. The nature of the proposed disposition of the grievance and the specific reason therefore; and
4. The procedures by which a Hearing under paragraph 4 below may be obtained if the resident is not satisfied.

Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

4. BYPASS OF THE GRIEVANCE PROCESS

In some cases, the BHA may determine that bypassing the Grievance Process is allowed by statute and regulation and is otherwise appropriate under the specific circumstances.

HUD regulations permit a housing agency to by-pass the grievance process for lease terminations actions that entail any of the following activities by the head of household, a household member, or a guest of the household while on BHA property:

- (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the BHA;
- (B) Any violent or drug-related criminal activity on or off such premises; or
- (C) Any criminal activity that resulted in felony conviction of a household member.

DHCD Programs permit a housing agency to void a lease and proceed to evict a household and bypass any Grievance Process requirements when the following circumstances are determined to exist by the housing agency:

- (A) has unlawfully caused serious physical harm to another tenant or an employee of BHA or any other person lawfully on BHA's property.
- (B) has unlawfully threatened to seriously physically harm another tenant or an employee of BHA or any person lawfully on BHA's property.
- (C) has unlawfully destroyed, vandalized or stolen property of a tenant or of LHA or of any person lawfully on LHA's property, if such conduct creates or maintains a serious threat to the health or safety of a tenant, an LHA employee, or any other person lawfully on LHA's property.
- (D) has unlawfully possessed, carried, or kept a weapon on or adjacent to LHA's property in violation of M.G.L. c. 269, §10.
- (E) has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or otherwise violated M.G.L. c. 266, §§ 101, 102, 102A or 102B.

(F) has unlawfully possessed, sold, or possessed with intent to distribute a class A, B or C controlled substance, as defined in M.G.L. c. 94C, §31, on or adjacent to LHA's property.

(G) has engaged in other criminal conduct which seriously threatened or endangered the health or safety of any member of a tenant household, employee of LHA, or any person lawfully on LHA's property.

(H) has engaged in behavior which would be cause for voiding the state-aided housing program lease pursuant to the provisions of M.G.L. c. 139, §19.

For all these situations, the housing agency's legal authority to bypass grievance procedure for state-aided public housing applies to lease violations of the kind described above that result from action of the head of household, members of the household, or their guests while on or adjacent to the development.

The BHA shall give to the Head of Household a written notice, which shall state the reason for proceeding to evict without recourse to a Grievance Hearing.

5. OBTAINING A HEARING

A. Request for Hearing

Although a matter may be resolved prior to an actual formal Grievance Hearing through the informal process that is available to resident households in most circumstances (see Section 4 for circumstances in which an informal Hearing is not available), the Household must request a formal Grievance within the time frames specific below.

The Grievant shall submit a written request for a Hearing to the BHA main office within seven (7) calendar days in relation to any Notice to Quit that does not involve non-payment or rent and fourteen (14) calendar days for all other matters.

The written request shall specify:

1. The reason for the grievance, and
2. The action or relief sought.

The grievance must be stated in terms specifying how the BHA's action or failure to act adversely affects the resident's rights, duties, welfare, or status in violation of the resident's lease or other BHA rules or regulations.

B. Hearing Officer

The Grievant will have a Hearing before a Hearing Officer. The Hearing Officer will be selected by the BHA from a pool of pre-qualified individuals. The Hearing Officer will in all cases be a neutral community member.

C. Scheduling of Hearings

BHA shall schedule a Grievance Hearing within thirty (30) days from receipt of the request for a Hearing except in the case for the federal housing program when an expedited Grievance Hearing is permitted under regulation. If the adverse action involves a termination of program participation the Hearing shall be scheduled for the federal program at least fifteen (15) days prior to the date of termination as set out in the notice of termination and for the state-aided program, within fourteen (14) days of the hearing request. At least seven (7) days notice of the scheduled date of the Hearing shall be given to Tenant.

The resident has the option of an open Hearing. If a closed Hearing is selected, the resident is limited to bringing no more than two (2) individuals who are not material to the presentation of information to the Hearing Officer or are serving as their legal advisor.

Hearings may be rescheduled by mutual agreement.

D. Escrow Deposit

Households may not grieve non-payment of rent. However households may grieve a determination of their rent if they feel that the BHA has made mistakes in its use of deductions, exclusions, or calculation of rent.

Before a Hearing is scheduled involving a dispute in the amount of rent which the BHA claims is due, the resident must establish an escrow account for the amount in dispute and provide proof of the existence of the account. All payments due prior the month in which the alleged act or failure to act took place must be paid in full. The Grievant shall, thereafter, deposit the monthly rent due in the escrow account each month until the grievance is resolved by a decision of the Hearing Officer.

BHA shall require proof that such deposits are being made. Unless this requirement is waived by the BHA, the failure to make such payments shall result in a termination of the Grievant's right to grieve under this procedure.

6. PROCEDURES GOVERNING THE FORMAL HEARING

A. Due Process -- The Grievant 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 Grievant, to copy all documents, records and regulations of the BHA that are relevant to the adverse action. Any document not so made available after request therefore by the Grievant may not be relied on by the BHA at the Hearing;
2. The right to be represented by counsel or other person chosen as his/her representative;
3. The right to a closed or open Hearing according to the Grievant's preference;

4. The right to present evidence and arguments in support of his/her grievance, to controvert evidence relied on by the BHA, and to confront and cross-examine all witnesses on whose testimony or information the BHA relies; and
5. A decision based solely and exclusively upon the facts presented at the Hearing.

B. Prior Determination on the same Issue is Binding -- The Hearing Officer may render a decision without proceeding with a Hearing if they determine that the issue has been previously decided in another proceeding.

At a Grievance Hearing involving a Notice to Quit any additional reason for termination of the lease, which arose subsequent to the date of the notice of termination of lease, shall be considered so long as BHA gives the resident written notice of the additional reason, not less than three (3) days before the Hearing or, if a reason for eviction shall have arisen within such three (3) day period, a subsequent session of the Hearing may be scheduled on not less than three (3) days notice to consider such additional reason.

C. Failure to Appear -- If the Grievant or the BHA 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) work days or may make a determination that the party has waived his/her right to a Hearing. Both the Grievant and the BHA shall be notified of the determination by the Hearing officer.

D. Access to Records -- The Grievant 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 person not a party to the grievance may obtain as a Freedom of Information request a copy of such transcript with all names and identifying referenced deleted if the Hearing was not closed at the grievant's request. As a matter of practice, the BHA tape records all Hearings and a copy can be made available to the resident upon request and payment of duplication costs.

E. Tape Recording of Hearings -- All Grievance Hearing for state-aided housing program are required by regulation to taped-recorded [CMR 6.08(4)(f)]

7. SCOPE OF JURISDICTION OF THE HEARING OFFICER

A. The Grievant must first make a showing of entitlement to the relief sought and thereafter the BHA must sustain the burden of justifying the BHA action or failure to act against which the grievance is directed.

B. The relief sought by the Grievant must be relevant to the aggrieved act or failure to act and must not be inconsistent with:

1. Local, State, or Federal law;
2. Resident's lease;
3. BHA rules or regulations;

4. The BHA's Annual Contributions Contract with either HUD or DHCD, depending on the program effected; or

5. HUD or DHCD regulations applicable to BHA.

C. 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. The Grievant, counsel, and other participants or spectators are required to conduct themselves in an orderly fashion. Closed Hearings are limited to two spectators of the residents choosing. Failure to comply with the directions to remain orderly may result in exclusion from the proceedings.

D. The Hearing Officer will conduct a Hearing in order to determine whether the BHA's action or failure to act is consistent with the resident's lease with the BHA or with other applicable BHA rules or regulations, and whether the BHA is justified in proceeding with its action.

8. DECISION OF THE HEARING OFFICER

A. The Hearing Officer will prepare a written decision together with the reasons therefore, within fourteen (14) calendar days after the Hearing. A copy of the decision shall be sent to the Grievant and the BHA. The BHA shall retain a copy of the decision in the resident's file. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the BHA and made available for inspection by a prospective Grievant or his/her representative.

B. The decision of the Hearing Officer in favor of the Grievant must specify which provision of the resident's lease or other regulation has been violated. The remedy granted by the Hearing Officer or Hearing Panel may not violate:

1. Local, State or Federal law;

2. Resident's lease;

3. BHA rules or regulations;

4. The BHA's Annual Contributions Contract with either HUD or DHCD, depending on the program effected; or

5. HUD or DHCD regulations applicable to BHA.

9. REVIEW BY THE COMMISSIONERS

A. Review by the BHA's Board -- In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the BHA's Board.

In other cases, in the event that the grievant or the BHA believes that (i) the decision of the Hearing Officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the BHA may request review of the decision by the BHA's Board.

The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the BHA and grievant to make oral presentations and submit documentation. The Board may also permit the Hearing Officer to make a presentation. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

10. REVIEW BY DHCD OF COMMISSIONER DECISION (APPLICABLE TO STATE-AIDED PROGRAM ONLY)

In the event that the BHA's Board shall make a material change in a decision of the Hearing Officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

11. EFFECT OF A HEARING OFFICER DECISION ON A GRIEVANCE

A decision by a Hearing Officer or the Board of Commissioner upon review of a grievance shall be binding between the BHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the BHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.