

**NEWBURYPORT HOUSING AUTHORITY
FEDERAL HOUSING GRIEVANCE PROCEDURE**

Revised 5/22/2008
Revised 06/21/2010

I. APPLICABILITY OF THIS GRIEVANCE PROCEDURE (966.51)

In accordance with the applicable Federal regulations (**24 CFR § 966.50**) this grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between Tenant and the Authority with the following two exceptions:

A. The Newburyport Housing Authority grievance procedure shall be applicable to all individual grievances as defined in Section III between the tenant and Newburyport Housing Authority, provided that in those jurisdictions which require that, prior to eviction, a tenant be given a hearing in court containing the elements of due process, as defined in Section III.D., Newburyport Housing Authority may exclude from its procedure any grievance concerning an eviction or termination of tenancy based on a tenant's creation or maintenance of a threat to the health or safety of other tenants or Newburyport Housing Authority employees.

Because HUD has issued a due process determination that the law of the State that requires that a Tenant be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the Authority, or

(2) Any violent or drug-related criminal activity on or off such premises; or

(3) Any criminal activity that resulted in felony conviction of a household member.

[966.51 (2)(i) (A) (B) and (C)]

B. Newburyport Housing Authority grievance procedure shall not be applicable to disputes between tenants not involving the Authority or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the Newburyport Housing Authority's Board of Commissioners. **[966.51 (b)]**

II. REQUIREMENTS

Within ninety days of the effective date of these regulations the Newburyport Housing Authority shall adopt a regulation affording each tenant an opportunity for a hearing on a grievance as defined in Section III in accordance with the requirements, standards, and criteria contained in these regulations with such modifications as are required by State law. The regulations shall be made part of all tenant dwelling leases.

III. DEFINITIONS APPLICABLE TO THE GRIEVANCE PROCEDURE: (§ 966.53)

A. Grievance shall mean any dispute which a Tenant may have with respect to Newburyport Housing Authority action or failure to act in accordance with the individual Tenant's lease or Newburyport Housing Authority regulations which adversely affect the individual Tenant's rights, duties, welfare or status.

B. Complainant: shall mean any tenant (as defined below) whose grievance is presented to the Authority (at the central office or the development office) in accordance with the requirements presented in this procedure.

C. Elements of due process shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

(1) Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;

(2) Opportunity for the tenant to examine all relevant documents, records, and regulations of the Authority prior to the trial for the purpose of preparing a defense;

(3) Right of the Tenant to be represented by counsel;

(4) 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;

(5) A decision on the merits of the case.

D. Hearing Officer: shall mean a person selected in accordance with **24 CFR § 966.550** and this procedure to hear grievances and render a decision with respect thereto.

E. Hearing Panel: shall mean a three member panel selected in accordance with **24 CFR § 966.55** and this procedure to hear grievances and render a decision with respect thereto.

F. Tenant: shall mean any lessee or remaining head of household of any tenant family residing in housing accommodations covered by these regulations.

G. Resident Organization: An organization of residents, which also may include a resident management corporation.

IV. INFORMAL SETTLEMENT OF A GRIEVANCE [966.54]

Any grievance must be personally presented, either orally or in writing, to the Authority's central office or the management office of the development in which the complainant resides within ten days after the grievable event. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in Newburyport Housing Authority's tenant file. The summary shall specify the names of the participants, dates of meetings, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing under Section V may be obtained if the complainant is not satisfied.

Grievances related to complaints about operational matters that are received by the Authority's central office will be referred to the person responsible for the management of the development in which the complainant resides. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Civil Rights Administrator or Director of Operations. As soon as the grievance is received, it will be reviewed by the management office of the development or the Civil rights Administrator (if applicable) to be certain that neither of the exclusions in paragraphs I.A or I.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the Authority's grievance procedure, with the reason therefore.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time to meet so the grievance may be discussed informally and settled without a hearing. At the informal hearing the complainant will present the grievance and the person in charge of the management office or the Civil Rights Administrator will attempt to settle the grievance to the satisfaction of both parties.

*Within a reasonable timeframe following the informal discussion, the Authority shall prepare and either hand deliver or mail to Tenant a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary shall also be placed in Tenant's file. A receipt signed by the complainant or a return receipt for delivery of certified mail, whether or not signed, will be sufficient proof of time of delivery for the summary of the informal discussion. **[966.55 (a)]***

V. PROCEDURE TO OBTAIN A HEARING

A. Request a hearing: If the complainant is dissatisfied with the settlement arrived at in the informal hearing, the complainant must submit a written request for a hearing to the management office of the development where Tenant resides no later than ten (10) days after the summary of the informal hearing is received. The written request shall specify:

1. The reasons for the grievance;
2. The action of relief sought from the Authority;

If the complainant requests a hearing in a timely manner, the Authority shall schedule a hearing on the grievance at the earliest time possible for the complainant, Authority and the hearing officer or hearing panel, but in no case later than ten working days after the Authority received the complainant's request.

If the complainant fails to request a hearing within ten (10) working days after receiving the summary of the informal hearing, the Authority's decision rendered at the informal hearing becomes final and the Authority is not obligated to offer the complainant a formal hearing unless the complainant can show good cause why he failed to proceed in accordance with this procedure. **[966.55 (c) and (d)]** Failure to request a grievance hearing does not affect the complainant's right to contest the Authority's decision in a court hearing. **[966-54 (c)]**

B. Selecting the Hearing Officer or Hearing Panel [966.55 (b)(2)(ii)] Grievances shall be presented before a hearing officer or hearing panel. A hearing officer or hearing panel shall be selected as follows:

1. A hearing officer shall be an impartial, disinterested person or persons selected by the Authority and complainant. If the Authority and complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the member so appointed shall select a third member. If the members appointed by the Authority and the complainant cannot agree on a third member, such member will be appointed by an independent arbitration organization such as the Center for Disputes Settlement of the American Arbitration Association, or by any other third party agreed upon by the Authority and the complainant.

2. In lieu of the procedure set forth in Paragraph A of this section, the Authority may provide for the appointment of a hearing officer or hearing panels by any method which is approved by the majority of tenants (in any building, group of buildings, or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose. The Board of Commissioners approved the selection of a single hearing officer for grievance hearings on 5/22/2008. The Horton Terrace Tenant Council approved the Executive Director for the Salisbury Housing Authority to act as the impartial hearing officer for NHA grievances at a meeting on 01/05/2010.

C. Failure to Request a Hearing. If the complainant does not request a hearing in accordance with this paragraph, then the Authority's disposition of the grievance under Section IV shall become final. Provided that failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the Authority's action in disposing of the complainant in an appropriate judicial proceeding.

D. Hearing Prerequisite. All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Section IV as a condition precedent to a hearing under this section, Provided that if the complainant shall show good cause why he failed to proceed in accordance with Section IV to the hearing officer or hearing panel.

E. Escrow deposit [966.55 (e)]

Before a hearing is scheduled in any grievance involving the amount of rent which the Authority claims is due, the complainant shall pay to the Authority an amount equal to 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 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. These requirements may be waived by the Authority in extenuating circumstances. Unless so waived, the failure to make such payments shall result in the termination of the grievance procedure, provided that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of his grievance in any appropriate judicial proceeding.

F. Scheduling hearings **[966.55 (f)]**

Upon complainant's compliance with paragraphs A, D, and E of this section, 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. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate Authority official.

VI. PROCEDURES GOVERNING THE HEARING **[966.56]**

- A. The hearing shall be held before a hearing panel or hearing officer as described above in Section VII.
- B. The complainant 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 complainant, to copy all documents, records, and regulations of the Authority that are directly relevant to the hearing. Any documents not so made available after request therefore by the complainant may not be relied on by the Authority at the hearing;
 2. The right to be represented by counsel or other person chosen as the Tenant's representative;
 3. The right to a private hearing unless the complainant requests a public hearing;
 4. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the Authority or project management, and to confront and cross-examine all witnesses on whose testimony or information the Authority or project management relies; and
 5. A decision based solely and exclusively upon the fact presented at the hearing. **[966-56(b)]**
- C. The hearing panel or officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding. **[966-56 (c)]**

If a hearing panel member or officer fails to disqualify himself/herself as required in Section V.A., the Authority will remove the panel member or officer from the hearing committee, invalidate the results of the hearing and schedule a new hearing with a new hearing panel or officer.

- D. Failure to appear at the hearing: If the complainant or the Authority fails to appear at the scheduled hearing, the hearing panel or officer may make a determination to postpone the hearing for not to exceed five business days, or may make a determination that the party has waived his right to a hearing. **[966.56 (d)]** Both the complainant and the Authority shall be notified of the determination by the hearing panel or officer; provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding. **[966.56 (d)]**
- E. 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 action or failure to act against which the complaint is directed.
- F. The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the fact and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. 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. The complainant of the Authority 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.
- H. *The Authority must 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. If the Tenant is visually impaired, any notice to the Tenant which is required under this procedure must be in an accessible format. **[966.56 (h)]***

VII. DECISION OF THE HEARING PANEL OR OFFICER **[966.57]**

A. The hearing panel or officer shall prepare a written decision, together with the reasons for the decision within a reasonable time after the hearing. 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 Tenant's folder. A copy of the decision with all names and identifying references deleted shall also be maintained on file by the Authority and made available for inspection by a prospective complainant, his representative, or the hearing panel or officer.

B. The decision of the hearing panel or officer shall be binding on 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 working days, and promptly notifies the complainant of its determination that:

1. The grievance does not concern Authority action or failure to act in accordance with or involving the complainant's lease or Authority regulations, which adversely affect the complainant's rights, duties, welfare or status.

2. The decision of the hearing panel or officer is contrary to applicable Federal, State or local law, HUD regulations, or requirements of the annual contributions contract between HUD and the Authority.

C. A decision by the hearing officer or hearing panel 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 affect in any way, the rights of the complainant to a trial de novo or judicial review in any court proceedings which may be brought in the matter later. [966.57]

VIII. NEWBURPORT HOUSING AUTHORITY EVICTION ACTIONS

If a tenant has requested a hearing in accordance with Section V on a complaint involving a Newburyport Housing Authority notice of termination of the tenancy, the Newburyport Housing Authority shall not commence an eviction action in a State or local court until it has served a notice to vacate on the tenant, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, which ever is later, appropriate action will be brought against him and he may be required to pay court costs and attorney fees.