

TUPELO HOUSING AUTHORITY GRIEVANCE PROCEDURE

1. Definitions applicable to the grievance procedures: [§966.53]

- A. Grievance:** Any dispute a Resident may have with respect to THA action or failure to act in accordance with the individual Resident's lease or THA regulations that adversely affects the individual Resident's rights, duties, welfare, or status.
- B. Complainant:** Any Resident (as defined below) whose grievance is presented to the THA in accordance with the requirements presented in this procedure.
- C. Elements of due process:** An eviction action or termination of tenancy in a State or local court in which the following procedural safeguards are required:
- (1) Adequate notice to the Resident of the grounds for terminating the tenancy and for eviction;
 - (2) Right of the Resident to be represented by counsel;
 - (3) Opportunity for the Resident to refute the evidence presented by the THA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Resident may have;
 - (4) A decision on the merits of the case.
- D. Hearing Officer:** An impartial person selected in accordance with 24 CFR §966.550 and this procedure to hear grievances and render a decision with respect thereto.
- E. Resident:** The adult person (or persons other than a Live-in Aide):
- (1) who resides in the unit, and who executed the lease with the THA as lessee of the dwelling unit, or, if no such person now resides in the unit;
 - (2) who resides in the unit, and who is the remaining head of the household of the Resident family residing in the dwelling unit.
- F. Resident Organization:** An organization of residents, which also may include a resident management corporation.

2. 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 1. Above) between the Resident and the THA.

The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit. If HUD has issued a due process determination, an Authority may exclude from the Administrative

Grievance Procedures any grievance concerning a termination of tenancy or eviction that involves any of the following:

A. Because HUD has issued a due process determination that the law of the State that requires that a Resident be given the opportunity for a hearing in court which provides the basic elements of due process (as defined above) 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 THA, 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)&(C)].

B. The THA grievance procedure shall not be applicable to disputes between Residents not involving the THA 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 residents and the THA's Board of Commissioners. [966.51(b)]

This grievance procedure is incorporated by reference in all Resident dwelling leases and will be furnished to each Resident and all resident organizations. [966.52(b) and (d)]

Any changes proposed in this grievance procedure must provide for at least thirty (30) days notice to Residents and Resident Organizations, setting forth explaining the proposed changes and providing an opportunity to present written comments. Comment submitted shall be considered by the THA before any revisions are made to the grievance procedure. [966.52(c)]

3. Informal settlement of a grievance [966.54]

Any grievance must be presented, in writing (**including email**) to the THA within ten (10) days after the grievable event.

Grievances related to complaints about operational matters that are received by the THA will be referred to the THA Executive Director. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Executive Director.

Grievances received by the PHA central office will be referred to the person responsible for the management of the development in which the complainant resides. When the grievance is received, it will be reviewed by the management office of the development to be certain that neither of the exclusions in paragraphs 2A. or 2B. 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 PHA grievance procedure, with the reasons therefore.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time within ten (10) working days 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 will attempt to settle the grievance to the satisfaction of all parties.

Within ten (10) working days following the informal discussion, the THA shall prepare and either hand deliver or mail to the Resident a summary of the discussion. The summary that must specify the names of the participants, the dates of the 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 [24 CFR 966.54]. A copy of this summary shall also be placed in the Resident's file.

4. Requesting a formal grievance hearing

If the complainant is dissatisfied with the settlement reached in the informal hearing, the complainant must submit a written request for a hearing to the management office of the development where the resident resides no later than five (5) working days after the summary of the informal hearing is received.

The written request shall specify:

- (1) The reason(s) for the grievance;
- (2) The action or relief sought from the THA
- (3) Several dates and times in the following ten working days when the complainant can attend a grievance hearing.

If the complainant requests a hearing in a timely manner, the THA shall schedule a hearing on the grievance at the earliest time possible for the complainant, THA, and the hearing officer, but in no case later than ten (10) working days after the THA received the complainant's request.

If the complainant fails to request a hearing within five (5) working days after receiving the summary of the informal hearing, the THA's decision rendered at the informal hearing becomes final and the THA 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 THA's decision in a court hearing. [966.54(c)].

5. Selecting the Hearing Officer [966.55(b)(2)(ii)]

An impartial person appointed by the THA, as described below shall conduct a grievance hearing:

- A.** The THA shall nominate an impartial person to sit as the hearing officer.

The PHA will check with the hearing officer to determine whether the hearing officer feels fully capable of impartiality, whether the hearing officer can serve without compensation, and THA limitations on the hearing officer's time would affect such service.

The hearing officer will be informed that they will be expected to disqualify themselves from hearing grievances that involve personal friends, other residents of developments in which they work or reside, or grievances in which they have some personal interest. Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical, will be withdrawn.

6. Scheduling hearings [966.55(f)]

When a complainant submits a timely request for a grievance hearing, the THA will immediately contact the hearing officer to schedule the hearing within the following ten (10) working days on one of the dates and times indicated by the complainant. If the hearing officer can agree on a date and time for the hearing, the complainant will be so notified.

Once the hearing officer has agreed upon the hearing date and time, the complainant, the THA Executive Director, and the hearing officer shall be notified in writing. Notice to the complainant shall be in writing, either personally delivered to complainant or sent by mail, with return receipt requested.

The written notice will specify the time, place, and procedures governing the hearing.

1. Procedures governing the hearing [966.56]

The hearing shall be held before a hearing officer as described in Section 6 above. The complainant shall be afforded a fair hearing, which shall include:

- A.** The opportunity to examine before the hearing any THA documents, including records and regulations that are directly relevant to the hearing.

The Resident shall be allowed to copy any such document at the resident's expense at \$.25 per page. If the THA does not make the document(s) available for examination upon request by the complainant, the THA may not rely on such document at the grievance hearing. There will be no charge for documents emailed by the PHA.

- B.** The right to be represented by counsel or other person chosen as the Resident's representative and to have such person make statements on the Resident's behalf.
- C.** The right to a private hearing unless the complainant requests a public hearing.
- D.** The right to present evidence and arguments in support of the Resident's complaint to controvert evidence relied on by the THA, and to confront and cross

examine all witnesses upon whose testimony or information the PHA or project management relies; and

- E. A decision based solely and exclusively upon the fact presented at the hearing. [24 CFR 966.56(b)]

The hearing 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)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and, thereafter, the THA must sustain the burden of justifying the THA action or failure to act against which the complaint is directed. [966.56(e)]

The hearing officer shall conduct the hearing informally. 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. [966.56(f)]

The hearing officer shall require the PHA, 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 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. [966.56(f)]

The complainant or the PHA may arrange in advance, at expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript. [966.56(g)]

Accommodation of persons with disabilities [966.56(h)]The THA 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 resident is visually impaired, any notice to the Resident, which is required under this procedure, must be in an accessible format. [966.56(h)]

The PHA must comply with HUD's requirements regarding limited English proficiency as specified in "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons," issued January 22, 2007, and available at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/omotingfh/lep-faq.

2. Remote Hearings

The PHA has the authority to require that hearings be conducted remotely in certain situations.

If the PHA will require the hearing to be conducted remotely, the PHA will send a separate document describing the process and procedures.

3. Failure to appear at the hearing

If the complainant or the THA fails to appear at the scheduled hearing, the hearing officer may make a determination to postpone the hearing **for not to exceed five (5) business days**, or may make a determination that the party has waived the right to a hearing. [966.56(d)]

Both the complainant and the THA shall be notified of the determination by the hearing officer; provided, that a determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the THA's disposition of the grievance in court. [966.56(d)]

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

4. Decision of the hearing officer [966.57]

The hearing officer shall prepare a written decision, together with the reasons for the decision within ten (10) working days after the hearing. A copy of the decision shall be sent to the complainant and the PHA.

The PHA shall retain a copy of the decision in the Resident's file. A copy of the decision with all names and identifying references deleted shall also be maintained in the resident's file by the THA and made available for inspection by a prospective complainant and his/her representative, or the hearing officer.

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

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

- B.** The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the annual contributions contract (ACC) between HUD and the PHA.

A decision by the hearing officer or Board of Commissioners in favor of the PHA 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 or judicial review in any court proceedings which may be brought in the matter at a later date.

I have had the THA's grievance procedures explained to me and all pertinent family members of my household, and have received a copy of the THA's grievance procedures.

Resident Head of Household

Date: _____

THA Representative

Date: _____