

GRIEVANCE PROCEDURE

EXHIBIT

I. PURPOSE AND SCOPE

This Grievance Procedure has been established to provide guidelines for Harrisonburg Redevelopment and Housing Authority (“Authority”) residents in the just and effective settlement of grievances. As much as possible should be left to the mutual efforts of management and tenants, with both parties attempting to settle each grievance as quickly and justly as possible. This grievance procedure is incorporated into by reference all dwelling leases and will be furnished to all tenants and resident organizations. At least thirty (30) days’ notice will be provided to tenants and resident organizations of any proposed changes to the grievance procedure, which will set forth the proposed changes and provide for an opportunity to present written comments, which will be considered by the Authority before any revisions are made to the grievance procedure.

II. APPLICABILITY

A. Except as otherwise provided for in Section V.C., this Grievance Procedure shall be applicable to all individual grievances as defined in Section III.A. below, between the tenant and the Authority. In those jurisdictions which require that, prior to eviction, a tenant be given a hearing in Court containing the elements of due process, the Authority may exclude from its procedure any grievance concerning:

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

B. The Authority reserves the right to amend any provision of this Grievance Procedure at any time with or without notice, as applicable, unless otherwise provided by federal, state or local law.

III. DEFINITIONS

For the purpose of this Grievance Procedure, the following definitions are applicable:

- a. Grievance -- “Grievance” shall mean any dispute which a tenant may have with respect to the Authority’s action or failure to act in accordance with the individual tenant’s lease or the regulations of the Authority, which adversely affect the individual tenant’s rights, duties, welfare or status, except as provided for in Section V.C. below.
- b. Complainant-- “Complainant” shall mean any tenant whose grievance is presented to the Authority’s Management Office, in accordance with Section V below.
- c. Tenant-- “Tenant” shall mean any adult person (other than live-in aide) who resides in the unit and who executed the Lease with the Authority as lessee of the unit, or if no such person now resides in the unit, residents of the unit who is the remaining head of the household of the Tenant family residing in the unit.
- d. Documents --“Documents” shall include records and regulations.
- e. Good Cause – “Good Cause” shall mean an unavoidable conflict that seriously affects the health, safety, or welfare of the Tenant.

IV. INFORMAL SETTLEMENT OF GRIEVANCE

Any grievance must be personally presented, either orally or in writing, to the Authority’s Management Office of the housing project in which the Tenant resides, **within ten (10) days after the occurrence giving rise to the grievance**, so that the grievance may be discussed informally and an attempt can be made to settle the grievance without a formal hearing. As soon as the grievance is received, it will be reviewed by the Authority to ascertain that the event qualifies as a grievable issue. If the matter is not grievable, the Tenant will be notified in writing that the matter raised is not subject to the Authority’s grievance procedure, with the reasons therefor stated. If the matter falls under the grievance procedure, the Tenant 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. Within a reasonable time, **not in excess of ten (10) working days after presentation** of the

grievance, a summary of the informal discussion shall be prepared by the Authority, and a copy thereof shall be provided to the Tenant and one retained in the Tenant's file. The summary shall be in writing and shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the grievance, and the specific reasons therefor, and shall specify the procedures by which the Tenant may obtain a hearing if he/she is not satisfied by the proposed disposition of the grievance.

V. PROCEDURE TO OBTAIN A FORMAL HEARING

A. Obtaining a Hearing: If the Tenant is dissatisfied with the settlement arrived at in the informal hearing, the Tenant must submit a written request for a formal hearing to the Authority no later than **ten (10) days** after the summary of the informal settlement hearing is received. The written request shall specify:

1. The reason for the grievance;
2. The action of relief sought from the Authority; and
3. Several dates and times in the following ten (10) working days when the Tenant can attend a grievance hearing.

B. When Hearing Required: The Authority must give Tenant an opportunity for a formal hearing to evaluate whether the following Authority decisions relating to the Tenant's individual circumstances are in accordance with the law, HUD regulations, and the Authority's policies, as follows:

1. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
2. A determination of the appropriate utility allowance (if any);
3. A determination of the family unit size under the Authority's subsidy standards;
4. A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the Authority's subsidy standards, or the Authority's determination to deny the Tenant's request for an exception from the standards;
5. A determination to terminate assistance (if applicable) for the Tenant because of the Tenant's action or failure to act; or

6. A determination to terminate assistance because the Tenant has been absent from the leased premises for longer than the maximum period permitted under the lease agreement;

The Authority must give the opportunity for a formal hearing before the Authority terminates housing assistance payments (if applicable) for the Tenant under an outstanding HAP contract under Sections V.B.4. through B.6. above (if applicable).

- C. Eligibility or Amount of Assistance Determinations: When the Authority makes a decision regarding the eligibility and/or the amount of assistance for Tenants, the Tenants must be notified in writing. The Authority will give the Tenant prompt notice of such determinations, which notice will include:

1. The proposed action or decision of the Authority;
2. The date the proposed action or decision will take place;
3. The Tenant's right to an explanation of the basis for the Authority's decision;
4. The procedures for requesting a hearing if the Tenant disputes the action or decision;
5. The time limit for requesting the hearing; and
6. To whom the hearing request should be addressed.

- D. When Hearing Not Required: The Authority is not required to provide the Tenant an opportunity for a hearing for the following:

1. Discretionary administrative determinations by the Authority;
2. General policy issues or class grievances;
3. Establishment of the Authority schedule of utility allowances for Tenants in the program;
4. An Authority determination not to approve an extension or suspension of a voucher term;
5. An Authority determination not to approve a unit or tenancy;
6. An Authority determination that an assisted unit is not in compliance with Housing Quality Standards ("HQS"). (However, the Authority must provide the opportunity for an informal hearing

for a decision to terminate assistance for a breach of the HQS caused by the Tenant, as pursuant to the lease agreement);

7. An Authority determination that the leased premises is not in accordance with HQS because of the family size;
8. A determination by the Authority to exercise or not to exercise any right or remedy against the owner under a HAP contract (if applicable); or
9. Disputes between tenants not involving the Authority.

E. Notice to Tenant:

1. In grievances involving matters in Sections V.B.1. through B.3., the Authority must notify the Tenant that the Tenant may ask for an explanation of the basis of the Authority determination, and that if the Tenant does not agree with the determination, the Tenant may request a formal hearing on the decision.
2. In grievances involving matters in Sections V.B.4. through B.6., the Authority must give the Tenant prompt written notice that the Tenant may request a formal hearing. The notice must include:
 - a. A brief statement of the reasons for the decision;
 - b. A statement that if the Tenant does not agree with the decision, the Tenant may request an informal hearing on the decision; and
 - c. State the deadline for the Tenant to request hearing.

E. Selection of Hearing Officer: Grievances shall be presented before a hearing officer or panel. A hearing officer or panel shall be appointed by the Authority. The hearing officer shall not be the person who made or approved the decision, or a subordinate of that person. The hearing officer or panel who conducts the hearing may regulate the conduct of the hearing in accordance with the Authority's hearing procedures, as set forth in Section VI of this Grievance Procedure.

F. Failure to Request a Hearing: If the Tenant does not request a hearing in accordance with this Section V then the Authority's disposition of the grievance

under this Section V shall become final, provided that failure to request a hearing shall not constitute a waiver by the Tenant of his/her right thereafter to contest the Authority's action in disposing of the Tenant in an appropriate judicial proceeding.

- G. Hearing Prerequisite: All grievances shall be personally presented, either orally or in writing, pursuant to the procedure prescribed in this Section V, as a condition precedent to a hearing under this section, provided, that if the Tenant shall show good cause why he/she failed to proceed in accordance with this Section V to the hearing officer, the provisions of this subsection may be waived by the hearing officer.
- H. Escrow Deposit: Before a hearing is scheduled in any grievance involving the amount of rent, as defined in the lease agreement, which the Authority claims is due, the Tenant shall pay to the Authority an amount equal to the amount of 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 Tenant 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. These requirements may be waived by the Authority in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure, provided that failure to make payment shall not constitute a waiver of any right the Tenant may have to contest the Authority's disposition of his grievance in any appropriate judicial proceeding.
- I. Scheduling of Hearings: When the Authority receives a request for a formal hearing, a hearing shall be scheduled within in **ten (10) working days**. The notification of the hearing shall contain, notwithstanding anything to the contrary:
1. The date and time of the hearing.
 2. The location where the hearing will be held.
 3. The family's right to bring evidence, witnesses, legal or other representation at the family's expense.
 4. The right to view any documents or evidence in the possession of the Authority upon which the Authority based the proposed action

and, at the Tenant's expense, to obtain a copy of such documents prior to the hearing.

5. A notice to the Tenant that the Authority will request a copy of any documents or evidence the Tenant will use at the hearing.
6. The Authority's hearing or grievance procedures.

J. Failure to Appear: If the Tenant or Authority fails to appear at the scheduled hearing, the hearing officer or panel may make a determination to postpone the hearing for not to exceed five (5) days or make the determination that the party has waived its right to a hearing. Both the Tenant and Authority shall be notified of the determination by the hearing officer or panel; however, a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest the Authority's disposition in court.

VI. PROCEDURES GOVERNING THE HEARING

- A. **Hearing Officer:** The hearing shall be held before a hearing officer or panel of hearing officers.
- B. **Hearing Procedures:** As set forth in the Administrative Plan, the following hearing procedures shall be followed:
 1. The hearing shall concern only the issues for which the Tenant has received the opportunity for the formal hearing.
 2. No documents may be presented which have not been provided to the other party before the hearing if requested by the other party.
 3. The hearing officer may ask the Tenant for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision.
 4. If the Tenant misses an appointment or deadline ordered by the hearing officer, the action of the Authority shall take effect and another hearing will not be granted. The hearing officer will determine whether the action, inaction, or decision of the Authority is legal in accordance with HUD regulations and the Administrative Plan based upon the evidence and testimony provided at the informal hearing. Factual determinations relating

to the individual circumstances of the Tenant will be based on a preponderance of the evidence presented at the informal hearing.

5. At the hearing, the Tenant 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.
6. 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 hearing officer shall require the Authority, the Tenant, 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.

C. Fair Hearing for Tenant: The Tenant 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 Tenant, to copy all documents, records and regulations of the Authority that are relevant to the hearing;
2. The right to be represented by counsel or other person chosen as his/her representative at his/her own expense;
3. The right to a private hearing unless the Tenant 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 the Authority or management relies;
5. Present any information or witnesses or question any witnesses pertinent to the issue of the hearing;

6. Request that the Authority's staff be available to present at the hearing to answer questions pertinent to the case;
7. A decision based solely and exclusively upon the facts presented at the hearing.

D. Authority's Rights: Notwithstanding any other rights contained in this Grievance Procedure and the Administrative Plan, the Authority has a right to:

1. Present evidence, witnesses and any information pertinent to the issue at the informal hearing;
2. Be notified if the Tenant intends to be represented by legal counsel, an advocate, or other party;
3. Examine and copy any documents to be used by the Tenant prior to the informal hearing;
4. Have its attorney present at the hearing; and
5. Have staff persons and other witnesses familiar with the case present at the hearing.

E. Rescheduling of Hearing: After the hearing date is set, the Tenant may request to reschedule only upon showing Good Cause.

F. Transcript of the Hearing: The Tenant or the Authority may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. An interested party may purchase a copy of such transcript.

G. Accommodation: The Authority will 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.

VII. DECISION OF THE HEARING OFFICER

A. Decision: The hearing officer shall prepare a written decision **within ten (10) working day after the hearing** and shall include:

1. A clear summary of the decision and the reasons for the decision;
2. If the decision involves money owed, the amount owed and documentation of the calculation of the monies owed; and
3. The date the decision goes into effect.

- B. Copies of the Decision: A copy of the decision shall be sent to the Tenant and the Authority. The Authority shall retain a copy of the decision in the Tenant's folder. A copy of such decision, with all names and identifying references deleted, shall be maintained on file by the Authority and made available for inspection by a prospective Tenant, his/her representative, or the hearing officer.
- C. Binding Effect of Hearing decisions: The decision of the hearing officer or panel 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 Board of Commissioners within a reasonable time, **not to exceed ten 10 working days**, determines that:
1. the grievance does not concern Authority action or failure to act in accordance with or involving the Tenant's lease or Authority regulations which adversely affect the Tenant's rights, duties, welfare, or status;
 2. the grievance concerns matters in which the Authority is not required to provide an opportunity for a hearing;
 3. the decision conflicts with or contradicts federal, state, or local regulations or requirements;
 4. the decision conflicts with or contradicts HUD regulations or requirements; or
 5. the decision exceeds the authority of the person conducting the hearing.

The Authority shall be bound, unless it is determined that the Authority is not bound by the hearing officer's determination and the Authority sends a letter to the Tenant within ten (10) business days of the hearing officer's notification to the Tenant. The letter shall include the Authority's reasons for the decision as stated above.

A decision by the hearing officer in favor of the Authority or which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Tenant may have to a trial de novo or judicial proceedings, which may thereafter be brought in the matter.

VIII. AUTHORITY EVICTION ACTIONS

If a tenant has requested a hearing in accordance with Section V on a complaint involving a notice of termination of the tenancy, and the hearing officer upholds the Authority's action to terminate the tenancy, the 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 having been mailed or delivered to the Tenant. 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 by the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him/her and he/she may be required to pay court costs and attorney's fees.