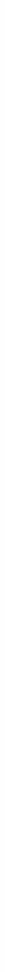


Using Your Public Housing Grievance Process

**A Know Your Rights Guide for
Public Housing Tenants in Massachusetts**



Why Use this Book?

The purpose of this booklet is to give tenants in public housing in Massachusetts answers to questions about grievance procedures.

As a tenant, you have important rights. But those rights have meaning only when you use them. To help you use your rights and take the steps you need to take, included are sample letters, forms, and worksheets.

This booklet is available on **www.MassLegalHelp.org**. Please distribute it freely to tenants and organizations working with tenants.

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Because laws and regulations change, make sure you have the most up-to-date version of the booklet by checking: **www.MassLegalHelp.org**.

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Right to a Grievance

1. What is a grievance procedure in public housing?

A grievance procedure is a process to resolve disputes between residents in public housing and a housing authority. It is a way to try and work out problems without having to go to court. As a tenant, you can use the grievance procedure in two different ways:

- To oppose some action that a housing authority wants to take against you. For example: Housing authority refuses to let you add someone to your lease.
- To hold your housing authority staff and board accountable for the way they have acted or not acted. For example: Housing authority does not respond to your request to make repairs.

Important—It is illegal for a housing authority to try and evict or harass you for filing a grievance or testifying at a grievance hearing.¹ The grievance procedure is there to resolve problems. Don't let the housing authority try to scare you away from using the grievance procedure.

2. Where did the idea of a grievance procedure come from?

The public housing grievance process grew out of the efforts in the late 1960s to stop arbitrary evictions and a famous lawsuit in 1970 that established due process requirements for people receiving welfare.² In 1971, HUD issued an official memorandum that formed the basis of public housing grievance procedures. Regulations followed. Similar laws were adopted for state public housing in the 1970s. Then in 1983 Congress passed, for the first time, legislation requiring housing authorities to provide grievance procedures for federal public housing.

3. How do I find out what the grievance process is in my development?

Housing authorities must have written grievance procedures. Ask your housing authority for a copy of your grievance procedure. In some cases, your rights under your grievance procedure may also be spelled out in your lease.

While grievance procedures for tenants in Massachusetts state and federal public housing are fairly similar, they are not identical.³ In order to figure out what your rights are, you need to know whether you are a state or federal public housing tenant. Where there are differences between the state and federal grievance procedures, these differences are spelled out in the answers that follow.

4. When am I supposed to be notified about my grievance rights?

If a housing authority takes some action against you, in most cases, you have a right to a grievance hearing and the housing authority must notify you about this right. This notice must be in writing and it must include the deadline by which you must file a grievance.⁴

For example, your housing authority must give you notice that you have a right to file a grievance if the housing authority is:

- Terminating your lease.
- Changing your rent.
- Requiring you to transfer.
- Denying your request for a transfer.
- Denying your request to add someone to the lease.
- Denying a request for a *reasonable accommodation* for a disability.
- Denying a request to be excused from the community service requirement.

Make sure that you file a grievance by the deadline on the notice and in the way described in the notice. Otherwise, you may lose your right to a grievance.

If you did not get a notice that you have a right to a grievance hearing and you should have, the housing authority will probably have to start the whole process over again. For example: If the housing authority is going to court to evict you because you refused to transfer to another apartment, but you never received a written notice telling you that you have a right to a grievance hearing, tell the court. Then ask the court to dismiss the case and to tell the housing authority to start the process over by informing you in writing of your right to a grievance hearing.

Types of Grievances

5. When do I have a right to file a grievance?

In addition to being able to file a grievance when a housing authority sends you a notice about some action it is taking against you, you can file a grievance if you or anyone in your household has been hurt by something that the housing authority has done or not done.⁵ For example, you can file a grievance if the housing authority:

- Refuses to adjust your rent.
- Does not process your request for a transfer.
- Does not answer requests for repairs.
- Refuses your request to keep a pet.⁶
- Staff or board treats you unfairly or harasses you.
- Has acted (or not acted) in a way that causes you harm or hardship.

The grievance procedure is also available to resolve any disputes that you have about how the housing authority is handling your personal information.⁷ For example, you may discover that the manager has inappropriately disclosed information that should be kept private.

There are some situations, however, where the housing authority does not have to hold a grievance hearing. They involve certain types of complaints and certain types of evictions. See the next question.

6. When don't I have a right to a grievance hearing?

A public housing authority may, in some cases, deny you a grievance hearing if you are being evicted for certain types of behavior. State and federal rules about who has a right to a grievance hearing when facing an eviction are different and both can be complicated.

To figure out whether you are entitled to a grievance, you will need to look closely at your housing authority's grievance policy, your lease, and the facts involved in your situation.

State public housing

If you live in state public housing, you do not have a right to a grievance hearing if you are being evicted for:⁸

1. **Non-payment of rent**, unless your lease gives you a right to a grievance hearing.⁹
2. **The following activities**, if a tenant, household member or guest has:
 - Harassed or threatened a tenant, housing authority employee, or guest;
 - Destroyed, vandalized, or stole property from a tenant, housing authority employee or guest;
 - Unlawfully possessed, carried, or kept a weapon on or next to housing authority property;
 - Unlawfully possessed or used an explosive or incendiary device on or next to housing authority property;
 - Unlawfully possessed, sold, or possessed with intent to distribute a class A, B, or C controlled substance on or next to housing authority property (if the unlawful activity involves marijuana, which is a class D substance, a tenant should still get a grievance hearing);¹⁰
 - Engaged in other criminal conduct that has seriously threatened or endangered the health or safety of a tenant, housing authority employee, or guest.
 - Engaged in behavior that would be cause for terminating the lease because of an occupant's illegal use of the apartment under state nuisance laws, such as prostitution, illegal gaming, or selling of alcoholic beverages.¹¹

Note on behavior of guests: In most cases, only if a housing authority believes that you knew or should have known beforehand that there was a reasonable possibility that your guest would engage in misconduct, can it deny you a right to a grievance hearing.¹²

Federal public housing

Federal rules permit, but do not require, housing authorities to deny tenants grievance hearings in evictions involving.¹³

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or housing authority employees;

- Any violent or drug-related criminal activity on or off the premises; or
- Any criminal activity that resulted in a felony conviction of a household member.

These types of evictions are not automatically excluded from the grievance process. Your housing authority must decide whether it wants to exclude any or all of the above types of evictions from the grievance process and then describe this in its grievance procedures.¹⁴

Note: If you live in federal public housing and you would have the right to a grievance hearing under state law, you get this right as a federal public housing tenant, too.¹⁵ For example, while there usually is no grievance right for federal public housing tenants when a household member is charged with drug possession, state law does provide such rights if the drug is marijuana.

7. Can I file a grievance against another tenant in the development?

No. You cannot use the grievance procedure to file a complaint against another tenant. If, however, you have complained about another tenant's conduct to the housing authority and the housing authority has failed to adequately respond, you may file a grievance against the housing authority.¹⁶

8. Can a grievance be filed by one tenant for another tenant?

No. A grievance cannot be filed by one tenant on behalf of another tenant. A tenant can file a grievance, however, on behalf of a member of her own household.

9. Can a group of tenants file a grievance?

State public housing

Tenants in state public housing have the right to file grievances together, so long as each tenant individually files his or her own grievance.¹⁷ For example, if a manager of a development was completely unresponsive to tenant “no heat” complaints, tenants might want to file all grievances together asking that action be taken to require the manager to immediately fix the problem and reduce their rent in the meantime.

Federal public housing

In federal public housing, tenants cannot file a grievance together (otherwise referred to as a *class grievance*). The federal law is also clear that the grievance procedure is not a forum for negotiating policy changes between groups of tenants and the housing authority.¹⁸

10. What if a housing authority says my grievance is not “grievable?”

First you should make sure that the matter is grievable. Read Questions 5-9 in this booklet.

State

If a housing authority staff person says that your grievance is not a matter that can be grieved, and you feel it is, you have a right to request your housing authority Board of Commissioners to review this decision. You must do this within 14 days of when the housing authority sends you a decision saying that the matter is not “grievable.”¹⁹

If you do not receive anything in writing from the housing authority saying that you cannot have a grievance hearing on a particular matter, ask them to put that decision in writing. Maybe they will change their mind. But if not, you will have the piece of paper you need to challenge this decision.

Federal

In federal public housing, the Board of Commissioners may determine whether a grievance is not grievable.²⁰ Therefore, a tenant should have the opportunity to ask the Board to review a decision by the housing authority that the grievance was not grievable.

How to File a Grievance

11. What are the steps of a grievance process?

While, in general, the steps of a grievance process for state and federal public housing are similar, there are some differences that are important to know. The way the grievance process works also depends on whether the housing authority is taking action against you, or whether you are filing a grievance against the housing authority. **To find out exactly what the steps are for your grievance procedure, review your housing authority's grievance procedure and your lease.**

On the next two pages are two charts that outline the differences between state and federal public housing and the major steps in the grievance process:

Chart 1: When the housing authority takes action against you.

Chart 2: When the tenant has a problem with the housing authority.

In some cases, a housing authority may have a different procedure than is in these charts. For example, some housing authorities automatically schedule private conferences in all eviction cases, and treat them as informal settlement conferences. Where this is the case, the tenant would not need to make a formal request for a settlement conference.

Important — If you have filed a request for a grievance hearing or you are appealing a grievance decision, a housing authority may not take any other action against you until a final decision has been reached. This means that the housing authority cannot bring you to court to evict you or take other action on the subject of the grievance (such as a transfer) until the grievance process is over.²¹

Chart 1: Steps in the Grievance Process

Housing Authority Plans to Take Action Against Tenant

State	Federal
Housing authority sends tenant notice about action it plans to take and right to grievance hearing	
Tenant must file a written grievance or loses right to a hearing.	Tenant must file a written grievance or loses right to a hearing.
Informal conference held	
Tenant is encouraged, but not required, to attend informal conference.	Tenant required to attend informal conference, except it may not be available for some evictions.
If not resolved, housing authority notifies tenant about grievance hearing date.	If not resolved, tenant must file a written grievance request (if hasn't already) to have a hearing. Housing authority then notifies tenant about hearing date.
Tenant entitled to review housing authority documents	
Grievance hearing held	
Decision issued	
Tenant or housing authority may appeal decision to Housing Authority Board.	Tenant or housing authority may be able to request that a decision be set aside. Process is not clear.
If Housing Authority Board significantly changes decision, tenant may appeal to state housing agency (DHCD).	Tenant cannot appeal decision to state or federal housing agency.

Chart 2: Steps in the Grievance Process

Tenant Has Problem with Housing Authority

State	Federal
Tenant has a problem with housing authority	
Tenant must file a written grievance or loses right to a hearing.	Tenant can request a grievance hearing verbally or in writing. (Best to do in writing).
Informal conference held	
Tenant is encouraged, but not required, to attend informal conference.	Tenant required to attend informal conference.
If not resolved, housing authority notifies tenant about grievance hearing date.	If not resolved, tenant must file a written grievance request to have a hearing. Housing authority then notifies tenant about hearing date.
Tenant entitled to review housing authority documents	
Grievance hearing held	
Decision issued	
Tenant or housing authority may appeal decision to Housing Authority Board.	Tenant or housing authority may be able to request that a decision be set aside. Process is not clear.
If Housing Authority Board significantly changes decision, tenant may appeal to state housing agency (DHCD).	Tenant cannot appeal decision to state or federal housing agency.

12. How do I file a grievance?

If you have received a notice that the housing authority is taking some action against you, your request for a grievance **must be in writing**. This is true for both state and federal public housing. In your grievance it is important to state why you disagree with the action proposed by the housing authority and how you want to solve the problem.

If, on the other hand, you want to file a grievance against the housing authority, you must put this in writing if you live in state public housing. In federal public housing, although you may verbally ask for a grievance hearing, it is best to put this grievance in writing.²² The reason it is better to put your grievance in writing is that a housing authority may deny that you ever filed a grievance. In your grievance it is important that you state what the problem is and how you want the housing authority to solve it.

Most housing authorities will have a standard grievance form that you can use to request a grievance hearing. If yours doesn't have one, you can write your own letter. You can also use the Sample Letter to Request a Grievance Hearing or the state's sample Grievance Complaint form on pages 30 and 31.

It is a good idea to hand deliver your grievance to either the local management office or the housing authority's main office. Ask the staff person who accepts it to make a copy for you and sign and date your copy. Then you will have a record that the grievance was received and the date it was received. If you cannot hand deliver your grievance, you can send it by mail.

Important—Keep copies of everything you send or receive from the housing authority. A “paper trail” between you and the housing authority can by itself lead to a negotiated a solution. Plus, you never know when you are going to need copies of documents you have sent or received.

13. Are there deadlines for filing a grievance?

In general, yes. To figure out deadlines for filing a grievance check:

- Your housing authority's grievance procedure,
- Any notices you receive from the housing authority, and
- Your lease.

Once you figure out what the deadline is, you should hand deliver or mail the request for a grievance to the housing authority's main office by that date (unless the housing authority says you can deliver it to your local management office).

State public housing

In state public housing, if there is no provision in your lease or the housing authority's grievance procedure about deadlines for filing a grievance, state regulations establish the following time frames within which you should request a grievance hearing:

- **Rent:** If you're disputing how your rent was set, file a grievance within **14 days** of receiving the housing authority's rent notice.²³
- **Termination of lease:** If you're disputing termination of your lease, file a grievance within **7 days** after receiving the notice of lease termination.²⁴
- **Other matters:** If the grievance is about some other matter, file a grievance no more than **14 days** after you first became aware (or should have become aware) of the matter.

The housing authority can permit additional time for the filing of a grievance if there is a good reason that it was filed late and the late filing will not cause prejudice or harm to the housing authority.²⁵ You should explain in the grievance why it was late – for example, you did not get notice from the housing authority right away or you were involved in a family emergency.

Federal public housing

There are no specific time frames set under federal rules, other than that a grievance must be filed within a reasonable time after you receive a summary of the informal settlement conference.²⁶ To figure out what deadlines your housing authority may have for filing a grievance, look at your housing authority's grievance procedure, your lease, or any notice you receive from the housing authority. If your grievance is late, you can ask for additional time if there was a good reason why it was filed late.

If the grievance is called an *expedited grievance*, which is a faster process, a grievance must be filed by the time specified under your housing authority's expedited grievance procedure.

14. How soon does the housing authority have to respond to my grievance?

State

After a grievance has been filed, a housing authority must “promptly” schedule an informal settlement conference. The regulations do not define what “promptly” means.²⁷ Check your grievance procedure to see whether it states how quickly the housing authority must schedule an informal settlement conference.

If there is no resolution of the matter at an informal settlement conference, a grievance hearing must be scheduled as soon as “reasonably convenient” following the housing authority’s receipt of your grievance. Again, the regulations do not define what “reasonably convenient” means.²⁸

If, however, the grievance involves determining whether there is good cause to end or terminate your lease, the housing authority must schedule a grievance hearing within 14 days (or as soon as reasonably practical) after the housing authority receives your request for a grievance.²⁹

If the housing authority is not responding to your request for a grievance in a prompt manner, you may need to take further steps such as sending your original grievance a second time, with a request that the matter be addressed promptly.

Federal

Under the federal regulations, there is no specific time frame within which a housing authority must schedule an informal settlement conference. Once the conference happens, a summary of it must be prepared within a “reasonable time.”³⁰

If there is no resolution of the matter at an informal settlement conference, a grievance hearing must be “promptly” scheduled.³¹ The regulations do not define what “promptly” means.

A housing authority may also establish a quick or *expedited* grievance procedure for any grievance concerning a termination of your tenancy.³² Again, there is no specific timeframe in the federal regulations. Check your lease to see if it states any timeframes for the housing authority to respond to your grievance.

15. What is an informal settlement conference?

In both state and federal public housing, before you have a grievance hearing, the housing authority should give you an opportunity to discuss the grievance informally in an attempt to settle it without the need for a hearing. This is referred to as an *informal settlement conference*.

The housing authority should give you reasonable advance notice of a time and place for the informal conference, unless the housing authority proposes to hold the informal settlement conference when you deliver the grievance and you agree to that. **If you would like support or someone with you during your informal conference, you have a right to have someone with you.** Don't let a housing authority discourage you from bringing someone if you want.

Important—Be careful about what you say at the informal settlement conference. The housing authority may try to use the informal conference to get information that it can use against you. You do not have to volunteer any information that you do not want to disclose.

If you work out a solution to your satisfaction at an informal conference, you and housing authority staff should put this agreement in writing and sign it. Many grievances are resolved this way, with no need for a grievance hearing. However, if you are not satisfied with the solution the housing authority is proposing, you may continue to bring your grievance before an impartial hearing officer or hearing panel.

State public housing

In state public housing, the informal conference happens after you file your grievance and prior to your hearing. You are encouraged, but not required, to attend the informal settlement conference.³³ You may choose to also be represented by a lawyer or non-lawyer.³⁴ If you can't work things out at the informal settlement conference or you do not go to your informal settlement conference, the grievance hearing will automatically be held, without any requirement that you take further steps.³⁵

Federal public housing

In federal public housing, you must go through an informal settlement conference—unless the housing authority's action concerns an eviction involving drug-related activity on or near the premises or criminal activity that threatens the health, safety or peaceful enjoyment of the housing authority staff or other tenants.³⁶ For such cases, an informal settlement conference is usually not provided, and the housing authority can proceed either directly to the grievance hearing (which is called an *expedited hearing*) or to an eviction case in court.³⁷ But check your lease and grievance procedures, because some housing authorities offer what is called a *private conference* in all eviction cases prior to serving a

notice to quit. This private conference serves the same purpose as an informal conference.

If you go through an informal conference, the housing authority must prepare a written summary of the conference. It must do so within a reasonable time after the conference and give you a copy. This summary must state the proposed solution, the reasons for it, and the steps you need to take to have a grievance hearing if you are not satisfied with the outcome of the informal conference. If you want a grievance hearing after an informal conference, you **will need to file a written request for a grievance hearing**. If you do not file a formal request for a grievance, you may lose your right to a grievance hearing.

How to Prepare for a Grievance Hearing

16. How do I prepare for a grievance hearing?

Prepare your documents! The more prepared you are for the grievance hearing, the more respect the hearing panel will have for you and your case. Use the worksheet at the end of these materials to help you prepare for your hearing. In addition, here are some tips:

- Very often hearing officers are not knowledgeable about specific laws, regulations, and what is in the lease. For this reason it is very important to identify the violation that is the issue, whether it is a violation of your lease, a regulation, or law. Have a copy of the rule, policy, or your lease so you can know and read the exact words and so hearing officers may take into consideration relevant laws, regulations, or housing authority policies and rules when making a decision.
- Be factual, not emotional, during your presentation. To help you do this, list on paper the problem or problems and how you want the housing authority to solve them. Use the Worksheet on page 32.
- Play “devil’s advocate.” List all the arguments you can think of that the housing authority may make to prove its case and prepare your response to each one. Do not ignore the housing authority’s case against you. Use the Worksheet on page 35.
- Figure out what documents you need to prove that the problems in your case do or do not exist. This can include letters, notes from phone calls, pictures, or any other documents that are important. **Get these documents before the hearing!**
- Make an extra copy of each document that you want to give the hearing officer or hearing panel. Highlight the important sections. This makes it easier for the officer or panel to read and helps keep the issues clearer in everyone’s mind. **Remember to keep copies of everything for yourself.**
- Organize all of these documents in a folder or three-ring binder so that when you go to the hearing you will be well prepared and not fumbling for papers.

- As you prepare, carry a small notebook with you or keep one near your telephone to document phone calls or meetings that are important to support your position. Note the date, time, people involved, and the gist of the discussion. This kind of documentation is helpful.
- Find out if anyone has personal knowledge about the problem, and, if so, whether they are willing to tell the hearing officer what they know.
- If people agree to testify, prepare them for the hearing. Tell them what you will be asking them and think about what the housing authority may ask them and go over this with them. If any of your witnesses live in public housing, they may be scared to testify. Remind them that they cannot be retaliated against or evicted for testifying.

17. Can I review housing authority documents before the hearing?

Yes. The housing authority must provide you with an opportunity, prior to and during the hearing, to look at all documents, records, and regulations that the housing authority has that may be relevant to your grievance. You also have the right to make one copy of these documents, if you make this request in a timely manner. Copying is done at your expense, although the housing authority can agree not to charge you.

Make the request to review documents enough in advance of the hearing so that you have time to prepare for the hearing. It is also a good idea to make this request in writing. Date this letter and keep a copy for your files. This will protect you against the housing authority saying that you never asked to see documents. If a housing authority does not provide you will access to documents until the last minute, this may be “good cause” to request that the hearing be postponed.

Federal public housing

Federal public housing regulations state that if the housing authority refuses to give you access to documents prior to the hearing, those documents may not be used against you. For example, if housing authority staff refuse to give you copies of complaints that they have received about you, the housing authority cannot use these documents at the grievance hearing or show them to the hearing panel or officer. If the housing authority tries to use these documents, you should object and ask that the documents be excluded as evidence.³⁸

State public housing

While state public housing regulations are not as clear as the federal regulations described in the paragraph above, you can argue that similar protections should apply as a matter of due process, and that if a housing authority refuses to show you documents, it cannot use them at the grievance hearing.³⁹

What Happens at the Grievance Hearing

18. When is a grievance hearing held?

Once the hearing panel or officer receives your grievance, the panel or officer must schedule a date for your hearing and then give you and the housing authority staff written notice of the time and place of the hearing. Either side may postpone a hearing, by agreement of both sides or for what is called *good cause*, such as illness, unavoidable absence of a party or witness, or failure to allow you to review documents a sufficient amount of time before the hearing.⁴⁰

State public housing

In eviction cases in state public housing, a grievance hearing must be scheduled within 14 days. In addition, the hearing must be scheduled at least 15 days prior to the termination date on your notice. You must be given notice of not less than 7 days of the time and place for the hearing. A hearing of a grievance on other issues should be scheduled as soon as reasonably convenient following receipt of the grievance.⁴¹

Federal public housing

Federal public housing regulations require that the hearing be scheduled promptly and at a location reasonably convenient to both the housing authority and the tenant. Notice of the hearing must, in addition to stating the time and place of the grievance hearing, also state what procedures will govern the hearing.⁴² Under federal rules, a housing authority may establish what is called an *expedited* or quick grievance procedure concerning evictions that involve criminal or drug-related activity.⁴³

19. Who hears grievances?

An impartial hearing officer or hearing panel will hear your grievance and provide a decision. *Impartial* means that the hearing officer cannot be a person (or the subordinate of that person) who held your informal settlement conference or who was involved in the issue being grieved in any way.

A hearing officer or member of a hearing panel cannot have any direct personal or financial interest in the outcome of the dispute. Nor can an officer or panel member be related by blood or marriage to any party or any person who is the

source of evidence (for example, a witness for the housing authority). If you feel that a hearing officer or panel member will not be able to act impartially in deciding your case, you can ask that the person not hear the case and that there be a substitute hearing officer or panel member.

The Massachusetts Union of Public Housing Tenants provides trainings for hearing officers and panel members about how to handle grievances. If the housing authority is setting up a hearing panel or recruiting new panel members at your housing authority, you may want to suggest to the housing authority that they contact the Mass. Union for training assistance. They can be reached at 617-825-9750.

20. What happens at a grievance hearing?

The hearing must be conducted in a fair manner. At the hearing, the hearing officer or panel will ask both you and the housing authority to tell your side of the story. It is not uncommon for a hearing officer or panel to ask a tenant to go first. At the hearing, both you and the housing authority have the right to:

- Tell your side of the story,
- Question anyone who testifies, and
- Question the validity or accuracy of any evidence.

Right to a person of your choice at the hearing

You and the housing authority have the right to have a lawyer, advocate, or any other person of your choosing with you during the grievance hearing and throughout all stages of the grievance process. In fact, you can be accompanied by up to three people of your choosing at all stages of the grievance process.

Public or private hearing

As a state or federal public housing tenant, you have a right to request that a hearing be open to the public.⁴⁴ Housing authorities cannot request that a hearing be public. If you have supporters and want them to come to the hearing, or this is a high-visibility case and you want the news media present, having a public hearing may be helpful to you. On the other hand, there can be private information that would come out at a hearing and you might not want it to be public.

If you request that a hearing be open to the public, this will occur unless the hearing officer or panel orders otherwise.⁴⁵ If you don't make such a request, the hearing is held in private.

Important—A hearing officer or panel may exclude any person who does not conduct himself or herself in an orderly fashion. If you or your supporters misbehave at the hearing, the hearing officer or panel may take other

measures to deal with the misbehavior—including dismissing the grievance.⁴⁶

Evidence

At the hearing, you have a right to submit written evidence such as a lease, or other documents to support your position.⁴⁷ This is very important, because a hearing officer or panel cannot consider evidence unless either you or the housing authority present it at the time of the hearing. The only time that evidence can be submitted after a hearing is if a hearing officer or panel requests it. Also, it is important to give hearing officers or panels copies of relevant laws, policies, and rules so that they can take these into consideration when making a decision.

Note: If the housing authority is asked to submit additional information, you must be given an opportunity to respond to it (and vice versa).

Witnesses

In addition to presenting evidence at the hearing, you have the right to bring people who have personal or direct knowledge about the problem to testify at the hearing. If the housing authority brings witnesses to testify, you also have a right to ask those people questions about what they are saying. A hearing officer or panel may also question any witnesses.

If the housing authority does not have witnesses who personally know what went on, they may not be able to win the grievance. For example, if the housing authority is relying only on the testimony of the manager who received reports of your suspected misconduct from other people, but the people who reported the conduct do not testify, you can ask the manager whether she has any personal knowledge of the misconduct. If the manager says no, you can ask the hearing officer or panel to rule against the housing authority because the manager does not have any direct personal knowledge of your misconduct and because you have not been given the opportunity to question the people who reported the conduct.

Record of the hearing

The housing authority must keep some kind of record of what happens at a grievance hearing.

State public housing

State regulations require that grievance hearings be tape-recorded.⁴⁸ Only the housing authority, the tenant who files the complaint (or people with written authorization from the tenant), and the hearing officer or panel can listen to this tape.

Federal public housing

There is no specific requirement that grievance hearings be tape-recorded, although this is the best practice. Federal regulations do provide that the tenant or the housing authority may arrange, in advance and at the party's own expense, for a written transcript of the hearing. This transcript must

also be available for purchase by the other party.⁴⁹ You can also bring your own tape recorder. This is a good idea if you find out that the housing authority is not going to record the hearing.

People with special needs

Federal rules require that the housing authority provide what are called *reasonable accommodations* in the hearing process for people with special needs, such as providing qualified sign language interpreters, readers, attendants, or accessible locations (including the holding of a telephonic hearing for a home-bound tenant). If a tenant is visually impaired, any notice to the tenant must be in an accessible format.⁵⁰ State disability laws provide similar protections. If you need such accommodations, you should let the housing authority know this well in advance of the hearing so that they can take appropriate steps.

21. What happens if I do not show up at the grievance hearing?

State public housing

There are no provisions under state law about what happens if a tenant or housing authority does not show up for a hearing. However, many housing authorities follow the federal regulations outlined below.

Federal public housing

Under federal regulations, if you do not show up at the grievance hearing and you do not request a postponement (or what is called a *continuance*), the hearing officer or panel may:

- Postpone the hearing for 5 working days, or
- Decide that you have given up (*waived*) your right to a hearing.

The same is true if the housing authority does not show up at the grievance hearing.

If the hearing officer or panel must decide how to proceed due to the failure of either party to show up, they should send written notice to both parties of the action taken. If a hearing officer or panel decides to deny your right to a hearing, you can still challenge a housing authority's actions in court.⁵¹

Getting a Grievance Decision

22. When do I get a decision?

After a hearing, a hearing officer or panel makes a decision. This decision must be based solely on the evidence that you and the housing authority presented at the hearing and on any information provided after the hearing that was requested by the hearing officer or panel. The hearing officer or panel may also take note of any relevant laws, regulations, or housing authority rules and policies in making the decision, which is why it is important to make reference to any of these if they support your position.

The decision must be in writing and dated. It must state at least three things:

- What facts a hearing officer or panel felt were true,
- What the decision is, and
- The reasons for the decision.

The hearing officer must provide a copy of the decision within a “reasonable time” after the hearing to the housing authority. The housing authority must then “promptly” mail it to you. The regulations do not define what these terms mean.

Note: For state public housing, the housing authority must keep copies of all grievance decisions on file (with names and identifying references deleted) and make them available to the public upon request. There is no similar provision under federal rules. If, however, a housing authority were to make grievance decisions available for federal public housing, these too would have to have names and identifying references deleted.⁵²

23. Can I challenge or appeal a grievance decision?

State public housing

State regulations provide that either you or the housing authority have the right to ask the housing authority’s Board of Commissioners to review a grievance decision in most cases.⁵³ This is called an *appeal*. The only time that you cannot appeal a grievance hearing is if a hearing officer or panel approved the termination of your lease. **You do not have to move, however, until a court orders you to.** (Note: The Boston Housing Authority does not have a Board of Commissioners, so grievance appeals go to the administrator or the person she chooses.⁵⁴)

To file an appeal, a tenant or housing authority must submit a written letter to the housing authority's Board of Commissioners (or for the Boston Housing Authority, the appropriate administrator) within **14 days** of receiving the hearing officer's or panel's decision. An appeal can be sought if you or the housing authority believe that the decision was not supported by the facts or did not correctly apply applicable laws, regulations, rules, or policies, or that the matter was not something subject to the grievance procedure. See the Sample Appeal Letter at the end of these materials.

The Board holds a meeting at which you and the Housing Authority are permitted to make oral presentations and submit documentation. The Board may also permit the hearing officer or panel to make a presentation. The Board shall then promptly decide whether to uphold, set aside, or modify the grievance.

The Board of Commissioners must notify you in writing of its decision and of the specific reasons for the decision within 5 working days of the Board meeting. If the Board does not issue a decision within 45 days of the date that a review was requested, the Board's decision, when it is issued, must specify a reason showing that there was no undue delay.

If a Board of Commissioners makes a significant change in the hearing decision, you have the right to ask the state Department of Housing and Community Development (DHCD) to review the Board's decision. (DHCD is the state agency that oversees state public housing.) To file an appeal with DHCD, you must send a written letter addressed to the Secretary of DHCD stating why the Board's decision was improper. (See Sample DHCD Appeal Letter at the end of these materials.) You must send this letter within 14 days of receiving the Board's decision. At the same time you send this letter to DHCD, you should send a copy to the housing authority. DHCD is required to review the Board's decision and issue a written decision upholding, setting aside, or modifying the decision of the Board.⁵⁵

Federal public housing

In federal public housing, there is no stated process for the housing authority or a tenant to appeal a grievance decision to the Board of Commissioners or any other agency. However, federal rules state that a housing authority is not bound by a grievance decision if the Board of Commissioners decides and promptly informs the parties that the matter was not grievable or the decision was contrary to applicable law, in which case the grievance decision becomes non-binding (not enforceable).⁵⁶ This should mean that either the tenant or the housing authority could make a written request to the Board of Commissioners to set aside the decision. Tenants in federal public housing do not have a right to ask the state Department of Housing and Community Development or HUD to review a Board decision.

Opening meeting law

Under the state's open meeting law, when the Board of Commissioners hears an appeal of a grievance hearing decision, its meeting must be open to the public. If the Board of Commissioners refuses to hold an open meeting on the appeal, you may need to contact your local district attorney and ask him or her to enforce the open meeting law. The district attorney can take legal action to request that a new meeting be held that complies with the open meeting law.⁵⁷

Setting Up or Changing a Grievance Procedure

24. How are grievance procedures established or changed?

There are state and federal rules about how to establish grievance procedures. Both require that tenants have input into the process.

State public housing

Housing authorities are required to negotiate the creation of a grievance procedure with local tenant organizations.⁵⁸ If there is no local tenant organization, a housing authority must still provide for tenant input. A procedure must be prompt, reliable, and comply with basic hearing, notice, and due process requirements. The Department of Housing and Community Development (DHCD), the state agency that oversees state public housing, must approve all new or amended grievance procedures.⁵⁹

If your local tenant organization believes that changes need to be made in your grievance process, the organization may at any time submit a proposal to the housing authority.

Federal public housing

If your grievance process is not working well, the yearly public housing plan process can provide tenants with an opportunity to negotiate and recommend changes.⁶⁰ If a housing authority wants to make any changes to the grievance procedure, it must provide all tenants and resident organizations with at least 30 days notice of any proposed changes and provide tenants with an opportunity to submit written comments.⁶¹

23. How are hearing officers and panels selected?

Grievance hearings must be conducted by either a hearing officer or a hearing panel. The hearing officer or members of the hearing panel must be impartial. *Impartial* means that the person may not be someone, or their subordinate, who held your informal settlement conference or who was involved in the issues being grieved in any way.

State public housing

Usually, grievance hearings are conducted by a 3-member grievance panel. There are two situations when this is not the case:

- The housing authority is using an older grievance procedure, approved by DHCD, which provides for a larger panel, and decides to keep that system; or
- The housing authority makes a case that, despite good-faith efforts, a 3-member panel cannot be promptly chosen and a single hearing officer should handle grievances. To have a single hearing officer a housing authority must receive permission from DHCD and must submit its nominations for hearing officers to each local tenant organization.

For a 3-member grievance panel, one member of the panel is chosen by the housing authority, one member of the panel is chosen by the local tenant organization, and the third member must be selected by the other two panel members. The term of a panel member cannot go beyond seven years.

If there is no local tenant organization, a housing authority must notify tenants of its nominations for panel members or hearing officers by posting them on all bulletin board used for notices for tenants. If 10 or more tenants disapprove of a nomination in writing and state their reason for disapproval **within 30 days of the posting**, a proposed panel member or hearing officer should not be appointed.

Federal public housing

Hearing officers or hearing panel members appointed by the housing authority may not be persons who made or approved the matter being grieved or a subordinate of such persons. The method of appointment of the hearing officer or hearing panel must be stated in your grievance procedure and be either:

- A method approved by the majority of the tenants in any building, group of buildings, development, or group of developments who voted in an election or meeting of tenants held for that purpose, or
- Selection of a person (who can be a housing authority employee or officer) in the manner required by the grievance procedure.

The housing authority must consult the local tenant organizations before appointment of each hearing officer or panel member. Any comments or recommendations received from tenant organizations must be considered by the housing authority before the appointment.⁶²

Sample Letters, Forms, and Worksheets

Sample Letter to Request a Grievance Hearing

Date

Name of person at housing authority who handles grievance requests

Name of housing authority

Address of housing authority

Dear _____:

I reside at _____ (your address) and am a public housing resident of _____ (name of housing authority).

State the problem. _____

For example:

- *I received an eviction notice telling me to leave my apartment.*
- *I have been unable to get repairs made.*
- *I received a rent increase that is higher than what I believe my rent should be.*

I understand that I can file a grievance regarding this matter and would like to request a grievance hearing. Please notify me of the date and time that this hearing will be held.

Sincerely,

Your name

Your address

Your telephone number

Worksheet to Help You Prepare for Your Grievance Hearing

1

I live in state public housing. I live in federal public housing.

2

Problem

What is the problem?

What part of the lease or regulation or policy has the housing authority violated?

or

What section of the lease or regulation does the housing authority say you have violated?

*If you don't have a copy of the lease or relevant regulations or policies that which relate to the violation, **get them from your housing authority!** It is very important to see the actual language.*

3 Proof

What evidence, documents, or witnesses do you have to prove that the problem exists?

If the housing authority is accusing you of a violation, what proof do they have of the violation? Go check their records and ask to see any documents that they have that relate to the dispute.

4 Solutions

What are solutions to the problem that you are grieving?

Making Your Case

Fill in this part of the worksheet to help you put all the pieces together and map out a position.

Problem	Proof	Solutions
1.		
2.		
3.		
4.		

Housing Authority's Case

Use this part of the worksheet to help you respond to the housing authority's case.

What arguments might the housing authority make against you?	How will you respond?
1.	
2.	
3.	
4.	

Sample Appeal Letter to Housing Authority Board

Date

Name of Chair of Housing Authority Board

Name of housing authority

Address of housing authority

Dear _____:

I reside at _____ (your address) and am a public housing resident of _____ (name of housing authority).

On _____ (date), I received the attached grievance decision which (summarize what the decision said) _____

I wish to appeal this decision to the Board because (write down whichever applies):

- ❖ I believe the facts presented at the hearing do not support this decision.
- ❖ I believe that the hearing officer or panel did not correctly apply the law, regulations, or relevant policies.
- ❖ I believe that this matter was not something that should have been subjected to a grievance.

I wish the Board to review the decision and (tell the Board what you would like them to do - set the decision aside or change it, stating how you would like them to change it).

I would also like to be permitted to make a presentation to the Board about this matter. Please notify me of the date and time that the Board will consider this matter. Thank you.

Sincerely,

Your name

Your address

Your telephone number

Attach grievance decision

Sample Appeal Letter to DHCD

Date

*Name of Secretary of DHCD
Massachusetts Department of Housing & Community Development
100 Cambridge St., Suite 300
Boston, MA 02114*

Dear _____:

I reside at _____ (your address) and am a public housing resident of _____ (name of housing authority).

On _____ (date), I received the attached grievance decision which (summarize what the decision said) _____.

I wish to appeal this decision to the DHCD because *(write down whichever applies)*:

- ❖ I believe the facts presented at the hearing do not support this decision.
- ❖ I believe that the hearing officer or panel did not correctly apply the law, regulations, or relevant policies.
- ❖ I believe that this matter was not something that should have been subjected to a grievance.

I wish DHCD to review the decision and *(tell DHCD what you would like them to do - set the decision aside or change it, stating how you would like them to change it)*.

I would also like to be permitted to make a presentation to the DHCD about this matter. Please notify me of the date and time that the DHCD will consider this matter. Thank you.

Sincerely,

*Your name
Your address
Your telephone number*

Attach grievance decision

Regulations

State Grievance Regulations

760 C.M.R. 6.08: Grievance Procedures

(1) Existing Procedures to Remain in Effect Until Amended or Replaced. Upon the effective date of this regulation, the grievance procedure then in effect at an LHA shall remain in effect and shall continue in effect unless and until the Department approves a new or amended grievance procedure. After the effective date hereof each LHA shall compare the provisions of its grievance procedure(s) with the provisions of 760 CMR 6.08(4) and shall initiate measures in order to achieve material compliance with those provisions.

(2) The Purpose of the Grievance Procedure. Each LHA shall have a grievance procedure, approved by the Department, of which the purpose shall be the prompt and reliable determination of grievances. An LHA's grievance procedure shall produce such prompt and reliable determinations of grievances. A grievance procedure, which in operation shall repeatedly fail to produce prompt and reliable determinations, shall be deemed deficient and shall be amended or replaced in the manner specified herein.

(3) Establishment, Replacement, or Amendment of a Grievance Procedure.

(a) Negotiation of Grievance Procedures. If no grievance procedure is in effect at an LHA or if an LHA or affected Local Tenants' Organization (LTO) believes that changes to or replacement of an existing grievance procedure are necessary or appropriate, proposals for establishment, replacement, or amendment of the grievance procedure may be made at any time by either the LHA or an affected Local Tenants' Organization (LTO). Establishment of a new grievance procedure or amendments to an existing grievance procedure shall be negotiated by the LHA and any affected LTOs and shall become effective upon the written approval of the Department.

(b) Approval of a Procedure Which Has Not Been Negotiated. In instances (i) where the operations of an existing grievance procedure have repeatedly failed to produce prompt and reliable determinations, (ii) where there is no operative grievance procedure and where the LHA and the LTO(s) have been unable to negotiate a new or amended grievance procedure, or (iii) where an LTO shall have failed to take necessary steps for the proper functioning of a grievance procedure (such as naming a panel member willing and able to serve), the LHA may request that the Department permit it to implement the three person panel grievance procedure set out in Appendix A. However, if it shall reasonably appear to the LHA that notwithstanding its own good faith efforts, a three person panel would likely not be promptly chosen if the Appendix A procedure were in effect, the LHA may request that the Department permit it to implement the grievance procedure set out in Appendix B which provides for a single hearing officer. As part of a request that the Department permit the LHA to implement one of these two unnegotiated grievance procedures, the LHA shall specify the reason(s) for its request and shall describe its prior

unsuccessful negotiations with the affected LTO(s). The LHA shall also specify the reason(s) why it believes that further efforts to negotiate a procedure would likely be unsuccessful. The LHA shall provide the affected LTO(s) with a copy of its request permission to implement one of the two unnegotiated grievance procedures.

Following receipt of the request, the Department shall give the LTO(s) a reasonable opportunity to respond in writing. The Department may also discuss the request with the LHA and the LTO(s). If the Department shall determine: (i) that the operations of the existing grievance procedure have repeatedly failed to produce prompt and reliable determinations of grievances or that there is no operative grievance procedure, (ii) that the LHA is not primarily responsible for this deficiency, and (iii) that further negotiations between the LHA and the affected LTO(s) appear to be unlikely to produce an agreement on a new or amended grievance procedure, the Department may give permission to the LHA to implement the three person panel grievance procedure set out in Appendix A or, if it shall appear to the Department that a three person panel would likely not be promptly chosen notwithstanding good faith efforts by the LHA, the Department may give permission to the LHA to implement the grievance procedure set out in Appendix B, which provides for a single hearing officer.

(4) Requirements for Grievance Procedures. An LHA's grievance procedure shall provide for the following:

(a) Initiation of a Grievance. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to tenant by the LHA.

A grievance regarding whether participation in the MRVP or AHVP should be terminated shall be initiated by a program participant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the program participant by the LHA.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the LHA at its main office, or at a development office, if so specified, no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the LHA shall have discretion to permit a grievance to be initiated late.

The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the LHA.

(b) Informal Settlement Conference. Promptly after the initiation of a grievance, unless otherwise provided, the LHA's executive director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The LHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall

have taken place when the grievance was delivered to the LHA. If a matter is not resolved at the informal settlement conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

(c) Hearing Date and Notice of Hearing. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the LHA receives the grievance. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

The LHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). The LHA, the hearing panel, or the hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the LHA that rescheduling is reasonably necessary.

(d) Pre-Hearing Examination of Relevant Documents. Prior to a grievance hearing the LHA shall give the grievant or his or her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

(e) Persons Entitled to be Present. The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing panel or the hearing officer otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the hearing panel or the hearing officer. At the hearing the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall be excluded. If the grievant misbehaves at the hearing, the hearing panel or hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(f) Procedure at Grievance Hearings. The hearing panel or the hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel or the hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape-recorded. The members of the hearing panel or the hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members or the hearing officer may request the LHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

(g) Written Decision; Effect of Decision. Within fourteen(14) days following the hearing or as soon thereafter as reasonably possible the hearing panel or the hearing officer shall provide the LHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been requested by the panel members or the hearing officer. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the LHA and shall be open to public inspection.

(h) Review by the LHA's Board. In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA believes that (i) the decision of the hearing panel or 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 LHA may request review of the decision by the LHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer or hearing panel 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.

(i) Review by the Department. In the event that the LHA's Board shall make a material change in a decision of the hearing panel or 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.

(j) Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the LHA 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 LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

Federal Grievance Regulations

Code of Federal Regulations TITLE 24, PART 966: Public Housing Lease and Grievance Procedure

SUBPART B--GRIEVANCE PROCEDURES AND REQUIREMENTS

SOURCE: 40 FR 33406, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

[56 FR 51579 Oct. 11, 1991]

§ 966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) 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 (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

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

(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.

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA 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 PHA's Board of Commissioners.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 61 FR 13273, March 26, 1996; 66 FR 28804, May 24, 2001]

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this Subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

[56 FR 51579, Oct. 11, 1991]

§ 966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

(a) *Grievance* shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office in accordance with §§ 966.54 and 966.55(a).

(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) Right of the tenant to be represented by counsel;

(3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;

(4) A decision on the merits.

(d) *Hearing officer* shall mean a person selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

(e) *Hearing panel* shall mean a panel selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA 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 household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. 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 the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under § 966.55 may be obtained if the complainant is not satisfied.

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to § 966.54. For a grievance under the expedited grievance procedure pursuant to § 966.55(g) (for which § 966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:

(i) A method 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.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

(c) *Failure to request a hearing.* If the complainant does not request a hearing in accordance with this paragraph, then the PHA's disposition of the grievance under § 966.54 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 PHA's action in disposing of the complaint 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 § 966.54 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 § 966.54 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

(f) *Scheduling of hearings.* 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 PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a

termination of tenancy or eviction that involves:

(i) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) Any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 65 FR 16731, March 29, 2000]

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(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 PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel 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. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: *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 PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA 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 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 or hearing panel 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 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 or the PHA 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) *Accommodation of persons with disabilities.*

(1) The PHA 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.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time 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 tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective

complainant, his representative, or the hearing panel or hearing officer.

(b) The decision of the hearing officer or hearing panel 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 Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that

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

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

(c) A decision by the hearing officer, hearing panel, 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 manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

Endnotes

¹ Such an action would violate state anti-retaliation laws. See M.G.L. c. 186, § 18, and M.G.L. c. 239, § 2A.

² National Housing Law Projects, *HUD Housing Programs*, Tenants Rights (2nd Edition), Section 13.2. The lawsuit was *Goldberg v. Kelly*, 397 U.S. 254 (1970).

³ For the state grievance laws, see 760 C.M.R. § 6.08 and G.L. c. 121B, § 32. For the federal grievance laws, see 24 C.F.R. § 966, Subpart B, and 42 U.S.C. § 1437d(k).

In the past, the Department of Housing and Community Development (DHCD), the state agency that oversees state public housing, said that its grievance regulations applied to both state and federal public housing. See *Commissioner of Department of Community Affairs v. Medford Housing Authority*, 363 Mass. 826, 298 N.E.2d 862 (1973), and *Harborview Residents' Committee v. Quincy Housing Authority*, 368 Mass. 425, 332 N.E.2d 891 (1975). This is no longer DHCD's position. See 760 C.M.R. § 6.02(1) (DHCD's regulations apply to persons residing in state-aided public housing).

⁴ For federal public housing, see 24 C.F.R. § 966.4(e)(8). For state public housing, see 760 C.M.R. § 6.06(4)(j).

⁵ 760 C.M.R. § 6.03 (definition of "grievance"), referencing 760 C.M.R. § 8.00.

⁶ There are special pet grievance rules and committees for state elderly/disabled public housing. See St. 1989, c. 151, and 760 C.M.R. § 6.07(5). Pet ownership is not specifically provided for in state family public housing. For federal public housing, the regular grievance procedure would apply.

⁷ 760 C.M.R. § 6.03, see (c) under definition of "grievance," and 760 C.M.R. § 8.05.

⁸ 760 C.M.R. § 6.06(7)(a), 760 C.M.R. § 6.06(7)(b)1-8, and G.L. c. 121B, § 32, paragraph 7. Even if a lease and grievance procedure say that a tenant has grievance rights in these kinds of cases, tenants do not because state law eliminated any rights that they may have had under the lease or grievance procedure.

⁹ For example, the housing authority may use the same lease for its federal and state public housing tenants with permission (or under a waiver) from DHCD. This is the case for the Boston Housing Authority.

¹⁰ The following are examples of classes of drugs under Chapter 94C:
Class A: Heroin, Morphine, Codeine, Prescription Opiates
Class B: Opium, Cocaine, LSD, Methadone, PCP, Barbiturates, Amphetamines
Class C: Mescaline, Peyote, Psilocybin (psychedelic mushrooms)

¹¹ G.L. c. 121B, § 32; 760 C.M.R. § 6.06(7)(b)1-8. The state's nuisance law is M.G.L. c. 139, § 19.

¹² 760 C.M.R. § 6.06(7)(c), G.L. c. 121B, § 32 paragraph 7. This standard is similar to that discussed in *Hodess v. Bonefont*, 401 Mass. 693, 519 N.E.2d 258 (1988). There may be an exception to this if the state nuisance laws are involved and the housing authority can show that the guest was an "occupant" of the unit.

¹³ 24 C.F.R. §§ 966.4(1)(3)(v), 966.51(a)(2)(i).

¹⁴ 24 C.F.R. §§ 966.4(1)(3)(v), 966.51(a)(2).

¹⁵ For circumstances in which an eviction is and is not grievable under state law, see G.L. c. 121B,

§ 32. For the proposition that state law grievance rights apply even if you live in federal public housing, see *Spence v. Reeder*, 382 Mass. 398, 416 N.E.2d 914 (1981).

¹⁶ 24 C.F.R. § 966.51(b); 760 C.M.R. § 6.03, see (d) under definition of “grievance.” See also 760 C.M.R. § 6.06(4)(p), which states that the housing authority must commence eviction proceedings against other tenants whose behavior has jeopardized the health and safety of the grieving tenant.

¹⁷ The state definition of “grievance” at 760 C.M.R. § 6.03, unlike the federal rules, does not have any restriction on “class grievances.” However, to be on the safe side, each individual who is seeking relief should file a grievance.

¹⁸ 24 C.F.R. § 966.51(b). Tenants do have rights, however, through their tenant organizations, as well as their Resident Advisory Boards, to negotiate policy changes with the housing authority. See 24 C.F.R. Part 964 (tenant participation rules) and 24 C.F.R. Part 903 (Public Housing Agency Plan). In addition, the housing authority must give affected tenants 30 days’ written notice and an opportunity to comment on any proposed changes in the lease, the grievance procedure, or charges, policies, or rules that are incorporated by reference into the lease. See 24 C.F.R. §§ 966.3 (lease), 966.5 (charges, policies, or rules), and 966.52(c) (grievance procedure).

¹⁹ 760 C.M.R. § 6.08(4)(h).

²⁰ 24 C.F.R. § 966.57(b).

²¹ 760 C.M.R. § 6.06(8)(b), and 24 C.F.R. § 966.4(e)(8)(ii)(B), (1)(3)(iv); see also *Cambridge Housing Authority v. Wedge*, 2000 Mass. App. Div. 235 (eviction dismissed where grievance procedure not concluded at time housing authority filed action).

²² 24 C.F.R. § 966.54.

²³ 760 C.M.R. § 6.04(7).

²⁴ 760 C.M.R. §§ 6.06(8)(a), 6.08(4)(a).

²⁵ 760 C.M.R. § 6.08(4)(a).

²⁶ 24 C.F.R. § 966.55(a).

²⁷ 760 C.M.R. § 6.08(4)(b).

²⁸ 760 C.M.R. § 6.08(4)(c).

²⁹ 760 C.M.R. § 6.08(4)(c).

³⁰ 24 C.F.R. § 966.54.

³¹ 24 C.F.R. § 966.55(f). If a housing authority has a pattern of not acting on grievances in a timely manner, this could be challenged in court. See *Samuels v. District of Columbia Housing Authority*, 669 F. Supp. 1133 (D.D.C. 1987) where the court found that the housing authority had failed to develop a grievance procedure under which tenant complaints would be heard and processed in a timely fashion.

³² 24 C.F.R. § 966.55(g).

³³ 760 C.M.R. § 6.08(4)(b).

³⁴ See Public Housing Notice 2000-03, Part A, issued by DHCD to all local housing authorities on July 3, 2000.

³⁵ 760 C.M.R. § 6.08(4)(b).

³⁶ 24 C.F.R. § 966.55(d). However, if a tenant can show good cause why she failed to proceed in accordance with the informal settlement conference procedure, the requirements for exhausting the informal settlement conference can be waived by the hearing officer or panel.

³⁷ 24 C.F.R. § 966.55(g).

³⁸ 24 C.F.R. § 966.56(b)(1). In addition, in federal public housing eviction cases, if the housing authority does not allow the tenant the opportunity to examine relevant documents before a grievance or court hearing, the eviction must be dismissed. See 42 U.S.C. § 1437d(l)(7); 24 C.F.R. § 966.4(m).

³⁹ 760 C.M.R. § 6.08(4)(d).

⁴⁰ 760 C.M.R. § 6.08(4)(c).

⁴¹ 760 C.M.R. §§ 6.06(8)(b), 6.08(4)(c).

⁴² 24 C.F.R. § 966.55(f).

⁴³ 24 C.F.R. § 966.55(g).

⁴⁴ 24 C.F.R. § 966.56 (b)(3); 760 C.M.R. § 6.08(4)(e).

⁴⁵ The regulations don't discuss what your rights are if the request for a public hearing is turned down.

⁴⁶ 760 C.M.R. § 6.08(4)(e); 24 C.F.R. § 966.56(f).

⁴⁷ The hearing panel is not required to follow the rules of evidence that would apply in court. 760 C.M.R. § 6.08(4)(f); 24 C.F.R. § 966.56(f).

⁴⁸ 760 C.M.R. § 6.08(4)(f).

⁴⁹ 24 C.F.R. § 966.56(g).

⁵⁰ 24 C.F.R. § 966.56(h).

⁵¹ 24 C.F.R. § 966.56(d).

⁵² 760 C.M.R. § 6.08(4)(g); 24 C.F.R. §§ 966.56(b)(5), 966.57(a).

⁵³ 760 C.M.R. § 6.08(4)(h). The Boston Housing Authority does not have a board of commissioners, so grievance appeals go to the administrator or her designee (see St. 1989, c. 88). For other housing authorities, prior to DHCD's regulations being revised in 1998, tenants were allowed to seek Board review in all cases, but the housing authority could do so only where it could show that the decision was contrary to law or arbitrary. In addition, prior to 1998, lease termination cases could be reviewed by the Board. If your housing authority's grievance procedures still contain the prior standards, these govern.

⁵⁴ See St. 1989, c.88

⁵⁵ 760 C.M.R. § 6.08(4)(i).

⁵⁶ 24 C.F.R. § 966.57(b).

⁵⁷ The state open meeting law is M.G.L. c. 39, § 23A.

⁵⁸ DHCD has regulations regarding recognition and rights of local tenant organizations. See 760 C.M.R. § 6.09.

⁵⁹ 760 C.M.R. § 6.08(1) and (2). Note: In 1998, DHCD changed its grievance regulations for state public housing, but allowed housing authorities to continue to use their previously approved grievance procedures, so long as the housing authority initiated measures to achieve “material compliance” with the revised regulations.

⁶⁰ 24 C.F.R. § 903.7(f).

⁶¹ 24 C.F.R. § 966.52(c).

⁶² 24 C.F.R. § 966.55(b).