

Grievance Procedure

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JOHNSON CITY HOUSING AUTHORITY

PUBLIC HOUSING GRIEVANCE PROCEDURE

1.0 PURPOSE

This grievance procedure has been adopted to provide a forum and procedure for Residents to seek the just, effective, and efficient settlement of grievances against the Johnson City Housing Authority ("Authority").

2.0 GOVERNING LAW

- A. Quality Housing and Work Responsibility Act of 1998 ("Act"), Subtitle F – Safety and Security in Public and Assisted Housing, Section 575.
- B. March 28, 1996, President Clinton's "One-Strike and You're Out" Policy for public housing Residents; "Housing Opportunity Program Extension Act of 1996," P.L. 104-120.
- C. Section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. sec. 1437d (k)) and subpart B of 24 CFR part 966 (24 CFR secs. 966.50 - 966.57).

3.0 APPLICABILITY

In accordance with applicable federal law and regulations, this grievance procedure shall be applicable to all individual grievances (as defined in Section 4.0 – DEFINITIONS) between Resident and Authority with the following two exceptions:

- A. This grievance procedure is not applicable to disputes between Residents not involving the Authority, or to class grievances involving groups of Residents. Also, this grievance procedure is not intended as a forum for initiating or negotiating policy changes between Residents, or groups of Residents, and the Authority's Board of Commissioners.
- B. HUD has issued a due process determination that the law of the State of Tennessee requires that Resident be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in Section 4.0 – DEFINITIONS) before eviction from a dwelling unit. Therefore, the Authority has elected to determine that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:

1. ANY criminal activity by any household member or guest that threatens the health, safety, or right to peaceful enjoyment of the premises by other Residents or employees of the Authority.
2. ANY violent or drug-related criminal activity by any household member or guest, *on or off such premises*, or any activity resulting in a felony conviction.

NOTE: *The Authority has a One-Strike or "Zero Tolerance" Policy with respect to violation(s) of lease terms regarding violent or drug-related criminal activity.*

3. ANY alcohol abuse, if such abuse creates a threat to the health, safety, or the right to peaceful enjoyment of the premises by other Residents or employees of the Authority.

4.0 DEFINITIONS

The following definitions shall be applicable to this grievance procedure:

- A. ***Grievance:*** Any dispute which a Resident may have with respect to an action or a failure to act by the Authority in accordance with the individual Resident's lease or the Authority regulations, which adversely affects the individual Resident's rights, duties, welfare, or status. Grievance does not include any dispute a Resident may have with the Authority concerning a termination of tenancy or eviction that involves:
 1. ANY criminal activity by any household member or guest that threatens the health, safety, or right to peaceful enjoyment of the premises by other Residents or employees of the Authority.
 2. ANY violent or drug-related criminal activity by any household member or guest, *on or off such premises*, or any activity resulting in a felony conviction.
 3. ANY alcohol abuse, if such abuse creates a threat to the health, safety, or the right to peaceful enjoyment of the premises by other Residents or employees of the Authority.
- B. ***CFR:*** The Code of Federal Regulations, which contains the federal regulations governing this grievance procedure (CFR 966.50).

- C. **Complainant:** Any Resident (as defined in this section) whose grievance is presented to the Central Administrative Office of the Authority in accordance with the requirements set forth in this procedure.
- D. **Drug-Related Criminal Activity:** The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance, as defined in sec. 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
- E. **Alcohol Abuse:** The over-indulgence of alcohol to the point where such consumption interferes with the health, safety, or right to peaceful enjoyment of the premises by other Residents or employees of the Authority.
- F. **Authority:** The Johnson City Housing Authority, a body corporate organized and existing under the laws of the State of Tennessee.
- G. **Elements of Due Process:** The following procedural safeguards are required to be followed in any eviction action or a termination of tenancy in a state or local court:
1. Adequate notice to the Resident of the grounds for terminating the tenancy and for eviction;
 2. Right of the Resident to be represented by counsel;
 3. Opportunity for the Resident to refute the evidence presented by the Authority, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Resident may have;
 4. A decision on the merits.
- H. **Hearing Officer:** An impartial person selected in accordance with 24 CFR sec. 966.55 and this grievance procedure to hear grievances and render decisions with respect thereto.
- I. **HUD:** The United States Department of Housing and Urban Development.
- J. **Notice:** As used herein, the term notice shall, unless otherwise specifically provided, mean written notice. (See Section 13.0 – NOTICES for specific criteria regarding notices.)
- K. **The "Regulations":** The HUD regulations contained in subpart B of 24 CFR part 966.50.

- L. **Resident Organization:** An organization of Residents, which may include any Resident management corporation or Resident council.
- M. **Resident:** The adult person(s) other than a live-in aid:
1. Who resides in the unit and who executed the lease with the Authority as lessee of the dwelling unit, or, if no such person(s) resides in the unit,
 2. The person who resides in the unit, and who is the remaining head of household of the Resident family residing in the dwelling unit.
- N. **Business Days:** Monday through Friday of each week, except for legal holidays recognized by the federal government.

5.0 INCORPORATION IN LEASES

This grievance procedure shall supersede any and all prior grievance procedures heretofore adopted by the Johnson City Housing Authority Board of Commissioners ("Board"), and shall be incorporated by reference in all leases between Residents and the Authority at all public housing dwelling units, whether or not so specifically provided in such leases.

6.0 INFORMAL SETTLEMENT OF GRIEVANCES

- A. **Initial Presentation.** Any grievance must be personally presented, either orally or in writing, to the Authority's Director of Admissions and Occupancy, or the Director's designated representative, whose office is located at 901 Pardee Street, Post Office Box 59, Johnson City, Tennessee 37605-0059, no later than five (5) business days after the occurrence of the event. Subsequent to the presentation of the grievance by the Complainant, the Director will assign an informal settlement hearing number to the case and provide same to the Complainant for the purpose of confirming the presentation of the grievance by the Complainant.
- B. **Informal Settlement Conference.** If the grievance is determined by the Authority to not fall within one of the exclusions mentioned in Section 3.0 – APPLICABILITY, then the Authority will, within five (5) business days after the initial presentation of the grievance, informally discuss the grievance with the Complainant or his/her representative(s) in an attempt to settle the grievance without the necessity of a formal hearing. If the informal settlement conference cannot occur at the time the grievance is initially presented by the Complainant, then the Complainant will be

promptly notified in writing of the time and place for the informal settlement conference.

- C. **Written Summary.** Within five (5) business days after the informal settlement conference, a summary of the informal discussion must be prepared by the Authority and a copy thereof must be provided to the Complainant. The summary must be in writing and must specify the names of the participants in the discussion, the date of the discussion, the nature of the proposed disposition of the grievance, and the specific reasons for such disposition. This written summary will also specify the procedures by which the Complainant may obtain a formal hearing if not satisfied by the proposed disposition of the grievance. A copy of the written summary must also be placed in the Complainant's Resident file.

7.0 FORMAL GRIEVANCE HEARING

The following procedures apply to the request for a formal grievance hearing under this procedure:

- A. **Request for Hearing:** If the Complainant is not satisfied with the results of the informal settlement conference, the Complainant must submit a written request for a formal hearing to the Authority's Director of Admissions and Occupancy, whose office is located at 901 Pardee Street, Post Office Box 59, Johnson City, Tennessee 37605-0059, no later than five (5) business days after the date Complainant receives the written summary of the informal settlement conference delivered as required under Section 6.0 – INFORMAL SETTLEMENT OF GRIEVANCES.

Complainant's WRITTEN request for a formal hearing MUST specify:

1. The reasons for the grievance; and
 2. The action or relief sought by the Complainant; and
 3. If the Complainant so desires, a statement setting forth the times at which the Complainant will be available for a hearing during the next ten (10) business days; and
 4. If the Complainant has failed to attend an informal discussion conference, a request that the hearing officer waive this requirement.
- B. **Failure to Request Hearing:** If the Complainant fails to request a formal hearing within five (5) business days after receiving the written summary of the informal settlement conference, the Authority's decision rendered at the informal settlement

conference *BECOMES FINAL* and the Authority is not thereafter obligated to offer the Complainant a formal hearing.

8.0 SELECTION OF HEARING OFFICER

All grievance hearings must be conducted by an impartial person or persons appointed by the Authority after consultation with Resident organizations in accordance with 24 CFR 966.55.

- A. The person(s) who is(are) presently appointed to serve as hearing officer for grievances under this grievance procedure is listed in Exhibit 1, attached hereto and incorporated herein by reference. Additional appointments shall be made in the manner set forth in this section and Exhibit 1 will be modified or amended accordingly.
- B. The designation of hearing officers for particular grievance hearings shall be governed by the following provisions.
 - 1. All hearings will be held before a single hearing officer.
 - 2. Appointments to serve as a hearing officer with respect to a particular grievance shall be made by the Authority, if applicable, in random order, subject to availability of the hearing officer to serve in each such case. The Authority may employ any reasonable system for random order choice.
 - 3. No member of the Authority's Board of Commissioners or staff may be appointed as hearing officer in connection with the grievance contesting an action which was either made or approved by proposed appointee, or which was made or approved by a person under whom the proposed appointee works or serves as a subordinate.
 - 4. No person shall accept an appointment, or retain an appointment, once selected as a hearing officer, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers must disqualify themselves from hearing grievances that involved personal friends, relatives, persons with whom they have any business relationship, or grievances in which they have some personal interest. Further, such persons are expected to disqualify themselves if the circumstances are such that a significant perception of partiality exists and is reasonable under the circumstances. If a Complainant fails to object to the designation of the hearing officer on the ground of partiality, at the commencement or before the hearing, such objection is deemed to be waived, and may not thereafter be made.

In the event that a hearing officer fails to disqualify him/herself as required in this grievance procedure, the Authority will remove the officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such person should have, but did not, disqualify himself or herself. The Authority will then schedule a new hearing, and assign a new hearing officer.

9.0 SCHEDULE OF HEARINGS

A. **Formal Hearing Prerequisites:** A Complainant DOES NOT HAVE A RIGHT to a grievance hearing unless the Complainant has satisfied the following prerequisites to such a hearing:

1. The Complainant has requested a hearing in writing.
2. The Complainant has completed the informal settlement conference procedure or has requested a waiver for good cause.
3. **Rent Escrow Deposit.** If the matter involves the amount of rent which the Authority claims is due under the Complainant's lease, the Complainant must have paid to the Authority an amount equal to the amount due and payable as of the first of the month preceding the month in which the complained of act or failure to act took place. And, in the case of situations in which hearings are, for any reason delayed, the Complainant must 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. Unless waived by the Authority in writing, no waiver will be given by the Authority except in cases of extreme and undue hardship to the Complainant, determined in the sole and absolute discretion of the Authority. However, failure to make payment shall not constitute a waiver of any right the Resident may have to contest the Authority's disposition of Resident's grievance in any appropriate judicial proceeding.

B. **Time, Place, Notice:**

1. Upon Complainant's compliance with the prerequisites to the hearing set forth above, a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the Complainant and the Authority, not later than the tenth (10th) business day after the Complainant has completed such compliance.

2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the Complainant and the appropriate Authority official.

10.0 PROCEDURES GOVERNING HEARINGS

- A. ***Fair Hearings.*** The hearings shall be held before a hearing officer as described in Section 8.0 – SELECTION OF HEARING OFFICER. The Complainant shall be afforded a fair hearing, which shall include:
 1. The opportunity to examine before the hearing any Authority documents, including records and regulations that are directly relevant to the hearing.

The Complainant will be allowed to copy any such document at the Complainant's expense. If the Authority does not make the document available for examination upon request by the Complainant, the Authority may not rely on such document at the grievance hearing.
 2. The right to be represented by counsel or other person chosen as the Complainant's representative(s) and to have such person(s) make statements on the Complainant's behalf.
 3. The right to a private hearing unless the Complainant requests a public hearing. The right to present evidence and arguments in support of the Complainant's complaint, to controvert evidence relied on by the Authority, and to confront and cross examine all witnesses upon whose testimony or information the Authority or its management relies; and
 4. A decision solely and exclusively upon the facts presented at the hearing.
- B. ***Prior Decision in Same Manner.*** The hearing officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding.
- C. ***Failure to Appear.*** If the Complainant or the Authority fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) business days or may make a determination that the party failing to attend has waived the right to a hearing. In such event, the hearing officer must notify the Complainant and the Authority of the determination.

The failure to attend a grievance hearing shall not constitute a waiver of any right for which the Complainant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

- D. ***Required Showing of Entitlement to Relief.*** At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter the Authority must sustain the burden of justifying the Authority's action or failure to act against which the complaint is directed.
- E. ***Informality of Hearing.*** 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 proceeding.
- F. ***Orderly Conduct Required.*** The hearing officer shall require the Authority, the Complainant, counsel, and other participants or spectators, to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer 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. ***Transcript of Hearing.*** The Complainant or the Authority may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- H. ***Accommodation to Persons with Disabilities.*** The Authority shall provide reasonable accommodation for persons with disabilities to participate in grievance hearings. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

11.0 INFORMAL HEARING PROCEDURES FOR DENIAL OF ASSISTANCE ON THE BASIS OF INELIGIBLE IMMIGRATION STATUS

The participant family may request that the Johnson City Housing Authority provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The participant family must make this request within 30 days of receipt of the *Notice of Denial or Termination of Assistance*, or within 30 days of receipt of the INS appeal decision.

12.0 DECISION OF THE HEARING

At or subsequent to the completion of the grievance hearing, the hearing officer shall make a determination as to the merits of the grievance and the following provisions shall govern.

- A. **Written Decision.** The hearing officer must prepare a written decision, together with the reasons for the decision, within ten (10) business days after the completion of the hearing.
1. A copy of the decision must be sent to the Complainant and the Authority's Executive Director. The Director of Admissions and Occupancy shall retain a copy of the decision in the Complainant's Resident folder.
 2. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and made available for inspection by any prospective Complainant, his representative, or the hearing officer.
- B. **Binding Effect.** The written decision of the hearing officer shall be binding upon the Authority, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Authority's Board of Commissioners determines, within ten (10) business days, and properly notifies the Complainant of its determination, that:
1. The grievance does not concern an Authority action or failure to act in accordance or involving the Complainant's lease, or Authority's regulations, which adversely affect the Complainant's rights, duties, welfare, or status; or
 2. The decision of the hearing officer is contrary to applicable Federal, State, or local laws, Authority regulations, HUD regulations, or requirements of the Annual Contributions Contract between HUD and the Authority.
- C. **Continuing Right of Complainant to Judicial Proceedings.** A decision by the hearing officer or Board of Commissioners in favor of the Authority or which denies the relief requested by the Complainant, in whole or in part, shall not constitute a waiver of, nor affect in any way, the rights of the Complainant to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

13.0 NOTICES

All written notices under this grievance procedure, whether originating from the Authority or the Complainant, shall be deemed delivered: (1) upon personal service thereof upon the Complainant or an adult member of the Complainant's household; (2) upon the date received for or refused by the addressee, in the case of Certified or Registered U.S. Mail; or (3) five (5) business days after the postmark date when mailed via First Class U.S. Mail (other than Certified or Registered Mail).

If a Resident is visually impaired, any notice hereunder delivered to such Resident shall be in an accessible format.

14.0 MODIFICATION

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the Authority, present at a regular meeting or a special meeting called for such purposes. Further, in addition to the foregoing, any changes proposed to be made to this grievance procedure must provide at least thirty (30) days advance notice to Residents and Resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the Authority, before final adoption of any amendments hereto.

15.0 MISCELLANEOUS

- A. **Captions.** Captions or paragraph headings set forth in this grievance procedure are for convenience of reference only and shall not be construed or interpreted to affect the substance of the paragraphs or sections so captioned.
- B. **Concurrent Notice.** If a Resident has filed a request for grievance hearing hereunder in a case involving the Authority's notice of termination of tenancy, the Complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law run concurrently. Therefore, if the hearing officer upholds the Authority's action to terminate tenancy, the Authority may commence an eviction action in court upon the sooner of, the expiration of the date for termination of tenancy and vacation of premises stated in the notice of termination delivered to Complainant, or the delivery of the report of decision of the hearing officer to Complainant.

16.0 ROLL CALL FOR GRIEVANCE PROCEDURE

Motion made by Commissioner Arnold and seconded by
 Commissioner Elrod.

ROLL CALL — GRIEVANCE PROCEDURE	Ayes	Nays	Absent	Abstain
Commissioner Arnold	✓			
Commissioner Elrod	✓			
Commissioner Lancaster			✓	
Commissioner Walters			✓	
Chairperson Wood	✓			

The foregoing is a true copy of a Resolution adopted at a Regular Meeting of the Johnson City Housing Authority of Johnson City, Tennessee, duly called and held on the 21st day of October, 1999.



 EDWARD ZIMBICKI
 Executive Director and Secretary

Exhibit 1 — HEARING OFFICER

Pursuant to 24 CFR Section 966.55, the Authority has selected:

John Taylor, Esq.

as an “impartial person” who will act as Hearing Officer to hear grievances and render decisions thereto.