

**GRIEVANCE PROCEDURE
BALLINGER HOUSING AUTHORITY**

A. PURPOSES AND SCOPE: The purpose of these procedures and requirements is to set forth the requirements, standards, and criteria for a grievance procedure for residents of the Ballinger Housing Authority to be established and implemented. To assure that an Authority resident is afforded an opportunity for a hearing if the resident disputes, within a reasonable time, any Authority action or failure to act involving the resident's lease with the Authority or Authority regulations which adversely affect the individual resident's right, duties, welfare or status. The grievance procedure provided herein shall be incorporated in each individual resident's lease.

B. APPLICABILITY:

1. The Authority's grievance procedure shall be applicable to all individual grievances as defined herein under the heading definitions.
2. This grievance procedure shall not be applicable to disputes between Residents not involving the Authority or to class grievances. This grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group of residents and the Authority's Board of Commissioners.

C. DEFINITIONS

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

"Authority" where used herein means the Ballinger Housing Authority

"Complainant" shall mean any resident whose grievance is presented to the Authority or at the project management office in accordance with Section III and Section IV.

"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:

- a. Adequate notice to the Resident of the grounds for terminating the tenancy and for eviction;
- b. Right of the Resident to be represented by grievance attorney;
- c. 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;
- d. A decision on the merits.

"Grievance" shall mean any dispute which a Resident may have with respect to Authority action or failure to act in accordance with the individual resident's lease or Authority regulations which adversely affect the individual Resident's rights, duties, welfare or status. Grievance does not include any dispute a resident may have with Authority concerning a termination of tenancy or eviction that involves any activity that may threaten the health, safety, or right to peaceful enjoyment of

the Authority's public housing premises by other residents or employees of the Authority, or any criminal activity or drug-related criminal activity on or off such premises.

"Hearing officer" shall mean a person selected in accordance with Section IV of these procedures to hear grievances and render a decision with respect thereto.

"Hearing Panel" shall mean a panel selected in accordance with paragraph IV below, to hear grievances and render a decision with respect thereto.

"Promptly" (as used in Section III, and IV.(D) shall mean within five business days from the date of mailing of the adverse action or grievable complaint.

"Resident" shall mean the adult person (or persons) (other than a live-in aide):

- a. Who resides in the premises, and who executed the lease with the Authority as lessee of the premises, or, if no such person now resides in the premises,
- b. Who resides in the premises, and who is the remaining head of household of the Resident family residing in the premises.

"Resident organization" includes a resident management corporation.

D. PROCEDURES PRIOR TO A HEARING

Informal settlement of grievance. Any grievance shall be promptly and *personally* presented, either orally or in writing, to the Authority office located at 1401 N 13th St., Ballinger, Texas within ten (10) days after the grievant event, so the grievance may be discussed informally and settled without a hearing.

1. A summary of such discussion shall be prepared within five (5) days of the date of discussion and one copy shall be given to the Complainant and one retained in the Authority's Resident file. The summary shall specify:
 - a. the names of the participants;
 - b. date and time of meeting;
 - c. the nature of the complaint and proposed disposition of the complaint and specific reasons therefore;
 - d. the right of the complainant to a hearing; and
 - e. the procedures by which a hearing may be obtained.

The purpose of this informal settlement of grievance is to allow the Complainant and management to informally discuss an issue without the need for third parties, including witnesses or representatives, to be involved. At any time that a third party, including a witness or representative becomes or should become involved in the process, the informal settlement conference shall become a "hearing" and the procedures found in Section IV hereof shall apply. The housing authority shall notify the Complainant of the date and time that the hearing will take place.

E. PROCEDURES TO OBTAIN A HEARING

1. **Request for hearing.** In the event that the Complainant is not satisfied with the informal settlement of grievance provided for in Section III, the Complainant shall submit a written request for a hearing to the Authority or the project office within fourteen (14) business days from date of mailing of the summary of discussion pursuant to Section III. The written request shall specify:
 - a. The reasons for the grievance;
 - b. The action or relief sought;
 - c. Several dates and times in the following ten (10) working days when the complainant can attend a grievance hearing.

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

3. **Selection of Hearing Officer or Hearing Panel:**

The hearing officer shall be an impartial, disinterested person willing to hear the complaint and render a decision, selected jointly by the Authority and the complainant. The impartial person will not:

- a. Be a subordinate of the person who made or approved the Authority's action.
- b. Be a resident of the Authority.
- c. Be a relative or close friend of the complainant.
- d. This Agency will check with each nominee to determine whether there is an interest in serving as a potential hearing officer or panel member, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.

If the Authority and complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the members so appointed shall select a third member. If the members appointed by the Authority and the complainant cannot agree on a third member, such member shall be appointed by any other third party agreed upon by the Authority and the complainant.

4. **Failure to request a hearing.** If the Complainant does not request a hearing in accordance with this Section, then the Authority's disposition of the grievance under Section III shall become final: *Provided*, That failure to request a hearing shall not constitute a waiver by the Complainant of the right thereafter to contest the Authority's action in disposing of the complaint in an appropriate judicial proceeding.
5. **Hearing Prerequisite.** All grievances shall be promptly presented in person, either orally or in writing pursuant to the informal procedure prescribed in Section

III as a condition precedent to a hearing under this section: *Provided*, That if the Complainant shall show good cause why there was failure to proceed in accordance with Section III to the hearing officer, the provisions of this Subsection may be waived by the hearing officer.

6. ***Escrow deposit.*** Before a hearing is scheduled in any grievance involving the amount of rent as defined in the lease which the Authority claims is due, the Complainant shall pay to the Authority an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Complainant shall thereafter deposit monthly the same amount of the monthly rent in an escrow account held by the Authority until the complaint is resolved by decision of the hearing officer. Amounts deposited into the escrow shall not be considered as acceptance of money for rent during the period in which the grievance is pending. These requirements may be waived by the Authority in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure: ***Provided***, That failure to make payment shall not constitute a waiver of any right the Complainant may have to contest the Authority's disposition of his grievance in any appropriate judicial proceeding.

7. ***Scheduling of hearings.*** Upon the Complainant's compliance with this Section, or upon the housing authority notifying the complainant or his/her representative that a hearing will be held, a hearing shall be promptly scheduled by the hearing officer or hearing panel within ten (10) working days, for a time and place reasonably convenient to both the Complainant and the Authority. A written notification specifying the date, time, place and the procedures governing the hearing shall be delivered to the Complainant and the appropriate Authority official.

F. PROCEDURES GOVERNING THE HEARING

1. The hearing shall be held before a hearing officer or hearing panel, as appropriate.
2. The Complainant shall be afforded a fair hearing providing the basic safeguards of due process, which shall include:
 - a. The opportunity to examine before the grievance hearing, and, at the expense of the complainant, to comply all documents, records and regulations of the Authority that are relevant to the hearing. 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.
 - b. The right to be represented by counsel or other person chosen as the Complainant's representative, and to have such person make statements on the Complainant's behalf;
 - c. The right to a private hearing unless the Complainant requests a public hearing;

- d. The right to present evidence and arguments in support of complaint, to controvert evidence relied on by the Authority or project management, and to confront and cross-examine all witnesses upon whose testimony or information the Authority management relies; and
- e. A decision based solely and exclusively upon the facts presented at the hearing.

3. ***Accommodation of persons with disabilities.***

- a. The Authority shall 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.

- b. If the Complainant is visually impaired, any notice to the Complainant which is required by these procedures must be in an accessible format.
- c. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the HA must sustain the burden of justifying the HA action or failure to act against which the complaint is directed.

G. DECISION OF THE HEARING OFFICER

- 1. The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time (not to exceed 15 calendar days) after the hearing. A copy of the decision shall be sent to the Complainant and the Authority. The Authority shall also retain a copy of the decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and made available for inspection by a prospective complainant, his representative, or the hearing officer.
- 2. The decision of the hearing officer or hearing panel shall be binding on the Authority which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Authority's Board of Commissioners determines at the next regularly scheduled board and notifies the complainant within five (5) days of its determination, that:
 - a. The grievance does not concern Authority action or failure to act in accordance with or involving the Complainant's lease or Authority regulations, which adversely affect the Complainant's rights, duties, welfare or status;
 - b. The decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, Authority regulations or requirements of the Annual Contributions Contract between Authority and the U.S. Department of Housing and Urban Development.
- 3. **AUTHORITY EVICTION ACTIONS:** If a resident has requested a hearing in accordance with paragraph IV herein, on a complaint involving the Authority,

notice of termination of the tenancy and the hearing officer or hearing panel upholds the Authority's action to terminate the tenancy, the Authority shall not commence an eviction action in state or local court until it has served notice to vacate on the resident, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or hearing panel having been mailed or delivered to the complainant. Such notice to vacate must be in writing and specify that if the resident fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate actions will be brought against them, and they may be required to pay court costs and attorney fees.

4. A decision by the hearing officer, hearing panel or Board of Commissioners in favor of the Authority or which denies the relief requested by the Complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatsoever, 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.