

GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

DEFINITIONS

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to HAMC action or failure to act in accordance with the individual tenant’s lease or HAMC regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to HAMC or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
 - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
 - Right of the tenant to be represented by counsel
 - Opportunity for the tenant to refute the evidence presented by HAMC including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
 - A decision on the merits
- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto
- **Tenant** – the adult person (or persons) (other than a live-in aide)
 - Who resides in the unit, and who executed the lease with HAMC as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

APPLICABILITY

Potential grievances could address most aspects of HAMC’s operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to HAMC. It is not applicable to disputes between tenants not involving HAMC. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of HAMC.

If HUD has issued a due process determination, HAMC may exclude from HAMC grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

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

HAMC must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described below, to deal with the first two of the above three categories of lease terminations.

INFORMAL SETTLEMENT OF GRIEVANCE

HUD regulations state that any grievance must be personally presented, either orally or in writing, to HAMC office so that the grievance may be discussed informally and settled without a hearing.

HAMC will accept requests for an informal settlement of a grievance in writing, to HAMC office within 5 calendar days of the grievable event. Within 14 calendar days of receipt of the request HAMC will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, HAMC will not reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in HAMC's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

HAMC will prepare a summary of the informal settlement within 10 calendar days; one copy to be mailed to the tenant and one copy to be retained in HAMC's tenant file.

PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision.

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion. The request must specify the reasons for the grievance and the action or relief sought.

The resident must submit a written request for a grievance hearing to HAMC within 5 calendar days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, HAMC's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest HAMC's action in disposing of the complaint in an appropriate judicial proceeding.

Escrow Deposits

Before a hearing is scheduled in any grievance involving the amount of rent that HAMC claims is due, the family must pay an escrow deposit to HAMC. When a family is required to make an escrow deposit, the amount is the amount of rent HAMC states is due and payable as of the first of the month proceeding 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/panel.

HAMC must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income.

Unless HAMC 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 HAMC's disposition of the grievance in any appropriate judicial proceeding.

HAMC will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

Scheduling of Hearings

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and HAMC. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and appropriate HAMC official.

Within 14 calendar days of receiving a written request for a hearing, a hearing officer will be contacted to schedule the hearing and a written notice of the hearing sent to the complainant.

HAMC may wish to permit the tenant to request to reschedule a hearing for good cause.

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made in writing two business days prior to the hearing date. At its discretion, HAMC may request documentation of the "good cause" prior to rescheduling the hearing.

Expedited Grievance Procedure

HAMC does not offer expedited grievances for any grievance concerning a termination of tenancy or eviction.

SELECTION OF HEARING OFFICER

The grievance hearing must be conducted by an impartial person or persons appointed by HAMC, other than the person who made or approved HAMC action under review, or a subordinate of such person.

HAMC must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

PROCEDURES GOVERNING THE HEARING

Rights of Complainant

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any HAMC documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If HAMC does not make the document available for examination upon request by the complainant, HAMC may not rely on such document at the grievance hearing.

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HAMC documents no later than 12:00 p.m. two business days prior to the hearing.

- The right to be represented by counsel or other person chosen as the tenant's representative and to have such person makes statements on the tenant's behalf.

Hearings may be attended by the following applicable persons:

HAMC representative(s) and any witnesses for HAMC

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by HAMC as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by HAMC or project management, and to confront and cross-examine all witnesses upon whose testimony or information HAMC or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Decision without Hearing

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

Failure to Appear

If the complainant or HAMC fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five calendar days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the HAMC must be notified of the determination by the hearing officer/panel: Provided, that a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the HAMC's disposition of the grievance in an appropriate judicial proceeding.

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

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

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

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

General Procedures

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter HAMC must sustain the burden of justifying HAMC action or failure to act against which the complaint is directed.

The hearing must be conducted informally by the hearing officer/panel. HAMC and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to HAMC. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the HAMC fails to comply with the discovery requirements (providing the tenant with the opportunity to examine HAMC documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of HAMC to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require HAMC, 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/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.

The complainant or HAMC 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.

If the complainant would like HAMC to record the proceedings by audiotape, the request must be made to HAMC by 12:00 p.m. two business days prior to the hearing.

HAMC will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities

HAMC must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

DECISION OF THE HEARING OFFICER

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and HAMC. HAMC must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by HAMC and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel.

In rendering a decision, the hearing officer will consider the following matters:

HAMC Notice to the Family: The hearing officer will determine if the reasons for HAMC's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with HAMC policy.

HAMC Evidence to Support the HAMC Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support HAMC's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and HAMC policies. If the grounds for termination are not specified in the regulations or in compliance with HAMC policies, then the decision of HAMC will be overturned.

The hearing officer will issue a written decision to the family and HAMC no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer
- Name of HAMC representative(s)
- Name of family representative (if any)
- Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold HAMC's decision.

Order: The hearing report will include a statement of whether HAMC's decision is upheld or overturned. If it is overturned, the hearing officer will instruct HAMC to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct HAMC to restore the family's status.

Procedures for Further Hearing

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of HAMC will take effect and another hearing will not be granted.

Final Decision

A decision by the hearing officer/panel in favor of the PHA or which denies the relief requested by the tenant in whole or part shall not constitute a waiver of, nor affect in any manner whatever, the rights of the tenant to a trial or judicial review in any proceedings which may thereafter be brought in the matter.