

APPENDIX 13-A
MODEL GRIEVANCE PROCEDURE IN COMPLIANCE
WITH 24 C.F.R. § 966

*(for consideration if the grievance procedure of a
PHA is to be entirely revamped)*

I. RIGHT TO A HEARING

A. Any tenant or applicant (hereinafter "tenant") who feels aggrieved by any Public Housing Authority (hereinafter "PHA") act or failure to act involving tenant's lease or any statute, regulation, policy or procedure that affects the tenant's status, rights, duties or welfare, or any tenant or potential tenant who has a complaint regarding a PHA employee, shall be afforded an opportunity for a hearing before the hearing officer or panel.¹

Examples of situations in which disputes may arise include, but are not limited to, the examination of tenant income to determine rent; the inspection of the units to determine their condition; the collection of rent; the eviction of a tenant; the imposition and collection of charges for maintenance of or repairs for damages to dwelling units or other project areas; the assessment and collection of charges for consumption of excess utilities; the failure of the PHA to assure safe, sanitary and decent housing in compliance with local health, building, and housing codes and procedures; and the failure of the tenant to abide by the terms and conditions of the lease. The examples below are included for illustration.

[THE FOLLOWING IS PERMISSIBLE ONLY IF HUD HAS DETERMINED THAT THE EVICTION COURT AND PROCEDURES TO BE USED SATISFY DUE PROCESS]

B. The PHA may deny a tenant a grievance hearing concerning an eviction or termination of tenancy based upon the tenant's² having engaged in drug-related criminal activity on or near the public housing premises where the tenant lives or felonious [serious] criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants or PHA employees, *provided* that the PHA pursues the eviction only using the following judicial procedures [*insert procedures HUD has approved*] in the following courts [*insert courts HUD has approved*] which HUD has determined to guarantee that (1) adequate and timely notice stating the reasons for eviction be given to the tenant; (2) the tenant has the right to be represented by counsel; (3) the tenant has the opportunity to refute any evidence presented by the PHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defenses; and (4) a decision on the merits explaining the basis of the decision will be rendered.

Examples of situations that present felonious or serious criminal activity that threatens the health, safety or right to peaceful enjoyment of other tenants or PHA employees include the manufacture or storage of explosives on project premises, clear and present threats of physical violence, and the waving about of firearms on project premises.³

¹ See 24 C.F.R. § 966.50 (1992). The regulations limit the grievance procedure to tenants; applicants are not included. It is recommended that applicants be included so that they have the right to a full grievance hearing if denied admission. The examples are included for illustration.

² The statute (42 U.S.C.A. § 1437d(k) (West Supp. 1992)) and the regulations (24 C.F.R. § 966.51(a)(2) (1992)) would appear to allow the PHA to bypass the grievance process not only when the tenant engages in the criminal activity, but also when other household members and guests do so.

³ See 24 C.F.R. § 966.51(a) (1992). This provision is impermissible if the local eviction court's procedures do not satisfy due process as defined by HUD. Note the felonious or serious language is not required by the regulations. If this type of narrowing language is not provided, or if examples of grossly abusive conduct are not provided, then the PHA may well seek to exercise virtually unfettered discretion to exclude any tenant from the grievance hearing, despite the regulations. For example, a PHA may try to exclude all evictions from the grievance process or exclude evictions involving any activity that threatens the health or safety of other tenants, even if the activity is not criminal, because that is what the old regulations allowed. The PHA might try to exclude evictions involving any activity that is criminal, instead of just those crimes that threaten others or are drug-related; or the PHA might not include the requirement that any drug-related activity must have occurred on or near the premises. Such overextensions by the PHA should not be tolerated and would be in violation of the statute and the regulations. See *Holmes v. New York City Hous. Auth.*, 398 F.2d 262, 265 (2d Cir. 1968); *Rudder v. United States*, 226 F.2d 51, 53 (D.C. Cir. 1955).

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C. The grievance procedure is not 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 Board of Commissioners.⁴

D. The failure of a tenant to participate in any of the stages of the grievance process shall not constitute a waiver of any future rights to a grievance hearing on the same issue. In no event shall the failure to participate in any of the stages of the grievance process or the failure to request a grievance hearing constitute a waiver by the tenant of his or her right to contest the PHA action in an appropriate judicial proceeding.⁵

II. DEFINITION OF TERMS⁶

A. "Board of Commissioners" is the Board of Commissioners of the Housing Authority of [your city or county].

B. "Tenant" is any lessee or member of lessee's family residing in the lessee's unit or the remaining head of the household of any tenant residing in housing leased directly by the PHA.

C. "Working days" are weekdays, Monday through Friday, excluding holidays that the PHA observes, such as New Year's, Martin Luther King's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

III. PROCEDURE FOR FILING COMPLAINTS AND INFORMAL SETTLEMENT OF GRIEVANCE

A. A grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the tenant resides so that the grievance may be discussed informally and ideally settled without a hearing.⁷

B. The PHA shall make diligent and reasonable efforts to hold an informal private discussion with the tenant and his or her designated representative immediately upon receipt of the written or oral complaint.

The tenant shall also make diligent and reasonable efforts to attend such an informal private discussion.⁸

C. The PHA shall provide reasonable accommodations to enable persons with disabilities to participate in the informal private discussion, including sign language interpreters, readers, accessible locations and attendants, as appropriate.⁹

The PHA shall provide a native speaker if the tenant is not fluent in English. If it is impossible for the PHA to provide a native speaker, then the tenant shall be notified that he or she may bring an interpreter.

D. All complaints shall be date-stamped at the time of receipt by the PHA.¹⁰

⁴ 24 C.F.R. § 966.51(b) (1992).

⁵ See *id.* §§ 966.55(c) and (d), 966.56(d) and 966.57(c).

⁶ Definition of terms: see *id.* § 966.53. The regulations include more and different terms than are included in the model. The definition of "grievance" in the regulations was specifically omitted in the model because it is narrower than the purposes and scope section, and thus confusing. Compare 24 C.F.R. § 966.50 (1992) with 24 C.F.R. § 996.53(a) (1992). The term "complainant" was omitted in favor of the term "tenant" — a simpler and more easily identifiable term. The term "elements of due process" was excluded since it was inserted in its entirety in the place in the model where it would be used. See § I-B of the model. The terms "hearing officer" or "hearing panel" could be included depending upon the alternative provided for in the grievance procedures. In the regulations, the term "tenant" does not include the words "or members of lessee's family residing in the lessee's unit." These words were included here to assure that minors and other members of the tenant family who are not lessees could present a grievance to the hearing panel or officer. See also § 13.2.5, *supra*. You may also wish to expand the definition to include former tenants, so that they may get a hearing on security deposit disputes.

⁷ This provision is required. See 24 C.F.R. § 966.54 (1992).

⁸ Not specifically required, but the language is consistent with the purposes and intent of 24 C.F.R. § 966.54 (1992). PHAs should be encouraged to reciprocate the duty to informally settle disputes.

⁹ Reasonable accommodation for persons with disabilities is mandatory. 24 C.F.R. § 966.56(5)(h) (1992). While the provision of an interpreter is not required, it certainly falls within the purview of providing meaningful participation for the tenant. See *Morales v. Golar*, 75 Misc.2d 157, 347 N.Y.S.2d 325 (1973).

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E. A summary of the informal private discussion shall be prepared in the tenant's native language, if applicable, within five (5) working days and copies shall be personally delivered or mailed first class, postage prepaid, to the tenant and to the tenant's representative, *provided* that if the tenant is visually impaired, the summary shall be in an accessible format. Copies of the same shall be retained in the PHA's tenant file.¹¹

F. The summary shall be signed by the project manager or other appropriate PHA official, shall specify the names of the participants, dates of the meeting, the nature of the proposed disposition of the complaint, the full and specific reasons therefor, the date on which any corrective action by the PHA is expected to be completed, the tenant's right to a hearing, the procedures by which a hearing may be obtained if the tenant is not satisfied, a form for requesting a hearing and a copy of these procedures.¹²

G. In cases of termination of tenancy, when the PHA discovers facts that appear to constitute a proper justification for issuing a notice of termination, the PHA shall make all reasonable attempts to hold an informal private discussion with the tenant. At the time of the meeting, if the PHA decides to proceed with the termination, the tenant shall be informed in writing of the specific grounds for the proposed termination, of the right to request a grievance hearing and to inspect and copy any PHA documents, records and regulations that are directly relevant to the termination of tenancy before the grievance hearing (or court trial), the procedures by which a hearing may be obtained, the form upon which such a request may be made, and a copy of these procedures.¹³

H. The informal private discussion referred to in §§ III-A, B and G is not required prior to the hearing and shall be waived by the hearing officer or panel where (1) a tenant shows good cause why he or she failed to proceed with the informal private discussion or (2) a tenant has received a notice of termination as required in the lease and fails to appear at the informal private discussion. If one of these conditions is met, the tenant shall not be penalized in any way for failing to proceed with the informal settlement.¹⁴

IV. PROCEDURE TO OBTAIN A HEARING

A. The tenant shall submit a written request for a hearing to the PHA or to the project office within ten (10) working days after the informal conference, or after receipt of the summary of the informal private discussion or of a notice to terminate the tenancy, whichever date is later. In grievances under a duly established expedited grievance procedure where there has been no informal conference as set forth in § III-H, the tenant shall submit a written request for a hearing to the PHA or to the project office within ten (10) working days after receipt of the notice of eviction. To make such a request, the tenant may use the form developed by the PHA and the tenants' organization.¹⁵

B. PHA's and Hearing Officer's or Panel's Duties

1. The written request for a hearing must be date-stamped and filed in the appropriate PHA project office as of the day it is received. The PHA office shall within two (2) working days forward the complaint to the hearing officer or panel.

¹⁰ Not required. This was inserted to assure proper record-keeping by the PHA.

¹¹ All that the regulations require is delivery of the summary to the tenant within a reasonable time. The five-day limitation and mailing requirements are not required. Compare 24 C.F.R. § 966.4(k) (1992) (the lease regulations regarding notice).

¹² See *id.* § 966.54. Some additions to the mandatory provisions of the regulations have been added, such as the signature of a PHA official, the date upon which the PHA must take corrective action, and the form requesting a hearing.

¹³ Not required, but it clarifies any ambiguity there may be in the regulations regarding whether a private conference is necessary in cases of termination. See 24 C.F.R. §§ 966.4(l)(3)(ii) and (m) (1992) regarding requirement for eviction notices to contain notice of the right to inspect and copy documents.

¹⁴ See *id.* § 966.54. The waiver of the informal discussion in eviction cases is not required in the regulations but it is consistent with their purposes and intent. Failure of the tenant to appear for an informal discussion should not preclude access to a grievance hearing. Furthermore, the tenant has the right as afforded in the lease regulations to make any reply that he or she may wish in addition to the right of a grievance hearing.

¹⁵ See *id.* § 966.55. The regulations require a reasonable time rather than 10 working days. Note that it may be advantageous to expand this period of time. The regulations do not require the use of a form to request a grievance hearing.

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2. The hearing officer or panel shall, within three (3) working days of receipt of the complaint, schedule the hearing for a date, time and place convenient to the tenant and occurring within thirty (30) days from receipt of the complaint.

3. Written notification specifying the time, place, and procedures governing the hearing shall be delivered to the tenant, his or her representative, and the appropriate PHA official. From the date of the receipt of the notice, the tenant must be afforded at least five (5) working days' notice of the hearing.

4. Within ten (10) working days after receipt of tenant's request for a hearing, or one day prior to the hearing if the hearing is set before the ten (10) days expire, a duly authorized representative of the PHA shall forward to the hearing officer or panel and to the tenant a written, dated, signed answer to the complaint specifying the proposed disposition of the matter and the full and specific reasons for the proposed disposition. If the tenant is satisfied with the PHA's answer, he or she may so notify the hearing officer or panel and withdraw his or her complaint and request for a hearing.

If the PHA fails to provide an answer and statement of reasons within the ten (10) working days, the complaint shall be decided in the tenant's favor and the hearing officer or panel shall schedule a hearing for the purpose of awarding the tenant appropriate relief.¹⁶

C. If the tenant does not request a hearing, the PHA's disposition of the grievance in the informal settlement becomes final.¹⁷

D. Escrow Deposit

1. Before a hearing is scheduled in any grievance involving the amount of rent as stated in the lease which the PHA claims is due, the tenant shall pay to the PHA an amount equal to the amount due and payable as of the first of the month preceding the month in which the act or failure to act took place. Subject to ¶ IV-D-3 below, the tenant shall thereafter deposit monthly in an escrow account the same amount of the monthly rent until the complaint is resolved by decision of the hearing officer or hearing panel. If the decision is in favor of the tenant, he or she shall receive the escrowed monies back with interest.¹⁸

2. The PHA may waive these requirements in extenuating circumstances based on the recommendation of the hearing officer or panel. Factors to be taken into consideration include: the amount of rent or other payments alleged to be due, the number of months the PHA has not received even partial payments, whether the tenant has made an attempt to make partial payments, the financial position of the tenant, the apparent merits of the tenant's case, the nature and extent of the PHA's violation of local housing codes and whether the PHA had made reasonable efforts upon notification to correct any defects.¹⁹

3. In cases in which the tenant has raised affirmative defenses or counterclaims that set off the PHA's claim for rent, the amount of the rent to be escrowed each month shall be determined in a separate hearing before the hearing officer or panel and may not necessarily be set at the full amount of the rent as it becomes due and payable. Factors to be considered in establishing the amount to be paid into escrow are similar to those listed in ¶ V-D-2 above.²⁰

4. Unless the escrow deposit is waived, the failure to make such payments shall result in a termination of the grievance process unless the tenant proves good cause for his or her failure.

¹⁶ Not required by the regulations. It is included to assure prompt and proper processing of a tenant grievance.

¹⁷ See 24 C.F.R. § 966.55(c) (1992).

¹⁸ See *id.* § 966.55(e). The local law should be checked before adoption of this provision to assure that escrow accounts are permitted and, if permitted, under what conditions. See, e.g., *Bell v. Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970). Note that the interest provision is not required by the regulations, but may be required by local law.

¹⁹ Though not required by the regulations, the waiver clause may be inserted in all grievance procedures. See *Wallace v. Housing Auth. of Huntsville*, No. 73-H-1112 NE (N.D. Ala. Jan. 13, 1975), 8 CLEARINGHOUSE REV. 743 (No. 14.304, Feb. 1975) (PHA must accept an affidavit attesting to tenant's financial inability to make required escrow deposit, in lieu of the deposit). The regulations, 24 C.F.R. § 966.55(e) (1992), require waiver in "extenuating circumstances." The listing of the types of circumstances is added for clarity.

²⁰ Not required by the regulations. It has been added for clarity and to comply with existing law in some jurisdictions.

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V. THE HEARING OFFICER OR HEARING PANEL

[THE FOLLOWING ALTERNATIVES ARE MERELY SUGGESTIVE. OTHER MODELS MAY BE MORE PRACTICAL IN A GIVEN SITUATION.]²¹

[ALTERNATIVE 1.]

A. Grievances shall be presented before a hearing officer or hearing panel selected as follows:

1. The hearing officer shall be an impartial disinterested person selected jointly by the PHA and the tenant requesting a grievance hearing. The disinterested person shall not be an officer, employee, agent or tenant of the PHA. If the PHA and the tenant cannot agree on a hearing officer within ___ days of the request for a hearing, they shall each appoint a member of a hearing panel within ___ days of the request for a hearing, *provided* that prior to its appointment of a panel member the PHA shall consult the tenants' organization and consider its views.²² If one party fails to appoint a panel member before the prescribed deadline, the member appointed by the other party shall decide the matter. The members so appointed shall select a third member. If the members appointed by the PHA and the tenant cannot agree on a third member, such member shall be appointed by an independent arbitration organization or by any other third party agreed upon by the PHA and the tenant.²³

2. In lieu of the procedure set forth in the preceding paragraph (V-A-1), the PHA may provide for the appointment of a hearing officer or panel by any 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 that purpose. The notice and purpose of the voting and/or meeting must be posted in three conspicuous places in each building so affected thirty (30) days in advance.²⁴

[ALTERNATIVE 2.]

A. Grievances shall be presented before a hearing officer or hearing panel selected as follows:

1. The hearing panel shall have three members: one representative chosen by the PHA, one representative chosen by the local tenants' organization, and the members so selected shall appoint one disinterested member. One alternate for each of the three categories shall be selected in the same fashion. The disinterested member and his or her alternate may not be officers, employees or tenants of the PHA.

[ALTERNATIVE 3.]

A. Grievances shall be presented before a hearing officer or hearing panel selected as follows:

1. The hearing officer shall be an impartial person who shall not be an officer, employee, agent or tenant of the PHA and who shall be chosen jointly by the local tenants' organization and the PHA. An alternate shall be selected in the same manner.

[ALTERNATIVE 4.]

A. Grievances shall be presented before a hearing officer or hearing panel selected as follows:

1. The hearing panel shall be composed of seven members who shall be selected in the following manner:

a. Three members of the hearing panel shall be tenants, selected from the lists of eligible tenant members as set forth below. One such list, to be known as the "Family Housing Panel List," shall contain the names of from

²¹ Alternative methods of selecting the hearing officers are presented because the HUD regulations issued in 1991 allow, but do not require, the PHA to appoint the hearing officer. 24 C.F.R. § 966.55(b) (1992), 56 Fed. Reg. 51,560, 51,579 (Oct. 11, 1991). Thus many variations can be negotiated. This first alternative follows the regulations that were effective prior to the 1991 change.

²² 24 C.F.R. § 966.55(b)(3) (1992).

²³ See *id.* § 966.55(b)(1). The model expands the definition of a disinterested person to exclude PHA employees and tenants. The regulations do not require such a provision.

²⁴ See *id.* § 966.55(b)(2). The requirement of a 30-day notice of the voting or meeting was added; it complies with the lease regulations. *Id.* Subpart A, § 966.5.

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four to six residents of the family units who shall be selected by the residents of those units. A second list, which shall be known as the "Leased Housing Panel List," shall contain the names of from four to six leased housing tenants who shall be selected by the Leased Housing Tenants Organization. A third list, to be known as the "Senior Housing Panel List," shall contain the names of five senior housing tenants. Each senior housing project tenants' council shall select one project resident for the "Senior Housing Panel List." The names of the persons on each of these lists shall be drawn at random and ranked on their separate lists in the order in which the names are drawn. The first person whose name is drawn for each list shall serve as a regular panel member. The remaining names on each list shall be designated as the first alternate, second alternate, etc., according to the order in which they are drawn. The regular panel member from each list or the ranking alternate, if the regular member is unavailable, shall serve as a member of the hearing panel during all hearings.

b. Three members of the hearing panel shall be appointed by the PHA. The PHA may also designate three persons to serve as alternates in the event that a regular member of the hearing panel appointed by the PHA is unable to attend the hearing.

c. The seventh member of the hearing panel shall be selected by the members selected above. If an agreement cannot be reached, the selection shall be submitted to an impartial arbitrator

2. A quorum of the hearing panel shall consist of five members, provided that at least two members appointed by the PHA and two tenant members and the chairperson or his or her alternate are present.

[ALTERNATIVE 5.]

A. Grievances shall be presented before a hearing officer appointed by the PHA, *provided* that prior to the appointment of each hearing officer for any grievance hearing the PHA shall consult the tenants' organization and consider its views.²⁵

[END OF ALTERNATIVES]

B. Disqualification of Panel Members. Any person who is related to the tenant or who participated in the decision that the tenant complains of shall be disqualified from sitting on the hearing panel upon challenge by the tenant or upon the hearing panel's own motion. Where a member of the hearing panel is disqualified, an alternate shall serve.²⁶

C. Term. All members of the hearing panel or the hearing officer shall serve for not less than one nor more than three years and may be chosen to serve in the same manner that they were originally selected for two successive terms.

D. Presiding Officer. The members of the hearing panel shall choose from among themselves a presiding officer who shall assign complaints for hearings, chair meetings of the panel, ensure that both the tenant and the PHA have a full opportunity to present all facts relevant to the complaint, and ensure that these procedures are followed in the handling of all complaints.

E. Vacancies. Vacancies shall be filled by the same procedure used for designating original members. If a vacancy occurs during a member's term, the newly designated member shall serve for the remainder of the unexpired term.

F. Meeting Times. The hearing panel shall meet as often as necessary to ensure that all complaints are heard and decided within thirty (30) working days from the time the tenant files his or her complaint and request for a hearing. Meetings shall be at a time, including evenings and weekends when necessary, and place convenient to the tenant, the PHA and the hearing panel.

²⁵ *Id.* § 966.55(b)(3).

²⁶ None of these provisions B - G is required. Each is included merely to clarify and to facilitate the grievance hearing procedure mechanism, especially in situations where there is a standing grievance panel with alternates, instead of cases where a new officer or panel is selected for each new grievance.

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G. Expenses. The PHA shall provide and pay for all space, supplies and clerical staff required by the hearing panel or officer and shall compensate all members of the hearing panel for any out-of-pocket expenses incurred in carrying out their functions as hearing panel members. Any member who is not a PHA employee or receiving compensation from the PHA for services shall also be compensated with a maximum of \$_____ per day prorated in accordance to the amount of actual hours spent.

VI. PROCEDURES GOVERNING THE HEARING

A. The tenant shall be afforded a fair, impartial and informal hearing providing the basic safeguards of due process which shall include:

1. The opportunity for the tenant and his or her representative to examine before and during the hearing and, at the expense of the tenant, to copy all documents, records and regulations of the PHA that are relevant to the hearing. Questions of relevancy shall be decided by the hearing officer or panel. In grievance hearings for cases involving eviction, if any document deemed relevant is not made available after request by the tenant, the PHA may not proceed with the eviction. In all other grievance hearings, any document deemed relevant and not made available after request by the tenant shall not be used or relied on by the PHA at the hearing. The subject matter of any requested document not made available shall be generally described in writing.²⁷

If the PHA is required to copy documents, it may charge the tenant actual costs, not to exceed 3 cents per page.²⁸

2. The right to be represented by counsel or other person(s) chosen as his or her representative, which includes the right to have any such representative make statements on the tenant's behalf.²⁹

3. The right to a private hearing unless the tenant requests a public hearing.³⁰

4. The right to a brief oral explanation by PHA staff of the PHA's policies and procedures relating to the subject matter of the complaint.³¹

5. The right to present evidence and argue in support of his or her complaint, to contest 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.³²

6. A written decision that is based solely and exclusively on facts presented at the hearing and that includes a statement of the reasons.³³

B. The hearing officer or panel shall have all powers necessary to conduct a fair, impartial and informal hearing, including:³⁴

1. Examining witnesses and directing witnesses to testify.³⁵

2. Ruling on offers of proof and receiving relevant evidence. All relevant oral or documentary evidence pertinent to the facts and issues raised by the PHA and the tenant may be received without regard to admissibility

²⁷ See 24 C.F.R. § 966.56(b)(1) (1992). The statement that questions of relevancy shall be determined by the hearing officer or panel has been added to prevent arbitrary action by the PHA. The requirement that a description of a withheld document must be provided to the tenant has been added to assure the tenant that the information withheld is not relevant, and to assist the hearing panel or officer in making the determination of relevancy.

²⁸ The limitation on the cost of duplicating is included to prevent unwarranted or excessive charges. Since its inclusion may encourage charges when previously none were required, this provision may not be advisable.

²⁹ See 24 C.F.R. § 966.56(b)(2) (1992).

³⁰ *Id.* § 966.56(b)(3).

³¹ Not required by the regulations.

³² See 24 C.F.R. § 966.56(b)(4) (1992).

³³ *Id.* §§ 966.56(b)(5) and 966.57(a).

³⁴ Not specifically required by the regulations, but see *Samuels v. District of Columbia*, supra note 30 (*Samuels* mandates adequate grievance procedures).

³⁵ Not specifically required by the regulations.

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under the rules of evidence applicable to judicial proceedings if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. The hearing panel or officer, with the approval of the Board of Commissioners, may make disclosure or evidentiary rules consistent with this procedure as are proper and necessary.³⁶

3. Regulating the course of the hearing and the conduct of the parties, their counsel or representative and other participants. Failure to comply with the direction of the hearing officer or panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the disorderly party. In no event, however, may the hearing officer or panel base the termination of tenancy upon the tenant's conduct at the hearing.³⁷

4. Taking any other action authorized by these rules.

C. A brief or other written statement may be filed with the hearing officer or presiding officer of the hearing panel by any party at the time of the hearing.³⁸

D. At the hearing the tenant must first present evidence in support of his or her complaint to show entitlement to the relief sought. The burden is then on the PHA to justify the action or inaction proposed in its answer to the complaint. No evidence may be used against a tenant or in any way affect the decision of the panel unless the evidence has been introduced at the hearing. No witness or testimony may be used against the tenant unless the witness is present, and no written document may be used against the tenant if the PHA refused the tenant access to the document before the hearing.³⁹

E. Continuances. The hearing may be continued at the request of either the PHA or the tenant for good cause such as illness or unavoidable absence of a party or witness, or by agreement between the PHA and the tenant. On its own motion, the hearing panel or officer may continue the hearing if either the tenant or the PHA fails to appear at the scheduled time for the hearing, or it may determine that the tenant has waived his or her right to a hearing or that the PHA has waived its right to proceed with the proposed eviction or to present evidence in support of its position. Except for circumstances beyond the control of the tenant, no continuance may be for more than five (5) working days unless both parties have agreed to a longer delay. Both parties shall be notified of the determination by the hearing panel or officer, provided that a determination that the tenant has waived his or her right to a hearing shall not constitute a waiver of any right the tenant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.⁴⁰

F. The tenant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a recording of the hearing by whatever means. Any interested party may purchase a copy of such recording or transcription therefrom.⁴¹

G. The PHA shall provide reasonable accommodation for persons with disabilities to participate in the hearing, including sign language interpreters, readers, accessible locations and attendants, as appropriate. The PHA shall provide a native speaker if the tenant is not fluent in English. If it is impossible for the PHA to provide a native speaker, then the tenant shall be notified that he or she may bring an interpreter.⁴²

³⁶ See 24 C.F.R. § 966.56(f) (1992). The regulations provide the standard of the admissibility of evidence; the model expands upon the standard so that a layman may understand and implement the standard. The provision regarding the hearing panel's or officer's power to issue rules and regulations has been added to facilitate the workings of the grievance officer or panel. Perhaps a reference to a 30-day notice and tenant comment period should be made.

³⁷ *Id.* The prohibition against evicting a tenant merely because of his or her conduct at the hearing is included to require the PHA to prove its case regardless of whether the tenant is ejected from the hearing.

³⁸ Not required.

³⁹ See *id.*, § 966.56(e). This provision expands upon the basic rights outlined in the regulations. The changes are self-explanatory.

⁴⁰ See *id.*, § 966.56(d) (1992). This provision has been expanded to provide the hearing panel or officer more flexibility in determining when and if to grant a continuance.

⁴¹ See *id.*, § 966.56(g).

⁴² *Id.*, § 966.56(h). The provision of an interpreter is not required.

VII. DECISION OF THE HEARING PANEL OR HEARING OFFICER

A. Within twenty (20) days of the hearing, the hearing panel or officer shall prepare a written decision stating the findings of fact and conclusions of law upon which the result is based. All decisions must be signed by the hearing panel members or hearing officer and a tally of votes of the members of the panel shall be indicated on the decision. A copy of the decision shall be personally delivered or mailed, postage prepaid, to the tenant and his or her representative and the PHA.⁴³

B. Either party may prepare and submit a proposed decision to the hearing panel or hearing officer for consideration. A copy of such proposed decision shall be given to the opposing party.⁴⁴

C. The hearing officer or panel may render a decision without proceeding with the hearing if the hearing officer or panel determines that the issue has been previously decided in another proceeding, but this procedure is limited to individual grievances between the same parties, concerning the identical grievance with no new material facts.⁴⁵

D. The PHA shall retain in the tenant's folder a copy of the decision, as well as any judicial order or related settlement. 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 any other tenant and his or her representative, or the hearing panel or hearing officer.⁴⁶

VIII. APPEALS FROM THE DECISION OF THE HEARING PANEL

A. 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 Board of Commissioners determines and promptly notifies the tenant of its determination that:

1. The grievance does not concern PHA action or failure to act in accordance with or involving the tenant's lease or PHA regulations that adversely affects the tenant'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.⁴⁷

B. In the event the Board of Commissioners determines that the decision of the hearing officer or panel is improper, the Board shall specify the precise nature of its objection and the laws and regulations that it believes are contravened. In considering any decision of the hearing officer or panel, the Board shall provide notice and an opportunity to be heard to the tenant and his or her representative. The hearing shall be held within thirty (30) days of the notification.⁴⁸

C. A decision by the hearing panel or hearing officer or Board of Commissioners in favor of the PHA, or one that denies the relief requested by the tenant in whole or in part, shall not constitute a waiver of, nor affect in any manner whatever, any rights the tenant may have to a trial *de novo* or judicial review in any judicial proceedings which may thereafter be brought in the matter.⁴⁹

IX. PHA EVICTION ACTIONS

If the hearing panel or officer upholds the PHA's action to terminate the tenancy, the PHA shall not commence an eviction action in the local eviction court until it has served a notice to vacate on the tenant. Such notice to

⁴³ See *id.* § 966.57(a). The regulations provide for a decision within a reasonable period of time rather than 20 days.

⁴⁴ Not required.

⁴⁵ See 24 C.F.R. § 966.56(c) (1992). The definition of what kinds of grievances need not be heard by the hearing panel or officer is clarified here so that only tenant grievances previously decided may be excluded from the hearing by *res judicata*.

⁴⁶ *Id.* § 966.57(a). No substantial change.

⁴⁷ *Id.* § 966.57(b). No substantial change.

⁴⁸ Not required by the regulations, but due process probably requires notice and a chance to be heard.

⁴⁹ See *i.d.* § 966.57(c).

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vacate, which shall not be issued prior to delivery of the decision of the hearing panel or officer to the tenant, must:

1. Be in writing.

2. Specify that, if the tenant fails to quit the premises within thirty (30) days of the decision of the hearing panel or officer, appropriate judicial action shall be brought against the tenant.

3. Specify that the tenant may be required to pay court costs and attorney fees if the tenant does not prevail in court and if the court so orders.

4. Specify that the PHA shall not seek an eviction for reasons other than those specified in the notice of termination.⁵⁰

X. MISCELLANEOUS PROVISIONS

A. Amendments. No substantive amendments to these rules or significant changes in procedures may be made without thirty (30) days' written notification to each tenant and tenant organization, setting forth the proposed modification(s), the reasons therefor, and providing the tenant and tenant organization an opportunity to present written comments which shall be taken into consideration by the PHA prior to the amendments' becoming effective.⁵¹

B. Delivery and Posting of Procedures. A copy of these procedures and of any revisions hereto shall be delivered to each tenant and tenant organization and posted in a conspicuous place in every project and shall be available at every project, from the PHA's main office and from the officers and representatives of the local tenants' organization.⁵²

C. Notice. All notices, answers or decisions required under these procedures to be sent to the tenant must be delivered in person to an adult member of the tenant's household or mailed, with postage prepaid, to the tenant.⁵³

⁵⁰ The 1991 regulatory changes deleted the specific regulatory provision that the PHA could not begin an eviction action in court until after delivery of the notice to vacate to the tenant. 56 Fed. Reg. 51,560, 51,580 (Oct. 11, 1991), deleting 24 C.F.R. § 966.58. But those same regulatory amendments made it clear that a PHA may not evict a tenant by the self-help or lock-out method. 24 C.F.R. § 966.4(l)(4) (1992). This provision makes the rights of the tenant easier to enforce if the PHA tries to lock out a tenant. Otherwise, the only change is a clarification that the tenant must be afforded 30 days in which to move if the decision of the hearing panel or officer is adverse to the tenant.

⁵¹ See 24 C.F.R. §§ 966.5, 966.52(c) (1992). The regulations do not give the PHA the option of merely posting the procedure or waiting for the tenants to ask for a copy. The PHA must give a copy of the procedures to each existing tenant if he or she has not been given one in the past, and to each new tenant upon moving into the unit; new copies must be distributed to all tenants when changes are proposed to be made.

⁵² *Id.* §§ 966.5 and 966.52(d).

⁵³ *Id.* § 966.4(k).