

ROCHESTER HOUSING AUTHORITY

GRIEVANCE PROCEDURE FOR PUBLIC HOUSING

I. Right to a Hearing

- A. Any resident who feels aggrieved by any Rochester Housing Authority (hereinafter RHA) 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 or any resident who has a complaint regarding a RHA employee shall be afforded an opportunity to file a written request as provided in these procedures for a hearing before the hearing panel.
- B. The RHA may exclude from the grievance procedure any grievance a resident may have with the Authority concerning a termination of tenancy or eviction that involves any criminal activity that threatens 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 violent or drug-related criminal activity on or near such premises provided that the threat constitutes a serious, clear and present physical danger. In cases of eviction the procedure will require that 1) adequate and timely notice stating the reasons for eviction must be given to residents; 2) the resident has the opportunity to examine all relevant documents, records and regulations of the RHA prior to the trial for the purposes of preparing a defense; 3) the resident has the right to be represented by counsel; 4) the resident has the opportunity to refute any evidence presented by the RHA including the right to confront and cross-examine witnesses and to present an affirmative legal or equitable defenses; and 5) a decision on the merits is guaranteed.
- C. The grievance procedure is not applicable to disputes between residents not involving the RHA 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 residents and the RHA Board of Commissioners.
- D. The failure of a resident to participate in any of the stages of the grievance process except for a good cause such as illness or unavoidable absence shall 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 resident of his or her right to contest the RHA action in an appropriate judicial processing.

II. Definition of Terms

- A. **“Resident”** shall mean the adult persons other than a live-in aide:
 - 1. Who resides in the unit and who executed the lease with the RHA as lessee of the premises, or member of the lessee’s family or, if no such person now resides in the premises.
 - 2. Who resides in the unit and who is the remaining head of household of the resident family residing in the unit.
- B. Board of Commissioners is the Board of Commissioners of the Rochester Housing Authority of the City of Rochester, New York.
- C. Working days are weekdays Monday through Friday excluding holidays that the RHA observes as non-working days such as New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day and Thanksgiving.

III. Procedure for Filing Complaints and Informal Settlement of Grievance

- A. Residents that a grievance with RHA may request a preliminary meeting with the site manager to see if the matter can be resolved without further action. The resident may bring one person to assist them, if they believe it is necessary.
- B. If the issue cannot be resolved during discussion, a grievance shall be promptly and personally presented, in writing, to the RHA office or to the office in the area in which the resident resides so that the grievance may be discussed through an informal hearing and settled without a formal hearing.
- C. The RHA shall make diligent and reasonable efforts to hold an informal hearing with the resident and his or her designated representative as soon as possible after receipt of the written or oral complaint.

The resident shall also make diligent and reasonable efforts to attend the informal hearing.

- D. The RHA shall provide an interpreter at no cost and expense to the resident if the resident is not fluent in English. If it is impossible for the RHA to provide an interpreter, then the resident shall be notified that he or she may bring an interpreter.

- E. All written complaints shall be date stamped at the time of receipt by the RHA.
- F. A summary of the informal hearing shall be prepared in the resident's native language, if applicable, within five (5) working days and copies shall be personally delivered or mailed first class, postage prepaid to the resident and to the resident's representative. Copies of the same shall be retained in the RHA's resident file.
- G. The summary shall be signed by the project manager or other appropriate RHA 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 RHA is expected to be completed, the resident's right to a formal grievance hearing, the procedures by which a hearing may be obtained if the resident is not satisfied, a form for requested a hearing and a copy of these procedures.
- H. In cases of termination of tenancy when the RHA discovers facts which appear to constitute a proper justification for issuing a notice of termination, the RHA shall make all reasonable attempts to hold an informal hearing with the resident. At the time of the meeting, if the RHA decides to proceed with the termination, the resident shall be informed in writing of the specific grounds for the proposed termination and of the right to request a formal grievance hearing, the procedures by which a hearing may be obtained, the form upon which such a request can be made and a copy of these procedures. The resident may bring a friend or representative to such discussion.
- I. The informal hearing referred to in Section III.A., B., and G. is not required prior to the formal hearing and shall be waived by the hearing panel where: 1) a resident shall show good cause why he or she failed to proceed with the informal private discussion or 2) a resident has received a notice of termination as required in the lease and fails to appear at the informal hearing. If one of these conditions is met, the resident shall not be penalized in any way for failing to proceed with the informal settlement.
- J. For all matters involving a tenant's request for a formal grievance hearing the tenant shall be informed that he/she has the right to examine pertinent items from the tenant file and to copy them prior to the formal hearing.
- K. All notices to tenant shall state that the tenant has the right to legal representation, and, if the tenant cannot afford private legal

representation, may apply for representation by a free legal services provider such as the Monroe County Legal Assistance Corporation, 80 St. Paul Street, Suite 700; telephone number 325-2520.

IV. Procedure to Obtain a Hearing

- A. The resident shall submit a written request for a formal hearing to the RHA or to the Management Office within ten (10) working days after the summary of the informal hearing has been received, or after the receipt of a notice to terminate the tenancy. To make such a request, the resident may use a form developed by the RHA and the residents' organization for such purpose.
- B. RHA's and Panel's Duties
1. The written request for a hearing must be date stamped and filed in the appropriate RHA project office as of the day it is received. The RHA office shall within five (5) working days forward the complaint to the hearing panel.
 2. The hearing panel shall within five (5) working days of receipt of the complaint schedule the hearing for a date, time and place convenient to the resident and RHA and occurring within thirty (30) days from the receipt of the complaint.
 3. Written notification specifying the time, place and procedures governing the hearing shall be delivered to the resident, his or her representative, and the appropriate RHA official. From the date of receipt of the notice, the resident and RHA must be afforded at least five (5) working days notice of the hearing unless waived by all parties.
 4. Within ten (10) working days after receipt of resident'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 RHA shall forward to the hearing panel and to the resident a written, dated, signed answer to the complaint specifying the proposed disposition. If the resident is satisfied with the RHA's answer, he or she may so notify the hearing panel and withdraw his or her complaint and request for a hearing.

- C. If the resident does not request a hearing, the RHA's disposition of the grievance in the informal settlement becomes final except for any legal remedies the resident may have.

- D. Escrow Deposit
 - 1. Before a hearing is scheduled in any grievance involving the amount of rent as stated in the lease which the RHA claims is due, the resident shall pay the RHA 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. The resident shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing panel. If the decision is in favor of the resident, he or she shall receive so much of the monies held in escrow back with such interest per annum pursuant to the General Obligations Law of the State of New York if that is the decision of the hearing panel or with such interest per annum as may have been earned by the Authority provided that the interest is awarded by the hearing panel.

 - 2. The RHA may waive these requirements in extenuating circumstances.

 - 3. Unless the escrow deposit is waived, the failure to make such payments shall result in a termination of the grievance procedure.

V. The Hearing Panel

Hearing Panel shall mean a panel selected to hear grievances and render a decision with respect thereto.

- A. The hearing panel shall have three (3) members: one representative chosen by RHA, one representative chosen by the local City-wide resident's organization (with 1 representative from family if grievance pertains to family or 1 representative from elderly if pertains to elderly) and one disinterested member (American Arbitration Association). One alternate member for each of the three categories shall be selected in the same fashion. The disinterested member and his/her alternate may not be officers, employees or residents of RHA.

- B. Disqualification of Panel Members. Any person who is related to the resident or who participated in the decision that resident complains of shall be disqualified from sitting on the hearing panel. In case a member of the hearing panel is disqualified, an alternate shall serve.

- C. Term. All members of the hearing panel shall serve for one year and may be chosen to serve in the same manner that they were originally selected for two (2) successive terms.
- D. Presiding Officer. Presiding officer shall be the disinterested members of the hearing panel who shall assign complaints for hearing, chair meetings of the panel, insure that both resident and the RHA have a full opportunity to present all facts relevant to the complaint and insure 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 in the middle of a member's term, if qualified, the alternate member shall automatically succeed to serve the remainder of the unexpired term and a new alternate shall be appointed.
- F. Meeting times. The hearing panel shall meet as often as necessary to insure that all complaints are heard and decided within thirty (30) working days from the time the resident files his or her complaint and request a hearing. Meetings shall be at a time and place convenient to the resident, the RHA and the hearing panel.

VI. Procedures Governing the Hearing

- A. The resident and RHA shall be afforded a fair, impartial and informal hearing providing the basic safeguards of due process which shall include:
 - 1. The opportunity for the resident and his or her representative to examine before and during the hearing and, at the expense of the resident, to copy all documents, records, and regulations of the RHA that are relevant to the hearing. Questions of relevancy shall be decided by the hearing panel. Any document deemed relevant and not made available after request by the resident shall not be relied on by the RHA at the hearing. The subject matter of any requested document not made available shall be generally described in writing.

If the RHA is required to copy documents, it may charge the resident costs not to exceed ten (\$.10) per page.
 - 2. The right to be represented by counsel or other person(s) chosen as his or her representative.

3. The right to a private hearing unless the resident requests a public hearing.
 4. The right to a brief oral explanation of the RHA policies and procedures relating to the subject matter of the complaint by the RHA staff.
 5. The right to present witnesses and submit documentation in support of his/her complaint, to contest evidence relied on by the RHA or project management, and to confront and cross-examine all witnesses on whose testimony or information the RHA or project management relies. Both parties have the right to present witnesses and submit documentation.
 6. A decision based solely and exclusively on facts presented at the hearing.
- B. The hearing panel shall have all powers necessary to conduct a fair, impartial and informal hearing, including:
1. Examining witnesses under oath or affirmation and direct witnesses to testify.
 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 RHA and resident may be received without regard to admissibility 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 may with the approval of the Board of Commissioners make disclosure or evidentiary rules consistent with this procedure as are proper and necessary.
 3. Regulating the course of the hearing and the conduct of parties, their counsel or representative and other participants. Failure to comply with the direction of the hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the disorderly party. In no event may the hearing panel base the termination of tenancy upon the resident's conduct at the hearing.
 4. Taking any other action authorized by these rules.

- C. A brief or other written statement may be filed with the presiding officer of the hearing panel by any party at the time of the hearing.
- D. At the hearing the resident must first present evidence in support of his or her complaint to show entitlement. The burden is then on the RHA to justify the action or inaction proposed in its answer to the complaint. No evidence may be used against a resident or in any way affect the decision of the panel unless the evidence has been introduced at the hearing. No witnesses or testimony may be used for or against the resident unless the witness is present, and no written document may be used against the resident if the RHA refused the resident access to the document before the hearing.
- E. Continuances. The hearing may be continued at the request of either the RHA or the resident for good cause such as illness or unavoidable absence of a party or witness or by agreement between the RHA and the resident. On its own motion, the hearing panel may continue the hearing if either the resident or the RHA fails to appear at the scheduled time for the hearing or it may determine that the resident has waived his or her right to a hearing or that the RHA 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 resident or RHA, 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 in writing. Provided that a determination that the resident has waived his or her right to a hearing shall not constitute a waiver of any right the resident may have to contest the RHA's disposition of the grievance in an appropriate judicial proceeding.
- F. A copy of a transcript or tape recording of said proceedings will be available to the resident at his own expense.

VII. Decision of the Hearing Panel

- A. Within ten (10) days of the hearing, the hearing panel 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 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 resident and his or her representative and the RHA.

- B. Either party may prepare and submit to the hearing panel for its consideration a proposed decision. A copy of such proposed decision shall be given to the opposing party.
- C. The RHA shall retain a copy of the decision as well as any judicial order or related settlement in the resident's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the RHA and made available for inspection by any other prospective complainant and his or her representative, or the hearing panel.

VIII. Appeals from the Decision of the Hearing Panel

- A. The decision of the hearing panel shall be binding on the RHA which shall take all actions or refrain from any actions, necessary to carry out the decision unless the Board of Commissioners determines within twenty (20) days and promptly notifies the resident and specifies its reasons that:
 - 1. The grievance does not concern RHA action or failure to act in accordance with or involving the resident's lease or RHA regulations, which adversely affect the resident's rights, duties, welfare or status;
 - 2. The decision of the hearing panel is contrary to applicable federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and the RHA.
- B. A decision by the hearing panel or Board of Commissioners in favor of the RHA or which denies the relief requested by the resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the resident may have to a trial de novo or judicial review in any judicial procedures which may thereafter be brought in the matter.

IX. RHA Eviction Actions

If the Hearing Panel upholds the RHA's action to terminate the tenancy, the RHA shall not commence an eviction action in a court of law until it has served a notice to vacate on the resident. Such notice to vacate which shall not be issued prior to the delivery of the decision of the hearing panel or officer to the resident must:

- 1. Be in writing.
- 2. Specify that if the resident fails to quit the premises within seven (7) days from the date of mailing of the notice to vacate, appropriate judicial action shall be brought against the resident.

3. Specify that the resident may be required to pay court costs and attorney fees, if the resident does not prevail in court and if court so orders.
4. Specify that the RHA shall not seek an eviction for reasons other than those specified in the notice of termination.
5. State that the tenant may apply for representation by a free legal services provider such as the Monroe County Legal Assistance Corporation, 80 St. Paul Street, Suite 700; telephone number 325-2520.

X. Miscellaneous Provisions

- A. Amendments: No substantive amendments to these rules or significant changes in procedures may be made without thirty (30) days posting in all Management Offices and notices to the two City-wide residents associations (elderly and family) and all residents associations, and made available to residents, setting forth the proposed modification(s), the reasons therefor, and providing the resident and resident organization an opportunity to present written comments which shall be taken into consideration by the RHA prior to the amendments becoming effective.
- B. Posting Procedures: A copy of these procedures and of any revisions hereto shall be posted in a conspicuous place in every management office and shall be available at every project, from the RHA's management and from the officers and representatives of the local resident's organization.
- C. Notice: All Notices, answers or decisions required under these procedures to be sent to the resident must be delivered in person to an adult member of the resident's household or mailed by postage prepaid to the resident.