

# **North Wilkesboro Housing Authority**

**North Wilkesboro, North Carolina**

# **Tenant Grievance Procedures**

Revised February 2004

## **GRIEVANCE PROCEDURE**

### **I. PURPOSE**

The Grievance Procedure has been adopted to provide a forum and procedure for residents to seek the just, effective and efficient settlement of grievances against the North Wilkesboro Housing Authority, hereinafter referred to as NWAHA or HA.

### **II. GOVERNING LAW**

The law governing this Grievance Procedure is section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. Sec. 1437d (k) and subpart B of 24 CFR part 966 (24 CFR Section 966.50 - 966.57).

### **III. APPLICABILITY**

In accordance with applicable Federal Regulations, this Grievance Procedure shall be applicable to all individual grievances (as defined in Section IV below) between a resident and the NWAHA with the following two (2) exceptions:

- A. This Grievance Procedure is not applicable to disputes between residents not involving the NWAHA, or to class grievances involving groups of residents. Also, this Grievance Procedure is not intended as a forum for initiating or negotiating policy changes between residents, or groups of residents, and the NWAHA's Board of Commissioners.
- B. The NWAHA has elected to determine that this Grievance Procedure shall not be applicable to any termination of tenancy or eviction that involves:
  - 1. Any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of HA;  
or
  - 2. Any drug-related criminal activity on or off such premises.

Any termination of tenancy or eviction that does fall into one of these two categories shall be handled within the confines of the Expedited Grievance Procedure, which is set forth in Section XII of this document.

### **IV. DEFINITIONS**

The following definitions of terms shall be applicable to this Grievance Procedure:

- A. **Grievance:** Any dispute which a resident may have with respect to an action or a failure to act by NWHHA in accordance with the individual resident's lease or NWHHA regulations, which adversely affects the individual resident's rights, duties, welfare, or status.
- B. **CFR:** The code of federal regulations that contains the federal regulation governing this Grievance Procedure.
- C. **Complainant:** Any resident (as defined in this section below) whose grievance is presented to the Central Office of the NWHHA, in accordance with the requirements set forth in this procedure.
- D. **Drug-related criminal activity:** The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sale, distribute, or use of a controlled substance as defined in Sec. 102 of the Controlled Substances Act (21 U.S.C. Sec. 802) as from time to time amended.
- E. **NWHHA or "Housing Authority":** The North Wilkesboro Housing Authority, a body corporate organized and existing under the laws of the State of North Carolina.
- F. **Elements of due process:** The following procedural safeguards are required in an eviction action or a termination of tenancy in a state or local court:
  - 1. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
  - 2. Right of the resident to be represented by counsel;
  - 3. Opportunity for the resident to refute the evidence presented by the NWHHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the resident may have;
  - 4. A decision on the merits.
- G. **Hearing Officer:** An impartial person or arbitrator selected in accordance with 24 CFR Sec 966.55 and this Grievance Procedure to hear grievances and render decisions with respect thereto.
- H. **Hearing Panel:** A three-member panel composed of impartial persons, selected in accordance with 24 CFR Sec. 966.55 and this procedure to hear grievances and render decisions with respect thereto.
- I. **HUD:** The United States Department of Housing and Urban Development.
- J. **Notice:** As used herein, the term notice shall, unless otherwise specifically provided, mean written notice.

- K. **The “Regulations”:** The HUD regulations contained in subpart B of 24 CFR part 966.
- L. **Resident Organization:** An organization of residents, which includes any Resident Management Corporation and specifically includes the NWA Resident Council.
- M. **Resident:** The adult person (or persons) other than a live-in aide:
  - 1. Who resides in the unit and who executed the lease with the NWA as lessee of the dwelling unit, or, if no such person resides in the unit
  - 2. The person who resides in the unit and who is the remaining head of the household of the resident family residing in the dwelling unit.
- N. **Business Days:** Monday through Friday of each week, except for legal holidays recognized by the Federal Government.

## V. INCORPORATION IN LEASE

This Grievance Procedure shall be incorporated by reference in all public housing dwelling leases between residents and the NWA, whether or not so specifically provided in such leases.

## VI. INFORMAL SETTLEMENT OF GRIEVANCES

- A. **Initial Presentation.** Any grievance must be presented, in writing to the NWA’s Management Office within five (5) business days after the occurrence of the event giving rise to the grievance.
- B. **Informal Settlement Conference.** If the grievance is not determined by the HA to fall within one of the two exclusions mentioned in Section III B (1 and 2) above, then the NWA shall, within five (5) business days after the initial presentation of the grievance to informally discuss the grievance with the complainant or his representative(s) in an attempt to settle the grievance without the necessity of a formal hearing. If the informal settlement conference cannot occur at the time the grievance is initially presented by the complainant, then the complainant shall be promptly notified in writing of the time and place for the informal settlement conference.

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

## **VII. FORMAL GRIEVANCE HEARING**

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

- A. Request for Hearing:** If the complainant is not satisfied with the results of the informal settlement conference, the complainant must submit a written request for a formal hearing to NWHHA's Management Office no later than seven (7) business days after the date complainant receives the summary of discussion delivered as required under Section VI above.

Complainant's written request for a formal hearing must specify:

1. The reasons for the grievance;
  2. The action or relief sought by the complainant; and
  3. If the complainant so desires, a statement setting forth the times at which the complainant shall be available for a hearing during the next ten (10) business days;
  4. Complainant's preference, if any, concerning whether the grievance should be heard by a single hearing officer or by a hearing panel;
  5. If the complainant has failed to attend an informal discussion conference, a request that the hearing officer or panel waive this requirement.
- B. Failure to Request Hearing:** If the complainant fails to request a hearing within seven (7) business days after receiving the written summary of the informal settlement conference, the NWHHA's decision rendered at the informal hearing becomes final and the NWHHA is not thereafter obligated to offer the complainant a formal hearing.

## **VIII. SELECTION OF HEARING OFFICER OR PANEL**

All grievance hearings shall be conducted by an impartial person or persons appointed by the NWHHA after consultation with resident organizations, in the manner described below:

- A. The permanent appointments of persons who shall serve as hearing officers and a hearing panel shall be governed by the following procedures:
  - 1. The hearing officers and hearing panel selected may not be a Commissioner, officer, employee or tenant of the NWHHA. The NWHHA shall nominate a slate of persons to sit as hearing officers and hearing panel members. The persons nominated to be listed on the slate of members for the hearing panel shall be responsible persons in the community. No persons shall be listed on the slate of members unless such person has consented to serve as a hearing officer or on a hearing panel.
  - 2. The slate of potential appointees shall be submitted to the Resident Organization for written comments. Written comments from the resident organization, received within seven (7) calendar days from date of notification, shall be considered by the NWHHA before appointments are finally made. Objection to the appointment of a person as a hearing officer or panelist must be considered but is not dispositive as to the proposed appointment with respect to which objection is made.
  - 3. On final appointment, the persons appointed and the Resident Organization shall be informed in writing of the appointments. A list of all qualified hearing officers and panelists shall be kept at the Central Office of the NWHHA and be made available for public inspection at any time.
- B. The designation of hearing officers or panel members for particular grievance hearing shall be governed by the following provisions:
  - 1. All hearings shall be held before a single hearing officer unless the complainant (at the time of the initial request for the hearing) or the NWHHA requests that the grievance should be heard by a hearing panel.
  - 2. Appointments to serve as a hearing officer or panelist with respect to a particular grievance shall be made by the NWHHA in random order, subject to availability of the hearing officer or panelist to serve in each such case. The NWHHA may employ any reasonable system for random order choice.

3. No person shall accept an appointment, or retain an appointment, once selected as a hearing officer or hearing panelist, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers or panelists must disqualify themselves from hearing grievances That involve personal friends, relatives, persons with whom they have any business relationship, or grievances in which they have some personal interest. Further, such persons are expected to disqualify themselves if the circumstances are such That a significant perception of partiality exists and is reasonable under the circumstances. If a complainant fails to object to the designation of the hearing officer or panelists on the grounds of partiality, at the commencement or before the hearing, such objection is deemed to be waived, and may not thereafter be made.

In the event That a hearing officer or panel member fails to disqualify himself or herself as required in this Grievance Procedure, the NWHHA shall remove the panel member or officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such person should have, but did not, disqualify himself or herself, and schedule a new hearing with a new hearing panel or officer.

## **IX. SCHEDULING OF HEARINGS**

- A. Hearing Prerequisites:** A complainant does not have a right to a grievance hearing unless the complainant has satisfied the following prerequisites to such a hearing:
  1. The complainant has requested a hearing in writing.
  2. The complainant has completed the informal settlement conference procedure or has requested a waiver for good cause.
  3. If the matter involves the amount of rent which the NWHHA claims is due under the complainant's lease, the complainant shall have paid to the NWHHA an amount equal to the amount due and payable as of the first of the month preceding the month in which the complained of act or failure to act took place. And, in the case of situations in which hearings are, for any reason delayed. the complainant 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 officer or hearing panel. Unless waived by the NWHHA in writing, no waiver shall be given by the

NWHA except in cases of extreme and undue hardship to the complainant, determined in the sole and absolute discretion of the NWHA.

## **B. Time, Place, Notice**

1. Upon complainant's compliance with the prerequisites to a hearing set forth above, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the NWHA, no later than the fifteenth (15th) calendar day after complainant has completed such compliance. (In the case of a panel, if all three appointed members of the panel are not able to agree upon a date and time convenient to all panelists, on or before the last date before the hearing permitted under this procedure, they shall immediately so inform the NWHA. If two panelists can agree upon a date and time, the NWHA shall reappoint a third panelist who shall be available at the time agreed upon by two who can agree. If none of the panelists can agree upon a time, a new panel shall be appointed).
2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate NWHA official who, unless otherwise designated, shall be the Executive Director.

## **X. PROCEDURES GOVERNING HEARINGS**

### **A. Fair Hearings**

The hearings shall be held before a hearing officer or hearing panel as directed above in Section VIII. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any NWHA documents, including records and regulations that are directly relevant to the hearing. The complainant shall be allowed to copy any such document at the complainant's expense. If the NWHA does not make the document available for examination upon request by the complainant, the NWHA may not rely on such document at the grievance hearing.
2. The right to be represented by counsel or other person chosen as the complainant's representative and to have such person make statements on the complainant's behalf.



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

**B. Prior Decision in Same Matter**

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

**C. Failure to Appear**

If the complainant or the NWHHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for a period not to exceed five (5) business days, or may make a determination that the party failing to attend has waived the right to a hearing. In such event, the hearing officer or hearing panel shall notify the complainant and the NWHHA of the determination.

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

**D. Required Showing of Entitlement to Relief**

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

**E. Informality of Hearing**

The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceeding.

**F. Orderly Conduct Required**

The hearing officer or hearing panel shall require the NWHHA, 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 or hearing 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.

**G. Transcript of Hearing**

The complainant or the NWHHA may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

**H. Accommodation to Handicapped Persons**

The NWHHA must provide reasonable accommodations for persons with disabilities to participate in grievance hearings. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants.

**XI. DECISION OF THE HEARING OFFICER OR HEARING PANEL**

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

**A. Written Decision**

The hearing panel or officer shall prepare a written decision, together with the reasons for the decision within seven (7) business days after the completion of hearing.

1. A copy of the decision shall be sent to the complainant and the NWHHA. The NWHHA shall retain a copy of the decision in the complainant's file.
2. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the NWHHA and made available for inspection by any prospective complainant, his representative, or the hearing panel or hearing officer.

**B. Binding Effect**

The written decision of the hearing officer or hearing panel shall be based solely and exclusively upon facts presented at the hearing and upon applicable PHA and HUD regulations. To the extent that the decision is not inconsistent with State law, the United States Housing Act

1937, as amended, HUD regulations and requirements promulgated thereunder, or the Annual Contributions Contract, the decision shall be binding upon the NWAHA.

If the NWAHA Board of Commissioners determines the decision rendered is not consistent or within the scope of applicability, the NWAHA shall properly notify within thirty (30) calendar days the complainant of its determination. The NWAHA shall then refrain from any action necessary to effect the decision. The following are listed as situations which should render tenant notification.

1. The grievance does not concern NWAHA action or failure to act in accordance or involving the complainant's lease, or HA's regulations, which adversely affect the complainant's rights, duties, welfare or status, or
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 NWAHA, or that the hearing panel has acted arbitrarily or exceeded its authority. In such event, the matter may be judicially reviewed.

#### **C. Continuing Right of Complainant to Judicial Proceedings**

A decision by the hearing panel or officer or Board of Commissioners in favor of the NWAHA or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor affect in any way the rights of the complainant to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

## **XII. NOTICES**

All notices under this Grievance Procedure shall be deemed delivered:

1. Upon personal service thereof upon the complainant or an adult member of the complainant's household;
2. Upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail; or
3. On the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail.

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

### **XIII. MODIFICATION**

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

### **XIV. MISCELLANEOUS**

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