

# WYOMING HOUSING COMMISSION

## PUBLIC HOUSING GRIEVANCE PROCEDURE

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### INTRODUCTION

The grievance procedure is applicable only to individual tenant issues relating to the Wyoming Housing Commission (WHC). It is not applicable to disputes between tenants not involving the WHC. 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 the WHC.

The grievance procedure is a process through which residents of public housing are provided an opportunity to grieve any WHC action or failure to act involving the lease or WHC policies which adversely affect their rights, duties, welfare, or status. The WHC must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

### 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 WHC action or failure to act in accordance with the individual tenant’s lease or WHC regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the WHC 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 the WHC 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** – An impartial person or persons selected by the WHC, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant** – the adult person (or persons) (other than a live-in aide)

- Who resides in the unit, and who executed the lease with the WHC 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

If HUD has issued a due process determination, the WHC may evict through the state/local judicial eviction procedures and may exclude from the WHC grievance procedure 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 the WHC
- Any violent or drug-related criminal activity on or off such premises

*The WHC is located in a HUD-declared due process state. Therefore, in the above cases, the WHC is not required to provide the opportunity for a hearing under the WHC's grievance procedure and will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the WHC, or for violent or drug-related criminal activity on or off the premises.*

## PROCEDURES PRIOR TO A HEARING

Any grievance must be personally presented within 10 business days of the grievable event, in writing, to the WHC office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

Within 10 business days of receipt of the request the WHC 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, the WHC will 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.

The WHC will prepare a summary of the informal settlement within 10 business days from the scheduled meeting; one copy to be given to the tenant, one copy to his/her legal representative (if applicable) and one copy to be retained in the WHC'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.

## PROCEDURES TO OBTAIN A HEARING

If the tenant is not satisfied with the result of the informal settlement, and would like a hearing, the resident must submit a written request for a grievance hearing to the WHC within 10 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the WHC'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 the WHC's action in disposing of the complaint in an appropriate judicial proceeding.

## SCHEDULING OF A HEARING

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing will be scheduled within 10 business days of receiving the written request for a hearing by the hearing officer. A written notification specifying the time, place and the procedures governing the hearing will be sent to the complainant and the hearing officer.

If necessary, the tenant may request to reschedule a hearing only 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 orally or in writing prior to the hearing date. At its discretion, the WHC may request documentation of the "good cause" prior to rescheduling the hearing.

## SELECTION OF A HEARING OFFICER

The grievance hearing will be conducted by an impartial person appointed by the WHC, other than the person who made or approved the WHC action under review, or a subordinate of such person. The WHC has designated the following to serve as hearing officers:

- Administrative Aide/Hearing Officer
- Professional mediators, arbitrators or legal counsel
- Qualified personnel from other area housing agencies
- Qualified City of Wyoming personnel

## PROCEDURES GOVERNING THE HEARING

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

- The opportunity to examine before the grievance hearing any WHC documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed

to copy any such document at a cost of \$.10 per page. The family must request discovery of WHC documents no later than 12:00 p.m. on the business day prior to the hearing.

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

Hearings may be attended by the following applicable persons:

- A WHC representative(s) and any witnesses for the WHC
  - The tenant and any witnesses for the tenant
  - The tenant's counsel or other representative
  - Any other person approved by the WHC 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 the WHC or project management, and to confront and cross-examine all witnesses upon whose testimony or information the WHC or project management relies.
  - A decision based solely and exclusively upon the facts presented at the hearing.

## FAILURE TO APPEAR

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 the WHC within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will 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.

## DECISION OF THE HEARING OFFICER

The hearing officer will issue a written decision to the family and the WHC 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 the WHC 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 the WHC's decision.

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

A copy of the decision must be sent to the complainant and the WHC. The WHC must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by the WHC and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

A decision by the hearing officer/panel, or Board of Commissioners in favor of the WHC or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

*For more detailed information, please refer to Chapter 14 of the Wyoming Housing Commission's Admission and Continued Occupancy Plan*