

BENNINGTON HOUSING AUTHORITY

GRIEVANCE POLICY

Grievance Procedures

A. Purpose and Scope

The purpose of these Grievance Procedures is to assure that the Bennington Housing Authority (hereinafter referred to as BHA) residents are afforded an opportunity for a hearing, if the resident disputes within a reasonable time, any BHA action or failure to act, involving the resident's lease, or BHA regulations which adversely affect the individual resident's right's, duties, welfare or status.

1. Additional areas covered by these procedures include the:
 - a) Community Service and Self-Sufficiency Requirements
 - b) Income changes resulting from welfare program requirements
 - c) Improper disclosure or inappropriate use of information obtained by the BHA through criminal records, sex offender registration records, drug abuse treatment facility records and domestic violence records.

The Grievance Procedure shall be applicable to all individual grievances as defined herein.

B. 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. 1437 d (K) and subpart B of 24 CFR part 966 (24 CFR secs. 966.50-966.57).

C. Definitions

The following definitions of terms shall be applicable to this grievance procedure:

1. Grievance: Any dispute which a resident may have with respect to an action or a failure to act by the BHA in accordance with the individual resident's lease or BHA regulations, which adversely affects the individual resident's rights, duties, welfare or status.
2. CFR: The Code of Federal Regulations, which contains the federal regulations governing this grievance procedure.
3. Complainant: Any resident (as defined in this section below) whose grievance is presented to the BHA or at the project management office in accordance with the requirements set forth in this procedure.
4. Drug-related criminal activity: The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
5. "Authority": Bennington Housing Authority, a body corporate organized and existing under the laws of the State of Vermont.
6. Elements of Due Process: The following procedural safeguards are required to be followed in an eviction action or a termination of tenancy in a state or local court:

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- a) Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
 - b) Right of the resident to be represented by counsel;
 - c) Opportunity for the resident to refute the evidence presented by the BHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and
 - d) A decision on the merits.
7. Hearing Officer or Hearing Panel: An impartial person or persons selected by the BHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.
 8. HUD: The United States Department of Housing and Urban Development.
 9. Notice: As used herein, the term notice shall, unless otherwise specifically provided, mean written notice.
 10. The "Regulations": The HUD regulations contained in subpart B of 24 CFR sec. 966.
 11. Resident organization: An organization of residents, which includes any resident management corporation.
 12. Resident: The adult person (or persons) other than a live-in aid:
 - a) Who resides in the unit and who executed the lease with the BHA as lessee of the dwelling unit, or, if no such persons reside in the unit;
 - b) 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.
 13. Business Days: Monday through Friday of each week, except for legal holidays recognized by the federal government and/or local city government.

D. Incorporation in Leases

This grievance procedure shall be included in, or incorporated by reference in, all dwelling leases between the residents and the BHA.

E. Exceptions

These procedures are applicable to all individual grievances, as defined in the BHA's Definitions section of these policies, between the resident and the BHA with the following exceptions:

1. The BHA's grievance procedures are not applicable to disputes between residents not involving the BHA, or to class grievances.
2. The grievance procedures are not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the BHA's Board of Commissioners; and
3. HUD has issued a due process determination that the law of the State of Vermont requires that the resident be given the opportunity for a hearing in court that provides the basic elements of due process (as defined in the Definition section of these policies) before eviction from a dwelling unit. Therefore, the BHA has elected to determine that

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this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:

- a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of BHA; or
- b) Any violent or drug-related criminal activity on or off such premises; or
- c) Any criminal activity that resulted in felony conviction of a household member.

However, improper use of or disclosure of information obtained by the BHA through criminal records, sex offender registration records and drug abuse treatment facility records, may be the subject of a grievance by a tenant of the BHA.

F. Processing Grievances

The primary objective of this process is to settle grievances at the lowest level and as quickly as possible and minimize impact upon the BHA's operations. Except as stated in paragraphs A. and B. above, the BHA's procedures shall afford each resident an opportunity for a hearing on a grievance, in accordance with the requirements, standards, and criteria contained in these procedures, with such modifications as are required by State law. The process for handling grievances is outlined below.

1. Informal Settlement of Grievance

- a) Grievances shall be personally presented, either orally or in writing, to the BHA's central office, or to the office of the development in which the complainant resides, so that the grievance may be discussed informally and settled without a hearing. This notice should be given within thirty (30) business days after the occurrence giving rise to the grievance.
- b) A summary of such discussion shall be prepared within five (5) business days. One copy shall be given to the resident and one shall be retained in the BHA's resident file.

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

- c) The summary shall specify:
 - (1) The names of the participants,
 - (2) Dates of the meetings,
 - (3) The nature of the proposed disposition of the complainant and the specific reasons therefore,
 - (4) The rights of the complainant to a hearing, and
 - (5) The procedures by which a hearing may be obtained if the resident is not satisfied.
- d) The BHA shall specifically include notice to the complainant of the following:
 - (1) The time limit to request a grievance hearing;

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- (2) The grievance will be heard by a hearing officer or a hearing panel, and the procedures for selecting the hearing officer or hearing panel;
- (3) What specifically must be included in the complainant's written request for a grievance, as provided in paragraph 1.b of the BHA's Procedures to Obtain a Hearing;
- (4) If the complainant fails to request a hearing within the required time period (5 business days) after receiving the summary, the BHA's decision rendered at the Informal Settlement conference becomes final. However, the complainant does not waive the right to contest the BHA's action in an appropriate judicial proceeding;
- (5) The complainant's rights to be represented by counsel or other representative at the grievance hearing; and
- (6) The complainant requesting a hearing has a right to examine any BHA documents relevant to the hearing, including records and regulations. The complainant shall be allowed to obtain a copy from the BHA of any such documentation at the complainant's expense, as stated in the "Charges in Addition to Rent" schedule.

G. Procedures to Obtain a Hearing

1. Request for a Hearing:
 - a) The complainant shall submit a written request for a hearing to the BHA, or to the development office, within five (5) business days after receipt of the written summary of the Informal Settlement conference.
 - b) The written request shall specify:
 - (1) The reasons for the grievance;
 - (2) The action or relief sought;
 - (3) The complainant's statement setting forth the times at which the complainant will 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.
 - c) If the complainant fails to request a hearing within five (5) business days after receiving the written summary of the Informal Settlement conference, the BHA's decision rendered at the Informal Settlement conference becomes final and the BHA is not thereafter obligated to offer the complainant a hearing.
 - d) Should the complainant fail to request a hearing, such failure shall not constitute a waiver by the complainant of his/her right thereafter to contest the BHA's action in disposing of the complaint in an appropriate judicial proceeding.

H. Selection of Hearing Officer or Hearing Panel:

1. Grievances shall be presented before a hearing officer or hearing panel.
2. The hearing officer or hearing panel shall be an impartial, disinterested person selected by the BHA. The hearing officer or hearing panel shall not be:
 - a) The person who made or approved the decision, or

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b) A subordinate of the person who made or approved the decision.

I. Hearing Prerequisite:

1. All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure prescribed in the paragraph on Informal Settlement of Grievance as a condition precedent to a hearing under this section.
2. If the complainant shows good cause why he/she failed to proceed in accordance with the paragraph on Informal Settlement of Grievance, the provisions of this subsection may be waived by the hearing officer or hearing panel.

J. Escrow Deposit:

1. Before a hearing is scheduled in any grievance involving the amount of Tenant Rent which the BHA claims is due, the resident shall pay into an escrow account, an amount equal to the amount of the Tenant Rent due and payable as of the first of the month preceding the month in which the act or failure to act took place.
2. The resident shall thereafter deposit the same amount of the Tenant Rent into that escrow account monthly, until the complaint is resolved by decision of the hearing officer or hearing panel.
3. The BHA may waive these requirements in extenuating circumstances. Unless so waived, failure to make such payments shall result in termination of the grievance procedures.
4. Failure to make payment shall not constitute a waiver of any right the resident may have to contest the BHA's disposition of the resident's grievance in any appropriate judicial proceeding.
5. Escrow deposits are not required for grievances related to minimum rent hardships and welfare reductions.

K. Scheduling Hearings:

1. The hearing officer or hearing panel shall promptly schedule the hearing, for a time and place reasonably convenient to both the complainant and the BHA, upon the complainant's compliance with the above requirements.
2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate BHA official.
3. The hearing may be conducted through electronic communications such as teleconference or web meetings.

L. Procedures Governing the Hearing

1. Official or Panel: The hearing shall be held before a hearing officer or a hearing panel, as appropriate.
2. Safeguards of Due Process: The complainant shall be afforded a fair hearing providing the basic safeguards of due process, which include the following:
 - a) The opportunity to examine documents before the hearing, and to copy all documents, records, and regulations of the BHA that are relevant to the hearing at

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the expense of the complainant. Any requested document not made available to the complainant may not be relied on by the BHA at the hearing;

- b) The right to be represented by counsel or other person chosen as the complainant's representative;
- c) The right to a private hearing, unless the complainant requests a public hearing;
- d) The right to present evidence and arguments in support of the complainant's complaint, to controvert evidence relied on by the BHA or development management, and to confront and cross examine all witnesses on whose testimony or information the BHA or development management relies; and
- e) A decision based solely and exclusively upon the facts presented at the hearing.

M. Previous Decision

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

N. Failure to Appear:

- 1. If the complainant or the BHA 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 has waived his or her right to a hearing.
- 2. The hearing officer or hearing panel shall notify both the complainant and the BHA of the determination.
- 3. A determination that the complainant has waived his or her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the BHA's disposition of the grievance in an appropriate judicial proceeding.

O. Entitlement and Justification:

- 1. At the hearing, the complainant must first make a showing of an entitlement to the relief sought.
- 2. Thereafter, the BHA must sustain the burden of justifying the BHA's action or failure to act against which the complaint is directed.

P. Conduct of the Hearing:

- 1. The hearing shall be conducted informally by the hearing officer or hearing panel.
- 2. Oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- 3. The hearing officer or hearing panel shall require the BHA, the complainant, legal counsel, and other participants or spectators to conduct themselves in an orderly

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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.

Q. Transcript:

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

R. Accommodation to Persons with Disabilities

The BHA will provide reasonable accommodation for persons with disabilities throughout the grievance process.

This includes, but is not limited to, accommodating tenants with disabilities by accepting grievances at alternate sites or by mail, having BHA staff reduce an oral request for a grievance to writing for a tenant with a disability who cannot write due to the disability, and providing accommodations in the grievance hearing itself by providing qualified sign language interpreters, readers, accessible locations or attendants.

If the resident is visually impaired, any notice to the resident which is required under this section must be in an accessible format.

S. Limited English Proficiency

The BHA must comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" issued on January 22, 2007 and available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.

T. Decision of the Hearing Officer or Hearing Panel

1. The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefore, within a reasonable time after the hearing (usually within 10 business days).
2. A copy of the decision shall be sent to the complainant and the BHA.
3. The BHA shall retain a copy of the decision in the resident's folder.
4. The BHA must maintain a log of all hearing officer or hearing panel decisions and make it available upon request of the hearing officer or hearing panel, a prospective complainant, or a prospective complainant's representative. At a minimum, the log must include:
 - a) The date of the hearing decision,
 - b) The general reason for the grievance hearing (failure to pay rent, CSSR noncompliance, etc.), and
 - c) Whether the decision was in the favor of the complainant or the BHA

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U. Subsequent Actions

The decision of the hearing officer or hearing panel shall be binding on the BHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision, unless the Board of Commissioners determines, within ten (10) business days, and promptly notifies the complainant of its determination, that:

1. The grievance does not concern BHA action or failure to act in accordance with or involving the complainant's lease or BHA regulations, which adversely affect the complainant's rights, duties, welfare, or status; and
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 BHA.

V. Judicial Proceedings

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

W. BHA Notice

Notices under this grievance procedure shall be deemed delivered:

1. Upon personal service thereof to the complainant or an adult member (18 years of age or older) 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 business day after first class mailing, with the U.S. Postal Service.

X. Concurrent Notice

If a complainant has filed a request for grievance hearing in a case involving the BHA'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 can run concurrently.

If the hearing officer or hearing panel upholds the BHA's action to terminate the tenancy, the BHA may commence an eviction action in court by the later of:

1. The expiration of the date for termination of tenancy and vacation of premises stated in the delivered termination notice, or
2. The delivery of the report of decision of the hearing officer or panel to complainant.

Y. Modification

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the BHA, present at a regular meeting or a special meeting called for such purposes.

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1. The BHA must provide for at least thirty (30) days advance notice to residents and resident organizations of any changes proposed to be made to this grievance procedure, setting forth the proposed changes and providing an opportunity to present written comments.
2. The BHA shall consider any comments submitted before final adoption of any amendments.