

# **GUTTENBERG HOUSING AUTHORITY**

## **GRIEVANCE PROCEDURE**

**Adopted February 19, 2013  
Resolution Number 2013-22**

## **1. Purpose**

This grievance procedure has been adopted to provide a forum and procedure for tenants to seek the just, effective, and efficient settlement of grievances against the Guttenberg Housing Authority (“GHA”).

## **2. Governing Law**

The law governing this grievance procedure is the U.S. Housing Act of 1937 (42 U.S.C. 1437d(k)) and subpart B of 24 CFR 966 (24 CFR (966.50-966.57)).

## **3. Applicability**

In accordance with applicable federal regulations, this grievance procedure shall be applicable to all individual grievances between tenant and the GHA which a tenant may have with respect to GHA action or failure to act in accordance with the individual tenant’s lease or GHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status.

A. This grievance procedure is not applicable to disputes between tenants not involving the GHA or to class grievances involving groups of tenants. Also, this grievance procedure is not intended as a forum for initiating or negotiating policy changes between tenants, or groups of tenants, and the GHA.

B. HUD has issued a due process determination that the laws of the State of New Jersey provide tenants the basic elements of due process (as defined in Section 4 below) before eviction from a dwelling unit. Nevertheless, HUD regulations require the GHA to offer tenants the opportunity to grieve eviction or any other adverse action affecting the individual tenant’s rights, duties, welfare or status, except that the regulations permit the GHA not to offer a grievance hearing in connection with an eviction action based upon:

1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the GHA; or
2. Any violent or drug-related criminal activity on or near such premises; or
3. Any criminal activity that resulted in felony conviction of a household member.

In accordance with the regulations, the GHA will not offer tenants a grievance hearing in an eviction, in which the basis for the eviction is one of the above causes.

## **4. Definitions**

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

**Business Days:** Monday through Friday of each week, excluding holidays.

**Complainant:** Any tenant (as defined in this section below) whose grievance is presented to the office of the GHA in accordance with the requirements set forth in this process.

**CFR:** Code of Federal Regulations, which contains the federal regulation governing this grievance procedure.

**Elements of Due Process:** The following procedural safeguards are required to be followed in an eviction action or a termination of tenancy in state court:

- 1) Adequate notice to the tenant of the grounds for terminating the tenancy for an eviction;
- 2) Right of the tenant to be represented by counsel;
- 3) Opportunity for the tenant to refute the evidence presented by the GHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
- 4) A decision of the merits.

**GHA:** Guttenberg Housing Authority

**Grievance:** Any dispute which a tenant may have with respect to GHA action or failure to act by the GHA in accordance with the individual tenant's lease or GHA regulations, which adversely affects the individual tenant's right, duties, welfare, or status.

**Hearing Officer:** A person selected in accordance with this grievance procedure to hear grievances and render decisions with respect thereto.

**HUD:** The United States Department of Housing and Urban Development.

**Notice:** As used herein, the term shall, unless otherwise specifically provided, mean written notice.

**Resident Organization:** An organization of residents.

**Tenant:** The adult person (or persons) other than a live-in aide:

1. Who resides in the unit the unit and who executed the lease with the GHA 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 household of the tenant family residing in the dwelling unit.

## **5. Informal Settlement of Grievances**

### *A. Initial Presentation*

Any grievance must be personally presented, either orally or in writing, to the GHA office within ten (10) 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 GHA to fall within one of the three exclusions mentioned in section 3(B)(1), 3(B)(2) and 3(B)(3) above, then the GHA will within ten (10) business days after the initial presentation of the grievance, informally discuss the grievance with the complainant or his representatives 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 will be promptly notified in writing of the time and place for the informal settlement conference.

### *C. Written Summary*

Within ten (10) business days after the informal settlement conference, a summary of the informal discussion shall be prepared by the GHA and a copy thereof shall be provided to the complainant. The summary shall be in writing, 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 will also specify the procedures by which the complainant may obtain a formal hearing if the complainant is not satisfied by the proposed disposition of the grievance. A copy of the written summary shall also be placed in the complainant's tenant file.

## **6. 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 the GHA's office no later than ten (10) business days after the date complainant receives the summary of discussion delivered.

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

1. The reasons for the grievance; and
2. The action or relief sought by the complainant.

### *B. Failure to Request Hearing*

If the complainant fails to request a hearing within ten (10) business days after receiving the written summary of the informal settlement conference, the GHA decision rendered at the informal settlement conference becomes final, and the GHA is not thereafter obligated to offer the complainant a formal hearing. Failure to request a hearing shall not constitute a waiver by the complainant of its right thereafter to contest the GHA's action in disposing of the complaint in an appropriate judicial proceeding.

### *7. Selection of Hearing Officer*

- A. All grievance hearings shall be conducted by an impartial person appointed by the GHA, other than a person who made or approved the action under review or a subordinate of such person, in the manner described below:
  1. At least four hearing officers shall be designated annually after consultation with the resident organizations. Any comments or recommendations submitted by the tenant organizations shall be considered by GHA before the appointment.
  2. Two of the designated hearing officers will be GHA employees and two will be non-employees who have knowledge of GHA rules and regulations such as employees of other housing authorities.
  3. On the final appointment, the persons appointed and resident organizations shall be informed in writing of the appointments.
- B. The designation of hearing officers for particular grievance hearings shall be governed by the following provisions:
  1. All hearings will be held before a single hearing officer.
  2. In assigning a hearing officer, the GHA will first utilize the employee hearing officer on an alternating basis. In the event of a conflict of interest or when the employee is the person who made or approved the action under review or is subordinate to that person, a non-employee hearing officer will be used, preferably on an alternating basis.
  3. No person shall retain an appointment once selected as a hearing officer, if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers 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 on the grounds of partiality, at the

commencement or before the hearing, such objection is deemed to be waived, and may not be made thereafter.

In the event that a hearing officer fails to disqualify himself or herself as required in this grievance procedure, the GHA will remove the 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 officer.

## **8. Scheduling of Hearing**

### *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 after receipt of the summary of the informal discussion.
2. The complainant has completed the informal settlement conference procedure.
3. If the matter involves the amount of rent which the GHA claims is due under the complainant's lease, the complainant shall have paid, at the time of its request for a grievance hearing, to the GHA 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 for deposit into an escrow account held by the GHA. And, in the case of situations in which the hearing is 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. No waiver will be given by the GHA except in cases of financial hardship exemption from minimum rent requirements or effect of welfare benefits reduction in calculation of family income. Unless the GHA waives the requirement, the family's failure to make the required escrow deposits will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the GHA's disposition of the grievance.

### *B. Time, Place Notice*

1. Upon complainant's compliance with the prerequisites to hearing set forth above, a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the GHA, not later than the tenth (10<sup>th</sup>) business day after complainant has completed such compliance.
2. A written notification specifying the time, place, and the procedures governing the hearing shall be mailed to the complainant and the appropriate GHA official.

## **9. Procedures Governing Hearing**

### *A. Fair Hearings*

The hearings shall be held before a hearing officer. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any GHA documents, including records and regulations that are directly relevant to the hearing;

The complainant will be allowed to copy any such document at the complainant's expense. The charge will be \$ 0.25 per copy. If the GHA does not make the documents available for examination upon request by the complainant, the GHA 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;
4. The right to present evidence and arguments in support of the complainant's complaint.
5. The right to controvert evidence relied on by the GHA and to confront and cross-examine all witnesses upon whose testimony or information the GHA relies; and
6. A decision based solely and exclusively upon the facts presented at the hearing.

### *B. Prior Decision in Same Matter*

The hearing officer may render a decision without proceeding with the hearing, if it/they determine that the subject of the grievance has been previously decided in another proceeding.

### *C. Failure to Appear*

If the complainant or GHA fails to appear at a scheduled hearing, the hearing officer 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 an event, the hearing officer shall notify the complainant and the GHA of the determination. A determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the GHA's disposition of the grievance in an appropriate judicial proceeding.

*D. Required Showing of Entitlement to Relief*

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

*E. Informality of Hearing*

The hearing shall be conducted informally by the hearing officer 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 shall require the GHA, 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 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 GHA 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 from the party which arranged to have the transcript made.

*H. Accommodation to Handicapped Persons*

The GHA must provide reasonable accommodation for persons with disabilities to participate in the grievance hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible location, or attendants.

**10. Decision of the Hearing Officer**

The hearing officer shall make a determination as to the merits of the grievance and the following provisions shall govern:

*A. Written Decision*

The hearing officer shall prepare a written decision, together with the reasons for the decision within ten (10) business days after the completion of the hearing.

1. A copy of the decision shall be sent to the complainant and the GHA. The GHA shall retain a copy of the decision in the complainant's tenant folder.

2. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the GHA and made available for inspection by a prospective complainant, his representative, or hearing officer.

### *B. Binding Effect*

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

1. The grievance does not concern GHA action or failure to act in accordance or involving the complainant's lease, or the GHA's regulations, which adversely affect the complainant's right, duties, welfare, or status;
2. The decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and the GHA.

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

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

## **11. Notices**

A. 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 business 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.

B. If a tenant is visually impaired, any notice hereunder delivered to such tenant must be in an accessible format.

## **12. Modification**

This grievance procedure may not be amended or modified except by approval of the majority of the Board of Trustees of GHA, 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 tenants and resident organizations setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the GHA before final adoption of any amendments hereto.

### **13. Miscellaneous**

#### **A. Captions**

Captions or paragraph heading 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 tenant has filed a request for a grievance hearing hereunder in a case involving the GHA 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 upholds the GHA's action to terminate the tenancy, the GHA 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 to complainant.

### **14. Incorporation in Leases**

This grievance procedure shall be incorporated by attachment to and by reference in all leases between tenants and the GHA, whether or not so specifically provided in such leases.

### **15. Survival**

If any agreement or portion of this Grievance Procedure is invalid or contrary to law, the rest of the Grievance Procedure shall remain in effect.