

Wrentham Housing Authority

P O Box 312 1 Garden Lane

Wrentham, MA 02093

Grievance Procedure Provisions for a Single Hearing Officer

(1) Appointment of Hearing Officers and Jurisdiction. This grievance procedure adopted by Wrentham Housing Authority (LHA) requires a hearing and determination of a matter subject to the procedure by a single hearing officer. The hearing officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing in the city or town and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA, except for those persons who are subject to an different grievance procedure.

Under this procedure the LHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five days of receipt of a nomination any affected LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an affected LTO, the LHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the LHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the LHA which shall notify the LTO(s).

Each hearing officer shall annually certify to the LHA that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the LHA shall render the hearing officer's position vacant.

(2) Impartiality of the Hearing Officer. A hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as hearing officer, whether or not he has been requested to do so.

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(3) Removal of the Hearing Officer. A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The LHA and the affected LTO(s) may agree on removal after notice to the hearing officer and the opportunity for him or her to be heard. In the absence of agreement, the Department may remove a hearing officer for cause upon a request by the LHA or the LTO. Prior to removing a hearing officer, the Department shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the hearing officer, the LHA and the LTO(s) the opportunity to be heard. The Department's decision whether to remove a hearing officer shall be in writing mailed to the hearing officer, the LHA, and the LTO(s). If a written specification fails to detail good and sufficient cause for removal, the Department shall deny a request for removal without a hearing.

(4) Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA with notice to the affected LTO(s) may request that an interim hearing officer be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim hearing officer, the Department shall name an interim hearing officer. The Department may name a previously disapproved nominee to serve as interim hearing officer if it finds that the LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by an LHA to be hearing officer in the manner set out herein.

(5) Scheduling. The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

(6) Procedural Provisions. The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the requirement of a pre-hearing informal settlement conference between grievant and the LHA about the grievance; (c) the provisions regarding the LHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.

APPROVED BY THE BOARD OF COMMISSIONERS AT THEIR MEETING ON
SEPTEMBER 12, 2005

Wrentham Housing Authority Procedural Provisions

1. General Overview

A. Presently, State Regulation 760 CMR 6.08 requires each Local Housing Authority (LHA) to have a grievance procedure which purpose shall be the prompt and reliable determination of grievances. Furthermore, the adopted procedures must be available to all public housing tenants, participants in the rental assistance programs and to an individual who has filed an appeal pursuant to 760 CMR 8.00 (Privacy and Confidentiality).

B. A grievance is defined as an allegation that the LHA or a LHA employee has acted or failed to act in accordance with any statute, regulation or rule regarding the conditions of tenancy or the program and that the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member.

C. The meaning of a statute, regulation or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the LHA is not involved, shall not be the subject of a grievance. A grievance shall not be filed by a tenant on behalf of another tenant or any household member or another tenant.

2. Initiation of a Grievance

A. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant, in writing, and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the LHA.

B. A grievance regarding whether participation in the MRVP, AHVP or any other rental assistance program shall be initiated by a program participant, in writing, and shall be mailed or delivered to the LHA at its main office within seven (7) days after the notice of program termination has been given to the program participant by the LHA.

C. A grievance regarding some other matter shall be initiated by a grievant, in writing, and shall be mailed or delivered to the LHA at its main office no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the LHA shall have discretion to permit a grievance to be initiated late.

D. In the event that a tenant files a grievance as to the amount of a re-determined rent within fourteen (14) days of the LHA's notice of the re-determined rent, the tenant shall continue to pay the rent then in effect (unless the re-determined rent is lower) until disposition of the grievance. Following disposition of the grievance, the tenant shall, forthwith, pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of re-determined rent or the LHA shall credit the tenant with any amounts paid but determined not to have been due. In the absence of a grievance, the re-determined rent shall be paid beginning on its effective date.

E. The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and the late initiation would not cause prejudice to the LHA.

3. Informal Settlement Conference

A. Promptly after the initiation of a grievance, unless otherwise provided, the LHA's Executive Director or his/her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The LHA shall give reasonable advance notice to the grievant and his or her representative, if any is known, of a time and place for an informal settlement conference; unless such a conference shall have taken place when the grievance was delivered to the LHA. If a matter is not resolved at the informal conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

4. Right to a Hearing

A. This grievance procedure requires a hearing and determination of a matter subject to the procedure by the grievance panel.

B. No grievance hearing shall be requested or held under any of the circumstances specified in items (1)-(8) in M G L c 121B, Section 32, including the following circumstances:

1. In the event of non-payment of rent

2. In the event the LHA has reason to believe that the tenant or household member:

- a. Has unlawfully caused serious physical harm to another tenant or an employee of the LHA or any person lawfully on the LHA's property; or
- b. Has unlawfully threatened to cause serious harm to any member of a tenant household or LHA employee or any person lawfully on the LHA's property; or
- c. Has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or the LHA or of any person lawfully on the LHA's property
- d. Has unlawfully possessed, carried or kept a weapon on or adjacent to the LHA's property in violation of M G L c 269, Section 10; or
- e. Has unlawfully possessed or used an explosive or incendiary device on or adjacent to the LHA's property or has otherwise violated M G L c 266, Section 101, 102, 102 A or 102B; or
- f. Has unlawfully possessed, sold or possessed with intent to distribute a class A, B or C controlled substance as defined in M G L c 94C Section 31 on or adjacent to the LHA's property; or
- g. Has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, a LHA employee or any other person lawfully on the LHA's property; or
- h. Has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M G L c 139, Section 19; or

3. In the event the LHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in (2) and the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in such misconduct.

5. Hearing Date and Notice of Hearing

A. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the LHA receives the grievance. The LHA shall schedule such a hearing on a date within thirty (30) days from the date of a request for a grievance hearing and at least fifteen (15) days prior to the date of termination and shall give written notice of not less than seven (7) days of the time and place to the tenant. At the grievance hearing, any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the LHA has given written notice to the tenant as to the additional reason(s) not less than three (3) days before the hearing, or, if the reason(s) for eviction shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason(s). In cases where the tenant is entitled to a grievance hearing and has made a timely request, the LHA shall not file a summary process summons and complaint pending the hearing and a decision or other resolution in the LHA's favor.

B. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following the receipt of the grievance. The LHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his/her representative, if any is known.

C. The LHA or the hearing panel may reschedule a hearing by agreement or upon a showing by the grievant or by the LHA that rescheduling is reasonably necessary.

6. Pre-Hearing Examination of Relevant Documents

A. Prior to a grievance hearing, the LHA shall give the grievant or his/her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA shall provide copies of such documents to the grievant and, for good cause (including financial hardship), may waive the charge for copies.

7. Persons Entitled to be Present

A. The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing panel otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be determined by the hearing panel. At the hearing, the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct him/her self in an orderly manner or they will be excluded. If the grievant misbehaves at the hearing, the hearing panel may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

8. Procedure at the Grievance Hearing

A. The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA shall be entitled to question each other's witnesses. Procedures at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape recorded. The hearing panel may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The hearing panel may request the LHA or grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

9. Written Decision; Effect of Decision

A. Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing panel shall provide the LHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be based upon the evidence presented at the grievance hearing and such additional information as may have been requested by the hearing panel. The LHA shall, forthwith, mail or otherwise deliver a copy of the decision to the grievant and his/her representative, if any is known. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the LHA and shall be open to public inspection.

10. Review by the LHA's Board

A. In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's board. In other cases, in the event that the grievant or the LHA believes that (i) the decision of the hearing panel is not supported by the facts, or (ii) the decision does not correctly

apply applicable laws, regulations, rules and/or policies, or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or delivery of the decision, the grievant or the LHA may request review of the decision by the LHA Board. The board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral presentations and/or submit written documentation. The Board may also permit the hearing panel to make a presentation. The decision of the board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

11. Review by the Department

A. In the event that the LHA's Board shall make a material change in a decision of the hearing panel, upon the written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

12. Effect of a Decision on a Grievance

A. The decision on a grievance shall be binding between the LHA and the grievant with respect to the particular circumstances involved in the grievance, provided that, if a court has jurisdiction to determine a matter which has been subject to the decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. In the event a decision on a grievance determines that good cause exists for terminating a lease, the LHA may, thereupon, file the summary process summons and complaint, and there shall be no review by the Board or the Department. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

ADOPTED BY THE WRENTHAM HOUSING AUTHORITY

BOARD OF COMMISSIONERS ON 9-2005