

HOUSING AUTHORITY OF THE CITY OF EASTMAN

GRIEVANCE PROCEDURE POLICY

Adopted Board Action January 15, 2013

23.0 GRIEVANCE PROCEDURE

23.1 RIGHT TO A HEARING

Upon the filing of a written request as provided in these procedures, a resident shall be entitled to a hearing before a hearing officer. The grievance procedures are not intended to supersede an individual's right to initiate a claim or seek relief under section 504, the Fair Housing Act, or any other Federal, State, or local civil rights statute(s).

23.2 DEFINITIONS APPLICABLE TO THE GRIEVANCE PROCEDURE: [§966.53]

- A. **Grievance:** Any dispute which a Resident may have with respect to the Eastman Housing Authority's (EHA) action or failure to act in accordance with the individual resident's lease or Authority regulations which adversely affect the individual resident's rights, duties, welfare or status. Grievance does not include any dispute a resident may have with the authority concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the authority's public housing premises by other residents or employees of the authority; or any violent or drug-related criminal activity on or near such premises. Nor shall this process apply to disputes between residents not involving the Eastman Housing Authority or to class grievances.
- B. **Complainant:** Any Resident (as defined below) whose grievance is presented to the Eastman Housing Authority (at the central office) in accordance with the requirements presented in this procedure.
- C. **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:
- (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 EHA, 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.
- D. **Hearing Officer:** A person selected in accordance with §966.55 and this procedure to hear grievances and render a decision with respect thereto.
- E. **Resident:** The adult person(s) other than a Live-in aide:



- (1) Who resides in the unit, and who executed the lease with the EHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - (2) Who resides in the unit, and who is the remaining head of the household of the Resident family residing in the dwelling unit.
- F. Resident Advisory Board: An organization of residents established in accordance with 24 CFR Part 903 whose membership is comprised of individuals who reflect and represent the residents assisted by the EHA.

23.4 Applicability of this grievance procedure [§966.51]

In accordance with the applicable Federal regulations §966.51 this grievance procedure shall be applicable to all individual grievances (as defined in Section 1.above) between Resident and the EHA with the following two (2) exceptions:

- A. Because HUD has issued a due process determination that the law of several states requires that Resident be given the opportunity for a hearing in court which provides the basic elements of due process (as defined above) before eviction from the dwelling unit, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the EHA, or
 - (2) Any drug-related criminal activity on or off such premises. [§966.51 (2)(i) and (ii)]
- B. The EHA grievance procedure shall not be applicable to disputes between residents not involving the EHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the EHA's Board of Commissioners. [§966.51 (b)]

This grievance procedure is incorporated by reference in all Resident dwelling leases and will be furnished to each Resident and all resident organizations. [§966.52 (b) and (d)]

Any changes proposed in this grievance procedure must provide for at least thirty (30) days notice to Residents and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments which will be considered before adoption of any grievance procedure changes by the EHA. [§966.52 (c)]

23.5 Informal settlement of a grievance [§966.54]

Any grievance must be personally presented, either orally or in writing, to the EHA's Administrative office within ten (10) days after the grievable event so that the grievance may be discussed informally and settled without a hearing.

As soon as the grievance is received, it will be reviewed by EHA's management to be certain that neither of the exclusions in paragraphs II.A or II.B above apply to the grievance. Should one (1) of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the EHA's grievance procedure, with the reason therefore.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time within ten (10) working days to meet so the grievance may be discussed informally and settled without a hearing.



At the informal hearing the complainant will present the grievance, and EHA will attempt to settle the grievance to the satisfaction of both parties.

Within five (5) working days following the informal discussion, the EHA shall prepare and either give or mail to Resident a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint, and the specific reasons therefore, and shall specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary shall also be placed in Resident's file.

23.6. Formal Grievance Hearing

If the complainant is dissatisfied with the settlement arrived at in the informal hearing, the complainant must submit a written request for a hearing to the Administrative office no later than five (5) working days after the summary of the informal hearing is received. A receipt signed by the complainant or a return receipt for delivery of certified mail, whether or not signed, will be sufficient proof of time of delivery for the summary of the informal discussion. [§966.55 (a)]

The written request shall specify:

- The reasons for the grievance;
- The action of relief sought from the EHA; and
- Several dates and times in the following ten (10) working days when the complainant can attend a grievance hearing.

If the complainant requests a hearing in a timely manner, the EHA shall schedule a hearing on the grievance at the earliest time possible for the complainant, EHA and the hearing officer, but in no case later than ten working days after the EHA received the complainant's request.

If the complainant fails to request a hearing within five (5) working days after receiving the summary of the informal hearing, the EHA's decision rendered at the informal hearing becomes final, and the EHA is not obligated to offer the complainant a formal hearing unless the complainant can show good cause why he failed to proceed in accordance with this procedure. [§966.55 (c)]

23.6 Selecting the Hearing Officer [966.55 (b)(2)(ii)]

A grievance hearing shall be conducted by an impartial person appointed by the EHA after consultation with resident organizations, as described below:

- A. Periodically, but no longer than every five (5) years, the EHA shall nominate a slate of impartial persons, including Executive Directors and senior administrative staff from other Housing Authorities, to sit as hearing officers.

EHA will check with each nominee to determine whether there is an interest in serving as a potential hearing officer, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.

Nominees will be informed that they will be expected to disqualify themselves from hearing grievances that involve personal friends, other residents of developments in which they work or reside, or grievances in which they have some personal interest.



The Executive Director of EHA is not prohibited from selecting himself/herself provided that he/she is impartial and was not the person who made or approved the PHA action.

A slate of potential hearing officers nominated by EHA shall be submitted to EHA's Resident Advisory Board. The Resident Advisory Board shall have up to thirty (30) days to review the nominees. Written comments from the Resident Advisory Board shall be considered by the EHA before the nominees are appointed as hearing officers.

When the comments from Resident Advisory Board have been received and considered, the nominees will be informed that they are the EHA's official grievance hearing committee. The EHA will subsequently contact committee members in random order to request their participation as hearing officers.

23.7 Escrow deposit required for a hearing involving rent [§966.55 (e)]

Before a hearing is scheduled in any grievance involving the amount of rent which the EHA claims is due under this lease, the Resident shall pay to the EHA an amount equal to the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Resident shall, thereafter, deposit the same amount of the monthly rent in an escrow account monthly until the Resident is resolved by decision of the Hearing Officer. Amounts deposited into the escrow account shall not be considered as acceptance of money for rent during the period in which the grievance is pending. This requirement will not be waived by the EHA.

23.8 Scheduling hearings [§966.55 (f)]

When a complainant submits a timely request for a grievance hearing, the EHA will immediately contact the Hearing Officer to schedule the hearing within the following ten (10) working days on one of the dates and times indicated by the complainant. If the Hearing Officer can agree on a date and time for the hearing, the complainant will be so notified.

As soon as the Hearing Officer has agreed upon the hearing date and time, the complainant, an EHA representative and the Hearing Officer shall be notified in writing. Notice to the complainant shall be in writing, either personally delivered to complainant or sent by mail, return receipt requested. The written notice will specify the time, place and procedures governing the hearing.

23.9 Procedures Governing the Hearing [§966.56]

The hearing shall be held before a Hearing Officer as described above in Section 23.8. The complainant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any EHA documents, including records and regulations, that are directly relevant to the hearing.

The Resident shall be allowed to copy any such document at the Resident's expense. If the EHA does not make the document available for examination upon request by the complainant, the EHA may not rely on such document at the grievance hearing.

- B. The right to be represented by counsel or other person chosen as the Resident's representative and to have such person make statements on the Resident's behalf.
- C. The right to a private hearing unless the complainant request a public hearing. The right to present evidence and arguments in support of the Resident's complaint to controvert evidence relied on by



the EHA and to confront and cross-examine all witnesses upon whose testimony or information the EHA relies; and

- D. A decision based solely and exclusively upon the fact presented at the hearing. [§966.56 (b)]

The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding. [§966.56 (c)]

At the hearing the complainant must first make a showing of an entitlement to the relief sought and, thereafter, the EHA must sustain the burden of justifying the EHA's action or failure to act against which the complaint is directed. [§966.56 (e)]

The hearing shall be conducted informally by the Hearing Officer. 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 proceedings. [§966.56 (f)]

The Hearing Officer shall require the EHA, 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. [§966.56 (f)]

The complainant or the EHA may arrange in advance, and at expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript. [§966.56 (g)]

23.10. Failure to Appear at the Hearing

If the complainant or the EHA fails to appear at the scheduled hearing, the Hearing Officer may make a determination to postpone the hearing for not to exceed five (5) business days, or may make a determination that the party has waived his right to a hearing. [§966.56 (d)]

Both the complainant and the EHA shall be notified of the determination by the Hearing Officer: provided that 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 EHA's disposition of the grievance in court. [§966.56 (d)]

23.11 Decision of the Hearing Officer [§966.57]

The Hearing Officer shall prepare a written decision, together with the reasons for the decision within ten (10) working days after the hearing. A copy of the decision shall be sent to the complainant and the EHA.

The EHA shall retain a copy of the decision in the Resident's folder. A copy of the decision with all names and identifying references deleted shall also be maintained on file by the EHA and made available for inspection by a prospective complainant, his representative, or the hearing officer.

The decision of the Hearing Officer shall be binding on the EHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the EHA's Executive Director determines within ten (10) working days, and promptly notifies the complainant of its determination that:

- A. The grievance does not concern EHA action or failure to act in accordance with or involving the complainant's lease or EHA regulations, which adversely affect the complainant's rights, duties, welfare or status.
- B. 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 EHA.



- C. A decision by the Hearing Officer or EHA's Executive Director in favor of the EHA 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 court proceedings which may be brought in the matter later. [§966.57]

23.12 Accommodation of Persons with Disabilities [§966.56 (h)]

The Authority will provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the Resident is visually impaired, any notice to the resident that is required by this Grievance Procedure must be in an accessible format.

