

## HOLLISTON HOUSING AUTHORITY'S GRIEVANCE PANEL Members 2016

- Susan Andrew  
617-605-3071  
Email: [sueandrew2000@yahoo.com](mailto:sueandrew2000@yahoo.com)
  - Warren Chamberlain  
508-429-5458  
Email: [w1uir@aol.com](mailto:w1uir@aol.com)
  - Beth O'Grady  
508-879-7562  
Framingham Housing Authority
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## Alternate Grievance Panel

- Candace Loewen  
508-453-5960  
Foxboro Housing Authority
- Jane Derrick  
Resident  
Holliston Housing Authority

Tenant's Name \_\_\_\_\_  
Request for Grievance Filed on \_\_\_\_\_

### LHA Grievance Checklist

- If this is a lease termination grievance, begin a lease termination tracking form.
- Determine whether or not the matter is grievable.
- If not grievable, inform grievant in writing, and copy PM of grievance panel.
- If grievable, determine whether or not the grievance was timely filed.
- If filed late, determine whether additional time for filing is merited, if requested by tenant.  
*(If the grievance is for a reason other than lease termination, the LHA has discretion to permit late filing)*
- Schedule informal settlement conference and give notice to grievant.  
*(Notification: "promptly after the initiation of a grievance" with "reasonable advance notice" to the tenant)*
- Review panel documentation to be sure your panel members are ready to serve.
- Coordinate prospective hearing dates with panel members.
- Schedule grievance hearing and give notice to grievant.  
*(Schedule lease termination grievances within 14 days of receipt of request; all others "as soon as convenient")*
- Collect/organize your evidence.
- Remove privileged documents from tenant's file.
- If requested, give grievant an opportunity to review relevant documents.
- Meet grievant for informal hearing.
- Decide who will attend the grievance hearing on behalf of the LHA.
- Review hearing procedure so you know what to expect.
- Obtain tape-recorder and blank tapes.
- Defend the LHA's actions at the formal grievance hearing.
- Mail or deliver a copy of the panel's decision to the grievant.  
*(The grievance panel will generally issue its written decision to the LHA within 14 days of the hearing)*
- Determine whether or not the LHA will appeal the panel's decision to the board.  
*(There is no appeal to the board on lease termination grievances; for info on other types of appeals, see the reg.)*
- File written appeal to the board.  
*(Appeal must be filed within 14 days of receipt of decision)*
- Prepare for appeal to LHA board.
- Defend LHA's actions at board hearing.
- Defend LHA's actions at DHCD hearing.

# GRIEVANCE PROCEDURE

## Part A

### 1. General Overview

- A. Department of Housing and Community and Development (DHCD) regulations (760 CMR 6.08) require each local housing authority (LHA) to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances. The procedure must be available to state-aided public housing tenants, participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP), and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality).
- B. A grievance is defined as: (1) an allegation that an LHA or an LHA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member; (2) an allegation that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or (3) an appeal by a data subject pursuant to 760 CMR 8.00.
- 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 of 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 (postmarked) 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 cause exists for terminating participation in the MRVP or AHVP shall be initiated by a program participant, in writing, and shall be mailed (postmarked) or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the tenant by the LHA.
- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) 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 redetermined rent within fourteen (14) days of the LHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of redetermined rent or the LHA shall credit the tenant with any amounts paid but determined not to have been due.
- 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 that the late initiation would not cause prejudice to the LHA. The LHA shall have available forms on which a grievance may be initiated.

### **3. Informal Settlement Conference**

Promptly after the initiation of a grievance, unless otherwise provided, the LHA's Executive Director or his or 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) 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. At the informal settlement conference, the LHA and the grievant may be represented by a lawyer or by a non-lawyer. If the grievance is resolved at the informal settlement conference, the LHA and grievant shall acknowledge the terms of the resolution in writing. If the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a grievance 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. The LHA's hearing panel shall conduct hearings on grievances filed by a public housing tenant, a program participant, or a data subject concerning a grievable matter, provided that no grievance hearing regarding whether good cause exists for terminating a lease shall be requested or held under any of the circumstances specified in MGL c.121B, §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 tenant or household member:
  - a. has unlawfully caused serious physical harm to another tenant or employee of the LHA or any other person lawfully on the LHA's property;
  - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's property;

- c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;
  - d. has unlawfully possessed, carried or kept a weapon on or adjacent to the LHA's property in violation of MGL c.269 §10;
  - e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or has otherwise violated MGL c.266 §§101, 102, 102A or 102B;
  - f. has unlawfully possessed, sold or possessed with intent to distribute a class A, B or C controlled substance, as defined in MGL, c.94C §31, on or adjacent to the LHA's property;
  - g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any 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 MGL, c139, §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 subparagraph 4 A (2) and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

##### **5. Hearing Date and Notice of Hearing**

- A. The LHA shall schedule of a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the LHA receives the grievance. At such time, the LHA shall set a date for the hearing no more than thirty (30) days from the date of the request for a grievance hearing (or as soon as reasonably practical thereafter) and at least fifteen (15) days prior to the date of termination. The LHA shall give grievant written notice of the date, time and place at least seven (7) days before the hearing. 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 grievant as to the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination 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 lease terminations if grievant is entitled to request a grievance hearing and has made a timely request, the LHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the LHA's favor.
- B. A hearing of a grievance regarding an issue other than lease termination shall be scheduled as soon as reasonably convenient following 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 or her representative, if any is known.

- C. The LHA or the Presiding Member may reschedule a hearing by agreement of the LHA and the grievant; or upon a showing by the grievant or by the LHA that rescheduling is reasonably necessary.

## **6. Pre-Hearing Examination of Relevant Documents**

Prior to a grievance hearing the LHA shall give the grievant or his or 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 grievant and for good cause (including financial hardship), may waive the charge for the copies.

## **7. Persons Entitled to be Present**

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 Presiding Member of the grievance 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 decided by the Presiding Member. At the grievance 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 himself or herself in an orderly manner or he or she may be excluded. If the grievant misbehaves at the hearing, the hearing panel by majority vote may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

## **8. Procedure at Grievance Hearings**

The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The Presiding Member 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. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape recorded. The panel members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members may request the LHA or the 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.

The tapes of the hearing shall be maintained by the LHA until any applicable appeals have been decided. During that time grievant and or his or her representative may listen to the tapes at the LHA's offices.

## **9. Written Decision by the Grievance Panel**

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, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be made by a vote of at least a majority of the panel members who heard the hearing. The decision shall be based on the information at the grievance hearing and such additional information as may have been provided to the hearing panel at its request. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. 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**

In cases where the decision of the hearing panel 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: (a) the decision of the hearing panel is not supported by the facts; (b) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or (c) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the LHA may request review of the decision by the LHA's 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 documentation. The Board may also permit the hearing panel to make a presentation. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law. 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 of Housing and Community Development**

In the event that the LHA's Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. DHCD shall mail copies of its decision to the LHA and the grievant or to their attorneys.

## **12. Effect of a Decision on a Grievant**

The final decision on a grievance (after any properly requested administrative reviews have been decided) 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 decision on a grievance,

the court's determination on the matter shall supersede the decision on the grievance. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the LHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or DHCD. 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.

## **Part B (Option 1 for LHAs with an LTO)**

### **1. Three Member Hearing Panel**

All grievance hearings and determinations of a matter subject to this grievance procedure shall be by a three member hearing panel except as otherwise provided herein. One member (and an alternate member to serve in the event of the member's unavailability for a hearing) shall be chosen by the LHA and one member (and such an alternate member) shall be chosen by the affected local tenant organization(s) (LTO(s)). The third member (and such an alternate member) shall be chosen by agreement of the other two members. The third member (including the alternate member) shall not be a board member of the LHA or an officer of an LTO. Whenever a member (including an alternate member) is chosen, notice of the choice shall be given to the member and shall specify the term, not to exceed seven years, for which the member so chosen shall serve. A copy of the notice shall be given to the LHA (if the LTO made the choice) or to the LTO(s) (if the LHA made the choice). Each member so chosen shall mail or deliver his or her written acceptance to the LHA promptly after being chosen. The LHA shall maintain all such notices and acceptances in its files.

A hearing panel so chosen shall serve all tenants of state-aided public housing represented by the LTO(s) in the city or town as well as those who are unrepresented by an LTO, and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

Each member (including each alternate member) shall annually certify to the LHA in writing that he or she is ready, willing and able to serve; failure so to certify within ten (10) days of receipt of a written request by the LHA shall render the member's position vacant. Upon a vacancy, however created, a new member shall be appointed in the same manner as the previous member was appointed. The LHA shall maintain all such certifications in its files.

### **2. Impartiality of Members**

No member of a hearing panel, which is to determine a particular matter, shall have or shall appear to have any direct personal or financial interest in the outcome. No member of a hearing panel, which is to determine a particular matter, shall be related by blood or marriage to any party or to any person who is the source of evidence as to facts that are disputed by the parties. No member 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 member of the hearing panel shall determine any matter at issue impartially and objectively. Any panel member, who shall be or shall appear to be unable to determine any particular matter impartially or objectively on the basis of the evidence and applicable law, shall remove himself or herself as a member of the panel hearing the particular matter, or, if he or she fails to do so, shall be removed from the panel by the Presiding Member upon written objection by the LHA, any affected LTO, or the person who requested the hearing. Any member of a hearing panel who shall willfully obstruct prompt and reliable determination of any matter before the panel shall be removed from the panel for that hearing by the Presiding Member upon such an objection.

### **3. Removal of a Member**

A member (including an alternate member) may be permanently removed as a member at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The LHA may remove the member which the LHA appointed and the LTO(s) may remove the member which the LTO(s) appointed, after notice to the member and the opportunity for him or her to be heard. The LHA and the LTO(s) may jointly remove the member (or alternate) appointed by agreement of their appointees, after such notice and opportunity to be heard. If the LHA and LTO(s) fail to agree on removal of a member chosen by agreement of their appointees, DHCD may remove that member for cause upon written request by either the LHA or an LTO. The written request to DHCD shall contain a detailed specification of charges. DHCD's decision whether to remove a member shall be in writing mailed to the member, the LHA and the affected LTO(s). Prior to removing a member for cause, DHCD shall give the member, the LHA and all affected LTO(s) the opportunity to be heard.

### **4. Designation of a Presiding Member**

Following their appointment a majority of the members (including alternate members) shall designate in writing one member to be the Presiding Member, who shall preside at grievance hearings or shall designate some other member to do so if he or she shall be absent. A majority of the members may designate in writing a different Presiding Member at any time. Written notice of the designation of a Presiding Member shall be given to the LHA and the LTO(s).

### **5. Scheduling**

The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult each panel member and insofar as reasonably possible shall schedule hearings at times convenient for him or her or for his or her alternate.

### **6. Quorum**

Reasonable efforts shall be made to have a three member panel hear and decide each grievance. If a panel member without adequate notice to the LHA fails to appear on a scheduled hearing date, or, if a panel member and his or her alternate are both not available at any time reasonably convenient for the other panel members, two members shall constitute a quorum and may render a decision. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the remaining two members may render a decision on the grievance.

## **Part B** *(Option 2 for LHAs without any LTO)*

### **1. Three Member Hearing Panel**

All grievance hearings and determinations of grievances shall be handled by a three member hearing panel except as otherwise provided herein. Each panel member shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

The LHA shall from time to time nominate one or more persons to serve as panel member(s) to conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall notify tenants of its nominee(s) for panel member(s) by posting all such nominations on all bulletin boards intended for notices of general interest to tenants. Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within thirty (30) days after the posting of a nomination ten (10) or more tenants may disapprove the nominee by giving signed written notice to the LHA. A notice of disapproval shall include the specific reason(s) why such tenants disapproved the nominee. In the absence of a disapproval, the nominee shall become a panel member upon written acceptance mailed or delivered to the LHA which shall then post notice thereof. No more than six (6) persons shall serve as panel members at any one time.

Each panel member (including each alternate member) shall annually certify to the LHA in writing 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 member's position vacant. The LHA may appoint three or more panel members.

### **2. Impartiality of the Panel Members**

No panel member or member of his or her family shall have or shall appear to have any direct personal or financial interest in the outcome of any matter before him or her. No member 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 member 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 member of the hearing panel shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any member of a hearing

panel who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as a member of the hearing panel, or, if he or she fails to do so, shall be removed from the hearing panel by the Presiding Member upon the written objection by the LHA or the tenant who requested the hearing. Any member of a hearing panel who shall willfully obstruct prompt and reliable determination of any matter before the panel shall be removed from the panel for that hearing by the Presiding Member upon such an objection.

### **3. Removal of a Panel Member**

A member of the hearing panel 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 may remove a member of the hearing panel after notice to the member and the opportunity for him or her to be heard.

### **4. Appointment of Interim Hearing Officer**

If there shall not be three panel members able and willing to serve for one or more pending matters and if use of the appointment process in Part B, section 1 of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the matter may be heard by two panel members or, if there shall not be two panel members able and willing to serve, the matter may be heard by a single panel member, or if there shall not be a single member able and willing to serve, the LHA may request that an interim hearing officer be named by DHCD. Such a request shall be in writing and shall specify the reason for the request. Notice of the request shall be posted, and tenants shall be given a reasonable opportunity to comment to DHCD about the request. If DHCD finds there to be a reasonable need for an interim hearing officer, DHCD shall name an interim hearing officer. DHCD may name a previously disapproved nominee to serve as interim hearing officer if it finds that the 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 the hearing panel and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by the LHA to be a panel member in the manner set out herein.

### **5. Designation of a Presiding Member**

A majority of the panel members shall designate in writing one member to be the Presiding Member, who shall preside at grievance hearings or shall designate some other member to do so if he or she shall be absent. The Presiding Member shall designate the members who will serve on the hearing panel for each grievance hearing. A majority of the members may designate in writing a different Presiding Member at any time. Written notice of the designation of a Presiding Member shall be given to the LHA.

## **6. Scheduling**

The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult each panel member designated for a grievance hearing and insofar as reasonably possible shall schedule hearings at times convenient for him or her.

## **7. Quorum**

Reasonable efforts shall be made to have a three member panel hear and decide each grievance. If a panel member without adequate notice to the LHA fails to appear on a scheduled hearing date, two members may hear and decide the matter. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the remaining member(s) may render a decision on the grievance.

Holliston Housing Authority's Grievance Committee

Sylvia J. Stickney  
86 Church Street.  
Holliston, MA 01746-2145  
(508) 429-6155

Allan A. Aueer, Jr.  
43 Robin Hill Road  
Holliston, MA 01746  
(508) 429-2919

Alternates

Helen E. Luccio  
9 Hillview Terrace  
Medway, MA 02053  
H (508) 533-6249  
W (508) 533-2434

Helen Hilliard  
221 Hill Street  
Holliston, MA 01746  
(508) 429-8036

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**GRIEVANCE PANEL  
HOLLISTON HOUSING AUTHORITY**

<b>TO</b>	<b>Sylvia Stickney</b>	<b>6/99</b>
	<b>Agnes Frey ( Alternate )</b>	<b>10/99</b>
<b>LHO</b>	<b>Paul Boulanger</b>	<b>6/99</b>
	<b>Helen Luccio ( Alternate )</b>	<b>7/99</b>
<b>Impartial</b>	<b>Rev. Jerome Janisko</b>	<b>6/99</b>
	<b>Allen Auerr ( Alternate )</b>	<b>8/99</b>

## 760 CMR 3.00: TENANT GRIEVANCE PROCEDURES

## Section

- 3.01: Regulations
- 3.02: Model Grievance Procedure
- 3.03: Form I

3.01: Regulations(1) General Provisions.

(a) Statutory Provisions. 760 CMR 3.00 is promulgated by the Secretary of Community Affairs under the provisions of M.G.L. c. 121B, § 29 which provides, in part, as follows:

"The department shall from time to time make, amend and repeal rules and regulations prescribing standards and stating principles governing the ... maintenance and operation of ... housing projects by housing authorities."

(b) Purpose. To set forth the standards and criteria of the management-tenant relationship to be embodied in Grievance Procedures in the low-rent public housing program. These standards and criteria were originally set forth in the Regulations for Tenant Grievance Procedures in Massachusetts promulgated by the Department of Community Affairs (DCA) on February 22, 1973. (hereinafter the 1973 Grievance Procedure).

(2) Effective Date.

(a) The effective date of these amended regulations is May 5, 1976.

(b) Any provisions of the 1973 Grievance Procedures which are not continued by these amendments are superseded, except where such provisions have been incorporated into local Grievance Procedures approved by DCA pursuant to the Regulations promulgated February 22, 1973. Where such provisions have been so incorporated, they shall remain in effect until modified pursuant to 760 CMR 20.01(4) or 30.01(5) and 30.01(6).

(c) The provisions of the 1973 Grievance Procedures shall continue in effect for the purposes of determining the rights of individual tenants which accrued between February 22, 1973 and May 5, 1976.

(3) Requirements.

(a) Each LHA shall adopt procedures or revise existing Grievance Procedures to embody the provisions of the Model Grievance Procedures (760 CMR 3.02).

(b) The Grievance Procedure in 760 CMR 3.02 is a model only and other language may be substituted or added so long as the local Grievance Procedure embodies the standards set forth in the model.

(c) The Grievance Procedure must be available to all public housing tenants including tenants in rental assistance housing.

(4) Implementation of 760 CMR 3.00.

(a) It is the intent of 760 CMR 3.00 to promote agreements and cooperation between each Local Housing Authority (LHA) and its Tenants. All of the following provisions of 760 CMR 3.00 are to be construed to effectuate this intent.

(b) Where the LHA has not previously received DCA approval of a Grievance Procedure pursuant to the 1973 Grievance Procedure, the LHA shall, as soon as possible, but not later than July 1, 1976, submit to DCA for approval a Grievance Procedure which meets the requirements of 760 CMR 3.00, with certification of agreement, duly signed by both the LHA and the LTO. As of May 5, 1976, and until such time as DCA approves an LHA's Grievance Procedure pursuant to 760 CMR 3.00, LHA(s) are required to act in accordance with the requirements of the amended Model Grievance Procedures.

3.01: continued

(c) Where there is an existing Grievance Procedure in effect in a locality, and the LHA and the LTO agree to retain all or some of its provisions rather than adopt the corresponding amended provisions, the LHA shall forward to DCA for approval a copy of the Grievance Procedure and a jointly signed written agreement specifying the provisions both wish to retain. Where either the LHA or the LTO opposes the implementation of any amended provision of the Model Grievance Procedure but cannot get the agreement of the other party, the party opposing implementation may follow the procedures set forth in 760 CMR 3.01(5) and 3.01(6).

(d) No later than July 1, 1976, the LHA shall implement, and include in the local Grievance Procedures all amended provisions of the Model Grievance Procedure unless an agreement has been filed pursuant to 760 CMR 3.01(4) or the provision has otherwise been waived pursuant to 760 CMR 3.01(5) and 3.01(6).

(e) Whenever an existing Grievance Procedure is to be amended pursuant to 760 CMR 3.01(4)(c), the LHA shall post a notice as set out in 760 CMR 3.01(7). The notice shall include the full text of any amended provision and a clear citation to the provision of the local Grievance Procedure which it amends.

(f) The LHA shall prepare the Grievance Procedure, or the amended provisions to an existing Grievance Procedure, in full consultation and cooperation with the LTO, and at the tenants' request, shall negotiate in good faith with the tenants over the terms and form of the Grievance Procedure.

(g) In circumstances where an LHA and LTO are negotiating in good faith on the Grievance Procedure, or amendments to a Grievance Procedure, to be submitted by DCA, and the July 1, 1976 deadline cannot be met, a delay may be granted by DCA. This delay in no case will extend beyond October 1, 1976, and all requests for such a delay under 760 CMR 3.01(4) must be made jointly by the LHA and LTO prior to July 1, 1976.

(5) Waiver of Certain Requirements.

(a) Upon application by an LHA or by a local tenant's organization, DCA may waive one or more of the requirements for Grievance Procedures contained in 760 CMR 3.00. DCA will grant a waiver only upon a showing of one of the following:

1. The requirement is inappropriate or inapplicable because of peculiar local conditions.
2. The requirements will impose a substantial hardship on the LHA or on the tenants.
3. The LHA and the local tenant's organization mutually agree that a requirement is undesirable in light of a particular local circumstance.

(b) In no case will DCA waive a requirement where the provision is mandated by statute or is a matter of constitutional right.

(6) Procedure for Obtaining a Waiver.

(a) If the LHA or the local tenant's organization desires a waiver of one or more of the provisions of the Grievance Procedure, the party desiring the waiver shall so notify the other party and shall mutually and fully consult with the other party with the goal of reaching agreement on the request for a waiver.

1. If the LHA and local tenant's organization agree on the request for waiver of one or more of the requirements, they shall jointly submit their request, with a full statement of reasons, in writing to DCA in care of the Secretary. DCA shall, within 15 working days, notify the LHA and the local tenant organization of its granting or denial of the request and of the reasons for granting or denying the request.

2. If the LHA and the local tenant's organization do not agree on the request for a waiver, the party desiring the waiver shall submit its request with a full statement of reasons, in writing to DCA in care of Secretary, and shall send a copy of the request and any documents or information submitted with the request to the party opposing the waiver. The party opposing the waiver shall have ten working days to submit a written opposition to the request for waiver. DCA may grant or deny the waiver on the basis of the written submissions or may confer with both parties prior to making decisions. DCA shall within 25 working days of receipt of the request for a waiver notify the LHA and the local tenant's organization of its granting or denial of the request and of the reasons for granting or denying the request.



3.01: continued

(7) Posting. The regulations and the approved Grievance Procedure shall be posted in each project and shall be available from the Local Housing Authority and the Local Tenant Organization Main Offices.

### 3.02: Model Grievance Procedure

#### (1) Right to a Hearing.

(a) Any tenant who feels aggrieved about any Local Housing Authority (LHA) action or failure to act in accordance with the lease or any statute, regulation, policy or procedure that affects the Tenant's status, rights, duties or procedure that affects the Tenant's status, rights, duties or welfare or any Tenant who has a complaint regarding an LHA employee shall be entitled to a hearing before the Hearing Panel.

(b) The LHA shall take no administrative or court action against any Tenant involving any matter before the Hearing Panel, the LHA Board or Department of Community Affairs (DCA) until a final decision has been reached on the matter.

(c) The aggrieved Tenant whose grievance is related to the amount of the rental shall, before instituting the grievance procedure, pay to the LHA all undisputed amounts of rent due.

#### (2) The Hearing Panel.

(a) Alternative One. Composition. The Hearing Panel shall have five members: two representatives and two alternates chosen by the LHA, two representatives and two alternates chosen by the Local Tenants Organization (LTO) and one disinterested member and one alternate who shall be chosen jointly by the Tenant and the LHA members of the Hearing Panel. The disinterested member and his alternate may not be officers, employees, agents or tenants of the LHA; or the hearing panel shall have three members, one representative and one alternate chosen by the LHA, one representative and one alternate chosen by the LTO and one disinterested member and one alternate who shall be chosen jointly by the Tenant and the LHA members of the Hearing Panel.

(b) Alternative Two. Composition. The Hearing Panel shall be composed of one (or more) impartial person(s) and one (or more) alternates(s) who shall not be officers, employees, agents or tenants of the LHA and who shall be chosen jointly by the LTO and LHA.

(c) Term. All members of the hearing Panel shall serve for not less than one, nor more than three years and may be chosen to serve successive terms.

(d) Disqualification. Any person who is related to the Tenant or who participated in the decision that Tenant complains of, shall be disqualified from sitting on the Hearing Panel upon challenge by the Tenant, LHA or upon the Hearing Panel's own motion. In case a member of the Hearing Panel is disqualified, an alternate shall serve.

(e) Presiding Officer. The members of the Hearing Panel shall choose from among themselves a Presiding Officer who shall assign complaints for hearing, chair meetings of the Panel, insure that both Tenant and the LHA have a full opportunity to present all facts relevant to the complaint and insure that these procedures are followed in the handling of all complaints.

(f) Vacancies. Vacancies shall be filled by the same procedure used for designating original members. If a vacancy occurs in the middle of a member's term, the newly designated member shall serve for the remainder of the unexpired term.

(g) Meeting Times. The Hearing Panel shall meet as often as necessary to insure that all complaints are heard within 20 working days from the time the Tenant files his complaint and request for a hearing. Meetings shall be at a time, including evenings and weekends when necessary, and place convenient to the Tenant, the LHA and the Hearing Panel.

(h) Expenses. The LHA shall provide and pay for all space, supplies and clerical staff required by the Hearing Panel and shall compensate all members of the Hearing Panel for any out-of-pocket expenses incurred in carrying out their function as Hearing Panel members.

3.02: continued

(3) Before the Hearing.

(a) Time for Requesting a Hearing. The Tenant may file a complaint and request for a hearing at any time provided that, in cases where delay will be prejudicial to the LHA, the Tenant shall file his complaint and request for a hearing within ten working days from the Tenant's receipt of written notice of proposed LHA action against him.

(b) Tenant's Complaint and Request for a Hearing. A Tenant's complaint and request for a hearing must be presented personally or forwarded by first class mail to the LHA's main office or to the manager of the project in which Tenant resides. The LHA shall date, stamp and file the Tenant's complaint as of the day it is received and shall, within two working days, forward the complaint to the Presiding Officer of the Hearing Panel. The Tenant may use a complaint form (Form 1 in 760 CMR 3.02) which shall be available at the LHA's main office at all local project offices and from the local tenant organization. All complaints must be in writing, must specify the particular facts that are the basis of the complaint and must specify the action the Tenant wants the LHA to take or to refrain from taking.

(c) LHA's Answer to Tenant's Complaint. Within ten working days after receipt of Tenant's complaint and request for a hearing, a duly authorized representative of the LHA shall forward to the Presiding Officer of the Hearing Panel and to the Tenant a written, dated, signed answer to the complaint specifying the proposed disposition of the matter of the Tenant's complaint and the full and specific reasons for the proposed disposition. If the Tenant is satisfied with the LHA's answer, he may so notify the Presiding Officer of the Hearing Panel and withdraw his complaint and request for a hearing. If the LHA fails to provide a statement of reasons within ten working days, the complaint shall be decided in the Tenant's favor and the Hearing Panel shall schedule a hearing for the purpose of awarding the Tenant appropriate relief.

(d) Access to Evidence. The Tenant and/or his authorized representative shall have adequate opportunity, before and during the hearing, to examine and make one copy of each document, record and regulation of the LHA that may be relevant to his complaint.

(e) Informal Resolution. LHA and Tenant are encouraged to propose solutions and/or to confer to resolve the matter of the complaint speedily and without a hearing. All informal resolutions shall be in writing signed by the Tenant who requested the hearing and by an official of the LHA. A copy of the informal resolution shall be forwarded to the Presiding Officer of the Hearing Panel.

(f) Right to Counsel. Tenant and LHA shall have the right to be represented by counsel or any other person of their choosing and to be accompanied by a maximum of three persons of their choosing at all stages of the complaint and hearing process.

(4) The Hearing.

(a) Time. The Presiding Officer shall give the Tenant or his authorized representative at least five working days advance written notice of the hearing date.)

(b) Continuances. Hearings may be continued at the request of either the LHA or Tenant for good cause such as illness or other unavoidable absence of a party of witness, or by agreement between the LHA and Tenant.

If Tenant does not request a continuance and does not appear at the hearing, the Panel may postpone the hearing for five working days, or continue the hearing, or determine that Tenant has waived his right to a hearing. Such a determination shall not under any circumstances mean that Tenant has waived any other remedy available to him.

(c) Private Hearings. Hearings shall be held in private unless Tenant requests a public hearing in which case the hearing shall be public.

(d) Evidence. At the hearing, the Tenant must set forth the basis for the complaint. The burden is then on the LHA to justify the action or inaction proposed in its answer to Tenant's complaint. No evidence may be used against a Tenant or in any way affect the decision of the panel unless the evidence has been introduced at the time of the hearing. The Tenant or his authorized representative shall have full opportunity to present his case, to question or refute any testimony or evidence through cross-examination, and to confront adverse witnesses. Written documentary evidence, which would be admitted into a court proceeding, may be used against the Tenant or LHA; however, if the LHA or Tenant refuses the other party access to the documents prior to the hearing, those documents may not be used against the Tenant or the LHA.

3.02: continued

(5) The Decision of the Hearing Panel.

- (a) A majority vote shall be necessary for any decision by the Panel for the composition outlined in alternative number one (760 CMR 3.02(2)(a) or a majority of members for the composition outlined in alternative number two (760 CMR 3.02 (2)(b)).
- (b) The decision must be based solely and exclusively upon the evidence presented at the hearing and upon applicable laws and regulations.
- (c) All decisions must be in writing, must be dated, and must state the findings of fact and the specific reasons for the results.
- (d) A copy of the Hearing Panel's written decision shall be forwarded to the LHA and to Tenant.
- (e) Copies of all written decisions, with all names and identifying references deleted, shall be maintained on file by the Hearing Panel and shall be available for inspection by the public.
- (f) A record shall be kept by the LHA on the testimony and events that take place at all hearings. This record shall be tape recorded record and shall be kept by the LHA. The record shall also be kept in a confidential manner, with only the LHA, Grievance Panel and the Tenant or his authorized representative allowed access to the material.

(6) Appeal from the Decision of the Hearing Panel.(a) Procedures Following the Decision.

1. If the decision is in favor of the Tenant, the LHA shall promptly take all actions necessary to carry out such decision or refrain from any action prohibited by such decision unless the Chairperson of the LHA Board initially determines and notifies the Tenant within ten working days from the date of the LHA's receipt of the decision that all or any part of the decision is arbitrary, in excess of the authority of the Hearing Panel or violates state law or regulations of DCA and that the LHA Board will review the decision. The LHA Board, which must review the decision no later than its next regular meeting, may reverse all or any part of the decision of the Hearing Panel and/or may modify any assessment of money damages against Tenant if the Board finds that the Hearing Panel acted arbitrarily, exceeded its authority or violated state law or regulations of DCA.
2. If the decision of the Hearing Panel is in favor of the LHA, the Tenant may, within ten working days of the date of Tenant's receipt of the decision, appeal the decision to the LHA Board which must hear the Tenant's appeal no later than its next regular meeting. The LHA Board may reverse or modify the decision of the Hearing Panel as requested by the Tenant or may allow the decision of the Hearing Panel to stand.
3. The LHA shall, within five working days of the Board meeting at which the appeal was heard, notify the Tenant in writing of its decision and of the specific reasons for its decision. A copy of the notice shall be filed by the Board with the Presiding Officer of the Hearing Panel.
4. The Tenant shall act in accordance with the decision of the Hearing Panel, unless the aggrieved Tenant promptly notifies the LHA requesting review by the LHA Board.

(7) Review by DCA.

- (a) If the Hearing Panel's decision is not upheld by the LHA, the aggrieved Tenant may appeal to the Secretary within 15 working days from the date of Tenant's receipt of the LHA Board's decision. Tenant's appeal must be in writing, must set forth the reasons why the decision of the Hearing Panel should be affirmed or why the LHA Board acted arbitrarily, exceeded its authority or violated state law or regulations of DCA. The Tenant should provide a copy of their appeal to the LHA, concurrently.
- (b) DCA's Decision on an Appeal. DCA shall, within 15 working days of its receipt of an appeal from a Tenant, notify the Tenant and the LHA Board in writing of its decision on the appeal and of the specific reasons for its decision.

3.02: continued

(8) Appeals to the Courts. The decision by the Hearing Panel or the LHA Board and any decision by DCA on an appeal of the Tenant shall not in any way limit nor constitute a waiver in any manner whatever of the right of Tenant or LHA to a trial de novo in court proceedings which may thereafter be brought. In such court proceedings the LHA shall be limited to the grounds relied upon in its proposed disposition of the Tenant's complaint. If the LHA wishes to introduce new evidence or rely on new grounds in any subsequent court proceedings, the Tenant must be notified in advance of the new evidence or grounds and given an opportunity for a hearing in accordance with these regulations on the new evidence or grounds. The Tenant's failure to pursue all or any part of the complaint and hearing remedies herein shall not constitute a waiver of or bar to any court or other remedy available to the Tenant.

(9) Miscellaneous.

(a) Variations. Any variations to the above-outlined procedure shall not be adopted by the LHA without prior approval of the LTO. A copy of these procedures and of any revision hereto shall be posted in a conspicuous place in every project and shall be available at every Project, from the LHA's main office and from the Officers and representatives of the LTO.

(b) Notice. All notices, answers or decisions required under these procedures to be sent to the Tenant must be delivered in person to an adult member of the Tenant's household or mailed by certified mail.

DATE AND TIME STAMP  
WHEN RECEIVED BY LHA

\_\_\_\_\_ Housing Authority  
(Address)

GRIEVANCE PROCEDURE COMPLAINT FORM  
AND REQUEST FOR HEARING

I, \_\_\_\_\_, a tenant at \_\_\_\_\_  
(apartment number and address), am dissatisfied with (or am appealing from) the following  
action or inaction by the \_\_\_\_\_ Housing Authority which occurred on  
\_\_\_\_\_, 199\_\_ at \_\_\_\_\_ o'clock.

Please describe the facts completely. Include the names of witnesses and other parties  
involved. List the order of events. Use the back of this sheet if additional space is needed.

I would like the \_\_\_\_\_ Housing Authority to take the following action on my  
complaint: (Be specific)

\_\_\_\_\_ Check here if you are requesting a hearing before the Grievance Panel. If you do  
not check here, your complaint will not be forwarded to the grievance panel and a hearing  
will not be scheduled. If this complaint regards an issue where a time delay would prejudice  
the \_\_\_\_\_ Housing Authority (ie. an eviction), you will lose your right to a hearing  
if you do not check here.