

Attachment E – To The State Lease

Grievance Procedure

A. Authority

Pursuant to 760 CMR 6.08 and the Dwelling Lease for State Housing, and 24 CFR § 966.50 and Section M of the Federal Tenant Lease, after negotiation with the Tenant Organizations comprising the various state and federally-aided developments, the Board of Commissioners of the Northampton Housing Authority, has adopted this Grievance Procedure for State-Aided Tenants, by Resolution 871 on March 11, 2002.

B. Compliance

This Grievance Procedure was approved for use in State Housing by the Department of Housing and Community Development. The Grievance Procedure complies with both State and Federal regulations; except where noted by specific reference, this policy governs grievances of tenants of both Federal and State-aided housing, including participants in the MRVP and AHVP programs. This Grievance Procedure shall be made part of the tenant lease, as described above, and a copy shall be furnished to each tenant and Tenant Organization. The NHA will, upon request, provide reasonable accommodations to disabled tenants relative to the Grievance Process. In cases where the tenant is entitled to a grievance hearing, and has made a timely request for one, the NHA will not file a Summary Process Summons and Complaint until the decision of the hearing is rendered. The NHA's procedure for selection of the Hearing Panel is explained in Section F of this Procedure.

If any part of this procedure is determined not to be in compliance with either State or Federal regulations, the procedure shall remain effective for the program in compliance.

C. Purpose

The purpose of the Grievance Procedure is to provide tenants a uniform opportunity to dispute, within a reasonable time, any action, or failure to act, by the NHA or its employees, involving the tenant's lease which adversely affect the tenant's right, duties, welfare or status, and to provide prompt and reliable determination of grievances by tenants protected by rights to a grievance hearing. This policy also governs appeals by data subjects with rights granted pursuant to 760 CMR 8.00.

D. Definitions

The following words or terms shall have the meaning defined herein:

Data Subject- An individual to whom personal data refers, as protected by 760 CMR 8.00, which regulates the Fair Information Practices Act (MGL Chapter 66A) for state-aided programs at housing authorities.

Grievance- A grievance is a dispute which a tenant or data subject has with the housing authority, or an employee acting in that capacity, resulting from the housing authority's action or failure to act in accordance with an individual tenant's lease or an applicable housing authority rule or regulation, an applicable state or federal regulation or law governing the tenant's housing program, the result of which adversely affects the tenant's (or a member of the tenant household's) rights, duties, welfare or status.

Grievant - the tenant or data subject initiating the grievance.

Hearing Panel- an impartial group of three persons selected by the housing authority in accordance with the requirements of state and federal regulations, as described in Section F of this procedure.

Tenant- An adult member(s) of a tenant household who resides in the unit, or who is a remaining tenant, and who executed the lease with the housing authority, or who is an MRVP or AHVP program participant.. This definition does not include a Live-In Aide or Personal Care Attendant.

Non-Grievable Matter- The meaning of a law, 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

NHA 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.

In addition, as eviction procedures accord tenants with the elements of due process of law required by Federal Law, and Chapter 121B §32 provides an explicit prohibition, no grievance hearing regarding whether good cause exists for termination of a lease shall be requested or held in the event the NHA has reason to believe that the tenant or a member of the tenant's household has:

- (1) unlawfully caused serious physical harm to another tenant or employee of the housing authority, or any other person lawfully on the premises of the housing authority, or
- (2) threatened to seriously physically harm another tenant or housing authority employee, or any person lawfully on the premises of the housing authority, or
- (3) destroyed, vandalized or stolen property of a tenant or the housing authority or any person lawfully on the premises of the housing authority which thereby creates or maintains a serious threat to the health or safety of a tenant or employee of the housing authority or any person lawfully on the premises of the housing authority, or
- (4) on or adjacent to housing property, possessed, carried, or illegally kept a weapon in violation of section ten of chapter two hundred and sixty-nine or possessed or used an explosive or incendiary device or has violated any other provisions of section one hundred and one, or has violated any other provision of sections one hundred and one, one hundred and two, one hundred and two A or one hundred and two B of chapter two hundred and sixty-six, or
- (5) on or adjacent to housing authority property, unlawfully possessed, sold, or possessed with intent to distribute a controlled substance as defined in classes A, B, or C of section thirty- one of chapter ninety-four C, or
- (6) engaged in other criminal conduct which seriously threatened or endangered the health or safety of another tenant, an employee of the housing authority or any other person lawfully on the premises of the housing authority, or
- (7) for any of the reasons set forth in section nineteen of chapter one hundred and thirty-nine, or
- (8) a guest of a tenant or of a household member engages in any such behavior listed in clauses (1) to (7) above, inclusive, where the tenant knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

In addition cases of non-payment of rent are not grievable matters for State-aided tenants. For Federally-aided tenants, a grievance for non-payment of rent owed in accordance with the lease is a grievable matter provided the tenant meets the obligations described in Section E, Step 1, below.

E. Grievance Process

Step 1. Initiation of a Grievance. 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 NHA at its main office within seven (7) days after a notice of lease termination has been given to tenant by the NHA.

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

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the NHA 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 that the NHA shall have discretion to permit a grievance to be initiated late if the NHA 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 NHA.

For State-aided tenants: In the event that a tenant files a grievance as to the amount of a redetermined rent within 14 days of the NHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until disposition of the grievance. Following the disposition of the grievance, the tenant must forthwith 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 NHA shall credit the tenant with any amounts paid but determined not to have been due.

For Federally-aided tenants: In the event that a tenant files a grievance involving an amount of rent which the NHA claims is owed in accordance with the lease, the tenant shall pay, before a hearing is scheduled, to the NHA, an escrow deposit equal to the amount of rent due and payable as of the first of the month preceding the NHA's notice to the tenant of non-payment of rent. After the first deposit, the tenant must deposit the same amount monthly until the tenant's complaint is resolved by decision of the hearing panel.

The NHA shall waive the requirement for an escrow deposit where the tenant was paying the Minimum Rent, or where the tenant had a reduction of benefits relative to failure to comply with work requirements. Absent waiver of the escrow deposit requirement, the tenant's failure to make the escrow deposit(s) will terminate the grievance procedure.

A tenant's failure to pay the escrow deposit does not waive the tenant's right to contest in any appropriate judicial proceeding the NHA's disposition of the grievance. Amounts deposited into the escrow account shall not be considered as acceptance of payment of rent during the period in which the grievance is pending.

Step 2. Informal Settlement Conference. Promptly after the initiation of a grievance, unless otherwise provided, the NHA'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 NHA 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, by agreement of the parties, have taken place when the grievance was delivered to the NHA.

The notice from the NHA shall state that the resident shall have the right to be represented by another person, including legal counsel, throughout the process.

A summary of the informal conference shall be prepared within a reasonable time, specifying the names of the participants, the date of the conference, resolution of the matter, if agreed upon, or the nature of the NHA's proposed disposition of the complaint and the specific reasons there for, and shall specify the procedures by which a hearing may be obtained if the grievant is not satisfied. The summary shall be given to the tenant and, if the matter was not resolved at the informal settlement conference, a grievance hearing shall be held, upon a request of the tenant received by the NHA within seven days of the delivery of the summary.

Failure to attend an informal settlement conference shall not affect a grievant's right to request or have a grievance hearing. The NHA's notice in an eviction case shall state that failure to attend the Informal Conference or request or attend a Grievance Hearing shall not constitute a tenant's waiver of a right to contest the NHA's action to terminate tenancy at an appropriate judicial proceeding.

Step 3. Hearing Date and Notice of Hearing. 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 NHA receives the request for a grievance hearing. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

The NHA shall give at least seven (7) days advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). The notice shall state the names of the hearing panel members, the right of the grievant to be represented by counsel and the name and phone number of the local Legal Services office, and the right of the grievant to examine and copy relevant documents. The NHA or the hearing panel may reschedule a hearing by agreement or upon a showing by grievant or by the NHA that rescheduling is reasonably necessary.

At the hearing regarding lease termination 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 NHA 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 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 days notice to consider such reasons.

Step 4. Pre-Hearing Examination of Relevant Documents. Prior to a grievance hearing the NHA shall give the grievant or his or her representative a reasonable opportunity to examine NHA documents which are directly relevant to the grievance. Following a timely request, the NHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies. If the NHA does not make the documents available to the grievant prior to the hearing, the NHA may not rely on those documents at the hearing.

Step 5. Persons Entitled to be Present at the Hearing. The grievance hearing shall be private unless the grievant requests that it be open to the public. The NHA 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 hearing panel. At the hearing the NHA and the grievant may be represented by a lawyer or by a non-lawyer, and the grievant may, at their expense, have a court reporter transcribe the hearing. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall 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.

Step 6. Procedure at Grievance Hearings. 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 NHA shall be entitled to question each other's witnesses. The hearing panel must first determine whether the grievant has made a showing of an entitlement to the relief sought and thereafter the NHA must sustain the burden of justifying the NHA's action or failure to act against which the grievance has been brought.

Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape-recorded, made available to the grievant, and kept until all appeals of the case have been decided. The members of the hearing panel may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and NHA rules and policies. The panel members may request the NHA 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 hearing panel may render a decision without proceeding with the hearing if the hearing panel determine that the same issue has been previously decided in a grievance brought by a grievant.

If one of the parties fails to attend the hearing or hearing panel may re-schedule the hearing to be held within five days or determine that the party has waived his/her right to a hearing, or decide the case based on testimony received from the party who is present.

Step 7. Written Decision; Effect of Decision. Within fourteen(14) days following the hearing or as soon thereafter as reasonably possible the hearing panel shall provide the NHA 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 based on the evidence at the grievance hearing and such additional information as may have been requested by the panel members. The NHA shall forth with mail or otherwise deliver a copy of the decision to the grievant and his or her representative, and place a copy in the tenant's file. The notice shall state that the decision, or the fact that the tenant may have failed to grieve the matter, does not constitute a waiver of any right to a trial in the appropriate judicial forum. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the NHA and shall be open to public inspection.

Step 8. Review by the NHA's Board.

A For Tenants or Participants of State-Aided Housing: In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the NHA's Board. In other cases, in the event that the grievant or the NHA believes that (i) the decision of the hearing panel is not supported by the facts; (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 other delivery of the decision, the grievant or the NHA may request review of the decision by the NHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the NHA and grievant to make oral presentations and submit 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.

B For Tenants or Participants in Federally-Aided Housing: The decision of the hearing panel may be overturned by the Board of Commissioners, within a reasonable time, if they determine that (1) The grievance does not concern NHA action or failure to act in accordance with or involving the grievant's lease or NHA regulations, which adversely affect the grievant's rights, duties, welfare or status, or (2) The decision of the hearing panel is contrary to applicable Federal, State, or local law, HUD regulations, or requirements of the annual contributions contract between the NHA and HUD.

Step 9. Review by the Department of Housing and Community Development for Tenants and Participants of State-Aided Housing only: In the event that the NHA's Board shall make a material change in a decision of the hearing panel, upon 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. The Department will not review cases where the decision concerns whether good cause exists to terminate the lease.

Step 10. Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the NHA 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. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the NHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

F. How the NHA 's Hearing Panel is Selected

(1) Appointment of Hearing Officers and Jurisdiction.

This grievance procedure adopted by Northampton Housing Authority (NHA) requires a hearing and determination of a matter subject to the procedure by a Hearing Panel that is composed of three members, one of whom shall be a member of the Board of Commissioners, one of whom shall be a tenant, and one of who shall be an impartial member.

Appointment of a Pool of Panel Members Available to Hear Grievances. The NHA recognizes that it is in the interests of the grievant and the NHA to resolve matters subject to this procedure in an expeditious manner. As such, there shall be a pool of hearing panel members appointed, from which the Hearing Panel to serve on a particular grievance is assigned. This pool shall be composed of at least two persons appointed for each constituency’s slot (Board of Commissioners, Tenant, Impartial). There shall be four pools of Tenant members appointed -- a pool representing residents of a) the State-aided family developments and programs, b) the State aided elderly/disabled developments and programs, c) the Federally-aided family development, and d) the Federally-aided elderly development. The establishment of these pools provides sufficient members from which a Hearing Panel can be assigned, as well as alternate members.

Term. Whenever a member is appointed, notice of the appointment shall be given to the member, as well as to the NHA and Tenant Organizations, and the notice shall specify the term of appointment as made by the appointing body, not to exceed seven years, for which the member has been appointed.

Appointment Process. Members of the Hearing Panel pool shall be appointed in the following manner:

a) Board Of Commissioners Members. The Board of Commissioners shall appoint two Commissioners to the pool.

b) Tenant Members. The Local Tenant Organizations, or in their absence the NHA, shall organize and hold a public meeting of tenants representing elderly/disabled and family residents from both Federally-aided and State-aided housing developments and programs, and participants in the AHVP and MRVP programs, for the purpose of appointing tenant members of the Hearing Panel pool. The residents in attendance shall meet and, as they see fit, organize so as to lead to the appointment of at least two members each to Hearing Panel pools from each of the following constituencies: (i) Residents living in State-aided elderly/disabled developments and participants in the AHVP program; (ii) Residents living in State-aided family developments, or programs, and participants in the MRVP program; (iii) Residents living in the Federally-aided elderly development, and; (iv) Residents living in the Federally-aided family development. In the event that the residents of a constituency, as described in (i) through (iv) above, fail to meet or appoint their members to the Hearing Panel Pool, the Board of Commissioners shall appoint temporary members to represent that constituency until such time as the tenants of that constituency make their appointments.

c) Impartial Members. The Local Tenant Organizations, or in their absence the NHA, shall organize and hold a public meeting(s) of representatives of the NHA and of tenants representing elderly/disabled and family residents from both Federally-aided and State-aided housing developments and programs, and participants in the AHVP and MRVP programs, for the purpose of appointing Impartial Members to the Hearing Panel pool. The tenants and the NHA shall submit the names of at least four impartial persons each, and from those lists agree upon at least two persons who shall be appointed to the pool of Impartial Members. If need be, each group shall submit additional names until they agree upon two.

Each hearing panel member shall annually acknowledge to the NHA that he or she is ready, willing and able to serve; failure to so certify shall render that member’s position vacant.

Assignment of a Grievance Panel: The NHA shall be responsible for the assignment and scheduling of a particular panel to hear a grievance. In the assignment of panel members to hear a specific grievance, the tenant member of a panel shall not live in the same residential development as the grievant.

The tenant member of the panel shall be assigned as follows:

<u>If the Grievant is a Tenant or Program Participant of:</u>	<u>The Tenant Representative on the Hearing Panel shall come from the Pool of:</u>
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State-Aided Elderly/Disabled or MRVP
State-Aided Family or AHVP
Federally-Aided Elderly
Federal-Aided Family

Federal Elderly Members
Federal Family Members
State Elderly Members
State Family Members

The Impartial Member of the Hearing Panel shall serve as chair of the Hearing Panel, and be responsible for working with NHA staff to ensure that the grievant and other panel members are provided all documentation, for preparing in a timely manner the written decision of the Panel, and for the fair and impartial administration of the hearing process.

(2) Impartiality of Members. No member of a hearing panel 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 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 which are disputed by the parties. The Impartial member who is appointed by agreement of the other two members shall not be a board member of the NHA or an officer of a tenants' organization. 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, or of another resident of the development where he or she lives.

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 NHA, any affected tenants' organization, 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 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 NHA may remove the member which the NHA appointed and the tenants' organizations may remove the member which they appointed, after notice to the member and the opportunity for him or her to be heard. The NHA and the tenants' organizations may jointly remove the Impartial member, after notice and opportunity to be heard.

(4) Scheduling. The NHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The NHA shall consult each panel member and insofar as reason ably possible shall schedule hearings at times convenient for him or her or for his or her alternate.

(5) 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 NHA 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.

Approved by Resolution 871 -March 11, 2002
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