

Using Your Public Housing Grievance Process

A Know Your Rights Guide for
Public Housing Tenants in Massachusetts



Why should I use this booklet?

The purpose of this booklet is to give tenants in public housing in Massachusetts answers to questions about grievance procedures.

As a tenant, you have important rights. But those rights have meaning only when you use them. To help you use your rights and take the steps you need to take, included are sample letters, forms, and worksheets.

This booklet is available online at www.MassLegalHelp.org/Housing/Grievances. Please distribute it freely to tenants and organizations working with tenants.

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Because laws and regulations change, make sure you have the most up-to-date version of the booklet by checking: www.MassLegalHelp.org/Housing/Grievances.

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Right to a Grievance

1. What is a grievance procedure in public housing?

A grievance procedure is a process to resolve disputes between residents in public housing and a housing authority.¹ It is a way to try and work out problems without having to go to court. As a tenant, you can use the grievance procedure in two different ways:

- To oppose some action that a housing authority wants to take against you. For example: Housing authority refuses to let you add someone to your lease or is trying to evict you.
- To hold your housing authority staff and board accountable for the way they have acted or not acted. For example: Housing authority does not respond to your request to make repairs.

Important—It is illegal for a housing authority to try to evict or harass you for filing a grievance or testifying at a grievance hearing.² The grievance procedure is there to resolve problems. Don't let the housing authority try to scare you away from using the grievance procedure.

2. Where did the idea of a grievance procedure come from?

The public housing grievance process grew out of the efforts in the late 1960s to stop arbitrary evictions and a famous lawsuit in 1970 that established due process requirements for people receiving welfare.³ In 1971, the Department of Housing and Urban Development (HUD) issued an official memorandum that formed the basis of public housing grievance procedures. Regulations followed. Similar laws were adopted for state public housing in the 1970s. Then in 1983 Congress for the first time passed legislation requiring housing authorities to provide grievance procedures for federal public housing.

¹ If the housing authority uses a private management company for day-to-day operations at a development, the actions of the private management company would also be grievable.

² Such an action would violate state anti-retaliation laws. See M.G.L. c. 186, § 18, and M.G.L. c. 239, § 2A.

³ National Housing Law Project, *HUD Housing Programs: Tenants' Rights* (5th Ed. 2018), Section 10.2.1.2. The lawsuit was *Goldberg v. Kelly*, 397 U.S. 254 (1970).

3. How do I find out what the grievance process is in my development?

Housing authorities must have written grievance procedures. For state public housing, housing authorities must post the grievance procedure in their central office and on their website or webpage.⁴ For federal public housing, housing authorities must have grievance procedures available at their main office and should have them on their websites.⁵

Ask your housing authority for a copy of your grievance procedure. In some cases, your rights under your grievance procedure may also be spelled out in your lease (including as an attachment to the lease).

While grievance procedures for tenants in Massachusetts state and federal public housing are similar, they are not identical.⁶ In order to figure out what your rights are, you need to know whether you are a state or federal public housing tenant. Where there are differences between the state and federal grievance procedures, these differences are spelled out in the answers that follow.

If you are in a “mixed finance” building, go to Questions 14-17 below. A “mixed finance” development is one that was state or federal public housing in the past but has been renovated or reconstructed and now has other funding sources. A “mixed finance” development may be owned by an affiliate of the housing authority or a different entity.

⁴ 760 C.M.R. § 4.02(2).

⁵ HUD, Public Housing Agency (PHA) Plan Desk Guide (2001); Form HUD-50075-ST, Instructions, A1 (HUD encourages PHAs to post Plans on their websites).

⁶ For the state grievance laws, see 760 C.M.R. § 6.08 and M.G.L. c. 121B, § 32. For the federal grievance laws, see 24 C.F.R. § 966, Subpart B, and 42 U.S.C. § 1437d(k). In some instances, DHCD and HUD may permit a housing authority to use a similar grievance procedure for most or all of their sites.

In the past, the Department of Housing and Community Development (DHCD), the state agency that oversees state public housing, said that its grievance regulations applied to both state and federal public housing. See *Commissioner of Department of Community Affairs v. Medford Housing Authority*, 363 Mass. 826, 298 N.E.2d 862 (1973), and *Harborview Residents' Committee, Inc. v. Quincy Housing Authority*, 368 Mass. 425, 332 N.E.2d 891 (1975). This is no longer DHCD's position. See 760 C.M.R. § 6.02(1) (760 C.M.R. § 6.00 applies to persons residing in state-aided public housing).

4. When am I supposed to be notified about my grievance rights?

If a housing authority takes some action against you, in most cases, you have a right to a grievance hearing and the housing authority must notify you about this right. This notice must be in writing, and it must include the deadline by which you must file a grievance.⁷

For example, your housing authority must give you notice that you have a right to file a grievance if the housing authority is:

- Terminating your lease.
- Changing your rent.
- Requiring you to transfer.
- Denying your request for a transfer.
- Denying your request to add someone to the lease.⁸
- Denying a request for a *reasonable accommodation* for a disability.⁹
- Denying a claim to be exempt from the community service requirement.

Make sure that you file a grievance by the deadline on the notice and in the way described in the notice. Otherwise, you may lose your right to a grievance.¹⁰

If you did not get a notice that you have a right to a grievance hearing and you should have, the housing authority will probably have to start the whole process over again. For example: If the housing authority is going to court to evict you because you refused to transfer to another apartment, but you never received a written notice telling you that you have a right to a grievance hearing, tell the court. Then ask the court to dismiss the case and to tell the housing authority to start the process over by informing you in writing of your right to a grievance hearing.

⁷ For federal public housing, see 24 C.F.R. § 966.4(e)(8). For state public housing, see 760 C.M.R. § 6.06(4)(j).

⁸ See *Saxton v. Housing Authority of the City of Tacoma*, 1 F.3d 881 (9th Cir. 1993) which held that a public housing tenant whose request to add a returning family member to a lease was denied has a right to a grievance hearing pursuant to 24 C.F.R. § 966.50.

⁹ See 24 C.F.R. § 8.53(b) (denial of reasonable accommodation subject to grievance rights). Given the often-sensitive medical information and/or lack of expertise of non-health care persons, the Cambridge Housing Authority has a separate procedure for denials of reasonable accommodations.

¹⁰ Some grievance procedures may allow a late grievance for good cause shown.

5. Can I be retaliated against for filing a grievance?

No, the housing authority should not retaliate against you for filing a grievance. It is illegal for a housing authority to try to evict or harass you for filing a grievance or testifying at a grievance hearing.¹¹ The grievance procedure is there to resolve problems. Don't let the housing authority try to scare you away from using the grievance procedure.

6. Can the housing authority take other actions against me for filing a grievance?

If you have filed a request for a grievance hearing or you are appealing a grievance decision, a housing authority may not take any other action against you until a final decision has been reached. This means that the housing authority cannot bring you to court to evict you or take other action on the subject of the grievance (such as a transfer) until the grievance process is over.¹²

¹¹ Such an action would violate state anti-retaliation laws. See M.G.L. c. 186, § 18, and M.G.L. c. 239, § 2A.

¹² 760 C.M.R. § 6.06(8)(b), and 24 C.F.R. § 966.4(e)(8)(ii)(B), (l)(3)(iv). See also *Cambridge Housing Authority v. Wedge*, 2000 Mass. App. Div. 235 (2000) (eviction dismissed where grievance procedure not concluded at time housing authority filed action).

Types of Grievances

7. When do I have a right to file a grievance?

In addition to being able to file a grievance when a housing authority sends you a notice about some action it is taking against you, you can file a grievance if you or anyone in your household has been hurt by something that the housing authority has done or not done.¹³ For example, you can file a grievance if the housing authority:

- Refuses to adjust your rent.
- Does not process your request for a transfer.
- Does not answer requests for repairs like something is broken or there is mold in your unit. You should consult the Housing Code Checklist for more information on your right to safe and decent housing.¹⁴
- Refuses your request to keep a pet.¹⁵
- Staff or housing authority board treats you unfairly or harasses you.
- Has acted (or not acted) in a way that causes you harm or hardship.

The grievance procedure is also available to resolve any disputes that you have about how the housing authority is handling your personal information.¹⁶ For example, you may discover that the manager has inappropriately disclosed information that should be kept private.

There are some situations, however, where the housing authority does not have to hold a grievance hearing. They involve certain types of complaints and certain types of evictions. See the next question.

¹³ 760 C.M.R. § 6.03 (definition of “grievance”), referencing 760 C.M.R. § 8.00: Privacy and Confidentiality.

¹⁴ Housing Code Checklist, *available at* <https://www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist.pdf>.

¹⁵ There are special pet grievance rules and committees for state elderly/disabled public housing. See St. 1989, c. 151, 760 C.M.R. § 6.07(5), and DHCD Pet Guidelines. Pet ownership is not specifically provided for in state family public housing. For federal public housing, there is a statutory right to keep common household pets, subject to reasonable rules, and the regular grievance procedure would apply. See 42 U.S.C. § 1437z-3.

¹⁶ 760 C.M.R. §6.03, see (c) under definition of “grievance,” and 760 C.M.R. § 8.05.

8. When don't I have a right to a grievance hearing?

A public housing authority may, in some cases, deny you a grievance hearing if you are being evicted for certain types of behavior. State and federal rules about who has a right to a grievance hearing when facing an eviction are different and can be complicated.

To figure out whether you are entitled to a grievance, you will need to look closely at your housing authority's grievance policy, your lease, and the facts involved in your situation.

State public housing

If you live in state public housing, you do not have a right to a grievance hearing if you are being evicted for:¹⁷

1. Non-payment of rent, unless your lease gives you a right to a grievance hearing.¹⁸
2. The following activities, if a tenant, household member or guest has:
 - Caused serious physical harm, harassed or threatened a tenant, housing authority employee, or guest;
 - Destroyed, vandalized, or stole property from a tenant, housing authority employee, or guest;
 - Unlawfully possessed, carried, or kept a weapon on or next to housing authority property;
 - Unlawfully possessed or used an explosive or incendiary device on or next to housing authority property;
 - Unlawfully possessed, sold, or possessed with intent to distribute a class A, B, or C controlled substance on or next to housing authority property (if the unlawful activity involves marijuana, which is a class D substance, a tenant should still get a grievance hearing);¹⁹
 - Engaged in other criminal conduct that has seriously threatened or endangered the health or safety of a tenant, housing authority employee, or guest.

¹⁷ 760 C.M.R. § 6.06(7)(a), 760 C.M.R. § 6.06(7)(b)(1-9), and M.G.L. c. 121B, § 32, paragraph 7.

¹⁸ For example, the housing authority may use the same lease for its federal and state public housing tenants with permission (or under a waiver) from DHCD. This is the case for the Boston Housing Authority.

¹⁹ The following are examples of classes of drugs under Chapter 94C:

Class A: Heroin, Morphine, Codeine, Prescription Opiates, Fentanyl

Class B: Opium, Cocaine, LSD, Methadone, PCP, Barbiturates, Amphetamines

Class C: Mescaline, Peyote, Psilocybin (psychedelic mushrooms)

- Engaged in behavior that would be cause for terminating the lease because of an occupant’s illegal use of the apartment under state nuisance laws, such as prostitution, illegal gaming, or selling of alcoholic beverages.²⁰

Note on behavior of guests: In most cases, only if a housing authority believes that you knew or should have known beforehand that there was a reasonable possibility that your guest would engage in misconduct, can the housing authority deny you a right to a grievance hearing.²¹

Federal public housing

Federal rules permit, but do not require, housing authorities to deny tenants grievance hearings in evictions involving:²²

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or housing authority employees;
- Any violent or drug-related criminal activity on or off the premises; or
- Any criminal activity that resulted in a felony conviction of a household member.²³

These types of evictions are not automatically excluded from the grievance process. Your housing authority must decide whether it wants to exclude any or all of the above types of evictions from the grievance process and then describe this in its grievance procedures.²⁴

Note: If you live in federal public housing and you would have the right to a grievance hearing under state law, you get this right as a federal public housing tenant, too.²⁵ For example, while there usually is no grievance right for federal public housing tenants when a household member is charged with drug possession, state law does provide such rights if the drug is marijuana.

²⁰ M.G.L. c. 121B, § 32; 760 C.M.R. § 6.06(7)(b)1-8. The state’s nuisance law is M.G.L. c. 139, § 19.

²¹ 760 C.M.R. § 6.06(7)(b)(9)), M.G.L. c. 121B, § 32 paragraph 7. This standard is similar to that discussed in *Hodess v. Bonefont*, 401 Mass. 693, 519 N.E.2d 258 (1988). There may be an exception to this if the state nuisance laws are involved and the housing authority can show that the guest was really an “occupant” of the unit (e.g. live in boyfriend).

²² 24 C.F.R. §§ 966.53(d), 42 U.S.C.A. § 1437d(k).

²³ A felony conviction depends on whether the specific statute provides for sentencing to the house of corrections. Note further that the language here is "conviction", and so in some instances there may have been a felony charge but no felony conviction i.e. plea bargain or conviction on a lesser charge.

²⁴ 24 C.F.R. §§ 966.53(d), 42 U.S.C.A. § 1437d(k)..

²⁵ For circumstances in which an eviction is and is not grievable under state law, see M.G.L. c. 121B, § 32. For the proposition that state law grievance rights apply even if you live in federal public housing, see *Spence v. Reeder*, 382 Mass. 398, 416 N.E.2d 914 (1981).

9. Can I file a grievance against another tenant in the development?

No. You cannot use the grievance procedure to file a complaint against another tenant. If, however, you have complained about another tenant's conduct to the housing authority and the housing authority has not adequately responded, you may file a grievance against the housing authority.²⁶

10. Can a grievance be filed by one tenant for another tenant?

No. A grievance cannot be filed by one tenant on behalf of another tenant. A tenant can file a grievance, however, on behalf of a member of her own household.²⁷

11. Who can file a grievance?

In state public housing, a tenant who is an adult or emancipated minor, a group of tenants (see Question 12 below), certified participants of the Alternative Housing Voucher Program (AHVP) or eligible participants of the Massachusetts Rental Voucher Program (MRVP), or a person about whom the housing authority holds data can file a grievance.²⁸ A tenant can file a grievance on behalf of a member of their own household.²⁹

In federal public housing, a grievance may be filed by a tenant which is defined as an adult person or persons living in the unit who either signed the lease or is the remaining head of household of the tenant family.³⁰

²⁶ 24 C.F.R. § 966.51(b) and 760 C.M.R. § 6.03, see (d) under definition of “grievance.” See also 760 C.M.R. § 6.06(4)(p), which states that the housing authority must commence eviction proceedings against other tenants whose behavior has jeopardized the health and safety of the grieving tenant.

²⁷ This may raise issues related to the Violence Against Women Act (VAWA). For information for survivors of abuse in public housing go to MassLegalHelp.org. <https://www.masslegalhelp.org/housing/dv/vawa-federal-public-housing> (federal public housing) and <https://www.masslegalhelp.org/housing/dv/vawa-project-based-section8-vouchers-article> (project based section 8). See also Notice of Occupancy Rights under the Violence Against Women Act, Mass Department of Housing and Community Development, *available at* <https://casamyrna.org/wp-content/uploads/2021/03/DHCD-VAWA-Notice.pdf>.

²⁸ 760 C.M.R. § 6.03, see definition of “grievance” and “grievant.” See also M.G.L. c. 66A, § 1 (definition of “data subject”), 760 C.M.R. § 49.02 (definition of Massachusetts Rental Voucher Program “participant”), and 760 C.M.R. § 53.02 (definition of Alternative Housing Voucher Program “participant”).

²⁹ This may also raise issues related to domestic violence. See footnote 27 above.

³⁰ 24 C.F.R. § 966.53(b). In state public housing, a remaining household member would be someone who qualifies as family. See definition of Family (Household) in 760 C.M.R. § 5.00. For discussion of how

12. Can a group of tenants file a grievance?

State public housing

Tenants in state public housing have the right to file grievances together, so long as each tenant individually files his or her own grievance.³¹ For example, if a manager of a development was completely unresponsive to tenant “no heat” complaints, tenants might want to file all of their individual grievances together asking that action be taken to require the manager to immediately fix the problem and reduce their rent in the meantime.

Federal public housing

In federal public housing, tenants cannot file a grievance together (otherwise referred to as a *class grievance*). The federal law is also clear that the grievance procedure is not a forum for negotiating policy changes between groups of tenants and the housing authority.³²

remaining household member issue is dealt with on the state side, see *Arsenault v. Chicopee Housing Authority*, 15 Mass. App. Ct. 939 (1983).

³¹ The state definition of “grievance” at 760 C.M.R. § 6.03, unlike the federal rules, does not have any restriction on “class grievances.” However, to be on the safe side, each individual who is seeking relief should file a grievance.

³² 24 C.F.R. § 966.51(b). Tenants do have rights, however, through their tenant organizations, as well as their Resident Advisory Boards, to negotiate policy changes with the housing authority. See 24 C.F.R. Part 964 (tenant participation rules) and 24 C.F.R. Part 903 (Public Housing Agency Plan). In addition, the housing authority must give affected tenants 30 days’ written notice and an opportunity to comment on any proposed changes in the lease, the grievance procedure, or charges, policies, or rules that are incorporated by reference into the lease. See 24 C.F.R. §§ 966.3 (lease), 966.5 (charges, policies, or rules), and 966.52(c) (grievance procedure).

13. What if a housing authority says my grievance is not “grievable?”

First you should make sure that the matter is grievable. Read Questions 7-13 in this booklet.

State

If a housing authority staff person says that your grievance is not a matter that can be grieved, and you feel it is, you have a right to request your housing authority Board of Commissioners (or Administrator if there is no Board of Commissioner) to review this decision. You must do this within 14 days of when the housing authority sends you a decision saying that the matter is not “grievable.”³³

If you do not receive anything in writing from the housing authority saying that you cannot have a grievance hearing on a particular matter, ask them to put that decision in writing. Maybe they will change their mind. But if not, you will have the piece of paper you need to challenge this decision.

Federal

In federal public housing, the Board of Commissioners may determine whether a grievance is not grievable.³⁴ Therefore, a tenant should have the opportunity to ask the Board (or Administrator if there is no Board) to review a decision by the housing authority that the grievance was not grievable.

³³ 760 C.M.R. § 6.08(4)(h).

³⁴ 24 C.F.R. § 966.57(b).

Mixed Finance Housing Grievance Procedures

14. What is Mixed Finance Housing?

A housing authority may choose to redevelop or rehabilitate a public housing site through a few different programs. These programs are collectively referred to as “Mixed Finance” housing because they mean bringing in different forms of funding or financing. Mixed financing can add to or replace traditional public housing operating and capital subsidies. Usually, Mixed Finance developments are no longer owned directly by the housing authority, but the housing authority may control what happens to the site through a ground lease.³⁵

As a brief history, the earliest examples of mixed financing redevelopment were in the 1990’s and early 2000’s through the federal HOPE VI program, the Choice Neighborhoods program, and demolition or disposition efforts under federal law. Since 2012, the Rental Assistance Demonstration (RAD) program authorized by Congress, has become a program where public housing is getting redeveloped.³⁶ Demolition refers to the tear down of buildings and replacement on site or elsewhere. Disposition refers to change of ownership or change of type of funding. Many of these programs rely on the use of federal or state Low Income Housing Tax Credits (LIHTC)³⁷ that bring in private investors and the use of project-based Section 8 subsidies. These programs may also result in public-private partnerships in which the property may be operated in the future by an entity other than the housing authority, although in many cases the housing authority still controls the land.

Mixed Finance housing, done properly, can provide badly needed capital funding for the long-term preservation of the housing. Importantly, Mixed Finance housing also has use restrictions that keep apartments affordable for low-income people for a certain period of time (in some cases forever) and tenant protections regarding rent, grievances, evictions, and tenant participation.

³⁵ There are various potential ownership structures of a mixed finance project such as ownership by a private entity or entities, a housing authority may co-own with a private entity, or a housing authority affiliate may own or co-own the unit.

³⁶ See PIH Notice 2012-32, REV-3 (July 2017), as updated by PIH Notice 2018-11 (July 2018, Supplement 3A and December, 2018, Supplement 3B) (RAD Notice), for detailed information about the RAD program. See also PIH Notice 2021-07 (January 2021) (allowing for different types of RAD and Section 8 PBV “blends” depending on the level of rehabilitation and costs).

³⁷ See 26 U.S.C. § 42, M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I, M.G.L. c. 53, § 31H, 760 C.M.R. § 54.00.

Residents and resident organizations should get involved in any redevelopment as early as possible to make sure that it will work for them. Residents should negotiate with developers and the housing authority and ensure that they receive the technical assistance they need to review and understand proposals and complicated legal documents and financing. Residents should ask tough questions about options and relocation. They should get guarantees in writing BEFORE the redevelopment and get guarantees about their rights and how the development will be operated AFTER the redevelopment. For more information on rent and Mixed Finance Housing see the Rent in Public Housing Booklet available at [MassLegalHelp.org](https://www.masslegalhelp.org).³⁸

15. What is Rental Assistance Demonstration (RAD)?

The Rental Assistance Demonstration (RAD) was authorized by Congress in 2012 to preserve federal affordable and public housing. Nationwide and in Massachusetts public housing needs billions of dollars in repairs.³⁹ RAD provides funding to stabilize, rehabilitate, and replace properties. It has expanded significantly nationwide and has reached hundreds of thousands of public housing units.

Under RAD, housing authorities can shift federal public housing operating and capital funds for a development into long-term Section 8 contracts through either the Project-Based Voucher (PBV) program or a Project-Based Rental Assistance (PBRA) contract.⁴⁰

All RAD proposals must go through several stages of resident review and comment and HUD assessment. Housing authorities are required by HUD to guarantee certain public housing rights, such grievance rights. For more information on RAD rent rules and tenant protections see the [Rent Booklet](#).⁴¹

³⁸ Annette Duke and Amy Copperman, Rent in Public Housing, A Know Your Rights Guide for Public Housing Tenants in Massachusetts, April 12, 2019, *available at* <https://www.masslegalhelp.org/housing/lt3-rent.pdf> (hereinafter Rent Booklet).

³⁹ In 2021 in Massachusetts, there were \$3 billion of capital repairs needed for state public housing, but only \$55 million in bond funds were distributed through formula funding to the 242 housing authorities annually. See MassNAHRO, “The Present State of Massachusetts’ Public Housing Portfolio,” *available at* https://cdn.ymaws.com/massnahro.org/resource/resmgr/arpa_whitepaper.pdf

⁴⁰ The Project-Based Voucher (PBV) is where a housing authority uses its Section 8 mobile vouchers to fund units that stay with a particular development. The Project-Based Voucher (PBV) program is described at 42 U.S.C. § 1437f(o)(13) and at 24 C.F.R. Part 983. Many but not all of the provisions that apply to the regular Section 8 voucher program also apply to the PBV program—for a description of this, see 24 C.F.R. § 983.2.

⁴¹ Rent Booklet, *available at* <https://www.masslegalhelp.org/housing/lt3-rent.pdf> (hereinafter Rent Booklet).

16. Does Mixed Finance housing have different grievance procedures than Public Housing?

Yes. If involving Section 8 or Mass Rental Voucher Program (MRVP), then you would use the informal hearing process (for Section 8) or the grievance procedure (for MRVP) with that housing authority.⁴² An example of when the informal hearing process would be used is a dispute about whether the tenant rent share was calculated correctly. However, residents can negotiate for the continued use of the “public housing” grievance process (as was done in Cambridge and elsewhere).

If, on the other hand, it involves Project-Based Rental Assistance (PBRA), then you will have to use the PBRA dispute process. Often there have been real problems in the past with multifamily owners’ misuse of the PBRA process. Since, under the Rental Assistance Demonstration (RAD), public housing grievance rights are to be retained, there is a good argument to ask that before the site is redeveloped, that there be a good Mixed Finance Grievance Procedure set up that will work for residents, and which preserves some role for housing authority oversight and involvement and judicial review.

Where the site will continue to have some public housing units, it may be easy to establish a blended procedure that works the same for all units (or at least for all units that have some kind of deep subsidy and income-based rents).

⁴² For the Section 8 informal hearing process, see 24 C.F.R. § 982.555; for grievance rights, see 42 U.S.C. § 1437d(k), 24 C.F.R. Part 966, Subpart B (federal) and 760 C.M.R. § 6.08 (state).

17. Are there some replacement or affordable units in Mixed Finance housing that may not get the benefit of public housing or Section 8/MRVP grievance rules?

Yes. While state or federal Low-Income Housing Tax Credit (LIHTC) funding may be coupled with public housing subsidies, Section 8 Project-Based Voucher (PBV) or Project-Based Rental Assistance (PBRA) or the Mass. Rental Voucher Program (MRVP) assistance, it may also be used for “affordable units” at a redeveloped site. If the “affordable unit” does not have any other subsidy, it may often not be affordable to those of extremely low income (30% of area median income or below) and other tenant protections may be lost.

Tenants in mixed finance developments may try to get similar policies from the housing authority and owner that would benefit LIHTC tenants and tenants in other replacement or affordable units.⁴³ This could include having a grievance/dispute resolution policy available to all affordable unit residents.

Other tenant protections could include:

- Having a local tenant organization or resident council open to all tenants including all “affordable units;”
- Getting tenant participation funding based on the full count of “affordable units,” or the pre-existing public housing inventory, rather than just the post-conversion public housing units; or
- Setting up transfer policies so that LIHTC tenants who need subsidy could apply for a transfer within the property.

⁴³ The Mixed Finance Grievance Protocols used for Boston Housing Authority-affiliated and ground leased properties is an example of where grievance rights were extended to all replacement units (whether RAD, PBV, or LIHTC).

How to File a Grievance

18. What are the steps of a grievance process?

While, in general, the steps of a grievance process for state and federal public housing are similar, there are some differences that are important to know. The way the grievance process works also depends on whether the housing authority is taking action against you, or whether you are filing a grievance against the housing authority. **To find out exactly what the steps are for your grievance procedure, review your housing authority's grievance procedure and your lease.**

On the next 2 pages are two charts that outline the differences between state and federal public housing and the major steps in the grievance process:

Chart 1: When the housing authority takes action against you.

Chart 2: When the tenant has a problem with the housing authority.

In some cases, a housing authority may have a different procedure than is in these charts. For example, some housing authorities automatically schedule private conferences in all eviction cases and treat them as informal settlement conferences. Tenants are not penalized for not appearing at these private conferences. Some housing authorities offer private conferences even for non-grievable evictions to give parties a chance to discuss if issues could be resolved outside of court. Where this is the case, the tenant would not need to make a formal request for a settlement conference.

Important — If you have filed a request for a grievance hearing or you are appealing a grievance decision, a housing authority may not take any other action against you until a final decision has been reached. This means that the housing authority cannot bring you to court to evict you or take other action on the subject of the grievance (such as a transfer) until the grievance process is over.⁴⁴

⁴⁴ 760 C.M.R. § 6.06(8)(b), and 24 C.F.R. § 966.4(e)(8)(ii)(B), (l)(3)(iv); see also *Cambridge Housing Authority v. Wedge*, 2000 Mass. App. Div. 235 (2000) (eviction dismissed where grievance procedure not concluded at time housing authority filed action). There is an argument, for federal public housing, that a housing authority cannot even serve a notice to quit while a grievance hearing is pending but that is not universally accepted or implemented by housing authorities. 24 C.F.R. 966.4 (l) (3)(iv),

Chart 1: Steps in the Grievance Process

Housing Authority Plans to Take Action Against Tenant

State	Federal
Housing authority sends tenant notice about action it plans to take and right to grievance hearing	
Tenant must file a written grievance or loses right to a hearing.	Tenant must file a written grievance or loses right to a hearing.
Informal conference held (usually with property manager)	
Tenant is encouraged, but not required, to attend informal conference.	Tenant required to attend informal conference but may not be available for some evictions. ⁴⁵
If not resolved, housing authority notifies tenant that not resolved and either provides notice on how to request a grievance hearing or provides the grievance hearing date. ⁴⁶	Housing authority gives tenant written summary of conference. If not resolved, tenant must file written grievance request (if hasn't already) for hearing. Housing authority notifies tenant of hearing date. ⁴⁷
Tenant entitled to review housing authority documents	
Grievance hearing held (before panel or hearing officer)	
Decision issued	
Tenant or housing authority may appeal decision to Housing Authority Board.	Tenant or housing authority may be able to request that a decision be set aside. Process not clear.
If Housing Authority Board significantly changes decision, tenant may appeal to state housing agency (DHCD). Case may be able to be brought to court.	Tenant cannot appeal decision to state or federal housing agency. Case may be able to be brought to court.

⁴⁵ Depending on the particular grievance procedure, the tenant may lose the right to grievance hearing if they do not go to the informal conference.

⁴⁶ Notice may be in a notice of termination

⁴⁷ Some housing authorities offer a pre-grievance meeting with a housing authority supervisor to again try to resolve the issue.

Chart 2: Steps in the Grievance Process

Tenant Has Problem with Housing Authority

State	Federal
Tenant has a problem with housing authority	
Tenant must file a written grievance or loses right to a hearing.	Tenant can request a grievance hearing verbally or in writing. (Best to do in writing).
Informal conference held	
Tenant is encouraged, but not required, to attend informal conference.	Tenant required to attend informal conference.
If not resolved, housing authority notifies tenant about grievance hearing date.	If not resolved, tenant must file a written grievance request to have a hearing. Housing authority then notifies tenant about hearing date.
Tenant entitled to review housing authority documents	
Grievance hearing held (before panel or hearing officer)	
Decision issued	
Tenant or housing authority may appeal decision to Housing Authority Board or Administrator if there is no Board. ⁴⁸	Tenant or housing authority may be able to request that a decision be set aside. Process is not clear. ⁴⁹
If Housing Authority Board significantly changes decision, tenant may appeal to state housing agency (DHCD). Case may be able to be brought to court.	Tenant cannot appeal decision to state or federal housing agency. Case may be able to be brought to court.

⁴⁸ Exception where decision authorizes housing authority to go to court for eviction.

⁴⁹ See generally *Wojcik v. Lynn Housing Authority*, 66 Mass. App. Ct. 103 (2006).

19. How do I file a grievance?

If you have received a notice that the housing authority is taking some action against you, your request for a grievance **must be in writing**. This is true for both state and federal public housing. In your grievance it is important to state why you disagree with the action proposed by the housing authority and how you want to solve the problem. Read the grievance procedure to see how much detail is needed. It might be enough to simply state that you disagree with the housing authority's proposed eviction of you, but more might be needed.

If, on the other hand, you want to file a grievance against the housing authority, you must put this in writing if you live in state public housing. In federal public housing, although you may verbally ask for a grievance hearing, it is best to put this grievance in writing.⁵⁰ The reason it is better to put your grievance in writing is that a housing authority may deny that you ever filed a grievance. In your grievance, it is important that you state what the problem is and how you want the housing authority to solve it.

Most housing authorities will have a standard grievance form that you can use to request a grievance hearing. If yours doesn't have one, you can write your own letter. You can also use the Sample Letter to Request a Grievance Hearing or the state's sample Grievance Complaint form on pages 38 and 39.

It is a good idea to hand deliver your grievance to either the local management office or the housing authority's main office. Ask the staff person who accepts it to make a copy for you and sign and date-stamp your copy. Signing and date-stamping the copy of your grievance is important because then you will have a record that the grievance was received and the date it was received.

If you cannot hand deliver your grievance, you can send it by mail. Ask the post office to send it "return receipt requested." This will cost more money but it will give you proof that the housing authority received your grievance. You should keep the receipt for your files. This is evidence and could be important later in the process.

Important—Keep copies of everything you send or receive from the housing authority. A "paper trail" between you and the housing authority can by itself lead to a negotiated solution. Plus, you never know when you are going to need copies of documents you have sent or received.

⁵⁰ 24 C.F.R. § 966.54.

20. Are there deadlines for filing a grievance?

In general, yes. To figure out deadlines for filing a grievance check:

- Your housing authority's grievance procedure,
- Any notices you receive from the housing authority, and
- Your lease.

Once you figure out what the deadline is, you should hand deliver or mail the request for a grievance to the housing authority's main office by that date (unless the housing authority says you can deliver it to your local management office).

State public housing

In state public housing, if there is no provision in your lease or the housing authority's grievance procedure about deadlines for filing a grievance, state regulations establish the following time frames within which you should request a grievance hearing:

- **Rent:** If you're disputing how your rent was set, file a grievance within **14 days** of receiving the housing authority's rent notice.⁵¹
- **Termination of lease:** If you're disputing termination of your lease, file a grievance within **7 days** after receiving the notice of lease termination.⁵²
- **Other matters:** If the grievance is about some other matter, file a grievance no more than **14 days** after you first became aware (or should have become aware) of the matter.

The housing authority can permit additional time for the filing of a grievance if there is a good reason that it was filed late and the late filing will not cause prejudice or harm to the housing authority.⁵³ You should explain in the grievance why it was late – for example, you did not get notice from the housing authority right away or you were involved in a family emergency.

Federal public housing

There are no specific time frames set under federal rules, other than that a grievance must be filed within a reasonable time after you receive a summary of the informal settlement conference.⁵⁴ To figure out what deadlines your housing authority may have for filing a grievance, look at your housing authority's grievance procedure, your lease, or any notice you receive from the housing

⁵¹ 760 C.M.R. § 6.04(7).

⁵² 760 C.M.R. §§ 6.06(8)(a), 6.08(4)(a).

⁵³ 760 C.M.R. § 6.08(4)(a).

⁵⁴ HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, Appendix V, § 18.4 (June 2003).

authority. If your grievance is late, you can ask for additional time if there was a good reason why it was filed late.

If the grievance is called an *expedited grievance*, which is a faster process, a grievance must be filed by the time specified under your housing authority’s expedited grievance procedure.

21. How soon does the housing authority have to respond to my grievance?

State

After a grievance has been filed, a housing authority must “promptly” schedule an informal settlement conference. The regulations do not define what “promptly” means.⁵⁵ Check your grievance procedure to see whether it states how quickly the housing authority must schedule an informal settlement conference.

If there is no resolution of the matter at an informal settlement conference, a grievance hearing must be scheduled as soon as “reasonably convenient” following the housing authority’s receipt of your grievance. Again, the regulations do not define what “reasonably convenient” means.⁵⁶

If, however, the grievance involves determining whether there is good cause to end or terminate your lease, the housing authority must schedule a grievance hearing within 14 days (or as soon as reasonably practical) after the housing authority receives your request for a grievance.⁵⁷

If the housing authority is not responding to your request for a grievance in a prompt manner, you may need to take further steps such as sending your original grievance a second time, with a request that the matter be addressed promptly.

Federal

Under the federal regulations, there is no specific time frame within which a housing authority must schedule an informal settlement conference. Once the conference happens, a summary of it must be prepared within a “reasonable time.”⁵⁸

⁵⁵ 760 C.M.R. § 6.08(4)(b).

⁵⁶ 760 C.M.R. § 6.08(4)(c).

⁵⁷ 760 C.M.R. § 6.08(4)(c).

⁵⁸ 24 C.F.R. § 966.54.

If there is no resolution of the matter at an informal settlement conference, a grievance hearing must be “promptly” scheduled.⁵⁹ The regulations do not define what “promptly” means.

A housing authority may also establish a quick or *expedited* grievance procedure for any grievance concerning a termination of your tenancy.⁶⁰ Again, there is no specific timeframe in the federal regulations. Check your lease to see if it states any timeframes for the housing authority to respond to your grievance.

22. What is an informal settlement conference?

In both state and federal public housing, before you have a grievance hearing, the housing authority should give you an opportunity to discuss the grievance informally to settle it without the need for a hearing. This is referred to as an *informal settlement conference* or sometimes as a private conference. This is an important part of the procedure, and many grievances can be resolved this way. The housing authority may not proceed with action against the tenant if it skips this step.⁶¹

The housing authority should give you reasonable advance notice of a time and place for the informal conference (unless the housing authority proposes to hold the informal settlement conference when you deliver the grievance and you agree to that). **If you would like the support of someone with you during your informal conference, you have a right to have someone with you.** Having another person with you is important, even if the person is there to support you or take notes. The person does not need to be a lawyer. Don’t let a housing authority discourage you from bringing someone if you want.

Important—It is important that you think about how the informal settlement conference can hurt or help you. Be strategic! Be careful about what you say at the informal settlement conference. The housing authority may try to use the informal settlement conference to get information that it can use against you. You do not have to volunteer any information that you do not want to disclose but you may want to ask questions and use the informal settlement conference to find out more about the housing authority’s case. On the other hand, the informal settlement conference may be your best opportunity to convince the housing authority to not act against you. For example, you can argue that another person

⁵⁹ 24 C.F.R. § 966.56. If a housing authority has a pattern of not acting on grievances in a timely manner, this could be challenged in court. See *Samuels v. District of Columbia Housing Authority*, 669 F. Supp. 1133 (D.D.C. 1987) where the court found that the housing authority had failed to develop a grievance procedure under which tenant complaints would be heard and processed in a timely fashion. Obviously, if a housing authority is seeking to evict the tenant, the delay is often helpful for the tenant.

⁶⁰ 24 C.F.R. §§ 966.52(a), 966.53.

⁶¹ See *Rivas v. Chelsea Housing Authority*, 464 Mass. 369 (2013).

was the source of the problem, or that you have a good solution to the problem going forward (such as a repayment plan, excluding a wrongdoer, or involving family/friends/service providers to stabilize your tenancy).

If you work out a solution to your satisfaction at an informal conference, you and housing authority staff should put this agreement in writing and sign it. Many grievances are resolved this way, with no need for a grievance hearing. However, if you are not satisfied with the solution the housing authority is proposing, you may continue to bring your grievance before an impartial hearing officer or hearing panel.

State public housing

In state public housing, the informal conference happens after you file your grievance and prior to your hearing. You are encouraged, but not required, to attend the informal settlement conference.⁶² You may choose to also be represented by a lawyer or non-lawyer.⁶³ If you can't work things out at the informal settlement conference or you do not go to your informal settlement conference, the grievance hearing will automatically be held, without any requirement that you take further steps.⁶⁴

Federal public housing

In federal public housing, unless your lease or grievance procedure states otherwise, you must go through an informal settlement conference—unless the housing authority's action concerns an eviction involving drug-related activity on or near the premises or criminal activity that threatens the health, safety or peaceful enjoyment of the housing authority staff or other tenants.⁶⁵ For such cases, an informal settlement conference is usually not provided, and the housing authority can proceed either directly to the grievance hearing (which is called an *expedited hearing*) or to an eviction case in court.⁶⁶ But check your lease and grievance procedures, because some housing authorities offer what is called a

⁶²

760 C.M.R. § 6.08(4)(b).

⁶³ See Public Housing Notice 2000-03, Part A, issued by DHCD to all local housing authorities on July 3, 2000.

⁶⁴ 760 C.M.R. § 6.08(4)(b).

⁶⁵ 24 C.F.R. §§ 966.52, 966.53. If the lease or grievance procedure requires attendance at the informal settlement conference and a tenant can show good cause why she failed to proceed in accordance with the informal settlement conference procedure, the requirements for exhausting the informal settlement conference can be waived by the hearing officer or panel.

⁶⁶ 24 C.F.R. §§ 966.52, 966.53.

private conference in all eviction cases prior to serving a notice to quit. This private conference serves the same purpose as an informal conference.

If you go through an informal conference, the housing authority must prepare a written summary of the conference. It must do so within a reasonable time after the conference and give you a copy. This summary must state the proposed solution, the reasons for it, and the steps you need to take to have a grievance hearing if you are not satisfied with the outcome of the informal conference. If you want a grievance hearing after an informal conference, you **will need to file a written request for a grievance hearing**. Make sure to keep a copy of your written request for a grievance hearing. Get proof that the housing authority received your request by having your copy date-stamped if you drop it off or getting a return receipt from the post office if you mail it. If you do not file a formal request for a grievance, you may lose your right to a grievance hearing.

How to Prepare for a Grievance Hearing

23. How do I prepare for a grievance hearing?

Prepare your documents! The more prepared you are for the grievance hearing, the more respect the hearing officer or panel will have for you and your case. Use the worksheet at the end of these materials to help you prepare for your hearing. In addition, here are some tips:

Very often hearing officers or members of the hearing panels are not knowledgeable about specific laws, regulations, and what is in the lease. For this reason, it is very important to identify the violation that is the issue, whether it is a violation of your lease, a regulation, or law. Have a copy of the rule, policy, or your lease so you can know and read the exact words and so the hearing officer or panel may take into consideration relevant laws, regulations, or housing authority policies and rules when making a decision.

Be factual, not emotional, during your presentation. To help you do this, list on paper the problem or problems and how you want the housing authority to solve them. Use the Worksheet on page 40.

Play “devil’s advocate.” List all the arguments you can think of that the housing authority may make to prove its case and prepare your response to each one. Do not ignore the housing authority’s case against you. Use the Worksheet on page 40.

Figure out what documents you need to prove that the problems in your case do or do not exist. This can include letters, notes from phone calls, pictures, or any other documents that are important. **Get these documents before the hearing!** This process of evidence gathering is called *discovery*.

Make an extra copy of each document that you want to give the hearing officer or hearing panel. Highlight the important sections. This makes it easier for the officer or panel to read and helps keep the issues clearer in everyone’s mind. **Remember to keep copies of everything for yourself.**

Organize all these documents in a folder or three-ring binder so that when you go to the hearing you will be well prepared and not fumbling for papers.

As you prepare, carry a small notebook with you or keep one near your telephone to document phone calls or meetings that are important to support your position. Note the date, time, people involved, and the summary of the discussion. This kind of documentation is helpful.

Find out if anyone has personal knowledge about the problem, and, if so, whether they are willing to tell the hearing officer or panel what they know.

If people agree to testify, prepare them for the hearing. Tell them what you will be asking them and think about what the housing authority may ask them and go over this with them. If any of your witnesses live in public housing, they may be scared to testify. Remind them that they cannot be retaliated against or evicted for testifying. Be aware that things they say in their testimony or cross-examination could open up other issues that could be a problem for them.

24. Can I review housing authority documents before the hearing?

Yes. The housing authority must provide you with an opportunity, prior to and during the hearing, to look at all documents, records, and regulations that the housing authority has that may be relevant to your grievance. You also have the right to make one copy of these documents if you make this request in a timely manner. Copying is done at your expense, although the housing authority can agree not to charge you.

Make the request to review documents enough in advance of the hearing so that you have time to prepare for the hearing. It is also a good idea to make this request in writing. Date this letter and keep a copy for your files. This will protect you against the housing authority saying that you never asked to see documents. If a housing authority does not provide you will access to documents until the last minute, this may be “good cause” to request that the hearing be postponed.

This process of evidence gathering from the housing authority is called *discovery*.

Federal public housing

Federal public housing regulations state that if the housing authority refuses to give you access to documents prior to the hearing, those documents may not be used against you. For example, if housing authority staff refuse to give you copies of complaints that they have received about you, the housing authority cannot use these documents at the grievance hearing or show them to the hearing panel or officer. If the housing authority tries to use these documents, you should object and ask that the documents be excluded as evidence.⁶⁷

State public housing

While state public housing regulations are not as clear as the federal regulations described in the paragraph above, you can argue that similar protections should apply as a matter of due process, and that if a housing authority refuses to show you documents, it cannot use them at the grievance hearing.⁶⁸

⁶⁷ 24 C.F.R. § 966.56(b)(1). In addition, in federal public housing eviction cases, if the housing authority does not allow the tenant the opportunity to examine relevant documents before a grievance or court hearing, the eviction must be dismissed. See 42 U.S.C. § 1437d(l)(7); 24 C.F.R. § 966.4(m).

⁶⁸ 760 C.M.R. § 6.08(4)(d).

What Happens at the Grievance Hearing

25. When is a grievance hearing held?

Once the hearing panel or officer receives your grievance, the hearing panel or officer must schedule a date for your hearing and then give you and the housing authority staff written notice of the time and place of the hearing. Either side may seek to postpone a hearing, by agreement of both sides or when reasonably necessary, such as illness, unavoidable absence of a party or witness, or failure to allow you to review documents in enough time before the hearing.⁶⁹

State public housing

In eviction cases in state public housing, a grievance hearing must be scheduled within 30 days from the date of your request for a grievance. In addition, the hearing must be scheduled at least 15 days prior to the termination date on your notice. You must be given notice of not less than 7 days of the time and place for the hearing. A hearing of a grievance on other issues should be scheduled as soon as reasonably convenient following receipt of the grievance.⁷⁰

Federal public housing

Federal public housing regulations require that the hearing be scheduled promptly and at a location reasonably convenient to both the housing authority and the tenant. Notice of the hearing, in addition to stating the time and place of the grievance hearing, must also state what procedures will govern the hearing.⁷¹ Under federal rules, a housing authority may establish what is called an *expedited* or quick grievance procedure concerning evictions that involve criminal or drug-related activity.⁷²

⁶⁹ 760 C.M.R. § 6.08(4)(c).

⁷⁰ 760 C.M.R. §§ 6.06(8)(b), 6.08(4)(c).

⁷¹ 24 C.F.R. § 966.56(a).

⁷² 24 C.F.R. § 966.53).

26. Who hears grievances?

An impartial hearing officer or hearing panel will hear your grievance and provide a decision.⁷³ *Impartial* means that the hearing officer cannot be the person (or the subordinate of that person) who held your informal settlement conference or who was involved in the issue being grieved in any way.⁷⁴

A hearing officer or member of a hearing panel cannot have any direct personal or financial interest in the outcome of the dispute. An officer or panel member cannot be related by blood or marriage to any party or any person who is the source of evidence (for example, a witness for the housing authority). If you feel that a hearing officer or panel member will not be able to act impartially in deciding your case, you can ask that the person not hear the case and that there be a substitute hearing officer or panel member.

The Massachusetts Union of Public Housing Tenants provides training for hearing officers and panel members about how to handle grievances. If the housing authority is setting up a hearing panel or recruiting new panel members at your housing authority, you could suggest to the housing authority that they contact the Massachusetts Union of Public Housing Tenants for training assistance. They can be reached at 617-825-9750.

27. What happens at a grievance hearing?

The hearing must be conducted in a fair manner. At the hearing, the hearing officer or panel will ask both you and the housing authority to tell your side of the story. It is not uncommon for a hearing officer or panel to ask a tenant to go first. At the hearing, both you and the housing authority have the right to:

- Tell your side of the story,
- Question anyone who testifies, and
- Question the validity or accuracy of any evidence.

Right to a person of your choice at the hearing

You and the housing authority have the right to have a lawyer, advocate, or any other person of your choosing with you during the grievance hearing and throughout all stages of the grievance process. In state public housing, you and the housing authority can specify a “reasonable” number of people who may be present at the hearing. The regulation does not say what a “reasonable” number of people is. The hearing officer or hearing panel will decide if you or the

⁷³ See Question 32: How are hearing officers and panels selected?

⁷⁴ See *Costa v. Fall River Housing Authority*, 453 Mass. 614, 621-623 (2009) (finding person that heard the settlement conference who was also on the hearing panel was not impartial).

housing authority has any challenge to the presence of someone.⁷⁵ Federal public housing has no similar regulation on those who can be present at a hearing.

Public or private hearing

As a state or federal public housing tenant, you have a right to request that a hearing be open to the public.⁷⁶ Housing authorities cannot request that a hearing be public. If you have supporters and want them to come to the hearing, or this is a high-visibility case and you want the news media present, having a public hearing may be helpful to you. On the other hand, there can be private information that would come out at a hearing, and you might not want it to be public.

If you request that a hearing be open to the public, this will occur unless the hearing officer or panel orders otherwise.⁷⁷ If you don't make such a request, the hearing is held in private.

Important—A hearing officer or panel may exclude any person who does not conduct himself or herself in an orderly fashion. For state public housing hearings only, if you or your supporters misbehave at the hearing, the hearing officer or panel may take other measures to deal with the misbehavior—**including dismissing the grievance**.⁷⁸ While federal public housing rules are not as clear as state public housing rules, it is important that you and any supporters conduct yourselves in a respectful fashion to make the best presentation at the hearing.

Evidence

At the hearing, you have a right to submit written evidence such as a lease, or other documents to support your position.⁷⁹ This is very important, because a hearing officer or panel cannot consider evidence unless either you or the housing authority present it at the time of the hearing. The only time that evidence can be submitted after a hearing is if a hearing officer or panel requests it.⁸⁰ Also, it is

⁷⁵ 760 C.M.R. § 6.08(4)(e).

⁷⁶ 24 C.F.R. § 966.56 (b)(3); 760 C.M.R. § 6.08(4)(e).

⁷⁷ The regulations don't discuss what your rights are if the request for a public hearing is turned down.

⁷⁸ 760 C.M.R. § 6.08(4)(e).

⁷⁹ The hearing panel is not required to follow the rules of evidence that would apply in court. 760 C.M.R. § 6.08(4)(f); 24 C.F.R. § 966.56(b)(1).

⁸⁰ See *Anderson v. Lowell Housing Authority*, No. 11-10580, 2012 WL 3965112 (D. Mass. Aug 24, 2012) (finding due process violation where hearing officer conducted post-hearing investigation, and decision rested in part on the results of that investigation, where tenant not afforded notice or an opportunity to be heard).

important to give hearing officers or panels copies of relevant laws, policies, and rules so that they can take these into consideration when deciding.

Note: If the housing authority is asked to submit additional information, you must be given an opportunity to respond to it (and vice versa).

Witnesses

In addition to presenting evidence at the hearing, you have the right to bring people who have personal or direct knowledge about the problem to testify at the hearing. If the housing authority brings witnesses to testify, you also have a right to ask those people questions about what they are saying. A hearing officer or panel may also question any witnesses.

If the housing authority does not have witnesses who personally know what went on, they may not be able to win the grievance.⁸¹ For example, if the housing authority is relying only on the testimony of the manager who received reports of your suspected misconduct from other people, but the people who reported the conduct do not testify, you can ask the manager whether she has any personal knowledge of the misconduct. If the manager says no, you can ask the hearing officer or panel to rule against the housing authority because the manager does not have any direct personal knowledge of your misconduct and because you have not been given the opportunity to question the people who reported the conduct.

Record of the hearing

The housing authority must keep record of what happens at a grievance hearing.

State public housing

State regulations require that grievance hearings be tape-recorded.⁸² Only the housing authority, the tenant who files the complaint (or people with written authorization from the tenant), and the hearing officer or panel can listen to this tape. You can ask the hearing officer or panel to ensure that the hearing is being tape recorded. If the case is later appealed to the court, it may be very important to get a transcript of the hearing.⁸³

⁸¹ Note exception for “reliable hearsay” such as police reports. *See Figgs v. Boston Housing Authority*, 469 Mass. 354 (2014), *Seales v. Boston Housing Authority*, 88 Mass. App. Ct. 643 (2015). While these were Section 8 termination cases, the same rules would likely apply in public housing grievance hearings.

⁸² 760 C.M.R. § 6.08(4)(f).

⁸³ See Housing Court Standing Order 1-04: Time standards for cases filed in the Housing Court Department, Civil Actions - Administrative Agency Appeals; Superior Court Standing Order 1-95: Processing and hearing of complaints for judicial review of administrative agency proceedings.

Federal public housing

There is no specific requirement that grievance hearings be tape-recorded, although this is the best practice. Federal regulations do provide that the tenant or the housing authority may arrange, in advance and at the party's own expense, for a written transcript of the hearing. This transcript must also be available for purchase by the other party.⁸⁴ You can also bring your own tape recorder. This is a good idea if you find out that the housing authority is not going to record the hearing. If you record the hearing yourself, you should let the housing authority and hearing officer or panel know.

People with special needs or who need an interpreter

Federal rules require that the housing authority provide what are called *reasonable accommodations* in the hearing process for people with special needs, such as providing qualified sign language interpreters, readers, attendants, or accessible locations (including the holding of a telephonic hearing for a home-bound tenant). If a tenant is visually impaired, any notice to the tenant must be in an accessible format.⁸⁵ State disability laws provide similar protections. If you need such accommodations, you should let the housing authority know this well in advance of the hearing so that they can take appropriate steps.

If you or your witness is not fluent in English, the housing authority should provide a free interpreter.⁸⁶

⁸⁴ 24 C.F.R. § 966.56(e).

⁸⁵ 24 C.F.R. § 966.56(f).

⁸⁶ Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2,732, 2,743 (Jan. 22, 2007) (interpreters should be provided for no cost to the family); the Commonwealth of Mass. Department of Housing and Community Development's Language Access Plan, and individual housing authority's language access or LEP plans.

28. What happens if I do not show up at the grievance hearing?

State public housing

There are no provisions under state law about what happens if a tenant or housing authority does not show up for a hearing. However, many housing authorities follow the federal regulations outlined below.

Federal public housing

Under federal regulations, if you do not show up at the grievance hearing (or what is called *default*) and you do not request a postponement (or what is called a *continuance*), the hearing officer or panel may:

- Postpone the hearing for at most 5 working days, or
- Decide that you have given up (*waved*) your right to a hearing.
- The same is true if the housing authority does not show up at the grievance hearing.

If the hearing officer or panel must decide how to proceed due to the failure of either party to show up, they must send written notice to both parties of the action taken. If a hearing officer or panel decides to deny your right to a hearing, you can still challenge a housing authority's actions in court.⁸⁷

⁸⁷ 24 C.F.R. § 966.56(c). The housing authority's grievance procedure should also be reviewed for a provision to request vacating of a default. Further, if the default was related to a disability the housing authority should consider a request for a new hearing as a reasonable accommodation.

Getting a Grievance Decision

29. When do I get a decision?

After a hearing, a hearing officer or panel decides. This decision must be based solely on the evidence that you and the housing authority presented at the hearing and on any information provided after the hearing that was requested by the hearing officer or panel. The hearing officer or panel may also take note of any relevant laws, regulations, or housing authority rules and policies in making the decision, which is why it is important to refer to any of these if they support your position at the hearing.

The decision must be in writing and dated. It must state at least three things:

- What facts a hearing officer or panel felt were true,
- What the decision is, and
- The reasons for the decision.

For state public housing, the hearing officer must provide a copy of the decision to the housing authority within 14 days after the hearing or as soon as “reasonably possible” after that. The housing authority must then “forthwith” mail a copy of the decision to you.⁸⁸ The regulations do not define what these terms mean.

For federal public housing, the hearing officer must provide a copy of the decision to the housing authority within a “reasonable time” after the hearing. The hearing officer must then send a copy of the decision to both you and the housing authority.⁸⁹

Note: For state public housing, the housing authority must keep copies of all grievance decisions on file (with names and identifying references deleted) and make them available to the public upon request. For federal public housing, the housing authority must keep a copy of the decision in your folder. The housing authority must also keep a log of all hearing officer decisions and make that log available if the hearing officer, you, or your representative asks for it.⁹⁰

⁸⁸ 760 C.M.R. § 6.08(4)(g)

⁸⁹ 24 C.F.R. §§ 966.56(b)(5), 966.57(a).

⁹⁰ 760 C.M.R. § 6.08(4)(g); 24 C.F.R. §966.57(a).

30. Can I challenge or appeal a grievance decision?

State public housing

State regulations provide that either you or the housing authority have the right to ask the housing authority's Board of Commissioners to review a grievance decision in most cases.⁹¹ This is called an *appeal*. The only time that you cannot appeal a grievance hearing is if a hearing officer or panel approved the termination of your lease. **You do not have to move, however, until a court orders you to. Go to MassLegalHelp.org for more information on evictions.** (Note: The Boston Housing Authority does not have a Board of Commissioners, so grievance appeals go to the administrator or the person she chooses.⁹²)

To file an appeal, a tenant or housing authority must submit a written letter to the housing authority's Board of Commissioners (or for the Boston Housing Authority, the appropriate administrator) within **14 days** of mailing or other delivery of the hearing officer's or panel's decision. An appeal can be sought if you or the housing authority believe that the decision was not supported by the facts or did not correctly apply applicable laws, regulations, rules, or policies, or that the matter was not something subject to the grievance procedure. See the Sample Appeal Letter at the end of these materials.

The Board holds a meeting at which you and the Housing Authority are permitted to make oral presentations and submit documentation. The Board may also permit the hearing officer or panel to make a presentation. The Board shall then promptly decide whether to uphold, set aside, or modify the grievance.

The Board of Commissioners must notify you in writing of its decision and of the specific reasons for the decision. If the Board does not issue a decision within 45 days of the date that a review was requested, the Board's decision, when it is issued, must specify a reason showing that there was no undue delay.

If a Board of Commissioners makes a significant change in the hearing decision, you have the right to ask the state Department of Housing and Community Development (DHCD) to review the Board's decision. (DHCD is the state agency that oversees state public housing.) An example of a significant change would be if you won before the hearing officer or panel, and the Board of Commissioner then decides in favor of the housing authority. To file an appeal

⁹¹ 760 C.M.R. § 6.08(4)(h).

⁹² See St. 1989, c.88. For other housing authorities, prior to DHCD's regulations being revised in 1998, tenants were allowed to seek Board review in all cases, but the housing authority could do so only where it could show that the decision was contrary to law or arbitrary. In addition, prior to 1998, lease termination cases could be reviewed by the Board. If your housing authority's grievance procedures still contain the prior standards, these govern.

with DHCD, you must send a written letter addressed to the Secretary of DHCD stating why the Board’s decision was improper. (See Sample DHCD Appeal Letter at the end of these materials.) You must send this letter within 14 days of mailing or delivery of the Board’s decision. At the same time you send this letter to DHCD, you should send a copy to the housing authority. DHCD is required to review the Board’s decision and issue a written decision upholding, setting aside, or modifying the decision of the Board.⁹³

A case could be brought in court after DHCD issues a decision, but time deadlines would apply.⁹⁴

Federal public housing

In federal public housing, there is no stated process for the housing authority or a tenant to appeal a grievance decision to the Board of Commissioners or any other agency. However, federal rules state that a housing authority is not bound by a grievance decision if the Board of Commissioners decides and promptly informs the parties that the matter was not grievable or the decision was contrary to applicable law, in which case the grievance decision becomes non-binding (not enforceable).⁹⁵ This should mean that either the tenant or the housing authority could make a written request to the Board of Commissioners to set aside the decision.

Tenants in federal public housing do not have a right to ask the state Department of Housing and Community Development or HUD to review a Board decision, but a case may be able to be brought in court.⁹⁶

Opening meeting law

Under the state’s open meeting law, when the Board of Commissioners hears an appeal of a grievance hearing decision, its meeting must be open to the public. If the Board of Commissioners refuses to hold an open meeting on the appeal, you may need to contact your local district attorney and ask him or her to enforce the open meeting law. The district attorney can take legal action to request that a new meeting be held that complies with the open meeting law.⁹⁷

⁹³ 760 C.M.R. § 6.08(4)(i).

⁹⁴ See G. L. c. 30A, § 14 (30 days of DHCD’s final decision). If it was a case that could not be appealed to DHCD, then certiorari deadlines (60-day statute of limitation) would apply.

⁹⁵ 24 C.F.R. § 966.57(b).

⁹⁶ Judicial review would likely be governed by certiorari 60-day statute of limitation unless the tenant can establish a federal law violation, which may bring the case within the three-year statute of limitation under 42 U.S.C. 1983.

⁹⁷ The state open meeting law is M.G.L. c. 30A , §§ 18-25 .

Setting Up or Changing a Grievance Procedure

31. How are grievance procedures established or changed?

There are state and federal rules about how to establish grievance procedures. Both require that tenants have input into the process.

State public housing

Housing authorities are required to negotiate the creation of a grievance procedure with local tenant organizations.⁹⁸ If there is no local tenant organization, a housing authority must still provide for tenant input. A procedure must be prompt, reliable, and comply with basic hearing, notice, and due process requirements. **The Department of Housing and Community Development (DHCD)**, the state agency that oversees state public housing, **must approve all new or amended grievance procedures.**⁹⁹ You can contact DHCD's Division of Public Housing at 617-573-1150 to find out whether your housing authority's state grievance procedures has been approved by DHCD.¹⁰⁰

If your local tenant organization believes that changes need to be made in your grievance process, the organization may at any time submit a proposal to the housing authority.¹⁰¹ This can be done during the state annual plan process or before or after.

Federal public housing

If your grievance process is not working well, the yearly public housing plan process can provide tenants with an opportunity to negotiate and recommend

⁹⁸ DHCD has regulations regarding recognition and rights of local tenant organizations. See 760 C.M.R. § 6.09.

⁹⁹ 760 C.M.R. § 6.08(1) and (2). Note: In 1998, DHCD changed its grievance regulations for state public housing, but allowed housing authorities to continue to use their previously approved grievance procedures, so long as the housing authority initiated measures to achieve "material compliance" with the revised regulations.

¹⁰⁰ Despite this requirement, it is worth noting that DHCD may not have the approved grievance procedure on file. See also Question 3 How do I find out what the grievance procedure is in my development?.

¹⁰¹ If the PHA is relying on a waiver from DHCD to have a different grievance procedure (such as a consolidated grievance procedure that meets both state and federal requirements), this must be listed in its state agency plan under waivers.

changes.¹⁰² If a housing authority wants to make any changes to the grievance procedure, it must provide all tenants and resident organizations with at least 30 day's notice of any proposed changes and provide tenants with an opportunity to submit written comments.¹⁰³

32. How are hearing officers and panels selected?

Grievance hearings must be conducted by either a hearing officer or a hearing panel. The hearing officer or members of the hearing panel must be impartial. *Impartial* means that the person may not be someone, or their subordinate, who held your informal settlement conference or who was involved in the issues being grieved in any way.¹⁰⁴

State public housing

Usually, grievance hearings are conducted by a 3-member grievance panel. There are two situations when this is not the case:

- The housing authority is using an older grievance procedure, approved by DHCD, which provides for a larger panel, and decides to keep that system; or
- The housing authority makes a case that, despite good-faith efforts, a 3-member panel cannot be promptly chosen, and a single hearing officer should handle grievances.¹⁰⁵ To have a single hearing officer a housing authority must receive permission from DHCD and must submit its nominations for hearing officers to each local tenant organization.

For a 3-member grievance panel, one member of the panel shall be chosen by the housing authority, one member of the panel shall be chosen by the local tenant organization, and the third member must be selected by the other two panel members. The term of a panel member cannot go beyond seven years.¹⁰⁶

¹⁰² 24 C.F.R. § 903.7(f).

¹⁰³ 24 C.F.R. § 966.52(c).

¹⁰⁴ See 24 C.F.R. § 966.53(e) and 760 C.M.R. § 6.00 (definition of hearing officer and hearing panel).

¹⁰⁵ 760 C.M.R. § 6.08(3)(b)(3).

¹⁰⁶ See Public Housing Notice 2000-03, Part B, issued by DHCD to all local housing authorities on July 3, 2000.

Federal public housing

Hearing officers or hearing panel members appointed by the housing authority may not be persons who made or approved the matter being grieved or a subordinate of such persons.¹⁰⁷

The method of appointment of the hearing officer must be stated in your lease and be either:

- A method approved by the majority of the tenants in any building, group of buildings, development, or group of developments who voted in an election or meeting of tenants held for that purpose, or
- Selection of a person (who can be a housing authority employee or officer) in the manner required by the grievance procedure.

The housing authority must consider comments received from the local tenant organizations before appointment of each hearing officer or panel member. Any comments or recommendations received from tenant organizations must be considered by the housing authority before the appointment.¹⁰⁸

¹⁰⁷ 24 C.F.R. § 966.53(e).

¹⁰⁸ 24 C.F.R. § 966.3

Sample Letters, Forms, and Worksheets

Sample Letter to Request a Grievance Hearing

Date

Name of person at housing authority who handles grievance requests

Name of housing authority

Address of housing authority

Dear _____:

I reside at _____ (*your address*) and am a public housing resident of _____ (*name of housing authority*).

State the problem. _____

For example:

- I received an eviction notice telling me to leave my apartment.
- I have been unable to get repairs made.
- I received a rent increase that is higher than what I believe my rent should be.

I understand that I can file a grievance regarding this matter and would like to request a grievance hearing. Please notify me of the date and time that this hearing will be held.

Sincerely,

Your name

Your address

Your telephone number

Grievance Complaint

Name:

(Please print clearly)

Address:

(Include Apartment Number)

Complaint: Please include all the facts that relate to your complaint.
Attach additional sheets if necessary.

Please write down what action you would like the Authority to take to resolve your complaint. Please be as specific as possible.

(Signature of Complaining Tenant)

(Date)

This complaint form was part of the Department of Housing and Community Development's model grievance procedure, issued on July 3, 2000, in Public Housing Notice 2000-3.

Worksheet to Help You Prepare for Your Grievance Hearing

I live in state public housing. I live in federal public housing.

Problem

What is the problem?

What part of the lease or regulation or policy has the housing authority violated?

or

What section of the lease or regulation does the housing authority say you have violated?

If you don't have a copy of the lease or relevant regulations or policies that which relate to the violation, **get them from your housing authority!** It is very important to see the actual language.

Proof

What evidence, documents, or witnesses do you have to prove that the problem exists?

If the housing authority is accusing you of a violation, what proof do they have of the violation? Go check their records and ask to see any documents that they have that relate to the dispute.

Solutions

What are solutions to the problem that you are grieving?

Making Your Case

Fill in this part of the worksheet to help you put all the pieces together and map out a position.

Problem	Proof	Solutions
1.		
2.		
3.		
4.		

Housing Authority's Case

Use this part of the worksheet to help you respond to the housing authority's case.

1.	
2.	
3.	
4.	

Sample Appeal Letter to Housing Authority Board

Date

Name of Chair of Housing Authority Board

Name of housing authority

Address of housing authority

Dear _____:

I reside at _____ (*your address*) and am a public housing resident of _____ (*name of housing authority*).

On _____ (*date*), I received the attached grievance decision which (*summarize what the decision said*)

I wish to appeal this decision to the Board because (*write down whichever applies*)

- I believe the facts presented at the hearing do not support this decision.
- I believe that the hearing officer or panel did not correctly apply the law, regulations, or relevant policies.
- I believe that this matter was not something that should have been subjected to a grievance.

I wish the Board to review the decision and (*tell the Board what you would like them to do - set the decision aside or change it, stating how you would like them to change it*).

I would also like to be permitted to make a presentation to the Board about this matter. Please notify me of the date and time that the Board will consider this matter. Thank you.

Sincerely,

Your name

Your address

Your telephone number

Attach grievance decision

Sample Appeal Letter to DHCD

Date

Name of Secretary of DHCD

*Massachusetts Department of Housing & Community Development
100 Cambridge St., Suite 300
Boston, MA 02114*

Dear _____:

I reside at _____ (*your address*) and am a state public housing resident of _____ (*name of housing authority*).

On _____ (*date*), I received the attached grievance decision which (summarize what the decision said)

_____.

I wish to appeal this decision to the DHCD because:

- The LHA Board made a material change in a decision of the hearing officer or panel.

I wish DHCD to review the decision and (*tell DHCD what you would like them to do - set the decision aside or change it, stating how you would like them to change it*).

I would also like to be permitted to make a presentation to the DHCD about this matter. Please notify me of the date and time that the DHCD will consider this matter. Thank you.

Sincerely,

Your name

Your address

Your telephone number

Attach grievance decision

Regulations

State Grievance Regulations

760 C.M.R. 6.08: Grievance Procedures

(1) Existing Procedures to Remain in Effect until Amended or Replaced. Upon April 21, 2017, the grievance procedure then in effect at an LHA shall remain in effect and shall continue in effect unless and until the Department approves a new or amended grievance procedure. After April 21, 2017 each LHA shall compare the provisions of its grievance procedure(s) with the provisions of 760 CMR 6.08(4) and shall initiate measures in order to achieve material compliance with those provisions.

(2) The Purpose of the Grievance Procedure. Each LHA shall have a grievance procedure, approved by the Department, of which the purpose shall be the prompt and reliable determination of grievances. An LHA's grievance procedure shall produce such prompt and reliable determinations of grievances. A grievance procedure, which in operation shall repeatedly fail to produce prompt and reliable determinations, shall be deemed deficient and shall be amended or replaced in the manner specified in 760 CMR 6.08.

(3) Establishment, Replacement, or Amendment of a Grievance Procedure.

(a) Negotiation of Grievance Procedures. If no grievance procedure is in effect at an LHA or if an LHA or affected Local Tenants' Organization (LTO) believes that changes to or replacement of an existing grievance procedure are necessary or appropriate, proposals for establishment, replacement, or amendment of the grievance procedure may be made at any time by either the LHA or an affected Local Tenants' Organization (LTO). Establishment of a new grievance procedure or amendments to an existing grievance procedure shall be negotiated by the LHA and any affected LTOs and shall become effective upon the written approval of the Department.

(b) Approval of a Procedure Which Has Not Been Negotiated. In Instances:

1. where the operations of an existing grievance procedure have repeatedly failed to produce prompt and reliable determinations;
2. where there is no operative grievance procedure and where the LHA and the LTO(s) have been unable to negotiate a new or amended grievance procedure; or
3. where an LTO shall have failed to take necessary steps for the proper functioning of a grievance procedure (such as naming a panel member willing and able to serve), the LHA may request that the Department permit it to implement the three person panel grievance procedure referred to in 760 CMR 6.01 and published on the Department's website at www.mass.gov/dhcd. However, if it shall reasonably appear to the LHA that notwithstanding its own good faith efforts, a three person panel would likely not be promptly chosen, the LHA may request that the Department permit it to implement the grievance procedure which provides for a single hearing officer. As part of a request that the Department permit the LHA to implement one of these two unnegotiated grievance procedures, the LHA shall specify the reason(s) for its request and shall describe its prior unsuccessful negotiations with the affected LTO(s). The LHA shall also specify the reason(s) why it believes that further efforts to negotiate a procedure would likely be

unsuccessful. The LHA shall provide the affected LTO(s) with a copy of its request permission to implement one of the two unnegotiated grievance procedures.

Following receipt of the request, the Department shall give the LTO(s) a reasonable opportunity to respond in writing. The Department may also discuss the request with the LHA and the LTO(s). If the Department shall determine:

- a. that the operations of the existing grievance procedure have repeatedly failed to produce prompt and reliable determinations of grievances or that there is no operative grievance procedure;
- b. that the LHA is not primarily responsible for this deficiency; and
- c. that further negotiations between the LHA and the affected LTO(s) appear to be unlikely to produce an agreement on a new or amended grievance procedure, the Department may give permission to the LHA to implement the three person panel grievance procedure referred to in 760 CMR 6.01 and published on the Department's website at www.mass.gov/dhcd or, if it shall appear to the Department that a three person panel would likely not be promptly chosen notwithstanding good faith efforts by the LHA, the Department may give permission to the LHA to implement the grievance procedure which provides for a single hearing officer.

(4) Requirements for Grievance Procedures. An LHA's grievance procedure shall provide for the following:

(a) 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 LHA at its main office within seven days after a notice of lease termination has been given to tenant by the LHA.

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 LHA at its main office within seven days after a notice of program termination has been given to the program participant by the LHA.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the LHA at its main office, or at a development office, if so specified, no more than 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 LHA shall have discretion to permit a grievance to be initiated late.

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.

(b) 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. If a matter is not resolved at the informal

settlement 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.

(c) Hearing Date and Notice of Hearing. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within 14 days or as soon as reasonably practical after the date on which the LHA receives the grievance. A hearing of a grievance regarding some other issue, 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). The LHA, the hearing panel, or the hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the LHA that rescheduling is reasonably necessary.

(d) 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.

(e) 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 hearing panel or the hearing officer 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 hearing panel or the hearing officer. At the hearing the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall be excluded. If the grievant misbehaves at the hearing, the hearing panel or hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(f) Procedure at Grievance Hearings. The hearing panel or the hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel or the hearing officer 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 members of the hearing panel or the hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members or the hearing officer 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.

(g) Written Decision: Effect of Decision. Within 14 days following the hearing or as soon thereafter as reasonably possible the hearing panel or the hearing officer 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 based on the evidence at the grievance hearing and such additional information

as may have been requested by the panel members or the hearing officer. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. 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.

(h) Review by the LHA's Board. In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA believes that:

1. the decision of the hearing panel or hearing officer is not supported by the facts;
2. the decision does not correctly apply applicable laws, regulations, rules and/or policies; or
3. the subject matter is not grievable, within 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 submit documentation. The Board may also permit the hearing officer or 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 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.

(i) Review by the Department. In the event that the LHA's Board shall make a material change in a decision of the hearing panel or hearing officer, upon written request of the grievant made within 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.

(j) Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the LHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to 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 LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

APPENDICES TO 760 CMR 6.00: OCCUPANCY STANDARDS AND TENANT PARTICIPATION FOR STATE-AIDED HOUSING

APPENDIX A- Grievance Procedure Provisions for a Three Member Hearing Panel.

(1) Choice of a Panel and Jurisdiction. This grievance procedure adopted by _____ Housing Authority (LHA) requires a hearing and determination of a matter subject to the procedure by a three member hearing panel. Under this procedure 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. 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.

A hearing panel so chosen shall serve all residents of state-aided public housing represented by the LTO(s) in the city or town and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA, except for residents or participants who are subject to a different procedure.

Each member (including each alternate member) shall annually certify to the LHA that he or she is ready, willing and able to serve; failure so to certify within 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 member, who created the vacancy, was appointed.

(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 member (including the alternate member) who is appointed by agreement of the other two members shall not be a board member of the LHA or an officer of an LTO. 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, the Department may remove that member for cause upon written request by either the LHA or an LTO. The written request shall contain a detailed specification of charges. The Department'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, the Department 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. 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.

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

APPENDIX B- Grievance Procedure Provisions for a Single Hearing Officer

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

Under this procedure the LHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five days of receipt of a nomination any affected LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an affected LTO, the LHA shall make prompt arrangements for an interview between the 3 nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove

the nominee by giving written notice to the LHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the LHA which shall notify the LTO(s).

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

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

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

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

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

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

Federal Grievance Regulations

Code of Federal Regulations

TITLE 24, PART 966: Public
Housing Lease and Grievance
Procedure

SUBPART B--GRIEVANCE
PROCEDURES AND
REQUIREMENTS

SOURCE: 40 FR 33406, Aug. 7,
1975; 49 FR 6714, Feb. 23, 1984; 53
FR 33304, Aug. 30, 1988; 53 FR
40221, Oct. 14, 1988; 53 FR 44876,
Nov. 7, 1988; 54 FR 6886, Feb. 15,
1989; 56 FR 922, Jan. 9, 1991; 56 FR
51576, Oct. 11, 1991; 61 FR 13273,
March 26, 1996; 66 FR 28802, May
24, 2001, unless otherwise noted.
§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

[56 FR 51579, Oct. 11, 1991]

§ 966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) The term due process determination means a determination

by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or off such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit

through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA 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 tenants and the PHA's Board of Commissioners.

[56 FR 51579, Oct. 11, 1991; 61 FR 13273, March 26, 1996; 66 FR 28804, May 24, 2001]

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart. A PHA may establish an expedited grievance procedure as defined in § 966.53.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984; 56 FR 51579, Oct. 11, 1991; 81 FR 12374, March 8, 2016]

§ 966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

(a) Grievance shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

(b) Complainant shall mean any tenant whose grievance is presented to the PHA or at the project management office.

(c) Elements of due process shall mean 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 tenant of the grounds for terminating the tenancy and for eviction;

(2) Right of the tenant to be represented by counsel;

(3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront

and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;

(4) A decision on the merits.

(d) Expedited grievance means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) Hearing officer means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training. PHAs must describe their policies for selection of a hearing officer in their lease forms as required by § 966.4, changes to which are subject to a 30-day comment period as described in § 966.3.

(f) Tenant shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA 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 household of the tenant family residing in the dwelling unit.

(g) Resident organization includes a resident management corporation.

[56 FR 51579, Oct. 11, 1991; 81 FR 12374, March 8, 2016]

§ 966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

[81 FR 12374, March 8, 2016]

§ 966.55 [Reserved by 81 FR 12374]

[81 FR 12374, March 8, 2016]

§ 966.56 Procedures governing the hearing.

(a) The hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than 5 business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer. A determination that the complainant has waived the

complainant's right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(d) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(e) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

(f) Accommodation of persons with disabilities.

(1) The PHA must 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.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

(g) Limited English Proficiency. PHAs must comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" issued on January 22, 2007 and available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_hou

sing_equal_opp/promotingfh/lep-faq.

[56 FR 51580, Oct. 11, 1991; 81 FR 12374, March 8, 2016]

§ 966.57 Decision of the hearing officer.

(a) The hearing officer must prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.

(b) The decision of the hearing officer will be binding on the PHA unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status; or

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

[81 FR 12375, March 8, 2016]

§ 966.58 [Reserved]

[56 FR 51580, Oct. 11, 1991]

§ 966.59 [Reserved]

[56 FR 51580, Oct. 11, 1991]