

# WAKEFIELD HOUSING AUTHORITY GRIEVANCE PROCEDURE

## STATE HOUSING PROGRAMS

February 2024

### PART A

#### I. GENERAL OVERVIEW

- A. The Executive Office of Housing and Livable Communities (EOHLC) regulations (760 CMR 6.08) require each local housing authority (LHA) to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances. This procedure must be available to state-aided public housing tenants, participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP), and to individuals who file appeals pursuant to 760 CMR 8.00 Privacy and Confidentiality.
- B. A grievance is defined as: (1) an allegation that the WHA or a WHA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member; (2) an allegation that the WHA or a WHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or (3) an appeal by a data subject pursuant to 760 CMR 8.00.
- C. The meaning of a statute, regulation or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the WHA is not involved, shall not be the subject of a grievance. A grievance shall not be filed by a tenant on behalf of another tenant or any household member of another tenant.

#### II. INITIATION OF A GRIEVANCE

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

- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the WHA at its main office, or at a development office, if so specified, no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the WHA shall have discretion to permit a grievance to be initiated late.
- D. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the WHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of redetermined rent or the WHA shall credit the tenant with any amounts paid but determined not to have been due.
- E. The WHA shall permit additional time for initiation of a grievance if the WHA 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 WHA. The WHA has available forms on which a grievance may be initiated (See Exhibit A). This form is for administrative purposes and may be substituted without Board approval.

### III. INFORMAL SETTLEMENT CONFERENCE

Promptly after the initiation of a grievance, unless otherwise provided, the WHA'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 WHA 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 WHA. At the informal settlement conference, the WHA and the grievant may be represented by a lawyer or by a non-lawyer. If the grievance is resolved at the informal settlement conference, the WHA and grievant shall acknowledge the terms of the resolution in writing. 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.

### IV. RIGHT TO A HEARING

- A. The WHA's Hearing Officer shall conduct hearings on grievances filed by a public housing tenant, a program participant, or a data subject concerning a grievable matter, provided that no grievance hearing regarding whether good cause exists for

terminating a lease shall be requested or held under any of the circumstances specified in MGL c.121 B, §32, including the following circumstances:

1. in the event of nonpayment of rent
2. in the event WHA has reason to believe that Tenant or a household member:
  - a. Has unlawfully caused serious physical harm to another tenant or an employee of WHA or any other person lawfully on WHA's property.
  - b. Has unlawfully threatened to seriously physically harm another tenant or an employee of WHA or any person lawfully on WHA's property.
  - c. Has unlawfully destroyed, vandalized or stolen property of a tenant or of WHA or of any person lawfully on WHA's property, if such conduct creates or maintains a serious threat to the health or safety of a tenant, an WHA employee, or any other person lawfully on WHA's property.
  - d. Has unlawfully possessed, carried, or kept a weapon on or adjacent to WHA's property in violation of M.G.L. c269, S10.
  - e. Has unlawfully possessed or used an explosive or incendiary device on or adjacent to WHA's property or otherwise violated M.G.L. c266, SS101, 102, 102A or 102B.
  - f. Has unlawfully possessed, sold, or possessed with intent to distribute a class A, B or C controlled substance, as defined in M.G.L. c94C, S31, on or adjacent to WHA's property.
  - g. Has engaged in other criminal conduct which seriously threatened or endangered the health or safety of any member of a tenant household, employee of WHA, or any person lawfully on WHA's property.
  - h. Has engaged in behavior which would be cause for voiding this lease pursuant to the provisions of M.G.L. c139, S19.
3. In the event the WHA has reason to believe that a guest of tenant or a guest of a household member has engaged in any of the behavior listed in the preceding paragraph (IV. A. 2.) above and that tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

V. HEARING DATE AND NOTICE OF HEARING.

- A. The WHA shall schedule a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the WHA receives the grievance hearing. At such time, the WHA shall set a date for the hearing no more than thirty (30) days from the date of the request for a grievance hearing (or as soon as reasonably practical thereafter) and at least fifteen (15) days prior to the date of termination. The WHA shall give grievant written notice of the date, time and place at least seven (7) days before the hearing. At the grievance hearing any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the WHA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason(s). In lease terminations if grievant is entitled to request a grievance hearing and has made a timely request, the WHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the WHA's favor.
- B. A hearing of a grievance regarding an issue other than lease termination shall be scheduled as soon as reasonably convenient following receipt of the grievance. The WHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative, if any is known.
- C. The WHA or the Hearing Officer may reschedule a hearing by agreement of the WHA and the grievant; or upon a showing by the grievant or by the WHA that rescheduling is reasonably necessary.

## VI. PRE-HEARING EXAMINATION OF RELEVANT DOCUMENTS

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

## VII. 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 Officer otherwise orders. The WHA 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 Officer. At the grievance hearing, the WHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she may be excluded. If the grievant misbehaves at the hearing, the Hearing Officer may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

#### VIII. PROCEDURE AT GRIEVANCE HEARINGS

The Hearing Officer shall conduct the grievance hearing in a fair manner without undue delay. 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 WHA 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 digitally recorded. The Hearing Officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and WHA rules and policies. The Hearing Officer may request the WHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

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

#### IX. WRITTEN DECISION OF THE HEARING OFFICER

Within fourteen (14) days following the hearing or as soon thereafter as reasonably as possible, the hearing officer shall provide the WHA 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 hearing officer. The WHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his/her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the WHA and shall be open to public inspection.

X. REVIEW BY THE WHA'S BOARD

In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the WHA's Board. In other cases, in the event that the grievant or the WHA believes that (i) the decision of the hearing officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the WHA may request review of the decision by the WHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the WHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer to make a presentation. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board when rendered, shall specify a reason showing that there has been no undue delay.

XI. REVIEW BY THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

In the event that the WHA's Board shall make a material change in a decision of the hearing officer, involving a state-aided program, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Executive Office of Housing and Livable Communities shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. EOHLC shall mail copies of its decision to the WHA and the grievant or to their attorneys.

XII. EFFECT OF A DECISION ON A GRIEVANCE

The decision on a grievance shall be binding between the WHA 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 WHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

## PART B

### I SINGLE HEARING OFFICER

All grievance hearings and determinations of grievances shall be handled 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 and if applicable in the future all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the WHA.

The WHA 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 WHA shall notify tenants of its nominees for Hearing Officer(s) by posting all such nominations on all bulletin boards intended for notices of general interest to tenants. Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within thirty (30) days after the posting of a nomination ten (10) or more tenants may disapprove the nominee by giving signed written notice to the WHA. A notice of disapproval shall include the specific reason(s) why such tenants disapproved the nominee. In the absence of a disapproval, the nominee shall become a Hearing Officer upon written acceptance mailed or delivered to the WHA which shall then post notice thereof.

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

### II. IMPARTIALITY OF THE HEARING OFFICER

No Hearing Officer or a member of his or her family shall have or shall appear to have any direct personal or financial interest in the outcome of any matter before him or her. No 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.

### III. 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 WHA may remove a Hearing Officer after notice to the Hearing Officer and the opportunity for him or her to be heard.

### IV. APPOINTMENT OF INTERIM HEARING OFFICER

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 Part B, section I of this grievance procedure would likely cause significant delay with potential adverse consequences to either the WHA or the grievant, the WHA may request that an interim Hearing Officer be named by EOHLC. Such a request shall be in writing and shall specify the reason for the request. Notice of the request shall be posted, and tenants shall be given a reasonable opportunity to comment to EOHLC about the request. If EOHLC finds there to be a reasonable need for an interim Hearing Officer, EOHLC shall name an interim Hearing Officer. EOHLC may name a previously disapproved nominee to serve as interim Hearing Officer if it finds that the stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim Hearing Officer shall have all the powers and duties of 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 the WHA to be Hearing Officer in the manner set out herein.

### V. SCHEDULING

The WHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The WHA shall consult with the Hearing Officer and shall schedule hearings at times convenient for him or her.



