



## FAMILY'S RIGHT TO A GRIEVANCE HEARING

1. A Resident (defined by HUD as any adult member who has executed a lease) is entitled to both an informal meeting and a grievance hearing when there is an adverse action to be taken by the Housing Department, as defined in the regulations at [24 CFR 966.4](#).
2. A Resident has a broad right to grieve a Housing Department action or non-action which may adversely affect the individual interest of the tenant ([24 CFR 966.53](#)). Whether or not a type of proposed adverse action is explicitly listed in the rule, the Resident has the right to grieve on any such subject, except for a termination of tenancy that has been excluded from the grievance process.
3. Any and all notices of a proposed adverse action issued by the Housing Department shall inform the family of:
  - 3.1. The reason for the proposed adverse action with enough specificity to allow them to prepare a defense;
  - 3.2. The timeframe and procedures for requesting a grievance hearing; if applicable;
  - 3.3. The date of the proposed adverse action;
  - 3.4. Resident's right to make a reply as they may so desire; and
  - 3.5. Resident's right to examine any documents of the Housing Department which are directly relevant to the proposed adverse action.
4. If there is a determination by the Housing Department that the family is not entitled to a grievance hearing, as may be the case for a termination of tenancy for criminal activity or drug-related criminal activity, the notice shall indicate:
  - 4.1. The grievance hearing is not applicable to this termination action; and
  - 4.2. The specific judicial action to be used.

## PERSONS EXCLUDED FROM THE GRIEVANCE PROCEDURE

1. A minor child shall not have the right to grieve nor the automatic right of leasehold succession. Neither shall a non-Resident relative nor a guardian acting on behalf of the minor child(ren) have the right to grieve nor an automatic right of leasehold succession. Rather, the grievance shall be restricted to a remaining family member with legal capacity to assume the tenancy.
2. A live-in aide is not entitled to a grievance hearing as they are neither a family member nor a party to the lease.
3. Residents who execute a Nonrevocable Notice of Intent to Vacate in lieu of lease termination will be included in the informal meeting process but excluded from the formal hearing process
4. It is the decision of the Housing Department to exclude from the grievance procedure Residents involved in:
  - 4.1. Criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other Residents, employees of the Housing Department or persons residing in the immediate vicinity of the premises threatened; or
  - 4.2. Any violent or drug-related criminal activity on or off such premises.

## REQUIREMENT TO ESTABLISH AN ESCROW ACCOUNT

This section does not apply to Residents of Sunnyslope Manor and Fillmore Gardens.

1. If the Resident elects to grieve a proposed termination for non-payment of rent or other charges the Resident must comply with the following:
  - 1.1. At least three (3) business days prior to the formal hearing the Resident must deposit with the Housing Department, an amount equal to the amount of Resident rent due the first of the month preceding the

month in which the Resident requested the grievance hearing. The Resident must deposit the same amount each month until the grievance process has concluded.

- 1.2. The manager of the escrow account(s) shall be identified to the Resident in the notice that Housing Department sends to the family establishing the date/time and location of the hearing.
  - 1.3. The Escrow Account Manager (EAM) shall be required to issue a receipt to the family for all such payments made each time a payment is made. Each receipt shall identify the date and amount of the most recent payment plus the aggregate amount accumulated in the escrow account.
  - 1.4. Resident must provide a copy of any/all such receipts at the initial grievance hearing or any subsequent hearings which are directly or indirectly related to the dispute of payments owed the Housing Department.
2. Failure of the family to make the required payments will terminate the grievance process; however, this does not preclude a Resident from seeking judicial relief if they continue to dispute the amounts the Housing Department contends are owed under the lease.
  3. The Housing Department reserves the right to waive these escrow requirements, in whole or in part, dependent upon any extenuating circumstances of an individual Resident family. However, any such waivers do not preclude the Housing Department from exercising its right to seek judicial relief for amounts the Housing Department contends are owed under the lease. The Housing Department reserves the right to apply any payments received and any balance of the rental account into escrow.

#### HEARING OFFICER

1. The Housing Department solicits Requests for Proposals for qualified neutral third-party hearing officers through the Procurement Division of the City of Phoenix Finance Department, in accordance with City of Phoenix procurement requirements.
2. For formal hearings on lease termination actions, the Hearing Officer will consist of three (3) members, represented by one (1) resident, one (1) Housing Department staff member and one (1) neutral third-party hearing officer. The Housing Department will appoint a resident and a Housing Department staff member that are impartial and have had no part in any action related to the subject of the hearing.
3. For all other formal hearings, the Hearing Officer will be a neutral third-party hearing officer.

#### PROCEDURES GOVERNING THE GRIEVANCE HEARING

1. Each family will be provided with a copy of the Housing Department's HUD approved grievance procedure at the time of lease execution and upon request whenever the family indicates they want a grievance hearing as a result of a proposed adverse action to be taken by the Housing Department.
2. At the informal stage, families are asked to present their grievances to Housing Department management to provide an opportunity for the grievance to be cured without a hearing if possible.
  - 2.1. A meeting will be arranged at a mutually agreeable time within ten (10) calendar days. The Resident will present the grievance and a Housing Department staff person not responsible for the area will attempt to settle the grievance. The informal meeting may be recorded. Recordings will be retained in accordance with the retention schedule of the program. Within ten (10) calendar days, the Housing Department will provide the Resident with a written summary of the informal meeting.
  - 2.2. The summary will include the names of the participants, the date(s) of the meeting, the nature of and the reasons for the proposed disposition and the procedures for obtaining a formal hearing if the complainant is not satisfied. A copy of the summary will be placed in the Resident's file.
3. If the family is dissatisfied with the proposed disposition of the complaint, the family may make a written request for a formal grievance hearing within ten (10) calendar days after receipt of the summary of the informal meeting.
4. An adult Resident has the right to a fair hearing which includes:
  - 4.1. The opportunity to examine any Housing Department documents which are directly relevant to the hearing prior to the hearing. This includes the right to review and copy, at the Resident's expense,

Housing Department policy, HUD regulations, and contents of the Resident file upon which the Housing Department will rely in its presentation of the case, including police generated reports.

- 4.2. The right of the Resident to be to be represented by legal counsel or other person of his/her choice and to have such representative present oral arguments on his/her behalf.
- 4.3. The right of the Resident to a private hearing on the dispute unless the family requests, in writing, to have a public hearing.
- 4.4. The right of the Resident to controvert evidence relied on by the management and to confront and cross-examine witnesses upon whose testimony or information the Housing Department management or site staff relies.
- 4.5. The right to a decision based solely upon the facts presented at the hearing.
5. The Hearing Officer will consider a request for a postponement of the hearing if:
  - 5.1. Such request is made in writing, by the Resident, and received at least five (5) business days prior to the scheduled date of the hearing; and
  - 5.2. Such request includes a reason that substantiates that moving forward with the scheduled hearing would place an undue hardship on the Resident (e.g., inability to take off from work at the scheduled time without losing pay or jeopardizing employment, inability to be represented by legal counsel of the tenant's choice at the scheduled time, etc.).
6. When such a request is received, the Hearing Officer will determine if the request is to be approved or disapproved within three (3) business days of receiving the request. The Resident will be issued a written notice of approval or disapproval of the request to postpone.
  - 6.1. If the request is disapproved the family will be expected to participate; failure to do so could result in the Hearing Officer ruling in favor of the Housing Department as a result of the Resident's default. If the request is approved a new date will be identified in the letter of approval. In no event shall the date of the re-scheduled hearing be more than ten (10) business days from the date of the originally scheduled hearing date, unless there is documentation that the Resident will (a) be hospitalized for a period of time exceeding the ten (10) day extension period or (b) the Resident will be sequestered on a jury for a period of time exceeding the ten (10) day extension period or (c) the Resident is involved in military duty which will be of a duration exceeding the ten (10) day extension period, but still less than thirty (30) days.
  - 6.2. If the Resident will be unable to participate in the hearing which is rescheduled within the ten (10) day extension period, for one or more of the three reasons identified above or for a reason of equal weight, the family may be granted on additional extension for an additional ten (10) day period at the discretion of the hearing officer. If the Resident is unable to participate within the period of the second extension period and a waiver is not granted for extenuating circumstances the Housing Department may proceed with the prepared adverse action. This does not exclude the Resident from pursuing any judicial relief available to them.
7. The determination of the Hearing Officer will be rendered in writing to the tenant and the Housing Department within ten (10) business days of the close of the hearing, or in the case of Sunnyslope Manor and Fillmore Gardens, within five (5) days of the close of the hearing. The decision is binding on the Housing Department unless HUD, the Assisted Housing Governing Board or its designee determines within thirty (30) calendar days of the decision that the hearing officer(s) acted arbitrarily or exceeded their jurisdiction, or that the decision is contrary to any applicable provisions of Federal, State or local law, HUD regulations, or the ACC.
8. A decision which is rendered in favor of the Housing Department does not affect the Resident's right to pursue any other judicial action available to him/her.

REMINDER: Residents who execute a Nonrevocable Notice of Intent to Vacate will be provided with an informal meeting, but will be excluded from the formal hearing process, per ACOP Section 29.1.3.

## CONDUCT OF THE FORMAL HEARING

The hearing will be conducted by the Hearing Officer in a manner that is both informal and orderly. If any participant or spectator evidences disorderly conduct and fails to comply with the directions of the Hearing Officer to modify the objectionable behavior, the Hearing Officer may dismiss the person(s) participating in the objectionable behavior and/or dismiss the case and rule in favor of the opposite party. The formal hearing may be recorded. Recordings will be retained in accordance with the retention schedule of the program.

## DECISION OF THE HEARING OFFICER

1. The Hearing Officer is required to issue a written decision within ten (10) business days following the hearing, or in the case of Sunnyslope Manor and Fillmore Gardens, within five (5) business days of the close of the hearing. The written decision should include a summary of the oral and written evidence presented by both the complainant and the Housing Department and must state the reason(s) for the decision, including the policy or regulation that supports the decision made. A copy of the decision will be placed in the Resident's file and an additional copy (with names and dates redacted) will be retained by the Housing Department and made available for a prospective complainant, the complainant's representative or Hearing Officer.
2. A decision by the Hearing Officer in favor of the Housing Department's action or failure to act or which denies the relief requested in whole or in part does not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.