

APPENDIX II

ALBUQUERQUE HOUSING SERVICES



GRIEVANCE PROCEDURES

In accordance with the applicable federal regulations (**24 CFR §966, Subpart B**) this Grievance Procedure shall be applicable to all individual grievances (as defined under definitions below) between an Applicant or Resident Tenant and Albuquerque Housing Services (AHS) with the following two exceptions:

- A. HUD issued a due process determination in that if a State law requires a Tenant to be given an opportunity for a hearing in court which provides the basic elements of due process (as defined under definitions below) prior to eviction from a dwelling unit, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - 1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of AHS, or disclosed to AHS before execution of the lease, or before AHS approval for occupancy of the unit by the household member.
 - 2. Any drug-related or violent criminal activity on or off such premises; or
 - 3. Any criminal activity that results in a felony conviction of a household member. **[966.51 (2)(i) (A) (B) and (C)]**

- B. AHS grievance procedure shall not be applicable to disputes between Tenants not involving AHS or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group of tenants, AHS, and City of Albuquerque Family and Community Services Department (DFCS). **[966.51 (b)]**

This grievance procedure is incorporated by reference in all Tenant dwelling leases and will be furnished to each Tenant and all resident organizations, if applicable. **[966.52 (b) and (d)]**

Any changes proposed in this grievance procedure will provide for at least 30-day notice to Tenants and Resident Organizations, setting forth the proposed changes and providing an opportunity to present written comments. All comments shall be considered by AHS before any final revisions are made to the grievance procedure. **[966.52 (c)]**

Definitions applicable to the “Grievance Procedure” [§ 966.53]

- A. Grievance: Any dispute the resident may have with respect to AHS action or failure to act in accordance with the individual Tenant’s Lease, or for denials of request for reasonable accommodations, or public housing program rules and regulations that adversely affects the individual Applicant or Tenant’s rights, duties, welfare or status.
- B. Complainant: Any Applicant or Tenant (as defined in this Part) whose grievance is presented to AHS at **1840 University Blvd., SE, Albuquerque, NM** in accordance with the requirements presented in this procedure.
- C. Elements of due process: An eviction action, 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 AHS, 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 of the case.
- D. Hearing Officer: A person selected in accordance with **24 CFR § 966.550** and this procedure to hear grievances and render a decision with respect thereto.
- E. Hearing Panel: Consists of a Three Member panel selected in accordance with **24 CFR § 966.55** and this procedure to hear grievances and render a decision with respect thereto.
- F. Tenant: The adult person (or persons other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with AHS as a lessee of the dwelling unit, or if no such person now resides in the unit, (2) Who resides in the unit and is the remaining head of household of the Tenant family residing in the dwelling unit.
- G. Resident Organization: An organization of residents, which also may include a resident management corporation.

Standard Grievance Procedure

Standard Grievance Procedure guidelines are set by the United States Department of Housing and Urban Development (HUD) and implemented herein by AHS. If you are presented with a notice that states you have violated any terms or conditions of the Lease Agreement, including any rules and regulations associated with the Public Housing Program, or are denied reasonable accommodations, the following describes the steps you need to follow under the Grievance Procedure process:

A. Informal Hearing Process:

1. If you disagree with the reasons for Lease termination or denial of reasonable accommodations, you may request an informal hearing by submitting a written request within ten (10) days after the date of the breach of lease (e.g., 14 or 30-Day Notice of Termination Rental Agreement) or date of the Reasonable Accommodations Denial notice.
2. Written notification that specifies time, place, and the procedures governing the hearing shall be delivered to you in person or by mail.
3. A written summary of the discussion will be ready within ten (10) business days. One copy will be given to you and one will be kept in your AHS application or resident file. The summary will specify the names of the participants, the date and time of the hearing, the nature of the complaint, the proposed outcome of the complaint, and specific reasons for the outcome.
4. In cases of Lease termination informal hearings, if you and AHS are unable to come to an agreement, AHS will file an action against you in the Bernalillo County Metropolitan Court, to remove you from the premises as stipulated in the Notice of Lease Termination.
5. In cases of reasonable accommodation denial informal hearings, if you and AHS are unable to come to an agreement, you may request a Formal Hearing, by submitting a written request to AHS within ten (10) business days from the date of the Informal Hearing. Upon receipt of your request for a Formal Hearing, AHS will schedule with the City of Albuquerque Hearing Officer a date and time for your appeal to be heard. You will be notified in writing by certified mail of the date and time of the Formal Hearing.
6. If you and AHS agree with the terms of the settlement as decided by the informal hearing officer, the settlement under the informal hearing process will be final.

B. Formal Hearing Process:

1. The Metropolitan Court hearing shall serve as the formal hearing process under this Grievance Procedure Lease terminations or evictions.

C. Informal Hearings for Rent:

1. Before an informal hearing is scheduled in any complaint involving the amount of rent which AHS claims is due, **the resident shall pay an amount equal to the amount due and payable as of the first of the month** proceeding the month in which the act or failure to act took place. The funds will be deposited to an escrow account.
2. You will deposit the same amount of rent into the AHS escrow account on a monthly basis until the complaint is resolved by decision of the hearing officer or panel.
3. Unless the requirement is waved under extenuating circumstances, the failure to make such payments shall result in a termination of the grievance procedure.
4. Once you have complied with the above procedures, the hearing officer or panel will schedule a hearing at a time and place convenient to both you and AHS. Procedures for the informal and formal hearing process will apply.

D. General Hearing Procedures:

1. You will be given a fair hearing providing the basic safeguards of due process.
2. You will have the opportunity to examine all documents, records, and related regulations of AHS that are relevant to the hearing. You may also copy, at your own expense, all documents, records, and related regulations. AHS may not rely on any document not made available after you have made a request, at the hearing.
3. You have the right to be represented by counsel or other persons chosen as your representative at your own expense.
4. You have the right to a private hearing unless a public hearing is requested.
5. You have the right to present evidence and arguments in support of your complaint to dispute evidence relied on by AHS, and to confront and cross-examine all witnesses on whose testimony or information AHS relies.
6. The decision will be based solely and exclusively upon the facts presented at the hearing.

7. The informal hearing officer or panel may present a decision without proceeding with the hearing if the hearing officer or panel determines that the similar issue(s) has been previously decided in another proceeding.
8. If you or AHS fail to appear at a scheduled hearing, the hearing officer or panel may postpone the hearing for a period of no more than five (5) business days or may determine that the absent party has waived his right to a hearing. All parties shall be notified of such determination.
9. At the hearing, you must first show an entitlement to the relief sought, and AHS must justify its acts or failure to act.
10. The hearing shall be conducted informally, but all persons present shall be orderly and maintain decorum. Failure to follow the directions of the hearing officer or panel to obtain order may result in exclusion from the proceedings or other appropriate action.
11. Oral or documentary evidence pertinent to the facts may be received without regard to admissibility under the rules of evidence that apply to judicial proceeding.
12. If a resident has requested a hearing involving AHS' notice of termination of the residency and the hearing officer or panel upholds AHS action to terminate the residency, AHS shall not begin eviction action in a state or local court until it has served notice to vacate on the resident, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or panel having been mailed to the resident. Notice to vacate will be in writing and will specify that if the resident fails to quit (vacate) the premises within the approved period of time or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against the resident, and he/she may be required to pay court costs and attorney fees.

Failure to Appear at the Hearing

If either the complainant or a representative of AHS fails to appear at the scheduled hearing, the hearing officer or panel may make a determination to postpone the hearing **for not to exceed five (5) business days**, or may make a determination that the party has waived the right to a hearing. **[966.56 (d)]**

Both the complainant and AHS shall be notified of the determination by the hearing officer or panel; provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest AHS's disposition of the grievance in court. **[966.56 (d)]**