

DEPARTMENT OF
HOUSING &
COMMUNITY
DEVELOPMENT

Public Housing Notice 2000-03



Argeo Paul Cellucci, Governor
Jane Swift, Lieutenant Governor
Jane Wallis Gumble, Director

MEMORANDUM

TO: All Local Housing Authorities

FROM: Carole E. Collins, Director, Bureau of Asset Management

RE: Grievance Procedure

DATE: July 3, 2000

The October 1, 1998 occupancy regulation provides for continued grievance procedures at LHAs until such time as a new or amended procedure is approved by DHCD. The regulation requires each LHA to compare the provisions of its grievance procedure with the provisions of 760 CMR 6.08(4) and to initiate measures in order to achieve material compliance with those provisions. Any LHA that determines that its grievance procedure fails to meet the requirements of 760 CMR 6.08(4) is required to negotiate revised procedures with each affected local tenant organization (LTO).

In an effort to assist LHAs and their LTOs with this task, DHCD has developed a grievance procedure that embodies all of the provisions of 6.08(4). Grievance procedures have been developed for use by LHAs having either a hearing panel or a single hearing officer for both LHAs having an LTO and for those without an LTO.

In reviewing the enclosed you will see that each the grievance procedure has two parts. Part A and Part B. Part A defines a grievance and the process to be followed in filing and ultimately resolving a grievance. Part B describes the hearing body, the manner in which panelists are to be appointed, their terms, and other matters generally related to the panelist's role and responsibility. LHAs need to negotiate both of these matters with each of its affected LTOs.

LHAs not having any LTO with which it is required to negotiate must still provide for tenant input on these matters. Part B under option 2 for LHAs without any LTO in each of the enclosed grievance procedures details how the LHA can fulfill its tenant-participation-obligation. In essence LHAs need to provide all tenants of state-aided housing programs the opportunity to comment on the Authority's proposed grievance procedure, the panel structure and the panel nominees.

In order to receive DHCD written approval of a new or amended grievance procedure an LHA must submit:

- A certified extract of the minutes of the board meeting at which the board voted approval of its proposed grievance procedure. The vote should clearly identify what procedure has been adopted. If the procedure is one of the DHCD procedures the vote should also indicate which option, 1 or 2, under Part B has been approved. If the procedure is other than a DHCD developed procedure, the LHA needs to include a copy of the LHA proposed procedure; and
- a cover letter indicating whether there is an LTO(s), and if there is, whether the LTO has agreed to the LHA's use of the grievance procedure as voted by the board;
 - the names of the panelists, their alternates;
 - an indication of whether each is the LHA, LTO or jointly chosen member or alternate;
 - the expiration date of the term for each; and
 - a statement that the LHA has received a written acceptance from each of panelists.
- The cover letter for any LHA without an LTO needs to additionally describe the process followed by the LHA in developing its proposed procedure and selecting its panel members.
- In addition, any LHA seeking DHCD written approval of a grievance procedure using a single hearing officer format must provide written explanation why a three member panel has not been proposed. DHCD will only approve a single hearing officer format when the LHA and the affected LTO have negotiated and agreed to the single hearing officer format, or when an LHA can demonstrate that it cannot successfully seat a three member panel.

Enclosed for your further assistance are sample letters for submitting a proposed grievance procedure for DHCD approval and a grievance complaint form.

Should you have any questions on this please feel free to contact your asset management specialist.

GRIEVANCE PROCEDURE

Part A

1. General Overview

- A. Department of Housing and Community and Development (DHCD) 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. The 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 an LHA or an LHA 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 an LHA or an LHA 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 LHA 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.

2. 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 (postmarked) or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the LHA.
- 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 LHA at its main office within seven (7) days after a notice of program termination has been given to the tenant by the LHA.
- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the LHA at its main office no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the LHA 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 LHA'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 LHA shall credit the tenant with any amounts paid but determined not to have been due.

- E. 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. The LHA shall have available forms on which a grievance may be initiated.

3. 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. At the informal settlement conference, the LHA 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 LHA and grievant shall acknowledge the terms of the resolution in writing. If the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a grievance is not resolved at the informal 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.

4. Right to a Hearing

- A. The LHA's hearing panel 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.121B, §32, including the following circumstances:

- (1) in the event of non-payment of rent;
- (2) in the event the LHA has reason to believe that tenant or household member:
 - a. has unlawfully caused serious physical harm to another tenant or employee of the LHA or any other person lawfully on the LHA's property;
 - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's property;
 - c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;
 - d. has unlawfully possessed, carried or kept a weapon on or adjacent to the LHA's property in violation of MGL c.269 §10;
 - e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or has otherwise violated MGL c.266 §§101, 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 MGL, c.94C §31, on or adjacent to the LHA's property;
 - g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any person lawfully on the LHA's property, or

- h. has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of MGL, c139, §19; or
- (3) in the event the LHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in subparagraph 4 A (2) and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

5. Hearing Date and Notice of Hearing

- A. The LHA shall schedule of a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the LHA receives the grievance. At such time, the LHA 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 LHA 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 LHA 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 LHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the LHA'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 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 is known.
- C. The LHA or the Presiding Member may reschedule a hearing by agreement of the LHA and the grievant; or upon a showing by the grievant or by the LHA that rescheduling is reasonably necessary.

6. 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.

7. 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 Presiding Member of the grievance panel 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 Presiding Member. At the grievance 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

may be excluded. If the grievant misbehaves at the hearing, the hearing panel by majority vote may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

8. Procedure at Grievance Hearings

The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The Presiding Member 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 panel members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members 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.

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

9. Written Decision by the Grievance Panel

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing panel 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 made by a vote of at least a majority of the panel members who heard the hearing. The decision shall be based on the information at the grievance hearing and such additional information as may have been provided to the hearing panel at its request. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. 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.

10. Review by the LHA's Board

In cases where the decision of the hearing panel 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: (a) the decision of the hearing panel is not supported by the facts; (b) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or (c) the subject matter is not grievable, within fourteen (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/or submit documentation. The Board may also permit the hearing panel to make a presentation. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law. 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.

11. Review by the Department of Housing and Community Development

In the event that the LHA's Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. DHCD shall mail copies of its decision to the LHA and the grievant or to their attorneys.

12. Effect of a Decision on a Grievant

The final decision on a grievance (after any properly requested administrative reviews have been decided) 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. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the LHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or DHCD. 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.

Part B (Option 1 for LHAs with an LTO)

1. Three Member Hearing Panel

All grievance hearings and determinations of a matter subject to this grievance procedure shall be by a three member hearing panel except as otherwise provided herein. 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. The third member (including the alternate member) shall not be a board member of the LHA or an officer of an LTO. 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. The LHA shall maintain all such notices and acceptances in its files.

A hearing panel so chosen shall serve all tenants of state-aided public housing represented by the LTO(s) in the city or town as well as those who are unrepresented by an LTO, and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

Each member (including each alternate member) shall annually certify to the LHA in writing that he or she is ready, willing and able to serve; failure so to certify within ten (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 previous member was appointed. The LHA shall maintain all such certifications in its files.

2. Impartiality of Members

No member of a hearing panel, which is 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, which is 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 that are disputed by the parties. 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, DHCD may remove that member for cause upon written request by either the LHA or an LTO. The written request to DHCD shall contain a detailed specification of charges. DHCD'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, DHCD 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. Written 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.

Part B *(Option 2 for LHAs without any LTO)*

1. Three Member Hearing Panel

All grievance hearings and determinations of grievances shall be handled by a three member hearing panel except as otherwise provided herein. Each panel member shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

The LHA shall from time to time nominate one or more persons to serve as panel member(s) to conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall notify tenants of its nominee(s) for panel member(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 LHA. 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 panel member upon written acceptance mailed or delivered to the LHA which shall then post notice thereof. No more than six (6) persons shall serve as panel members at any one time.

Each panel member (including each alternate member) shall annually certify to the LHA 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 LHA shall render the member's position vacant. The LHA may appoint three or more panel members.

2. Impartiality of the Panel Members

No panel member or 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 member 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 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 on the basis of the evidence and applicable law. Any member of a hearing panel who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as a member of the hearing panel, or, if he or she fails to do so, shall be removed from the hearing panel by the Presiding Member upon the written objection by the LHA or the tenant 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 Panel Member

A member of the hearing panel 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 may remove a member of the hearing panel after notice to the member and the opportunity for him or her to be heard.

4. Appointment of Interim Hearing Officer

If there shall not be three panel members able and willing to serve for one or more pending matters and if use of the appointment process in Part B, section 1 of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the matter may be heard by two panel members or, if there shall not be two panel members able and willing to serve, the matter may be heard by a single panel member, or if there shall not be a single member able and willing to serve, the LHA may request that an interim hearing officer be named by DHCD. 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 DHCD about the request. If DHCD finds there to be a reasonable need for an interim hearing officer, DHCD shall name an interim hearing officer. DHCD 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 the hearing panel and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by the LHA to be a panel member in the manner set out herein.

5. Designation of a Presiding Member

A majority of the panel 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. The Presiding Member shall designate the members who will serve on the hearing panel for each grievance hearing. A majority of the members may designate in writing a different Presiding Member at any time. Written notice of the designation of a Presiding Member shall be given to the LHA.

6. Scheduling

The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult each panel member designated for a grievance hearing and insofar as reasonably possible shall schedule hearings at times convenient for him or her.

7. 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, two members may hear and

decide the matter. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the remaining member(s) may render a decision on the grievance.

GRIEVANCE PROCEDURE

Part A

1. General Overview

- A. Department of Housing and Community and Development (DHCD) 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. The 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 an LHA or an LHA 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 an LHA or an LHA 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 LHA 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.

2. 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 (postmarked) delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the LHA.
- 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 LHA at its main office within seven (7) days after a notice of program termination has been given to the tenant by the LHA.
- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the LHA at its main office no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the LHA 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 LHA'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 LHA shall credit the tenant with any amounts paid but determined not to have been due.

- E. 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. The LHA shall have available forms on which a grievance may be initiated.

3. 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. At the informal settlement conference, the LHA 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 LHA and grievant shall acknowledge the terms of the resolution in writing. If the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a grievance is not resolved at the informal 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.*

4. Right to a Hearing

- A. The LHA'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.121B, §32, including the following circumstances:

- (1) in the event of non-payment of rent;
- (2) in the event the LHA has reason to believe that tenant or household member:
 - a. has unlawfully caused serious physical harm to another tenant or employee of the LHA or any other person lawfully on the LHA's property;
 - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's property;
 - c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;
 - d. has unlawfully possessed, carried or kept a weapon on or adjacent to the LHA's property in violation of MGL c.269 §10;
 - e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or has otherwise violated MGL c.266 §§101, 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 MGL, c.94C §31, on or adjacent to the LHA's property;

- g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any person lawfully on the LHA's property, or
 - h. has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of MGL, c139, §19; or
- (3) in the event the LHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in subparagraph 4 A (2) and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

5. Hearing Date and Notice of Hearing

- A. The LHA shall schedule of a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the LHA receives the grievance. At such time, the LHA 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 LHA 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 LHA 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 LHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the LHA'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 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 is known.
- C. The LHA or the Hearing Officer may reschedule a hearing by agreement of the LHA and the grievant; or upon a showing by the grievant or by the LHA that rescheduling is reasonably necessary.

6. 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.

7. 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 of the grievance panel 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 Officer. At the grievance 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 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.

8. 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 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 Hearing Officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies.* The Hearing Officer members 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.

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

9. Written Decision by the Grievance Panel

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, 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 information at the grievance hearing and such additional information as may have been provided to the Hearing Officer at his or her request. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. 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.

10. Review by the LHA's Board

In cases where the decision of the Hearing Officer 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: (a) the decision of the hearing panel is not supported by the facts; (b) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or (c) the subject matter is not grievable, within fourteen (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/or submit documentation. The Board may also permit the Hearing Officer to make a presentation. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law. 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.

11. Review by the Department of Housing and Community Development

In the event that the LHA's Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. DHCD shall mail copies of its decision to the LHA and the grievant or to their attorneys.

12. Effect of a Decision on a Grievant

The final decision on a grievance (after any properly requested administrative reviews have been decided) 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. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the LHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or DHCD. 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.

Part B (Option 1 for LHAs with LTO(s))

1. 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 all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

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 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 (5) days of receipt of a nomination any LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an LTO, the LHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty (30) days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any 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 LTO(s) shall approve a nominee or if no LTO shall disapprove a nominee within the requisite time, the nominee shall become a Hearing Officer upon written acceptance mailed or delivered to the LHA which shall then notify the LTO(s).

Each Hearing Officer shall annually certify to the LHA 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 LHA shall render the Hearing Officer's position vacant.

2. 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.

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 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, DHCD may remove a Hearing Officer for cause upon a request by the LHA or an LTO. Prior to removing a Hearing Officer, DHCD 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. DHCD'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, DHCD shall deny a request for removal without a hearing.

4. 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 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 LTO(s) may request that an interim Hearing Officer be named by DHCD. Such a request shall be in writing and shall specify the reason for the request. The LTO(s) shall be given a reasonable opportunity to comment on the request. If DHCD finds there to be a reasonable need for an interim Hearing Officer, DHCD shall name an interim Hearing Officer. DHCD may name a previously disapproved nominee to serve as interim Hearing Officer if it finds that an 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 the 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. The LHA shall consult with the hearing officer and shall schedule hearings at times convenient for him or her.

Part B *(Option 2 for LHAs without any LTO)*

1. 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 all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

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 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 LHA. 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 LHA which shall then post notice thereof.

Each Hearing Officer shall annually certify to the LHA 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 LHA shall render the Hearing Officer's position vacant.

3. 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.

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

4. 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 1 of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA may request that an interim Hearing Officer be named by DHCD. 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 DHCD about the request. If DHCD finds there to be a reasonable need for an interim Hearing Officer, DHCD shall name an interim Hearing Officer. DHCD 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 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. The LHA shall consult with the Hearing Officer and shall schedule hearings at times convenient for him or her.

LHA Letterhead

Bureau of Asset Management
DHCD
One Congress Street, 10th Floor
Boston, MA 02114

RE: Request for Approval of Grievance Procedure

Dear ***:

This is written to request approval of a grievance procedure which meets the regulatory requirements of 760 CMR 6.08. After reviewing the requirements and provisions of the regulation with our local tenant organization, we reached an agreement to adopt the DHCD procedure using a three member hearing panel. At its regular board meeting held on *(date)*, the members of the board voted to adopt the DHCD procedure and a three member panel. At that meeting the members also appointed the LHA member and alternate member to serve on the grievance panel. Enclosed is a certified extract of the minutes of the meeting and the board's votes on this matter.

All of the members of the panel and their alternates have been appointed and have provided the Authority with the necessary certifications of their ability to serve as a panelist. A copy of each of the certifications will be maintained in the Authority's files. The members, their alternates, their affiliations and term expiration dates are listed on the enclosed sheet.

We will provide a copy of the DHCD approved grievance procedure and a listing of the panelists to the local tenant organizations as well as post the procedure on all bulletin boards intended for notice of general interest to tenants.

Should you require any further information for your review and approval of a grievance procedure for the Authority please contact me.

Sincerely,

Executive Director

LHA Letterhead

Bureau of Asset Management
DHCD
One Congress Street, 10th Floor
Boston, MA 02114

RE: Request for Approval of Grievance Procedure

Dear ***:

This is written to request approval of a grievance procedure which meets the regulatory requirements of 760 CMR 6.08. The Authority has been unsuccessful in its efforts to organize a local tenant organization and therefore, did not negotiate a procedure with our tenants. We did however provide the tenants with the opportunity to comment on the Authority's proposals.

At its regular board meeting held on (date), the members of the board voted to adopt the DHCD procedure and a three member panel, and nominated six members to serve on the grievance panel subject to a thirty (30) day tenant comment period. By notice dated *** the Authority informed all tenants of its intention to seek DHCD approval of the grievance procedure and of its panel member nominees. The notice provided for a 30 day comment period. During that 30 day period tenants also had the opportunity to disapprove any of the nominees. We did not receive any comments during that period. Therefore, at its regular board meeting held on (date) the board voted its final approval of the DHCD grievance procedure with a three member panel subject to DHCD approval. The Board also appointed panel members. Enclosed is a certified extract of the minutes of the meeting and the board's votes on this matter.

All of the members of the panel have provided the Authority with the necessary certifications of their ability to serve as a panelist. A copy of each of the certifications will be maintained in the Authority's files. The members and their term expiration dates are listed on the enclosed sheet.

We will post a copy of the DHCD approved grievance procedure and a listing of the panelists on all bulletin boards intended for notice of general interest to tenants.

Should you require any further information for your review and approval of a grievance procedure for the Authority please contact me.

Sincerely,

Executive Director

Please Note: Should comments be received, this letter needs to be modified to indicate that, to provide a general description of the comments received, and to detail the action the Authority took as a result of the comments received.

