

BROOKLINE (MA) HOUSING AUTHORITY  
(BHA)

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FINAL DRAFT  
RESIDENT GRIEVANCE AND HEARING PROCEDURE

JANUARY 30, 1998

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# RESIDENT GRIEVANCE AND HEARING PROCEDURE

## I. Purpose and Scope

This Grievance Procedure is established and implemented by the Brookline Housing Authority to assure that Housing Authority residents are afforded an opportunity for a hearing of a resident dispute regarding any Brookline Housing Authority action or failure to act involving the resident's lease with the Brookline Housing Authority, excluding Section XIV.1.E of the lease, or Authority regulations, which adversely affect the individual resident's rights, duties, welfare or status. The grievance procedure outlined in this document is incorporated in Section V.12 the dwelling lease.

## II. Applicability

- A. The Brookline Housing Authority grievance procedure is applicable to all individual grievances as specified in Section III of this document between the resident and the Authority. Residents shall have no right to a grievance hearing for:
1. Evictions which are brought pursuant to the expedited procedure set out in M.G.L. c. 121B§32, and for which the Hearing Officer has granted a waiver to the BHA; or
  2. Evictions from federally-funded housing where the alleged grounds are based upon drug related criminal activity, or criminal activity which threatens the health, safety, or right to peaceful enjoyment of the BHA's public housing premises by other residents or employees of the BHA;
  3. Matters which have already been heard by the Hearing Officer or for which there has been a judicial resolution;
  4. Matters involving class grievances or disputes between resident's not involving the BHA.
  5. Grievances that are initiated for the purpose of negotiating policy changes between a group or groups of residents and the Brookline Housing Authority Board of Commissioners.

## III. Definitions

For the Purpose of this document, the following definitions are applicable:

- A. "Grievance" shall mean any dispute which a resident may have with respect to Brookline Housing Authority action or failure to act in accordance with the individual resident's lease or Brookline Housing Authority regulations which

adversely affect the individual resident's rights, duties, welfare, or status, except for Section XIV.2E of the lease.

- B. "Complainant" shall mean any resident whose grievance is presented to the Brookline Housing Authority or the property management office in accordance with Section IV or Section V of this document.
- C. "Elements of Due Process" shall mean an eviction action or a termination of residency in a State or local court in which the following safeguards are required:
  - 1. Adequate notice to the resident of the grounds for terminating the residency and for evictions;
  - 2. Right of the resident to be represented by counsel;
  - 3. Opportunity for the resident to refute the evidence presented by the BHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have.
  - 4. A decision on the merits.
- D. "Hearing Officer" shall mean a person selected in accordance with Section V of this document to hear grievances and render a decision with respect thereto.
- E. "Resident" shall mean the adult person or persons (other than a live-in aide):
  - 1. Who resides in the unit and who executed the lease with the Brookline Housing Authority as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - 2. Who resides in the unit, and who is the remaining head of household of the resident family residing in the dwelling unit.
- F. "Resident Organization" includes a resident management corporation, Resident Council, or resident Association.

#### **IV. Informal Settlement of Grievance**

Any grievance shall be presented in writing, either personally or forwarded by first-class mail, to the Brookline Housing Authority main office or to the office of the development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within five (5) working days, and one copy shall be given to the resident and one retained in the resident's file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing under Section V may be obtained if the complainant is not satisfied.

#### **V. Procedure to Obtain a Hearing**



A. Request for Hearing

The Brookline Housing Authority shall make readily available grievance forms at the Housing Authority's main office, and the property offices at 22 High Street. A grievance shall not have standing and a complaint will not be granted a hearing before the Hearing Officer prior the compliance with Section IV, Informal Settlement of Grievance. The complainant shall submit a written request; i.e., grievance form, for a hearing to the Brookline Housing Authority or the property office within five (5) days working days after receipt of the summary discussion pursuant to Section IV.

Failure of the resident to request a hearing within five (5) days of the proposed disposition of the complaint by the BHA shall constitute a waiver of the resident of a grievance hearing, but shall not constitute a waiver of the right to contest the BHA's decision in an appropriate legal proceeding.

B. Hearing Pre-requisite

All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure prescribed in Section IV as a condition precedent to a hearing under this section, provided that, if the complainant shall show good cause why he failed to proceed in accordance with Section IV to the Hearing Officer, the provisions of the prerequisite may be waived by the Hearing Officer.

C. BHA's Answer to resident's Complaint

Within five (5) working days after receipt of resident's complaint and request for a hearing, a duly authorized representative of the BHA shall forward to the Hearing Officer and to the resident a written, dated, signed answer to the complaint specifying the proposed disposition of the matter of the resident's complaint and the full and specific reasons for the proposed disposition. If the resident is satisfied with the BHA's answer, he may so notify the Hearing Officer and withdraw his/her complaint and request for a hearing.

D. Failure to Request a Hearing

If the complainant does not request a hearing in accordance with Section V.A. of this document, then the Brookline Housing Authority's disposition of the grievance under Section IV shall become final, provided that failure to request a hearing shall not constitute a waiver by the complainant of his right to contest the BHA's action in disposing of the complaint in an appropriate judicial proceeding.

E. Escrow Deposit

Before a hearing is scheduled in any grievance involving the amount of rent as defined in the payments due under the lease which the Brookline Housing Authority claims is due, the complainant shall pay to the BHA an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act failure to act took place. The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by the decision of Hearing Officer of hearing panel. These requirements may be waived by the BHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure: Provided, that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the BHA's disposition of his/her grievance in any appropriate judicial proceeding.

F. Scheduling of Hearings.

Upon complainant's compliance with paragraphs (A) (B) (C) (D) (E) of this section, a hearing shall be scheduled by the Hearing Officer within ten (10) working days from the time the resident submitted his/her grievance at a time and place reasonable and convenient to both the complainant and BHA. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the Brookline Housing Authority. Residents will be given at minimum a five (5) working day notice of the hearing date. Every effort will be made to ensure that grievance hearing are held within twenty (20) days of receipt of the complaint.

G. Selection of Hearing Officer

Grievances shall be presented before a Hearing Officer.

1. The Hearing Officer shall be an impartial person who shall be chosen jointly by the local residents' organization and the Housing Authority. The Hearing Officer may not be an officer, employee, agent, or resident of the Brookline Housing Authority.
2. The BHA shall provide and pay for all spaces, supplies and clerical staff required by the Hearing Officer and shall compensate the Hearing Officer for any out-of-pocket expenses incurred in carrying out his or her function as Hearing Officer.



**VI. Procedures Governing the Hearing**

- A. The hearing shall be held before the Hearing Officer as appropriate.
- B. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:
  - 1. The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and regulations of the Brookline Housing Authority that are relevant to the hearing. Any document not so made available after request therefore by the complainant may not be relied on by the BHA at the hearing.
  - 2. The right to be presented by counsel or other person chosen as his or her representative.
  - 3. The right to a private hearing unless the complainant requests a public hearing.
  - 4. The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by the BHA or property management, and to confront and cross-examine all witnesses on whose testimony or information BHA or property management relies; and
  - 5. A decision based solely and exclusively upon the facts presented at the hearing.
- C. The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding.
- D. If the complainant or the Brookline Housing Authority fails to appear at a scheduled hearing, the Hearing Officer may make a determination to postpone the hearing for a period of time not to exceed five (5) business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the Brookline Housing Authority shall be notified of the determination by the Hearing Officer 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 the BHA's disposition of the grievance in an appropriate judicial proceeding.
- E. At the hearing, the complainant must first make a showing of an entitlement to the relief sought; and, thereafter, the BHA must sustain the burden of justifying the Housing Authority's action or failure to act against which the complaint is directed.





- F. The hearing shall be conducted informally by the Hearing Officer and oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Hearing Officer shall require the Brookline Housing Authority, the complainant, counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.
- G. The complainant or the Brookline Housing Authority may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

## **VII. Decision of the Hearing Officer**

- A. All decisions must be based solely and exclusively upon the evidence presented at the hearing and upon applicable laws and regulations.
- B. The Hearing Officer shall prepare a written decision, together with the reasons therefore, within ten (10) working days after the hearing. A copy of the decision shall be sent to the complainant and the Brookline Housing Authority.
- C. The Brookline Housing Authority shall retain a copy of the decision in the resident's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the BHA and made available for inspection by a prospective complainant, his representative, or Hearing Officer.
- D. The decision of the Hearing Officer shall be binding on the BHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Brookline Housing Authority Board of Commissioners determines at its next regular meeting and notifies the complainant within five (5) working days of its determination, that
  - 1. The grievance does not concern Brookline Authority action or failure to act in accordance with or involving the complainant's lease on BHA regulations which adversely affect the complainant's rights, duties, welfare or status;
  - 2. The decision of the Hearing Officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the Brookline Housing Authority.

- E. A decision by the Hearing Officer or Board of Commissioners in favor of the Brookline Housing Authority or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

### **VIII. Brookline Housing Authority Eviction Actions**

If a resident has requested a hearing in accordance with Section V of this document, or a complaint involving a Brookline Housing Authority notice of termination of residency and the Hearing Officer upholds the Brookline Housing Authority's action to terminate the residency, the BHA shall not commence an eviction action in a State or local court until it has served a notice to vacate on the resident; and in no event shall the notice to vacate be issued prior to the decisions of the Hearing Officer having been mailed or delivered to the complaint. Such notice to vacate must be in writing and specify that if the resident fails to quit the premises within the applicable statutory period or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him; and he may be required to pay court cost and attorney fees.

### **IX. Miscellaneous**

#### **A. Variations**

Any variations to the above outlined procedure shall not be adopted by the BHA without prior consultation with the Resident Council or Resident Representatives of the development. A copy of these procedures and of any revision hereto shall be posted in a conspicuous place in the property management office and shall be available from the BHA main office and from the Resident Council or Resident Representative.

#### **B. Notice**

All notices, answers or decisions required under these procedures to be sent to the resident must be delivered in person to any adult member of the resident's household or mailed first-class mail to the resident.

#### **C. Accommodation of Persons with Disabilities**

The BHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants. If a resident is visually impaired, any notice must be in an accessible format, unless the BHA has actual knowledge that the resident has the regular assistance of a sighted person who is available to read the notice to the tenant in a timely way.