

# HACL Informal Hearing Process for Public Housing Applicants & Non-Citizens

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## Objective:

When HACL makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status). These procedures will respond to applicant appeals through the informal hearing process.

Informal hearings provide applicants with an opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

## Scope:

This policy shall apply to the public housing program administered by the Housing Authority of the City of Lumberton (HACL) and its employees, unless specifically noted.

## Responsibility:

The Director of Housing Services shall be responsible for overall oversight and administration of this policy. The Outreach Occupancy Specialist shall be responsible for the day-to-day implementation of this policy and for carrying out the following procedures.

## Procedure:

The HACL will only offer informal hearings to applicants for the purpose of disputing denials of admission.

## Notice of Denial:

The HACL must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the HACL decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. [24CFR 960.208(a)]

## Scheduling an Informal Hearing:

The HACL prefers that all requests for an informal hearing are made in writing and delivered to the HACL either in person or by first class mail, by the close of business day, no later than 10 business days from the date of the HACL's notification of denial of admission. However, the HACL will accept a verbal request and document the official hearing request formal accordingly to maintain a written record. This request should be signed by the applicant as soon as possible.

The HACL will schedule and send written notice of the informal hearing within 10 business days

of the family's request.

### Conducting an Informal Hearing

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decisions of the HACL.

The person conducting the informal hearing will make a recommendation to the HACL, but the HACL is responsible for making the final decision as to whether admission should be granted or denied.

The HACL Informal Hearings for Public Housing will be conducted by the Housing Choice Voucher Program Coordinator. The HCV Coordinator is not a subordinate to the Occupancy Outreach Specialist and does not make any decisions pertaining to admissions to the Public Housing Program.

### Informal Hearing Decision

The HACL will notify the applicant of the HACL's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the HACL will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice
- The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in the HACL policy, then the decision to deny assistance will be overturned. See Chapter 3 of the ACOP for a detailed discussion of the grounds for applicant denial.
- The validity of evidence. The HACL will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the HACL will uphold the decision to deny admission.
- If the facts prove the grounds for denial, and the denial is discretionary, the HACL will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The HACL will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

### Reasonable Accommodation for Persons with Disabilities [24CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the HACL must consider such accommodations. The HACL must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 of the ACOP for more detail pertaining to reasonable accommodation requests.



### **Hearing and Appeal Provisions for Non-Citizens [24CFR 5.514]**

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the HACL hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the HACL informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

### **Notice of Denial or Termination of Assistance [24CFR 5.514(d)]**

The notice must detail the following:

- Financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24CFR 5.514 and 5.518]
- That the family has a right to request an appeal to the USCIS of the results of a secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the HACL either upon completion of the USCIS appeal or in lieu of the USCIS appeal.

### **Scheduling an Informal Hearing**

The HACL prefers that all requests for an informal hearing are made in writing and delivered to the HACL either in person or by first class mail, by the close of business day, no later than 10 business days from the date of the HACL's notification of denial of admission. However, the HACL will accept a verbal request and document the official hearing request formal accordingly to maintain a written record. This request should be signed by the applicant as soon as possible.

The HACL will schedule and send written notice of the informal hearing within 10 business days of the family's request.

### **Conducting an Informal Hearing**

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decisions of the HACL.

The person conducting the informal hearing will make a recommendation to the HACL, but the HACL is responsible for making the final decision as to whether admission should be granted or denied.

The HACL Informal Hearings for Public Housing will be conducted by the Housing Choice Voucher Program Coordinator. The HCV Coordinator is not a subordinate to the Occupancy Outreach Specialist and does not make any decisions pertaining to admissions to the Public

Housing Program.

### Informal Hearing Decision

The HACL will notify the applicant of the HACL's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the HACL will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice
- The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in the HACL policy, then the decision to deny assistance will be overturned. See Chapter 3 of the ACOP for a detailed discussion of the grounds for applicant denial.
- The validity of evidence. The HACL will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the HACL will uphold the decision to deny admission.
- If the facts prove the grounds for denial, and the denial is discretionary, the HACL will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The HACL will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### United States Citizenship and Immigration Services Appeal Process

When HACL receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the HACL must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide HACL with a copy of the written request for appeal and proof of mailing.

The HACL will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the HACL with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The USCIS will notify the family, with a copy to HACL, of its decision. When the USCIS notifies HACL of the decision, the HACL must notify the family of its right to request an informal hearing.

The HACL will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### Informal Hearing Procedures for Applicants

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the HACL provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HACL notice of denial, or within 30 days of



receipt of the USCIS appeal decision.

### ***Informal Hearing Officer***

The HACL must provide an informal hearing before an impartial individual, other than the person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing any documents in the possession of the HACL pertaining to the family's eligibility status, or in the possession of the USCIS, including any records and regulations that may be relevant to the hearing.

The family will be allowed to copy any documents related to the hearing at a cost of .25 per page. The family must request discovery of HACL documents no later than 12:00 pm on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided an opportunity to refute evidence relied upon by the HACL, and to confront and cross-examine all witnesses on whose testimony or information the HACL relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the HACL, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the HACL is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The HACL will not provide a transcript of an audio-taped informal hearing.

### ***Hearing Decision***

The HACL must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

The HACL must retain for a minimum of 5 years the following documents that may have been submitted to the HACL by the family, or provided to the HACL as part of the USCIS appeal or the HACL informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification of consent forms

- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision [24CFR 5.514(h)]

#### [Informal Hearing Procedures for Residents \[24CFR 5.514\(f\)\]](#)

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for the hearing must be made either in 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for the resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found below.



# Grievance Procedures for Public Housing Residents

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## Objective:

The HACL must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or HACL policies which adversely affect their rights, duties, welfare or status. The HACL grievance procedure must be included in the lease.

## Scope:

This policy shall apply to the public housing program administered by the Housing Authority of the City of Lumberton (HACL) and its employees, unless specifically noted.

## Responsibility:

The Director of Housing Services shall be responsible for overall oversight and administration of this policy. The Asset Managers and Assistant Asset Managers shall be responsible for the day-to-day implementation of this policy and for carrying out the following procedures.

## Procedure:

The HACL will only offer grievance hearings to residents of public housing. Grievances could potentially address most aspects of the HACL's operation. However, there are some situations for which the grievance procedure is not applicable.

## Applicability:

The grievance procedure is applicable only to individual tenant issues relating to HACL. It is not applicable to disputes between tenants not involving the HACL. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the HACL.

## DEFINITIONS

- **Grievance**- any dispute which a tenant may have with respect to HACL's action or failure to act in accordance with the individual tenant's lease or HACL regulations which adversely affect the individual tenant's rights, duties, welfare or status.
- **Complainant**- any tenant whose grievance is presented to the HACL or at the project management office.
- **Due Process Determination**- a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.
- **Elements of Due Process**- an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - ❖ Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - ❖ Right of the tenant to be represented by counsel

- ❖ Opportunity for the tenant to refute the evidence presented by the HACL including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
- ❖ A decision on the merits
- **Hearing Officer/Panel**- a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto.
- **Tenant**- the adult person (or persons)(other than live-in aide) who resides in the unit and who executed the lease with the HACL as lessee of the dwelling unit, or, if no such person now resides in the unit, who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.
- **Resident Organization**-includes a resident management cooperation

#### **Informal Settlement of Grievance [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing so that the grievance may be discussed informally and settled without a hearing.

The HACL will accept requests for an informal settlement of a grievance either orally or in writing, to the HACL office within 10 business days of the grievable event. Within 10 business days of receipt of the request the HACL will arrange for a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the HACL will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the HACL's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complainant and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained in the complainant is not satisfied.

HACL will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the HACL's tenant file.

#### **Requests for Hearings and Failure to Request [24CFR 966.55(a), (c) and (d)]**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer, the hearing officer may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the



informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding. [24 CFR 966.55 (c)].

#### **Escrow Deposits [24 CFR 966.55 (e)]**

The HACL will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

Before a hearing is scheduled in any grievance involving the amount of rent that the HACL claims is due, the family must pay an escrow deposit to HACL. When a family is required to make an escrow deposit, the amount is the amount of rent the HACL states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The HACL must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630 (b)(3)].

A family's failure to pay the escrow deposit does not waive the family's right to contest the HACL's disposition of the grievance in any appropriate judicial proceeding. The family's failure to make the escrow deposit will terminate the grievance procedure.

#### **Scheduling of Hearings [24 CFR 966.55(f)]**

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the HACL.

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

Requests to reschedule a hearing must be made orally, or in writing prior to the hearing date. At its discretion, the HACL may request documentation of the "good cause" prior to rescheduling the hearing.

#### **Expedited Grievance Procedure [24 CFR 966.55(g)]**

The HACL will follow expedited grievance procedures for any grievance concerning the termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the HACL, or any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. The hearing officer will have 3 business days to schedule the hearing and 3 business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.

#### **Selection of Hearing Officer**

The HACL grievance hearings will be conducted by a single hearing officer and not a panel. The HACL has designated the *Housing Choice Voucher Coordinator* to serve as the Hearing Officer.



The HACL will appoint a person who has been selected in a manner required under the grievance procedure. Efforts will be made to assure that the person selected is neither a friend nor enemy of the complainant, that they do not have a personal stake in the matter under dispute, and will otherwise not appear to lack impartiality.

### **Rights of the Complainant [24 CFR 966.55(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing and HACL documents. The tenant will be allowed to copy any documents related to the hearing at a costs of .25 per page. The family must request discovery of HACL documents no later than 12:00 pm on the business day prior to the hearing.
- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf. Hearings may be attended by the following applicable persons"
  1. A HACL representative(s) and any witnesses for the HACL
  2. The tenant and any witnesses for the tenant
  3. The tenant's counsel or other representative
  4. Any other person approved by the HACL as a reasonable accommodation for a person with a disability.
- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by HACL or project management, and to confront and cross-examine all witnesses upon whose testimony or information the HACL or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

### **Failure to Appear [24 CFR 966.56 (d)]**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled hearing time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact HACL within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities. "Good cause" is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

### **General Procedures [24 CFR 966.56]**

Any evidence to be considered by the hearing office must be presented at the time of the hearing. There are four categories of evidence.

**Oral Evidence:** The testimony of witnesses

**Documentary Evidence:** A writing which is relevant to the case, for example, a letter written to



HACL. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstration Evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, chart or other diagram.

**Real Evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

### Decision of the Hearing Officer/Panel [24 CFR 966.57]

In rendering a decision, the hearing officer will consider the following matters:

**HACL Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with HACL policy.

**HACL Evidence to Support the HACL Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support HACL's conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in HUD regulations and HACL policies. If the grounds for termination are not specified in the regulations or in compliance with HACL policies, the decision of HACL will be overturned.

The hearing officer will issue a written decision to the family and HACL no later than 10 business days after the hearing. The report will contain the following information:

#### Hearing Information

1. Name of the Complainant
2. Date, Time and place of the hearing
3. Name of the hearing officer
4. Name of the HACL representative(s)
5. Name of the family representative(s) (if any)
6. Names of witnesses (if any)
7. Background- A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.
8. Summary of Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

termination of tenancy, the hearing officer will instruct the HACL to restore the family's status.

### Procedures for Further Hearing

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the HACL will take effect and another hearing will not be granted.

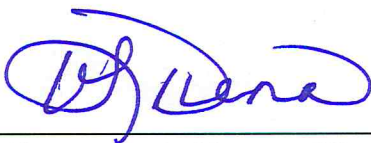
### Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on the HACL which must take action, or refrain from taking the action cited in the decision unless the HACL Board of Commissioners determines within a reasonable time and notifies the complainant that:

- The grievance does not concern the HACL action or failure to act in accordance with or involving the complainant's lease on HACL's policies which adversely affect the complainant's rights, duties, welfare or status or
- The decision of the hearing officer/panel is contrary to Federal, state or local law, HUD regulations or requirements or the annual contributions contract between HUD and the HACL.

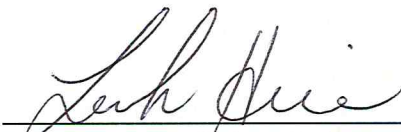
When the HACL considers the decision of the hearing officer to be invalid due to reasons stated above, it will present the matter to the HACL Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of HACL or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].



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Ms. Vanessa Dunn, Director of Housing Services



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Mr. Lemark Harris, Interim Executive Director