

BILL OF RIGHTS
FOR
PUBLIC HOUSING TENANTS

I. RIGHTS OF APPLICANTS FOR PUBLIC HOUSING

Sec. 1. The local agency shall use application forms which provide only such information as is pertinent to the size of the household unit, the income of that household unit and the need of that unit for public housing. Questions concerning the legal standing of the marital status of members of the family, the legitimacy of the children in the family, the police record of members of the family and other such information, including race or religion are specially prohibited from appearing on the application form. Any other criteria beside income and family size which is utilized in determining eligibility by the housing authority must be submitted to the Department of Housing and Urban Development for approval.

Sec. 2. Once the application form has been completed, the applicant must be given a number which indicates his chronological place on the waiting list for the size apartment necessary for his family unless on the face of the application the family is by the published standards ineligible because of excess income or on the face of the application there is shown no demonstrable need for public housing (i.e., that the family lives in decent housing and pays a rent it can afford). For this initial determination, all statements made on the application are deemed to be true.

Sec. 3. For the purpose of determining initial eligibility or ineligibility, all statements made on the application are presumed to be true. If the local authority believes that some or all of the statements are untrue, the authority may conduct an investigation after the initial determination of eligibility has been

made and the person given his chronological place on the waiting list. It is the sole responsibility of the housing authority to collect all information available in public records. The applicant may authorize the authority to collect relevant data not available in public records from persons other than the applicant. No negative inference shall be drawn from the failure of individuals other than the applicant himself to cooperate with the housing authority.

- (a) If the local authority determines that despite the statement given on the application form the person or family are ineligible for public housing because of excess income or no need, the family must be notified in writing within 30 days following the date of the application of their ineligibility and the detailed reasons for it. If the household unit is held to be ineligible and wishes to challenge this determination, a hearing shall be afforded. This hearing shall comply with the provisions of Part III. However, during the time that such procedures are being utilized and until a decision upon the hearing, the person shall continue to be listed as eligible and shall remain on the waiting list in the chronological order based on the original number given to the family.
- (b) Any applicant not notified that he is ineligible within 30 days after the date of the application is deemed to be eligible and thereafter the housing authority may not challenge his eligibility unless there is a substantial change in the income of the family or the composition of the household unit as it relates to income, or the housing authority can demonstrate there is no longer a need for public housing (i.e., the applicant has moved to decent housing at a rent he can afford) or

the authority can demonstrate fraud on the part of the applicant in providing eligibility information.

Sec. 4. Applicants shall be processed in strict chronological order and no priority shall be given except for:

- (a) persons who are forced to relocate as a result of a comprehensive urban renewal program which includes demolition of the premises in which the persons reside or in the event that they are forced to relocate as a result of the Public Housing Authority having acquired the premises in which they reside and said premises are to be demolished so that public housing projects can be built on that site;
- (b) persons who demonstrate urgency of need (i.e., elderly individuals, large families, those who are destitute).

Sec. 5. The local agency must make available for inspection at reasonable times and places the rent schedule in effect at all projects administered by that agency, and the number of apartments available in each project broken down by the size of apartment. The local authority must also make available for inspection the general schedule of maximum income based on family size which will permit persons to be eligible for admission to its projects. The authority must also make available for public inspection the waiting list of applicants.

Sec. 6. When an applicant has been notified that he is eligible and that an apartment is available, he may challenge the housing authority's determination of rent through hearing proceedings outlined in Part III. No lease shall extend for a period of less than 1 year duration.

II. RIGHTS OF TENANTS IN PUELIC HOUSING

Sec. 1. The lease shall be written in clear concise language able to be understood by laymen of average intelligence. Where required, the lease shall be written in the applicants native language if said applicant does not speak English.

Sec. 2. The signed lease does not in any way derogate the rights of the tenant and the authority as declared and guaranteed by the United States Constitution, federal and state statutes, decisional law and regulations promulgated by the Department of Housing and Urban Development.

Sec. 3. No lease, regulation or other written or oral agreement shall permit the termination of a tenancy on grounds other than the following:

- (a) chronic non-payment of rent after efforts have been made to develop a schedule of rent payments throughout the rent period which the tenant could meet;
- (b) commission of active waste (physical destruction) of the leased premises by tenant;
- (c) tenant in over-income as determined by the Housing Authority except where eviction would work extreme hardship on the family unit;
- (d) substantial interference with other tenants in such a manner as to materially diminish their enjoyment of the premises; substantial interference must relate to actual conduct of the tenant and not to such matters as are specifically prohibited from appearing on the applications of prospective tenants by Section 7 of Part I of this Bill of Rights; issues arising from a proposed tenancy shall be submitted to the Hearing Panel and no eviction shall apply except to the individual offender unless he is the head of the family unit and no other responsible individual is a member of the family unit.

- (c) failure of resident to provide the Housing Authority with income statement within 60 days from date of request.

Sec. 4. No local housing authority shall interfere directly or indirectly with the right of its tenants to free speech, to organize or to seek redress of grievances. No tenant shall be evicted or otherwise penalized for engaging in such activity.

Sec. 5. No local housing authority shall interfere with the right of its tenants to quiet enjoyment of the premises they rented nor shall the authority infringe upon its tenants' right to privacy. The authority shall not enter the premises rented by a tenant without the tenant's express permission except for an annual inspection or in an emergency.

Sec. 6. Rent is defined as that sum of money expressly provided for in the lease between the tenant and the housing authority as consideration for housing provided to the tenant. No local housing authority shall levy any fines, fees, or other financial sanctions upon tenants. The cost of repairs shall be charged to a tenant only if the Hearing Panel determines it was caused by the tenant's own malicious or reckless act and such cost of repairs shall be collectible only by a separate civil action.

Sec. 7. Tenants shall be chargeable for repairs only when management can affirmatively establish fault on the part of the tenant. The tenant shall not be responsible for ordinary wear and tear, or for negligence (except gross negligence). Any determination of fault shall be subject to review by the Hearing Panel.

Sec. 8. Where repairs are deemed necessary, a tenant or tenant organization shall have the right to submit a written or oral complaint to the local housing authority. If the complaint is oral, the responsible official of the authority shall reduce that complaint to writing on an appropriate form. If the needed repairs are not of an immediate nature or do not create an emergency situation,

the authority shall have 30 days in which to consider the complaint and take appropriate action. If no action is taken by the authority within that time, the complaint shall automatically be considered by the Hearing Panel. If the repairs are needed immediately, the authority must act within 48 hours. If the authority fails to act, the tenant may contract privately to have repairs made which will eliminate the emergency conditions (i.e., those necessary to eliminate dangers to health and safety). The tenant's action shall be reviewed by the Hearing Panel.

Sec. 9. If the Hearing Panel determines that the complaint is valid, the tenant shall have the option of withholding rent to the extent of rent-impairment determined by the Panel, or to make repairs at his own expense and reduce the rent pro tanto. The Hearing Panel shall have the additional authority to invite local housing inspection unit to inspect subject premises in order to determine existence of housing violation or violations and the housing authority shall waive any immunity it may otherwise possess with respect to the action of such inspection unit.

Sec. 10. Overall responsibility for rodent control and maintenance of hallways, staircases and other common areas of the Project shall rest in the Authority. It shall bear all expenses for materials and labor and shall replace tenants' garbage receptacles in need of same. Where regular garbage collection is insufficient to control infestation, additional collections shall be made at the expense of the Authority.

Sec. 11. The graded rent system, whereby a tenant is charged a rental which accords with his income, shall be applied uniformly.

Sec. 12. Rent shall be redetermined no more often than once a year, preferably once every 2 years, with the exception of "hardship rent." Where, during the course of a tenancy, a tenant undergoes a serious reduction in income and thereby qualifies for the hardship rent, rent shall be

modified downward immediately. Such hardship rent shall then continue until the next annual or biannual redetermination, with the obligation upon the tenant to report any restoration of original income level during this period.

Sec. 13. In any redetermination of income, temporary income shall not be projected on an annual basis, unless tenant's prior work history clearly indicates a pattern of maintaining temporary jobs on a continuous basis.

Sec. 14. Only a substantial "increase or decrease" in family income shall bring redetermination procedures into operation (and require reporting by tenant). Such amount shall be no less than \$400, computed on an annual basis, or other basis if work is temporary. This same principle is to be followed in the case of decrease.

Sec. 15. Decreases in rent shall be retroactive to the beginning of the rent determination period. Increases in rent shall not be retroactive except in cases where the Authority can prove beyond a reasonable doubt that the tenant willfully concealed information. Such a determination shall be made by the Hearing Panel.

Sec. 16. Any disputes regarding redetermination shall be submitted to the Hearing Panel or other arbitration body. The "reduced rent" concept, by which the tenant agrees in advance to be bound by any increases (up to maximum rent), shall be eliminated.

III. THE RIGHT TO AN ADMINISTRATIVE HEARING AND DUE PROCESS

Sec. 1. The local agency shall adopt and promulgate regulations establishing policies for occupancy or continued occupancy which shall give full consideration to the right of tenants or applicants rejected for tenancy in low-rent housing projects to due process of law. Said regulations, which shall be incorporated in all leases executed by tenants at or before the commencement of occupancy and shall be posted on all bulletin boards accessible to the tenants or to the public within the project, shall provide, at least the minimum protections hereinafter set forth.

Sec. 2. Notices

- (a) Every notice of eviction or other sanction against tenants or refusal to take action on the complaints of tenants or of rejection of applications shall be typewritten, signed by an official of the agency and mailed in a postage prepaid envelope addressed to the tenant's apartment of residence in the project, or, in the case of applicants, the address furnished with the application by registered mail, return receipt requested.
- (b) The notice shall advise the tenant, or applicant of the time and place of a hearing on the grounds for the action taken, to be held on a date no less than 10 days after receipt by the tenant or applicant of the notice, and, if feasible, during the evening hours. The notice shall further advise the tenant or applicant in clear and precise language of the specific grounds for the action taken. Where the local agency has reason to believe that the tenant or applicant is Spanish speaking, the notice and all of its contents shall be in Spanish as well as English.
- (c) The notice shall further advise the tenant of: his right to be represented by legal counsel (including the address of the local legal services, legal aid, or other office where such assistance can be obtained) or any other person of his

choosing at the hearing; his right to examine all the written evidence to be used by the local agency against him (at the hearing) prior to and during the hearing, or at any reasonable time after the hearing; his right to other discovery as hereinafter set forth; his right to cross-examine hostile witnesses and to bring his own witnesses; his right to demand that the local agency produce at the hearing any employee whose testimony is alleged relevant. A copy of the rules governing the conduct of hearings shall be attached to the Notice.

- (d) Every such notice of hearing shall issue within 5 days of a final decision by the agency on the application, eviction or complaint, which final decision in the case of applications and complaints shall be made within 10 days after presentation by the applicant or tenant of the application or complaint. In the event the agency fails to comply with the provisions herein, the tenant or applicant may request a hearing unilaterally in a letter to the hearing panel stating the circumstances of the request and, unless the request is frivolous on its face, the panel shall itself schedule a hearing to be held.

Sec. 3. Answer to the Notice

The tenant or applicant shall acknowledge in writing, or in person, receipt of the notice and his willingness to participate in a hearing on the scheduled date, within 5 days of receipt of the notice. If the tenant or applicant does not so acknowledge, and no reasonable excuse is shown, the hearing shall be canceled and the matter terminated. The agency shall give consideration to reasonable requests for postponements of hearing dates.

Sec. 4. Place of Hearings

Hearings under this paragraph shall be conducted, to the extent feasible, in a well-lighted, comfortable room in the project containing ample space and chairs for the parties and for other interested persons.

Sec. 5. Hearing Officers

a) Hearings shall be conducted before a panel of three officers; one officer to be designated by the agency, who shall not be an employee of the agency; one officer to be designated by the tenants of the project, and one officer, to represent the public, to be designated by agreement of the other officers.

b) The representative of the tenants on the hearing panel shall be elected by majority vote of the tenants at a meeting initially called for that purpose within the project on at least ten days notice, published on all bulletin boards, by officers of the tenants' association.

c) All officers shall act in their respective capacities for one year terms to conclude on the same date each year. After the initial designation of the tenants' representative, subsequent elections shall be held on a date exactly one year after the original election unless otherwise agreed to by majority vote of the tenants. In the event of resignation or disability to serve, the successor representatives shall be designated within five days of the effective date of said resignation or disability, to serve as officers for the balance of the respective one year terms. An interim tenants' representative shall be elected in the manner prescribed in subparagraph (b).

d) All officers shall be compensated out of the agency's funds at the rate of twenty-five dollars for each day of hearing service, or substantial portion thereof.

e) The hearing officers shall mutually designate and retain at the commencement of the initial term of service and as often thereafter as necessary, the services of an attorney whose duties shall include attendance at all hearings for the purpose of furnishing legal advice and guidance to the presiding officer and other officers of the panel, and the preparation of the panel's decision in each case, and who shall be compensated for his services out of agency funds at the rate of fifteen dollars for each hour of legal service rendered.

f) The members of the panel shall serve in rotation as presiding officer at each complete hearing. The other officers may participate in the examination of witnesses or in discussions with the parties or counsel but only the presiding officer, with the assistance of counsel to the panel, may make rulings during the course of the hearing.

g) The panel, at its discretion, may elect to hear several cases, separately, at one hearing session and will so advise the agency officials responsible for issuance of notices of hearing.

Sec. 6 Jurisdiction of the Hearing Panel

a) The panel shall have jurisdiction to decide issues relating to rejections of applications for admission to the projects, evictions, or other sanctions sought to be imposed by the agency on tenants, rent determinations, and complaints by tenants against management personnel but not against other tenants (unless such complaints against other tenants are considered as part of an eviction action under Section I (d) of Part II of this Bill of Rights).

b) The panel shall determine whether the action taken by management conflicts with the Housing Act, and the regulations of the Public Housing Administration and the local agency. If the panel determines that a conflict exists, it shall dismiss the notice of eviction, order the application reinstated or order any other necessary and appropriate relief. In the event that the matter of issue does not conflict with a specific provision of the statute or the regulations, the panel shall decide the case, in an equitable manner, with the object of effectuating the humane intent and purposes of the Housing Act.

Sec. 7 Conduct of Hearing

a) Rights of Parties. In any hearing held pursuant to this Section, any party shall have the right to appear, to be represented by counsel or other person of his choosing; to call, examine, and cross-examine witnesses; to introduce into the record documentary or other evidence; and to present an opening statement and closing argument.

(1) Cross-Examination; Exclusion of Certain Evidence. In any hearing the tenant or applicant shall have the right to confront and cross-examine all witnesses who testify or furnish or have furnished evidence adverse to the applicant or tenant; including persons who have furnished information contained in case records, investigation reports, affidavits, statements, and other documents the Housing Authority wishes to introduce into evidence at the hearing. If the Housing Authority fails to produce any such person for cross-examination by the applicant or tenant, no evidence, oral, written, or otherwise, attributable to such person may be admitted in evidence except at the request of the applicant or tenant, provided however that nothing herein shall preclude the admission of evidence otherwise admissible under judicially recognized exceptions to the hearsay rule.

(2) Discovery. At least seven (7) days prior to the date set for the hearing the applicant or tenant shall receive upon request: a list of all witnesses who are to testify on behalf of the Housing Authority; copies of all statements of such witnesses in possession of the Housing Authority which have been reduced to writing and signed or otherwise approved or adopted by the witness; copies of all written or other evidence which the Housing Authority intends to read from or introduce into evidence at the hearing; copies of all statutes, rules, regulations, and policies to which the Housing Authority intends to rely, at the hearing and otherwise in support of its actions. Any witness not disclosed, or document not furnished in accordance with this sub-section may not testify, or be introduced in evidence, at the hearing.

b) Rules of Evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to the provisions of sub-section (a) of this Section, any oral or documentary evidence shall be received except that which is clearly irrelevant, immaterial, or unduly repetitious.

c) Burden of Proof. In any hearing involving an eviction, denial of application, or rent determination the burden of proof shall be on the Housing Authority to support its position by a fair preponderance of the evidence. In a hearing involving any other issue the same burden of proof shall be on the party requesting the hearing. The party having the burden of proof shall present its case first.

d) Transcript. In any hearing held pursuant to this Section a verbatim record of the proceedings shall be kept, either by a stenographer or by an electronic device. When this record shall have been transcribed, copies shall be furnished to the parties. A copy of the transcript shall be furnished to the applicant or tenant free of charge upon request.

e) Briefs. At the conclusion of any hearing, both parties shall be advised of their right to submit briefs in support of their respective positions. The applicant or tenant shall be granted a minimum of two (2) weeks after receipt of the transcript of the hearing in which to file his brief. The Housing Authority shall be granted a minimum of one (1) week after receipt of the brief of the applicant or tenant in which to file a reply brief. A brief is "filed" within the meaning of this sub-section when a copy has been filed with the hearing panel and a copy has been served on the adverse party or his counsel.

f) Decision. No final decision shall be rendered by the hearing board until each member of the board has had an opportunity to review the transcript of the hearing and to read the briefs of the parties. The board shall only consider evidence contained in the record of the hearing, to wit, the transcript, exhibits admitted into evidence, and the briefs of the parties. Decisions shall be by a majority of the hearing panel and shall be binding upon the parties, subject to the right of judicial review provided in Section 8.

(2) The decision shall be in writing and shall set forth in detail the findings of fact and conclusions of law upon which the decision is based. The hearing panel is required in its decision to consider and dispose of all issues and

contentions raised by the parties. Each finding of fact and conclusion of law in the decision must be supported by and in accordance with a preponderance of the reliable and relevant evidence in the hearing record.

(3) A decision shall be rendered within two (2) weeks after receipt by the panel of the case record and briefs of the parties. Copies of the decision shall be served upon all parties and their respective counsel.

Sec. 8. Judicial Review

a) The housing authority and the tenant or applicant, if aggrieved by the decision of the hearing panel, shall have the right to seek such judicial review as is provided by the laws of the jurisdiction in which the hearing was held. The decision of the reviewing court shall be binding on the panel and the parties unless reversed on appeal.

b) The filing of the complaint or petition for review shall not stay enforcement of the decision of the hearing panel, but the hearing panel may order such a stay in the interests of justice, except that the filing of such a complaint or petition shall operate to stay an eviction pending the exhaustion of judicial remedies by the tenant.

c) Within ten (10) days after service of the complaint or petition, or within such further time as the court may allow, the hearing panel shall transmit to the reviewing court a copy of the entire record of the proceeding under review.

d) Nothing in this section shall be deemed in any way to foreclose or diminish the right to other means of judicial review, redress, relief, or trial de novo provided by law.

Sec. 9. Hearing Optional

a) Notwithstanding any other provision contained in this Bill of Rights, the hearing procedure provided herein shall be deemed to be optional with the tenant or applicant. The tenant or applicant shall have the right to refuse a hearing

before the hearing panel and to seek in the first instance such relief as is available from the courts of the jurisdiction in which the housing authority is located.

b) The hearing procedure provided herein shall be deemed to be mandatory on the housing authority. The authority must utilize the hearing procedure in the first instance and may only seek judicial review of decisions of the hearing panel.

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