

# VILLAGE OF NYACK HOUSING AUTHORITY

## HEARING PROCEDURE (NON-SECTION 8)

---

### INTRODUCTION

Pursuant to the the Master Management Plan of the Village of Nyack Housing Authority (VNHA), the VNHA will, under appropriate circumstances, hold an Administrative Review or a hearing pursuant to 9 NYCRR §1627-7.3 in all matters other than Section 8 matters.

A hearing will be held upon the request of an aggrieved person (referred to herein as the Grievant) of the following:

- (a) an appeal of the Board's Decision to terminate a tenancy; or
- (b) an appeal from an administrative denial of an application for admission to VNHA housing;
- (c) an appeal of an adverse ruling, decision or action of the VNHA.

Subsections (a), (b), and (c) are each known as a Tenant Grievance. In each case the person asking for the Administrative Review or the Hearing is called the Grievant.

### PRE - HEARING PROCEDURE

#### Administrative Review Procedures for Grievants.

The following determinations by the VNHA require that the program participant be given an opportunity for an Administrative Review:

1. Determination of the family's annual or adjusted income;
2. Calculation of rent;
3. Termination of tenancy;
4. Determination of unit size for participants under the VNHA's subsidy standards;

Prompt notice of 1 through 4 above, as well as the termination of a tenancy, denial of an application for admission to VNHA housing and any adverse ruling, decision or action of the VNHA, will be given to the applicant with a brief statement of the reasons for the determination, also stating that the Grievant can request an Administrative Review or a Hearing within 10 business days receipt of the denial.

The Administrative Review will be by the VNHA Executive Director. If the Grievant does not appear on the scheduled date and has not requested a change, the Administrative review will not be rescheduled. There will be only one opportunity to reschedule an Administrative Review if requested by the Grievant. The Administrative Review will be conducted within 30 days from the notice date.

1. As to any Grievance or Complaint or Appeal or Tenant Grievance (hereinafter “Grievance”) concerning (a) through (c) , same will first be reviewed and addressed at an Administrative Review by VNHA Executive Director who will attempt to resolve the Grievance. If the Grievance is not resolved, the Grievant may request a hearing before the Board of Commissioners (also referred to as the Board of Review), for all matters other than Section 8 matters. The Grievance will be referred to the Hearing panel. The Grievant will be notified in writing by mail of the date and time of the Hearing along with the hearing procedures.

2. In the cases described in subparagraphs (a) through (c) above (in “Introduction”) and in the definition of “Grievance” below, the VNHA must give the tenant written notice that the Grievant may request a hearing within ten (10) business days after receipt of the Decision as to the Grievance referenced in the Introduction (1) through (4) hereinabove.

3. The notice must be in writing and (i) contain a brief statement of reasons for the decision; (ii) state that if the family does not agree with the decision, the family may request a hearing on the Decision; and (iii) provide a copy of the procedures the family must follow to request a hearing.

Hearing may be requested by the family or the family’s representative.

#### Pre-Hearing Requirements

1. A Grievant is entitled to a hearing whether or not Grievant has filed for and attended an Administrative Review.

2. a. All documentation in support of the Grievant’s objections to the VNHA’s finding or determination after the Administrative Review must be provided to the VNHA at least fourteen (14) days prior to the date of the Hearing. Together with the

documentation, the Grievant shall provide the VNHA with a statement, no more than one handwritten or typewritten page, of why the Grievant believes that the finding or determination by the VNHA after the Administrative Review is incorrect and should not be adopted or, in some situations, be reversed. Failure to submit the statement and documentation may result in the documentation not being admissible for consideration at the Hearing.

b. All documentation in support of the VNHA's determination shall be provided to the Grievant at least seven (7) calendar days prior to the hearing date. Failure to submit the documentation may result in the documentation not being admissible for consideration at the Hearing.

3. Only one adjournment can be given by the VNHA and it is in the sole and absolute discretion of the VNHA Hearing panel as to whether or not to grant an adjournment of the Hearing if so requested by the Grievant. Requests for adjournment must be in writing and either personally delivered to the VNHA or sent by certified mail, return receipt requested, or overnight mail, or recognized courier service, and must be transmitted to the VNHA and will be promptly forwarded to the Hearing panel.

4. The Grievant shall have the opportunity to review the VNHA's file relating to the matter and to make copies at the Grievant's expense of relevant documentation. Copy costs are \$.25 per page.

5. When the Grievant attends the Hearing, the Grievant must be on time and prepared to proceed with the Hearing.

6. The Grievant should bring to the Hearing any written information and witnesses in support of the Grievant's contentions.

7. A Grievance Hearing will be held by the VNHA Board of Commissioners.

8. A Tenant Grievance Hearing will be held by the entire Board of Commissioners as the Board of Review pursuant to 9 NYCRR §1627.7.3..

9. A Grievant must request the Hearing within ten (10) calendar days of the notification that they may request a hearing by filing an appeal directly with the VNHA Board of Commissioners by serving the Appeal on VNHA's Executive Director. A Hearing must be held within 60 days from the date of the Notice.

10. A Tenant Appeal from any administrative ruling or finding of ineligibility for admission or an administrative ruling to terminate a tenancy by a Holdover eviction must be filed with the VNHA Board of Commissioners within 30 days after the Administrative Review is held in accordance with the provisions of the Public Housing Law, §156-a or after receipt of the written notice of the decision of the Administrative Review, whichever is later. At the time of the Decision of the Administrative Review the Grievant must be advised of his right to review by the Board of Review (Board of Commissioners).

11. A Tenant Grievance and request for a hearing must be filed within thirty (30) calendar days from the date of receipt of the Notice from the VNHA Executive Director that the Grievance has not been resolved or granted.

12. Any hearing held shall be governed by the regulations at 9 NYCRR §1627-7.3 and the provisions of this Procedure as set forth herein.

13. Representation of family. At its own expense, the family may be represented by a lawyer or other representative.

## DEFINITIONS

Grievance: (1) Any dispute which a tenant (as defined herein) may have with respect to any VNHA action; or (2) any claimed VNHA failure to act in accordance with the tenant's lease or regulations; or (3) any VNHA action which adversely affects the individual tenant's rights; or (4) VNHA's determination to terminate a tenancy by a Holdover eviction; or (5) an administrative denial of an application for admission to VNHA housing. Disputes subject to the grievance process shall include, but not be limited to, unit transfers, calculation of tenant rent and imposition of additional fees or charges including maintenance charges and additional "rent."

Tenant: "Tenant" shall include any resident of the properties owned or managed by the VNHA or applicant therefor. The term "tenant" is used interchangeably with "family" herein.

Grievant: "Grievant" shall include any "tenant" or "family" as defined above who has requested review of a determination as provided herein.

Service of the Notice: Written notice to the Tenant or the VNHA shall be deemed as received on the third day after transmittal by hand delivery to the VNHA or by recognized

overnight courier service or on the fifth day after mailing by regular and certified mail, return receipt requested, postage prepaid. Failure to accept the copy of the notice from the recognized courier service or the certified mail shall not be effective to extend the time of the receipt of the notice which shall be deemed served as set forth hereinabove.

Notice: A written statement by the VNHA or the Tenant.

Contents Of The Notice:

By VNHA: A statement of the action taken by the VNHA and the reason for the action (or decision) including the Tenant's right to file a grievance, the time frame to request a hearing on the grievance, and the information that the tenant must provide in the hearing request. The notice must be delivered to the tenant by regular and certified mail.

By the Tenant: A Notice by the Tenant which must set forth the specific grounds for the objection to the VNHA action or decision; what issue or issues the Tenant is contesting and why the Tenant believes the VNHA action was in error. The Notice must specify, in detail:

- a) As to Rent Calculation: Why the Tenant claims that the rent was calculated incorrectly and what portion of the rent the Tenant claims was calculated incorrectly. Supporting documents must be provided, where applicable;
- b) As to a Charge or Fee: Why the Tenant claims that the charge or fee was calculated incorrectly or erroneously assessed and what portion of the charge or fee the Tenant claims was calculated incorrectly or wrongly assessed. Supporting documents must be provided, where applicable.
- c) As to Regulatory Errors. Where the Tenant claims that the regulations for the calculation of rent were not followed, the Notice of the Grievance must specify why the rent was calculated incorrectly, what rule or regulation was not followed and in what way, what the correct calculation of the rent should be. Supporting documents must be provided, where applicable.

The notice from the tenant may be delivered to the VNHA offices or sent by the tenant/applicant or tenant/applicant's representative by regular and certified mail.

## ADMINISTRATIVE REVIEW AND HEARING PROCEDURE

Documentation

Where a Grievant claims that he/she provided proof of income; proof of loss of a job or any other documentation that was not considered in the calculation of his/her rent, the Grievant must:

1. Specify the time / date the documentation was provided to VNHA and to whom it was given;
2. Provide copy of receipt from VNHA of receipt of documents;
3. Provide the Documents attached to Grievance / Complaint Notice when filed with VNHA.

When the Grievant comes to the Hearing, the Grievant should take a seat where indicated by the Chair. There will be a short explanation of the purpose of the Hearing by the Chair of the Commissioners.

Commencement of the Hearing.

1. Opening the Hearing

The Hearing will be conducted by the Chair of the Board of Commissioners,

The Chair will “open” the Hearing by calling the Hearing to order.

The Request for the Hearing by the Grievant will be entered into the “Record” as will the Recommendation of the VNHA. The contents will, if deemed appropriate by the Chair, be read into the record in full or in part.

The VH or Grievant will be given the opportunity to make an opening presentation which should be a short summary of the facts that the Grievant wishes the Board to consider.

An Opening presentation will be made by the VNHA. The statements shall not be longer than 5 minutes for each of the VNHA and the Grievant.

2. The Hearing

All witnesses will be “sworn in” or required to “affirm” the truth of their testimony. Other than the parties, all witnesses shall be excluded from the hearing room until their turn to testify.

The Grievant has the opportunity to present witnesses and documents in support of its objection to the VNHA’s proposed determination or finding or action.

The Grievant will introduce any documents it believes relevant in support of its position. The documents will either be read aloud or summarized by the VH or the Grievant. A copy of the Documents will be provided to the VNHA.

After the conclusion of the testimony of the Grievant or witness, the VNHA shall have the opportunity to cross examine the witness, Grievant. After cross-examination there shall be one opportunity for rebuttal and cross rebuttal strictly limited to the preceding testimony and documents.

The VNHA will then present the facts, testimony and documents in support of its proposed determination or action.

The VNHA will introduce any documents it believes relevant in support of its position. The documents will either be read aloud or summarized by the VNHA. A copy of the documents will be provided to the Grievant.

After the conclusion of the testimony by individual witnesses for the VNHA, the Grievant will be given the opportunity to Cross-Examine each witness. Cross Examination will follow the testimony of each witness. Cross Examination shall be limited to the testimony and documents provided. There will be one opportunity for rebuttal and cross rebuttal strictly limited to the preceding testimony and documents.

Only documents relevant to the issues will be admissible and considered.

If the board anticipates a large number of witnesses wishing to testify, it may want to limit the time for each witness' testimony. Limiting statements to 3-5 minutes encourages witnesses to be focused and direct, and permits more people to testify. Provisions may be made so that extra time may be given, should the board consider it necessary.

The Chair should call the witnesses in the order requested by the VNHA and VH or Grievant.

When a witness testifies, it is the Chair's responsibility to prevent the witness from straying too far from the subject, and to remind the witness to speak clearly or to speak into the microphone. The Chair should instruct the witness to present his/her testimony to the board, not to the public. The Chair should also prevent others from interrupting the testimony.

The board members may want to ask questions of witnesses in order to clarify facts and opinions presented in their testimony. Members of the public, if allowed to attend the particular

hearing, may not question witnesses at the Hearing nor may they participate in the Hearing. The Chair may direct any person who creates a disturbance to leave the Hearing.

After the VNHA has presented its case, it ends its case and states “nothing further.”

The VH or Grievant may then present rebuttal witnesses and then the VNHA may present rebuttal witnesses.

The rebuttal witnesses shall be the final presentation of witnesses and documents.

The testimony and document presentation portion of the Hearing shall then be closed by the Chair.

### 3. Conclusion of the Hearing.

Upon the closing of the hearing, the VNHA shall be entitled to make a closing statement of no more than 5 minutes and thereafter, the Grievant shall be entitled to make a closing statement of no more than 5 minutes.

The Chair shall then formally close the hearing.

## POST - HEARING PROCEDURE

The Board of Commissioners will issue a written decision within 14 calendar days from the date of the closing of the Hearing, which will be sent by regular mail to both the tenant and the tenant’s representative, stating briefly the reasons for the decision. Factual determinations relating to the issues at the hearing or the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.