

# FRANKLIN COUNTY CONSOLIDATED HOUSING AUTHORITY

Post Office Box 502 ♦ Winchester, Tennessee 37398

(931) 967-0344 ♦ fax (931) 967-4451

[fcchousing.org](http://fcchousing.org)

CHAIRMAN  
BRENDA JOHNSON

EXECUTIVE DIRECTOR  
LYDIA MCBEE

July 20, 2022

To: FCCHA Residents

Re: Changes to the following policy:  
**Grievance Procedure (draft)**

The above listed policy of the Franklin County Consolidated Housing Authority has been amended by the FCCHA Board of Commissioners at the July 2022 Board of Commissioner's meeting.

The purpose of the policy change was to incorporate updates from Notice PIH 2020-32 that pertain to providing an option for remote hearings for applicants and participants to allow for an informal settlement of a grievance or a grievance hearing.

This amended policy change will be effective pending a sixty-day review period from the date of this notice, during which time you may make comment(s) to your respective Housing Manager or the Executive Director.

The policy revision is available for your review at the main office, located at **136 Ross Lane, Winchester, TN**, and online at **[fcchousing.org](http://fcchousing.org)**. You may also request a copy for your records.

The Administrative Office is open Monday through Friday, 8:00 a.m. to 4:30 p.m.

Sincerely,



Lydia McBee  
Executive Director

# **GRIEVANCE PROCEDURE**

## **Franklin County Consolidated Housing Authority**

### **1. PURPOSE [24 CFR 966.50]**

a. This grievance procedure has been adopted to provide the standards and procedures to assure residents the opportunity for a hearing within a reasonable time if the resident disputes the action or failure to act involving the resident's lease with the Public Housing Authority (PHA) or regulations which adversely affect the individual resident's rights, duties, welfare or status.

### **2. GOVERNING LAW**

a. The law governing this grievance procedure is Section 6(k) of the U. S. Housing Act of 1937 (42 U.S.C. sec. 1437d(k) and subpart B of 24 CFR part 966, as amended.)

### **3. APPLICABILITY [24 CFR 966.51]**

a. The grievance procedure shall be applicable to all individual grievances as defined in Section 4 between the resident and the Housing Authority.

b. The grievance procedure shall not be applicable to disputes between residents not involving the Housing Authority or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between residents, or groups of residents, and the Board of Commissioners of the Authority.

### **4. DEFINITIONS [24 CFR 966.53]**

The following definitions are applicable:

a. "CFR" shall mean the Code of Federal Regulations, which contains the federal regulation governing this grievance procedure.

b. "Complainant" shall mean any resident whose grievance is presented to the Housing Authority office in accordance with Sections 5 and 6.

c. "Elements of Due Process" shall mean an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:

1. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
2. Right of the resident to be represented by counsel;
3. Opportunity for the resident to refute the evidence presented by the Housing Authority 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. "Grievance" shall mean any dispute which a resident may have with respect to the Housing Authority's action or failure to act in accordance with the individual resident's lease or regulations which adversely affect the individual resident's rights, duties, welfare or status. "Grievance" does not include any dispute a resident may have with the Authority concerning a termination of tenancy or eviction that involves:

1. any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other residents, employees of the Authority or persons residing in the immediate vicinity of the premises;
2. any drug-related or violent criminal activity on or off such premises;
3. any criminal activity that resulted in felony conviction of a household member.

e. "Hearing Officer" shall mean a person selected in accordance with Section 6 to hear grievances and render a decision with respect thereto.

f. "HUD" shall mean The United States Department of Housing and Urban Development.

g. "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 PHA 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 tenant family residing in the dwelling unit.

## 5. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

a. Any grievance shall be personally presented, whether orally or in writing, to the Housing Authority office, within five (5) working days of the occurrence giving rise to the grievance, so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared by the PHA within a reasonable time and one copy shall be given to the resident and one retained in the Housing Authority's resident 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 6 may be obtained if the complainant is not satisfied.

## 6. PROCEDURE TO OBTAIN A HEARING

a. Request for Hearing – The complainant shall submit a written request for a hearing to the Housing Authority office within five (5) working days after receipt of the summary of discussion pursuant to Section 5. The written request shall specify:

1. The reasons for the grievance, and
2. The action or relief sought.

b. Selection of Hearing Officer – Grievances shall be presented before a hearing officer. A hearing officer shall be an impartial person selected by the Housing Authority, other than the person who made or approved the decision under review, or a subordinate of such person. Such individual or individuals do not need legal training;

c. Failure to Request a Hearing – If the complainant does not request a hearing in accordance with this paragraph, then the Housing Authority disposition of the grievance under Section 5 shall become final. **Provided**, that failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the Housing Authority's action in disposing of the complaint in an appropriate judicial proceeding.

d. Hearing Prerequisite – All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Section 5 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 5 to the hearing officer, the provisions of this subsection may be waived by the hearing officer.

e. Escrow Deposit – Before a hearing is scheduled in any grievance involving the amount of rent which the Housing Authority claims is due, the complainant shall pay to the Housing Authority 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 or 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 decision of the hearing officer. These requirements may be waived by the Housing Authority in extenuating

circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedures. **Provided**, that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the Housing Authority's disposition of his grievance in any appropriate judicial proceeding. The Housing Authority will waive the requirement for an escrow deposit in cases where either:

1. Complainant is appealing a financial hardship determination related to minimum rent requirements, or,

2. The resident is appealing the Housing Authority's decision not to reduce the annual income of the complainant as a result of a reduction in welfare benefits attributable to fraud or a failure to participate in an economic self-sufficiency program or to comply with a work activities requirement.

f. Scheduling of Hearings – Upon complainant's compliance with paragraphs a, d, and e, of this section, a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the Housing Authority. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate Housing Authority official.

## **7. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

- a. The hearing shall be held before a hearing officer.

- b. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the grievance hearing and, at the expense of the complainant, to copy all documents, records and regulations of the 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 Housing Authority at the hearing;

2. The right to be represented by counsel or other person chosen as his or her representative and to have such person make statements on the complainant's behalf;

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 Housing Authority or project management, and to confront and cross-examine all witnesses upon whose

testimony or information the Housing Authority or project 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 Housing Authority fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the Housing Authority shall be notified of the determination by the hearing officer. **Provided**, that a determination the complainant has waived their right to a hearing will not constitute a waiver of any right the complainant may have to contest the Housing Authority'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 Housing Authority 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 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 maintain 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 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.

h. The following accommodation will be made for persons with disabilities:

1. The Housing Authority shall provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may

include qualified sign language interpreters, readers, accessible locations, or attendants.

2. If the resident is visually impaired, any notice to the resident that is required by these procedures must be in an accessible format.

## **8. INFORMAL HEARING PROCEDURES FOR DENIAL OF ASSISTANCE ON THE BASIS OF INELIGIBLE IMMIGRATION STATUS**

a. The participant family may request that the Housing Authority provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The participant family must make this request within 30 days of receipt of the Notice of Denial or Termination of Assistance, or within 30 days of receipt of the INS appeal decision.

## **9. DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

a. The hearing officer shall prepare a written decision, including the reasons for the Housing Authority's decision, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the Housing Authority. The Housing Authority must 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 Housing Authority and made available for inspection by a prospective complainant, his representative, or the hearing officer.

b. The decision of the hearing officer will be binding on the Housing Authority unless the Board of Commissioners of the Housing Authority determines that:

1. The grievance does not concern Housing Authority action or failure to act in accordance with or involving the complainant's lease or Housing Authority regulations, which adversely affect the complainant's rights, duties, welfare or status; or

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 Housing Authority.

c. A decision by the hearing officer or Board of Commissioners in favor of the Housing Authority or which denies the relief requested by the complainant, in whole or in part, will 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.

## **10. NOTICES**

a. All notices under this grievance procedure shall be deemed delivered: 1) upon personal service thereof upon the complainant or an adult member of the complainant's household, 2) upon the date for or refused by the addressee, in the case of certified or registered U.S. Mail, or 3) on the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail.

## **11. CONCURRENT NOTICE**

a. If a resident has failed a request for grievance hearing hereunder in a case involving the PHA's notice of termination of tenancy, the complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law run concurrently. Therefore, if the hearing officer upholds the PHA's action to terminate the tenancy, the PHA may commence an eviction action in court upon the sooner of, the expiration of the date for termination of tenancy and vacation of premises stated in the notice of termination delivered to complainant, or the delivery of the report of decision of the hearing officer to complainant.

## **12. MODIFICATION**

a. This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the PHA present at a regular meeting or a special meeting called for such purposes. Further, in addition to the foregoing, any changes proposed to be made to this grievance procedure must provide for at least thirty (30) days advance notice to residents and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the PHA before final adoption of any amendments hereto.

## **13. PROCEDURES FOR ALLOWING REMOTE HEARINGS IN PUBLIC HOUSING [Notice PIH 2020-32, Issued: November 20, 2020]**

a. **Purpose.** As the Coronavirus Disease (COVID-19) and social distancing requirements present significant challenges for PHAs to conduct in-person hearings, the following procedures as recommended in Notice PIH 2020-32 will be adopted, and will remain in effect post COVID-19.

Provisions including the use of mail, electronic mail, telephone, and video calls as appropriate will be utilized in the remote hearing process. The preferred method to conduct remote hearings is via video call services such as Zoom; however, other options may be utilized as described below.

In all cases, the remote environments provided will ensure equal opportunity and nondiscrimination for individuals with disabilities and limited English proficiency



(LEP), persons under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964, and the Fair Housing Act.

**b. Definitions.**

- a. **Remote Hearings.** Under Notice PIH 2020-32, a “remote hearing” in public housing refers to the informal hearing for a denial of admission (24 CFR 960.208(a)), the informal settlement of a grievance for a participant (24 CFR 966.54) and the grievance hearing for a participant (24 CFR 966.56).

**c. Requirements for the Technology Platform.**

- a. **Accessibility requirements for persons with disabilities.** FCCHA will take appropriate steps to ensure effective communication with applicants, participants, members of the public, and companions with disabilities through the use of available auxiliary aids and services. FCCHA will furnish appropriate auxiliary aids and services to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, each of the PHA’s services, programs, and activities. Such services will include the Tennessee Relay Services at 1-800-848-0299.
- b. **Accessible Platform.** For a remote hearing, steps for an accessible platform include ensuring any information, websites, emails, digital notifications, and platforms are accessible for persons with vision, hearing, and other disabilities.
- c. **Individualized auxiliary aids or services.** To provide effective communication in a digital context, individualized AA/S may include audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. FCCHA will give primary consideration to the auxiliary aid or service requested by the individual with a disability. Auxiliary aids and services requested will be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

FCCHA will not request or require that individuals with disabilities provide their own auxiliary aids or services. FCCHA will not rely on an adult or minor child accompanying a person with a disability to interpret or facilitate communication for such person, except in an emergency involving an imminent threat to the safety or welfare of an individual or public where there is no interpreter available; or where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communications, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

- d. **Reasonable Accommodations.** If no method of conducting a remote hearing is available that appropriately accommodates an individual's disability, FCCHA will not hold against the individual his or her inability to participate in the remote hearing. FCCHA will consider whether postponing the hearing to a later date is appropriate or whether there is a suitable alternative that meets the participant's needs more expeditiously. The appropriate auxiliary aid or service or reasonable accommodation will depend on the specific circumstances and requirements of the individual to ensure the person with a disability has equal opportunity to participate in and benefit from the remote hearing.
  
- e. **Requirement for persons with Limited English Proficiency (LEP).** FCCHA will take reasonable steps to ensure full and meaningful access to the remote hearing for LEP persons consistent with its obligation under Title VI of the Civil Rights Act of 1964. FCCHA will coordinate with a remote language interpretation service prior to the hearing to provide remote interpretation. Video technology, if available, is preferred over voice-only.

In addition, FCCHA will not rely on minors to interpret. For written materials, FCCHA will engage with a language translation service such as The Spanish Group, LLC. Written materials related to the remote hearing will be provided in a translated format if necessary.

**d. Identifying and Resolving Technology Barriers Prior to the Hearing.**

FCCHA will determine if barriers exist prior to scheduling the remote hearing. If the participant does not have the proper technology access which will allow the individual to fully participate, then the remote hearing will be postponed, or an in-person alternative will be provided. This includes if a witness for the remote hearing is unable to participate due to a lack of access to technology.

- a. **Surveying the Family to Identify Barriers.** To determine if there are technology barriers, FCCHA will survey what technology resources the family has to conduct a remote hearing. FCCHA will ask if the resident has a computer, phone, tablet, laptop that has a camera, internet access, or can the resident go to a place with sufficient privacy and internet access (family, friend, or neighbor's home), or can technology be borrowed. During the survey, FCCHA will meet their obligations under Section 504 and the ADA to effectively communicate to persons with disabilities and under Title VI of the Civil Rights Act of 1964 to provide meaningful access to individuals with LEP.
  
- b. **Resolving Barriers.** Depending on the barriers identified, the following alternatives to a video information hearing may be utilized by FCCHA to resolve a barrier and proceed with scheduling a remote hearing.

- 1. Wi-Fi connection from FCCHA parking lot.

2. Smartphone Apps such as Face Time.
  3. Personal resources for technology access such as family members or friends who could lend the individual a phone or computer.
  4. Voice Only Option (Telephone)
  5. Other options as requested by the individual will be reviewed for adequacy.
- e. **Presenting Documents Prior to a Remote Hearing.** If video or telephone conferencing is used for the remote hearing, all materials being presented, whether paper or electronic, will be provided to the individual or family prior to the remote hearing. Any materials made available to the individual or family will meet the requirements for accessibility for persons with disabilities and persons with LEP.

For documents that contain PII (Personally Identifiable Information) and are provided prior to a remote hearing, FCCHA will minimize the risk of exposure or misuse of the data collected, used, and shared. (Examples of PII are names, SS numbers, biometric records, date and place of birth, and mother's maiden name.) All information containing PII will be mailed to the individual.

- f. **Due Process for Remote Hearings.** In conducting remote hearings, FCCHA will follow HUD regulations at 24 CFR part 966, subpart B (public housing grievance process) and include the procedures in the resident's lease.
- g. **Conducting Discovery and Providing Evidence.** FCCHA may request and copy any of the individual's or family's documents at the PHA's own expense in accordance with the applicable regulations. Additionally, the individual or family will be given the opportunity to examine any PHA documents that are directly relevant to the hearing prior to the remote hearing. This may include transmitting documents electronically or by mail that would normally be exchanged at FCCHA's office. Under Section 504, the ADA, and the Fair Housing Act, FCCHA will make reasonable accommodations when necessary and take appropriate steps to ensure effective communication with individuals with disabilities through the provision of AAS before, during, and after any hearing. This may require changes in how the individual or family seeks discovery of information held by FCCHA and the manner in which evidence is made available to persons with disabilities during remote hearings (while still meeting any applicable rules concerning the acceptance of evidence by the hearing officer). FCCHA will take reasonable steps to ensure meaningful access to LEP persons before, during, and after such remote hearings.
- h. **Procedures governing the hearing.** All other procedures not addressed in Section 13 of this Grievance Procedure, and as specified in 24 CFR 966.56, will remain in effect.

**ADMINISTRATIVE PROCEDURES [24 CFR 966.52]**

1. The PHA grievance procedure shall be included in, or incorporated by reference in, all resident dwelling leases.
2. The PHA shall furnish a copy of the grievance procedure to each resident and to resident organizations.

DRAFT