

# ***HOW TO PREPARE FOR A GRIEVANCE HEARING***

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# DISCLAIMER

- This presentation is for educational purposes only. Opinions or points of view expressed in this presentation represent the view of the presenter alone, and do not necessarily represent the position or policies of DHCD or any Local Housing Authority. Nothing in this presentation constitutes legal advice.



*“There is no grievance that is a fit object of redress by mob law. In any case that arises, as for instance, the promulgation of abolitionism, one of two positions is necessarily true; that is, the thing is right within itself, and therefore deserves the protection of all law and all good citizens; or, it is wrong, and therefore proper to be prohibited by legal enactments; and in neither case, is the interposition of mob law, either necessary, justifiable, or excusable.”*

- Oprah Winfrey, 1999

**\*\*just kidding\*\***

- Abraham Lincoln, 1838



# **PRESENTATION OUTLINE:**

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- Part I – Grievance Hearing Fundamentals
- Part II - Preparing for a Grievance Hearing

# PART I

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## **GRIEVANCE HEARING FUNDAMENTALS**

- LEGAL BASIS – SCOTUS, M.G.L. CH. 121B, 760 CMR 6.08
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- **PURPOSE?**



# DEFINITIONS

## 760 C.M.R. 6.03

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**Grievant.** Any tenant or program participant who files a written grievance with an LHA in accordance with the LHA's grievance procedure. A grievant shall also include any person about whom the LHA holds data (data subject) who pursues an appeal pursuant to 760 CMR 8.00: Privacy and Confidentiality.



# DEFINITIONS

## 760 C.M.R. 6.03

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### Grievance.

- a) An allegation **by a tenant** that an LHA or an LHA employee has acted or failed to act in accordance **with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy** and that the alleged action or failure to act has **adversely affected** the status, rights, duties, or welfare of the tenant or a household member;

# DEFINITIONS

## 760 C.M.R. 6.03

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- b) An allegation by a **program participant** that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or

# DEFINITIONS

## 760 C.M.R. 6.03

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- c) An appeal by a data subject pursuant to 760 CMR 8.00: Privacy and Confidentiality.

# DEFINITIONS

## 760 C.M.R. 6.03

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- d) The meaning of a statute, regulation, or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the LHA is not involved, shall not be the subject of a grievance. **A grievance shall not be filed by a tenant on behalf of another tenant** or any household member of another tenant.

- NOTIFICATION OF RIGHTS (DUE PROCESS)
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- **WHAT ARE THE RIGHTS SPECIFICALLY?**
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- NO RETALIATION
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- **DISCRIMINATION CONCERNS**
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- LHA OBLIGATION
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# **PRE-GRIEVANCE CONSIDERATIONS**

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# TIMELINESS

- Was the request made in a timely manner?
- 7 days for lease termination;
- 14 days for rent determination, or;
- 14 days after tenant first became aware (or should have become aware) of some other matter.

# DISCRETION

- To accept a late request?
- To deny?



# STANDING

- What is standing?
- Who has standing?

# PART II

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## **PREPARING FOR A GRIEVANCE HEARING**

# WHAT ARE THE STEPS TO THE GRIEVANCE PROCESS

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- a. LHA response obligation
- b. Informal Settlement conference
- c. Preparation – Gather documents
- d. Preparation – Scheduling of grievance place, and hearing panel/officer
- e. Grievance hearing
  - i. Grievant was a no show, what next?
- f. Grievance Decision
- g. Appeal Rights

# LHA RESPONSE

- Obligations?

# INFORMAL SETTLEMENT CONFERENCE

- Purpose?
- Benefits?

# SCHEDULING A HEARING

- A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within 14 days or as soon as reasonably practical after the date on which the LHA receives the grievance
- A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.



# HEARING PREPARATION

- Think and prepare like a lawyer!

# HEARING PREPARATION

- Gather and prepare evidence/exhibits to “tell a story”, adding exhibits “for the record”
- Provide “discovery” to grievant
- Keep three (3) copies of exhibits on-hand (in person) or email to grievance officer/panel ahead of time
- Highlight important sections in exhibits
- “Prepare” any witnesses
- Direct comments to Hearing Officer or Panel only



# HEARING PREPARATION (CONT.)

- Where held? Is space accessible?
- Reasonable accommodation considerations
- Is interpreter necessary? May need to allot more time
- Be factual not emotional
- Anticipate arguments the grievant will make, focus on relevant arguments only – don't stray
- Children
- Checklist/form
- Divide up your notes



# GRIEVANCE DECISION

- If tenant is a no show?
- Decision provided within 2 weeks
- Can order whatever relief, if any, that shall be applicable under the circumstances and under applicable laws, regulations, rules and/or policies.

# APPEAL TO BOARD?

- No for good cause terminations
- Yes, for other matters where:
  - the decision is not supported by the facts;
  - the decision does not correctly apply applicable laws, regulations, rules and/or policies; or
  - the subject matter is not grievable

# APPEAL TO DHCD?

- Yes, when Board changes decision
- Can also have a court decide



*Other ways to address grievances*

# QUESTIONS AND ANSWERS

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