

PREPARING FOR LEASE TERMINATION, HEARING & TRIAL



**Professional
Development**

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POLL

How long have you been in affordable housing?

- A. Less than 1 year
- B. 2 - 5 years
- C. 6 - 10 years
- D. More than 11 years

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POLL

Why is this training important to you?

- A. It was requested I take this course
- B. In order to become NAHRO Certified
- C. Career growth
- D. I need a "brush up" on this information

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POLL

Which entity plays the most critical role in lease enforcement?

- A. Residents
- B. Maintenance
- C. Management
- D. Stakeholders (such as Police, Resident Associations, Local Agencies)

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THE LEASE...

- There are elements of the lease that are essential.
- There are elements of the lease that are not essential, but can be useful when unusual situations occur.

Critical Question: **What are some of these elements?**

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THE LEASE...

- Communication regarding issues with or surrounding the lease should always be in writing.
- Discussions regarding lease violations or enforcement should be summarized and issued to both parties.
- Any and all edits, changes, amendments, addendums must be either initialed or signed by both parties.

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WARNINGS

- It is customary for managers to issue written warnings when the lease has been breached in some manner.
- Warning letters are highly effective when used appropriately and judiciously.
- Hearing Officers and Judges can not deny notice was given properly when evidence of warnings are present.

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Which item below best describes the attributes of a Warning Letter?

- The letter should be firm, direct and concise and advise of lease violations and actions to be taken.
- The letter should be concise and advise of alleged lease violations, with an opportunity to discuss or link to services if desired, and a timeline for further review.
- The letter should be direct and advise the resident that termination is imminent, unless certain issues or behaviors cease immediately.
- The letter should be extremely detailed, with references to all information and alleged violations that management has acquired, with deadlines and agreement documents that must be signed as soon as possible.

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CONFERENCE & AGREEMENTS

- Managers may opt to conference with the tenant about the infraction.
- It is customary to have a written agreement ready for signature.
- The agreement identifies the infraction and the tenants acknowledgment of the managers concerns and signs agreement to refrain from future infractions.

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THE TERMINATION LETTER...

- Termination letters should never be rushed and must always be thorough.
- Often, it is best to wait until all the details are clear and documented.
- Often, it is best to wait until a marginal infraction becomes a serious one, but not in all cases.

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THE TERMINATION LETTER...

- The termination letter must clearly identify each and every section of the lease that was breached.
- The letter must also include all details of the events and infractions, and include a reference to any and all documents relating to the termination.
- For example; police reports, complaint letters, eyewitness statements.

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THE TERMINATION LETTER...

- Legal Aid and other attorneys will scrutinize the termination letter for common mistakes or regulatory missteps (in affordable housing cases).
- Most errors occur on the notice provisions, quotes on lease citations and elimination of evidence.
- If evidence is referred to or quoted, attach it to the letter.

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GRIEVANCES (MEETINGS)...

- Legislates talking first.
- Lays down problem solving, emphasizing informal steps before getting more formal.
- Provides you an opportunity to "see their cards" prior to court.
- Learn from this experience! There is usually information presented that should cause an additional review of case documents.

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GRIEVANCES (MEETINGS)...

- These meetings (in cases other than Public Housing or other programs that require grievances) may often resolve the issue.
- Sometimes the meeting provides you with more detailed information that can be useful in your final determination.
- Provision of additional meetings prior to termination indicate a willingness to avoid a negative action.

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GRIEVANCE PROCEDURES FOR PUBLIC HOUSING...

- Informal Process
 - Problem Solving
 - The grievance should be discussed informally with the complainant, and an attempt should be made to settle the grievance without following formal procedures.
 - A written summary of the informal meeting must be issued with the results, and language describing how to request a more formal grievance where terminations are upheld.

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GRIEVANCE PROCEDURES FOR PUBLIC HOUSING...

- Formal Process
 - Hearing
 - The complainant must submit a request to the public housing agency or project office within a reasonable time, as specified in the LHA's adopted grievance procedures.
 - Grievances must be personally presented either orally or in writing as a condition to a hearing.
 - The grievance is presented before a hearing officer or hearing panel.

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During an Informal Grievance the resident provides you with additional potential lease infractions of which you were unaware. These are potentially serious issues, what options are available to you?

- A. None, you are already in the process and you must continue with the entire Grievance Process. Regulations state there must be an Informal and Formal Grievance.
- B. You can add them to your case and move forward, gather whatever documents you can and place them in the file for future use. However, if they have counsel, they may raise objections.
- C. You should request further information from the resident about these other infractions, continue with the informal grievance meeting; contact legal counsel or supervisors immediately after the meeting and decide whether or not to rescind and re-set the termination.
- D. None of the above.
- E. All of the above.

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THE COURT CASE...

- Get ready for the case and handle it seriously!
- Know your evidence well, read it many times prior to heading into the trial.
- Anticipate the arguments, what is the counter argument?
- Know your witnesses! Speak to them prior to trial and make absolutely certain that they show up!

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THE COURT CASE...

- Judges are acutely aware of a well documented and professionally planned case.
- Everyone should "look" the part and remain serious and focused during the trial.
- Be prepared to "make a deal" at the last minute.
- It may be better to enter into an agreement to vacate with additional time, rather than risk losing a case.

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THE COURT DOCUMENTS

- Make copies of all documents and label them clearly. Be prepared for surprise requests for additional documents.
- Never give away your copy. There may be notes or important information on your copy.
- NEVER let anyone have the original file!!
- Always bring the client's rent register; judges often ask for info on payment history.

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THE COURT TESTIMONY

- Make sure that all witnesses arrive on time!
- Bring them with you!
- Your witnesses should be educated and counseled on the event – only answer the question, don't offer information.
- Attorneys look for conflict and a nervous witness.
- "Yes" or "No" are the most preferable responses under cross examination.

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Several days prior to a Formal Grievance Hearing you receive a request from the resident and their Legal Counsel to review the documents in the resident file. What is considered a best practice to complete this process?

- A. Schedule a time for them to review the file. Place them in a quiet, conference room with some means to flag or mark documents that need copying. If there are a large number of copies, make a determination on what/if you will charge them.
- B. Schedule a time for them to review the file. Tell them they only have 30 minutes to advise which documents must be copied. Please set a max allowable number of copies.
- C. Schedule a time for them to review the file. Make certain the file is within the visual sight of an employee at all times.
- D. Just make a copy of the entire file and send it to them electronically.
- E. Schedule a time and confirm in writing. The confirmation should contain your policy on copying, privacy and relevance of documents copied for hearings. During the review, the file should be visible to at least one staff person to insure integrity.

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SUMMARIZING THE PROCESS...

- Warnings and Conference Agreements indicate a willingness to give additional chances.
- The Conference Agreement indicates that the management provided knowledge of the infraction and ability to cure.
- Solid evidence and documents usually “seal the deal” in court. If it does not pass your “smell” test, it won’t convince a judge either.
- It is critical that you are careful not to stray from your termination letter in court.

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SUMMARIZING THE PROCESS...

- Legal Aid/Attorneys will ask for rulings and strikes when you stray from the termination letter.
- These items begin to hurt your arguments and weaken your position.
- If you want to present it in court, please add it to the termination letter.
- It is okay to rescind your letter and start over – the “back up and punt” scenario. This must be done prior to court.

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POLL

Overall, how did it go?

- A. Excellent! I feel rejuvenated!
- B. Great! I learned a lot.
- C. Just ok. Could be better.
- D. I survived.

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