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## STATEMENT OF INTENT

It is the intent of Burleigh County Housing Authority, hereafter known as BCHA, to provide low cost housing to eligible persons and families. No relationship other than Landlord-Tenant is created by these rules and guidelines. All disputes will be resolved by the rules herein.

### PART I – DEFINITIONS

**Activities of Daily Living** – A person who engages in any of the following activities including but not limited to:

- \* Bathing
- \* Sleeping
- \* Meals
- \* Storage of personal belongings
- \* Uses the assisted unit's address on any type of public or legal document or in the procurement of goods and services.
- \* Is observed by reliable witnesses to engage in the activities of daily living at the assisted unit's address for more than seven (7) days in a 30-day period without prior approval by BCHA.
- \* Reports to BCHA from other public agencies and law enforcement officials that they have provided services and/or have served legal papers to a person at the assisted unit's address.
- \* Uses the assisted unit's address as the person's mailing address and/or as the person's address to law enforcement officials or federal or state courts.

**Adjusted Income** – Annual Income less:

- A. \$480 for each Dependent;
- B. \$400 for any Elderly Family or Disabled Family;
- C. For any family that is not an Elderly Family but has a Handicapped or Disabled person other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent (3%) of Annual Income, but this allowance may not exceed the income received by family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled person;
- D. For any Elderly Family or a Disabled Family:
  - 1. With no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent (3%) of Annual Income;
  - 2. With Handicapped Assistance Expenses greater than or equal to three percent (3%) of Annual Income, an allowance for Handicapped Assistance Expenses computed according to paragraph (c) of this section, plus an allowance of Medical Expenses that is equal to the Family Medical Expenses;
  - 3. With Handicapped Assistance Expenses less than three percent (3%) of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceed three percent (3%) of Annual Income;
- E. For a family with Dependents, Child Care Expenses which are not reimbursed; and

F. Earned income of a minor household member who is not the head or spouse.

**Annual Income** – All amounts, monetary or not, which:

A. Go to, or on behalf of, the family's head or spouse (even if temporarily absent) or to any other family member; or,

B. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and which are not listed as exclusions below.

**Annual Income includes, but is not limited to the following:**

A. The full amount, before any payroll deductions of wages, salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services.

B. Net income from operation of a business or profession.

C. Interest, dividends, and net income of any kind from real or personal property. Where the net family assets exceed \$5,000 annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD less the costs incurred in disposing of these assets.

D. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **except** the delayed start of a periodic payment of Social Security or Supplemental Security Benefits.

E. Payments in lieu of earnings, such as unemployment disability compensation, worker's compensation, and severance pay.

F. The full amount of the Welfare assistance grant excluding amounts specifically received to cover out-of-pocket expenses necessary to participate in education and job training and so specified by the Welfare Agency.

G. Periodic and determinable allowances, such as alimony, child support and regular contributions or gifts including amounts received from organizations or from persons not residing in the dwelling.

H. All regular pay, special pay and allowances (such as longevity, overseas duty, rental allowances, allowances for dependents, etc.) of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit except as excluded below.

I. Payments to the head of the household for support of a minor or payments nominally to a minor for his/her support but controlled for his/her benefit by the head of the household or a Tenant family member other than the head who is responsible for his/her support.

J. Relocation payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621-4993).

K. Amounts derived (during the 12-month period) from assets to which any member of the family has access.

**Annual Income does not include the following:**

A. Temporary, nonrecurring or sporadic income (including gifts).

B. Amounts that are specifically received for, or in reimbursement of the cost of medical expenses for any family member.

C. Lump sum additions to family assets such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation settlements for non-back pay awards), capital gains, and settlement for personal or property losses (these are treated as assets, see above).

D. The full amount of student financial assistance paid directly to the student or to the educational institution.

E. The hazardous duty pay to a family member in the Armed Forces away from home and exposed to hostile fire.

F. Income from employment of children (including foster children) under the age of 18 years.

G. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the Tenant family, who are unable to live alone).

H. Amounts received under training programs funded by HUD.

I. Amounts received by a person with a disability that are disregarded for a limited time for purposes of SSI eligibility and benefits because they are set aside under a PASS Plan.

J. Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

K. Amounts received under a Tenant service stipend.

L. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as Tenant management staff. Amounts excluded under this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participated in the employment training program.

M. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

N. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).

O. Adoption assistance payments in excess of \$480 per adopted child.

P. The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988 (42 U.S.C. 1437(t)) or any comparable federal, state or local law during the exclusion period. For purposes of this exclusion the following definitions apply:

1. Comparable federal, state or local law means a program providing employment training and supportive services that:
  - a. Is authorized by a federal, state or local law;
  - b. Is funded by the federal, state or local government;
  - c. Is operated or administered by a public agency; and
  - d. Has as its objective to assist participants in acquiring employment skills.
2. Exclusion period means the period during which the family member participated in a program described in this section, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the family member is terminated from employment with good cause, the exclusion period shall end.
3. Earnings and benefits mean the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job. Note: Incremental earnings are the difference between the family member's current income and benefits and the income and benefits derived from the job training or job.

Q. Deferred period amounts from Social Security and SSI.

R. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.

S. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

T. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance that includes assistance under any program to which the exclusions above apply.

Other amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance program. The following types of income are subject to such exclusions:

1. The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011-2029);
2. Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951-4993); including Experience Works, Senior Aides and Senior Home Companion employees;
3. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1926 (a));

4. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (24 U.S.C. 459 (e));
5. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance program (42 U.S.C. 8621-8629);
6. Payments received from programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552 (b));
7. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-2504);
8. The first \$2000 of per capita shares received each year from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408), or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117); and
9. Earnings in excess of \$480 for each full-time student 18 years of age or older, excluding head and spouse.

If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of 30-days or otherwise BCHA-specified shorter period.

**Child Care Expenses:** Amounts expected to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable head of household or an adult family member to be gainfully employed and/or to further his or her education. The amount deducted shall reflect reasonable charges for childcare and, in the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

**Dependent:** A member of the family (excluding foster children) other than the family head or spouse, who is under 18 years of age, or is a disabled person or handicapped person, or is a full-time student (does not include full-time student who is head of household or spouse).

**Disabled Person:** Disabled person means a person who is under a disability as defined in Section 223 or the Social Security Act or in Section 102(5) of the Development Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped as defined in this section or section 504 of the Rehabilitation Act. Section 223 of the Social Security Act defines disability as:

- A. Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
- B. In the case of an individual who has attained age 55 and is blind within the meaning of "blindness" as defined in the above regulations; inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time.

**Effective Date:** The "effective date" of an examination or reexamination refers to:

A. An examination for admission, the effective date of initial occupancy; and

B. In the reexamination of an existing Tenant, the effective date of the re-determined Total Tenant Payment.

**Elderly Only Designated Housing:** Burleigh County Housing Authority has two buildings known as Crescent Manor and Crescent West which are designated as near-elderly and elderly only.

**Elderly Family:** An elderly family includes a family whose head (including co-head), spouse or sole member is at least 62 years of age; two or more persons at least 62 years of age living together; or one or more persons at least 62 years of age living with one or more live-in aides.

**Elderly Person:** A person who is at least 62 years of age.

**Eligibility Income:** To determine whether a family is income eligible, income shall be determined according to the definition of Annual Income in Part I.

**Evidence of Citizenship or Eligible Immigration Status:** The documents which must be submitted to evidence citizenship or eligible immigration status (C.F.R. 912.6(b)).

**Family:** The term “family” includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

1. A single person, who may be an elderly person, displaced person, disabled person, near-elderly person or any other single person; or
2. A group of persons residing together and such group includes, but is not limited to:
  - (i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
  - (ii) An elderly family;
  - (iii) A near-elderly family;
  - (iv) A disabled family;
  - (v) A displaced family; and
  - (vi) The remaining member of a tenant family.

**Full-time Student:** This is a person who is carrying a subject load that is considered full-time for the educational institution attended. An educational institution includes a state accredited institution.

**Gender Identity:** The term “gender identity” means actual or perceived gender-related characteristics.

**Gross Income:** Is the total annual income as defined in this section.

**Handicapped Assistance Expense:** Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member and that are necessary to enable a Family member to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

**Handicap:** Any condition or characteristic that renders a person an individual with handicaps. Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment or is regarded as having such an impairment.

**Head of the Household:** This is the individual who assumes legal responsibility and responsibility for the behavior of the household determined to be eligible by BCHA and listed by name on the lease.

**HUD:** The term HUD means the United States Department of Housing and Urban Development.

**Live-in Aide:** A person who resides with an elderly, disabled or handicapped person, and

- A. Is determined by BCHA to be essential to the required care of the person;
- B. Is not obligated to support the person; and
- C. Would not be living in the unit except to provide necessary support services.

**Low-Income Family:** A family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD, determined to be eligible by BCHA, and listed by name on the lease.

**Medical Expenses:** Those medical expenses including medical insurance premiums anticipated to be paid during the period for which annual income is computed which are not covered by insurance and are an out-of-pocket expense to the family are calculated pursuant to current IRS Publication 502. (Medical expenses are allowed only for elderly, disabled or handicapped households. The amount allowable as a deduction is the amount that exceeds three percent (3%) of annual income).

**Near Elderly:** A person who is at least 55 years of age.

**Net Family Assets:** Value of equity in real property, savings, stocks, bonds, and other forms of capital investment. To determine net family assets, BCHA shall include the value of any assets disposed of by an applicant or Tenant for less than fair market value (including a disposition of trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination. In the case of a disposition of property as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value.

**Rent:** Amount payable monthly by the family as rent to BCHA is the rent selected annually by the family from the following options:

**Option 1:** Flat Rent. This is the amount of rent based on the market value of the unit as determined by BCHA, or

**Option 2:** Income-Based Rent. This is the highest of:

- A. 30 percent of the family's monthly adjusted income; or
- B. 10 percent of the family's monthly gross income.

**Sexual Orientation:** The term "sexual orientation" means homosexuality, heterosexuality or bisexuality.

**Spouse:** The legal husband or wife of the head of the household.

**Tenant Service Stipend:** An amount (not to exceed \$200 per month) received by a Tenant for performing a service for BCHA on a part-time basis that enhances the quality of life in the development. No Tenant may receive more than one such stipend during the same period of time.



**Utilities:** Electricity or gas.

**Utility Allowance:** A fixed amount is allowed to the Tenant as a deduction from the Total Tenant Payment for utilities purchased separately by the Tenant. The amount of the allowance is based on the average estimated cost of utilities for living units of various bedroom sizes as determined by BCHA's Utility Allowance Schedule. Telephone service and electricity for amenities or excess use of utilities are not covered by the utility allowance.

## **PART II – ELIGIBILITY REQUIREMENTS**

**Eligibility Requirements:** To be eligible for admission, an applicant must qualify as a family.

For purposes of admission a family may be a single person or a group of persons.

**A. Income Limits for Admission:** To be financially eligible, the applicant's family must provide adequate evidence that the Annual Income for the 12-month period following occupancy is not anticipated to exceed the Income Limits for Admission. (See Appendix A - Income Limits).

**B. Other Qualifications:** Elements considered when determining eligibility include, but are not limited to the following:

1. Whether the conduct of the applicant or member of the family in present or prior housing is such that admission could adversely affect the health, safety, or welfare of other Tenants, Authority Staff, the physical environment, or the financial stability of the project. A record of any of the following may be sufficient to deny eligibility:

- a. Non-payment of lawful obligations including rent and utilities.
- b. Disturbance of neighbors.
- c. Destruction of property.
- d. Poor living or housekeeping habits.
- e. Any criminal activity which threatens the health, safety or right to peaceful enjoyment of BCHA's premises by other Tenants or Housing Authority Staff.
- f. Drug-related criminal activity on or off the premises or violent criminal activity.
- g. Reasonable cause to believe that the applicant or a member of applicant's family has a pattern of controlled substance abuse that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other Tenants.
- h. Reasonable cause to believe that the applicant or a member of applicant's family has a pattern of alcohol abuse that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other Tenants.
- i. A record of lease violations and/or excessive damages.
- j. An applicant being investigated or with a record of fraud through another government agency.
- k. Any unauthorized individual staying in public housing for a period of over seven (7) days within a 30-day period without prior written permission from BCHA.
- l. An applicant who certifies false statements or information provided to BCHA on application or other documents related to obtaining tenancy through BCHA.
- m. Persons evicted from public housing, Indian housing, Section 23 housing, any Section 8 program or any other assisted housing program for drug-related criminal activity are ineligible for admission to public housing for a three (3) year period beginning on the date of such eviction.

2. To determine eligibility for admission, BCHA shall rely upon sources of information which may include, but are not limited to: BCHA records, personal interviews with previous landlords, employers, family social workers, parole officers, public records at the district and/or federal court, the statewide Applicant Reselect List (ARS), the state registry list for sex offenders and offenders against children and the Dru Sjodin national sex offender public website, clinics, physicians, school record, foreign or tribal records, newspaper articles, or the police and sheriff departments, computer matching with National Crime Information Center, and other law enforcement entities. This information will be used to determine whether the applicant or applicant's family's prior conduct and behavior is likely to interfere with other Tenants or BCHA Staff to diminish their health, safety or welfare, or be adversely affecting the physical environment or the financial stability of BCHA's low-income housing program.

3. If unfavorable information is received, consideration may be given to the time, nature, and extent of the conduct and to factors which indicate a reasonable probability of favorable future conduct.

**C. Ineligible Applicants:** An applicant shall be ineligible as follows:\*

1. If BCHA determines that the applicant is illegally using a controlled substance. BCHA may waive prohibiting admission if the person demonstrated to BCHA's satisfaction that the person is no longer engaging in illegal use of a controlled substance or abuse of alcohol and:

- a. Has successfully completed a supervised drug or alcohol rehabilitation program;
- b. Has otherwise been rehabilitated successfully; or
- c. Is participating in a supervised drug or alcohol rehabilitation program.

2. If the person or family has been evicted from public housing, Indian housing, Section 23 housing, any Section 8 program or any other assisted housing program because of drug-related criminal activity are ineligible for admission to public housing for a three (3) year period beginning on the date of such eviction.

BCHA can waive this requirement if:

- a. The person demonstrates successful completion of a rehabilitation program approved by BCHA,  
or
  - b. The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated or has removed himself or vacated.
3. If applicant or any member of the family is subject to a registration requirement under a state sex offender registration program, or is required to register as an offender against children under a state registration program.
4. If a family member has been convicted of manufacturing or producing methamphetamine on BCHA premises or on the premises of any other assisted lease.
5. If the applicant fails to meet any other required eligibility criteria.

**\* Burleigh County Housing Authority has implemented a Zero Tolerance "One Strike and You're Out" policy to deny applicants who are involved in drug-related criminal activity.**

Each applicant determined ineligible shall be promptly notified by BCHA in writing of the determination with the reason therefore and of the right, upon request, to an informal hearing.

**Family Break-up:** To remove a family member during the application process the adult head of household may remove a minor from the application by written request to BCHA. The head of household may be required to provide written documentation to show that the minor no longer resides with the family.

An adult member may only be removed from the application as follows: a) the adult family member presents a written request to BCHA to be removed from the application, b) there is a court restraining or protection order in force which prohibits the adult family member from being in or near the unit and/or the other adult member, c) the adult family member is incarcerated for a period to exceed six (6) months, d) the adult family member is hospitalized for a period to exceed six (6) months, or e) when circumstances arise other than those mentioned above which would not deny or interfere with the removed adult family member's rights under the application.

### **PART III – TENANT SELECTION AND ASSIGNMENT POLICIES**

The Tenant Selection and Assignment Policies take into consideration the needs of individual families for low-income housing and the statutory purpose in developing and operating a sound low-income housing program which provides a decent and suitable living environment and which fosters economic and social diversity in the Tenant body as a whole.

**A. Non-Discrimination:** BCHA shall provide housing in a fair and consistent manner to all persons/families interested in renting a BCHA unit. BCHA will not discriminate at any stage of the application/participation process because of race, color, religion, sex, creed, age, handicap, disability, familial status, or national origin. BCHA is bound by the non-discrimination requirements of federal, state and local law. No preference will be shown any applicant because of political affiliation or acquaintance with any public official at the federal, state or local level. BCHA will abide by the non-discrimination requirements of the following:

1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs receiving federal financial assistance;
2. Title VIII of the Civil Rights Act of 1968, which prohibits discrimination based on race, color, religion, sex, handicap, disability, familial status or national origin, in the sale, rental or advertising of housing;
3. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on handicap in programs receiving federal financial assistance;
4. The Age Discrimination Act of 1975, which prohibits discrimination based on age in programs receiving federal assistance;
5. Executive Order 11063, which required HUD to take whatever action is necessary to prohibit discrimination based on race, color, sex, handicap, disability, familial status or national origin, in housing receiving federal assistance;
6. N.D.C.C. 14-02.4, which is the state anti-discrimination law. BCHA shall not discriminate against any applicant because of race, color, religion, sex, national origin, age or mental or physical disability, or status with regard to marriage or public assistance. No preference will be shown any applicant because of political affiliation or acquaintance with any public official at the federal, state, or local level;
7. The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100, 108, 109 and 110;

8. The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable;
9. Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (VAWA.)

Any reports or complaints of discriminatory harassment or other acts of discrimination may be made, either orally or in writing, at the BCHA office to the Tenant's housing technician or, if the Tenant's housing technician is unavailable, the Executive Director.

### **B. Reasonable Accommodation**

Any individual with a disability may request a reasonable accommodation to have access to the benefits of housing or housing assistance equal to the benefits of housing and housing assistance accessed by non-disabled individuals.

To qualify for a reasonable accommodation the individual must meet the following criteria.

1. Be a Public Housing-verified disabled individual.
2. The requested accommodation must be related to the disability. When the disability is not documented or apparent, will request written documentation from a qualified individual or agency that the requested accommodation is needed due to the disability. BCHA will not require verification of the nature of the disability.
3. The requested accommodation must be considered reasonable by BCHA. To be considered reasonable, the accommodation requested should (a) not alter the fundamental business of providing housing assistance. For example: BCHA would not consider a request to provide a grocery shopping or housekeeping service reasonable, as this does not fall within the fundamental business of providing housing or housing assistance, and (b) not create undue hardship or financial burden to BCHA. If more than one accommodation is equally effective in providing equal access to BCHA's services, BCHA retains the right to select the most efficient or economic choice of accommodation.
4. Communication Accommodation. BCHA does take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public, and furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving federal financial assistance in accordance with 24 CFR 8.6 Communication. All interpreters, signers and auxiliary aids must be pre-approved by BCHA if services are to be billed to BCHA.

Whenever a reasonable accommodation is requested BCHA retains the right to determine if the requested accommodation meets the above criteria.

When a request for a reasonable accommodation is denied, the tenant/applicant will be notified in writing of the denial and their right to request an Informal Hearing under BCHA's grievance procedure.

### **C. Tenant Selection and Waiting List Procedures:**

De-concentration of Poverty. BCHA will affirmatively market housing to all eligible income groups. Lower income Tenants will not be steered toward lower income developments and higher income people will not be steered toward higher income developments. Eligible families will be offered all available appropriate size unit(s) to assure family choice to the best level possible. Upon each update of the

Census Tract BCHA will compare the income levels of families residing in each of the developments, the income levels of Census Tracts in which our developments are located, and the income levels of families on the Public Housing Waiting List. Based on this comparison BCHA will develop and implement a strategy to abate any identified concentration in an expedited manner at the time concentration is identified.

2. Income Targeting Procedure. BCHA will implement the statutory requirement that at least 40 percent of newly admitted families in any fiscal year be families whose annual income is at or below 30 percent of the area median income. Monthly reports tracking income for new admissions will be reviewed for compliance with this income-targeting requirement.

In the event that new admissions of extremely low-income families fall below the 40 percent level for the current fiscal year it will be necessary to select applicants from the waiting list based on their meeting the extremely low-income guidelines. This will be accomplished in the following manner:

- a. An applicant at the top of the waiting list will be notified in writing that: (1) their name is nearing the top of the waiting list; and (2) they must contact BCHA to set up an appointment for the initial briefing interview with BCHA Staff.
- b. If after the initial briefing interview an applicant's verified income exceeds the extremely low-income requirement, the applicant will be notified that their name will remain on the waiting list as of their original date and time, but that their housing must be delayed until BCHA has met the HUD income targeting requirement.
- c. This process will continue until BCHA is again in compliance with mandatory admission income guidelines.

3. Placement on Waiting List. In order to be placed on the waiting list, an interested family must submit a completed application to BCHA. Complete applications will be date and time stamped upon receipt in BCHA office and placed on the waiting list in order of date and time received. To be considered a complete application, every question must be answered and the form signed by the head of household listed on the application. The application will not be placed on the waiting list until a completed application is submitted to BCHA.

4. Waiting List Maintenance. The waiting list will be maintained for all eligible applicants by unit size. A second waiting list will be maintained for BCHA's Designated Near-Elderly and Elderly Only units known as Crescent Manor and Crescent West.

A waiting list based on date and time of application will be managed according to:

- a. Type and size of unit.
- b. Near-Elderly and Elderly to be housed in units designated for their use.
- c. Handicapped to be housed in units for their use, i.e. a person needing a handicap accessible unit may take precedence over a non-handicapped person if a handicap accessible unit is available.
- d. Units will be assigned in compliance with Income Targeting Requirements as contained in this plan.
- e. Units will be assigned in compliance with de-concentration procedures when required as contained in this plan.

Applicants will be removed from the waiting list under the following circumstances:

- a. At any time upon the written request of the Applicant to be removed from the waiting list; or

- b. When the Applicant has failed to respond to the notification of an available unit within ten days of the date of the notification; or
- c. When the Applicant has responded to the notification of an available unit and failed to appear for the appointment; or
- d. When the Applicant has failed to return completed landlord references within ten days of the date mailed; or
- e. When the Applicant is no longer eligible for the program; or
- f. When the Applicant has been offered an available unit and has refused the unit; or
- g. When regular mail sent to the address on the completed or updated application is returned by the USPS, unopened and/or undeliverable; or
- h. When the household size of the applicant no longer qualifies for the bedroom size applied for or pursuant to Occupancy Standards.

5. Inactive Files. An inactive file will be disposed of five (5) years from the date it was classified as inactive.

6. Ineligible or Withdrawn Files. Ineligible or withdrawn files will be disposed of five (5) years from the date they were classified as ineligible or withdrawn. Terminated Tenant files will be disposed of five (5) years after audit.

**D. Reassignment or Transfers to Other Dwelling Units**: Reassignment or transfers to other dwelling units shall be made in accordance with Part III, A. Non-Discrimination, as follows:

- a. Tenants shall not be transferred to a dwelling unit of equal size either within a project or between projects, except for alleviating hardships as determined by the Executive Director or his/her designee.
- b. Transfers shall be made to conform to occupancy standards.
- c. Transfers required shall take precedence over new admissions.
- d. Families in over-occupied units shall be offered a larger unit at the first opportunity.
- e. Families in under-occupied units shall be offered a smaller unit at the first opportunity. This may be waived to avoid a vacancy problem, to maintain full occupancy, or to prevent a hardship to the family.
- f. Only one unit will be offered to a family transferring unless there is a hardship situation as determined by BCHA. If Tenant refuses the unit offered, and it is determined by BCHA that there is no hardship to the family, the lease may be terminated by BCHA with a 30-day notice.

**E. Additional Selection Criteria**:

- 1. Selection is determined in accordance with Part III, B. above.
- 2. BCHA can hold a unit for an eligible Tenant for no more than 30 days after notifying the Tenant of the available unit. If BCHA Staff determines extenuating circumstances warrant it, an extension period may be granted up to an additional 30 days.
- 3. All other eligibility requirements apply.
- 4. Each eligible applicant will be offered a suitable unit. If the applicant rejects the unit offered, he/she shall be either moved to the last place on the waiting list or removed from the waiting list, whichever the applicant chooses. If the applicant rejects a unit when their name reaches the top of the waiting list for a second time the application will be made inactive and the applicant informed that he/she must reapply when he/she is again interested. It is not a rejection if the location would create an undue hardship to the applicant. This hardship situation must be verified and accepted by BCHA.

## **PART IV – RENTS AND RENT COLLECTION POLICY**

**A. Schedule of Rents:** At the choice of the Tenant, the Tenant rent shall be one of the following options:

**Option 1:** Flat Rent. This is the amount of rent based on the market value of the unit as determined by BCHA, or

**Option 2:** Income-Based Rent. This is the highest of:

- A. 30 percent of the family's monthly adjusted income; or
- B. 10 percent of the family's monthly gross income.

Where rent computations result in "negative rent" (total Tenant payment less utilities), BCHA shall pay the difference directly to Tenant.

### **B. Rent Collection Policy:**

**Delinquent or Late Rent:** Rent which is not paid by close of business on the 5<sup>th</sup> day of the month in which the rent is due or on such later date which was agreed to by a rent agreement.

**Nonpayment of Rent:** Rent which is not paid by close of business on the last working day of the month for which the rent is due.

1. All Tenants will be notified of Burleigh County Housing Authority's Rent Collection Policy during their initial interview prior to occupancy.
2. All unpaid rents become delinquent on the 5<sup>th</sup> day of each month and unless a written extension (rent agreement) is requested prior to 4:30 p.m. on the 5<sup>th</sup> day of the month and approved by Management. The Tenant shall be notified in writing that the rent is delinquent and that a delinquent (late) rent fee has been assessed to their account.
3. A Tenant may be given an extension beyond the 5<sup>th</sup> day of the month upon request; however, the Tenant must appear in person at the Burleigh County Housing Authority Office (410 South 2<sup>nd</sup> Street) prior to the 5<sup>th</sup> day of the month and request the extension which, upon approval, will be given to the Tenant in writing. If the rent is not paid on the date set forth in the rent agreement, the Tenant will be notified in writing that the rent is delinquent and that a delinquent (late) rent fee has been assessed to their account. The maximum length of an extension of time to pay the delinquent rent as set forth in the rent agreement shall be 30 days. At no time will a rent agreement be approved for payment due after the last working day of the month.
  - (a) All payments will be applied first to outstanding unpaid rent and outstanding unpaid late charges before applying to current rent.
4. If the rent is not paid by close of business on the last working day of the month for which the rent is due, the Tenant shall be considered to be in non-payment of rent which is in material non-compliance with the terms and conditions of the lease. The Tenant will be served with a 14-Day Notice to Pay or Quit (Vacate) in accordance with the terms and conditions of the Tenant's lease.
5. A \$25 fee to cover additional administrative costs will be added to any rents not paid by the 5<sup>th</sup> day of the month or such later date as set forth in an approved, written rent agreement.
6. If payment is not made and the time period for an informal grievance hearing has expired, legal proceedings will be instituted for possession of the dwelling unit. Tenant will be responsible for Management's legal costs in addition to the rent. Partial payment will not affect the eviction process.

7. Receipt of a “Non-Sufficient Funds” (NSF) check will be considered nonpayment of rent and procedures outlined above will apply, including assessment of a \$25 late fee if acceptable payment is not received by the 5<sup>th</sup> day of the month. An additional \$25 NSF charge will be assessed.
8. Nonpayment of rent and/or receipt of a NSF check constitute material non-compliance with the terms and conditions of the lease and could result in termination of tenancy.
9. If Tenant issues one (1) NSF check, Management has the right to require the Tenant to pay future rents by cash, money order or cashier’s check.
10. If Tenant requests a replacement for a lost utility check, a \$25 stop-payment charge will be withheld from the replacement.

## **PART V – ADDITIONAL CHARGES**

**A. Security Deposit:** Each Tenant is required to pay a security deposit in an amount determined by BCHA. The security deposit will be held until the Tenant moves out and will be returned with interest at that time if the following conditions are met:

1. There is no unpaid rent or other charges for which the Tenant is liable.
2. The assisted unit and all equipment are left reasonably clean, and all trash and debris have been removed by the Tenant.
3. There is no damage that is not due to normal wear.
4. All keys issued to the Tenant are returned to the Housing Authority office when the Tenant vacates.
5. Tenant must provide BCHA with a forwarding address.
6. Tenant gives 30-days prior written notice to BCHA.
7. Tenant must have resided in a BCHA unit for nine (9) or more months before interest will be paid on security deposit.

The security deposit may not be used to pay rent or maintenance charges during occupancy. The amount of security deposit shall be a minimum set by BCHA or equal to one month’s gross rent, whichever is greater. The security deposit paid by Public Housing Tenants shall not exceed \$350.

**B. Pet Deposit:** See Appendix C – Lease Addendum Pet Policy.

## **PART VI – RE-EXAMINATION AND RENTAL ADJUSTMENTS**

A. BCHA will re-examine income, assets, expenses and family composition as follows:

1. As required by regulation for Tenants paying income-based rent.
2. Once every three (3) years as required by regulation for Tenants paying a flat rent.
3. When any of the following occur:
  - a. Additional persons will reside in the unit.
  - b. Tenant requests a rent review due to a decrease in family income or change in family size or a change in other circumstances which would lower the rent payment according to HUD regulations.
  - c. The current rental payment was calculated for a temporary time period.
  - d. There is a change in Housing Authority regulations/policies requiring such a review.
  - e. The family requests a flat-rent hardship exemption.
  - f. Tenant requests a rent review due to a decrease in income resulting from welfare program requirements will be processed as follows:



A family covered under Section 12(d) of the 1937 Housing Act is a family that:

- (1) Receives benefits for welfare or public assistance from a state or other public agency under a program for which the federal, state or local law relating to the program requires, as a condition of eligibility for assistance under the program;
- (2) Participation of a member of the family in an economic self-sufficiency program, and
- (3) Resides in a public housing dwelling unit.

For welfare sanctions – income shall be reviewed and changes in rent shall be as follows:

- (1) If a covered family is sanctioned by the public assistance agency for their failure to comply with either, an economic self-sufficiency program or a work requirement, their rent will not be reduced proportionally;
- (2) If a covered family loses benefits due to a lifetime time limit on public assistance, their rent will be reduced proportionally; or
- (3) If a covered family is sanctioned for fraud and their benefits are reduced, their rent will not be reduced proportionally.

When a rent reduction will not occur as set out in (1) and (3) above, BCHA will have written verification from the welfare agency that:

- (1) The family's benefits have been reduced;
- (2) The amount of the reduction; and
- (3) The reason for the reduction.

When BCHA does not reduce the rent charged proportionally for loss of benefits, the failure to reduce the rent can be appealed by the Tenant through BCHA's Grievance Procedure.

- g. When a family requests to switch from a flat rent to an income-based rent and BCHA determines that the family has a financial hardship circumstance.

4. BCHA will phase-in rent for qualified Tenants that transition from welfare to work according to Section 508 of QHWRA. There will be no increase in rent for qualified Tenants who meet eligibility for the disregard program in the first 12 months after employment. Rent will increase 50 percent of the regular increase in the income of a qualified working Tenant in the second year (for the second 12 working months). The income of the qualified Tenant will be counted at 100 percent after the disregard period has ended or 48 months have passed, whichever comes first for the third year.

5. When a Tenant reports to BCHA the disclosure of income letter they have received from HUD regarding income matching.

B. At both the annual and the three (3) year re-examination the Tenant is required to:

- a. Provide releases of information;
- b. Complete Personal Declaration form;
- c. Verify ALL income, assets and deductions;
- d. Provide current information on family composition; and
- e. Provide evidence of citizenship or eligible immigration status, if they have not already done so.

C. If at the conclusion of an annual, interim or three (3) year review, it is found that the rent currently being charged is no longer in conformance with HUD regulations, the rent will be adjusted accordingly.

D. Increases in rent resulting from rent reviews are effective on the first day of the second month following the change (except for changes for participants in the Mandated Income Disallowance Policy, see Appendix G). Decreases are effective the first day of the month following the change. All changes in income and household size must be reported in writing within ten (10) calendar days of the change.

E. If it is found that the size or composition of a household has changed so that the unit occupied by the family contains a number of rooms less or greater than necessary to provide decent, safe and sanitary accommodations, BCHA shall transfer the family to another dwelling unit according to the transfer procedures as set out in this plan.

F. If it has been found that a Tenant misrepresented to the Housing Authority the facts upon which rent is based, so that the rent paid is less than should have been charged, then the increase in rent is made retroactive to the date the change should have been made. If BCHA determines that the Tenant has gained admission or remained in occupancy in BCHA's project through the Tenant's willful misrepresentation of income, assets, or family composition, BCHA may serve a 30-day Notice of Termination of Lease and may file charges against Tenant in district court for theft of services or fraud.

G. If BCHA finds that a Tenant intentionally or deliberately misrepresented his/her income, assets, deductions or family composition, the Tenant may be given Notice of Termination of Lease at the time the misrepresentation is discovered, whether or not the Tenant is eligible when the misrepresentation is discovered. Tenant has the right to request to pursue BCHA's grievance procedures.

## **PART VII – VERIFICATION OF STATEMENTS AND INCOME**

All applicants and Tenants shall be required to furnish proof of any statements, when requested by BCHA, to reasonably assure accuracy.

When an applicant or Tenant reports annual income of zero, BCHA may require the absence of such income to be verified every 60 days.

All verifications will be obtained prior to the signing of a lease and for all subsequent re-examinations to ensure that current and accurate data is used in calculating rents, eligibility and unit size.

Applicants and Tenants must furnish verification or provide authorization to BCHA to obtain verification from a third party of all statements regarding income, assets and allowances.

When a Tenant or applicant's participation in or completion of a drug abuse, alcohol abuse or other counseling program is required for admission or continued occupancy, the applicant or Tenant must provide releases of information to BCHA for such counselors or agencies as are involved for purposes of determining eligibility.

All income, assets and each applicable deduction or exemption is verified at the time of admission and at each subsequent re-examination. Income will be verified by third-parties where feasible. If third-party written verification is not possible, a review of documentation provided by the family, such as employer's W-2 forms, benefit checks, income tax returns, benefit award letters, savings and checking account statements, estimated market value of real estate from tax statements, United States savings bond redemption values, and other supporting documents may be accepted. In cases where third-party

verification is not used, BCHA will document the reason another method was used. (US Treasury checks will not be photocopied).

The following will be verified and documented in Tenant files:

1. Age of family members when the sole factor determining eligibility is based on age or to support exemptions claimed for minors.
2. Displacement, handicap, disability or age when they are a factor in determining eligibility for a placement on the waiting list or unit assignment. For persons who claim disability but do not receive benefits under Section 223 of the Social Security Act or Section 102(b) 5 of the Developmental Disabilities Services and Facilities Construction Amendment of 1970, or any other disability insurance, and when applicant or Tenant has no other means of verifying disability, a doctor's certification as to the degree and possible length of such disability or equivalent may be required. The receipt of veteran's benefits for disability, either service-incurred or otherwise, does not automatically establish eligibility.
3. Full-time student status.
4. Non-economic selection criteria. When the basis for possible denial of eligibility is the past conduct of the applicant or members of his or her family, BCHA may request additional information including, but not limited to:
  - a. Verification of past rental history;
  - b. Interviews with clergy, advocates, counselors, parole officers, local law officers, etc.; and
  - c. Review of public records.

## **PART VIII – OCCUPANCY STANDARDS & REQUIREMENTS**

**A. Occupancy Standards:** Units are assigned so that no persons of the opposite sex, other than head, co-head and children below the age of six (6) years will occupy the same bedroom. When possible, units also should be assigned not to require use of living rooms for sleeping purposes. Every member of a family regardless of age should be considered a person. The following will determine the number of bedrooms required for a family of a given size except that such standards may be waived when a vacancy problem exists and it is necessary to achieve or maintain full occupancy by temporarily assigning a family to a larger unit than is required. Such family would be transferred to the proper size unit as soon as one is available. When transfers are necessary, they take priority over new admissions.

Generally assignment of units will be made as shown below:

<u>Number of Bedrooms</u>	<u>Number of Persons</u>	
	Minimum	Maximum
0	1	1
1	1	4
2	2	6
3	3	10
4	5	12

The relationship, age, sex, health or handicap of the members of the family may be taken into consideration in assigning families within the above ranges.

**B. Family Absences from Unit:** A unit under lease may not be left unoccupied for greater than 45 days, whether or not the Tenant pays rent and/or utilities on the unit unless otherwise approved in writing by BCHA. Criteria used to determine if a family is absent from a unit include but are not limited to:

1. Rent is unpaid.
2. Utilities are not in service.
3. Papers piled up in front of door.
4. Mail not collected, or Post Office reports a forwarding address has been placed at the Post Office by the family.
5. Reports by neighbors or other individuals that the unit is vacant.
6. Emergency inspection to view unit.
7. Attempts by BCHA Staff through mail and telephone to contact the family.
8. Newspaper or other reports that the individual is incarcerated or deceased.

When BCHA determines that a unit is abandoned by the Tenant family, the unit will be reinstated to BCHA in accordance with BCHA's Abandonment Procedure (See Appendix D).

**C. Changes in Family Composition:**

1. To add a family member, foster child or live-in aide to a Tenant's lease, the Tenant must:
  - a. Provide a written request to BCHA.
  - b. Complete a Personal Declaration including the proposed new family member so that the additional family member may be screened for eligibility.
  - c. Supply all required documentation for proposed new family member, foster child, live-in aide, etc.
  - d. Not allow the proposed new family member to reside in the unit for more than seven (7) days in a 30-day period without prior approval from the Housing Authority prior to the proposed new family member being determined to be eligible by BCHA Staff and being officially added to the lease. (Exception: a newborn, adopted baby or foster child may reside in the unit during the process of determining eligibility to be added to the lease as a family member).
2. To remove a family member from the Tenant's lease the following procedures must be followed:
  - a. The adult head of household may remove minors from the lease by written request to BCHA. The Tenant may be required to provide documentation to show that the minor no longer resides in the unit when BCHA requests such information.
  - b. An adult member of the household may only be removed from the lease as follows:
    - (1) The adult member presents a written request to BCHA to be removed from the lease.
    - (2) The court evicts the adult family member from the unit.
    - (3) There is a court restraining or protection order in force which prohibits the adult family member from being in or near the unit.
    - (4) The adult family member is incarcerated for a period to exceed six (6) months.
    - (5) The adult family member is hospitalized for a period to exceed six (6) months.
    - (6) When circumstances arise other than those mentioned above that would not deny or interfere with the removed adult family member's rights under the lease.

- (7) When a family breakup reduces the number of family members, the occupancy standards and requirements will be reviewed to reflect the reduced size of the family.

**D. Unit Uniform Physical Condition Standards:** BCHA will inspect all BCHA-owned units in accordance with BCHA's written procedures for uniform physical condition standards inspections as set out in 24 C.F.R. 902.23.

## **PART IX – LEASING**

- A. Prior to admission a lease shall be signed by the family head of household and any other adult members of the household and executed by BCHA.
- B. The lease is to be current at all times and must be compatible with BCHA policies as well as state and federal law.
- C. Notices of Rent Adjustments which are issued to amend the lease need not be signed by either the Tenant or BCHA.
- D. Schedules of special charges for services, repairs and utilities, and rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in BCHA office and shall be furnished to applicants and Tenants upon request. Such schedules, rules and regulations may be modified from time to time, provided that at least 30-days written notice is given setting forth the proposed modification, the reasons therefore, and providing the Tenant an opportunity to present written comments which shall be taken into consideration prior to the proposed modifications becoming effective. A copy of such notice shall be:
- a. Delivered directly or mailed to each Tenant;
  - b. Posted in a conspicuous place at the Housing Authority office; or
  - c. Posted on BCHA's website at [www:burleighcountyhousing.com](http://www.burleighcountyhousing.com).
- E. Any modifications of the lease other than noted above must be accomplished by a written addendum to the lease signed by both parties.

## **PART X – LEASE TERMINATIONS**

### **A. When the Lease may be Terminated**

1. The Tenant may terminate the lease by providing BCHA with 30-days written notice as defined in the lease agreement.
2. The lease may be terminated by BCHA at any time by the giving of written notice for violation of the terms of the lease, HUD regulations or for other good cause.

**B. Grounds for Termination of the Lease:** Listed below are grounds for termination of the lease or denial of public housing for action or failure to act by the applicant/Tenant, any member of the applicant/Tenant's household or guest(s), and the period of ineligibility to apply for or receive public housing through BCHA after denial or termination is shown in parenthesis at the end of each item listed below. These grounds include, but are not limited to the following:

1. Violation of any term of the lease. (At least one (1) year from denial or vacate date).
2. Violation of any HUD regulation. (At least one (1) year from denial or vacate date).
3. Violation of BCHA rules as set out in this plan. (At least one (1) year from denial or vacate date).
4. Criminal activity that threatens the health, safety or right to peaceful enjoyment of BCHA's public housing premises by other Tenants or BCHA Staff. (Shall be determined on a case-by-case basis considering the level of violence or threatened violence and based on a preponderance of the evidence).
5. Any drug-related criminal activity on or off the premises.

Drug Use and Possession – Illegal use or possession: When the incident is personal use or possession the family member shall show addiction and complete treatment (must be verified and accepted by BCHA) or shall be ineligible for three (3) years from date of last incident.

Manufacture and Selling: When the incident is illegal manufacture, distribution, or possession with intent to manufacture, sell or distribute a controlled substance, the applicant/Tenant shall be ineligible for five (5) years from the date of last incident.

6. Failure to pay rent or other charges. (At least one (1) year from denial or vacate date, and the family executes and is current on a repayment agreement or has repaid the amount in full).
7. Disturbance of neighbors. (Decided case-by-case but in no case for less than one (1) year from the denial or vacate date).
8. Destruction of property. (Decided case-by-case but in no case for less than one (1) year from the denial or vacate date, and the family executes and is current on a repayment agreement or has repaid the amount in full).
9. Poor living or housekeeping habits which result in the unit failing inspection and/or which creates an unsafe or unsanitary condition in the unit or on the project premises. (Case-by-case but at least one (1) year from denial or vacate date).
10. Reasonable cause to believe that the Tenant or a member of Tenant's family or guest(s) has a pattern of alcohol abuse that interferes with the health, safety or right to peaceful enjoyment of the premises by other Tenants. (Case-by-case based on the preponderance of the evidence but in no case less than one (1) year).
11. Reasonable cause to believe that the Tenant, a member of the Tenant's family or guest(s) has a pattern of controlled substance abuse that interferes with the health, safety or right to peaceful enjoyment of the premises by other Tenants. (Case-by-case based on the preponderance of the evidence but in no case less than one (1) year).
12. Tenant allows unauthorized individual(s) to stay in public housing unit for a period of more than seven (7) days within a 30-day period without prior approval of BCHA. (One (1) year from denial or vacate date).
13. Tenant certifies false statements and documents. (Three (3) years from denial or vacate date).

14. Tenant fails to complete interim re-certifications as set out in this plan, and annual and three-year re-certifications as required by HUD. (One (1) year from denial or vacate date).
15. Tenant fails to submit BCHA-requested releases of information and other documentation as requested by BCHA to comply with this plan, the Tenant's lease, HUD regulations and any other federal, state or local law which binds the Tenant and/or BCHA within the time specified by BCHA. (One (1) year from denial or vacate date).
16. Failure to provide Social Security numbers for household members over the age of six (6) years. (One (1) year from denial or vacate date).
17. Failure to provide evidence of citizenship or eligible immigration status. (One (1) year from date of denial or vacate date).
18. Failure to keep utilities in service. (One (1) year from denial or vacate date).
19. Failure to report increased income or family composition changes within ten (10) calendar days of the date the change occurs. (One (1) year from denial or vacate date).
20. Vacates unit in violation of lease. (Case-by-case but in no case less than one (1) year from vacate date).
21. Knowingly omits or under-reports income or assets of self or household member. (Three (3) years from denial or vacate date, and any amounts of money owed to BCHA repaid in full).
22. Transfers income or assets to obtain/retain false eligibility. (Three (3) years from denial or vacate date).
23. Overstates deductions/allowances/expenses. (Three (3) years from denial or vacate date, and any amounts of money owed to BCHA repaid in full).
24. If any family member has been evicted from public housing, Indian housing, Section 23 housing or any Section 8 Assisted Housing. (Three (3) years from eviction).
25. If any family member has been convicted of manufacturing or producing methamphetamine on the premises of assisted housing. (Ineligible for lifetime).
26. If any family member is subject to a lifetime registration requirement for sex offenders. (Ineligible for lifetime).
27. Any family member who is required to register as a sex offender or offender against children will not be eligible to receive assistance from Burleigh County Housing Authority until the time has run requiring them to register as a sex offender or offender against children and until their name is removed from the North Dakota Office of Attorney General Convicted Sex Offenders and Offenders Against Children- Public List or any other convicted sex offenders and offenders against children lists; and the period, if any, of ineligibility based on the date of the incident as set out in BCHA's Public Housing Admissions and Occupancy Administrative Plan has also run or expired.

28. Family fails to comply with the Community Service requirement as set out by HUD and BCHA's Administrative Plan. (One (1) year from denial or vacate date, and until Community Service hours are completed in full and verified to BCHA).

29. If a member of the household or a guest is fleeing to avoid prosecution or avoid custody, confinement, sentence requirements, or revocation of probation after conviction for a crime, or attempts to commit a crime that is a misdemeanor or a felony under the laws of the state in which such crime was attempted. (Case-by-case but at no time less than one (1) year from the date of the incident of fleeing).

30. If a member of the household is violating a condition of probation or parole imposed under federal or state law. (Case-by-case but at no time less than one (1) year from the date of the incident of violating probation or parole).

31. If a family member has knowingly permitted a person who is neither a citizen nor a national of the United States to reside in the assisted housing unit of the family member. (Two years from denial or vacate date).

Determination that a Tenant, Tenant's family or guest(s) has violated the lease, BCHA's Admissions and Occupancy Administrative Plan, HUD regulations or federal housing law which requires that the applicant be denied or the Tenant evicted from the premises shall be based on the preponderance of the evidence rather than the standard of "beyond a reasonable doubt" in criminal law.

Verification of any of the above violations is considered grounds for Termination of Lease or other appropriate action to correct the violation(s).

**Burleigh County Housing has implemented a Zero Tolerance "One Strike and You're Out" policy to remove Tenants who are involved in drug-related criminal activity.**

Before BCHA takes any adverse action based on a criminal conviction record, BCHA must provide the applicant or Tenant with a copy of the criminal record and an opportunity to dispute the accuracy or relevancy of the record through BCHA's grievance procedure as set out in this Plan.

Failure by BCHA to terminate on the basis of one incident is not a waiver of any legal remedies or termination at a later date. If BCHA terminates the lease, written notice will be given as follows:

- a. Ten (10) days prior to termination in the case of failure to pay rent.
- b. Three (3) days for drug-related activity on or off the premises, violent criminal activity or alcohol abuse that threatens the health, safety or peaceful enjoyment of the premises by other Tenants or BCHA Staff.
- c. A reasonable time based on the circumstances in the case of Tenant or Tenant's guests or other persons under the Tenant's control creating or maintaining a threat to the health or safety of other Tenants or BCHA employees, or the safety of the unit or the project with the exceptions set out in b. above.
- d. Thirty (30) days in all other cases.

C. Notice of Termination to Tenants shall state the reasons for the termination, shall inform the Tenant of his/her right to make such reply as he/she may wish and of his/her right to request to pursue BCHA's grievance procedure and the elements of due process, except where the grievance procedure is not required by statute.



D. When BCHA is required to afford the Tenant the opportunity for a hearing under BCHA's grievance procedure for a grievance concerning the lease termination (24 C.F.R. 966.51(9)(1)), the tenancy shall not terminate (even if any notice to vacate under state or local law has expired) until the time for the Tenant to request a grievance hearing has expired, and (if a hearing was timely requested by Tenant) the grievance process has been completed.

E. Appeals concerning the obligations of the Tenant or BCHA under the provisions of the lease shall be processed and resolved according to the grievance procedure of BCHA in effect at the time such grievance or appeal arises, which procedure is posted in BCHA office.

F. Terminated Tenant files shall be disposed of five (5) years after audit.

When making a determination to deny an application for housing to an applicant or to evict a Tenant because of action or failure to act by members of the family, BCHA has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial of or eviction from public housing on other family members who were not involved in the actions or failure to act. All decisions will be made on the preponderance of the evidence.

## **PART XI – COMMUNITY SERVICE AND SELF-SUFFICIENCY REQUIREMENTS**

Burleigh County Housing Authority will comply with the BCHA Community Service Requirement Policy and Procedures for Tenants in Public Housing. (See Appendix F).

## **PART XII – GRIEVANCE PROCEDURE**

### **Grievance Procedure for an Applicant**

**A. The applicant must appear personally at Burleigh County Housing Authority's office, 410 South 2<sup>nd</sup> Street, Bismarck, ND to present his/her grievance (phone calls or mailed in requests are not accepted other than as a reasonable accommodation for a person with disabilities who has notified BCHA in advance that he/she cannot comply with that requirement due to a disability condition).**

The request for an informal hearing may be presented orally or in writing. When the request is written, it must be signed by the applicant. The grievance must be presented no later than ten (10) calendar days from the date of notice of action or proposed action.

The request shall specify:

- a. The particular ground(s) on which it is based;
- b. The action requested; and
- c. The name, address and telephone number of the applicant and similar information about his/her representative, if any.

FAILURE TO REQUEST AN INFORMAL HEARING AS SET OUT ABOVE WILL BE DEEMED A WAIVER BY APPLICANT OF APPLICANT'S RIGHT TO A HEARING ON THE GRIEVANCE.

B. The applicant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any BCHA documents directly relevant to the hearing. The applicant is allowed to copy any such document at the applicant's expense. If BCHA does not make a document available for examination upon request, BCHA may not rely on such document at the informal hearing.
2. The right to be represented by counsel or other person chosen as the applicant's representative.
3. The right to present written or oral objections to the Housing Authority's decision.
4. A decision based solely upon the preponderance of the evidence presented at the hearing.
5. Reasonable accommodations for persons with disabilities to participate in the informal hearing.
6. A written decision will be issued by the hearing officer within ten (10) working days of the hearing. A copy will be mailed to the applicant and a copy will be retained with the application on file at BCHA. This summary will include the names of the participants, the date of the informal hearing, the proposed disposition and specific reason(s) therefore.

A decision by the hearing officer in favor of BCHA or which denies the relief requested shall not constitute a waiver of the rights of the applicant to a judicial hearing by the applicant in whole or in part.

C. Scheduling.

1. Upon applicant's compliance with the above procedures, a hearing shall be scheduled promptly by BCHA for a date, time and place acceptable to the hearing officer and reasonably convenient to both the applicant and BCHA.
2. A written notification specifying the date, time and place of the hearing shall be mailed to the applicant.
3. When an applicant wishes to reschedule the date and time of the scheduled informal hearing, he/she must contact BCHA 24 hours prior to the date and time of the scheduled hearing.

D. Failure to Appear.

If the applicant fails to appear at the scheduled hearing, the applicant shall be deemed to have waived his/her right to an Informal Hearing on this matter and the disposition of the grievance proposed by BCHA shall become final.

## **GRIEVANCE PROCEDURE FOR A TENANT**

### **Definitions:**

A. A "grievance" is a dispute which a Tenant may have concerning Housing Authority action or failure to act according to the individual Tenant's lease or Housing Authority regulations which adversely affects the individual Tenant's rights, duties, welfare or status.

B. A "complainant" is an adult Tenant whose grievance is presented to the Housing Authority at BCHA's office informally or as part of the informal hearing process.

C. "Hearing Officer" means a person(s) selected according to this grievance procedure to hear grievances and render a decision.

D. A “Tenant” is a lessee of any Tenant family residing in housing owned or leased by BCHA.

E. “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 Tenant of the grounds for terminating the tenancy and for eviction;
2. opportunity for the Tenant to examine prior to trial any relevant documents, records or regulations of BCHA for the purpose of preparing a defense. (The Tenant is allowed to copy BCHA’s documents directly relevant to the eviction. Such copying is at the Tenant’s expense).
3. right of the Tenant to be represented by counsel of his/her choice, and at his/her expense.
4. opportunity for the Tenant to refute the evidence presented by BCHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have.
5. decision based solely and exclusively upon the facts presented at the hearing.

**Complaints Excluded from the Grievance Procedure:**

The following complaints are excluded:

1. Imposition of penalties for late payment, NSF or no checking account penalties, and copying charges.
2. Disputes between Tenants.
3. Class grievances.
4. Grievances filed by a live-in aide or remaining family members.
5. An eviction for activity or activities that threaten the health, safety or right to the peaceful enjoyment of the premises of other Tenants or BCHA employees which may include but are not limited to:
  - Violent criminal activity on or off the premises;
  - Drug-related criminal activity;
  - Domestic violence;
  - Vandalism;
  - Crimes against children;
  - Sex-related crimes; and
  - Alcohol abuse.
6. Any activity resulting in a felony conviction.

When BCHA is not required to afford the Tenant the opportunity for a hearing under BCHA administrative grievance procedure, BCHA shall:

- State that the Tenant is not entitled to a grievance hearing on the notice issued;
- Specify the judicial eviction procedure to be used for eviction of the Tenant; and
- State that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

## **Procedures Prior to a Formal Hearing:**

### **A. Informal Settlement of Grievance**

1. The request shall specify:
  - a. The particular ground(s) on which it is based;
  - b. The action requested; and
  - c. The name, address and telephone number of the complainant and similar information about his/her representative, if any.

FAILURE TO REQUEST AN INFORMAL HEARING AS SET OUT ABOVE WILL BE DEEMED A WAIVER BY COMPLAINANT OF HIS/HER RIGHT TO A HEARING ON THE GRIEVANCE.

2. Within ten (10) working days, a summary of this decision will be mailed to the complainant by the hearing officer and a copy will be filed in BCHA's Tenant files.
3. The summary will include: names of participants, date of the informal hearing, nature of the proposed disposition and the specific reason therefore, and shall specify steps by which a formal hearing can be obtained if a resolution is not reached.
4. When a complainant wishes to reschedule the date and time of the scheduled informal hearing, he/she must contact BCHA 24 hours prior to the date and time of the scheduled hearing.
5. If the complainant fails to appear at the scheduled hearing, the complainant shall be deemed to have waived his/her right to an informal hearing on this matter, and the disposition of the grievance proposed by BCHA shall become final. (Should the action by BCHA be a termination of lease, BCHA will then proceed to district court for an eviction hearing).

The informal hearing must be held within 30 days of the complainant's request for such hearing unless there are extenuating circumstances which are verified by the complainant and accepted by BCHA.

When BCHA fails to hold an informal hearing within 30 days of the complainant's request and no extenuating circumstance has been claimed by the complainant, verified to BCHA and accepted by BCHA, the complainant shall then be notified by mail of procedures by which to request a formal hearing.

If the complainant fails to make a timely request for a formal hearing as set out in the procedures to request a formal hearing complainant shall be deemed to have waived his/her right to such a hearing and BCHA will forward the file to legal counsel for processing through the district court.

### **B. Dissatisfaction with Informal Disposition:**

1. When a complainant or complainant's family is a Tenant and is dissatisfied with the proposed disposition of the grievance as a result of the informal hearing, he/she is entitled to a formal hearing before a hearing officer. (When a formal hearing is requested, the right to a private hearing shall be afforded the complainant unless the complainant requests a public hearing).

If the complainant wishes to request a formal hearing, he/she shall submit a written request. **The complainant must appear personally at Burleigh County Housing Authority's office, 410 South 2<sup>nd</sup>**

**Street, Bismarck, ND to present his/her grievance (phone calls or mailed in requests are not accepted other than as a reasonable accommodation for a person with disabilities who has notified BCHA in advance that he/she cannot comply with that requirement due to a disability condition).** The grievance must be presented no later than ten (10) calendar days from the date of notice of action or proposed action. It may be simply stated, but shall specify:

- a. the particular ground(s) upon which it is based;
- b. the action requested; and
- c. the name, address and telephone number of complainant and similar information about his/her representative, if any.

**C. Failure to Request Formal Hearing:**

1. If the complainant does not request a hearing within ten (10) calendar days, he/she waives his/her right to a hearing and BCHA's proposed disposition of the grievance will become final.
2. The above determination in no way constitutes a waiver of the complainant's right to contest BCHA's disposition of his/her grievance in an appropriate judicial proceeding.

**Procedures to Obtain a Hearing:**

**A. Informal Prerequisite:**

1. All grievances must be presented at an informal hearing as stipulated above as a prerequisite to a formal hearing.
2. The hearing officer may waive the prerequisite informal hearing if, and only if, the complainant can show good cause why he/she failed to proceed informally.
3. If the complainant does not request a hearing within the time period allowed above, he/she waives his/her right to the hearing and proposed disposition of the grievance will become final. This shall not, however, constitute a waiver of the complainant's right thereafter to contest disposition of his/her grievance in an appropriate judicial proceeding.

**B. Escrow Deposit:**

1. Before a hearing is scheduled in any grievance involving an amount for miscellaneous charges and/or rent BCHA claims is due, complainant shall pay to BCHA all miscellaneous charges and/or all rent due and payable as of the month preceding the month in which the act or failure to act took place. (When the grievance is based on BCHA's denial of a Tenant's request for a flat rent hardship exception, no escrow deposit shall be required to be paid by the Tenant).
2. The complainant shall thereafter deposit the same amount of the miscellaneous charges and/or the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer.
3. Failure to make the aforementioned payments shall result in termination of the grievance procedure.
4. Failure to make such payments is not a waiver of any right the complainant may have to contest BCHA's disposition of his/her grievance in any appropriate judicial proceeding.

### **C. Scheduling of Formal Hearing:**

1. Upon complainant's compliance with all procedures as set out above, a formal hearing shall be promptly scheduled by BCHA for a time and place acceptable to the hearing officer and reasonably convenient to both the complainant and BCHA.
2. A written notification specifying the date, time and place shall be mailed to the complainant and the hearing officer by BCHA. The procedures governing the hearing shall be delivered to the complainant and BCHA's representative by the hearing officer at the time of the hearing.
3. When the Tenant wishes to reschedule the date and time of the scheduled formal hearing, the Tenant must contact BCHA 24 hours prior to the date and time of the scheduled hearing. When a Tenant fails to reschedule at least 24 hours in advance of the scheduled date and time, the hearing will be held at the date and time set.

### **Procedure Governing the Hearing:**

- A. The hearing shall be held before a hearing officer.
- B. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which are noted above.
- C. If the hearing officer determines that the issue has been previously decided in another proceeding, the hearing officer may render a decision without proceeding with the hearing.
- D. Failure to Appear:
  1. If the complainant fails to appear at the scheduled hearing, the complainant shall be deemed to have waived his/her right to a formal hearing on this matter and the disposition of the grievance proposed by BCHA shall become final. (Should the action by BCHA be a termination of lease, BCHA will then proceed to district court for an eviction hearing).
  2. Such a determination in no way waives the complainant's right to appropriate judicial proceedings.
- E. At the hearing the complainant must first make a showing of an entitlement to the relief sought, and then BCHA must sustain the burden of justifying BCHA's action or failure to act against which the complaint is directed.
- F. The hearing shall be conducted by the hearing officer in such a way to be:
  1. Informal – 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.
  2. Orderly – the hearing officer shall require that BCHA, complainant, counsel, and other participants and spectators conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings or a decision adverse to the interests of the disorderly party and granting or denial of the relief sought as appropriate.

G. The complainant or BCHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Either party may purchase a copy of such transcript.

**Decisions of the Hearing Officer:**

A. A written decision will be issued by the hearing officer within ten (10) working days of the hearing. A copy will be mailed to the complainant, a copy will be filed in BCHA's Tenant files and BCHA will maintain another file copy with names and identifying references deleted for inspection by a prospective complainant/his/her representative/or hearing officials.

B. The decision of the hearing officer shall be binding on the Housing Authority which shall take all actions necessary to carry out the decision unless the Board of Commissioners determines within five (5) working days and so notifies the complainant that:

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

C. A decision by the hearing officer or Board of Commissioners in favor of BCHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, not affect in any matter whatsoever the rights the complainant may have to judicial review in any proceedings; which may thereafter be brought in the matter.

**Selection of Hearing Officer:**

The Board of Commissioners shall appoint an impartial person or persons as hearing officer(s), upon appropriate notice, who may be an employee of BCHA, provided such person is someone other than the person who made or approved BCHA's action under review or is a subordinate of such person.

**Accommodations of Persons with Disabilities:**

A. BCHA shall provide reasonable accommodations for the complainant with disabilities to participate in the informal and/or formal hearings.

B. If the Tenant is visually impaired any notice to the Tenant which is required must be in an accessible format.