

23.0 GRIEVANCE PROCEDURE

In the administration of programs managed and operated by the Housing Authority of the City of Mexico (hereinafter referred to as “MHA”), disputes may arise over decisions made by staff, that directly involve residents.

1.0 Statement of Purpose (Reference 24 CFR 966.50)

The purpose of this procedure is to set forth the requirements, standards and criteria for a grievance procedure to assure that the MHA resident is afforded an opportunity for a hearing if the resident disputes, within a reasonable period of time, any MHA action or failure to act involving the resident’s lease with the MHA or MHA regulations which adversely affect the individual resident’s rights, duties, welfare or status. This policy supersedes and replaces all prior grievance procedures and policies in effect at the time of final adoption of the MHA Board of Commissioners.

2.0 Applicability

2.01 Scope

This grievance procedure shall be referred to and be incorporated in, by reference, and become a part of the Dwelling Lease. Said grievance procedure shall be binding upon the MHA and the resident. As such, the MHA requests that the resident follow the grievance procedure prior to seeking third party intervention.

2.02 Non-Applicability (Reference 24 CFR 966.51)

Where a determination by HUD has been made that the laws of the jurisdiction provide the resident with an opportunity for a hearing in court that provides the basic elements of due process before eviction, the MHA may exclude any grievance concerning termination of tenancy or eviction that involves:

- 2.02.01 Any criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises of other residents or employees of the MHA.
- 2.02.02 Any drug-related criminal activity on or off said premises or property.
- 2.02.03 Disputes between residents not involving a decision by the MHA.
- 2.02.04 Class grievances
- 2.02.05 Any forums or proceedings intended for initiating or negotiating policy changes between a group(s) of residents and the Board of Commissioners of the MHA.

3.0 Applicant's Grievance Rights (Required 24 CFR 960.207(a))

3.01 Right to and Informal Hearing

3.01.01.1 Applicants will be rejected only for ineligibility or failure to meet the applicant selection criteria. Applicants only have the right to an informal hearing under this Section 3.0 procedures. Subsequent Sections of this grievance procedure do not apply.

3.01.02 If the rejection is a result of the Applicant's failure to complete the application process, the Applicant shall not have the right to an informal hearing. However, if the Applicant disputes the MHA's decision that the application is incomplete based on a substantiated claim that information was already submitted or is not required by the MHA to make a reasonable determination of eligibility, then the Applicant shall have the right to an informal hearing. The MHA shall make the final determination whether or not the Applicant's grounds for requesting an informal hearing falls within the grounds herein set forth, and, as a result, whether or not the Applicant will be given an informal hearing.

3.02 Schedule of Hearing

Upon receipt of the Applicant's written request, the MHA shall schedule an informal hearing. The hearing shall occur within the 30-day period following the Applicant's request for an informal hearing. A reasonable attempt shall be made to conduct the hearing at a mutually convenient time and accessible place for the Applicant and the MHA. Written request for said consideration must be included in the Applicant's written request for an informal hearing.

3.03 Contents of the Rejection Letter

Applicants who are rejected by the MHA will receive a letter that informs them of the rejection, explains why they were rejected, and notifies them that they may contest the rejection in an informal hearing within ten days of the date of the letter of rejection.

3.03.02 The Notice of Rejection to the Applicant must include the above information plus a description of the informal hearing process. The Notice of Rejection will advise Applicants with disabilities of their rights to a request for reasonable accommodation.

3.03.03 The Notice of Rejection shall inform the Applicant that if he or she has a disability meeting the currently accepted definition of same, he or she is entitled, upon advance request, to an interview to discuss mitigating circumstances or to request reasonable accommodation.

3.04 Applicant Rights During the Hearing

During the hearing, the Applicant will be afforded an opportunity to present evidence rebutting the grounds for rejection. Applicants have the right to be represented by Counsel or other representative(s) at the hearing. The Applicant shall be responsible for informing the MHA of any parties who will be acting as representatives in their behalf prior to the date of the informal hearing.

3.05 Due Process Requirements

The informal hearing will conform to the following due process requirements:

- 3.05.01 If the decision to deny admission is based on allegations by a third party, the MHA will attempt to have the third party present.
- 3.05.02 The MHA employee who made the decision must be present to provide available facts, and to be questioned.
- 3.05.03 The informal hearing must be conducted by an employee of the MHA who did not participate in the decision
- 3.05.04 The decision must be based solely on evidence presented at the hearing.
- 3.05.05 The Applicant has a right to inspect the file prior to the hearing and at the hearing.

3.06 Reversal of MHA Rejection Decision

If, as result of information presented by the Applicant at the informal hearing, the MHA reverses its decision to reject the Applicant, no new application is required and the application will be returned to the appropriate spot on the waiting list.

3.07 No Reversal of the MHA Rejection Decision

If the MHA's decision for rejection is not overturned, a new application for admission may be submitted by the Applicant at a time when the waiting list is open after a period of 18 months has elapsed to permit the Applicant to correct the behavior or situation that resulted in the rejection. A shorter period, as determined by the MHA to be appropriate under the circumstances of the rejection, may be allowed.

4.0 Definitions (Reference 24CFR 966.53)

The following definitions are applicable:

- 4.01 *Complainant* shall mean any resident whose grievance is presented to the MHA or at the project management office in accordance with this grievance procedure.
- 4.02 *Elements of Due Process* shall mean an eviction action or termination of tenancy in a State or local court in which the following procedural safeguards are required:
 - 4.02.01 Adequate notice to the resident of the grounds for terminating the tenancy or eviction;
 - 4.02.02 Right of the tenant to be represented by Counsel;

- 4.02.03 Opportunity for the resident to refute the evidence presented by the MHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
- 4.02.04 A decision on the merits.
- 4.03 *Grievance* shall mean any dispute which a tenant may have with respect to the MHA action or failure to act in accordance with the individual resident's lease or MHA and/or HUD regulations which adversely affect the individual resident's rights, duties, welfare, or status.
- 4.04 *Hearing officer* shall mean a person selected in accordance with 24 CFR 966.55 to hear grievances and render a decision with respect thereto.
- 4.05 *Hearing Panel* shall mean a panel selected in accordance with 24 CFR 966.55 to hear grievances and to render a decision with respect thereto.
- 4.06 *Resident* shall mean the adult person(s)(other than a live-in aide):

5.0 Informal Hearing - Resident (Reference 24 CFR 966.54)

5.01 Request for Informal Hearing

Any grievance shall be personally presented, either orally or in writing, to the MHA office so that the grievance may be discussed informally and settled without a hearing within a reasonable period of time but no later than 10 days after the basis for the grievance becomes apparent. For the purposes of this part, the person with whom the informal hearing should be conducted is with the person who initiated the action that forms the basis for the grievance. For an expedited grievance procedure, the Complainant shall submit such request at such a time as is specified by the MHA for a grievance under the expedited grievance procedure requirements of Section 9.0 of this grievance procedure.

5.02 Notice of Informal Hearing Decision

An Informal Hearing Summary of Discussion shall be prepared within a reasonable period of time but no later than ten calendar days of the date of the informal hearing. One copy of the summary shall be given to the resident and one retained in the MHA's resident file. The summary shall specify the following:

Informal Hearing - Resident (Reference 24 CFR 966.54)

Notice of Informal Hearing Decision

- 5.01.01 Names of the participants; and
- 5.01.02 Date(s) of the meeting; and
- 5.01.03 Nature of the proposed disposition of the complaint and reasons thereof; and
- 5.01.04 Specify the procedures to obtain a Executive Director's Review Hearing.

6.0 Executive Director's Review Hearing

6.01 Request for a Review Hearing

Should the resident still dispute the decision regarding the action, the Complainant (resident) shall submit a written request for a Review Hearing to the Executive Director of the MHA within five business days of the receipt of the Summary of Discussion. Such written request must state:

- 6.01.01 The reason for the grievance; and
- 6.01.02 The action or relief sought.

6.02 Notice of Executive Director's Review Hearing Decision

A Review Hearing Summary of Discussion shall be prepared within a reasonable period of time but no later than ten calendar days of the date of the Review Hearing. One copy of the summary shall be given to the Complainant and one retained in the MHA's resident file. The summary shall specify the following:

- 5.01.01 Names of the participants; and
- 5.01.02 Date(s) of the meeting; and
- 5.01.03 Nature of the proposed disposition of the complaint and reason thereof; and
- 5.01.04 Specify the procedures to obtain a Formal Hearing

7.0 Formal Hearing (Reference 24 CFR 966.55)

7.01 Request for a Formal Hearing

Should the Complainant continue to dispute the MHA's decision following the Review Hearing, the Complainant shall submit a written request for a Formal Hearing to the MHA Executive Director. The written request must be received at the MHA administrative offices within ten (10) days of the receipt of the Executive Director's Hearing Review Summary of Discussion.

7.02 Selection of a Hearing Officer

A grievance hearing shall be conducted by an impartial third person or persons appointed by the MHA, other than a person who made or approved the MHA action under review or a subordinate of such person. For the purposes of this part, the MHA Board of Commissioners, upon recommendations by the MHA attorney, shall solicit and select a Hearing Officer from within the jurisdiction of the MHA. Said selection shall be periodically reviewed and approved in accordance with standard accepted practice for the MHA jurisdiction.

The MHA shall consult with the resident council before the appointment of a Hearing Officer. Any comments or recommendations submitted by the residents shall be considered prior to appointment of the Hearing Officer.

7.03 Hearing Prerequisite

All grievance under this Section shall be in writing and shall be personally presented either orally or in writing to the Executive Director at the MHA Administrative Offices located 828 Garfield Avenue, Mexico, MO 65265 prior to a Formal Hearing being scheduled. Said written request must state:

- 7.02.01 The reason for the grievance; and
- 7.02.02 The action or relief sought.

7.03 Escrow Deposit

Before a Formal Hearing is scheduled in any grievance involving the amount of rent which the MHA claims is due, the Complainant shall pay to the MHA an amount equal of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Complainant shall thereafter deposit the same amount of the monthly rent in an escrow account designated by the MHA until the complaint is resolved by decision of the Hearing Officer. Unless the requirements of this part have been waived in writing by the MHA Executive Director, failure to make such payments shall result in termination of the grievance procedure. Failure to make payment shall not constitute a waiver of any right the Complainant may have to contest the MHA's disposition of his grievance in any appropriate judicial proceeding.

7.04 Scheduling of Formal Hearings

Upon Complainant's compliance with the above paragraphs, a Formal Hearing shall be scheduled by the Hearing Officer promptly for a time and place reasonably convenient to both the Complainant and the MHA. A written notification specifying the time, place and the procedures governing the Formal Hearing shall be delivered to the Complainant and the appropriate MHA personnel.

7.05 Procedures Governing the Formal Hearing (Reference 24 CFR 966.58)

- 7.05.01 The Formal Hearing shall be held before a Hearing Officer
- 7.05.02 The Complainant shall be afforded a fair hearing, which shall include:
 - 7.05.02.1 The opportunity to examine, before the hearing, any MHA documents, including record and regulations that are directly relevant to the hearing. The Complainant shall be allowed to copy any such document at the Complainant's expense. If the MHA fails to make the document available for examination within a reasonable period of time

- of the request by the Complainant, the MHA may not rely on such document at the Formal Hearing;
- 7.05.02.2 The right to be represented by counsel or other person chosen as the Complainant's representative, and to have such person make statements on the Complainant's behalf;
- 7.05.02.3 The right to a private hearing unless the Complainant requests a public hearing;
- 7.05.02.4 The right to present evidence and arguments in support of the Complainant's complaint, to controvert evidence relied upon by the MHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the MHA or project management relies; and
- 7.05.02.5 A decision based solely and exclusively upon the facts presented at the hearing.
- 7.05.03 The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding.
- 7.05.04 If the Complainant fails to appear at the scheduled Formal Hearing, the Hearing Officer may make a determination to postpone the hearing for not to exceed five business days; or may make a determination that the party has waived their right to a hearing.
- 7.05.05 Both the MHA and the Complainant shall be notified of the determination by the Hearing Officer. A determination that the Complainant has waived his right to a Formal Hearing shall not constitute a waiver of any right the Complainant may have to contest the MHA's disposition of the grievance in an appropriate judicial proceeding.
- 7.05.06 At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter, the MHA must sustain the burden of justifying the MHA action or failure to act against which the complaint is directed.
- 7.05.07 The hearing shall be conducted informally by the Hearing Officer and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Hearing Officer shall require the MHA, the Complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with directions of the Hearing Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interest of the disorderly party, and granting or denial of the relief sought, as appropriate.
- 7.05.08 The Complainant or the MHA may arrange, in advance and at the expense of the party making the arrangements, for a transcript of the hearing. Any

interested party may purchase a copy of such transcript at a cost reasonable to the actual cost of producing the transcript.

7.06 Failure to Request a Formal Hearing

If the Complainant does not request a Formal Hearing, then the MHA's disposition of the grievance shall become final. If the Complainant shows good cause as to why he failed to proceed with a Formal Hearing request to the Hearing Officer, the provisions of this Section 7.06 may be waived by the Hearing Officer.

7.07 Decision of the Hearing Officer

The Hearing Officer shall prepare a written decision, together with the reasons therefore, with a reasonable time after the hearing. A copy of the decision shall be sent to the Complainant and the MHA. The MHA shall retain a copy of the decision in the resident's file. A copy of the decision, with all names and identifying references deleted, shall also be maintained by the MHA and made available for inspection by a prospective Complainant, his representative, or the Hearing Officer. The decision of the Hearing Officer shall be binding on the MHA. The MHA shall take all actions, or refrain from any actions, necessary to carry out the decision unless the MHA Board of Commissioners determines within a reasonable time, and promptly notifies the Complainant of its determination, that:

- 7.07.01 The grievance does not concern MHA action or failure to act in accordance with or involving the Complainant's Lease or public housing regulations, which adversely affect the Complainant's rights, duties, welfare or status; or
- 7.07.02 The decision of the Hearing Officer is contrary to applicable Federal, State, or local law, HUD regulations, or requirements of an annual contributions contract between HUD and MHA.
- 7.07.03 A decision by the Hearing Officer or MHA Board of Commissioners in favor of the MHA or which denies the relief requested by the Complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

8.0 Housing Authority Eviction Actions

If a resident has requested a Formal Hearing on a complaint involving the MHA Eviction Notice and the Hearing Officer upholds the MHA's action to terminate tenancy, the MHA shall not commence an eviction action in a state or local court until it has served a notice to vacate to the resident. In no event, shall the Eviction Notice be issued prior to the decision of the Hearing Officer having been mailed or delivered to the Complainant. Procedures governing issuance of the Eviction Notice shall comply with state and local laws applicable to termination of tenancy.

9.0 Reasonable Accommodation for Handicapped and Disabled Persons

It is the policy of the MHA to provide reasonable accommodations to handicapped and disabled persons in the administration of this grievance procedure. Such reasonable accommodations may include, but are not limited to, conducting hearings in accessible locations, providing and/or allowing oral requests for sight impaired persons, and assisting in providing a sign language interpreter. A request for reasonable accommodation should be made to the MHA Administrative Offices at the time of requesting the hearing. Forms are available for this purpose. MHA personnel shall assist in completion of the forms.