

Chapter 14

COMPLAINTS AND GRIEVANCES

[24 CFR Part 966 Subpart B]

INTRODUCTION

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of HHA. This Chapter describes the policies to be used when families disagree with a HHA decision. It is the policy of HHA to ensure that all families have the benefit of all protections due to them under the law. Grievances are handled in accordance with HHA's grievance policy, if applicable.

A. COMPLAINTS

HHA may receive complaints regarding a variety of issues from a variety of sources including, residents, families, staff and the public. All complaints shall be made either verbally or in writing to the HHA office. Complaints reported verbally shall then be put in writing either by the complainant or by the staff member receiving the complaint. HHA has complaint forms that are available upon request. Complaints regarding the physical condition of any HHA property or grounds may be reported by phone to the HHA office or the Maintenance Supervisor in the Maintenance Department.

Anonymous complaints are difficult to process but will be considered to the extent possible.

Complaints from residents. Resident complaints will be referred to the Property Manager handling the file. If a resident has a complaint regarding the physical condition of their dwelling unit, the resident should contact the HHA office during business hours so that a work order may be submitted to the Maintenance Department.

Complaints from staff. If a staff person reports a family is violating or has violated a lease provision or is not complying with program rules, the complaints will be referred to their Property Manager.

Complaints from the general public. Complaints or referrals from persons in the community in regard to HHA or a family will be referred to the Executive Director.

B. GRIEVANCE PROCEDURES

Definitions

Grievance. Any dispute which a **resident** may have with respect to a HHA action or failure to act in accordance with the individual **resident's** lease or HHA regulations that adversely affect the individual **resident's** rights, duties, welfare, or status.

Complainant. Any **resident** whose grievance is properly and timely presented to HHA.

Hearing Officer. The person selected in accordance with this grievance procedure to hear grievances and render a decision with respect thereto.

Resident. A lessee or the remaining head of household of any resident family residing in housing accommodations owned or leased by HHA.

Elements of Due Process. An eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;

Opportunity for the resident to examine all relevant documents, records, and regulations of HHA prior to the trial for the purpose of preparing a defense;

Right of the resident to be represented by counsel;

Opportunity for the resident to refute the evidence presented by HHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and

A decision on the merits of the case.

Applicability

This Grievance Procedure applies to all individual **resident** grievances, **except** any grievance concerning a termination of tenancy or eviction that involves:

Any activity, that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or HHA employees;

Any drug-related criminal activity *on* or *off* such premises; or

Any criminal activity that resulted in the felony conviction of a household member.

Rent: In situations involving the amount of rent HHA claims is due, except grievances concerning imputed welfare benefits or use of minimum rent, before a hearing is scheduled the complainant shall pay to HHA all rent due and payable as of the month preceding the month in which the act or failure to act took place. Grievances concerning imputed welfare benefits and minimum rents are exempt from the escrow deposit requirement.

The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account each month until the complaint is resolved by decision of the hearing official.

HHA may waive these escrow requirements in extraordinary circumstances.

Unless so waived, failure to make the required escrow payments shall result in termination of the grievance procedure.

Failure to make such payments does not constitute a waiver of any right the complainant may have to contest HHA's disposition of the grievance in any appropriate judicial proceeding.

HHA's grievance procedures are not applicable to disputes between residents not involving HHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and HHA's Board of Commissioners.

Pre-Hearing Procedures

Informal Conference Procedures

Any grievance shall be **personally presented orally or in writing to the HHA office located at 812 Abbey, Helena, Montana.** Written grievances must be signed by the complainant. The grievance must be hand-delivered or received **by HHA** within **7 calendar days after an HHA action, failure to act, or service of notice of termination or other HHA action** that is the basis for the grievance. **However, if the basis of the grievance is a notice of termination for either 3 days or 5 days as set forth in the Dwelling Lease and the grievance procedure applies, the grievance must be hand-delivered to HHA or received by HHA on or before the termination date set forth in the 3-day or 5-day notice of termination.**

The grievance may be simply stated, but shall specify:

A description of HHA's action or inaction complained of,

The particular grounds upon which the grievance is based,

The corrective action requested by the complainant; and

The name, address, and telephone number of the complainant, and similar information about the complainant's representative, if any.

Within 10 calendar days or at an alternative time to be agreed upon by the complainant and HHA, an informal conference will occur to address the complaint.

The purpose of the informal conference is to discuss and to resolve the grievance without the necessity of a formal hearing. **A member of HHA management will participate in the informal conference and will make a decision regarding the disposition of the grievance at or after the conclusion of the informal conference.**

Within 5 working days after the day of the informal conference, a written summary of the discussion will be given to the complainant by a HHA representative. One copy will be filed in the resident's file.

The summary will include: the names of participants, the date of the meeting, the nature of the disposition, and the specific reasons for the disposition. The summary will also specify the steps by which a formal hearing can be obtained.

Dissatisfaction with Informal Conference and Request for Formal Hearing

If the complainant is dissatisfied with the proposed disposition of the grievance, s/he shall submit a written request for a hearing within 5 working days of the delivery of the summary of the informal conference.

The written request for a hearing must be presented to HHA within five working days.

The written request must specify the reasons for the grievance request and the relief sought.

Right to a Formal Hearing

After exhausting the informal conference procedures outlined above, a complainant has the right to request a hearing before a hearing officer. **In all such cases where a formal hearing is set and conducted by the HHA:**

- 1. The head of household and any other adult household member requested by HHA must attend the hearing.**
- 2. If the complainant requests to reschedule the first hearing date due to an unavoidable schedule conflict, the complainant must provide to HHA: 1) at least 48 hours notice of the conflict; 2) explain the nature of the conflict; and 3) propose at least three alternative dates within the next ten day period for a rescheduled hearing date. Complainant's failure to comply with these notice provisions and/or failure to cooperate in rescheduling a hearing shall be deemed a waiver of their right to a hearing.**
- 3. If the complainant or HHA fails to appear at the scheduled hearing within 15 minutes of its starting time, the hearing officer may then make a determination to postpone or reset the hearing at a particular location, date and time not to exceed an additional five business days, or may make a determination that the non-showing party has waived the right to hearing**
- 4. The complainant shall make every effort to notify HHA prior to the time of the scheduled hearing if special accommodations for participation due to disability are required.**

Failure to Request a Formal Hearing

If the complainant does not request a formal hearing within 5 working days after delivery of the summary of the informal conference, s/he waives his/her right to a hearing and HHA's disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to contest HHA's disposition in an appropriate judicial proceeding.

Selection of Hearing Officer

A grievance hearing shall be conducted by an impartial hearing officer, which may include any officer or employee of the HHA or another impartial person or persons appointed by HHA other than the person who made or approved the HHA action under review, or a subordinate of such person. HHA may appoint a hearing officer that has been selected after a request for qualifications has been submitted to the public and the person(s) has been selected after the request for qualifications criteria have been met.

The hearing officer will be selected promptly by HHA. Notice of the selection will be sent to the Resident Management Corporation (RMC) with the opportunity for its comment by a date specified in the notice. The notice will advise that a hearing will be taking place and the name of the proposed hearing officer. The RMC may make comments to the Executive Director with regard to the appointment of the hearing officer

Procedures to Obtain a Hearing

Informal Prerequisite

All grievances must be presented through the informal conference process as a prerequisite to a formal hearing.

The hearing officer may waive the prerequisite informal conference if, and only if, the complainant can show good cause why s/he failed to proceed informally.

Scheduling of Hearing

If the complainant complies with the procedures outlined above, a hearing shall be scheduled by the hearing officer promptly within **10** calendar days after the request for hearing has been properly submitted to HHA, at a time and place reasonably convenient to the complainant and HHA. On occasions when the hearing officer is not available within the 10 calendar days an alternate day will be mutually agreed upon by all parties.

A written notification of the date, time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate **HHA** official through first class mail.

Hearing Procedures

The hearing shall be held before a hearing officer.

The complainant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

The opportunity to examine and to copy before the hearing, at the expense of the complainant, all documents, records and regulations of HHA that are relevant to the hearing with at least a 24-hour notice to HHA prior to the hearing. Any document not so made available after request by the complainant may not be relied upon by HHA at the hearing;

HHA may request the opportunity to examine and to copy at the expense of HHA all documents, records and statements that the family plans to submit during the hearing to refute HHA's inaction or proposed action prior to the hearing. The family should bring such records and statements that the family plans to submit during the hearing for examination by HHA when it appears to examine records at HHA.

The right to a private hearing unless otherwise requested by the complainant;

The right to be represented by counsel or other person chosen as a representative;

The right to present evidence and arguments in support of the complaint, to controvert evidence presented by HHA, and to confront and cross-examine all witnesses upon whose testimony or information HHA relies, limited to the issues for which the complainant has received the opportunity for a formal hearing; and

The right to a decision based solely and exclusively upon the facts presented at the hearing.

If the hearing officer determines that the issue has been previously decided in another proceeding, a decision may be rendered without proceeding with the hearing.

If the complainant or HHA fail to appear at the scheduled hearing, the hearing officer may make a determination that the party has waived his/her right to a hearing or postpone the hearing to a later date as described above. Such a determination in no way waives the complainant's right to appropriate judicial proceedings in another forum.

Burden of Proof

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter HHA must sustain the burden of justifying the HHA action or failure to act against which the complaint is directed.

The **formal** hearing shall be conducted by the **Hearing Officer**.

It is the primary role of the Hearing Officer to hear the grievance and issue a decision based solely on the evidence presented at the grievance hearing. At all times, the Hearing Officer must ensure that the grieving party and HHA are afforded fundamental measure of due process. The Hearing Officer must also must maintain order and require all in attendance to conduct themselves orderly and respectfully. The Hearing Officer may direct all disorderly persons to leave the hearing after warning. The Hearing Officer may consider any hearing misconduct by the resident/grieving party as a basis for issuing a decision adverse to the resident/grieving party.

In making the determination, the Hearing Officer should site the policy, rule, law or regulation that supports the decision made:

- 1. Ascertain the nature of the grievance presented by the complainant;**
- 2. Consider the documentary or other physical evidence properly presented by the complainant and HHA at the hearing, if any;**
- 3. Consider the testimony of the witnesses at the hearing, if any; and**
- 4. Issue a written decision explaining the reasons for their decision.**

HHA or the complainant may arrange for a transcript of the proceeding at their own expense. Any party to the hearing may purchase a copy of such transcript.

Decisions of the Hearing Officer

The Hearing Officer shall concurrently mail a written decision to HHA and the complainant within 20 calendar days after the date of the hearing. HHA will place one copy in the resident's file. The written decision will be sent by the Hearing Officer to the complainant's address provided at the hearing.

HHA will also maintain a copy of the decision, with all names and identifying references deleted, in a file at HHA and made available for inspections by a prospective complainant, his/her representative or a hearing officer.

Appeal of Hearing Officer Decision

The decision of the Hearing Officer shall be binding on HHA which shall take all lawful actions necessary to carry out the decision, unless the complainant requests Board action to appeal the decision within 14 calendar days. The appeal will then be considered by the Board at the next calendared Board meeting, provided that the appeal request is received by HHA 14 or more days before the next regularly scheduled Board meeting. Otherwise, the Board will consider the appeal at the next regularly scheduled monthly Board meeting. In such case the HHA Commissioners shall consider the decision and determine:

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

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 HHA; or

The HHA Commissioners affirm the decision of the hearing officer.

The Board's decision will be mailed to the complainant within **20 calendar** days following the Board meeting in which the decision is considered, and will notify the complainant that:

A decision by the Hearing Officer or HHA Board of Commissioners in favor of HHA or which denies the relief requested by the complainant in whole or part shall not constitute a waiver of, nor affect in any manner whatever, the rights of the complainant to a trial or judicial review in any proceedings which may thereafter be brought in the matter.

Housing Authority Eviction Actions

If a resident complainant has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a HHA notice of termination of tenancy, and the Hearing Officer upholds the HHA action, HHA shall not commence an eviction action until it has served a notice to vacate on the resident.

In no event shall the notice to vacate be issued prior to the decision of the Hearing Officer having been mailed or delivered to the complainant.

Such notice to vacate must be in writing and specify that if the resident fails to quit the premises within the applicable statutory period, or on the termination date as stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant. The complainant may be required to pay court costs and attorney fees.