

MANCHESTER HOUSING AND REDEVELOPMENT AUTHORITY

GRIEVANCE PROCEDURES

This grievance procedure has been adopted to provide a forum and procedure for residents to seek the just, effective and efficient settlement of grievances against the Manchester Housing and Redevelopment Authority, hereinafter referred to as MHRA.

I. GOVERNING LAW

The law governing this grievance procedure is Section 6(k) of the US Housing Act of 1937 (42 U.S.C. sec. 1437d(k)) and subpart B of 24 CFR part 966 (24 CFR sec. 966.50-966.57) or as subsequently amended.

II. APPLICABILITY

In accordance with the applicable federal regulations, this grievance procedure shall be applicable to all individual grievances between resident and MHRA, with the following two exceptions:

- A. This grievance procedure is not applicable to disputes between residents not involving MHRA or to class grievances involving groups of residents. Also, this grievance procedure is not intended as a forum for initiating or negotiating policy changes between residents or groups of residents and MHRA's Board of Commissioners.
- B. HUD has issued a due process determination that the law of the State of New Hampshire requires that residents be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from a dwelling unit. Therefore, MHRA has elected to determine that this grievance procedure shall not be applicable to any termination of residency or eviction that involves:

Any activity, not just criminal activity, by resident, household member, guest or other persons under resident's control that threatens the health, safety or right to peaceful enjoyment of MHRA's premises by other residents or employees of MHRA; or

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

Alcohol abuse that the MHRA determines interferes with the health, safety or right to peaceful enjoyment of the premises by other residents or employees of MHRA; or

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

III. DEFINITIONS

The following definitions of terms shall be applicable to this grievance procedure:

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

- B. CFR: The Code of Federal Regulations, which contains the federal regulation governing this grievance procedure.
- C. Complainant: Any resident whose grievance is presented to the applicable MHRA Management Office in accordance with the requirements set forth in this procedure.
- D. Drug-related criminal activity: The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as amended from time to time.
- E. MHRA or “Authority”: The Manchester Housing and Redevelopment Authority, a public corporation organized and existing under the laws of the State of New Hampshire.
- F. 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:
 - (1) Adequate notice to the resident of the grounds for terminating the residency and for eviction;
 - (2) Right of the resident to be represented by counsel;
 - (3) Opportunity for the resident to refute the evidence presented by MHRA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have;
 - (4) A decision on the merits.
- G. Hearing Officer: An impartial person selected in accordance with 24 CFR sec. 966.55 and this grievance procedure to hear grievances and render decisions with respect thereto.
- H. HUD: The United States Department of Housing and Urban Development.
- I. Notice: As used herein, the term shall, unless otherwise specifically provided, mean written notice.
- J. The “Regulations”: The HUD regulations contained in subpart B of 24 CFR part 966, or as amended from time to time.
- K. Resident Organization: An organization of residents, which includes any resident management corporation.
- L. Resident or “Tenant” as defined in 24 CFR sec. 966.53:
The adult person(s) (other than a live-in aide):
 - (1) Who resides in the unit and who executed the lease with MHRA as lessee of the dwelling unit or, if no such person now resides in the unit,
 - (2) The person who resides in the unit and who is the remaining head of household of the resident family residing in the dwelling unit.
- M. Business Days: Monday through Friday of each week except for legal holidays recognized by the federal, state or local government.

N. Management Office: The MHRA office at which the resident pays rent.

IV. INCORPORATION IN LEASES

This grievance procedure shall be incorporated by reference in all leases between resident and MHRA whether or not so specifically provided in such leases.

V. INFORMAL SETTLEMENT OF GRIEVANCES

A. Initial Presentation: Any grievance must be presented in writing within five (5) business days after the date of the notice giving rise to the grievance to the applicable MHRA Management Office. This must be signed by the complainant and may be simply stated but shall specify:

- The particular grounds upon which it is based;
- The action requested; and
- The name, address and telephone number of the Complainant and similar information about the Complainant's representative, if any.

B. Informal Settlement Conference: If the grievance is not determined by MHRA to fall within one of the exclusions mentioned in Section 13 G., MHRA will, within five (5) business days after the initial presentation of the grievance, informally discuss the grievance with the Complainant or his representative(s) in an attempt to settle the grievance without the necessity of a formal hearing. If the informal settlement conference cannot occur at the time the grievance is initially presented by the Complainant, then the Complainant will be promptly notified in writing of the time and place for the informal settlement conference.

C. Written Summary: Within five (5) business days after the informal settlement conference, a summary of the informal discussion shall be prepared by MHRA and a copy thereof shall be provided to the Complainant. The summary shall be in writing and shall specify the names of the participants in the discussion, the date of the discussion, the nature of the proposed disposition of the grievance and the specific reasons for such disposition. This written summary will also specify the procedures by which the Complainant may obtain a formal hearing if not satisfied by the proposed disposition of the grievance. A copy of the written summary shall be placed in the Complainant's resident file.

VI. FORMAL GRIEVANCE HEARING

The following procedures apply to the request for a formal grievance hearing under this grievance procedure:

A. Request for Hearing: If a Complainant is not satisfied with the results of the informal settlement conference, the Complainant must submit a written request for a formal hearing to the applicable MHRA Management Office no later than five (5) business days after the complainant receives the summary of discussion, delivered as required under Section V above.

Complainant's written request for a formal hearing must specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought by the Complainant; and
- (3) Name, address and telephone number of the Complainant and name, address and telephone number of the Complainant's representative, if applicable.
- (4) If the Complainant has failed to attend an informal discussion conference, a request that the hearing officer, for good cause, waive this requirement.

B. Failure to Request Formal Hearing: If the Complainant fails to request a formal hearing within five (5) business days after receiving the written summary of the informal settlement conference, MHRA's decision rendered at the informal hearing becomes final and MHRA is not thereafter obligated to offer the Complainant a formal hearing. Failure to request a formal hearing shall not constitute a waiver by the Complainant of his/her right thereafter to contest MHRA's action in disposing of the complaint in an appropriate judicial proceeding.

VII. SELECTION OF HEARING OFFICER

All grievance hearings shall be conducted by an impartial person or persons appointed by MHRA after consultation with resident organizations in the manner described below:

- A. The permanent appointment of persons who shall serve as hearing officers shall be governed by the following procedures:
- (1) MHRA shall nominate persons deemed appropriate by the Executive Director to sit as permanent hearing officers;
 - (2) On final appointment, the persons appointed and the MHRA Resident Council if applicable shall be informed in writing of the appointments. A list of qualified hearing officers will be kept at MHRA's Main Office and be made available for public inspection at any time.

The persons who are presently appointed to serve as hearing officers for grievances brought under this procedure are listed on Exhibit 1 attached hereto and hereby incorporated herein by reference. Additional appointments shall be made in the manner set forth in this section.

- B. The designation of hearing officers for particular grievance hearings shall be governed by the following provisions:
- (1) No member of MHRA staff may be appointed as a hearing officer in connection with the grievance contesting an action which was either made or approved by the proposed appointee or which was made or approved by a person under whom the proposed appointee works or serves as a subordinate.
 - (2) Appointments to serve as a hearing officer with respect to a particular grievance shall be made by MHRA in random order subject to availability of the hearing officer to serve in each case. MHRA may employ any reasonable system for random order choice.
 - (3) No person shall accept an appointment, or retain an appointment, once selected as a hearing office if it becomes apparent that such person is not fully capable of impartiality. Persons who are designated to serve as hearing officers must disqualify themselves from hearing grievances that involve personal friends, relatives, persons with whom they have any business relationship or grievances in which they have some personal interest.

Further, such persons are expected to disqualify themselves if the circumstances are such that a significant perception of partiality exists and is reasonable under the circumstances. If a Complainant fails to object to the designation of the hearing officer on the grounds of partiality, at the commencement of or before the hearing, such objection is deemed to be waived and may not thereafter be made. In the event that a hearing officer fails to disqualify himself or herself as required in this grievance procedure, MHRA will remove the officer from the list of persons appointed for such purposes, invalidate the results of the grievance hearing in which such person should have, but did not, disqualify himself or herself, and schedule a new hearing with a new hearing officer.

VIII. SCHEDULING OF HEARINGS

A. Hearing Prerequisites: A Complainant does not have a right to a grievance hearing unless the Complainant has satisfied the following prerequisites to such a hearing:

- (1) The Complainant has requested a hearing in writing.
- (2) The Complainant has completed the informal settlement conference procedure or has requested a waiver for good cause.
- (3) If the matter involves the amount of rent which MHRA claims is due under the Complainant's lease, the Complainant shall have paid to MHRA an escrow deposit in an amount equal to the amount due and payable as of the first of the month preceding the month in which the Complainant's act or failure to act took place. Complainant must deposit the same amount monthly until the complaint is resolved by decision of the hearing officer. And, in the case of situations in which hearings are for any reason delayed, the Complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer. Unless waived by MHRA in writing, no waiver will be given by MHRA except in cases of extreme and undue hardship to the Complainant, determined in the sole and absolute discretion of MHRA.
- (4) The grounds for the action are other than as described in Section II, B herein.

B. Time, Place, Notice:

- (1) Upon Complainant's compliance with the prerequisites to hearing set forth above and not later than the tenth (10th) business day after Complainant has completed such compliance, a hearing shall be scheduled by the hearing officer promptly at a time and place reasonably convenient to both the Complainant and MHRA.
- (2) A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the Complainant and the appropriate MHRA official.

IX. PROCEDURES GOVERNING HEARINGS

A. Fair hearings: The hearings shall be held before a hearing officer as described above in Section VII. The Complainant shall be afforded a fair hearing which shall include:

- (1) The opportunity to examine before the hearing any MHRA documents, including records and regulations, that are directly relevant to the hearing. Any and all requests for records and regulations shall be requested in writing.

The Complainant will be allowed to copy any such documents at the Complainant's expense. If MHRA does not make the documents available for examination upon request by the Complainant, MHRA may not rely on such documents at the grievance hearing.

- (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.
- (3) The right to a private hearing unless the Complainant requests a public hearing. The right to present evidence and arguments in support of the Complainant's complaint, to controvert evidence relied on by MHRA and to confront and cross examine all witnesses upon whose testimony or information MHRA or its management relies, limited to the issues for which the Complainant has received the opportunity for a formal hearing.
- (4) A decision based solely and exclusively upon the facts presented at the hearing.

- B. **Prior Decision in Same Matter:** The officer may render a decision without proceeding with the hearing if s/he determines that the issue has been previously decided in another proceeding.
- C. **Failure to Appear:** If the Complainant or MHRA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) business days or may make a determination that the party failing to attend has waived the right to a hearing. In such event the hearing officer shall notify the Complainant and MHRA of the determination.

The failure to attend a grievance hearing shall not constitute a waiver of any right the Complainant may have to contest MHRA's disposition of the grievance in an appropriate judicial proceeding.

- D. **Required Showing of Entitlement to Relief:** At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter MHRA must sustain the burden of justifying MHRA's action or failure to act against which the complaint is directed.
- E. **Informality of Hearing:** 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 proceeding.
- F. **Orderly Conduct Required:** The hearing officer shall require MHRA, the Complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to maintain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.
- G. **Transcript of Hearing:** The Complainant or MHRA may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- H. **Accommodation to Persons with Disabilities:** MHRA must provide reasonable accommodation for persons with disabilities to participate in grievance hearings. Reasonable

accommodation may include qualified sign language interpreters, readers, accessible locations or attendants.

X. DECISION OF THE HEARING OFFICER

At or subsequent to the completion of the grievance hearing, the hearing officer shall make a determination as to the merits of the grievance and the following provisions shall govern:

- A. Written Decision: The hearing officer shall prepare a written decision, together with the reasons for the decision, within ten (10) business days after the completion of the hearing.
 - (1) A copy of the decision shall be sent to the Complainant and MHRA. MHRA shall retain a copy of the decision in the Complainant's resident folder.
 - (2) A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by MHRA and made available for inspection by any prospective Complainant, his or her representative, or hearing officer.

- B. Binding Effect: If the decision is in favor of the Complainant, MHRA shall promptly take all actions, or refrain from any actions, necessary to carry out such decision unless the MHRA Board of Commissioners determines and notifies the Complainant in writing within a reasonable time that the hearing officer has exceeded his or her authority in that:
 - (1) The grievance does not concern MHRA action or failure to act in accordance with, or involving the Complainant's lease or MHRA regulations, which adversely affect the complainant's rights, duties, welfare or status, or
 - (2) The decision of the hearing officer is contrary to applicable federal, state or local law, HUD regulations, requirements of the Annual Contributions Contract between HUD and MHRA, or MHRA's Admissions and Continued Occupancy Policies.

- C. Continuing Right of Complainant to Judicial Proceedings: A decision by the hearing officer or Board of Commissioners in favor of MHRA which denies the relief requested by the Complainant, in whole or in part, shall not constitute a waiver of, nor affect in any way, the rights of the Complainant to a trial or judicial review in any judicial proceedings which may thereafter be brought in the matter.

XI. NOTICES

All notices under this grievance procedure shall be deemed delivered: (1) upon personal service thereof upon the Complainant or an adult member of the Complainant's household; (2) upon the date received for or refused by the addressee, in the case of certified or registered US Mail; or (3) on the second (2nd) day after the deposit thereof for mailing, postage prepaid, with the US Postal Service if mailed by first class mail other than certified or registered mail.

If a resident is visually impaired, any notice hereunder delivered to such resident shall be in an accessible format.

XII. MODIFICATION

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of MHRA, present at a regular meeting or a special meeting or by

phone poll called for such purposes. Further, any changes proposed to this grievance procedure must provide for at least thirty (30) days advance notice to residents and resident organizations setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by MHRA before final adoption of any amendments thereto.

XIII. MISCELLANEOUS

- A. Captions: Captions or paragraph headings set forth in this grievance procedure are for convenience of reference only and shall not be construed or interpreted to affect the substance of the paragraphs or sections so captioned.
- B. Concurrent Notice: If a resident has filed a request for a grievance hearing hereunder in a case involving MHRA's notice of termination of residency, the Complainant should be aware that the state law notice to vacate and the notice of termination of residency required under federal law run concurrently. Therefore, if the hearing officer upholds MHRA's action to terminate the residency, MHRA may commence an eviction action in court upon the sooner of the expiration of the date for termination of residency and vacating of the premises stated in the notice of termination delivered to the Complainant, or the delivery of the report of decision of the hearing officer to the Complainant.