

## Chapter 13

### COMPLAINTS, GRIEVANCES AND APPEALS

#### I. Hearing Request By Tenants

Grievances or appeals concerning the obligations of the tenant or MHA under the provisions of the lease shall be processed and resolved in accordance with the Grievance Procedure of MHA which is in effect at the time such grievance or appeal arises.

#### II. Definitions applicable to the grievance procedure: (§ 966.53)

A. Grievance: Any dispute a Tenant may have with respect to Marin Housing Authority (MHA) action or failure to act in accordance with the individual Tenant's lease or MHA regulations that adversely affects the individual Tenant's rights, duties, welfare or status.

B. Complainant: Any Tenant (as defined below) whose grievance is presented to the PHA (at the central office or the development office) in accordance with the requirements presented in this procedure.

C. Hearing Officer: A person selected in accordance with **24 CFR § 966.550** and this procedure to hear grievances and render a decision with respect thereto.

D. Tenant: The adult person (or persons other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) Who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.

E. Resident Organization: An organization of residents, which also may include a resident Management Corporation.

#### III. Applicability of this grievance procedure (966.51)

In accordance with the applicable Federal regulations (**24 CFR § 966.50**) this grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between Tenant and the MHA with the following two exceptions:

A. Because HUD has issued a due process determination that the unlawful detainer law of the State of California provide the basic elements of due process before an eviction from the dwelling unit can occur, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of MHA,
- (2) Any violent or drug-related criminal activity on or off MHA property; or
- (3) Any criminal activity that resulted in felony conviction of a household member.

**[966.51 (2)(i) (A) (B) and (C)]**

- B. The MHA grievance procedure shall not be applicable to disputes between Tenants not involving the PHA 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 tenants and the PHA's Board of Commissioners. **[966.51 (b)]**

This grievance procedure is incorporated by reference in all Tenant dwelling leases and will be furnished to each Tenant and all resident organizations. **[966.52 (b) and (d)]**

Any changes proposed in this grievance procedure must provide for at least 30 days notice to Tenants and Resident Organizations, setting forth the proposed changes and providing an opportunity to present written comments. Comments submitted shall be considered by the MHA before any revisions are made to the grievance procedure. **[966.52 (c)]**

**IV. Informal settlement of a Grievance [966.54]**

Any grievance must be presented, in writing to the MHA Central Office or the Golden Gate Village Office **within ten (10) business days after the grievable event.**

Grievances related to complaints about operational matters that are received by the MHA's central office will be referred to the person responsible for the management of the development in which the complainant resides. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Deputy Executive Director.

As soon as the grievance is received, it will be reviewed by the management office of the development or to be certain that neither of the exclusions in paragraphs III.A or III.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to MHA's grievance procedure, with the reason.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time **within ten (10) business days** to meet so the grievance may be discussed informally and settled without a hearing. At the informal hearing, the complainant will present the grievance and the person in charge of the management office will attempt to settle the grievance to the satisfaction of both parties.

**Within ten (10) business days** following the informal discussion, MHA shall prepare and either hand deliver or mail to Tenant a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary shall also be placed in Tenant's file. A receipt signed by the complainant or a return receipt for delivery of certified mail, whether or not signed, will be sufficient proof of time of delivery for the summary of the informal discussion. **[966.55 (a)]**

## V. Formal Grievance Hearing

If the complainant is dissatisfied with the settlement arrived at in the informal hearing, the complainant must submit a written request for a hearing to the management office of the development where Tenant resides **no later than ten (10) business days after the summary of the Informal Hearing is received.**

The written request shall specify:

The reasons for the grievance;

The action of relief sought from the Housing Authority; and

Several dates and times **in the following ten (10) business days** when the complainant can attend a grievance hearing.

If the complainant requests a hearing in a timely manner, the MHA shall schedule a hearing on the grievance at the earliest time possible for the complainant, MHA and the Hearing Officer, **but in no case later than ten (10) business days** after MHA received the complainant's request.

If the Complainant fails to request a hearing within ~~five working~~ **ten (10) business** days after receiving the summary of the Informal Hearing, MHA's decision rendered at the Informal Hearing becomes final and the MHA is not obligated to offer the Complainant a Formal Hearing unless the Complainant can show good cause why he failed to proceed in accordance with this procedure. **[966.55 (c) and (d)]**

Failure to request a Grievance Hearing does not affect the complainant's right to contest the MHA's decision in a court hearing. **[966-54 (c)]**

## VI. Expedited Hearing Process for Criminal Activities Not Involving Violence, Drugs, or Risk To Health Or Safety.

These modified and expedited procedures apply when the MHA has served a notice to terminate a tenancy or otherwise initiated eviction proceedings, which is based on criminal activity which is not activity which threatens the health safety or right to peaceful enjoyment of the premises of other Tenants or employees of MHA; any violent or drug-related criminal activity on or off of MHA property; or any criminal activity that resulted in felony conviction of a household member.

**Informal Hearing:** The request for an informal hearing must be made in writing within ~~three (3)~~ **seven (7)** business days of the date of service of the Housing Authority's termination notice. The hearing should be held at the earliest opportunity by the MHA. A summary of the meeting shall be prepared within a reasonable time and one copy given to the resident and one copy retained in the resident's file.

**Formal Hearing:** If the resident is not satisfied with the results of the Informal Hearing, the resident can submit a written request for a formal grievance hearing within ~~two (2)~~ **ten (10)** business days of the date of service of the Housing Authority's Informal Hearing results. The request must state the reason for the grievance and the action sought from MHA. If the resident does not request a Formal Hearing within the timeframe specified in the grievance procedure, the decision of the Informal Hearing Officer becomes final, unless the resident can show good cause why s/he failed to request the formal hearing in accordance with the grievance procedure.

## **VII. Selecting the Hearing Officer [966.55 (b)(2)(ii)]**

A Grievance Hearing shall be conducted by an impartial person appointed by MHA after consultation with resident organizations, as described below:

- A. MHA shall nominate a slate of impartial persons to sit as hearing officers. Such persons **may** include MHA Board members, MHA staff members, residents, professional arbitrators, or others. The initial slate of nominees should be at least nine persons.

MHA will check with each nominee to determine whether there is an interest in serving as a hearing officer or panel member, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.

Nominees will be informed that they will be expected to disqualify themselves from hearing grievances that involve personal friends, other residents of developments in which they work or reside, or grievances in which they have some personal interest. Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical will be withdrawn and other names will be substituted.

- B. A slate of potential hearing officers nominated by MHA shall be submitted to MHA's Resident Organizations. Written comments from the organizations shall be considered by the PHA before the nominees are appointed as hearing officers.
- C. When the comments from Resident Organizations have been received and considered, the nominees will be informed that they are the PHA's official grievance hearing committee. MHA will subsequently contact committee members in random order to request their participation as hearing officers.

## **VIII. Escrow deposit required for a hearing involving rent [966.55 (e)]**

Before a hearing is scheduled in any grievance involving the amount of rent which the MHA claims is due under this lease, the complainant shall pay to the MHA an amount equal to 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 monthly until the complaint is resolved by decision of the hearing officer. This requirement will not be waived by the MHA unless the complainant is paying minimum rent and

the grievance is based on a request for a hardship exemption or the tenant's welfare benefits have been reduced for welfare fraud or failure to comply with economic self sufficiency requirements. **In these cases only**, rent need not be escrowed.

#### **IX. Scheduling hearings [966.55 (f)]**

When a complainant submits a timely request for a Grievance Hearing, MHA will immediately contact a member of the Hearing Committee to schedule the hearing within the following ten (10) business days on one of the dates and times indicated by the complainant. The Complainant will be notified on a date and time for the hearing.

Once the Hearing Officer has agreed upon the hearing date and time, the Complainant, the Manager of the development in which the Complainant resides, and Hearing Officer shall be notified in writing. Notice to the complainant shall be in writing, either personally delivered to complainant or sent by mail, return receipt requested. The written notice will specify the time, place and procedures governing the hearing.

#### **X. Procedures governing the hearing [966.56]**

The hearing shall be held before a hearing officer as described above in Section VII. The complainant shall be afforded a fair hearing, which shall include:

A. The opportunity to examine before the hearing any HA documents, including records and regulations, that are directly relevant to the hearing. The Tenant shall be allowed to copy any such document at the Tenant's expense. If the MHA does not make the document available for examination upon request by the complainant, the MHA may not rely on such document at the grievance hearing.

B. The right to appear at the hearing and 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. The counsel or other person chosen by the Complainant to be the Complainant's representative will only be permitted to appear on behalf of the Complainant if the Complainant is physically present at the hearing.

C. The right to a private hearing unless the complainant requests a public hearing. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by the PHA or project management, and to confront and cross examine all witnesses upon whose testimony or information the PHA or project management relies; and

D. A decision based solely and exclusively upon the fact presented at the hearing. **[966-56 (b)]**

The hearing officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding. **[966-56 (c)]**

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 PHA action or failure to act against which the complaint is directed. [966.56 (e)]

The hearing shall be conducted informally by the hearing officer. 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. [966.56 (f)]

The hearing officer shall require MHA, 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 obtain 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. [966.56 (f)]

The complainant or the PHA may arrange in advance, at expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript. [966.56 (g)]

MHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the Tenant is visually impaired, any notice to the Tenant which is required under this procedure must be in an accessible format. [966.56 (h)]

If a Hearing Officer fails to disqualify himself/herself as required in Section V.A, MHA will remove the Hearing Officer from the Hearing Committee, invalidate the results of the hearing and schedule a new hearing with a new Hearing Officer.

#### **XI. Failure to appear at the hearing**

If the Complainant or MHA fails to appear at the scheduled 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 has right to a hearing. [966.56 (d)]

The Complainant must be physically present for a hearing. Legal Counsel or other representative of the Complainant may not appear at a hearing on behalf of Complainant unless complainant is physically present at the hearing.

Both the complainant and MHA shall be notified of the determination by the Hearing Officer; provided, that a determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in court. [966.56 (d)]

## **XII. Decision of the Hearing Officer [966.57]**

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within ten business days** after the hearing. A copy of the decision shall be sent to the complainant and the MHA.

MHA shall retain a copy of the decision in the Tenant's folder. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the MHA and made available for inspection by a prospective complainant, his representative, or the Hearing Officer.

## **XIII. Reasonable Accommodation in the Grievance Procedure**

MHA will provide reasonable accommodation for a person with disabilities throughout the grievance process. This includes, but is not limited to, accommodating residents with disabilities by accepting grievances by mail or having MHA staff reduce an oral request to writing, providing accommodations in the hearing by providing qualified sign language interpreters, readers, and/or accessible locations.

## **XIV. Review Request From Applicants For Housing**

Applicants who are determined ineligible, who do not meet MHA's admission standards, or where MHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination.

Ineligible applicants will be promptly provided with a letter detailing their individual status, stating the reason for their ineligibility, and offering them an opportunity for an Informal Review.

Applicants must submit their request for an informal review to MHA within ten (10) business days from the date of the notification of their ineligibility.

If the applicant requests an Informal Review, MHA will schedule a meeting within 10 business days of receiving the request. MHA will notify the applicant of the place, date, and time.

An impartial manager will conduct the informal meeting. The Manager who conducts the meeting cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the meeting any documentation or evidence s/he wishes and the evidence along with the data compiled by MHA will be considered by the Manager.

The Manager will make a determination based upon the merits of the evidence presented by both sides. Within ~~5 working~~ **ten (10) business** days of the date of the review, the manager will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

The Grievance Procedures for Public Housing tenants do not apply to MHA determinations that affect applicants.

#### **D. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"**

**Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.**

Assistance to a family may not be terminated or denied while the MHA hearing process is pending, but assistance to an applicant may be delayed pending the outcome of the hearing.

##### **INS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, MHA notifies the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with MHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give MHA a copy of the appeal and proof of mailing or MHA may proceed to deny or terminate. The time period to request an appeal may be extended by MHA for good cause.

The request for a MHA hearing must be made within ten days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within ten (10) business days of receipt of that notice.

After receipt of a request for an Informal hearing, the hearing is conducted as described in the "Grievance Procedures" section of this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members, the MHA will:

- Deny the applicant family.
- Defer termination if the family is a participant and qualifies for deferral.
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, MHA will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

- If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.
- Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.
- Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Tenant Rent and Total Tenant Payment.
- Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.