



The Housing Authority of the City of Fort Myers

4224 Renaissance Preserve Way
Fort Myers, FL 33916
Phone: (239) 344-3220
TTY # 800-955-8771
Website: www.hacfm.org
Marcus D. Goodson
Executive Director

COMPLAINTS, GRIEVANCES AND APPEALS

[24 CFR 66.50-966.57]

INTRODUCTION

This document describes the policies to be used when families disagree with a decision by the Housing Authority of the City of Fort Myers (HACFM) based on any action, decision, or inaction by HACFM. It is the policy of HACFM to ensure that all families have the benefit of all protections due to them under the law.

If a Complainant does not follow the procedures set forth in this policy and/or does not request a hearing, then the Authority's action, inaction, or decision shall be considered final on part of HACFM. Failure of a Complainant to request a hearing does not constitute a waiver of his/her right to contest the Authority in an appropriate judicial proceeding.

For all aspects of the grievance and appeals process, a disabled person shall be provided reasonable accommodation to the extent necessary to provide the disabled person with an opportunity to use the grievance procedures equal to a non-disabled person.

According to 24 CFR, 966.55 (b) Selection of Hearing Officer or Hearing Panel.

- (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.
- (2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:
 - a. A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.
 - b. Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.
- (3) The PHA shall consult the resident organizations before PHA appointment of each hearing or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

This document is divided into four (4) main sections:

- A. Complaints: This section covers how to report a complaint of a general nature and the appropriate staff member or Department to whom the complaint should be referred.



- B. Applicants: This section covers how an applicant would file a grievance, such as to appeal withdrawal from a Wait List. This section also covers the process for appealing determinations of ineligibility based on HUD's Restrictions to Non-Citizens.
- C. Tenants: This section covers how a resident of HACFM property would appeal a decision, action, or inaction. Such appeals may include, but are not limited to, appealing the action to evict or appeal of how the resident's portion of the rent was calculated.
- D. Definitions: This section covers definitions used in the document "Complaints, Grievances and Appeals."

A. COMPLAINTS

HACFM will respond promptly to all complaints.

Complaints from Resident Families. If a resident family disagrees with an action or inaction of HACFM, complaints will be referred to the Property Manager or the Director of Housing Operations, as appropriate. Complaints regarding the physical condition of the units may be reported to the Property Manager, Director of Housing Operations or Director of Maintenance. If the complaint cannot be resolved to the satisfaction of the resident, the resident shall have the right to appeal by following the grievance procedures outlined in Section C of this document.

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 the Property Manager or the Director of Housing Operations.

Complaints from the General Public. Complaints or referrals from persons in the community in regard to HACFM or a family will be referred to the Property Manager and or the Director of Housing Operations.

B. APPEALS BY APPLICANTS

Applicants who are determined ineligible, who do not meet HACFM's admission standards, or where HACFM 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. The written notification will state that the applicant may seek an Informal Hearing.

Applicants must submit their request for an **Informal Hearing** in writing to HACFM within 5 working days from the date of the notification of their ineligibility. HACFM will then provide an **Informal Hearing** within 10 working days of receiving the applicant's request. HACFM will notify the applicant of the place, date, and time of the hearing.



Informal Hearings will be conducted by the Property Manager and the Resident.

Formal Hearings will be conducted by an impartial Hearing Officer. The person who is designated as the Hearing Officer cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes. The applicant's information, along with data compiled by HACFM, will be considered by the Hearing Officer. A determination will be made based upon the merits of the evidence presented by both sides.

Within 10 working days of the date of the Property Manager or the Hearing Officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

SPECIAL HEARING AND APPEAL PROVISIONS FOR APPLICANTS NOTIFIED OF INELIGIBILITY BASED ON "RESTRICTIONS ON ASSISTANCE TO NONCITIZENS"

Assistance to a 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 an Immigration and Naturalization Service (INS) appeal.

INS Determination of Ineligibility [24 CFR 912.9(e)]

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, HACFM notifies the applicant within 10 working days of their right to appeal to the INS. The family will have 30 days from the date of HACFM's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating in writing directly to the INS. The family must provide HACFM a copy of the written request for appeal, and proof of mailing. For good cause shown, HACFM shall grant the family an extension of the time within which to request an appeal.

Documentation to be submitted to the INS as apart of an appeal to the INS:

1. Copy of original Form 0-845S received from INS annotated at the top center in bold print: HUD APPEAL.
2. Include two stamped envelopes, one addressed to the applicant and one addressed to HACFM.
3. Attach any and all documentation available to support the reason or basis for the appeal. This should include legible copies of both sides of the Form 0-845S.

The INS will issue the results of the appeal to the family, with a copy to HACFM, within 30 days of its receipt. If, for any reason, the INS is unable to issue a response within the 30-day time period, the INS will inform the family and HACFM of the reason for delay.



When HACFM receives a copy of the INS response, HACFM will notify the family of its right to request an Informal Hearing on HACFM's ineligibility determination in accordance with the procedures outlined in "Section B. Appeals by Applicants."

If the Hearing Officer decides that the individual is not eligible, and there are no other eligible family members HACFM will:

1. Deny the applicant family, or
2. Defer termination if the family is a participant and qualifies for deferral, or
3. Terminate the participant if the family does not qualify for deferral.

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

A decision against an applicant under the INS appeal process or HACFM's Informal Hearing does not preclude the applicant from exercising the right to seek redress directly through judicial procedures [24 CFR 912.9(g)].

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 documentation and/or certification.

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.

C. TENANT GRIEVANCE POLICY AND PROCEDURES

HACFM's Grievance Policy and Procedures, for 30-Day Notices (Two-Part Process) and for 7Day Notices (Expedited Process), shall be applicable to all individual grievances between the Resident and HACFM, *except* that it shall not apply to an order of eviction following a hearing in a court containing the elements of due process *. Denial of the hearing process does not preclude the resident from exercising the right to seek redress directly through judicial procedures.



* "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:

1. Adequate notice to the Resident of grounds for terminating the tenancy and for eviction.
2. Opportunity for the Resident to examine all relevant documents, records, and regulations of the Authority prior to the trial for the purpose of preparing a defense.
3. Right of the Resident to be represented by counsel.
4. Opportunity for the Resident to refute the evidence presented by HACFM, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have.
5. A decision on the merits.

Furthermore, the grievance policy is not applicable to disputes between Residents not involving HACFM, nor of class action grievances. The policy and procedures are not intended as a forum for initiating or negotiating policy changes between individual Residents or a group of residents and HACFM's Board of Commissioners.

The Grievance Process for a 30-DAY NOTICE to a resident is a two-part process:

1. **Informal Hearing:** The resident first requests an **Informal Hearing** (an informal discussion of the problem) with the Property Manager and attempts to resolve the matter with the Property Manager. The request may be presented orally or in writing to the Property Manager. The request must be made within five (5) working days of the time the Resident was notified of an Authority action, or became aware of the condition, situation, or circumstance alleged in the grievance, in order that the grievance may be discussed informally and settled without a hearing if possible.

A summary of the discussion between the resident and Property Manager will be prepared within a reasonable time following the Informal Settlement, not to exceed five (5) working days, and one copy will be given to the Resident and one retained in HACFM's Resident lease file. The summary will specify the following:

1. The names of the participants.
2. The date of the meeting or meetings held between the participants.
3. The nature of the disposition thereof and the reason therefore.
4. The procedures by which a hearing under provisions of HACFM's policy may be



obtained if the resident is not satisfied.

2. Hearing: If the resident is not satisfied with the decision of the Property Manager, the resident may then file a written request for a Hearing with HACFM's Hearing Officer within five (5) working days of receipt of the Property Manager's written decision. The written request shall be hand delivered or mailed to the attention of HACFM's Hearing Officer, at HACFM's Administrative Office, 4224 Renaissance Preserve Way, Fort Myers, Florida 33916. The Hearing Officer will have five (5) working days from receipt of the request in which to schedule the time, place, and date of the Hearing. The Hearing Officer will prepare of summary of the Informal Hearing within five (5) working days of the Hearing, inclusive of the following:

The names of the participants.;

The date of the meeting held between the participants;

The nature of the disposition thereof and the reason therefore.

The Expedited Grievance Process for a 7-DAY NOTICE to a resident is a one-part process:

An expedited hearing may be requested and/or conducted for an order of eviction due to:

- Criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the Housing Authority; or
- Any violent or drug-related criminal activity on or off the public housing premises [24 CFR 966.51].

The expedited hearing process shall be listed on all 7-Day Notices and the procedure is as follows:

1. An informal settlement of grievance is not applicable under this provision. When the resident receives a 7-Day Notice and they are subject to the Expedited Grievance Process, the resident may file a written request for a Hearing with their Property Manager within two (2) working days of receipt of the 7-Day Notice.
2. The Expedited Hearing will be conducted by the Hearing Officer and shall take place within five (5) working days from the date the request was received.
3. The Property Manager will schedule the hearing within two (2) working days from receipt of the request for the expedited hearing. The Property Manager will promptly notify the appropriate parties of the time, place and date of the Hearing. The notice shall state that no postponements will be permitted and that failure to appear waives the right to the hearing.



4. A written decision shall be provided to all parties within two (2) working days from the date of the hearing.

DECISIONS

The decision of the Hearing Officer shall be binding on HACFM, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless HACFM's Executive Director determines within a reasonable time, and promptly notifies the resident of its determination, that (a) the grievance does not concern HACFM action or failure to act in accordance with or involving the resident's lease on HACFM regulations, which adversely affect the resident's rights, duties, welfare or status; (b) 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 HACFM.

A decision by the Hearing Officer or Executive Director in favor of HACFM or which denies the relief requested by the resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the resident may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter. [24 CFR 966.57]

Miscellaneous matters related to the Tenant Grievance Policy and Procedures:

1. Before a hearing is scheduled in any grievance involving the amount of rent which HACFM claims is due, the resident shall pay to HACFM an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act took place. The resident shall thereafter deposit the same amount of rent monthly in an escrow account established and maintained by HACFM, to be disbursed at the direction of the Hearing Officer at such time as the grievance is resolved by decision of the Hearing Officer.

If the resident fails to deposit the amount required, he or she shall have waived his or her right to a Hearing. However, HACFM in extenuating circumstances may waive these requirements. Unless so waived, the failure to make such payment shall result in a termination of the grievance procedure, provided however, that failure to make payment shall not constitute a waiver of any right the resident may have to contest the Authority's disposition of his or her grievance in any appropriate judicial proceeding.

2. 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.
3. If the resident or HACFM fails to appear at a scheduled Hearing, the Hearing Officer, for good cause and in the interest of justice, may make a determination to postpone the



Grievance Procedures

Hearing for a period of time not to exceed five (5) working days (except for an expedited hearing), or may make a determination that the party has waived its right to a Hearing. Both the resident and HACFM shall be notified of any such determination by the Hearing Officer, provided that determination that the resident has waived his or her right to a Hearing shall not constitute a waiver of any right the resident may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

D. DEFINITIONS

"**Authority**" shall mean the Housing Authority of the City of Fort Myers, Florida, abbreviated also as HACFM.

"Grievance" shall mean any dispute that a Resident may have with respect to any HACFM action, or failure to act, in accordance with the Resident's lease or HACFM regulations, policies, or procedures that adversely affect the Resident's rights, duties, welfare, or status with HACFM

"**Request for Hearing**" shall mean a written request filed in accordance with the provisions of the HACFM's Grievance Policy and Procedures. The Request for Hearing should state the reason for the grievance, and the action or relief sought.

Section 504 Grievance Procedures

Any person who believes that he/she has been subject to discrimination as prohibited by Section 504 of the Rehabilitation Act of 1973 may personally, or by representative, file a complaint with the Housing Authority of the City of Fort Myers (owner/agent).

When a person who believes he/she has been adversely affected by a act or decision by the owner/agent and that such act or decision was based on disability status, he/she will have the right to process a complaint or grievance in accordance with the following process:

1. An aggrieved person must submit a statement (preferably written) to the owner / agent setting forth the nature of the discrimination alleged and facts upon which the allegations is based.
2. The owner/agent shall contact the complainant no later than 15 business day after receiving the written statement to establish an informal meeting with the objective of resolving the matter informally. However in no case shall the information meeting be conducted sooner that five business days or more than forty-five business days after receiving the written statement.
3. Within fifteen business days of the informal meeting, the owner agent will provide the aggrieved person with a written decision about whether the owner/agent determines the complaint valid and if so, what steps will be taken to rectify the situation
4. If it is determined, by the owner /agent, that the complaint is not valid, the aggrieved person has the right to appeal the decision within 10 business days of the date of the written notification.

