

## PUBLIC HOUSING/SECTION 8 NEW CONSTRUCTION GRIEVANCE PROCEDURE

### HOUSING AUTHORITY OF THE CITY OF FOND DU LAC

**DATE ADOPTED:** May 14, 2001

**PURPOSE:** The purpose of this policy is to establish procedures for hearings for residents.

#### 1.0 RIGHT TO A HEARING

Upon the filing of a written request as provided in these procedures, a resident shall be entitled to a hearing before a Hearing Officer.

#### 2.0 DEFINITIONS

For the purpose of this Grievance Procedure, the following definitions are applicable:

- A. **"Grievance"** shall mean any dispute which a resident may have with respect to the Fond du Lac Housing Authority's action or failure to act in accordance with the individual resident's lease or Authority regulations which adversely affect the individual resident's rights, duties, welfare or status. **Grievance does not include any dispute a resident may have with the Authority concerning a termination of tenancy or eviction.** Nor shall this process apply to disputes between residents not involving the Fond du Lac Housing Authority or to class grievances.
- B. **"Complainant"** shall mean any resident whose grievance is presented to the Fond du Lac Housing Authority or at the development management office in accordance with sections 3.0 and 4.0 of this procedure.
- C. **"Elements of Due Process"** shall mean 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 tenancy and for eviction;
  - 2. Right of the resident to be represented by counsel;
  - 3. Opportunity for the resident to refute the evidence presented by the Authority including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and
  - 4. A decision on the merits.
- D. **"Hearing Officer"** shall mean a person selected in accordance with section 4.0 of these procedures to hear grievances and render a decision with respect thereto.

- E. **"Resident"** shall mean the adult person (or persons) other than a live-in aide:
  - 1. Who resides in the unit and who executed the lease with the Fond du Lac Housing Authority as lessee of the premises, or, if no such person now resides in the premises,
  - 2. Who resides in the unit and who is the remaining head of household of the resident family residing in the unit.
- F. **"Resident Organization"** includes a resident management corporation.
- G. **"Promptly"** (as used in section 3.0, and 4.0 (D)), shall mean within the time period indicated in a notice from Fond du Lac Housing Authority of a proposed action, which would provide the basis for a grievance if the resident has received a notice of a proposed action from the agency.

### **3.0 PROCEDURES PRIOR TO A HEARING**

Any grievance shall be promptly and personally presented, either orally or in writing, to the Fond du Lac Housing Authority office or to the office of the development in which the resident resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within fourteen (14) calendar days and one copy shall be given to the resident and one retained in the Authority's resident file. The summary shall specify the names of the participants, dates of the meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing under these procedures may be obtained if the resident is not satisfied.

### **4.0 PROCEDURES TO OBTAIN A HEARING**

#### **4.1 REQUEST FOR HEARING**

The resident shall submit a written request for a hearing to the Authority or the development office within fourteen (14) calendar days from the date of the mailing of the summary of the discussion pursuant to section 3.0. The written request shall specify:

- A. The reasons for the grievance; and
- B. The action or relief sought.

#### **4.2 SELECTION OF A HEARING OFFICER**

A grievance hearing shall be conducted by an impartial person appointed by the Fond du Lac Housing Authority other than a person who made or approved the action under review or a subordinate of such person.

The Fond du Lac Housing Authority shall annually submit a list of prospective hearing officers. This list shall be provided to any existing resident organization(s) for such organization's comments or recommendations. The Fond du Lac Housing Authority shall consider any comments or recommendations by a resident organization.

From this list, a hearing officer shall be selected.

#### **4.3 FAILURE TO REQUEST A HEARING**

If the resident does not request a hearing in accordance with this section, then the Fond du Lac Housing Authority's disposition of the grievance under section 3.0 shall become final. However, failure to request a hearing does not constitute a waiver by the resident of the right thereafter to contest the Fond du Lac Housing Authority's action in disposing of the complaint in an appropriate judicial proceeding.

#### **4.4 HEARING PREREQUISITE**

All grievances shall be promptly presented in person, either orally or in writing, pursuant to the informal procedure prescribed in section 3.0 as a condition precedent to a hearing under this Section. However, if the resident can show good cause why there was failure to proceed in accordance with section 3.0 to the Hearing Officer, the provisions of this subsection may be waived by the Hearing Officer.

#### **4.5 ESCROW DEPOSIT**

Before a hearing is scheduled in any grievance involving the amount of rent as defined in the lease which the Fond du Lac Housing Authority claims is due, the resident shall pay to the Fond du Lac Housing Authority an amount equal to the amount 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 resident shall thereafter deposit monthly the same amount of the monthly rent in an escrow account held by the Fond du Lac Housing Authority until the complaint is resolved by decision of the Hearing Officer. Amounts deposited into the escrow account shall not be considered as acceptance of money for rent during the period in which the grievance is pending. In extenuating circumstances, the Fond du Lac Housing Authority may waive these requirements. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure. However, failure to make payment shall not constitute a waiver of any right the resident may have to contest the Fond du Lac Housing Authority's disposition of his grievance in any appropriate judicial proceeding.

If a grievance concerns the denial of a financial hardship exemption from the minimum rent requirement or the effect of welfare benefit reductions in the calculation of family income, the requirement for an escrow deposit is waived.

#### **4.6 SCHEDULING OF HEARINGS**

Upon the resident's compliance with this section the Hearing Officer shall promptly schedule a hearing for a time and place reasonably convenient to both the resident and the Fond du Lac Housing Authority. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the resident and the appropriate agency official.

## **5.0 PROCEDURES GOVERNING THE HEARING**

The resident shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the grievance hearing any Authority documents, including records and regulations that are directly relevant to the hearing. The resident shall be provided a copy of any such document at the resident's expense. If the Fond du Lac Housing Authority does not make the document available for examination upon request by the resident, the Fond du Lac Housing Authority may not rely on such document at the grievance hearing.
- B. The right to be represented by counsel or other person chosen as the resident's representative and to have such person make statements on the resident's behalf;
- C. The right to a private hearing unless the resident requests a public hearing;
- D. The right to present evidence and arguments in support of the resident's complaint, to controvert evidence relied on by the Authority or development management, and to confront and cross examine all witnesses upon whose testimony or information the Fond du Lac Housing Authority or development management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.

The Hearing Officer may render a decision without holding a hearing if the Hearing Officer determines that the issue has been previously decided at another hearing.

If either the resident or Authority fails to appear at a scheduled hearing, the Hearing Officer may postpone the hearing for up to five business days or determine that the missing party has waived their right to a hearing. Both the Fond du Lac Housing Authority and the resident shall be notified of the Hearing Officer's decision. This decision shall not waive a resident's right to contest the disposition of the grievance in an appropriate judicial proceeding.

The following accommodation will be made for persons with disabilities:

- A. The Fond du Lac Housing Authority shall provide reasonable accommodations for persons with disabilities to participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants.
- B. If the resident is visually impaired, any notice to the resident that is required by these procedures must be in an accessible format.

## **6.0 INFORMAL HEARING PROCEDURES FOR DENIAL OF ASSISTANCE ON THE BASIS OF INELIGIBLE IMMIGRATION STATUS**

The participant family may request that the Fond du Lac Housing Authority provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The participant family must make this request within 30 days of receipt of the *Notice of Denial or Termination of Assistance*, or within 30 days of receipt of the INS appeal decision.

## **7.0 DECISION OF THE HEARING OFFICER**

The Hearing Officer shall prepare a written decision, together with the reasons therefore, within fourteen (14) calendar days after the hearing. A copy of the decision shall be sent to the resident and the Fond du Lac Housing Authority. The Authority shall retain a copy of the decision in the resident's folder. A copy of such decision with all names and identifying references deleted shall also be maintained on file by the Fond du Lac Housing Authority and made available for inspection by a prospective complainant, his or her representative, or the Hearing Officer.

The decision of the Hearing Officer shall be binding on the Fond du Lac Housing Authority who shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Fond du Lac Housing Authority's Board of Commissioners determines within reasonable time, and promptly notifies the complainant of its determination, that:

- A. The grievance does not concern Fond du Lac Housing Authority action or failure to act in accordance with or involving the resident's lease or Authority 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, Authority regulations, or requirements of the Annual Contributions Contract between the Authority and the U.S. Department of Housing and Urban Development.

A decision by the Hearing Officer or Board of Commissioners in favor of the Fond du Lac Housing Authority 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 whatsoever, any rights the resident may have to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.