

# **THE FITCHBURG HOUSING AUTHORITY'S GRIEVANCE PROCEDURES FOR FHA'S STATE PUBLIC HOUSING AND VOUCHER PROGRAMS**

## **PART I**

The Fitchburg Housing Authority's Grievance Procedures for the state public housing and voucher programs shall be administered in accordance with 760 CMR 6.08: Grievance Procedures, as follows:

### **1. Appointment of Hearing Officers and Jurisdiction.**

The Fitchburg Housing Authority's Grievance Procedure requires a hearing and determination of a matter subject to the procedure by a single hearing officer pursuant to Appendix B of 760 CMR 6.00. The FHA's hearing officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing in Fitchburg, MA, and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the FHA, except for those persons who are subject to an different grievance procedure.

Under this procedure the FHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The FHA's nomination(s) for hearing officer(s) are subject to a thirty (30) day comment period for TENANTS to have the opportunity to disapprove any of the nominees. Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five days of receipt of a nomination any affected TENANT may make a written request to the FHA to interview the nominee.

Following such a request for an interview by an affected TENANT, the FHA shall make prompt arrangements for an interview between the nominee and the TENANT(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected TENANT may approve or disapprove the nominee by giving written notice to the FHA. A notice of disapproval shall include the specific reason(s) why the TENANT disapproved the nominee. If all affected TENANT(s) shall approve a nominee or if no affected TENANT shall disapprove a nominee within the requisite time, the nominee shall thereupon become the FHA's hearing officer upon written acceptance mailed or delivered to the FHA which shall notify the TENANT(s).

The FHA's hearing officer shall annually certify to the FHA that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the FHA shall render the hearing officer's position vacant.

### **2. Impartiality of the Hearing Officer.**

The FHA's hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. The FHA's hearing officer shall not be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. The FHA's hearing officer shall not determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. The FHA's hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. The FHA's hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively, shall remove himself or herself as hearing officer, whether or not he has been requested to do so.

### **3. Removal of the Hearing Officer.**

The FHA's hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The FHA and the affected TENANT(s) may agree on removal after notice to the FHA's hearing officer and the opportunity for him or her to be heard. In

the absence of agreement, the Department may remove the FHA's hearing officer for cause upon a request by the FHA or the TENANT. Prior to removing the FHA's hearing officer, the Department shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the FHA's hearing officer, the FHA and the TENANT(s) the opportunity to be heard. The Department's decision whether to remove the FHA's hearing officer shall be in writing mailed to the FHA's hearing officer, the FHA, and the TENANT(s). If a written specification fails to detail good and sufficient cause for removal, the Department shall deny a request for removal without a hearing.

#### **4. Appointment of Interim Hearing Officers.**

If the FHA's hearing officer is unable and/or unwilling to serve for one or more pending matters and if use of the appointment process referenced above would likely cause significant delay with potential adverse consequences to either the FHA or the grievant, the FHA with notice to the affected TENANT(s) may request that an interim hearing officer for the FHA be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected TENANT(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim hearing officer for the FHA, the Department shall name the FHA's interim hearing officer. The Department may name a previously disapproved nominee to serve as FHA's interim hearing officer if it finds that the TENANT's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

The FHA's interim hearing officer shall have all the powers and duties of the FHA's hearing officer and shall serve in the pending matters for which he or she was appointed. The FHA's interim hearing officer may be nominated by an FHA to be hearing officer in the manner set out herein.

#### **5. Scheduling.**

The FHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

#### **6. Procedural Provisions.**

The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include:

- (a) the provisions regarding the time and method for initiating a grievance;
- (b) the requirement of a pre-hearing informal settlement conference between grievant and the FHA about the grievance;
- (c) the provisions regarding the FHA's setting a hearing date and giving notice to grievant;
- (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing;
- (e) the provisions regarding who may be present at the grievance hearing;
- (f) the procedural requirements for the conduct of grievance hearings; and
- (g) the requirements regarding a written decision following the grievance hearing.

## **PART II**

The FHA's grievance procedure shall provide for the following:

**(a) Initiation of a Grievance.** A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the FHA to the Office of the Executive Director, Fitchburg Housing Authority, 50 Day Street, Fitchburg, MA 01420, seven (7) days after a notice of lease termination has been given to tenant by the FHA.

A grievance regarding whether participation in the MRVP or AHVP should be terminated shall be initiated by a program participant in writing and shall be mailed or delivered to the FHA to the Office of the Executive Director, Fitchburg Housing Authority, 50 Day Street, Fitchburg, MA 01420, within seven (7) days after a notice of program termination has been given to the program participant by the FHA.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the FHA to the Office of the Executive Director, Fitchburg Housing Authority, 50 Day Street, Fitchburg, MA 01420, no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the FHA shall have discretion to permit a grievance to be initiated late.

The FHA shall permit additional time for initiation of a grievance if the FHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the FHA.

**(b) Informal Settlement Conference.** Promptly after the initiation of a grievance, unless otherwise provided, the FHA's Executive Director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The FHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the FHA. If a matter is not resolved at the informal settlement conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

**(c) Hearing Date and Notice of Hearing.** A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the FHA receives the grievance. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

The FHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). The FHA or the FHA's hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the FHA that rescheduling is reasonably necessary.

**(d) Pre-Hearing Examination of Relevant Documents.** Prior to a grievance hearing the FHA shall give the grievant or his or her representative a reasonable opportunity to examine FHA documents which are directly relevant to the grievance. Following a timely request the FHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

**(e) Person Entitled to be Present.** The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the FHA's hearing officer otherwise orders. The FHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the hearing officer. At the hearing the FHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or

herself in an orderly manner or he or she shall be excluded. If the grievant misbehaves at the hearing, the hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

**(f) Procedure at Grievance Hearings.** The FHA's hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The FHA's hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the FHA shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape-recorded. The FHA's hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and FHA rules and policies. The FHA's hearing officer may request the FHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

**(g) Written Decision; Effect of Decision.** Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible the FHA's hearing officer shall provide the FHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been requested by the FHA's hearing officer. The FHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the FHA and shall be open to public inspection.

**(h) Review by the FHA's Board.** In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the FHA's Board. In other cases, in the event that the grievant or the FHA believes that:

- (1) the decision of the FHA's hearing officer is not supported by the facts;
- (2) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or
- (3) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision,

the grievant or the FHA may request review of the decision by the FHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the FHA and grievant to make oral presentations and submit documentation. The Board may also permit the FHA's hearing officer to make a presentation. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

**(i) Review by the Department.** In the event that the FHA's Board shall make a material change in a decision of the FHA's hearing officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

**(j) Effect of a Decision on a Grievance.** The decision on a grievance shall be binding between the FHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the FHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.