MISSOULA HOUSING AUTHORITY
GRIEVANCE PROCEDURE FOR PUBLIC HOUSING

I. POLICY

This policy only applies to tenants of federally-subsidized public housing operated by the Missoula Housing Authority. Applicants to public housing are not entitled to the same hearing process afforded tenants in the MHA Grievance Procedure. The Grievance Procedure for Public Housing does not apply to:

1. Applicants for MHA housing;
2. Guests of tenants and live-in-aides;
3. Section 8 Voucher Program Participants, including Project-Based;
4. LIHTC tenants.

The Missoula Housing Authority shall direct its best efforts toward resolving tenant grievances at the lowest possible level of the MHA's organizational structure, while providing tenants an opportunity for a fair and impartial hearing where resolution of grievances at the staff level is not possible. This policy shall be incorporated and made part of MHA’s public housing lease, by reference.

A grievance is any dispute a tenant may have with respect to MHA action or failure to act in accordance with the lease or regulations that adversely affect the individual tenant’s rights, duties, welfare or status. The grievance policy is applicable only to individual tenant issues relating to MHA. It shall not be applicable to disputes between tenants that do not involve MHA or to class grievances, and shall not be used as a means of initiating or negotiating MHA policy changes which are subject to MHA Board of Commissioner approval.

The Missoula Housing Authority shall provide an opportunity for a fair and impartial hearing of the grievance provided that the grievance hearing request is made in a timely manner. If no request is made or, if a request is not made in a timely manner as defined in the Grievance Procedure, the tenant shall be deemed to have waived his or her right to a grievance hearing under this policy.

II. PROCEDURE

A. DEFINITIONS:

1. Grievance: Any dispute a tenant may have with respect to any MHA action or failure to act in accordance with the tenant’s lease/rental agreement or housing authority regulations which adversely affect the individual tenant’s rights, duties, welfare, or status.

2. Complainant shall mean any tenant whose grievance is presented to the MHA in accordance
with the policies set forth below.

3. **Elements of due process.** An eviction action or a termination of tenancy in a state or local court shall require the following procedural safeguards:
   a. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
   b. Right of the tenant to be represented by counsel;
   c. Opportunity for the tenant to refute the evidence presented by MHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
   d. A decision on the merits;

4. **Hearing Officer:** An impartial person appointed by MHA according to the procedures set forth in this policy to hear grievances and render a decision.

5. **Tenant:** the adult person (or persons), other than a live-in aid:
   a. Who resides in the unit, and who executed the lease/rental agreement with MHA as lessee of the dwelling unit, or, if no such person now resides in the unit;
   b. Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

6. **Resident Organization** is the Resident Advisory Board (RAB) or other Resident Management Association of MHA.

**B. INFORMAL SETTLEMENT OF GRIEVANCE:**
The first required step in the grievance process is to attempt an informal settlement. Grievances always originate with the tenant.

1. A tenant may personally present the grievance either orally or in writing, to the MHA Public Housing Asset Manager. The tenant must make/file the grievance within ten (10) business days of MHA’s action or failure to act which gives rise to the grievance. Grievances received after ten business days will not be considered.

2. If the grievance involves allegations of discrimination or harassment against staff, the tenant shall submit the grievance directly to the Operations Director or the Executive Director. If the grievance involves allegations of discrimination or harassment against the Operations Director, the tenant shall submit the grievance to either the Public Housing Asset Manager or the Executive Director. If the grievance involves allegations of discrimination or harassment against the Executive Director, the tenant shall submit the grievance to either the Public Housing Asset Manager or the Operations Director.

3. Upon receipt of the grievance, it shall be reviewed by the Operations Director or other appropriate MHA staff. The tenant shall be contacted within five (5) business days of receipt of the grievance, to meet and discuss the issue informally and to attempt to settle the grievance if possible.
4. If a complainant fails to attend a scheduled meeting without prior notice to MHA staff, MHA will reschedule the appointment only if the complainant can show good cause for failing to appear. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

5. MHA will prepare a summary of the informal settlement discussion and disposition within five (5) business days; one copy of the summary shall be given to the complainant and one copy of the summary shall be retained in MHA’s tenant’s file. The summary shall specify the names of the participants, date(s) of meeting(s), the nature of the proposed disposition of the grievance and the specific reasons for the disposition. The summary shall also specify the procedure by which a grievance hearing may be obtained by the complainant if the complainant is not satisfied with the informal settlement disposition.

C. PROCEDURE TO OBTAIN A FORMAL GRIEVANCE HEARING:

1. Request for Hearing: If the complainant is not satisfied with the outcome of the informal settlement, he or she may submit a written request for a formal grievance hearing to the MHA Public Housing Asset Manager within five (5) business days of the date of the written summary of discussion of the informal settlement. The written request for a grievance hearing shall specify:
   a. The reason for the grievance; and
   b. The action or relief sought.

2. Failure to Request a Hearing: If the complainant does not request a formal grievance, MHA’s informal settlement disposition of the grievance shall become final. The complainant’s failure to request a formal grievance hearing shall not constitute a waiver by the complainant of his or her right to contest MHA’s decision about the grievance in an appropriate judicial proceeding.

3. Hearing Prerequisite: All grievances must first go through the Informal Settlement procedures set forth in Section II(B) of this policy. If it is determined the complainant has good cause for bypassing the informal settlement procedure, MHA or the Hearing Officer may waive this requirement. The reason for waiving this requirement shall be documented by MHA staff or the Hearing Officer in the complainant/tenant’s file, along with the complainant’s written request for the hearing.

D. ESCROW DEPOSITS FOR GRIEVANCES INVOLVING NON-PAYMENT OF RENT.

1. If a grievance involves the amount of rent owed by a tenant, before a hearing is scheduled, the tenant shall pay into an escrow account with MHA the amount of rent MHA states is due and owing as of the first of the month preceding the month in which the act or failure to act took place. After the first deposit, the tenant must deposit the same amount monthly until the grievance is resolved by a decision of the hearing officer.
2. MHA staff will notify the tenant of this requirement and the procedures for making the escrow deposits.

3. Failure to make an escrow deposit when due shall result in termination of the grievance procedure and all rent owed by the tenant shall become immediately due and payable. Failure to make an escrow deposit shall not constitute a waiver of any right the tenant may have to contest MHA’s disposition of his grievance in any appropriate judicial proceeding.

4. MHA shall waive the escrow deposit requirement where required by § 5.630 of title 24 of the CFR’s (financial hardship exemption from minimum rent requirements) or § 5.615 of title 24 of the CFR’s (effect of welfare benefits reduction in calculation of family income). Unless MHA waives the requirement, the family’s failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding MHA's disposition of the grievance.

E. SCHEDULING OF HEARINGS: Upon the complainant’s compliance with paragraphs B, C, and D of Section II of this policy, a hearing shall be promptly scheduled for a time and place reasonably convenient to both the complainant, MHA and the Hearing Officer. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and MHA. Under no circumstances, including rescheduling of a grievance hearing pursuant to Section H, shall a grievance hearing be rescheduled at the complainant’s request more than two times. If the complainant cannot attend the grievance hearing after the third scheduled grievance hearing, it shall constitute a waiver of the complainant’s right to a grievance hearing.

F. SELECTION OF A HEARING OFFICER; MHA grievance hearings shall be conducted by a single hearing officer and not a panel. MHA shall select a person who has been appointed in the following manner:

1. The Hearing Officer shall be an impartial, disinterested person appointed by MHA. The Hearing Officer may be an employee or an independent hearing officer. No person who made or approved the action being grieved or who has some interest in the matter under review, or who appears to lack impartiality, shall be appointed.

2. The Operations Director (or designee) shall retain and appoint hearing officers. The Operations Director (or designee) shall maintain a list of the appointed hearing officers. This list shall be submitted to the RAB Board once a year for comment, or any time there are additional hearing officers added to the appointed hearing officers list. Any comments or recommendations submitted by the tenant organization shall be considered by the MHA regarding the appointment of a hearing officer.

G. PROCEDURE GOVERNING THE HEARING:
1. The hearing shall be held before a Hearing Officer.

2. The complainant shall receive a fair hearing with due process, which shall include:
   a. At the request of the complainant, the opportunity to examine before the grievance hearing all documents, records and regulations of MHA that are relevant to the grievance hearing. The complainant may copy any such document(s) at the complainant’s own expense, at a cost of $.25 per page. The tenant must request discovery/examination of the documents no later than 12:00 p.m. on the business day prior to the hearing. If MHA does not make the document(s) available for examination upon request by the complainant, MHA may not rely on such document(s) at the formal grievance hearing.
   
   b. The right to representation by counsel or other person chosen as the claimant’s representative, and to have such person make statements on the claimant’s behalf.
   
   c. The right to a private hearing unless the complainant requests a public hearing.
   
   d. The right to present evidence and arguments in support of the claimant’s grievance, to contest or rebut evidence relied upon by MHA and to confront and cross-examine all witnesses.
   
   e. A decision based solely and exclusively upon the facts presented at the hearing.

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

4. At the hearing, the complainant must first show that he or she is entitled to the relief sought and thereafter MHA has the burden to justify its actions or failure to act.

5. The hearing shall be conducted informally and oral or documentary evidence may be received without regard to admissibility such as in judicial proceedings. All parties shall 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.

6. Either MHA or the complainant may arrange in advance for transcription of the proceedings at their own expense. Any interested party may purchase a copy of the transcript.

7. 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 must be in an accessible format.

H. FAILURE TO APPEAR FOR THE SCHEDULED HEARING:

1. If the complainant does not appear at the scheduled time of the formal grievance hearing,
the Hearing Officer will wait up to 20 minutes. If the complainant appears within 20 minutes of the scheduled time, the hearing will be held. If the complainant does not appear within 20 minutes of the scheduled time, he or she will be considered to have failed to appear.

2. If the complainant fails to appear and was unable to reschedule the hearing in advance, a hearing will be automatically rescheduled if the complainant contacts MHA within 24 hours of the scheduled hearing date, excluding weekends and holidays, subject to the restrictions set forth in Section E of this procedure. The Hearing Officer may reschedule the hearing if a request is made by the complainant within five (5) days of the date of the hearing and the Hearing Officer determines the complainant has established good cause for his or her failure to appear. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the tenant.

I. DECISION OF THE HEARING OFFICER:

1. The Hearing Officer shall prepare a written decision, with the reasons for the decision stated, within ten business days after the hearing. The written decision shall contain:

   a. A brief impartial statement of the reason for the hearing;
   b. A summary of the evidence presented;
   c. Findings of Facts made by the Hearing Officer based on a preponderance of the evidence; and
   d. A conclusion, which shall include a statement whether MHA’s decision is upheld or overturned.

2. A copy of the decision shall be sent to the complainant and to MHA within ten business days after the hearing. A copy of the decision shall be maintained in the complainant/tenant’s file. A copy of the decision, with all names and identifying references deleted, shall also be maintained on file by MHA and made available for inspection by a prospective complainant, his representative, or the hearing officer.

3. The Hearing Officer’s decision shall be binding on MHA unless the Missoula Housing Authority’s Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination that:

   a. The grievance does not concern MHA action or failure to act in accordance with or involving the tenants lease/rental agreement or MHA regulations, which adversely affect the tenant’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 (ACC).
4. A decision by the Hearing Officer or MHA Board of Commissioners in favor of MHA or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a judicial review of the decision through any judicial proceedings.

J. EXCEPTION(S) TO APPLICABILITY OF GRIEVANCE PROCEDURE

1. The Missoula Housing Authority grievance procedure does not apply to, and tenants will not be allowed to utilize the grievance procedure, for any termination of tenancy or eviction that involves:

   (a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of MHA premises by other residents or MHA employees;

   (b) Any drug related criminal activity on or near MHA premises.

2. HUD has issued a due process designation for the State of Montana. This determination holds that the State of Montana provides sufficient due process for tenants who face termination in these circumstances during eviction proceedings through the State of Montana’s court system.