

XIII. Grievance Procedure

A. Definitions

1. "Grievance" shall mean any dispute, which a tenant may have with respect to Housing Authority of Billings action or failure to act in accordance with the individual tenant's lease which adversely affect the individual tenant's rights, duties, welfare or status.
2. "Complainant" shall mean any tenant whose grievance is presented to the Housing Authority of Billings in accordance with Sections B. and C. of this Procedure.
3. "Hearing Officer" shall mean a person selected in accordance with Section C. of this Procedure to hear grievances and render a decision with respect thereto.
4. "Tenant" shall mean any lessee or the remaining head of the household of any tenant family residing in housing accommodations covered by this procedure.

B. Informal Settlement Of Grievance.

1. Any grievance shall be personally presented orally or in writing to the Housing Authority of Billings office so that the grievance may be discussed informally and settled without a hearing, if possible.
2. The grievance must be presented by the complainant or his representative within a reasonable time, not in excess of 10 days of the Housing Authority of Billings action or failure to act, which is the basis of the grievance.
3. The Housing Authority of Billings shall schedule the informal discussion referred to in Subsection (b) above as promptly as possible, at a time and place reasonably convenient to the complainant and the Housing Authority of Billings, and shall inform the complainant thereof.
4. A summary of the discussion, dated and signed by the Executive Director, or other appropriate official, shall be prepared within a reasonable time, not in excess of ten working days of the informal discussion. One copy shall be given to the tenant and one retained in the Housing Authority of Billings' tenant file. The summary shall specify the nature of the complaint, the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint if any and the specific reason therefore, and shall specify the right of the complainant to a hearing and the procedures by which a hearing under Section C. may be obtained if the complainant is not satisfied.

C. Procedure To Obtain A Hearing

1. **Request for a Hearing.** If the complainant is dissatisfied with the proposed disposition of his complaint, as stated in the Executive Director's or other Housing Authority of Billings official's informal discussion summary, he/she may submit a written request for a hearing, to the Housing Authority of Billings within a reasonable time, not in excess of 10 days from the date of the summary. The written request shall specify:
 - (a) the reasons for the grievance; and
 - (b) the action or relief sought.
2. **Selection of Hearing Officer.** Grievances shall be presented before a hearing officer. A hearing officer shall be selected as follows:
 - (a) Upon consultation of the Resident Organizations, the Housing Authority of Billings has appointed the members of the Board of Commissioners, managerial staff and other persons independent of the Housing Authority who are familiar with HUD

regulations to act as hearing officers. One of these individuals will be assigned by the Housing Authority of Billings to conduct each hearing.

3. **Failure to Request a Hearing.** If the complainant does not request a hearing in accordance with Section C.1 and C.2, then the Housing Authority of Billings' disposition of the grievance under Section B. shall become final, provided that failure to request a hearing shall not constitute a waiver by the complainant of their right thereafter to contest the Housing Authority of Billings' action in disposing of the complaint in an appropriate judicial proceeding.

4. **Hearing Prerequisite.** All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Section B. as a condition precedent to a hearing under this section. Provided, that if the complainant shall show good cause why he failed to proceed in accordance with Section B. to the hearing officer, the hearing officer may waive the provisions of this subsection.

5. **Escrow Deposit.** Before a hearing is scheduled in any grievance involving the amount of rent which the Housing Authority of Billings claims is due, the complainant shall pay to the Housing Authority of Billings 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 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. These requirements may be waived by the Housing Authority of Billings in extenuating circumstances. Unless so waived, the failure to make payments shall result in a termination of the grievance procedure. Provided, that failure to make payments shall not constitute a waiver of any right the complainant may have to contest the Housing Authority of Billings' disposition of this grievance in any appropriate judicial proceeding.

6. **Schedule of Hearings.** Upon complainant's compliance with Subsections B., a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the Housing Authority of Billings. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate Housing Authority of Billings' official.

D. Procedures Governing The Hearing.

1. The hearing shall be held before a hearing officer appointed as set forth above.

2. The complainant shall be afforded a fair hearing providing the basic safeguards of due process, which shall include:

(a) The opportunity to examine before the hearing and, at the expense of complainant, a copy of all documents, records and regulations of the Housing Authority of Billings that are relevant to the hearing. Any document not so made available after request therefore by the complainant may not be relied upon by the Housing Authority of Billings at the hearing. All documents will be photocopied at the tenant's expense;

(b) The right to be represented at the expense of the complainant, by counsel or other person chosen as his or her representative;

(c) The right to a private hearing unless the complainant requests a public hearing, but this shall not be construed to limit the attendance if persons with a valid interest in the proceedings;

(d) The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by the Housing Authority of Billings, and to confront and cross examine all witnesses on whose testimony or information the Housing Authority of Billings relies; and

(e) A decision on the merits.

3. 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.
4. If the complainant or the Housing Authority of Billings fails to appear at a 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 his or her right to a hearing. The hearing officer shall notify both the complainant and the Housing Authority of Billings of the determination. Provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the Housing Authority of Billings' disposition of the grievance in an appropriate judicial proceeding.
5. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the Housing Authority of Billings must sustain the burden of justifying the Housing Authority of Billings' action or failure to act against which the complaint is directed.
6. The hearing shall be conducted informally by the hearing officer, and 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. The hearing officer shall require the Housing Authority of Billings, 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.
7. The complainant or the Housing Authority of Billings may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

E. Decision Of The Hearing Officer

1. The hearing officer(s) shall prepare a written decision together with the reasons therefore, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the Housing Authority of Billings shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all name and identifying references deleted, shall also be maintained on file by the Housing Authority of Billings and made available to inspection by a prospective complainant, his representative, or the hearing panel.
2. The decision of the hearing officer shall be binding on the Housing Authority of Billings, which shall take all actions or refrain from any actions necessary to carry out the decision unless the Housing Authority of Billings' Board of Commissioners determines within a reasonable time and promptly notifies the complainant of its determination that:
 - (a) The grievance does not concern Housing Authority of Billings action or failure to act in accordance with or involving the complainant's lease or Housing Authority of Billings regulations; which adversely affect the complainant'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 the Housing Authority of Billings.

F. Appeals From The Hearing Officer's Decision

A decision by the hearing officer or Board of Commissions in favor of the Housing Authority of Billings 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 trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

G. Exception(s) For Grievance Procedures

1. The Housing Authority will bypass the grievance procedure for termination of tenancy or eviction that involves:
 - (a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA, or
 - (b) Any drug related criminal activity on or near such premises.
2. HUD has issued a due process designation for the State of Montana. The State of Montana provides due process for evictions in its court system.