



# Grievance Procedure

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## **INTRODUCTION**

The purpose of this Grievance Procedure (“Procedure”) is to implement a system by which the Housing Opportunities Commission of Montgomery County (HOC) correctly and fairly provides an appeal process for HOC customers who wish to challenge or dispute a decision of the Agency. This includes the opportunity for an informal hearing at which HOC customers may identify their complaints against alleged arbitrary, unfair, or illegal practices by HOC. This Procedure also provides an opportunity for an informal hearing if an HOC customer files a grievance based on a perceived HOC action, or failure to act, involving the customer’s lease, recertification, eviction, or termination of assistance, which adversely affects the customer’s rights, duties, welfare, or status within the program. This Procedure applies to customers of all HOC programs notwithstanding program-specific regulations which may provide alternate or additional grievance procedures for eligible participants of the given program. To allow for full participation in all stages of the grievance process, HOC offers application for reasonable accommodations to all customers with disabilities.

Furthermore, HOC applies this Grievance Procedure in a consistent and nondiscriminatory manner to guide the actions taken by HOC staff regarding proper provision of a grievance process for all of HOC’s customers. All applicable HOC staff and customers must comply with this Procedure.

### **A. ELIGIBILITY**

HOC’s Grievance Procedure is designed to resolve disputes between a customer and HOC because of either an action that HOC did or that it failed to do (under the lease or under HOC’s regulations), which will cause an adverse impact on the customer’s rights, duties, welfare, or status. This includes lease termination, eviction, adding charges for maintenance or repair, not scheduling timely repairs, or transferring to another unit. This Procedure is not for disputes between tenants, for class grievances, or for dealing with issues between tenants or tenant groups and HOC’s Board of Commissioners. Moreover, this Procedure does not cover grievances connected to personal injury, property damage, or to challenge an HOC policy of procedure.

Any HOC customer of the Public Housing, Housing Choice Voucher, or Project-Based Voucher programs is eligible to request an appeal under this Grievance Procedure. This includes applicants and residents. Applicants are defined as HOC customers called for a specific housing opportunity through a covered HOC program, but have not yet leased up in their unit and begun their tenancy. Tenants are defined as HOC customers currently participating in a covered HOC program, who are active in their tenancy or are transferring or relocating with their assistance to another unit in the same program.

#### **Exclusions**

This Grievance Procedure is not available for certain disputes, even for those customers participating in a covered HOC program. These include:

1. Non-payment of rent, unless administrative error by HOC;
2. Breach of agreement to pay outstanding debts owed to HOC;
3. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of HOC;
4. Any violent or drug-related criminal activity on or off such premises;

5. Any criminal activity that resulted in a felony conviction of a household member; and/or
6. Criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking engaged in by a member of a customer's household or any guest or other person under the customer's control. HOC may bifurcate a lease in order to terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others without evicting, removing, terminating assistance to, or otherwise penalizing the victim of, such violence who is also a tenant or lawful occupant. Additional information is available in HOC's Violence Against Women's Act (VAWA) Policy.

For disputes not covered by this Grievance Procedure, HOC customers may utilize the court system in order to contest an adverse action. If a grievance is requested, but it is for a dispute of one of the types excluded from this Procedure as per the above, the complainant will receive a letter from HOC denying their appeal as per this section of HOC's Grievance Policy.

## **B. DEFINITIONS**

Applicant. HOC customers called for a specific housing opportunity through a covered HOC program, but who have not yet leased up in their unit and begun their tenancy.

Complainant. The HOC customer who initiates the grievance or appeal.

Customer. Any qualified tenant residing in a housing unit owned and/or managed by HOC or participating in the Housing Choice Voucher program. Any applicant called-up from HOC's wait list for a housing unit owned by HOC or for a Housing Choice Voucher.

Dating violence. Violence committed by a person:

- (1) Who is or was previously in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship is determined based on a consideration of the following factors:
  - (i) The length of the relationship;
  - (ii) The type of relationship; and
  - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence. Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Grievance. A request to appeal a decision regarding any dispute between an HOC customer and an HOC action, or failure to act, in accordance with the individual customer's lease or HOC regulations that adversely affects the customer's rights, duties, welfare, or status.

Hearing Officer. The individual appointed by HOC to conduct informal hearings. The hearing officer is neither the person who made or approved the decision, nor a subordinate of that person. The hearing officer may be an independent contractor, volunteer, or HOC management or other official, as HOC may from time-to-time designate.

Housing Path. HOC's electronic wait list for all HOC housing programs.

Office Conference. First-level informal discussion of the relevant issues and/or concerns. This is conducted by HOC program staff. An office conference is not conducted in matters involving criminal or drug related activity.

Program Staff. The HOC asset manager, property manager, community manager, and resident counselor assigned to a given property or HUB; and/or the housing specialist and customer service manager assigned to work with the customer.

Sexual Assault. Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Supervisory Staff. Management-level staff who reviews the determinations of program-level staff.

Tenant. HOC customers currently participating in a covered HOC program, who are active in their tenancy or are transferring or relocating with their assistance to another unit in the same program.

VAWA. The Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

## **C. GRIEVANCE PROCESS**

The following steps constitute the process which HOC customers must follow, in order to utilize HOC's Grievance Procedure:

1. After a customer receives notice from HOC of a planned action regarding the customer or a member of their household (or, if the dispute is over a lack of action by HOC, it may be done without receiving a Notice);
2. The customer submits an Informal Hearing Request form to the relevant program office;
3. HOC staff offers the opportunity for an office conference to informally resolve any customer concerns;

4. If the office conference fails, or the customer declines the office conference option, an informal hearing is scheduled with the appropriate adjudicator;
  - a. For the HCV program, grievances regarding a customer's failure to recertify are adjudicated by a manager from the Housing Resources Division.
  - b. For all other grievances, including other HCV items, the informal hearing is adjudicated by HOC's third-party Hearing Officer.
5. The adjudicator provides a written response to the customer explaining their decision based on the evidence provided at the informal hearing;
6. If the customer is unsatisfied with the decision of the adjudicator, they may proceed in court.

HOC's informal grievance hearing is intended to quickly and informally settle disputes and protect the due process rights of HOC's customers. However, participation in the grievance process does not alter any rights that the customer may have to appropriate judicial proceedings— either instead of, or after, an informal hearing. Unless ordered by the court, HOC does not pay for a tenant's court costs or attorney's fees.

## **D. NOTICE OF A PLANNED ADVERSE ACTION**

HOC provides written notice mailed or emailed to the address or email address which the Agency has on file for the customer who is affected by an adverse action. This notice will explain the following:

1. The proposed action by HOC (such as lease termination);
2. The reason for the action, with factual detail and legal citation as may be applicable;
3. Who may dispute the action;
4. How and where the customer can appeal the action via HOC's Grievance Procedure; and
5. The procedures for requesting an informal grievance hearing.

If the customer files a grievance, the adverse action in the notice is placed on hold until the grievance process is completed.

## **E. GRIEVANCE HEARING**

If the complainant is entitled to a grievance hearing, HOC's hearing coordinator will contact the complainant, relevant HOC staff, and the hearing officer to schedule the informal hearing and collect relevant information. This process involves the following steps:

1. Schedule a grievance hearing at a reasonably convenient time and place for all parties involved.
2. Send written notification of the hearing to the complainant, relevant HOC staff, and the hearing officer identifying the time, place, and typical procedures of the informal hearing process.
3. Provide the opportunity for an exchange of documents, if requested, for both sides to see any documents that will be presented to the hearing officer at the hearing. Completion of this exchange of documents will occur at least three business days before the hearing.
4. Obtain the names of any witnesses at least three business days in advance of the hearing. Failure to provide the name of a prospective witness will result in restriction of the person to

testify, unless the hearing officer, in the interests of fairness, allows for the presentation of this person's testimony.

The hearing is held before an impartial hearing officer selected pursuant to this Procedure. A hearing officer may make a decision without a hearing, if it is determined that the same issue was already decided in a previous proceeding.

Neither the customer nor HOC may engage in ex parte communications with the hearing officer. Ex parte communications include any communication with the hearing officer in advance of the hearing about the merits or substance of the grievance, unless the other party has notice and a chance to participate in the communication. This also includes the prohibition of communication with the hearing officer about the case from any representative of the parties. To avoid even the appearance of such communications before or during the hearing, the parties will communicate with the hearing coordinator for scheduling matters and not email, call, or otherwise communicate with the hearing officer, unless the other party is simultaneously included in the e-mail or the call.

The following rules govern the grievance hearing itself:

1. The complainant must show that the dispute is one that is appropriate for a grievance hearing, but thereafter, HOC must justify its position by a preponderance ("more likely than not") of the evidence.
2. Both HOC and the complainant must have the opportunity, upon request, to look at any records that are directly relevant to the hearing and/or that are presented at the hearing. If interested the parties must make this request at least three business days before the hearing, unless the hearing officer allows a shorter time for meaningful review by both parties.
3. HOC and the complainant are provided the opportunity to copy relevant records at their own expense. HOC is permitted to set a duplication fee.
4. Any records requested by one party, but which were not provided to the other party, are excluded from the hearing, unless the hearing officer decides to allow the evidence as a matter of fairness in exceptional circumstances.
5. Unless the parties already have the documents, HOC and the complainant will receive from the hearing coordinator a briefing packet of relevant documents related to the hearing, at the hearing.
6. The complainant, at the complainant's expense, has the right to representation by counsel or any other representative selected by the complainant. However, the complainant must still attend the hearing.
7. The complainant has the right to a private hearing, unless the complainant requests a public hearing and the hearing officer agrees. However, either HOC or the complainant may make arrangements in advance, and at their own expense, to have the hearing transcribed and any interested party may purchase a copy of the transcript. Otherwise, no recordings, photographs or videotaping of the proceedings are allowed without the permission of the hearing officer.
8. The complainant has the right to present relevant evidence and arguments in support of the complainant's dispute, to challenge evidence presented by HOC staff.
9. The rules of evidence at the hearing are not the same as those in a judicial proceeding. Hearsay is admissible; it just may not be the sole basis for a decision.
10. Testimony is given under oath, administered by the hearing officer, explaining that the information must be true and correct to the best knowledge of the person presenting the evidence.

11. The complainant has the right to a reasonable accommodation, upon request, for persons with disabilities to participate in the hearing, which may include qualified sign-language interpreters, readers, accessible locations, or attendants.
12. If needed, and requested at least two weeks in advance, HOC will arrange for a qualified language interpreter. If the complainant wishes to have a different interpreter, the complainant may arrange for one at the complainant's expense.
13. Children are not appropriate interpreters for a grievance hearing and generally are not permitted to attend.
14. Any safety or security concerns regarding the hearing are presented to the hearing coordinator in advance of the scheduled hearing.
15. All those involved in the hearing must behave in an orderly manner. Failure to comply with the directions of the hearing officer to maintain order may result in exclusion from the proceedings or in a decision against the disorderly party.
16. Continuances of scheduled hearing are permitted for good cause, which determination is at the discretion of the hearing officer. Reasons for a continuance include, but are not limited to, unavoidable conflict that seriously affects the health, safety, or welfare of the complainant, a critical witness for either party, relevant staff from HOC, and/or the hearing officer.
17. If either party fails to appear within 15 minutes of the scheduled time for the hearing, the hearing officer may make a determination to postpone the hearing for a period to be determined, or may make a determination that the complainant has waived their right to a hearing, and so notifies both parties. Failure by a previously non-appearing party to attend a re-scheduled hearing will result in a decision that the non-appearing party has waived their right to a hearing. Written notice is sent to both parties. A decision regarding waiver of any right to a grievance hearing due to non-appearance by the tenant does not impact the tenant's right to contest HOC's position in a separate judicial proceeding through the court system.
18. In exceptional cases, at the discretion of the hearing officer and with the consent of both parties, it is permitted to conduct a hearing with one party appearing by telephone or other means that does not involve the individual's physical presence.
19. The decision of the hearing officer is based solely, and exclusively, on the information presented at the hearing, along with any accompanying documents.

## **F. DECISION OF THE HEARING OFFICER**

After the hearing is complete, the hearing officer prepares a written decision. The hearing officer send the written decision to the hearing coordinator, and the coordinator distributes the decision to HOC and the complainant.

The decision of the hearing officer is binding on HOC, unless:

1. The Board of Commissioners for HOC determines within a reasonable time and promptly informs the complainant that:
  - a. The complaint was not initially eligible for a hearing; or
  - b. The decision of the hearing officer is contrary to applicable law, regulations, or the requirements of any contract between the U.S. Department of Housing and Urban Development (HUD) and HOC; or

2. There is a significant procedural or administrative error that is demonstrated to the hearing officer by written request for reconsideration from either party, within three business days of the date of the decision. In such a case, the hearing officer has two business days to re-issue the decision.

If the hearing officer's decision is against the complainant, the complainant still retains any rights he or she may have to judicial remedies through the court system.

**Upon request, copies of this Requirements Guide are available in an accessible format to persons with disabilities.**