PUBLIC HOUSING GRIEVANCE POLICY

**Definitions applicable to the grievance procedure: (§ 966.53)**

1. Grievance: Any dispute a Tenant may have with respect to HADCO action or failure to act in accordance with the individual Tenant's lease or HADCO regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
2. Complainant: Any Tenant (as defined below) whose grievance is presented to HADCO (at the central office or the development office) in accordance with the requirements presented in this procedure.
3. Elements of due process: 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 Tenant of the grounds for terminating the tenancy and for eviction;

(2) Right of the Tenant to be represented by counsel;

(3) Opportunity for the Tenant to refute the evidence presented by HADCO, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;

(4) A decision on the merits of the case.

1. Hearing Officer: A person selected in accordance with 24 CFR § 966.550and this procedure to hear grievances and render a decision with respect thereto.
2. Resident/Tenant: The adult person (or persons other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with HADCO as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) Who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.
3. Resident Organization: An organization of residents, which also may include a resident management corporation.

**II. Applicability of this grievance procedure (966.51)**

In accordance with the applicable Federal regulations (24 CFR § 966.50)this grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between Tenant and HADCO with the following two exceptions:

A. Because HUD has issued a due process determination that the law of the State that requires that a Tenant be given the opportunity for a hearing in court which provides the basic elements of due process (as defined above) before eviction from the dwelling unit, the grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of HADCO, or

(2) Any violent or drug-related criminal activity on or off such premises; or

(3) Any criminal activity that resulted in felony conviction of a household member. [966.51 (2)(i) (A) (B) and (C)]

B. HADCO grievance procedure shall not be applicable for disputes between tenants not involving HADCO or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and HADCO's Board of Commissioners. [966.51 (b)]This grievance procedure is incorporated by reference in all Tenant dwelling leases and will be furnished to each tenant and all resident organizations. [966.52 (b) and (d)]Any changes proposed in this grievance procedure must provide for at least 30 days’ notice to tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. Comments submitted shall be considered by HADCO before any revisions are made to the grievance procedure. [966.52 (c)]

# III. Informal settlement of a grievance [966.54]

Any grievance must be either personally presented, either orally or in writing, or received by certified mail at HADCO's central office or the management office of the development in which the complainant resides within ten days after notification of the grievable event.The complainant must contact the manager with in ten days after the initial deadline at which time a dialogue between HADCO and the resident will begin, if a settlement or an agreement cannot be reached informally. HADCO will mail request for hearing giving ten days to return grievance request. Grievances received by HADCO's administration office will be referred to the person responsible for the management of the development in which the complainant resides so that the grievance may be discussed informally and settled. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Executive Director.

As soon as the grievance is received, the management office will review it of the development or the Civil Rights Administrator (if applicable) to be certain that neither of the exclusions in paragraphs II.A or II.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to HADCO's grievance procedure, with the reason therefore.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time within ten working daysto meet so the grievance may be discussed informally and settled without a hearing. At the informal hearing the complainant will present the grievance and the person in charge of the management office or the Civil Rights Administrator will attempt to settle the grievance to the satisfaction of both parties.

Within five working daysfollowing the informal discussion, HADCO shall prepare and either hand deliver or mail to Tenant a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary shall also be placed in Tenant's file.

# IV. Formal Grievance Hearing

If the complainant is dissatisfied with the settlement arrived at in the informal hearing, the complainant must submit a written request for a hearing to the management office of the development where Tenant resides no later than five working days after the summary of the informal hearing is received.

The written request shall specify:

1. The reasons for the grievance

2. The action of relief sought from HADCO and

3. Several dates and times in the following ten working dayswhen the complainant can attend a grievance hearing.

If the complainant requests a hearing in a timely manner, HADCO shall schedule a hearing on the grievance at the earliest time possible for the complainant, HADCO and the hearing officer, but in no case later than ten working daysafter HADCO received the complainant's request.

If the complainant fails to request a hearing within ten working days after receiving the summary of the informal hearing, HADCO's decision rendered at the informal hearing becomes final and HADCO is not obligated to offer the complainant a formal hearing unless the complainant can show good cause why he failed to proceed in accordance with this procedure. [966.55 (c) and (d)]Failure to request a grievance hearing does not affect the complainant's right to contest HADCO's decision in a court hearing. **[966-54 (c)]**

# V. Selecting the Hearing Officer or Hearing Panel [966.55 (b)(2)(ii)]

A grievance hearing shall be conducted by the Executive Director or a Hearings Officer appointed by the Board of Commissioners. The Hearings Officer will be supervised and overseen by the Executive Director.

# VI. Escrow deposit required for a hearing involving rent [966.55 (e)]

Before a hearing is scheduled in any grievance involving the amount of rent, which HADCO claims is due under this lease, the complainant shall pay to HADCO an amount equal to 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 or hearing panel.

This requirement will not be waived by HADCO unless the complainant is paying minimum rent and the grievance is based on a request for a hardship exemption or the tenant's welfare benefits have been reduced for welfare fraud or failure to comply with economic self-sufficiency requirements. In these cases, only, rent need not be escrowed.

# VII. Scheduling hearings [966.55 (f)]

Notice to the complainant shall be in writing, either personally delivered or sent by certified mail to complainant. The written notice will specify the time, place and procedures governing the hearing.

**VIII. Procedures governing the hearing [966.56]**

The hearing shall be held before a hearing officer as described above in Section VII. The complainant shall be afforded a fair hearing, which shall include:

1. The opportunity to examine before the hearing any HADCO documents, including records and regulations that are directly relevant to the hearing. The Tenant shall be allowed to copy any such document at the Tenant's expense of $0.25 per copy. If HADCO does not make the document available for examination upon request by the complainant, HADCO may not rely on such document at the grievance hearing.
2. The right to be represented by counsel or other person chosen as the Tenant's representative and to have such person make statements on the Tenant's behalf.
3. The right to a private hearing unless the complainant requests a public hearing. The right to present evidence and arguments in support of the Tenant's complaint to controvert evidence relied on by HADCO, and to confront and cross examine all witnesses upon whose testimony or information HADCO relies; and
4. A decision based solely and exclusively upon the fact presented at the hearing. [966-56(b)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and, thereafter, HADCO must sustain the burden of justifying HADCO action or failure to act against which the complaint is directed. **[**966.56 (e)]

The hearing shall be conducted informally by the hearing officer. 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. [966.56 (f)]

The hearing officer shall require HADCO, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing panel or 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. [966.56 (f)]

The complainant or HADCO may arrange in advance, at expense of the party making the arrangement, for an audio recording of the hearing. Copies of the audio recording can be forwarded via e-mail at no charge provided the e-mail will transfer the size of the recording. In the event the recording is unable to be sent via e-mail, the complainant may provide a thumb drive or disk and request a copy of the recording at no additional charge. If the claimant is unable to provide a thumb drive and would like a copy of the recording, HADCO will provide the thumb drive and the claimant will be responsible for the expense reimbursement of the device in advance of receipt of the recording.

HADCO 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 under this procedure, must be in an accessible format. [966.56 (h)]

If a hearing officer fails to disqualify himself/herself due to lack of impartiality as required in Section V, The Executive Director after consulting with the HADCO Board Chairman will remove the officer from the hearing, invalidate the results of the hearing and schedule a new hearing with a new officer.

# IX. Failure to appear at the hearing

If the complainant or HADCO fails to appear at the scheduled hearing, the officer may decide to postpone the hearing for not to exceed five business days,or may decide that the party has waived their right to a hearing. [966.56 (d)**]** Emergency situations beyond the control of the complainant will be considered when determining the eligibility to re-schedule a hearing. Examples of emergency would be hospitalization of the claimant that prevents them from making the scheduled hearing.

Both the complainant and HADCO shall be notified of the determination by the officer; 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 HADCO's disposition of the grievance in court. [966.56 (d)]

**X. Decision of the hearing panel or officer [966.57]**

The hearing officer shall prepare a written decision, together with the reasons for the decision within ten working daysafter the hearing. A copy of the decision shall be sent to the complainant and HADCO.

HADCO shall retain a copy of the decision in the Tenant's folder. A copy of the decision with all names and identifying references shall also be maintained on file by HADCO and made available for inspection by a prospective complainant, his representative, or the hearing panel or officer.

The decision of the hearing officer shall be binding on HADCO, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless HADCO's Executive Director determines within ten working days, and promptly notifies the complainant of its determination that:

1. The grievance does not concern HADCO action or failure to act in accordance with or involving the complainant's lease or HADCO regulations, which adversely affect the complainant's rights, duties, welfare or status.
2. 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 HADCO.
3. A decision by the hearing officer or Executive Director in favor of HADCO or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the complainant to a trial or judicial review in any court proceedings which may be brought in the matter later. [966.57]

The Executive Director review, if requested, is only to ensure the eviction and decision is within HADCO, State, and Federal policies. The review does not allow the complainant to a third hearing.