

## Section 14

# COMPLAINTS AND APPEALS (4-21-2008)

### A. Complaints and Appeals

1. Complaints.
  - a. *Applicant, Participant, or Landlord Complaint Regarding Phoenix Housing Program Decision:* If a participant or applicant disagrees with a decision by a Phoenix Housing Program staff person, the following procedure is available:
    - (i) Contact the Supervisor of the Phoenix Housing Program and discuss the problem. If a settlement cannot be reached, then the applicant, participant, or landlord can appeal through the grievance procedure outline on the following pages.
2. Appeals.
  - a. *Applicant, Participant, or Landlord:* The Phoenix Housing Program has established a grievance procedure which is in accordance with federal regulations. All appeals will be handled as specified by these procedures.

### B. Grievance Procedures

In the event any applicant, participant, or landlord desires to appeal a determination by the Phoenix Housing Program, such aggrieved person will be fully advised as to the appeals procedures.

#### **Formal Hearings:**

The formal hearing process will be made available to all applicant, participant, or landlord wishing to appeal decisions relating to eligibility, changes in assisted housing benefits, vacancy and rent loss claims and claims for payment of damages.

The following protocol will be followed:

1. Requests for review must be made within 20 days of the written notification of the determination by Phoenix Housing Program staff. A written explanation of the determination shall be provided to the aggrieved person.
2. The aggrieved person shall supply a written request for the hearing with the reason for the request. The hearing shall not be scheduled sooner than 20 days after the date postmarked on the agency's notice of hearing unless the appellant consents to an earlier date in writing.
3. The appeal will be made to the Phoenix Housing Program Board. A minimum of three Phoenix Housing Program Board members must be present to hear the appeal.
4. Upon receipt of a request for hearing before the Phoenix Housing Program Board, the Supervisor of the Phoenix Housing Program shall advise the Chairperson of the Phoenix Housing Program Board who shall schedule a meeting of the Phoenix Housing Program Board which shall sit as a Board of Appeals.
5. Phoenix Housing Program staff will notify both the aggrieved person and other parties to the dispute, in writing as to the date, time and place of the hearing.
  - a. All parties will be encouraged to attend all hearings.
  - b. Upon notification in advance with at least 48 hours' notice on any party's unavailability to attend a scheduled hearing, the hearing will be rescheduled one time only without justification of the need to reschedule.
  - c. After the hearing has been rescheduled a request to reschedule a second time by the same party with at least **48 hour** notice will only be considered for legitimate reason.

- d. Legitimate reasons may include but are not limited to illnesses of self or family, death in the family, weather related restriction. The hearing officer will have the opportunity to decide if the request is legitimate and with good cause.
  - e. However, if any party fails to give such notice and does not attend a scheduled hearing, the hearing will be conducted as scheduled and the party failing to appear shall forfeit all rights to further appeal.
  - f. Any aggrieved person has a right to representation by legal or other counsel at his/her own expense at any and all stages of the proceedings.
  - g. If the aggrieved person is not fluent in English, the Phoenix Housing Program shall provide an interpreter. If it is not possible after reasonable efforts by the Phoenix Housing Program to provide an interpreter, the aggrieved person shall be notified that he or she may bring an interpreter.
  - h. If the aggrieved person is disabled and requires special assistance due to the nature of a disability, extra efforts shall be made by the Phoenix Housing Program to assist with any reasonable requested need.
6. The Chairperson of the Phoenix Housing Program Board shall issue a written statement of the findings within 20 days of the conclusion of the hearing. Any person who believes himself/herself aggrieved as the result of the determination of his/her claim upon review by the Phoenix Housing Program Board sitting as a Board of Appeals may contact the Office of the U.S. Department of Housing and Urban Development, located in Kansas City or pursue other legal options.

### **C. Rules for Notices, Formal Hearings and Appeals**

Each applicant/participant in the Phoenix Housing Program shall be entitled to notice and an opportunity to be heard on any proposed reduction or termination of his/her housing assistance payments, claims for payment of damages, eviction and inspection findings. The level of benefits for any such participant shall not be reduced or terminated by the Phoenix Housing Program prior to delivery of the notice and completion of a hearing, if such a hearing is requested.

#### **1. NOTICE**

A Phoenix Housing Program applicant, participant, or landlord shall be notified in writing of any Phoenix Housing Program finding. The notice shall be delivered by First Class mail or in person at a meeting with Phoenix Housing Program staff. It shall contain a statement of the reasons for the proposed determination. It shall state:

- (1) The factual basis of the determination, including a summary of the information on which it is based;
- (2) The fact that the staff representative who made the proposed determination is available for a further explanation of the decision, and is available to meet with the participant to attempt to settle any dispute informally; and
- (3) The applicant's/participant's right to inspect the entire contents of his/her file prior to the hearing and examine and copy, at his/her own expense, all documents, records, rules, regulations, and any other information relevant to the determination.

The notice shall further state that the applicant/participant/landlord is entitled to a formal hearing if such a hearing is requested by the applicant/participant/landlord either orally or in writing within twenty days of the date on the notice, and that benefits will continue at the present level until after the hearing is completed if one is requested. The notice shall also inform the applicant/participant/landlord that s/he shall have the following rights at the hearing if one is requested:

- (1) An opportunity to present his/her own arguments and evidence orally;

- (2) An opportunity to defend by confronting and cross-examining all witnesses on whose testimony or information the Phoenix Housing Program relies;
- (3) The right to be represented by counsel or other person chosen as his/her representative, at his/her own expense;
- (4) A decision within twenty days of the date of the hearing will be rendered based solely and exclusively on the rules and evidence presented at the hearing. (Ten days for damage/rent loss/vacancy claims.)

The notice shall also advise the applicant/participant/landlord of the possible availability of free legal services in the area. Finally, the notice shall state the date when the determination will become effective if a hearing is not requested.

2. HEARING

At the formal hearing, all parties shall be given the opportunity to respond to evidence and present argument on all issues involved. Witnesses or documents which have been submitted shall be subject to cross-examination and review by any party as necessary for a full and true disclosure of the facts. Parties may be represented by counsel or other representative.

3. EVIDENCE

The Phoenix Housing Program and the applicant/participant/landlord shall be given the opportunity to present evidence, and may question any witnesses. Evidence shall be received and considered even though it would be inadmissible under rules of evidence applicable in a court of law, and shall be considered if reasonably reliable. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to any evidence submitted may be noted during the hearing process along with the reason for the objection.

Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

4. DISCOVER:

The applicant/participant/landlord will be given the opportunity to examine before the hearing any Phoenix Housing Program documents that are directly relevant to the hearing. If the Phoenix Housing Program does not make the document available for examination on request of the family, the Phoenix Housing Program may not rely on the document at the hearing.

The Phoenix Housing Program must be given the opportunity to examine at the Phoenix Housing Program office before the hearing any family documents that are directly relevant to the hearing. The Phoenix Housing Program must be allowed to copy any such document at the Phoenix Housing Program's expense. If the family does not make the document available for examination on request of the Phoenix Housing Program, the family may not rely on the document at the hearing.

5. BURDEN OF PROOF:

The Phoenix Housing Program must show the factual determination relating to the family based upon a preponderance of the evidence.

6. HEARING OFFICER:

The formal hearing shall be made in front of the Phoenix Housing Program Board. The chairperson of the Phoenix Housing Program Board will conduct the hearing according to the stated hearing procedures.

A Phoenix Housing Program Board, shall not communicate, directly or indirectly, in connection with any issue of fact or evidence in that contested case, with any other person or party, except during the hearing with notice and opportunity for all parties to participate.

Parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with the Phoenix Housing Program Board, except during the hearing with notice and opportunity for all parties to participate.

The Phoenix Housing Program Supervisor, as a member of the Phoenix Housing Program Board will recuse her/himself from the formal hearing. No member of the Phoenix Housing Program Board shall have participated in the initial determination, or have any previous knowledge with the case which would cause impartial or unfair judgment toward the parties involved in the hearing. Nor shall any member of the Phoenix Housing Program Board be subject to the authority or direction of any person who had previously made a determination in connection with that case.

Any party involved in the hearing may file a request of disqualification or personal bias of a hearing officer if notice has been given showing evidence that is contrary to the rules for hearings. The chairperson of the Phoenix Housing Program Board must enter any such notice as part of the record in the case.

7. DECORUM:

The chairperson of the Phoenix Housing Program Board shall require the Phoenix Housing Program, applicant/participant/landlord, counsel and other parties or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to maintain 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 relief sought, as appropriate.

8. RECORD:

The record in the hearing shall include: all evidence received or considered; all questions and offers of proof, objections, and rulings; all finding of facts and any decision, opinion, or report by the officer presiding at the hearing. The Phoenix Housing Program Board may enter into a closed session for deliberations at the formal hearing.

The applicant/participant/landlord may request that the proceedings be private. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least three years from the date of decision.

9. CONTINUANCE:

The hearing may be continued at the request of either the Phoenix Housing Program or applicant/participant/landlord for good cause such as illness or other unavoidable absence of a party or witness, or by agreement between the Phoenix Housing Program and the applicant/participant/landlord. A continuance may also be granted by the chairperson of the Phoenix Housing Program Board to seek additional evidence or verify facts presented at the hearing.

10. DECISION:

Within twenty days after the date of the hearing, the hearing officer shall issue a written decision, stating briefly the reasons for the decision (10 days for damage/vacancy claims). Factual

determinations relating to the individual circumstances of the applicant/participant/landlord shall be based on a preponderance of the evidence presented at the hearing even if the evidence would be inadmissible in a court of law. A copy of the hearing decision shall be furnished to the applicant/participant/landlord by first class mail.

A finding shall be based upon the evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

The decision shall be supported by a statement of the findings of facts which support the decision and a brief explanation of the decision in layperson's terms.

#### 11. TIME GUIDELINES FOR GRIEVANCE PROCEDURES

Requests for hearing: Within **20 days** of the written notification of the change.

Scheduling of hearing: No sooner than **20 days** after the date postmarked on the notice of hearing unless the tenant/applicant consents to an earlier date in writing **and no later than 30 days after the receipt of the request for the hearing.**

Results of hearing: Written notice of the result of the hearing must be provided within **20 days** of the hearing date. However, Damage/Rent Loss/Vacancy Loss Claim hearing notices must be within **10 days** of the hearing date.

Rescheduling of hearing: The hearing shall be rescheduled upon at least **48 hours'** notice of any party's unavailability to attend a scheduled hearing.

