MARIPOSA COUNTY RESOLUTION No. 84-246

ADOPTING A COMPLAINT AND GRIEVANCE PROCEDURE FOR THE HOUSING AUTHORITY OF MARIPOSA COUNTY

WHEREAS, the Housing Authority of Mariposa County requires a Complaint and Grievance Procedure to administer its program, and

WHEREAS, the Board of Supervisors desires to adopt a Complaint and Grievance Procedure designed specifically for the residents of Mariposa County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Mariposa County, a political subdivision of the State of California that the attached Complaint and Grievance Procedure marked Exhibit "A" and by this reference incorporated herein, shall be used in all appeals necessitated by complaints or grievances regarding the Mariposa County Housing Authority.

PASSED AND ADOPTED this 21st day of August, 1984 by the Board of Supervisors of Mariposa County by the following vote:

AYES: BARRICK, DALTON, ERICKSON, MOFFITT
NOES: NONE
ABSENT: TABER
ABSTAINING: NONE

ATTEST:

GERALD MC CARTHY, County Clerk and Ex Officio Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JEFFREY G. GREEN
County Counsel
HOUSING AUTHORITY OF THE COUNTY OF MARIPOSA

COMPLAINT AND GRIEVANCE PROCEDURE

1. RIGHT TO A HEARING. Upon filing of a written request as provided herein, a complainant shall be entitled to a hearing before the Hearing Officer or Hearing Panel, as the case may be.

2. DEFINITIONS.
   a. Complainant is defined as any tenant whose rights, duties, welfare or status are or may be adversely affected by local Housing Authority action or failure to act and who files a grievance or complaint with the local Housing Authority with respect to such action or failure to act.
   b. Grievance or complaint is defined as any dispute with respect to PHA action or failure to act in accordance with lease requirements or any PHA of application of the PHA's regulations, policies or procedures which affects the rights, duties, welfare or status of the complainant.
   c. PHA is defined as Program Housing Authority of the County of Mariposa.

3. PROCEDURE PRIOR TO A HEARING.
   a. Any grievance or complaint must be personally presented to the Office of the County Clerk, located in the County Courthouse, 5088 Bullion Street, Mariposa, California, 95338, who shall act as the PHA representative in Mariposa County so that the grievance may be informally discussed and settled without a hearing. The grievance or complaint must be signed by the complainant and filed in said office by him or his representative within a reasonable time, not in excess of three (3) days of the PHA action or failure to act which is the basis for the grievance. It may be simply stated, but shall specify: (1) the particular ground(s) upon which it is based and (2) the action requested.

   A copy of the complaint shall be retained by the complainant and a copy filed with the Mariposa County Clerk. An additional copy shall be forwarded to the Housing Authority of the County of Mariposa, 405 U Street, Merced, California 95340. All complaints and/or copies must be date-stamped at time of receipt by the County Clerk's Office in Mariposa County.

   A written summary of the informal discussion shall be prepared within a reasonable time after the discussion. The summary shall specify the names of the participants, dates of meeting, nature of proposed disposition of the complaint, and the specific reasons therefore. A copy of the summary together with a copy of the "Complaint and Grievance Procedure" shall be given to the tenant or mailed by certified mail, return receipt requested.
b. An answer in writing to each complaint, dated and signed by the project manager, or other appropriate official, shall be delivered or mailed to the complainant within a reasonable time, not later than five (5) working days. A copy of the answer shall be filed with the Office of the County Clerk, Mariposa County, and additionally a copy shall be filed with the Housing Authority of the County of Mariposa, 405 U Street, Merced, California 95340. The answer shall specify:

1. The proposed disposition of the complaint and the specific reasons therefore;
2. The right of the complainant to a hearing; and
3. The procedure by which a hearing may be obtained.

c. If the complainant is dissatisfied with the proposed disposition of his complaint, as stated in the project manager's or other PHA official's answer, he may submit a written request, to the PHA or project management office, for a hearing. This written request shall be made within a reasonable time of the date of the answer to his complaint, and after the summary of the informal discussion has been delivered or mailed to the tenant, but not later than ten (10) working days thereafter. The written request for a hearing must be date-stamped and filed with the County Clerk's Office in Mariposa County and an additional written request shall be filed with the Housing Authority of the County of Mariposa, 405 U Street, Merced, California, 95340, along with the complaint and answer. The Hearing Officer or Hearing Panel, as the case may be, shall be advised promptly of the request by the appropriate PHA official; shall schedule the hearing as promptly as possible for a date, time and place reasonably convenient to the complainant and PHA, and shall inform the complainant thereof in writing.

The written request for hearing shall specify the reasons for the grievance and the action or relief sought.

d. If the complainant does not request a hearing within the time period allowed by Subsection c. above, he waives his right to the hearing, and the PHA's proposed disposition of the grievance shall become final. This shall not, however, constitute a waiver of complainant's right thereafter to contest the PHA's disposition of his grievance in an appropriate judicial proceeding.

4. SELECTION OF THE HEARING OFFICER OR HEARING PANEL. Grievances shall be presented before a Hearing Officer or Hearing Panel. A Hearing Officer or Hearing Panel shall be selected as follows: The Hearing Officer shall be an impartial, disinterested person selected jointly by the PHA and the complainant. If the PHA and the complainant cannot agree on a Hearing Officer, they shall each appoint a member of a Hearing Panel and the member so appointed shall select one person from the community, not an officer or the chairman of the Hearing Panel. Such appointments shall be made no later than three days after complainant's request. No member of the Hearing Panel shall be related by blood or marriage to the complainant, nor shall any PHA
officer or employee whose duties and responsibilities involve him in any way with the grievance at issue, be a member thereof. Panel members shall serve without compensation as such, but may be reimbursed by the PHA for necessary out-of-pocket expenses in the performance of their duties as panel members. The Hearing Panel shall convene in the offices of the PHA at a time and date satisfactory to the parties but no later than ten (10) days after the Hearing Panel has been constituted. Two votes shall be required for any decision by the Hearing Panel.

If the third member cannot be agreed upon, such member shall be appointed by the American Arbitration Association, or by any other third-party agreed upon by the PHA and the complainant.

5. **THE HEARING.**
   a. The parties shall be entitled to a fair hearing before the Hearing Officer or Hearing Panel and may be represented by counsel or another person chosen as a representative.

   b. The hearing shall be private unless complainant requests and the Hearing Officer or Hearing Panel agrees to a public hearing. This shall not be construed to limit the attendance of persons with a valid interest in the proceedings.

   c. Complainant may examine before the hearing, and at his expense, copy all documents, records and regulations of the PHA that are relevant to the hearing. Any document not made available, after request therefore by the complainant, may not be relied on by the PHA or the project management at the hearing. The complainant may request in advance and at his expense, a transcript of the hearing, to be made by a certified shorthand reporter of the State of California.

   d. If the dispute is over the amount of rent or other charges which the PHA claims is due, the complainant shall pay to the PHA an amount equal to the amount of rent or other charges due as of the first of the month preceding the month in which the act or failure to act took place. The Complainant thereafter shall 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, but these requirements may be waived by the PHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure, but provided that failure to make payments shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

   e. If a complainant fails to appear at a Hearing, the Hearing Officer or Hearing Panel may postpone the Hearing for not more than five (5) working days, or may make a determination that the complainant has waived his right to the Hearing. Such a determination shall not constitute a waiver of complainant's right to thereafter contest the PHA's disposition of the grievance in an appropriate judicial proceeding.
f. At the hearing the complainant must make a prima facie case and then the burden of proof is on the PHA or project management to justify the action or inaction proposed by it in its answer to the complaint. The complainant may present evidence and arguments in support of his complaint, controvert evidence relied on by the PHA or project management, and confront and cross-examine all witnesses on whose testimony or information the PHA or project management relies.

Hearings conducted by the Hearing Officer or Hearing Panel shall be informal, and any oral or documentary evidence, as limited however, to the facts and issues raised by the complaint and answer, may be received by the Hearing Officer or Hearing Panel without regard to whether that evidence would be admissible under rules of evidence employed in judicial proceedings.

g. The Hearing Officer or Hearing Panel shall require all parties to the dispute and spectators to conduct themselves in an orderly fashion, and failure to do so may result in exclusion from the proceedings, or may result in a decision adverse to the interests of the disorderly party to the proceedings and granting or denial of the relief sought, as appropriate.

h. The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing by a certified shorthand reporter. Any interested party may purchase a copy of such transcript.

6. DECISIONS OF THE HEARING OFFICER OR HEARING PANEL.

a. The decision of the Hearing Officer or Hearing Panel shall be based solely and exclusively upon facts presented at the hearing and upon applicable PHA and HUD regulations, to the extent that the decision is not inconsistent with State Law, the United States Housing Act of 1937, as amended, HUD regulations and requirements promulgated thereunder, or the Annual Contributions Contract, and to the extent provided in subsection f. below, the decision of the Hearing Officer or the Hearing Panel shall be binding on the PHA.

b. If both parties agree to prepare a proposed decision to the Hearing Officer of Hearing Panel, each party shall submit the same to the Hearing Officer or Hearing Panel for its consideration.

c. The Hearing Officer or Hearing Panel shall prepare the written decision, including a statement of findings and conclusions; as well as the reasons or basis therefore, upon all material issues raised by the parties. This shall be done within a reasonable time after the date of the hearing. Copies thereof shall be mailed or delivered to the parties and/or their representatives.

d. The written decision of the Hearing Officer or Hearing Panel, with all names and identifying references deleted, shall be maintained on
file by the PHA and made available for inspection by a prospective complainant or his representative.

e. Any judicial decision or related settlement pertaining to the decision of the Hearing Officer or Hearing Panel shall also be maintained on file by the PHA and made available for inspection.

f. If the decision is in favor of the complainant, the PHA shall promptly take all actions necessary to carry out such decisions or refrain from any action prohibited by such decision unless the Board of Commissioners of the PHA determines and notifies the complainant in writing within thirty (30) days that the Hearing Officer or Hearing Panel has acted arbitrarily or exceeded its authority, or the grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affect the complainant's rights, duties, welfare or status, or the decision of the Hearing Officer or Hearing Panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

7. APPEALS FROM THE DECISION OF THE HEARING OFFICER OR HEARING PANEL. A decision by the Hearing Officer or Hearing Panel, which is in favor of the PHA or project management and/or denies the complainant his requested relief in whole or in part, shall not constitute a waiver of, or affect in any manner, whatever rights the complainant may have to a trial de novo in judicial proceedings which may thereafter be brought in the matter. In such judicial proceedings, the PHA shall, by stipulation or other appropriate means, be limited to invoking against the complainant the grounds originally relied on by the PHA in its proposed disposition of the complaint or grievance.

8. EVICTION ACTIONS: NOTICE. If a tenant has requested a hearing on a complaint involving a PHA notice of termination of the tenancy and the Hearing Officer or Hearing Panel upholds the PHA's action to terminate the tenancy, the PHA shall not commence an eviction action in a state or local court until it has served a notice to vacate on the tenant, and in no event shall the notice be issued prior to the decision of the Hearing Officer or the Hearing Panel having been mailed or delivered to the complainant. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate legal action will be brought against the tenant in which case the tenant may be required to pay court costs and attorneys' fees, and tenant's lease will be forfeited.

9. RIGHT TO COUNSEL. Tenant has the right to be represented by counsel at all stages of the grievance procedures.