

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #02/17

**GRIEVANCE PROCEDURE FOR HOUSING OWNED OR ADMINISTERED BY THE
FOND DU LAC HOUSING DIVISION**

Approved pursuant to Resolution 1160/17 of the Fond du Lac Reservation Business Committee on April 25, 2017.

TABLE OF CONTENTS

CHAPTER 1 GENERAL PROVISIONS 1

CHAPTER 2 DEFINITIONS 3

CHAPTER 3 GENERAL PROCEDURES..... 4

CHAPTER 4 WRITTEN COMPLAINT PROCEDURE 5

CHAPTER 5 APPEAL PROCEDURE 8

CHAPTER 6 EFFECTIVE DATE; AMENDMENTS; SEVERABILITY 11

CHAPTER 1 GENERAL PROVISIONS

Section 101. Authority

This Grievance Procedure Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa (the “Band”), acting through the Reservation Business Committee (the “RBC”) as the governing body, as delegated in Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 et seq.

Section 102. Purpose

The RBC recognizes the need to establish a procedure to resolve disputes between Participants and the Housing Division in a fair and impartial manner. The purpose of this ordinance is to establish the general principals by which the Fond du Lac Band provides for due process and hears grievances and formal complaints by Participants in compliance with all applicable federal and tribal laws.

This ordinance shall be interpreted to preserve the peace, harmony, safety, health and general welfare of the Fond du Lac community and to protect and balance the rights of the Housing Division and Participants. Filing a Complaint shall not affect the relationship between the Housing Division and the Participant regarding the provision of other services.

This ordinance shall be provided to all Participants who apply to, or become residents or homebuyers of, the Housing Division. It shall be made available to the public and shall be prominently posted in the Housing Division office and posted on the Housing Division website.

Section 103. Scope

- a. This ordinance applies to Complaints from Participants who have applied for, have been awarded, or are currently participating in Fond du Lac Housing Division programs.
- b. This ordinance does not apply to Fond du Lac employees, except as they may file a Complaint as a Participant, nor does it apply to vendors or contractors.
- c. This ordinance is not applicable to disputes between tenants not involving the Housing Division.

- d. This ordinance is not intended as a forum for initiating changes in policy between a Participant or group of tenants and the Housing Division.
- e. This Ordinance shall not apply to leases of trust lands issued pursuant to Ordinance #02/15, as amended, Land Lease Ordinance; land assignments issued pursuant to Ordinance #02/11, as amended, Land Assignment and Land Lease Ordinance; leases of trust or allotted land approved by the Bureau of Indian Affairs; Fond du Lac Assisted Living Residence Leases; and leases or other interests subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program, as amended.

Section 104. Reservation of Rights

The RBC reserves the right to amend or repeal all or any part of this ordinance at any time. All the rights, privileges, and immunities conferred by this ordinance or by acts done pursuant to this ordinance shall exist subject to the powers of the Band. Nothing in this ordinance shall be construed to constitute a waiver of the sovereign immunity of the Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this policy.

Section 105. Jurisdiction

The Fond du Lac Housing Committee and the Fond du Lac Tribal Court shall exercise exclusive jurisdiction over proceedings brought under this ordinance.

CHAPTER 2 DEFINITIONS

Section 201. Definitions

For the purposes of this Ordinance, the following definitions apply:

- a. **Complainant** shall mean any Participant who has filed a Complaint with the Housing Committee in accordance with this ordinance.
- c. **Complaint** shall mean a formal written grievance addressed to the Housing Committee.
- d. **Grievance** shall mean any dispute which a Participant may have with respect to any Housing Division action or failure to act which affects the rights, duties, welfare, or status of the Participant and which is presented to the Housing Division or Housing Committee in accordance with this ordinance.
- e. **Grievance Hearing** shall mean the presentation to the Housing Committee of the Grievance in accordance with Chapter 4 of this ordinance.
- f. **The Housing Committee** shall serve as an impartial committee authorized to hear Grievance Complaints, organized pursuant to the Charter and Bylaws of the Fond du Lac Housing Committee, adopted by Resolution #1089/98 on March 30, 1998, as amended.
- g. **Housing Division** shall mean the Fond du Lac Band of Lake Superior Chippewa Housing Division created in the Charter and Bylaws of the Fond du Lac Housing Committee, adopted by Resolution #1089/98 on March 30, 1998, as amended.
- h. **Hearing Officer** shall mean the Chairperson of the Housing Committee, and the Vice-Chairperson of the Housing Committee shall serve in the absence of the Chairperson.
- i. **Housing Program** shall mean the housing programs owned and operated by the Housing Division. The term "Housing Program" does not include a housing program operated by an independent management company or the Human Services Division Assisted Living Program.
- j. **Participant** shall mean any individual who has applied for, has been awarded, or is currently participating in any Housing Program.

CHAPTER 3
GENERAL PROCEDURES

Section 301. General Provisions

- a. All proceedings regarding a Grievance shall be documented and preserved by the Housing Division in the Participant's housing file.
- b. Filing a Grievance shall not suspend, negate, delay, or disrupt the implementation of any Housing Division decision or action.
- c. The Hearing Officer, Housing Division staff, and Complainant shall treat each other respectfully and fairly when handling, hearing, or presenting a Grievance.
- d. The Complainant has the right to review all files and documents that were used by the Housing Division related to the Grievance prior to a Grievance Hearing and may do so before filing a Complaint. This includes names of witnesses or parties who have made complaints if such parties' statements were used by the Housing Division in its original decision. The Housing Division shall have two business days to produce the files and documents.

CHAPTER 4
WRITTEN COMPLAINT PROCEDURE

Section 401. Written Complaint

- a. The Complaint may be simply stated, but shall specify at least the following:
 - i. the particular grounds upon which the Grievance is based;
 - ii. the date of the decision, action or inaction that adversely affected the Complainant;
 - iii. the parties involved in the decision, action or inaction; and
 - iv. the action requested to resolve the Grievance.

Any additional information and supporting documents shall be attached to the Complaint.

- b. All Complaints must be in writing and signed by a Complainant, and personally delivered or sent by mail to the Director of the Housing Division, no later than 15 calendar days after the Housing Division decision, action, or inaction occurs.

Section 402. Requesting a Grievance Hearing

- a. If the Housing Division receives a Complaint within 15 calendar days of the date of the Housing Division's decision, action, or inaction the Housing Division shall notify the Hearing Officer in writing, with a copy of the Complaint attached, and shall schedule a Grievance Hearing to be held within 45 calendar days of receipt of the Complaint.
- b. Written acknowledgment of the Complaint and notice of the Grievance Hearing date, time, and place shall be provided by the Housing Division to the Complainant at least 10 calendar days prior to the hearing date. The written acknowledgement shall be personally delivered or sent by certified mail.

Section 403. Grievance Hearing Procedures

- a. The Hearing Officer shall preside over the Grievance Hearing and shall make the final determination as to questions of rules and procedure.
- b. Grievance matters, including the Grievance Hearing, shall be confidential and held in executive session in accordance with the Housing Committee's Charter and Bylaws.

- c. Complainants may represent themselves or may be represented an advocate of their choice. An advocate may be a lawyer or non-lawyer.
- d. Should the Complainant fail to appear at the Grievance Hearing by 30 minutes after the scheduled hearing time, the Housing Committee may:
 - i. dismiss the Grievance;
 - ii. proceed without the Complainant; or
 - iii. reschedule the hearing one time to be held within the next 5 calendar days if the Complainant has provided a valid reason for failing to appear.
- d. If the Hearing Officer determines at any time that any party is not acting in a civil or respectful manner, they may take any, or all, of the following actions 1) call for order and verbally warn the offending party; 2) call a short recess to allow the offending party to compose themselves; 3) conclude the hearing; or 4) continue the hearing one time to resume within the next 5 calendar days.

Section 404. Presentation of Information

- a. The Grievance Hearing shall be conducted informally by the Hearing Officer and verbal or written evidence pertinent to the facts and issues raised by the Complainant will be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- b. The Housing Division has the burden of proving by a preponderance of the evidence that the Housing Division decision, action or inaction complies with Housing Division policies and procedures.
- c. All aspects of the hearing shall be confined to the specific action before the Housing Committee, its supporting material, and any statements of the parties. The Housing Committee shall use its authority to ensure that this is strictly complied with by keeping order and limiting discussion to the aforementioned topics.
- d. Both the Complainant and the Housing Division, or their representatives, shall make verbal arguments and present evidence at the Grievance Hearing.
- e. The Housing Committee may ask clarification questions regarding any information presented by the Housing Division or Complainant.

Section 405. Decision of Housing Committee

- a. Failure to follow any requirement of this ordinance shall allow the Housing Committee to dismiss the Complaint with no further consideration.

- b. The Housing Committee shall deliberate after the Grievance Hearing in an executive session without the presence of the Housing Division or the Complainant, or their advocates.
- c. After due consideration is given to a Grievance, a final decision will be made by the Housing Committee whether to sustain, reverse or modify the decision, action or inaction challenged. A written decision shall be personally delivered or sent by certified mail to the Complainant and the Housing Division no later than 10 calendar days after the hearing.
 - i. If the Housing Committee determines the Housing Division has met its burden of proving by a preponderance of the evidence that the Housing Division decision, action or inaction complies with Housing Division policies and procedures then the Housing Committee shall sustain the decision of the Housing Division.
 - ii. If the Housing Committee determines that the Housing Division has not met its burden of proving by a preponderance of the evidence that the Housing Division decision, action or inaction complies with Housing Division policies and procedures then the Housing Committee may reverse, modify, or reverse and remand the Housing Division decision, action or inaction for further proceedings.
- d. The decision of the Housing Committee is final and binding on all parties, subject to the right to appeal contained in Chapter 5.

CHAPTER 5 APPEAL PROCEDURE

Section 501. Right to Appeal

A decision of the Housing Committee concerning a Complaint may be appealed by either party to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.

Section 502. Filing a Notice of Appeal

A Notice of Appeal must be filed with the Tribal Court in writing within 30 calendar days of the date of the decision. The Notice of Appeal shall specify the order appealed from and the basis for the appeal. A copy of the order appealed from shall be attached to the Notice of Appeal. Prior to filing an appeal with the Tribal Court, the appealing party shall serve a copy of the Notice of Appeal and the order appealed from on all other parties. Proof of such service shall be filed with the Tribal Court together with the Notice of Appeal. There shall be a \$25 filing fee for the Notice of Appeal.

Section 503. Production of the Record

Within 30 calendar days following the date a Notice of Appeal is filed, the Band shall transmit to the Tribal Court the record before the Housing Committee relating to the decision being appealed. A copy of the record provided to the Tribal Court shall be transmitted by the Band to each party to the appeal. Within 10 calendar days of receipt of the record a party may file a written request with the Court identifying additional documents or information which the party believes should be included in the record. If it is shown to the satisfaction of the Tribal Court that the additional documents or information cited by the party were part of the underlying record, the Tribal Court shall order that such documents or information be included in the record to be considered by the Tribal Court.

Section 504. Briefing Schedule

After receiving a Notice of Appeal, the Tribal Court shall issue a briefing schedule setting forth the deadlines for filing briefs and the oral argument date, if any. The Tribal Court may schedule a conference to address briefing schedule matters such as:

- i. Supplementation or shortening of the record;
- ii. Clarification of the specific issues presented on appeal;
- iii. Scheduling of briefs or other written argument;

- iv. Setting the date and time for oral argument; and
- v. Such other deadlines and matters as may expedite the orderly and prompt resolution of the issues presented by the appeal.

Section 505. Scope of Review

The Tribal Court's review will be based upon the record established by the Housing Committee. The Tribal Court may not hold an evidentiary hearing or make new factual determinations. The burden is on the Appellant to show that the Housing Committee made an error of law or an arbitrary and capricious application of the law. The Tribal Court shall determine whether the appellant has meet its burden.

Section 506. Decision

After reviewing the briefs and conducting a hearing, if any, the Tribal Court shall issue a decision. The Tribal Court may decide as follows:

- i. If the Tribal Court determines that the factual record is inadequate, the Court may remand the matter to the Housing Committee for additional factual determinations.
- ii. If the Tribal Court determines that the Housing Committee decision was based on an error of law, the Tribal Court may reverse, modify, or reverse and remand the Housing Committee decision for further proceedings.
- iii. If the Tribal Court determines that the Housing Committee decision was based on an arbitrary and capricious application of the law to the facts, the Tribal Court may reverse, modify, or reverse and remand the Housing Committee decision for further proceedings.
- iv. If the factual record is adequate, the Housing Committee's decision was not based on an error of law, and the Housing Committee's decision was not arbitrary and capricious, then the Tribal Court shall affirm the Housing Committee's decision.

Section 507. Appeals

- a. A party who feels aggrieved by the judgment may appeal within 10 days. All orders of the Court will remain in effect during the pendency of an appeal under this Ordinance unless a stay of execution is granted by the tribal Court.
- b. A party may apply for a stay of execution during the pendency of an appeal if the following is established:

- i) Execution of the judgment could result in extreme hardship for the party;
- ii) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
- iii) A bond is posted or monies are paid to the Court, to satisfy the judgment or for payment for the reasonable use and occupancy of the premises during the period of the time following the judgment. No stay may exceed ninety days.

CHAPTER 6
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 601 **Effective Date**

The provisions of this Ordinance shall become effective immediately upon adoption by the Reservation Business Committee.

Section 602 **Amendment or Recission**

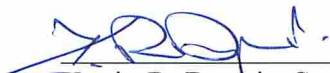
The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

Section 603 **Severability**

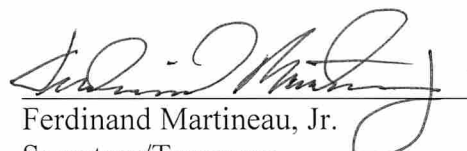
If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #02/17 was duly presented and adopted by Resolution #1160/17 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on April 25, 2017, on the Fond du Lac Reservation.



Kevin R. Dupuis, Sr.
Chairman



Ferdinand Martineau, Jr.
Secretary/Treasurer

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