

Legal Opinion: GCH-0063

Index: 2.245

Subject: Lease and Grievance Rules--Eviction by Court Action

July 1, 1992

Mr. Mitsuo Shito
Executive Director
Hawaii Housing Authority
P.O. Box 17907
Honolulu, Hawaii 96817

Dear: Mr. Shito:

On behalf of Secretary Kemp, thank you for your May 21, 1992, letter concerning the effect of the recent amendment to the Public Housing Lease and Grievance Procedures on the Hawaii Housing Authority's procedures for eviction. Specifically, you are concerned about the effect of 24 CFR 966.4(1)(4), which provides that a public housing agency (PHA) may only evict a public housing tenant by bringing a "court action", on the Authority's eviction procedures.

You maintain that under the Hawaii State law the Hawaii Housing Authority may terminate a public housing tenant's lease after an administrative hearing which affords the tenant his or her full due process rights. You assert that under 24 CFR 966.4(1)(4) the Authority would be required to provide such a hearing as well as a hearing de novo in court, resulting in a delay in the eviction process. Consequently, you have requested a waiver of § 966.4(1)(4).

The regulatory provision requiring eviction by court action was intended to insure that public housing tenants have the opportunity for a fair and full hearing by a landlord prior to eviction, and therefore to preclude "self-help" evictions without opportunity for a hearing. However, we acknowledge that the effect of 966.4(1)(4) on the Hawaii Housing Authority's eviction procedures is to require that the PHA afford the tenant the opportunity for a judicial eviction process, in addition to the administrative hearing process under Hawaii law. The tenant would receive duplicative administrative and judicial hearings prior to eviction.

The Department cannot waive the tenant's right to eviction by court action under the current regulation. The Department will consider amending the current regulation to permit eviction after an opportunity for a due process administrative hearing required by State law. Until the regulation is amended the PHA will be required to evict public housing tenants only by court process in order to comply with current Federal regulation.

You also requested a due process determination in order to adopt an expedited grievance procedure as provide in 24 CFR 966.55(g). It is not necessary that a PHA receive a due process determination in order to adopt an expedited grievance procedure. An expedited grievance procedure may be adopted by a PHA at any time for any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the PHA, or other drug-related activity on or near such premises. Section 966.55(g) provides that a "PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expediting notice or scheduling, or provisions for expedited decision on the grievance."

Very sincerely yours,

Robert S. Kenison
Associate General Counsel
Office of Assisted Housing
and Community Development