



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

GENERAL COUNSEL

The Honorable Pamela Bondi
Attorney General
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050

MAR 2 2016

Dear Attorney General Bondi:

By letter dated September 11, 1989, the U.S. Department of Housing and Urban Development issued a "due process determination" letter for the State of Florida. The letter was amended in 1992. A copy of the HUD 1992 due process determination letter is enclosed. Under Federal law, a public housing agency (PHA) must afford public housing tenants an opportunity for an administrative grievance hearing concerning a termination of tenancy or eviction from the dwelling unit. The PHA grievance procedure shall be applicable to all individual grievances as defined in HUD's regulations in § 966.53 of title 24 of the Code of Federal Regulations (CFR) between the public housing tenant and the PHA. If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure. (42 U.S.C. 1437d(k)).¹

In 1992, HUD determined that Florida's eviction procedures complied with Federal due process requirements. This due process determination was based on HUD's analysis of the laws of the State of Florida to determine if an action for possession and a summary procedure under Florida laws required a hearing with all of the regulatory "elements of due process," as defined in 24 CFR § 966.53(c). Since that time, HUD has re-analyzed its due process determination for the State of Florida and finds that the Florida eviction process lacks the required elements of due process.

HUD's due process elements require, among other elements, that tenants are allowed to present any affirmative legal or equitable defense, receive adequate notice for the eviction proceedings, and obtain a decision on the merits. In 2013 the Florida legislature amended Florida Statute (F.S.) § 83.60(2).² It is our reading of F.S. § 83.60(2), that public housing tenants

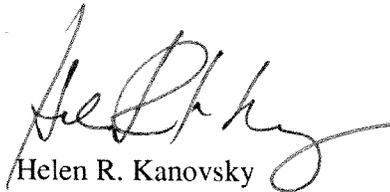
¹ Section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k)), as amended by section 503(a) of the National Affordable Housing Act of 1990, Pub. L. 101-625, approved November 28, 1990), provides that: For any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any drug-related criminal activity on or near such premises, the agency may . . . exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process . . .

² Section 83.60(2), of the Florida Statutes (2014) provides: In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment . . . the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays,

are no longer afforded all of the elements of due process. The plain language of F.S. § 83.60(2) authorizes an automatic default judgment when a tenant fails to deposit the accruing rent into the court registry along with the answer to the complaint. Florida trial and appellate courts have held that upon any violation of F.S. § 83.60(2) (or its analogous commercial sister statute F.S. § 83.232) trial courts have no discretion other than to enter an immediate default for possession without further notice or hearing. Acknowledging the various courts' interpretation of F.S. § 83.60(2) to require a default final judgment when the tenant fails to deposit accruing rent into the court registry deprives the tenant of due process because the tenant loses his or her subsidized tenancy without the opportunity to be heard, present defenses, and cross-examine the landlord's witnesses. This stark application of the statute provides no discretion to the trial court to assist in guaranteeing due process and a decision on the merits, even in egregious cases such as where the tenant's attorney may have been negligent in depositing the escrow, errors in recording of the date of the actual deposit into the court registry, or even a total lack of notice. Accordingly, although the language of F.S. § 83.60(2) is substantially similar to its form when HUD made its original due process determination, Florida courts' interpretation of the statute, since HUD's prior determination, has resulted in the risk of public housing tenants being evicted without due process.

By virtue of this determination, a PHA in Florida must afford public housing tenants an opportunity for an administrative grievance hearing before a hearing officer prior to evicting the tenants through the judicial eviction procedures pursuant to a county court decision in an action for possession under F.S. § 83.60. HUD will notify Florida PHAs of this conclusion and make available for public inspection and copying a copy of the legal analysis on which this determination is based.

Sincerely,



Helen R. Kanovsky
General Counsel

after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon.