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Subject: PH Due Process Determination: Rhode Island

January 22, 1992

HUD DUE PROCESS DETERMINATION

for the

STATE OF RHODE ISLAND

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ANALYSIS

I. Jurisdiction: Rhode Island.

II. Elements of Due Process

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

The statutory phrase "elements of due process" is defined by HUD at 24 CFR § 966.53(c) as:

. . . an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

- (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

- (2) Right of the tenant to be represented by counsel;

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- (3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and
- (4) A decision on the merits.

HUD's determination that a State's eviction procedures satisfy this regulatory definition is called a "due process determination."

The present due process determination is based upon HUD's analysis of the laws of the State of Rhode Island to determine if eviction procedures under Rhode Island laws require a hearing with all of the regulatory "elements of due process," as defined in 966.53(c).

HUD finds that the requirements of Rhode Island law governing an action for eviction in the Rhode Island District Court under the Rhode Island Residential Landlord and Tenant Act at Chapter 18 of Title 34 of the Rhode Island General Laws (R.I.G.L.) includes all of the elements of basic due process as defined in 24 CFR 966.53(c). This conclusion is based upon requirements in the Rhode Island General Laws, case law and court rules.

III. Overview of Rhode Island Eviction Procedures

The Rhode Island Residential Landlord and Tenant Act (R.I.G.L. Title 34, Chapter 18) establishes laws governing rental of residential dwelling units, including procedures for judicial eviction of residential tenants. The Landlord and Tenant Act applies to public housing unless a subject is pre-empted by federal law, or there is a direct conflict with Federal law or regulation. R.I.G.L. 34-18-3(b).

The Rhode Island District and Housing Courts have law and equity jurisdiction over a case under the Landlord and Tenant Act, including an eviction action. R.I.G.L. 34-18-9.

Procedures for eviction actions in the Rhode Island District Courts are subject to the District Court Civil Rules (D.C.R.). D.C.R. 1, 81.

A tenant must comply with obligations under the Landlord and Tenant Act. R.I.G.L. 34-18-24. In addition to other tenant duties, the tenant:

- must not disturb peaceful enjoyment by other residents (R.I.G.L. 34-18-24(7));
- must not maintain a "narcotics nuisance" on the premises (R.I.G.L. 34-18-24(8));
- must not manufacture, sell or deliver a controlled substance on the premises or adjacent public property (R.I.G.L. 34-18-24(9));
- must not commit any "crime of violence" on the premises or adjacent public property (R.I.G.L. 34-18-24(10)).

The landlord may adopt rules or regulations concerning a tenant's use and occupancy of the premises. R.I.G.L. 34-18-25.

Under the Landlord and Tenant Act, the landlord may evict a tenant for noncompliance with the lease or with the tenant's statutory obligations under R.I.G.L. 34-18-24 "materially affecting health and safety." R.I.G.L. 34-18-36(a).

IV. Analysis of Rhode Island Eviction Procedures for Each of the Regulatory Due Process Elements

- A. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction (24 CFR 966.53(c)(1))

Pre-eviction: Notice of Noncompliance

Before commencing an eviction action for violation of the lease, or of the tenant's statutory State-law tenancy obligations, the landlord must give the tenant notice of noncompliance. R.I.G.L. 34-18-36(a), 34-18-56(b). After the date of lease termination specified in the notice, the landlord may commence the eviction action. R.I.G.L. 34-18-36.

The noncompliance notice must specify the acts or omissions which have breached the rental agreement or breached the tenant's statutory duties under R.I.G.L. 34-18-24. The notice generally gives the tenant 20 days to remedy the breach.

The landlord is not required to give notice of noncompliance, or opportunity to remedy the breach, if the landlord is seeking to evict the tenant for the following violations of the tenant's statutory obligations: maintenance of a narcotics nuisance (R.I.G.L. 34-18-24(8)), dealing in controlled substances (R.I.G.L. 34-18-24(9)), or commission of

violent crimes in public housing premises (R.I.G.L. 34-18-24(10)). In such circumstances, R.I.G.L. 34-18-36(f) provides that "the landlord shall not be required to

send a notice of noncompliance to the tenant and may immediately file a complaint for eviction"1

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Federal law (42 U.S.C. 1437d(1)(3)) requires that each public housing agency utilize leases which:

require the public housing agency to give adequate written notice of termination of the lease which shall not be less than

- (A) a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;
- (B) 14 days in the case of nonpayment of rent; and
- (C) 30 days in any other case.

R.I.G.L. 34-18-3 expressly defers the application of provisions of the Residential Landlord and Tenant Act whenever:

- (1) a particular subject matter has been pre-empted by federal law, or;
- (2) a . . . tenant has any rights . . . derived from federal law or regulations which directly conflict with the provisions of this chapter, in which case the rights and responsibilities derived from federal laws and regulations shall control.

This provision recognizes that federal laws and regulations supersede State landlord-tenant law, and also adopts such requirements under Federal laws and regulations as part of a tenant's rights under Rhode Island law. This entitles a tenant as a matter of Rhode Island State law to all of the rights otherwise granted as a result of federal law and regulations, including the public housing requirements for notice of lease termination.

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For evictions where the Rhode Island pre-termination noncompliance notice is required, the notice of noncompliance is notice of the "acts and/or omissions constituting the breach," and therefore provides adequate notice of the grounds for eviction. Noncompliance notice is required by Rhode Island law where the PHA is evicting for breach of the rental agreement. By Federal law, a public housing lease must provide that drug-related criminal activity, or criminal activity which threatens PHA residents or employees, is grounds for eviction.

42 U.S.C. 1437d(1)(5). Thus commission of such criminal activity is a breach of the public housing lease (even though it may also be a breach of the tenant's statutory obligations under Rhode Island law (R.I.G.L. 34-18-24(8), (9) or (10))). Where a PHA is evicting for such criminal activity as a material noncompliance with the lease agreement (rather than for breach of the parallel statutory tenant obligation under Rhode Island law), then Rhode Island law requires that the PHA deliver a noncompliance notice which provides adequate notice of the grounds for eviction.

Eviction Action: Summons and Complaint

The District Court acquires personal jurisdiction over the defendant-tenant by service of process. A summons and complaint must be served on the defendant in accordance with the procedures stated in the District Court Rules. D.C.R. 4.

In an eviction action for noncompliance with the rental agreement or with tenant obligations under State law, the summons must be in the form provided in R.I.G.L. 34-18-56(h). R.I.G.L. 34-18-10(b)(1); 34-18-36(c). The form of summons informs the tenant that the tenant has been "served with an eviction complaint for noncompliance with the rental agreement" The summons notifies the defendant of the opportunity to appear and defend the action.

The complaint must be substantially in the form provided in R.I.G.L. 34-18-56(e). R.I.G.L. 34-18-36(b). If landlord was required to give a pre-termination notice of noncompliance, the notice is attached to the complaint. R.I.G.L. 34-18-56(e). As noted in the preceding discussion of the noncompliance notice, a notice of noncompliance provides adequate notice of the grounds for eviction.

Termination by City or Town Housing Authority

R.I.G.L. 45-25-18.1(C) requires that each city housing authority adopt and promulgate rules which establish:

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Just cause for the termination of the right of use and occupation, so that a tenant may be clearly apprised of the precise reasons for a termination. Emphasis added.

This requirement also applies to town housing authorities. R.I.G.L. 45-26-7 provides that "all the provisions of law applicable to housing authorities created for cities and the commissioners thereof shall be applicable to town authorities."

For tenants of a city or town housing authority, including a public housing tenant, the housing authority must apprise the tenant of the "precise reasons" for terminating the tenant's right of use and occupancy. Notice of "precise reasons" for

termination would constitute adequate notice of the grounds for eviction.

Notice: Conclusion

Rhode Island's statutory scheme provides the tenant adequate notice of the grounds for terminating the tenancy and of the grounds for eviction, as required by 24 C.F.R. 966.53(c)(1):

- for eviction by a city or town housing authority.
- for any eviction where State law requires a pre-eviction notice of noncompliance.

B. Right to be represented by counsel
(24 CFR 966.53(c)(2))

The right of a tenant to be represented by counsel is implied by various provisions of the statute and court rules concerning the role of counsel. For example, the blank answer form at R.I.G.L. 34-18-56(j), instructs the tenant that the tenant "may consult a lawyer and seek representation before filing out" the answer.

The District Court Rules (D.C.R.) which address the role of counsel in a tenant's defense imply that a tenant has the right to be represented by counsel. See, e.g., references to a defendant's attorney in D.C.R. 3, 11, 16, and 43(f).

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C. Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses (24 CFR 966.53(c)(3))

Under the Rhode Island District Court Rules (D.C.R.) all evidence must be admitted "which is admissible under the statutes of this state, or under the rules of evidence applied in the courts of this state." D.C.R. 43(a). The D.C.R. provide that the testimony of witnesses must be taken orally in open court (unless otherwise provided by statute or the D.C.R.). D.C.R. 43(a).

The D.C.R. give a tenant-defendant the right to impeach or contradict the plaintiff's case through cross-examination. D.C.R. 43(b), 43(f). A party may "interrogate any unwilling or hostile witness by leading questions." D.C.R. 43(b). A tenant may also "call an adverse party" and "contradict and impeach him or her in all respects. . . ." Id.

The Rhode Island D.C.R. give a defendant-tenant a full opportunity to defend against and refute the PHA's evidence, including the right to confront and cross-examine witnesses.

D. Opportunity to present any affirmative legal or

equitable defense which the tenant may have
(24 CFR 966.53(c)(3))

D.C.R. 7(a) provides that " t here shall be a complaint and an answer" (as well as other forms of pleadings relating to counter-, cross-, and third-party complaints). D.C.R. 8(b) requires a party to "state in short and plain terms his or her defenses to each claim asserted." D.C.R. 12(b) requires that "every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required" (except that some defenses may be raised by motion). The blank answer form at R.I.G.L. 34-18-56(j) advises the tenant of defenses which the tenant can and should raise in the answer.

There are no limitations on the grounds of defense which may be raised by the defendant in the pleadings. Consequently, the tenant in a Rhode Island eviction case is afforded the opportunity to present any available defenses to the PHA's eviction action.

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E. A decision on the merits (24 CFR 966.53(c)(4))

R.I.G.L. 8-8-30 requires that the district court "render its decision in writing, including a concise statement of the facts found by the court and the conclusions of law reached by the court." Under District Court Rules (D.C.R. 54(a)), the judgment of the court is "the formal disposition of a claim by the court." Under D.C.R. 58, judgment is entered on the court's decision after trial or hearing.

In addition to these specific requirements, the structure of the trial and hearing requirements under the District Court Civil Rules implies that the court's decision will be a decision on the merits: a decision based upon the evidence presented bearing upon the legal and factual issues as framed by the complaint and answer.

V. Conclusion

Rhode Island law governing an action for eviction in the Rhode Island District Court under the Rhode Island Residential Landlord and Tenant Act (R.I.G.L. Title 34, Chapter 18) requires that the tenant have the opportunity for a pre-eviction hearing in court which provides the basic elements of due process as defined in 24 CFR 966.53(c) of the HUD regulations.

By virtue of HUD's due process determination under section 6(k) of the U.S. Housing Act of 1937, a PHA in Rhode Island may evict a public housing tenant pursuant to a District or Housing Court decision in an eviction proceeding for 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 any drug related criminal activity on or near the premises, and is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.