

2000

Housing Authority of the County of Salt Lake v. John Thomas Snyder : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

HOUSING AUTHORITY OF THE
COUNTY OF SALT LAKE,

Plaintiff/Appellee

vs.

JOHN THOMAS SNYDER,

Defendant/Appellant.

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BRIEF OF APPELLANT

Case No. 20000591

Priority No. 15

AN APPEAL FROM JUDGMENT ENTERED BY THE THIRD JUDICIAL
DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, MURRAY
DEPARTMENT, The Hon. Michael K. Burton, Judge Presiding
(Trial Court Case No. 00-201-0956)

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ORAL ARGUMENT REQUESTED

FILED
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UTAH

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COUNTY OF SALT LAKE,**

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ORAL ARGUMENT REQUESTED

LIST OF PARTIES IN THE COURT BELOW

The following is a complete list of the parties in the proceedings before the Third Judicial District Court:

JUDGE

The Hon. Michael K. Burton, Judge Presiding, Third Judicial District, Murray Department.

PARTIES

Housing Authority of the County of Salt Lake (herein referred to as "County Housing Authority"), represented by Kimberly D. Washburn, Attorney at Law.

John Thomas Snyder (herein referred to as "Tom Snyder" or "Mr. Snyder"), represented by the Utah Legal Clinic, Brian M. Barnard, and James L. Harris, Jr., Attorneys at Law.

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PRIOR OR RELATED APPEALS

There are no prior or related appeals. However, the Utah Supreme Court previously denied a Petition for Extraordinary Writ in this matter, Case No. 20000322 SC. That petition sought a stay of the trial date and an order allowing Mr. Snyder the right to discovery, etc. under the Utah Rules of Civil Procedure and the Code of Judicial Administration. This Court denied that petition without explanation or comment.

IN THE UTAH SUPREME COURT

**HOUSING AUTHORITY OF THE
COUNTY OF SALT LAKE,**

Plaintiff/Appellee

vs.

JOHN THOMAS SNYDER,

Defendant/Appellant.

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BRIEF OF APPELLANT

Case No. 20000591

AN APPEAL FROM JUDGMENT ENTERED BY THE THIRD JUDICIAL
DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, MURRAY
DEPARTMENT, The Hon. Michael K. Burton, Judge Presiding
(Trial Court Case No. 00-201-0956)

STATEMENT OF JURISDICTION

The Supreme Court of Utah has jurisdiction in this matter
pursuant to Utah Code Ann. § 78-2-2 (3)(j) (1953 as amended).

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in granting an expedited
trial absent the posting of a possession bond pursuant to Utah
Code Ann. § 78-36-8.5 (1953 as amended).

2. Whether the trial court erred in setting the case for
expedited trial disallowing Mr. Snyder the opportunity to engage
in discovery.

3. Whether the trial court erred in finding that Mr. Snyder

engaged in criminal behavior.

4. Whether the lease provision under which Mr. Snyder was evicted allows eviction based upon criminal behavior against staff.

5. Whether the lease provision under which Mr. Snyder was evicted is invalid because it prohibits more behavior than prohibited under relevant Federal Regulations.

6. Whether the trial court lacked subject matter jurisdiction because Mr. Snyder was entitled to an administrative hearing.

ISSUES RAISED AND CONSIDERED

1. Whether the trial court erred in granting an expedited hearing absent the posting of a possession bond pursuant to Utah Code Ann. § 78-36-8.5 was raised in a Writ for Extraordinary Relief, Supreme Court Case No. 20000322 SC (R. 99); Defendant's Motion for Continuance, ¶¶ 4-5 (R. 154); the issue was considered and denied without comment by the Supreme Court. Order, May 4, 2000 (R. 218). The issue was also considered at trial. Trial Transcript (hereinafter "Transcript"), p. 10:20-21.

2. Whether the trial court erred in setting the case for expedited trial disallowing defendant the opportunity to engage in discovery was raised in Objection to Certificate of Readiness for Trial (R. 27). The issue was considered in a Notice of

Decision, dated March 27, 2000 (R. 31).

3. Whether Mr. Snyder engaged in criminal behavior was raised in the Answer, ¶ 4-5 (R. 18); Motion to Dismiss, ¶ 2-3 (R. 25); at trial (Transcript, p. 95:10-24); and, Objection to Findings of Fact and Conclusions of Law and to Judgment, ¶ 5 (R. 261). The issue was considered at trial (Transcript, pp. 101:2-3; 103:11-19) and by the Findings of Fact, ¶ 6 (R. 266-267).

4. Whether the lease provision under which Mr. Snyder was evicted allows eviction of criminal behavior against staff was raised in the Motion to Dismiss, ¶ 2 (R. 25); Defendant's Motion for Summary Judgment, passim (R. 233-248); and, at trial (Transcript, pp. 94:23 - 95:1-9). The issue was considered at trial (Transcript, p. 102:7-15).

5. Whether the lease provision under which Mr. Snyder was evicted is invalid because it prohibits more behavior than prohibited under relevant Federal Regulations was raised in Defendant's Motion for Summary Judgment, passim (R. 233-248); and, at trial (Transcript, pp. 94:23 - 95:1-9). The issue was considered at trial (Transcript, pp. 103:25 - 104:2).

6. Whether the trial court lacked subject matter jurisdiction because Mr. Snyder was entitled to an administrative hearing was raised in the Answer, ¶ 9 (R. 18); Motion to Dismiss, ¶ 7 (R. 25); Motion for Summary Judgment, ¶ 30 (R. 239); and, at trial (Transcript, pp. 96:9-15; 97:11-18; 98:17-25). The issue

was considered at trial (Transcript, pp. 103:25 - 104:2).

STANDARD OF REVIEW

1. Whether the trial court erred in granting an expedited trial absent the posting of a possession bond pursuant to Utah Code Ann. § 78-36-8.5 (1953 as amended) is an issue of law. As such it is reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

2. Whether the trial court erred in setting the case for expedited trial disallowing Mr. Snyder the opportunity to engage in discovery is an issue of law. As such it is reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

3. Whether the trial court erred in finding that Mr. Snyder engaged in criminal behavior is a question of fact. As such it is reviewed under a clearly erroneous standard. Young v. Young, 979 P.2d 338, 342 (Utah 1999).

4. Whether the lease provision under which Mr. Snyder was evicted allows eviction based upon criminal behavior against staff is an issue of law. As such it is reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

5. Whether the lease provision under which Mr. Snyder was evicted is invalid because it prohibits more behavior than prohibited under relevant Federal Regulations is an issue of law.

As such it is reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

6. Whether the trial court lacked subject matter jurisdiction because Mr. Snyder was entitled to an administrative hearing is an issue of law. As such it is reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

STATEMENT OF THE CASE

This is an unlawful detainer action by the Housing Authority of the County of Salt Lake (hereinafter "County Housing Authority") against John Thomas Snyder (hereinafter "Mr. Snyder" or "Tom Snyder"). Mr. Snyder was the defendant in the action below and is the appellant herein. The County Housing Authority was the plaintiff in the action below and is the appellee herein. Mr. Snyder was a tenant in an apartment owned by County Housing Authority. At trial, the court found that Mr. Snyder failed to abide by the terms of the lease, and that the County Housing Authority had properly terminated his tenancy. Findings of Fact, ¶ 5 (R. 266). The court also found that Mr. Snyder was in unlawful detainer of the premises and awarded treble damages. Findings of Fact, ¶ 9 (R. 267). The court granted the County Housing Authority a judgment in the amount of \$8,687.20. Judgment, p. 2 (R. 296).

STATEMENT OF FACTS

1. This is a landlord tenant dispute involving subsidized housing. Defendant's Aff., ¶ 3¹; Transcript, passim.

2. The County Housing Authority is a governmental entity and is bound by the provisions of the United States and Utah Constitutions. Motion to Dismiss, ¶ 1 (R. 24); Defendant's Aff. ¶ 2; Transcript, pp. 54:15 - 55:2.

3. Because the housing at issue herein is subsidized housing, the federal government, which in part funds the housing project, imposes certain due process requirements before an eviction can occur. Transcript, pp. 54:10 - 55:17.

4. Mr. Snyder's alleged misconduct involves a dispute between him and management of the plaintiff's housing complex in which he resides. Defendant's Aff. ¶ 4; Transcript, pp. 26:18 - 27:10; 77:8-20; 80:12 - 81:13.

5. On or about February 23, 2000 Sherry Rico, the manager of the housing complex called defendant on the phone in Mr. Snyder's apartment and said something to the effect, "I understand you want to see me. I am in my office now. You can find me here." Defendant's Aff. ¶ 5; Transcript, p. 16:14-16.

6. Rico had previously threatened to evict Mr. Snyder

¹ Mr. Snyder's affidavit was filed April 5, 2000. See File Stamp found thereon. It is located within the Record (on top of the file; not fastened). However, the affidavit is not identified nor listed in the Index prepared for purposes of appeal.

because, among other things, Defendant had complained to her boss about her conduct and "challenged her authority." Defendant's Aff., ¶ 6; Transcript, pp. 26:18 - 27:10; 77:4-6. In addition, Rico had Mr. Snyder's automobile towed and impounded for an expired registration. Transcript, p. 80:21-25.

7. Upon Rico's invitation, Mr. Snyder went to Rico's office. Several days earlier Rico had written a letter to defendant threatening to evict defendant. Defendant's Aff., ¶ 7; Transcript, pp. 26:18 - 27:10.

8. Mr. Snyder had written a responsive letter and wanted to deliver the letter to Rico and to respond to the eviction threat from her. Defendant's Aff., ¶ 7; Transcript p. 77:8-20.

9. When Mr. Snyder got to her office, one of the first things she said to defendant was, "So if you don't like it here why don't you leave." Transcript, pp. 77:22 - 78:3.

10. The conversation began as heated and went downhill from there. Rico spoke to defendant in a loud voice from the beginning of the conversation. She was agitated, almost hysterical, from the beginning and throughout the conversation. Defendant's Aff. ¶ 7; Transcript, pp. 77:22; 78:18 - 79:1.

11. During the conversation, among other things, Mr. Snyder referred to Rico as "Honey." She took offense at that and the tone of the conversation became worse. She was unpleasant in tone and demeanor toward defendant and Mr. Snyder was unpleasant

in return. Eventually, Mr. Snyder left the room ceasing further conversation as not productive. Defendant's Aff. ¶ 8; Transcript, pp. 78:2-14; 78:18 - 79:3.

12. Mr. Snyder remained seated throughout the entire exchange. Transcript, p. 79:4-5.

13. Rico lodged a complaint with the Salt Lake Police Department based upon the exchange with Mr. Snyder. Rico claimed that Mr. Snyder had committed an assault against her. Transcript, p. 21:25 - 22:19.

14. Mr. Snyder was never contacted by any police officer as a result of the February 23, 2000 incident. Mr. Snyder was never arrested for any alleged misconduct of February 23rd. Mr. Snyder was never criminally charged for any alleged misconduct during the February 23rd incident. Defendant's Aff. ¶ 9; Transcript, pp. 44:25 - 44:12; 81:18-21.

15. The lease and eviction notice provides for termination if a tenant's criminal conduct threatens other tenants. Based upon the allegations of the complaint and the eviction notice, Mr. Snyder's alleged criminal conduct was not directed toward other tenants. Defendant's Aff. ¶ 11; Transcript, pp. 62:14 - 64:13; Lease and Eviction Notice, Exhibits "A" & "B" attached to Complaint (R. 5-14) (the Lease and Eviction Notice are attached hereto as Attachments "A" & "B" respectively).

16. Mr. Snyder did not engaged in any misconduct to warrant

or justify the termination of his lease. Defendant's Aff. ¶ 12; Eviction Notice (R. 13-14); Transcript, pp. 81:22 -82:2.

17. County Housing Authority has failed to comply with the terms of the lease in its attempt to terminate Mr. Snyder's tenancy. Mr. Snyder is entitled to an administrative hearing under the lease. Defendant's Aff. ¶ 13; Transcript, pp. 54:15 - 56:13; 63:7-20.

18. Mr. Snyder is entitled to and requested an administrative hearing and access to the grievance process provided in the lease prior to termination of the lease. Defendant's Aff. ¶ 15.

19. The eviction notice served upon Mr. Snyder on or about February 25, 2000 recites a violation of § 11, Resident's Obligations:

I. Resident and household members, guests and visitors will act in a manner so as not to disturb any neighbors peaceful enjoyment of his/her accommodations and refrain from all illegal or Criminal activity on or near the Premises. Such illegal activity includes, but is not limited to, the Use or sale of drugs by the Resident, household members, guests or visitors.

Eviction Notice (R. 13).

20. The eviction notice served upon Mr. Snyder on or about February 25, 2000 recites that based upon an alleged violation of § 11, Resident's Obligations, Mr. Snyder may not avail himself of the grievance process and administrative remedies provided for in his lease. Eviction Notice (R. 14).

21. The eviction notice served upon Mr. Snyder on or about February 25, 2000 cites no lease provision as to alleged of misconduct toward a staff member of the County Housing Authority. Eviction Notice (R. 13-14).

22. The unlawful detainer action was filed on or about March 6, 2000. Complaint (R. 1).

23. On March 13, 2000, Mr. Snyder filed an answer. Answer (R. 17).

24. Mr. Snyder filed a Motion to Dismiss dated March 20, 2000. Motion to Dismiss (R. 24).

25. The trial court on March 27, 2000 *sua sponte* denied that motion to dismiss without allowing the County Housing Authority to respond. Notice of Decision, March 27, 2000 (R. 31).

26. The trial court did so not "on the merits", but rather because defendant did not file a notice to submit. Notice of Decision, March 27, 2000 (R. 31).

27. The County Housing Authority filed a certificate of readiness for trial dated March 17, 2000 in the underlying action (R. 29). That certificate of readiness for trial falsely stated that:

* * *

2. . . .; that opposing parties have had reasonable time to pursue discovery; . . .

* * *

4. That reasonable discussions to attempt settlement have been pursued by counsel and their clients, but no

settlement has been effected. (Such discussions are to be realistic in nature and not limited to nonresponse to an offer. The duty to effectively negotiate lies with all parties.)

Certificate of Readiness for Trial (R. 29-30).

28. Mr. Snyder filed an objection to the Certificate of Readiness for Trial dated March 20, 2000 (R. 27).

29. Mr. Snyder's objection to the Certificate of Readiness for Trial complained a) No discovery has occurred; (there had been no opportunity for discovery); and, b) No settlement discussions had occurred (R. 27).

30. The trial court on March 27, 2000 overruled the objection to the certificate of Readiness for Trial without allowing the County Housing Authority to respond. Notice of Decision, March 27, 2000 (R. 31).

31. No basis in law justified an expedited trial of the underlying action.

32. On or about May 1, 2000, Mr. Snyder filed a Motion for Summary Judgment (R. 229).

33. On May 5, 2000, County Housing Authority filed a Memorandum in Opposition.²

34. Mr. Snyder informed the Court that he intended to reply. Notice of Intent to Reply (R. 167).

35. At trial, on May 8, 2000, defendant again moved for

² The County Housing Authority's Memo in Opposition is not found in the record.

continuance, because defendant had not been afforded the opportunity to engage in discovery. Transcript, 10:14-19. At trial, defendant objected to testimony by witnesses that had not been disclosed prior to trial. Transcript, 34:12-17.

36. The trial court stated that "all those things can be accomplished through the trial and we'll go ahead with today's trial." Transcript, 10:20-22.

37. The trial court found that Mr. Snyder failed to abide by the terms of the lease, and that the County Housing Authority had properly terminated his tenancy. Transcript, p. 101:2-10; Findings of Fact, ¶ 5 (R. 266).

38. The trial court found that Mr. Snyder engaged in criminal activity in violation of the lease agreement. Transcript, p. 101:2-10; Findings of Fact, ¶ 5 (R. 266).

39. The court found that Mr. Snyder was in unlawful detainer of the premises and awarded treble damages. Transcript, p. 102:16-24; Findings of Fact, ¶ 9 (R. 267).

40. The court granted the County Housing Authority a judgment in the amount of \$8,687.20. Judgment, p. 2 (R. 296).

SUMMARY OF THE ARGUMENT

The Trial Court erred in granting County Housing Authority an expedited hearing in violation of Mr. Snyder's due process rights. Utah's Forcible Detainer statute contemplates an expedited trial only when the plaintiff files a possession bond

and the defendant requests an expedited hearing under Utah Code Ann. § 78-36-8.5 (1953 as amended). The Housing Authority did not file a possession bond, and defendant did not request an expedited hearing. Therefore, this action should have not be processed on an expedited basis.

The expedited trial setting precluded Tom Snyder from engaging in discovery. Mr. Snyder was precluded from developing and presenting his defenses. Mr. Snyder was not afforded proper due process protections in that he was not allowed to prepare for trial and to defend the case.

The trial court erred in finding that Mr. Snyder engaged in criminal behavior. A verbal exchange occurred on February 23, 2000 between Sherry Rico, the manager of the housing complex and Mr. Snyder. The parties had an ongoing dispute. Unpleasantries were mutually exchanged. However, Mr. Snyder's conduct, in context, did not rise to the level of criminal conduct.

Pointing a finger, stating, "We're not done yet" and telling someone to "Pull up your pantyhose", does not rise to the level of criminal behavior. Had criminal conduct been involved law enforcement officers would have taken action or at least spoken to defendant upon Ms. Rico's report. They did not. Therefore, the trial court erred in finding that Mr. Snyder engaged in criminal conduct.

Mr. Snyder's lease with the County Housing Authority

provides for its termination for "criminal activity that threatens the health, safety, or right to peaceful enjoyment by other residents; drug related criminal activity at or near the Premises". The lease does not provide for termination of the lease based upon "criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by . . . employees of the PHA." Because the notice of eviction did not provide for eviction for criminal behavior against employees, Mr. Snyder's eviction was not justified on the grounds asserted by the County Housing Authority and set out in the eviction notice.

The lease provision under which Mr. Snyder was evicted prohibits more activity than may be prohibited under relevant federal regulations. Mr. Snyder's lease provision prohibits "all illegal or criminal activity on or near the premises". A literal reading would justify the eviction of a tenant without a due process administrative grievance proceeding for minor offenses. The federal regulations do not allow such a broad prohibition with regard to location of criminal activity in general. Therefore, the provision is void and not a valid provision.

The trial court lacked jurisdiction because Mr. Snyder was entitled to an administrative hearing. The federal government grants certain rights and imposes certain due process requirements before an eviction can occur in subsidized housing.

This includes the right to an administrative hearing and due process protections.

The eviction notice served upon Mr. Snyder recites that he may not avail himself of the grievance process and administrative remedies provided for in his lease. County Housing Authority claims the power to unilaterally declare Mr. Snyder's conduct to be criminal and thus deny Mr. Snyder his right to an administrative hearing and due process. Someone other than the County Housing Authority must determine that Mr. Snyder engaged in substantial criminal or illegal conduct before plaintiff can deny his mandated due process rights under his lease.

ARGUMENT

1. THE TRIAL COURT ERRED BY ALLOWING AN EXPEDITED HEARING ABSENT THE POSTING OF A POSSESSION BOND PURSUANT TO UTAH CODE ANN. § 78-36-8.5 (1953 AS AMENDED) .

The Trial Court erred in granting County Housing Authority an expedited trial in violation of Mr. Snyder's due process rights. The Forcible Detainer statute (§ 78-36-1) contemplates an expedited hearing only when the plaintiff files a possession bond and the defendant requests an expedited hearing under Utah Code Ann. § 78-36-8.5 (1953 as amended). That section reads as follows:

(1) At any time between the filing of his complaint and the entry of final judgment, the plaintiff may execute and file a possession bond.

★ ★ ★

The plaintiff shall notify the defendant that he has filed a possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (2).

(2) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsection (1):

* * *

(b) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.

* * *

(c) The defendant, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the filing of plaintiff's possession bond.

(3) If the defendant does not elect and comply with a remedy under Subsection (2) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. The constable of the precinct or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(4) If the defendant demands a hearing under Subsection (2)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (2)(b). If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Utah Code Ann. § 78-36-8.5 (1953 as amended).

The statute provides for an expedited procedure only if 1) plaintiff files a possession bond, and, 2) the defendant requests an expedited hearing. Letter Opinion, Admin. Office of the Courts, dated September 24, 1994 (hereinafter, "Letter Opinion") (R. 164-166) (attached hereto as Attachment "C").

Absent these two requirements, the case must remain on the regular litigation track. Any other reading would render the clear intent of the Legislature's meaningless; if the Legislature intended all eviction matters to be heard on an expedited basis, there would be no reason for the possession bond statute. Letter Opinion (R. 166).

In the case at bar, the Housing Authority did not file a possession bond, and defendant did not request an expedited hearing. Defendant informed the court that he desired to engage in discovery. Objection to Notice of Readiness for Trial (R. 27). Because a possession bond was not filed in the underlying case, this action should have not be processed on an expedited basis, but rather under the normal litigation track.

2. THE TRIAL COURT ERRED IN SETTING THIS CASE FOR TRIAL OVER MR. SNYDER'S OBJECTION DENYING HIM DISCOVERY.

Tom Snyder was prejudiced by the trial court's setting of the case for trial and not allowing him the opportunity to conduct discovery. County Housing Authority filed a certificate of readiness for trial that was clearly false. That certificate

of readiness falsely stated that:

* * *

2. . . .; that opposing parties have had reasonable time to pursue discovery; . . .

* * *

4. That reasonable discussions to attempt settlement have been pursued by counsel and their clients, but no settlement has been effected. (Such discussions are to be realistic in nature and not limited to nonresponse to an offer. The duty to effectively negotiate lies with all parties.)

Certificate of Readiness for Trial (R. 29-30).

As noted, Mr. Snyder filed an objection (R. 27) notifying the trial court that no discovery had occurred and that no settlement discussions had occurred. Nevertheless, over Tom Snyder's objections, the trial court set the matter for trial based upon false representations by the County Housing Authority. By doing so, the trial court afforded Tom Snyder no opportunity for discovery whatsoever.

Again at trial, Tom Snyder moved this court for a continuance to conduct minimal discovery. Mr. Snyder complained that the parties never exchanged required information under Rule 26 of the Utah Rules of Civil Procedure; Mr. Snyder was never provided a witness list; Mr. Snyder was never afforded the opportunity to depose potential witnesses nor obtain any discovery whatsoever. To Mr. Snyder's concerns, the court responded, "I think all of those things can be accomplished through the trial and we'll go ahead with today's trial."

Transcript, p. 10:20-22.

The conduct of the trial court precluded Tom Snyder from engaging in discovery. The trial court's action violated the Utah Rules of Civil Procedure and the Code of Judicial Administration in that Mr. Snyder was precluded from developing and presenting his defenses as contemplated in those rules. Finally, the conduct of the trial court violated the due process provisions of the Constitution of Utah and the United States in that Mr. Snyder was not allowed the opportunity to prepare for trial and to defend the case in conformance with the applicable rules, etc.

3. THE COURT ERRED IN FINDING THAT TOM SNYDER ENGAGED IN CRIMINAL BEHAVIOR.

Mr. Snyder's alleged mis-conduct justifying his eviction involves a dispute between him and management of the County Housing Authority housing complex in which Mr. Snyder resided. Defendant's Aff. ¶ 4; Transcript, pp. 26:18 - 27:10; 80:21-25.

The trial court relied upon the testimony of Sherrie Rico, Daphne Poulton, and Calvin Trowbridge to support its finding that Mr. Snyder engaged in criminal activity. Transcript, 101:5-25. Rico testified that Mr. Snyder called her "honey" and "bitch". Transcript, p. 18:14-18. According to Rico, Mr. Snyder stated, "You know, you better pull up your fucking pantyhose you fucking bitch because I'm going to get you on this."³ Transcript, p.

³ Rico had threatened to evict Mr. Snyder because Defendant had complained to her boss about her conduct and "challenged her

18:20-21. Mr. Snyder "kept calling [Ms. Rico] the names and he came around the desk, and he said, 'You cost me a hundred and twenty dollars you fucking bitch.'" Transcript, pp. 18:24 - 19:1. Mr. Snyder "had his finger right up in [Ms. Rico's] face" Transcript, p. 19:4. Mr. Snyder then backed away stating, "I've got a doctor's appointment . . . but you better pull up your fucking pantyhose because I'm not done with you yet." Transcript, p. 20:9-12. Ms. Rico also testified that there had been an ongoing dispute between herself and Mr. Snyder. Transcript, pp. 26:18 - 27:10.

Daphne Poulton testified that from the hallway she heard someone yelling and swearing. Transcript, pp. 29:3-4, 14; 30:3-5. However, she did not see Mr. Snyder do anything threatening nor move toward Sherri Rico. Transcript, p. 33:18-24. Calvin Trowbridge heard, over a radio, two voices that he identified as Sherri Rico and Tom Snyder. Transcript, p. 36:10-22. He heard Tom Snyder call Sherri some obscenities and he heard yelling. Transcript, pp. 37:10-17, 21-23. Mr. Trowbridge also did not see any threatening behavior. Transcript, pp. 38:25 - 39:5.

Plaintiff/Appellee also offered the testimony of James Alcock, an investigator with the Salt Lake City Police Department. Mr. Alcock opined that "you better pull up your

authority." Transcript, pp. 26:18 - 27:10; 77:4-6. In addition, Rico had Mr. Snyder's automobile towed and impounded for an expired registration. Transcript, p. 80:21-25.

fucking pantyhose, you fucking bitch, we're going to go the rounds" constitutes as assault under Utah law.⁴ Transcript, p. 43:1-6. However, Alcock's statement is a misquote of what actually occurred. Rico called Mr. Snyder to come to her office. Transcript, pp. 16:14-15; 77:4-5. The parties had an ongoing dispute regarding previous threats of eviction and an incident where Ms. Rico had Tom Snyder's car towed and impounded. Transcript, pp. 26:18 - 27:10; 80:21-25. On the day in question, Tom Snyder allegedly said, "You know, you better pull up your fucking pantyhose you fucking bitch because I'm going to get you on this [in reference to the prior incidents]." Transcript, p. 18:20-21 (emphasis added).

There are two (2) versions of the yelling match that occurred on February 23, 2000 between Sherry Rico, the manager of the housing complex and defendant. The parties had an ongoing dispute. Unpleasantries were mutually exchanged. However, the conduct of Mr. Snyder, even if this Court were to believe plaintiff's version of the February 23rd incident does not rise to the level of criminal conduct.⁵

⁴ Of note, Mr. Alcock also opined that the statement, "I've got to leave now, I'm not through with you or we're not finished yet" constitutes an assault. Transcript, 43:15-20. Said statement is not an assault under any conceivable stretch. See Utah Code Ann. § 76-5-102 (1953 as amended).

⁵ Mr. Snyder was never contacted by any law enforcement officer as a result of the February 23, 2000 incident. He was never arrested or charged for any alleged misconduct as a result

Mr. Snyder's behavior, while offensive, did not arise to the level of criminal behavior. Pointing a finger, stating, "We're not done yet" and telling someone to "Pull up your pantyhose", while offensive, does not rise to the level of criminal behavior. In context, Mr. Snyder's statements simply do not amount to an assault. Had criminal conduct been involved, upon Ms. Rico's report to the police, law enforcement officers would have taken action (or at least spoken to defendant).

Wherefore, the trial court erred in finding that Mr. Snyder engaged in criminal behavior.

4. THE LEASE PROVISION UNDER WHICH MR. SNYDER WAS EVICTED DID NOT PROHIBIT "CRIMINAL" CONDUCT TOWARD A STAFF MEMBER OF COUNTY HOUSING AUTHORITY.

As noted, defendant did not engaged in any criminal conduct to warrant the termination of his lease. Additionally, the lease and eviction notice (attached to Complaint) provided for termination only if a tenant's criminal conduct threatens other tenants.

The eviction notice served upon defendant on February 25, 2000 recites a violation of § 11, Resident's Obligations:

I. Resident and household members, guests and visitors will act in a manner so as not to disturb any neighbors peaceful enjoyment of his/her accommodations and refrain from all illegal or Criminal activity on or near the Premises. Such illegal activity includes, but is not limited to, the Use or sale of drugs by the

of the February 23rd incident. Transcript, p. 81:18-21.

Resident, household members, guests or visitors.

Exhibit "B" attached to Complaint (R. 13).

Thus, Mr. Snyder's lease with the County Housing Authority provides for its termination for "criminal activity that threatens the health, safety, or right to peaceful enjoyment by other residents; drug related criminal activity at or near the Premises". Lease p. 5, ¶ 17 (R. 9). Neither the lease nor federal regulations provide for termination of the lease based upon "criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by . . . **employees of the PHA.**" 24 CFR § 966.4(f)(12)(i)(A) (emphasis added) (a copy of the relevant federal regulations is attached hereto as Attachment "D").

A comparison of 24 CFR § 966.4(f) (*Tenant's obligations*) and 24 CFR § 966.4(l) (*Termination of tenancy and eviction*) is illustrative. The former provides that a tenant shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents **or employees of the PHA**, or

(B) Any drug-related criminal activity on or near such premises.

24 CFR § 966.4(f)(12)(i) (emphasis added).

In contrast, 24 CFR § 966.4(l) (*Termination of tenancy and eviction*) allows termination of tenancy only for

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents.

(B) Any drug-related criminal activity on or near such premises.

24 CFR § 966.4(1)(2)(ii). Noticeably absent in the second CFR provision is termination for threatening **employees of the PHA**. Thus, the grounds asserted for termination of Mr. Snyder's lease are not provided for in the relevant regulations.

Mr. Snyder's lease only includes the second provision. Even though County Housing Authority had the right to add the other provision (as against employees), it chose not to do so. Transcript, p. 63:7-20. Defendant's alleged criminal conduct was not directed toward other tenants.

Because the unlawful detainer statute provides for such harsh remedy, the entire process must be afforded strict compliance. See generally Sovereign v. Meadows, 595 P.2d 852 (Utah 1979); Cache County v. Beus, 978 P.2d 1043 (Utah Ct. App. 1999). The eviction notice recites alleged criminal behavior toward an employee. However, that can not be the basis for termination of the lease. Lease p. 4, ¶ 11(I) cited in the notice does not provide grounds for eviction; Lease p. 5, ¶ 17 sets forth grounds to terminate a lease. Lease p. 5, ¶ 17 prohibits only mis-conduct toward a tenant. Mr. Snyder did not engaged in mis-conduct toward a tenant. "Strict compliance" invalidates the eviction notice itself (the notice describes mis-conduct against an

employee); the lease provision cited (§ 11) does not establish grounds for eviction; and the pertinent section (§ 17) allows for termination only for mis-conduct directed toward another tenant.

Therefore, Mr. Snyder's eviction notice was not accurate nor justified on the grounds asserted therein.

5. THE LEASE PROVISION UNDER WHICH MR. SNYDER WAS EVICTED PROHIBITS MORE ACTIVITY THAN MAY BE PROHIBITED UNDER RELEVANT FEDERAL REGULATIONS.

The lease provision under which Mr Snyder was evicted is not in compliance with 24 CFR § 966.4(f) (*Tenant's obligations*). That section of the Code of Federal Regulations mandates that plaintiff's lease must provide that a tenant be obligated:

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12)(i) To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

24 CFR § 966.4(f) (*Tenant's obligations*).

In contrast, § 11, Resident's Obligations of Mr. Snyder's lease prohibits more conduct than may be prohibited by 24 CFR § 966.4(f) (*Tenant's obligations*). Mr. Snyder's lease provision prohibits "**all** illegal or criminal activity on or **near the**

premises" (emphasis added) (R. 7-8). A literal reading would justify the eviction of a tenant without a due process administrative grievance proceeding for spitting on the sidewalk on the public street adjoining the housing project or for running a red light upon leaving the project's parking lot or for theft.⁶ Transcript, p. 103:20-24.

The CFR does not allow such a broad prohibition with regard to criminal activity or its location. The intent of the lease and of HUD which requires that provision in the lease was not to allow eviction for minor infractions such as spitting, swearing or overtime parking; rather, the intent is that only certain criminal activity may be prohibited. For example, the CFR mandates a prohibition of "any drug-related criminal activity on or near such premises".

However, non-drug criminal activity may be prohibited only if it threatens people or rights on "the PHA's public housing

⁶ Reported cases have construed the § 11(I) language and have judicially reviewed the application of that provision. Those cases involving eviction based upon that provision involve serious criminal conduct and intervention by law enforcement. Housing Auth. of Jersey City v. Myers, 685 A.2d 532 (New Jersey 1996) (tenant arrested for drug related activity); Housing Authority of the City of Newark v. Raindrop, 670 A.2d 1087 (New Jersey 1996) (drug-related activities by tenant's son); Barajas v. Housing Auth. of Harlingen, 882 S.W.2d 853 (Texas 1994) (tenant delivered cocaine to undercover officer at housing project); City of So. San Francisco Housing Auth. v. Guillory, 49 Cal.R.2d 367 (Cal. 1995) (illegal narcotics found in tenants' son's bedroom closet); Chavez v. Housing Auth. of City of El Paso, 973 F.2d 1245 (5th Cir. 1992) (adult son of tenant arrested, threatened security guards with crowbar and switch blade).

premises." 24 CFR § 966.4(f)(12)(i) (tenant shall not engage in "Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA").

As discussed above, the terms of the County Housing Authority's lease with defendant would allow for the eviction of Mr. Snyder for any criminal conduct. Therefore, the lease provision is too broad and is contrary to HUD's requirements as set out in 24 CFR § 966.4(f)(12)(i). As a result, that provision is void and not a valid provision in Mr. Snyder's lease.

6. THE TRIAL COURT LACKED JURISDICTION BECAUSE MR. SNYDER WAS ENTITLED TO AN ADMINISTRATIVE HEARING.

This landlord/tenant dispute involves subsidized housing, funded in part by the federal government. Because it is subsidized housing, the federal government grants certain rights and imposes certain due process requirements before an eviction can occur. Defendant's Aff. ¶ 3; Transcript, pp. 54:10 - 55:17. This includes the right to an administrative hearing and due process protections. Id.

Federal regulations controlling Department of Housing and Urban Development (HUD) leases (such as at bar) must be complied with fully before a trial court has jurisdiction to enter a judgment for eviction from subsidized public housing. Housing Auth. of Jersey City v. Myers, 685 A.2d 532 (New Jersey 1996);

Housing Authority of the City of Newark v. Raindrop, 670 A.2d 1087 (New Jersey 1996) (stern remedy of dispossession available to landlord only when landlord has afforded tenant all required pre-eviction statutory and regulatory protections); See also Sovereign v. Meadows, 595 P.2d 852 (Utah 1979) (unlawful detainer statute provides a severe remedy and must be strictly complied with before the cause of action can be maintained).

The eviction notice served upon Mr. Snyder on February 25, 2000 recites that based upon an alleged violation of § 11, Resident's Obligations defendant may not avail himself of the grievance process and administrative remedies provided for in his lease. Exhibit "B" attached to Complaint (R. 14). County Housing Authority claims the power to unilaterally declare Mr. Snyder's conduct to be criminal and thus deny Mr. Snyder his right to an administrative hearing and due process.⁷ Allowing County Housing Authority to exercise such a power nullifies the required due process protections of the lease and allows the County Housing Authority to terminate leases without an objective standard. Someone other than the County Housing Authority must determine that Mr. Snyder engaged in substantial criminal or

⁷ The County Housing Authority suggests "The Housing Authority does not have to wait for a prosecution and conviction of the Defendant before it seeks to terminate the Defendant's tenancy." Memo in Opposition to Motion for Summary Judgment. Mr. Snyder suggests a corollary requirement that something more than County Housing Authority unilaterally branding conduct as criminal is necessary before eviction!

illegal conduct before plaintiff can deny his mandated due process rights under his HUD approved contract.

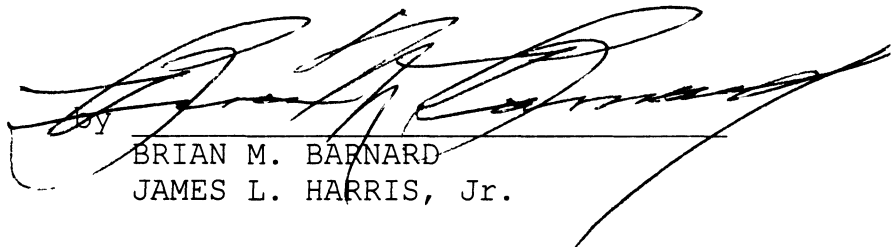
CONCLUSION AND RELIEF SOUGHT

Wherefore, this Court should determine that 1) the trial court erred in granting County Housing Authority an expedited trial absent the posting of a possession bond; 2) Mr. Snyder did not engage in criminal activity in violation of the lease agreement, and was not in unlawful detainer of the premises; 3) County Housing Authority was not justified in terminating Mr. Snyder's Lease, 4) the Judgment against Mr. Snyder is invalid; and, 5) that Mr. Snyder's lease be reinstated.

In the alternative, this Court should determine that the trial court lacked jurisdiction and that Mr. Snyder is entitled to avail himself of the administrative grievance procedure prior to termination of his lease.

RESPECTFULLY SUBMITTED this 13th day of NOVEMBER 2000.

UTAH LEGAL CLINIC
ATTORNEYS FOR DEFENDANT/APPELLANT


BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

ORAL ARGUMENT REQUESTED

The issues are of first impression before the Utah Supreme Court. The determination of these issues will affect the rights of many tenants in subsidized housing under the Housing Authority of Salt Lake County. This action presents important questions with regard to the rights of tenants in subsidized housing throughout the state. The appellant believes that oral argument will give the parties a beneficial opportunity to explain their respective positions and to answer questions from the Court.

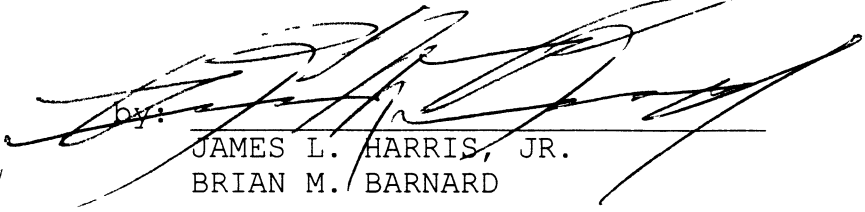
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing BRIEF OF APPELLANT to:

Kimberly D. Washburn
STIRBA & HATHAWAY
Attorneys for Plaintiff/Appellee
215 South State Street, Suite 1150
Salt Lake City, Utah 84110-0810

on the 13th day of NOVEMBER, 2000, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for DEFENDANT/APPELLANT

by: 
JAMES L. HARRIS, JR.
BRIAN M. BARNARD

ATTACHMENT A

HOUSING AUTHORITY OF THE COUNTY OF SALT LAKE
3595 SOUTH MAIN ST
SALT LAKE CITY, UTAH 84115
(801) 284-4400 TOD (801) 284-4407

LEASE AGREEMENT

1. PARTIES AND PREMISES. The Housing Authority of the County of Salt Lake ("Housing Authority") agrees to lease to SNYDER, JOHN THOMAS ("Resident"), and Resident agrees to lease from Housing Authority the Premises located at 1966 SO 200 E A506, SLC, UTAH

Household or family members who will reside at the Premises are:

NAME	BIRTHDATE	RELATIONSHIP
JOHN T. SNYDER	07/26/31	H

2. TENANCY. This tenancy shall commence on AUGUST 7, 1998 , for a period of six (6) months and then shall be renewed automatically on a month to month basis until terminated pursuant to the provisions of paragraph 17 hereunder.

3. PAYMENTS UNDER LEASE. Rental amounts paid by Resident depend upon family income and the number of household members. The rent under this lease at this time is \$ 186.00 per month and is due on or before the first day of each month. The pro-rated amount due before delivery of the Premises key to the Resident is \$ 136.00

The amount of monthly rent is subject to upward or downward adjustments by Housing Authority. These adjustments, if any, are based on changes in family income, number of household members, or any other factor affecting Resident's continued eligibility as determined by Housing Authority and will occur at least annually, and at any other time Housing Authority deems necessary. Resident must, upon Housing Authority's request, but at least on an annual basis, fully and accurately complete forms provided by Housing Authority regarding rent determination.

Housing Authority will reimburse Resident for any overpayment received, after applying the overpayment to any payments due from Resident. If Housing Authority reevaluates rent amount or determines that Resident must change Premises, Resident may ask for an explanation of such determination; if Resident disagrees, Resident has the right to request a hearing under Housing Authority grievance procedures.

Resident will be assessed a \$10.00 late fee on the sixth day of month if full rent has not been paid that month. A second \$10.00 late charge will be assessed if the rent is not paid by the fifteenth day of the month. Housing Authority will charge Resident \$10.00 on each returned check. Resident's checks will not be accepted if a second check is returned; payment of rent will only be accepted by money order or cashier check. Payments will be accepted at Housing Authority's main office or by mail.

All payments will be applied to charges in the following order: (a) maintenance charges; (b) other charges; (c) late charges; (d) past due rent; then (e) current rent.

Non-Payment of rent and/or any other charges by the fifth of the month will result in commencement of eviction proceedings.

CASH WILL NOT BE ACCEPTED FOR ANY PAYMENT

4. SECURITY DEPOSIT. A security deposit in the amount of \$ 100.00 is required of Resident. The deposit is to be used by Housing Authority for reimbursement for any repairs necessary as a result of anything other than normal wear and use of the Premises. The deposit may also be used by Housing Authority for any outstanding rent or other obligations owed by Resident at the time the Premises are vacated. The deposit will constitute liquidated damages and may be retained in full by Housing Authority if Resident occupies the Premises for less than six months or if Resident fails to give at least thirty days notice prior to terminating the agreement in accordance with Paragraph 17 herein. Housing Authority will return deposit balance to Resident within thirty days after Premises are vacated, provided that a forwarding address is provided.

5. INFORMATION REQUIRED OF RESIDENT. Before the due date of the next rent payment, the 1st of the month, Resident must inform the Housing Authority in writing of any increase or decrease in the number and relationship of household members or in the amount of household income. Income includes, but is not limited to, church welfare, family, employment and social services payments, alimony, child support and social security. Any omission, false or misleading statement by Resident concerning income or number of household members will result in eviction.

Housing Authority will notify Resident of any rent adjustments. All rent adjustments which involve an increase will be effective beginning the first of the second month. All decreases in rent will be effective first of the next month. If Resident fails to report an increase, the rent increase shall become effective on the first day of the first month following such increase in income.

Those Residents who do not show up for their re-determination of rent after being notified by Housing Authority will either pay the Published Fair Market Rent or 30% of their adjusted gross income whichever is greater. The Housing Authority may also evict the Resident as outlined in Section 5.

6. UTILITIES. At no cost beyond the monthly rent Housing Authority will provide the following utilities: water, sewer, other _____.
A. Management shall give written notice to Resident of any applicable allowance for Management-furnished utilities or Resident-furnished utilities. Resident understands and agrees that Management may revise said allowance from time to time during the course of this lease and that said revisions are binding upon Resident.

B. Management's allowance for Management-furnished utilities shall be determined in accordance with HUD regulations and requirements.

C. Management's allowance for Resident-purchased utilities shall be determined in accordance with HUD regulations and requirements.

D. If Resident-purchased utilities are shut-off due to Resident's failure to pay utility bill(s), said shut-off constitutes a serious violation of this Agreement and may be grounds for termination of the Agreement pursuant to paragraph 17 hereunder.

7. CHANGE OF PREMISES. If Housing Authority determines, for any reason, that the Premises provided for in this lease are no longer appropriate, Resident will be transferred to an appropriate alternative location after receipt of reasonable notice.

8. RESIDENT'S RIGHT TO USE AND OCCUPY. Resident shall have exclusive use and occupancy of the premises including the right to care for foster children and live-in care of member of Resident's family, provided appropriate notice of such persons is given to Housing Authority in accordance with this lease. Resident and/or household members may engage in legal profit making activities if Housing Authority determines that such are incidental to the primary use of the Premises and do not violate any rule, law or ordinance. Resident may also have guests whose stay may not exceed five (5) days without Housing Authority's prior written approval. Repeated or extended accommodation of guests is grounds for redetermination of the rent or eviction.

9. DAMAGE AND REPAIR. Resident is responsible for payment of repair charges not due to reasonable wear and tear. The Housing Authority will make repairs and bill Resident for those repairs due to non-reasonable wear and tear. Such damage shall be presumed to be due to the negligence or intentional acts of Resident, household members, or other persons under the control of Resident. This presumption is rebuttable. Payment for repairs will be due on the first day of the second month. A late fee of \$10.00 will be assessed for charges that are past due. Resident may be evicted for nonpayment of repair charges. Charges for repairs will be based upon a schedule of repair charges posted in Housing Authority's office.

10. HOUSING AUTHORITY OBLIGATIONS. Housing Authority shall maintain the common areas in a decent, safe, and sanitary condition and will comply with applicable local building and housing codes and all HUD regulations affecting safety and health. Housing Authority will also make all necessary repairs and maintain electrical, plumbing, sanitary heating, ventilating and other facilities and appliances, including elevators, in good and safe working condition. Housing Authority will supply and maintain necessary waste receptacles for deposit of waste removed from Resident's premises, hot and cold running water, and reasonable amounts of heat unless not required by law. Housing Authority will also make reasonable accommodation for disabled persons. Contact Roy House, Section 504 Coordinator, 3595 S. Main St. SLC, UT 84115, telephone 284-4430, concerning any accommodations.

11. RESIDENT'S OBLIGATIONS.

A. Resident shall not assign or sublease the Premises nor provide accommodations for boarders whether for compensation or not.

B. The Premises is for use as a private residence and may not be used for any other purpose.

C. Resident will notify Housing Authority, in writing, of any absence from the premises of longer than one week (seven days).

D. Resident will comply with all terms of this lease, all rules and regulations posted by Housing Authority in its office, and all applicable provisions of building and housing codes affecting health and safety.

E. Additionally, Resident will keep all areas assigned for Resident's exclusive use in a safe and sanitary condition and dispose of all waste in a safe and sanitary manner.

F. Resident and all household members and guests will use all utilities, appliances, plumbing, and facilities in a reasonable manner and refrain from damaging or removing any part of the Premises.

G. Resident will pay for all repair of damages caused by Resident, household members, guests or visitors.

H. Resident will be held directly responsible for the actions of Resident, household members, guests and visitors.

I. Resident and household members, guests and visitors will act in a manner so as not to disturb any neighbor's peaceful enjoyment of his/her accommodations and refrain from all illegal or criminal activity on or near the Premises. Such illegal activity includes, but is not limited to, the use or sale of drugs by the Resident, household members, guests or visitors.

J. Neither Resident nor household members, guests or visitors shall commit any fraud in connection with any housing assistance program, or engage in any illegal or criminal activity. Such activity shall be cause for eviction.

12. PETS. Only residents of elderly or handicapped housing developments are permitted to have pets. Violation of Management's pet policy, a copy of which is attached hereto as Exhibit "B" by Resident may be cause for removal of their pet on 24 hours written notice to Resident and shall be cause for eviction.

13. RESIDENT MAINTENANCE RESPONSIBILITIES. Resident will maintain the inside of the Premises in clean condition and repair any broken windows, screens, or doors. Resident is also responsible for the following:

- _____ Mow and edge the lawn at least once a week.
- _____ Water the lawn as often as necessary, at least two times weekly.
- _____ Shovel snow from sidewalks immediately after each snowfall.
- _____ Sweep sidewalks on regular basis.
- _____ Keep litter and trash off the Premises at all times.
- _____ Weed when required to keep property in good condition.
- _____ Other _____.

If Resident fails to perform the duties marked above, Housing Authority will perform them and charge Resident a reasonable fee. Refusal to perform these duties is grounds for eviction. Charges will be due the first day of the second month. Resident will be assessed a \$10.00 late fee if not paid when due. If Resident is determined by Housing Authority to be unable to perform such duties, resident shall not be required to do so.

14. HAZARDOUS DEFECTS. If the Premises are damaged enough to be hazardous to the life, health, or safety of an occupant, Resident shall immediately notify Housing Authority of the damage.

Housing Authority will repair the Premises within a reasonable time or offer alternative accommodations when repairs cannot be made in a reasonable time. Housing Authority shall also abate Resident's rent proportionate to the loss in value of the Premises if repairs are not made in a reasonable time and/or alternate accommodations are not provided. However, no abatement will occur and Resident will be charged for the repairs if Resident, Resident's household members, guests, or visitors cause the damage. Nor will there be any abatement if Resident rejects offered alternative accommodations.

15. INSPECTIONS. Housing Authority and Resident will inspect the Premises before Resident takes possession and furnish Resident with a written statement of the condition of the Premises and the appliances provided with the Premises. The statement will be signed by both Housing Authority and Resident before Resident takes possession.

When Resident vacates the Premises, Housing Authority will once again inspect the Premises and appliances and furnish a statement to Resident of any charges to be assessed to Resident for damages. Resident may participate in this final inspection unless Resident vacates without notice.

Housing Authority will be allowed by Resident to enter the Premises to make regular inspections, do routine maintenance, or to show the Premises for releasing. Housing Authority may enter the Premises during reasonable hours with reasonable notice to Resident or without notice if it is reasonable to believe an emergency exists.

Housing Authority will provide a written statement specifying the purpose of entry at least 48 hours before entry. If there are no adults present when Housing Authority enters the Premises, it will leave a written statement specifying the date, time, and purpose of entry.

16. NOTICE PROCEDURES. Except for notice prior to entering the Premises or notice prior to the sale of abandoned property, any notice given by Housing Authority shall be in writing and delivered to an adult member of Resident's household or sent by prepaid first class mail. If Resident is visually impaired, the notice shall be in an accessible format.

Any notice given by Resident to Housing Authority must be written and hand delivered to its main office or sent by prepaid first class mail.

17. LEASE TERMINATION. Resident may terminate this lease upon thirty days notice in compliance with Paragraph 16. Resident will leave the Premises in a clean and safe condition and return all keys to Housing Authority.

Housing Authority will evict Resident for nonpayment of rent, nonpayment of other financial obligations due under the terms of the lease, making any false or misleading statements concerning information required by Housing Authority; criminal activity that threatens the health, safety, or right to peaceful enjoyment by other residents; drug related criminal activity at or near the Premises; repeated failure to comply with any other Resident's obligation under the lease; or for other good cause.

Housing Authority will give written notice of termination of the lease as follows: Three day notice for either type of criminal activity described in the proceeding paragraph; fourteen days notice for nonpayment of rent; and thirty days notice in all other cases. The notice shall state the reasons for termination and inform Resident of the right to a grievance hearing in accordance with HUD regulations if applicable.

Tenancy shall not terminate until the time for Resident to request a grievance hearing has expired, if Resident is entitled to a grievance hearing. If Resident is entitled to a grievance hearing and requests such in a timely fashion, tenancy shall not terminate until the grievance process is completed.

If Resident is evicted for criminal activity, Housing Authority shall notify the Post Office to discontinue delivery of Resident's mail to the Premises.

18. COURT COSTS AND ATTORNEY FEES. Should Housing Authority incur court costs and/or attorney fees while attempting to resolve noncompliance with any term of this lease by Resident, Resident will be assessed those costs and/or fees if Housing Authority is successful.

Resident shall compensate Housing Authority in full and hold it harmless with respect to any claims made against Housing Authority for damages caused by intentional acts of Resident and/or any of Resident's family members, household members, guests or visitors.

19. ABANDONMENT AND DISPOSAL OF ABANDONED PROPERTY. Abandonment of the Premises is presumed if Resident has not notified Housing Authority of an absence from the Premises of more than seven (7) days, Resident fails to pay rent within fifteen (15) days after rent is due, and there is no reasonable evidence, other than the presence of Resident's personal property, that Resident is occupying the Premises. Abandonment is also presumed if Resident's personal property has been removed from the premises, if Resident has not notified Housing Authority of an absence from the premises, Resident fails to pay rent when due, and/or other facts exist which indicate abandonment of the Premises.

If Housing Authority determines that Premises are abandoned pursuant to the above criteria, Housing Authority will post notice of abandonment on the Premises for a period of seven (7) days. At the same time Housing Authority will also mail a copy of the abandonment notice to Resident, and a copy to the individual listed on Resident's application as the person to contact in the event of an emergency. At the end of the seven (7) day period, if there has been no contact from Resident, Housing Authority will take possession of the premises.

Upon entry of the Premises after repossession, if Housing Authority discovers that personal property is left, Housing Authority will remove the property and store it at Resident's expense for thirty (30) days. Housing Authority will post notice of possession of the property and will mail a copy to Resident and a copy to the individual listed on Resident's application as the person to contact in the event of an emergency.

If Resident claims the property, Resident will be responsible for all moving and storage costs before being entitled to the return of the property. If Resident does not attempt to recover the property, at the end of the thirty (30) day period, Housing Authority will dispose of it as it deems proper.

20. LEASE MODIFICATIONS. All modifications of the lease must be accomplished by written rider to the lease executed by both parties.

21. CERTIFICATION BY RESIDENT. In entering into this agreement, Resident certifies that neither Resident nor any household members have committed fraud with any federal housing assistance programs, unless that fraud has been fully disclosed to Housing Authority. Resident also certifies that all information submitted by Resident or household members is true and complete.

IN WITNESS WHEREOF, the parties have executed this lease agreement on AUGUST 7, 1998. at Salt Lake City, Utah.

RESIDENT(S)

John T. Snyder
Resident.

Co-Resident

HOUSING AUTHORITY OF THE
COUNTY OF SALT LAKE

[Signature]
Authorized Signature

Manager
Title

ATTACHMENT B

HOUSING AUTHORITY OF THE COUNTY OF SALT LAKE
3 - DAY NOTICE OF
TERMINATION OF LEASE AGREEMENT

To: John Thomas Snyder
1966 South 200 East #A506
Salt Lake City, Utah 84115

You must vacate the premises by midnight,
WEDNESDAY, March 1, 2000 . (3 Days)

This is notice to you to move out of your unit in **3 days, by midnight, Wednesday, March 1, 2000**. You have been served this notice because you have caused, or allowed to be caused by household occupants, guests or visitors to make, serious violations of your Lease Agreement with Housing Authority, as follows:

On or about February 23, 2000, during a meeting with the apartment manager, Sherrie Rico, and the assistant manager, Julie Cayou, you threatened the safety and well-being of Ms. Rico. Your threats and intimidation began as you started verbally assaulting Ms. Rico. You repeatedly called Ms. Rico "honey" and a "fucking bitch." When Ms. Rico requested that you stop your verbal assault, you stood up from your chair and moved toward her in a threatening manner. You were yelling insults at Ms. Rico and pointing your finger at her as you moved toward her. Your demeanor was belligerent and hostile. When you reached Ms. Rico you moved so close to her that she had to pull backward to get away from the finger that you were thrusting in her face. You continued to call Ms. Rico a "fucking bitch" and told her that she had "better pull up her fucking pantyhose because you were going to go the rounds." Ms. Rico continued to ask you to desist from your threats, but you refused. You threatened Ms. Rico again telling her that you "were going to get her" because she cost you \$120.00. At this point in time, Ms. Rico was nearly falling backward over her chair. You finally stepped backward, opened the door and again threatened Ms. Rico when you stated, "I don't have time for you right now, I have a doctor's appointment. You fucking bitch, you'd better pull up your fucking panty hose because I'm not done with you yet."

These threats constitute criminal activity and Ms. Rico has filed a police report as a result of your assault, case #2000-35594 with the Salt Lake City police department.

This assault is not the only time you have engaged in criminal activity in violation of your lease agreement. You have repeatedly threatened and intimidated Ms. Rico, employees, and other tenants. The Housing Authority has previously asked you to stop such activity to no avail.

Based on these actions by you, you have violated your lease agreement as follows:

1. Section 11 - Resident's Obligation
D. - Resident will comply with all terms of this lease, all rules and regulations posted by Housing Authority in its main office, and all applicable provisions of building and housing codes affecting health and safety.
2. Section 11 - Resident's Obligation
H. - Resident will be held directly responsible for the actions of Resident, household members, guests and visitors.
3. Section 11 - Resident's Obligation
I. - Resident and household members, guests and visitors will act in a manner so as not to disturb any neighbors peaceful enjoyment of his/her accommodation and refrain from all illegal or Criminal activity on or near the Premises. Such illegal activity includes, but is not limited to, the Use or sale of drugs by the Resident, household members, guests or visitors.

The provisions of this grievance procedure are not applicable to any grievance concerning an eviction or termination of tenancy based upon a tenant's creation or maintenance of the threat to the health or safety of other tenants or HA employees. The HA may immediately commence an eviction action in accordance with State Law based on any of the grounds stated in this section.

Utah law gives you 3 days to vacate the premises. U.C.A. S78-36-3(1) and 24 C.F.R. S966.4(l)(5). If you do not vacate the premises, you will be breaking Utah law and a complaint to evict you will be filed with Third District Court, U.S.A. S78-36-1, et seq.

UTAH LAW

Utah state law says if you are found by the court to be guilty of unlawful detainer, the judge can order you to pay Housing Authority for damages, which may include *three times* (1) the amount of rent for the time you remain in the unit after this notice expires; (2) the cost of repairs of tenant-caused damage to the unit; and (3) any damages caused by forcible entry, U.C.A. S78-36-10. If you do not win in court, your Lease Agreement with Housing Authority gives the judge authority to order you to pay Housing Authority for *attorney's fees and court costs* they have spent to evict you. Utah state law, U.C.A. S15-1-4, allows Housing Authority to charge you legal interest at the rate the Federal Post Judgment Rate plus 2% on the judgement amount.

FEDERAL LAW


Federal Housing Authority regulations give you the following rights:

4. You have the right to make any reply you wish to this notice, 24 C.F.R. S966.4(l);
5. You have the right to talk to and have an attorney represent you in any court proceeding, 24 C.F.R. S966.53(c). If you cannot afford an attorney, you may be able to get one with Utah Legal Services, Inc. at 328-8891.
6. You have the right to ask your Housing Authority Representative to show you all documents in your Housing Authority file which relate to this eviction. If you ask, copies of these documents can be made for you for a charge. 24 C.F.R. S966.4(m).

Because you are being evicted for criminal and/or drug-related activity on or near the premises, the following shall apply to you, 24 CFR S966.4(1)(4):

1. You are not entitled to a grievance proceeding concerning the issues of this notice, 24 C.F.R. S966.4(l)(3)(v)(A).
2. Under Utah state law, if you do not vacate the premises as requested, a lawsuit will be filed against you in Third District Court. You will have the opportunity for a hearing before the court. 24 C.F.R. S966.4(l)(3)(v)(B).
3. HUD has issued a determination which finds Utah judicial eviction proceedings meet the due process guidelines as defined in HUD regulations. 24 C.F.R. S966.4(l)(3)(v)(B). A copy of this determination may be obtained from counsel for Housing Authority upon request.
4. When Housing Authority gets an order from the court to evict you, they will notify the post office that you no longer live on the premises. (24 C.F.R. S966.4(5)(ii).

Dated: 2-25-00



Authorized representative of Housing Authority of
the County of Salt Lake

RETURN OF SERVICE

I certify that I caused to be served, pursuant to 24 CFR S966.4(k), 24 CFR S247.4(b) and U.C.A. S78-36-5 (1987), the above Notice of Termination and Notice to Vacate, by the method checked below. Notice was served on the 25 day - FEB, 2000, upon John Thomas Synder AT 3:37 P.M

- X (1) by sending a copy through registered or certified mail addressed to the tenant at his place of residence; and
- X (2) by delivering a copy to the tenant personally; or
- _____ (3) if the tenant is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the address of his place of residence or place of business; or
- _____ (4) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property. Service upon a subtenant may be made in the same manner.

DATED this 25th day of FEB, 2000.

P. House
Server's signature

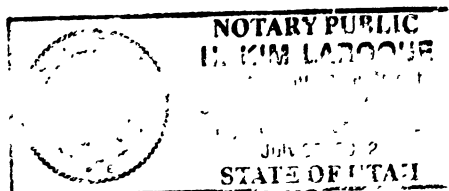
STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

ACKNOWLEDGED AND SWORN TO before me this 25th day of Feb, 2000.

Kim LaRoue
Notary Public
Resides In: Salt Lake

My Commission Expires:

7-27-02



ATTACHMENT C

MEMORANDUM

To: Clerks of Court

From: Brent Johnson

Date: September 2, 1994

Re: Eviction procedures

Issue No. 1: Under what circumstances should an expedited trial or hearing be scheduled in eviction cases?

Resolution: The only time that the Forcible Detainer statutes (§ 78-36-1 et. seq.) provide for an expedited hearing is when a plaintiff files a possession bond and the defendant requests the early hearing. If a possession bond is not filed, or the defendant does not request a hearing, the statutes do not provide for anything other than regular case tracking.

The relevant portion of the statute reads as follows (with some emphasis added):

78-36-8.5. Possession bond of plaintiff - Alternative remedies.

(1) At any time between the filing of his complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The court shall approve the bond in an amount that is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (2).

(2) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsection (1):

(a) With respect to an unlawful detainer action based solely upon nonpayment of rent or utilities, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three days of the service of the notice of the possession bond, pays accrued rent, utility charges, any late fee, and other costs, including attorney's fees, as provided in the rental agreement.

(b) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The form of the bond is at the defendant's

option. The bond shall be payable to the clerk of the court. The defendant shall file the bond prior to the expiration of three days from the date he is served with notice of the filing of plaintiff's possession bond. The court shall approve the bond in an amount that is the probable amount of costs of suit and actual damages that may result to the plaintiff if the defendant has improperly withheld possession. The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

(c) The defendant, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the filing of plaintiff's possession bond.

(3) If the defendant does not elect and comply with a remedy under Subsection (2) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. The constable of the precinct or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(4) If the defendant demands a hearing under Subsection (2)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (2)(b). If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

The statute only contemplates an expedited procedure if the plaintiff files a possession bond and the defendant requests a hearing. Even then, the hearing will only address possession unless the court finds that all issues can be adjudicated without the need for further proceedings.

Here are the possibilities after the filing of a complaint:

1. Possession bond filed (Plaintiff may file at any time, with or without answer being filed).
 - a. Defendant pays the past due rent (in cases only involving past due rent).
 - i. Possession bond and the case are dismissed.
 - b. Defendant files a counter bond.
 - i. There is no expedited hearing. Both parties are protected until trial, through the bonds that have been posted.
 - c. Defendant requests a hearing
 - i. The hearing must be held within three days of the time that notice of the bond is served on defendant, giving the ridiculous result that a defendant could request a hearing 10 minutes before the time expires and the hearing must be held in that 10 minutes.
 - ii. At the hearing, the court can decide all issues, if that is possible, or just the issue of possession, reserving damage and other issues.
 - d. Defendant does not pay rent, file a bond or request a hearing.
 - i. Plaintiff is entitled to move ex parte for an order of restitution.

- ii. If defendant has filed an answer, the remaining issues receive regular case tracking for resolution at trial.
- 2. Answer filed with no possession bond.
 - a. The case receives regular tracking with discovery, etc taking place and possession and damages being resolved at trial.
- 3. No answer or bond filed.
 - a. Default judgment may issue as to possession and damages.

If the Legislature intended all eviction matters to receive expedited treatment, then the possession bond statute would be meaningless. The Legislature apparently recognized that there are possession issues and damages issues involved in each eviction. Possession is often important to avoid the incurrence of additional damages, which, in the typical case, will not be recoverable. The possession bond alternative was given to remedy this.

This analysis does not prevent expedited trials upon the court's motion or parties stipulation, but such expediting must be done as the same circumstances as in other cases. If a party objects because the party wants to conduct discovery an expedited trial may not be a good idea.

Issue No. 2: Who has the responsibility to insure that the request for hearing is attached to the restitution order and that it conforms to the order?

There is nothing in the statute that indicates whose responsibility this is. There are some clues to responsibility. First, the plaintiff is responsible for service of the documents. Service can be accomplished in any number of ways including mail and posting. Because the court has no control over the type of service, it is reasonable to assume that plaintiff takes responsibility for all matters related to service, including the types of documents that should be included.

Second, clerks are not in the business of making discretionary calls as to whether an order is conforming or documents conform to existing statutes. This may go beyond a pure ministerial act and we should requiring the clerks to look at the substance of a document.

However, as a matter of concession and to make eviction practice consistent with other actions requiring requests for hearing, clerks should review packets to at least insure that the appropriate documents accompany the order when the order is issued. In cases involving garnishment and execution, clerks will not issue writs without first determining that the writ is authorized and then insuring that the request for hearing packet is included with the writ. If there are objections as to form, it will be the defendant's burden to raise those.

ATTACHMENT D

in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, such units, child care facilities, exterior or interior common areas are not required to be re-tested or re-treated.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577-0090)

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

\$965.710 Compliance with state and local laws.

(a) *PHA responsibilities.* Nothing in this subpart H is intended to relieve a PHA of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The PHA shall maintain records evidencing compliance with applicable state or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(Approved by the Office of Management and Budget under control number 2577-0090)

[51 FR 27789, Aug. 1, 1986 Redesignated at 53 FR 20803, June 6, 1988]

\$965.711 Monitoring and enforcement.

PHA compliance with the requirements of this subpart will be included

in the scope of HUD monitoring of PHA operations. Noncompliance with any requirement of this subpart may subject a PHA to sanctions provided under the Annual Contribution Contract or to enforcement by other means authorized by law.

[51 FR 27789, Aug. 1, 1986. Redesignated at 53 FR 20803, June 6, 1988]

Subpart I—Fire Safety

SOURCE: 57 FR 33853, July 30, 1992, unless otherwise noted.

\$965.800 Applicability.

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

\$965.805 Smoke detectors.

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

PART 966—LEASE AND GRIEVANCE PROCEDURES

Subpart A—Dwelling Leases, Procedures and Requirements

- Sec 966.1 Purpose and scope
- 966.2 [Reserved]
- 966.3 Tenants' opportunity for comment
- 966.4 Lease requirements.
- 966.5 Posting of policies, rules and regulations.
- 966.6 Prohibited lease provisions
- 966.7 Accommodation of persons with disabilities.

Subpart B—Grievance Procedures and Requirements

- 966.50 Purpose and scope
- 966.51 Applicability.
- 966.52 Requirements.
- 966.53 Definitions
- 966.54 Informal settlement of grievance
- 966.55 Procedures to obtain a hearing
- 966.56 Procedures governing the hearing
- 966.57 Decision of the hearing officer or hearing panel.

AUTHORITY: 42 U.S.C. 1437a, 1437d note, and 3535(d).

Subpart A—Dwelling Leases: Procedures and Requirements

SOURCE: 40 FR 33402, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

\$966.1 Purpose and scope.

The purpose of this subpart is to prescribe the provisions that shall be incorporated in leases by public housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants. This subpart is applicable to all such dwelling leases entered into directly by PHAs with tenants and is not applicable to Section 23 and Section 10(c) leased housing projects the Section 23 Housing Assistance Payments Program, and the Section 8 Housing Assistance Payments Program, where the owners enter into leases directly with the tenants. This subpart is not applicable to the Low Rent Housing Homeownership Opportunities Program (Turnkey III) or to Indian Housing Authorities.

[40 FR 33402, Aug. 7, 1975, as amended at 42 FR 5673, Jan. 28, 1977 Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 922 Jan. 9, 1991]

\$966.2 [Reserved]

\$966.3 Tenants' opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the PHA before formal adoption of any new lease form.

[56 FR 51576, Oct. 11, 1991]

\$966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Identification of parties and dwelling unit.* The names of the parties to the lease and the identification of the

dwelling unit, leased shall be set forth, including:

(1) The term of the lease and provisions for renewal, if any;

(2) The members of the household who will reside in the unit.

(b) *Payments due under the lease* (1) The lease shall state the amount fixed as rent, specifying the utilities and quantities thereof and the services and equipment furnished by the PHA without additional cost.

(2) The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

(3) At the option of the PHA, the lease may provide for payment of penalties for late payment.

(4) The lease shall provide that charges assessed under paragraph (b) (2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).

(5) At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities.

(c) *Redetermination of rent and family composition.* The lease shall provide for redetermination of rent and family composition which shall include:

(1) The frequency of regular rental redetermination and the basis for interim redetermination.

(2) An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.

(3) An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition upon appropriate notice by the PHA that such a dwelling unit is available.

(4) When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

(d) *Tenant's right to use and occupancy.* (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. For purposes of this subpart, the term *guest* means a person in the leased unit with the consent of a household member.

(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.

(3)(i) With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons.

(ii) *Live-in aide* means a person who resides with an elderly, disabled or handicapped person and who.

(A) Is determined to be essential to the care and well-being of the person;

(B) Is not obligated for the support of the person; and

(C) Would not be living in the unit except to provide the necessary supportive services.

(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage) except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive con-

trol of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination in accordance with paragraph (i)(3) of this section, shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated:

(1) Not to assign the lease or to sublease the dwelling unit;

(2) Not to provide accommodations for boarders or lodgers,

(3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose,

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(6) To keep the dwelling unit and such other areas as may be assigned to

the tenant for the tenant's exclusive use in a clean and safe condition;

(7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

(8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

(9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12)(i) To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in.

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

(ii) For purposes of subparts A and B of this part 966, the term *drug-related criminal activity* means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks

by tenants of dwellings units of a similar design and construction is customary; *Provided*, That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

(h) *Defects hazardous to life, health, or safety.* The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

(1) The tenant shall immediately notify project management of the damage;

(2) The PHA shall be responsible for repair of the unit within a reasonable time; *Provided*, That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;

(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time, and

(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(i) *Pre-occupancy and pre-termination inspections.* The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at the time

the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.

(j) *Entry of dwelling unit during tenancy.* The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:

(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;

(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

(k) *Notice procedures.* (1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant, and

(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.

(2) If the tenant is visually impaired, all notices must be in an accessible format.

(l) *Termination of tenancy and eviction—(1) Procedures.* The lease shall set forth the procedures to be followed by the PHA and by the tenant in terminating the lease.

(2) *Grounds for termination.* (i) The PHA shall not terminate or refuse to renew the lease other than for serious or repeated violation of material terms of the lease such as failure to make payments due under the lease or to fulfill the tenant obligations set forth in § 966.4(f) or for other good cause.

(ii) Either of the following types of criminal activity by the tenant, any member of the household, a guest, or another person under the tenant's control, shall be cause for termination of tenancy:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA's public housing premises by other residents.

(B) Any drug-related criminal activity on or near such premises.

(3) *Lease termination notice.* (i) The PHA shall give written notice of lease termination of.

(A) 14 days in the case of failure to pay rent,

(B) A reasonable time considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents or PHA employees is threatened, and

(C) 30 days in any other case.

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.

(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see §966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see §966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (1)(3)(i) of this section shall:

(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in §966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in §966.51(a)(2)(i)(B).

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

(5) *Eviction for criminal activity—(1) PHA discretion to consider circumstances.* In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the

case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

(ii) *Notice to Post Office.* When a PHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the PHA shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit. (So that the post office will terminate delivery of mail for such persons at the unit, and that such persons not return to the project for pickup of the mail.)

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to §966.4(i)(3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this §966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in §966.51(a)(2)) be resolved in accordance with the PHA grievance procedures.

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The grievance procedures shall comply with subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and §966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting that the lease has been executed by the parties.

(56 FR 51578, Oct. 11, 1991, as amended at 61 FR 13273, Mar. 28, 1996)

§966.5 Posting of policies, rules and regulations.

Schedules of special charges for services, repairs and utilities and rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to applicants and tenants on request. Such schedules, rules and regulations may be modified from time to time by the PHA provided that the PHA shall give at least 30-day written notice to each affected tenant setting forth the proposed modification, the reasons therefor, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the PHA prior to the proposed modification becoming effective. A copy of such notice shall be:

(a) Delivered directly or mailed to each tenant; or

(b) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project.

§966.6 Prohibited lease provisions.

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

(a) *Confession of judgment.* Prior consent by the tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.

(b) *Distraint for rent or other charges.* Agreement by the tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.

(c) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.

(d) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreements by the tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.

(e) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(f) *Waiver of jury trial.* Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

(g) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.

(h) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

§966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped

person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

[56 FR 51579, Oct. 11, 1991]

Subpart B—Grievance Procedures and Requirements

Source: 40 FR 33406, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

[56 FR 51579, Oct. 11, 1991]

§ 966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(1) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning

a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rule-making procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the FEDERAL REGISTER a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) 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.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners.

[40 FR 33406, Aug. 7, 1975 Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991, 61 FR 13273, Mar. 28, 1996]

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed

changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

[56 FR 51579, Oct. 11, 1991]

§ 966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

(a) *Grievance* shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office in accordance with §§ 966.54 and 966.55(a).

(c) *Elements of due process* shall mean 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;

(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;

(4) A decision on the merits.

(d) *Hearing officer* shall mean a person selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

(e) *Hearing panel* shall mean a panel selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

(2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

[40 FR 33406, Aug. 7, 1975 Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under § 966.55 may be obtained if the complainant is not satisfied.

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to § 966.54. For a grievance under the expedited grievance procedure pursuant to § 966.55(g) (for which § 966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

(1) The reasons for the grievance; and

(2) The action or relief sought.

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA

may use either of the following methods to appoint a hearing officer or panel:

(1) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(2) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

(c) *Failure to request a hearing* If the complainant does not request a hearing in accordance with this paragraph, then the PHA's disposition of the grievance under § 966.54 shall become final: *Provided*, That failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

(d) *Hearing prerequisite*. All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in § 966.54 as a condition precedent to a hearing under this section: *Provided*, That if the complainant shall show good cause why he failed to proceed in accordance with § 966.54 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.

(e) *Escrow deposit*. Before a hearing is scheduled in any grievance involving the amount of rent as defined in § 966.4(b) of subpart A of this part which the PHA claims is due, the complainant shall pay to the PHA an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The complainant shall thereafter 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. 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: *Provided*, That failure to make payment shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of his grievance in any appropriate judicial proceeding.

(f) *Scheduling of hearings* Upon complainant's compliance with paragraphs (a), (d) and (e) of this section, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

(g) *Expedited grievance procedure*. (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) Any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977; Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: *Provided*, That a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and there-

after the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) 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. Any interested party may purchase a copy of such transcript.

(h) *Accommodation of persons with disabilities* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format

[40 FR 33406, Aug. 7, 1975; Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51580, Oct. 11, 1991]

§ 966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and

made available for inspection by a prospective complainant, his representative, or the hearing panel or hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that

(1) 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;

(2) 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.

(c) A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

PART 968—PUBLIC HOUSING MODERNIZATION

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- AUTHORITY: 42 U.S.C. 1437d, 1437f, and 3535(d).

SOURCE: 54 FR 52689, Dec. 21, 1989, unless otherwise noted.

Subpart A—General

\$ 968.101 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to set forth the policies and procedures for the Modernization program authorizing HUD to provide financial assistance to Public Housing Agencies (PHAs).

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs

that own or operate fewer than 250 public housing units. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant Program (CGP) for PHAs that own or operate 250 or more units. A PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. A PHA that has already qualified to participate in the CGP may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

(2) This part applies to PHA-owned low-income public housing developments (including developments managed by a resident management corporation pursuant to a contract with the PHA); conveyed Lanham Act and Public Works Administration (PWA) developments; and to Section 23 Leased Housing Bond-Financed developments. Rental developments which are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but which have not yet been sold by a PHA, continue to qualify for assistance under this part. This part does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(3) A section 23 Leased Housing Bond-Financed development is eligible for modernization only if HUD determines that the development has met the following conditions:

(i) The development was financed by the issuance of bonds;

(ii) Clear title to the development will be conveyed to or vested in the PHA at the end of the section 23 lease term;

(iii) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year period of the modernization;

(iv) After completion of the modernization, the development will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the development; and

(v) The development is covered by a cooperation agreement between the PHA and local governing body during

the 20-year period of the modernization.

(4) A section 23 Leased Housing Bond-Financed development which has been conveyed to the PHA after the bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (b)(3) of this section have been satisfied.

(5) A development/building/unit which is assisted under section 5(j)(2) of the Act (Major Reconstruction of Obsolete Projects) (MROP) is eligible for section 14 funding (CIAP or CGP) where it received MROP funding after FFY 1988 and has reached Date of Full Availability (DOFA) or where it received MROP funding during FFYs 1986-1988 and all MROP funds have been expended.

(c) *Transition.* Any amount that HUD has approved for a PHA must be used for the purposes for which the funding was provided, or:

(1) For a CGP PHA, for purposes consistent with an approved Annual Statement or Five-Year Action Plan submitted by the PHA, as the PHA determines to be appropriate; or

(2) For a CIAP PHA, in accordance with a revised CIAP budget.

(d) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577-0044: §§968.135, 968.145, 968.210, 968.215, 968.225, and 968.230. The following sections of this subpart have been similarly approved and assigned approval number 2577 0157: §§968.310, 968.315, 968.325, and 968.330.

[57 FR 5570, Feb. 14, 1992, as amended at 58 FR 13930, Mar. 15, 1993; 61 FR 8737, Mar. 5, 1996]

\$ 968.102 Special requirements for Turnkey III developments.

(a) *Modernization Costs.* Modernization work on a Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance.*—(1) *Paid-off units.* A Turnkey III unit that is paid off but has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any