

Legal Opinion: GCH-0032

Index: 2.245

Subject: PH Due Process Determination: Washington

December 20, 1991

HUD DUE PROCESS DETERMINATION

for the

STATE OF WASHINGTON

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ANALYSIS

- I. Jurisdiction: State of Washington.
- II. Elements of Due Process

Section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d (k), as amended by section 503(a) of the National Affordable Housing Act of 1990, Pub. L. 101-625, approved November 28, 1990), provides that:

For any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any drug-related criminal activity on or near such premises, the agency may . . . exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process . . . .

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

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

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

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- (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; and
- (4) A decision on the merits.

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

The present due process determination is based upon HUD's analysis of the laws of the State of Washington to determine if eviction by unlawful detainer procedures under Washington laws requires that a tenant have the opportunity for a hearing which comports with all of the regulatory "elements of due process," as defined in § 966.53(c).

HUD finds that the requirements of Washington law governing an action for unlawful detainer in the Washington State superior court or district court include all of the elements of basic due process, as defined in 24 CFR 966.53(c). This conclusion is based upon requirements contained in the Washington State Constitution, the Revised Code of Washington, case law and court rules.

### III. Overview of Washington Eviction Procedures

#### Action for Unlawful Detainer: Grounds

The substantive law regulating landlord and tenant relationships in the State of Washington includes RCW Chapter 59.12, Unlawful Detainer, and RCW Chapter 59.18, the Residential Landlord-Tenant Act. Chapter 59.18 governs all landlord-tenant relationships unless specifically exempted (under RCW 59.18.040). Chapter 59.18 applies to public housing tenancies.

RCW 59.12 provides that a person is guilty of unlawful detainer when the person continues in possession of real property (1) after expiration of the term for which the property is let, (2) after notice for default in payment of rent, (3) when the person commits waste, or permits or maintains on or about the premises any nuisances, and (4) after notice of failure to perform any conditions or covenants of the lease. RCW 59.12.030.

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RCW 59.18, the Residential-Landlord Tenant Act, defines duties of a tenant, including a public housing tenant. Violation of a these duties are additional grounds for an action of unlawful detainer. A tenant may be evicted, by an unlawful detainer action under Chapter 59.12, for violations of the tenant's statutory duties set forth in Chapter 59.18 (at RCW

59.18.130 and RCW 59.18.140).

This due process determination by HUD considers the use of an unlawful detainer action for evictions which may be excluded from a PHA's grievance procedure pursuant to a HUD due process determination: evictions for drug-related criminal activity or for criminal activity that threatens health or safety of a PHA resident or employee.

#### State Court Jurisdiction

In Washington State, an eviction action for unlawful detainer must generally be commenced in the superior court. RCW 59.12.050. However, an unlawful detainer action for violation of a tenant's duties under Chapter 59.18 may be brought in either the district or superior court. RCW 59.18.050 provides that:

the district or superior courts . . . may exercise jurisdiction over any landlord or tenant with respect to any conduct . . . governed by Chapter 59.18 or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdiction of the district or superior courts as provided in Article IV, section 6 of the Constitution of the State of Washington.

An eviction action in the superior court is governed by the Superior Court Civil Rules (CR). An eviction action in the district court is governed by the Courts of Limited Jurisdiction Civil Rules (CRLJ).

#### State Due Process Clause

Article 1, 3 of the Washington State Constitution provides that " n o person shall be deprived of life, liberty, or property, without due process of law."

An unlawful detainer action in the Washington superior court or district court is subject to the due process clause of the Washington State Constitution.

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#### IV. Analysis of Washington Eviction Procedures for Each of the Regulatory Due Process Elements

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

A landlord commences an eviction action for failure to perform any condition or covenant of the lease by serving a ten day notice in the alternative, requiring performance of the condition or covenant or surrender of the property. RCW

59.12.040 provides that any notice shall be served by (a) delivering a copy to the tenant personally, (b) leaving a copy with a person of suitable age and discretion at either the tenant's place of residence or usual place of business, (c) or posting.

A summons and complaint in an unlawful detainer action must be properly served on the defendant. RCW 59.12.070, 59.12.080, RCW 59.18.365, CR 4(d), CRLJ 3. The summons directs the defendant to defend the action, and allows a reasonable time for the defendant to present a defense. The summons must state the name of the parties to the proceeding, the court in which the proceeding is brought, the nature of the action, in concise terms, and the relief sought. The summons must also state the return day and must notify the defendant to appear and answer in the time designated. RCW 59.12.080, RCW 59.12.070, CR 4(b). The complaint must state the facts which are the basis of the plaintiff's claim. RCW 59.12.070.

The summons and complaint may be served (a) by delivering a copy to the tenant personally, (b) by leaving a copy with a person of suitable age and discretion at either the tenant's place of residence or usual place of business, (c) or by posting and mailing. RCW 59.12.040.

Article 1, 3 of the Washington Constitution guarantees due process. This provision requires adequate notice of the grounds for eviction.

HUD finds that Washington State law governing an unlawful detainer action requires adequate notice to the tenant of the grounds for eviction.

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

The tenant's right to be represented by counsel is implied by provisions of the Superior Court Civil Rules and the Courts of Limited Jurisdiction Civil Rules which refer to the role of counsel (e.g., CR 11 - Signing of pleadings; CRLJ 71 - Withdrawal by attorney; CR 54 - preparation of order by attorney for prevailing party).

The right to representation by counsel is also guaranteed by the due process clause of the Washington State Constitution. Article 1, 3.

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

Testimony of witnesses at trial must generally be taken in open court (unless otherwise directed by the court or provided by

rule or statute). CR and CRLJ 43(a). Plaintiff's witnesses may be cross-examined by the defendant.

A party may be examined at the instance of any adverse party. CR and CRLJ 43(f)(1). The testimony of an adverse party may be rebutted. CR and CRLJ 43(f)(2). If a plaintiff refuses to testify, the complaint may be stricken. CR and CRLJ 43(f)(3).

The tenant may present evidence to refute the PHA's case. For this purpose, the tenant may subpoena witnesses or documentary evidence. CR and CRLJ 45; cf. CR 43(f)(3)(B) and CRLJ 43(f)(3)(ii).

The opportunity to be heard, and to refute the plaintiff's case, is an essential ingredient of the due process guaranteed by Article 1, 3 of the Washington State Constitution.

Due process includes the opportunity to confront and cross-examine the PHA witnesses.

HUD finds that Washington State law governing an unlawful detainer action requires that the defendant-tenant must have an opportunity to refute evidence presented by the PHA.

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- D. Opportunity to present any affirmative legal or equitable defense which the tenant may have (24 CFR 966.53(c)(3))

CR and CRLJ 7(a) provide that allowable pleadings include a complaint and an answer. CR and CRLJ 8(b) provide that "a party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." The tenant may assert any legal or equitable defense the tenant may have. RCW 59.18.380; RCW 59.18.400; CRLJ 8(c). Affirmative equitable defenses are permitted in an unlawful detainer actions. CR 8(c) states that a party shall set forth affirmatively any matter constituting an avoidance or affirmative defense.

Washington State law does not limit the right of the tenant to raise any available equitable or legal defense.

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

CR 54(a) requires a judgment, which is the final determination based on the rights of the parties in the action. The final judgement grants relief to the party in whose favor the judgment is rendered is entitled. CR 54(c); RCW 59.12.170; CRLJ 54.

These provisions, and the incidents of the eviction action under the Washington States statutes and court rules are intended to lead to a decision on the merits - that is, a determination based on the facts and the law.

The due process clause of the Washington Constitution also requires a decision on the merits. Article 1, 3.

#### V. Conclusion

Washington law governing an eviction by action for unlawful detainer in the Washington State superior and district courts requires that the tenant have the opportunity for a pre-eviction hearing in court which provides the basic elements of due process as defined in 24 CFR 966.53(c) of the HUD regulations.

By virtue of this due process determination under section 6(k) of the U.S. Housing Act of 1937, a PHA in Washington State may evict a public housing tenant pursuant to a court decision in an unlawful detainer proceeding in superior or district court, for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or

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employees of the PHA or any drug-related criminal activity on or near such premises. The PHA is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.

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