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Subject: PH Due Process Determination: Missouri

March 30, 1993

DUE PROCESS DETERMINATION

for the

STATE OF MISSOURI

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ANALYSIS

- I. Jurisdiction: State of Missouri.
- 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 Section 966.53(c) as:

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

- (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- (2) Right of the tenant to be represented by counsel;

- (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 on HUD's analysis of the laws of the State of Missouri to determine if eviction procedures under Missouri law require a hearing with all of the regulatory "elements of due process," as defined in Section 966.53(c).

The analysis in this due process determination will consider an unlawful detainer action for failure to perform conditions of the lease (Revised Statutes of Missouri 440.010). The determination will focus on 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 tenant or a PHA employee.

HUD finds that the requirements of Missouri law governing an action for unlawful detainer in the circuit courts of Missouri include all of the elements of basic due process, as defined in 24 CFR Section 966.53(c). This conclusion is based upon requirements contained in the Revised Statutes of Missouri (cited as RSMo), in the Missouri Supreme Court Rules of Civil Procedure (cited as Rule __), and in the case law.

III. Overview of Missouri eviction procedures

Unlawful detainer action

In Missouri, a person claiming the right to possession of real property may evict a tenant by action for unlawful detainer in the Missouri circuit court (RSMo 534.060), which is the court of general jurisdiction. RSMo 534.030 provides that:

when any person shall wrongfully and without force, by disseisin, shall obtain and continue in possession of any lands, tenements or other possessions, and after demand made, in writing, for the delivery of the possession thereof by the person having the legal right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an 'unlawful detainer.'

RSMo 534.060 provides that:

[U]nlawful detainers, may be heard and determined by any associate circuit judge of the county in which they are committed . . . Such cases shall be heard and determined by associate judges unless a circuit judge is transferred or assigned to hear such case or cases or unless the plaintiff pursuant to subsection 2 of 478.250, RSMo, has designated the case as one to be heard under the practice and procedure applicable before circuit judges and the

case is heard by a circuit judge. If the case is heard before an associate circuit judge who has not been specially assigned to hear the case on the record, to the extent practice and procedure are not provided in this chapter the practice and procedure provided in chapter 517, RSMo, shall apply.

Chapter 441 covers rights and liabilities of a landlord or tenant (RSMo 441.010 - 441.300). RSMo 441.030 prohibits violation by the tenant "of the condition of this written lease."

Procedure in unlawful detainer action

RSMo 517.011 provides that the provisions of RSMo chapter 517 (Procedure Before Certain Associate Circuit Judges) shall apply to the practice and procedure in civil cases originally filed before associate circuit judges in hearing and determining all cases arising under RSMo chapter 534.

The Missouri Supreme Court Rules of Civil Procedure apply to the cases brought in the circuit court (Rule 89 and RSMo 517.021). RSMo 517.021 states that "the rules of civil procedure shall apply to cases or classes of cases to which this chapter is applicable, except where otherwise provided by law."

Rule 41.01 provides that Rules 41 through 101 shall govern: (1) civil actions pending before a circuit judge, (2) civil actions pending before an associate circuit judge sitting as a circuit judge, and (3) civil actions pending in the associate circuit division except where otherwise provided by law. Rule 41.01(b) provides that civil actions originating before an associate circuit judge but that are pending before a circuit judge shall also be governed by Rules 41 through 101, except Rule 55 [Pleadings and Motions] shall not apply unless the court orders the application of Rule 55, or specified portions of it.

RSMo 534.060 provides:

If [an unlawful detainer] case is heard initially before an associate circuit judge who has been specially assigned to hear the case on a record or before a circuit judge, the case shall be heard and determined under the same practice and procedure as would apply if the case was being heard upon an application for trial de novo, and in such instances, notwithstanding the specific reference to chapter 517, RSMo, in this chapter, the practice and procedure provided in the Missouri Rules of Civil Procedure and the extant provisions of the Civil Code of Missouri shall apply instead of those contained in chapter 517, RSMo.

Small claims procedure

Chapter 482 sets forth practice and procedures for cases in which the circuit court sits as a small claims court. RSMo 482.300 provides that:

1. Each judge of the circuit court hearing and determining small claims cases shall maintain a separate "small claims" docket and shall set aside and specify such times as may be reasonable and necessary for hearing "small claims" . . .
2. When such judge is hearing small claims matters, the court shall be known as "small claims court".

RSMo 482.305 provides that when sitting as a small claims court, the judge has original jurisdiction of all civil cases, whether tort or contract, where the amount in controversy does not exceed five hundred dollars. When sitting as a small claims court, the formal rules of evidence and civil procedure do not apply. Supreme Court Rules 140 to 152 govern proceedings in small claims courts. Rule 144.01 provides that trials are to be conducted in an informal manner. RSMo 482.310 provides that "[p]roceedings shall be conducted in an informal summary manner, and the formal rules of evidence and procedure shall not apply."

Chapter 517 is applicable to cases arising in small claims courts under RSMo chapter 482.

RSMo 482.310 provides that in a small claims action the provisions of RSMo 482.300 to 482.365 (Small Claims Courts) "shall be liberally construed and applied to effectuate the purposes of the act. Judges sitting as a small claims court shall have the power and duty to construe and apply sections 482.300 to 482.365 to further its purposes."

Missouri Constitution - Due process clause

Article I, Section 10 of the Missouri Constitution of 1945 provides "that no person shall be deprived of life, liberty or property without due process of law."

IV. Analysis of Missouri eviction procedures for each of the regulatory due process elements

The following analysis considers whether each element of HUD's regulatory due process definition is satisfied in a unlawful detainer action in the Missouri circuit court.

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

Due process requires notice sufficient to make it "reasonably probable that the party proceeded against would be apprised of what is going on and given an opportunity to defend." In *Re Barger*, 365 S.W.2d 89, 97 (Mo. App. 1963). "The contents of the notice must be such as to inform the one directed to of the nature of the proceedings and of the relief sought." *Id.*

Demand for possession

RSMo 534.030 provides that:

when any person shall wrongfully and without force, by disseisin, shall obtain and continue in possession of any lands, tenements or other possessions, and after demand made, in writing, for the delivery of the possession thereof by the person having the legal right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an 'unlawful detainer.'

RSMo 534.050 provides that a demand for possession "shall be made either by delivering a copy of such demand to the person in possession, or by leaving such copy with some person above the age of fifteen years residing on or being

in charge of the premises, or if no such person be in actual occupancy thereof, then by posting such copy on the premises."

Summons and complaint

Under chapter 517, an action is commenced when the plaintiff files a written petition containing the facts on which the claim is founded. A copy of any written instrument or account in support of the petition must be attached and filed. Unless otherwise required by the court, the pleadings in the petition are informal (RSMo 517.031 and Rules 53.01 and 55.05). The petition (complaint) must specify the "lands, tenement or other possessions unlawfully detained, and by whom and when [it was] done" (RSMo 534.070).

A summons is issued upon the filing of a petition in the circuit court (RSMo 534.070 and 534.090). A copy of the petition must be served along with the summons (Sections 517.041 and 534.080 and Rule 54.13).

Notice in small claims proceeding

In small claims court, an action is commenced with the filing of a complaint. The complaint must state the facts upon which the claim is brought. The complaint must be filed with the court clerk (RSMo 482.340; RSMo 517.031).

Upon the filing of the complaint a summons is issued.

A copy of the complaint is attached to the summons, and is served on the defendant. RSMo 482.350 provides that personal service is not required unless specifically requested by the plaintiff. Service may be made by mailing the complaint and summons to the defendant's last known address, return receipt requested, delivery restricted to addressee.

Notice -- State due process clause

Adequate notice for the grounds for terminating tenancy and for eviction is required by the due process clause of the Missouri Constitution (Article I, Section 10).

Notice -- conclusion

Missouri law provides adequate notice of the grounds for termination of tenancy and eviction. Such notice is contained in the complaint or petition served on defendant at commencement of the action.

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

In *Magerstadt v. LaForge*, 303 S.W.2d 130, 133 (1957), the Supreme Court of Missouri stated that the right of a party to be represented by counsel in a civil case is guaranteed by the due process section of the State Constitution.

Many provisions of the Revised Statutes of Missouri refer to the role of counsel, e.g., Rule 43.01(b) (Service Upon Attorney), RSMo 482.310 (Right in Small Claims Court to Appear Without an Attorney). These provisions imply that the litigant has the right to be represented by counsel.

C. Opportunity for the tenant to refute the evidence presented by the

PHA, including the right to confront and cross-examine witnesses (24 CFR Section 966.53(c)(3))

Rule 64.01 provides that "all trials upon the merits shall be conducted in open court." RSMo 491.03 (Witnesses) provides that an adverse party may be compelled to testify in a civil case. In cases where witnesses are called, RSMo 491.070 provides that:

A party to a cause, civil or criminal, against whom a witness had been called and given some evidence, shall be entitled to cross-examine said witness . . . on the entire case

RSMo 534.110 provides that the "judge shall have the power to issue subpoenas for witnesses on the application of either party"

RSMo 482.310 and Rule 144 refer to the questioning of witnesses in small claims court and thus imply that the litigant has the right to call witnesses. RSMo 491.030 and 491.070 apply to the cross-examination of witnesses in small claims court.

Opportunity for a tenant to refute the evidence presented by the PHA is required by the due process clause of the Missouri Constitution (Article I, Section 10). In *Mueller v. Ruddy*, 617 S.W.2d 466, 475 (Mo. App. 1981), the court stated that procedural due process requires a meaningful opportunity for appellants to be heard, which includes the right to confront and cross-examine opposing witnesses and to rebut their testimony with appellants' own evidence. *Tonkin v. Jackson County Merit System Comm'n.*, 599 S.W.2d 25, 32-33 (Mo. App. 1980).

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

Rule 55.07 provides that "a party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." Rule 55.08 requires a party to set forth any matter constituting an affirmative defense. Rule 55.08 states that "in pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk . . . or any other matter constituting an avoidance or affirmative defense."

Affirmative defenses are required to be filed in writing not later than the return day and time of the summons, unless leave to file at a later date is granted by the court (RSMo 517.031).

Issues relating to title or matters of equity, such as mistake, estoppel, and waiver cannot be interposed as a defense in unlawful detainer actions. (See *S.L. Motel Enterprises, Inc. v. East Ocean, Inc.*, (App. 1988) 751 S.W.2d 114.) However, the tenant can raise any defenses related to the landlord's claim of possession under the lease.

For small claim actions, RSMo 482.355 provides that if the defendant appears, the defendant does not have to file an answer and when no answer is filed allegations are considered denied and any defense may be proved as if specifically pleaded.

The Missouri rules permit a defendant to raise any available defenses to the PHA's claim for possession, whether the defense may be deemed equitable or

legal in character. Further, the defendant may plead any of the affirmative defenses enumerated under the Missouri statute.

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

The substance of the Supreme Court Rules, and the due process clause of the State Constitution require a decision on the merits of the legal and factual issues presented in an action. See *Mueller v. Ruddy*, 617 S.W.2d 466, 475 (Mo. App. 1981)

In an unlawful detainer action, a judgment, to be valid, must be so specific, definite, and unambiguous as to show clearly just what claim or cause of action was adjudicated. *Femmer v. Gay*, 167 S.W.2d 940 (App. 1943)

Small claim trials are conducted without a jury. In cases without a jury:

at or after the trial, the court shall render [a] judgment as it thinks right upon the law and the evidence. If any party shall so request before final submission of the case, the court shall dictate to the court reporter, or prepare and file a brief opinion containing a statement of the grounds for its decision and the method of determining any damages awarded.

Thus a final decision must have adjudicated the claims of both the plaintiff and the defendant on the merits, based upon the facts and the law.

V. Conclusion

Missouri law governing an unlawful detainer action brought in the Missouri circuit courts, including actions in small claims court, 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 Section 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 Missouri may evict a tenant pursuant to an action for eviction in the circuit courts, for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the PHA, or any drug-related criminal activity on or near the premises, and is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.