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IN REPLY REFER TO

ADMINISTRATIVE MEMORANDUM

PROJECTS NO. 3
January 13, 2005

To: All Branches, Sections, Units and Support Offices

From: Stephanie Aveiro
Executive Director

Subject: **RENT COLLECTION POLICY AND PROCEDURES**

I. POLICY

The Housing and Community Development Corporation of Hawaii (HCDCH) has adopted this rent collection policy and it applies to all Tenants. It addresses the manner in which Tenants must pay their monthly rent and the consequences of late payment or non-payment. HCDCH is committed to enforcing this Policy in an equitable and non-discriminatory manner.

All payments must be made at an authorized bank and are due on the first (1st) day of the month and is payable on or before the seventh (7th) business day of the month. Timely notification of non-payment or late payment of rent is critical to managing aging account receivables. Enforcement of the rental agreement and timely write-offs are necessary.

II. PROCEDURES

HCDCH's rent collection policy stipulates that all payments, regardless of the type of charges, are to be made at an authorized bank. Management unit (MU) staff should not collect any payments at the management offices with the exception of payments made via check by agencies, churches, etc., in behalf of tenants.

During the leasing interview, the tenant is informed of the authorized bank that will accept payments to HCDCH's account for their respective project. The tenant is shown an example of the billing and informed that he/she must present the monthly billing with his/her payment. The bank will not accept payments without the billing (or a counter receipt).

III. COUNTER RECEIPTS

Determine whether or not a counter receipt should be issued. Counter receipts or deposit slips should only be given when:

- The tenant fails to receive a monthly billing
- The monthly billing has been lost
- The tenant has previously entered into a Rental Payment Arrangement
- There is a new tenant
- Vacated tenants are making payments

If a counter receipt must be issued, fill in the following information on the counter receipt:

- The project's name
- The tenant's name and account number
- The amount to be deposited
- The date of the receipt

Give the tenant the counter receipt and tell him to make his payment at the authorized bank.

IV. COLLECTING ON RETURNED CHECKS

Upon notification from an authorized bank that a check is not being honored due to insufficient funds (NSF) or the account being closed, the Accounting Staff will post the NSF adjustment to the tenant's ledger in EmPHAsys. The tenant ledger will reflect the original receipt, as well as the NSF adjustment resulting in the correct rent receivable balance. Accounting will also post the adjustment to the general ledger to reflect the correct tenant account receivable balance. The NSF check will be forwarded to the MU Manager. Upon receipt of the NSF check, the Manager will inform the tenant of the NSF check and follow the procedures as outlined for non-payment of rent.

V. NON-PAYMENT OF RENT

On or about the 15th of each month, management units will identify accounts that are delinquent. If the 15th is a weekend or holiday, the following business day will be the cut off. Management will notify the tenant of the default in writing and shall allow the tenant fourteen (14) calendar days to pay the rent amount due.

Management will also attempt to contact the tenant and assist in resolving the issue. Tenant may be referred to a non-profit agency for assistance or may enter into a payment agreement to pay the delinquent amount.

Management shall proceed with proposed termination of the rental agreement if there is a history of chronic violations of non-payment of rent (chronic is defined as 3 notices of violation issued to the tenant within any twelve (12) month period) without affording the tenant time to cure.

VI. WAIVER OF EVICTION ACTION

It is important that HCDCH adhere to its policy of referring a tenant for eviction when a tenant has not cleared their delinquent balance by the date indicated in the Notice of Violation letter sent by management. On occasion, there may be a valid reason that a tenant might not be referred for eviction, such as:

- HCDCH administrative error
- Pending interim resulting in a decrease in rent for that month
- Non-profit agency will be paying the rent and this is verified by the agency
- Tenant could not pay directly related to a handicap or disability
- Tenant had initiated paperwork for a Minimum Rent Waiver

Reasons that are not acceptable include but are not limited to the following:

- Loss of job the month the rent is owing
- Lost their money
- Health-related accident that occurred months ago
- Last minute pleas of how hard they are trying to pay their rent
- Disagrees with the rent amount (refer them to the grievance procedures)
- Claims they are behind on paying other household bills and don't have enough money to pay rent
- Claims their payday is the same day as cutoff, or right after cutoff, and needs an extra day or two to get the rent
- Withholding rent because management is not responding to their complaints (refer them to the grievance procedures)

VII. VACATED TENANTS

When a tenant vacates a unit, conduct a final inspection, preferably with the tenant there and calculate the final bill. Close out the tenant in EmPHAsys. Within fourteen (14) days of a lease termination date, management will notify the vacated tenant in writing at their forwarding address or last known address of any balance due. This will include a bill for collection and a breakdown of charges to be paid within ten (10) days. After ten (10) days, if the rent or any amount due is not paid, management will send a 2nd bill for collection to be paid within ten (10) calendar days. If payment is not made in ten (10) calendar days

management will employ a collector and/or attorney to collect the total amount due.

The collector and/or attorney shall be contacted every 30 days to obtain a status report on each account that has been referred. After ninety (90) days the collector and/or attorney should confirm in writing that the tenant cannot be found and the account is deemed uncollectible or that further efforts are futile. This will validate the submittal to obtain approval to write the debt off.

VIII. WRITE OFF PROCEDURES

All requests for write-off approval of amounts in excess of $500 shall be submitted on the form for accounts over $500. If the amount is under $500 use the short form for write off. All information must be completed before submitting to Property Management and Maintenance Branch (PMMB) for review and processing.

PMMB will forward the request for write-off approval to the Attorney General's Office. Once approval is received the Accounting Office will proceed to write-off the approved amount.

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 2020

EVICTION - PRACTICE AND PROCEDURE

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Subchapter 5 Miscellaneous Provisions

§17-2020-51 Severability
§17-2020-52 Number
§17-2020-53 Termination of rental agreement based on Public Law 104-120

Historical Note: This chapter is substantially based upon Chapter 17-501, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R 10/25/99], and Chapter 15-182, Hawaii Administrative Rules. [Eff 10/25/99; R AUG 0 6 2004]

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SUBCHAPTER 1

GENERAL PROVISIONS

§17-2020-1 Purpose. These rules shall govern the practice and procedure for terminating the tenancy of persons using or occupying any unit in a project owned or operated by the housing and community development corporation of Hawaii except for rental housing projects governed by chapter 15-173. These rules afford tenants an opportunity for a hearing if a tenant disputes any action by the corporation to evict the tenant from the tenant's unit. These rules shall be liberally construed to ensure that the rights of the parties are preserved in a just and timely resolution of every hearing.
[Eff AUG 0 6 2004] (Auth: HRS §201G-5) (Imp: HRS §201G)

§17-2020-2 Definitions. As used in these rules, except otherwise required by context:
"Agreement" means any lease, rental agreement, permit, or license covering the use and occupation of any unit or other premises owned or controlled by the corporation.
"Alcohol abuse" means a tenant or any member of the tenant's household has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, or furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.
"C.F.R." means the Code of Federal Regulations.
"Corporation" means the housing and community development corporation of Hawaii.
"Criminal activity" means the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in:
(1) the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug

with intent to manufacture, sell, distribute, or use the drug; or

(2) any illegal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage;

regardless of whether there has been an arrest or conviction for such activity and without satisfying the standard of proof used for a criminal conviction.

"Documents" means written decisions, orders, and notices issued for the purposes of this chapter.

"Drug" means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Examiner" means a trial examiner, hearing board or eviction board appointed by the corporation for the purposes of chapter 201G, HRS.

"Grievance hearing" means the hearing prescribed in the grievance procedure set forth in rules of the corporation.

"HRS" means the Hawaii Revised Statutes.

"Hearing" means a quasi-judicial proceeding in which the corporation prepares to terminate an agreement.

"Hearings clerk" means the person responsible for receiving, recording, and preserving the records of the examiner.

"Hearings officer" means the person representing the corporation in a hearing.

"Party" means a person or agency as defined in section 201G-51, HRS.

"Presiding officer" means the trial examiner, a member of the hearing board, or a member of the eviction board duly elected by a majority of the board members to serve as its chairman.

"Project manager" means the corporation's representative assigned to manage projects in a management area or any other employee of the corporation specifically designated by position description.

"Tenant" means a person who is subject to eviction proceedings under this chapter.

"U.S.C." means the United States Code.
[Eff AUG 0 6 2004] (Auth: HRS §§201G-59, 92-6)
(Imp: HRS §201G-53)

§17-2020-3 Examiner. (a) Communications to the examiner may be mailed or delivered to the corporation's office in the respective county in care of the hearings clerk.

(b) When the examiner is a hearing board, or an eviction board, a quorum of members shall be present to validate any action taken.

(c) No employee of the corporation shall be an examiner, unless specifically designated by the corporation.

(d) All documents issued by the examiner may be executed by facsimile signature. [Eff: AUG 0 6 2004] (Auth: HRS §§201G-59, 92-15) (Imp: HRS §201G-53)

§17-2020-4 Process service. (a) All documents issued for the purposes of this chapter shall be served either:

(1) Personally to the tenant or adult household member by a law enforcement officer of the State or county, or an officer appointed by the corporation; or
(2) By certified mail return receipt requested; or
(3) If personal service or service by certified mail cannot be effectuated, the document or documents may be served:
    (i) By posting the document or documents on the unit occupied by the tenant and by first class mail to the party's last known address; or
    (ii) By publication in a newspaper of general circulation and by first class mail.

(b) Service upon a party shall be complete if:
(1) The party or the party's attorney is personally served;
(2) The party signs the receipt for certified mail;

(3) The document or documents are posted on the unit occupied by the tenant and mailed to the party's last known address by first-class mail;
(4) Upon publication in a newspaper of general circulation; or
(5) By special order of the examiner, upon a finding that service by other means is not practicable, a document is posted on the unit occupied by the party.

[Eff: AUG 06 2020] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-5 Grounds for termination of tenancy and eviction. (a) The examiner shall determine whether there are sufficient grounds for termination of the rental agreement.

(b) The following constitutes grounds for termination of the rental agreement:

(1) Serious or repeated violation of material terms of the rental agreement, including, but not limited to:
  (A) Failure to make payments due under the rental agreement;
  (B) Failure to fulfill household obligations as defined in the rental agreement.
(2) Other good cause, including, but not limited to, the following:
  (A) Criminal activity or alcohol abuse;
  (B) Discovery after admission of facts that made the tenant ineligible;
  (C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income; and
  (D) Failure of a family member to comply with service requirement provisions of 24 C.F.R. part 960, subpart F; and
  (E) Failure to accept the corporation's offer of a revision to the existing rental agreement, subject to the requirements of 24 C.F.R. 966.4(l).

[Eff: AUG 0 6 2004] (Auth: HRS §201G-59, 24 C.F.R §966.4(l)) (Imp: HRS §201G-55)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§17-2020-11 Notice of cause for cases referred for eviction prior to June 28, 2002. (a) Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed termination, the project manager shall submit a written request to the examiner that the tenant be evicted. [Eff: AUG 0 6 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-12 Notice of cause for cases referred for eviction on or after June 28, 2002. (a) Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed

termination, the project manager shall submit a written request to the examiner that the tenant be evicted.

(d) If the violation is for delinquent payment in rent,

(1) The written notice shall conform to the requirements of section 201G-52(b), HRS; and

(2) The corporation shall schedule a meeting with the tenant to discuss the delinquency.

(3) If the tenant fails to attend the meeting and does not contact the corporation or the corporation's agents to reschedule the meeting, the corporation shall provide the tenant with a second written notice conforming to the requirements of section 201G-52(e), HRS.

(e) At the meeting, the corporation or its agent and the tenant shall complete, sign, and date a checklist conforming to the requirements of section 201G-52(c), HRS, to memorialize the meeting.

(f) If the tenant appears at the meeting, the corporation will consider whether the tenant's situation is appropriate for a reasonable payment plan. The corporation or its agent may consider but is not limited to considering the following factors to determine whether the tenant's situation is appropriate for a reasonable payment plan:

(1) The amount of the delinquent balance;

(2) The amount of tenant's monthly rent charge;

(3) The tenant's household income;

(4) Any other sources of income of the tenant;

(5) The history of rent payment by the tenant;

(6) Any history of other violations of the rental agreement by the tenant;

(7) The cause of the delinquency; and

(8) Any mitigating factors.

(g) The corporation or its agent may consider, but is not limited to considering, the following factors to determine if the payment plan is reasonable:

(1) The tenant's household income;

(2) Any other sources of income of the tenant;

(3) Any other debts of the tenant;

(4) Whether the tenant can clear the delinquent balance within six months; and

(5) Any hardship on the tenant.

(h) If the corporation or its agent determines that the tenant will be unable to clear the delinquent balance within a six-month period, the tenant's situation is not appropriate for a reasonable payment plan.

(i) If the corporation or its agent determines that the tenant's situation is appropriate for a reasonable payment plan, one may be offered as agreed upon between the corporation or its agent and the tenant. A reasonable payment plan shall not exceed a period of six months.

(j) The corporation shall inform the tenant of its decision in writing. The written notice shall further notify the tenant of the tenant's right to request a grievance hearing within thirty days of receipt of the notice.

(k) In the event the tenant breaches the reasonable payment plan, the corporation or its agent shall proceed to terminate the tenant's tenancy by referring the matter to the hearings office to schedule a hearing before the eviction board.

[Eff: AUG 06 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-13 Notice of hearing. Notice of hearing shall meet the requirements of chapter 201G, HRS.

[Eff: AUG 06 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-14 Request for subpoena. (a) Only an examiner or parties to the hearing may request the issuance of a subpoena, provided that subsection (b) shall be complied with. The examiner or the examiner's designated representative shall issue the subpoena.

(b) The request for issuance of a subpoena of a witness shall be in writing and shall state the name and address of the desired witness and the reasons why the testimony of the witness is material and relevant to the issues in the hearing. The party requesting the subpoena shall pay to the witness the same fees and mileage as prescribed in chapter 607, HRS. The request for issuance of a subpoena duces tecum for documents

and records shall be in writing. The party requesting the subpoena duces tecum for documents and records shall pay all copying costs. The request shall specify the particular document or record, or part thereof sought, and shall state the reasons why the document or record is material and relevant to the issues of the hearing. [Eff AUG 0 6 2004] (Auth: HRS §§201G-59, 607-12, 92-16) (Imp: HRS §201G-53)

SUBCHAPTER 3

HEARING PROCEDURE

A. Conditions

§17-2020-21 Counsel. (a) Unless otherwise directed by the presiding officer, one counsel for each party represented shall be permitted to conduct direct and cross examination of a witness, state and argue an objection or motion, and make opening or closing argument.

(b) A tenant may appear in the tenant's own behalf or with another person as the tenant may authorize. [Eff: AUG 0 6 2004] (Auth: HRS §§201G-59) (Imp: HRS §201G-53)

§17-2020-22 Motions. (a) All motions shall state the grounds and shall set forth the relief or order sought. Motions need not be in writing.

(b) All motions shall be presented to the examiner at the commencement of the hearing. If a written motion is presented, a copy shall be provided to the opposing party.

(c) The opposing party may state opposition to any motion presented to the examiner.

(d) The examiner may consider all motions and opposing motions in executive session and shall rule on each motion when appropriate. [Eff: AUG 0 6 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-23 Waiver of procedure. Upon agreement of the parties, any procedure in a hearing may be modified or waived and informal disposition may be made of any case by agreed settlement, consent order, or default. [Eff: AUG 0 6 2004] (Auth: HRS §§201G-59) (Imp: HRS §201G-53)

§17-2020-24 Records. (a) The hearings clerk shall keep written summaries of all hearings. Except as required by section 91-9(f), HRS, neither a full transcript nor recording of the hearing shall be required.

(b) All records of a hearing shall be confidential and released only at the direction of the examiner or by judicial order. [Eff: AUG 0 6 2004] (Auth: HRS §§201G-59, 92-9, 92-6) (Imp: HRS §201G-53)

B. Hearings

§17-2020-31 Hearings. (a) In all hearings the presiding officer shall preside. The vice-chairman of a hearing board or an eviction board shall preside at a hearing in the absence of the presiding officer.

(b) The presiding officer shall determine the order of appearance of the parties to a hearing and shall administer the oath to all witnesses as prescribed by section 621-12, HRS. The presiding officer may limit the time of each witness giving testimony upon a particular issue.

(c) Hearings shall be conducted in an informal manner unless otherwise required by law.

(d) The examiner may remove any person who disrupts a hearing.

(e) If a tenant, the tenant's attorney, or the tenant's representative is removed for disruptive conduct, the hearing may continue and a determination made based upon the available evidence and testimony presented.

(f) All hearings shall be confidential and closed to the public unless the tenant agrees otherwise. [Eff: AUG 0 6 2004] (Auth: HRS §§201G-59, 92-6, 92-16) (Imp: HRS §201G-53)

§17-2020-32 Default. A tenant who fails to appear at a hearing after being duly notified may be found in default and the examiner may proceed with the hearing. [Eff: AUG 0 6 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-33 Curable and Non-Curable Violations. (a) The examiner shall determine whether or not the violation of the rental agreement is curable by the tenant. A violation is curable if the violation for which the tenant is being referred is a first offense and is not defined as a non-curable violation.

(b) Non-curable violations include:

(1) Chronic or consistent violations of any material term of the rental agreement;

(2) A history of chronic or consistent rent delinquency;

(3) Violations of any material term of the rental agreement subsequent to a finding of violation of said term by a hearing or eviction board;

(4) Any violations that threaten the health or safety of the other residents or the corporation's employees or representatives;

(5) Any drug-related criminal activity occurring on or near the project premises;

(6) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the other residents or the corporation's employees or representatives;

(7) Where the tenant has received notice from the United States Department of Housing and Urban Development that the tenant is no longer eligible to remain in the unit.

[Eff: AUG 0 6 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-55)

SUBCHAPTER 4

APPEALS

§17-2020-41 Appeals of contested case hearings referred for eviction prior to June 28, 2002. (a) An appeal of the decision of the examiner may be taken to the corporation as provided in section 201G-54, HRS. The appeal shall be in writing and may be mailed or delivered to the corporation's office at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, in care of the hearings clerk. The appeal may be heard and decided by the corporation or an appeals board appointed by the corporation.

(b) The corporation shall give written notice of the appeal hearing to the tenant fixing the date, time, and place of the appeal hearing. The notice shall be given at least five days before the date set for the appeal hearing.

(c) A tenant who fails to appear at an appeals hearing after being duly notified may be found in default and the corporation may proceed with the hearing.

(d) The corporation's decision shall be based solely on the record of the examiners which may be orally summarized by the hearings officer.

(e) Any person aggrieved by the final decision and order of the corporation may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS. [Eff: AUG 0 6 2020] (Auth: HRS §§201G-54, 201G-59) (Imp: HRS §201G-53)

§17-2020-42 Appeals of contested case hearings referred for eviction on or after June 28, 2002. Any person aggrieved by the final decision and order of the examiner may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS. [Eff AUG 06 2020] (Auth: §201G-59) (Imp: HRS §201G-53)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

§17-2020-51 Severability. If any part, section, sentence, clause, or phrase of these rules or its application to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases or applications of these rules to other persons or circumstances shall not be affected. [Eff: AUG 0 6 2004] (Auth §201G-59) (Imp: HRS §201G-53)

§17-2020-52 Number. The use of all words used in the singular shall extend to and include the plural. [Eff: AUG 0 6 2004] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§17-2020-53 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement as provided for in section 15-190-59. [Eff: AUG 0 6 2004] (Auth: 42 U.S.C. §1437d; Pub. L. 104-120; §201G-59) (Imp: HRS §201G-53)

DEPARTMENT OF HUMAN SERVICES

The repeal of Chapter 15-182, Hawaii Administrative Rules, and the adoption of Chapter 17-2020, Hawaii Administrative Rules, on the Summary page dated May 13, 2004 was adopted on May 13, 2004 following public hearings held in Oahu, Kauai, Maui, and Hilo on April 19 and in Kona on April 20, 2004, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune Herald, The Maui News, and The Garden Isle on March 19, 2004 and in West Hawaii Today on March 20, 2004.

The adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHARLES A. STED
Chairperson
Housing and Community
Development
Corporation of Hawaii

THEODORE E. LIU
Director of Business,
Economic Development
and Tourism

APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
Governor
State of Hawaii
Date: JUL 26 2004

Filed

LIEUTENANT GOVERNOR'S OFFICE

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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 2021

GRIEVANCE PROCEDURE

Subchapter 1 General Provisions

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§17-2021-02 Applicability
§17-2021-03 Definitions
§17-2021-04 Termination of rental agreement based on Public Law 104-120

Subchapter 2 Pre-hearing Procedure

§17-2021-10 Informal settlement of grievances
§17-2021-11 Request for hearing
§17-2021-12 Selection of hearing officer
§17-2021-13 Escrow deposit
§17-2021-14 Scheduling of hearings

Subchapter 3 Hearing Procedure

§17-2021-20 Procedures governing the hearing
§17-2021-21 Decision of the hearing officer

Subchapter 4 Expedited Grievance Procedure

§17-2021-30 Applicability
§17-2021-31 Request for hearing - expedited grievance
§17-2021-32 Selection of hearing officer - expedited grievance
§17-2021-33 Failure to request a hearing - expedited grievance
§17-2021-34 Scheduling of hearings - expedited grievance
§17-2021-35 Decision of the hearing officer - expedited grievance

Historical Note: Chapter 17-2021, Hawaii Administrative Rules, is based substantially upon chapter 17-502, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R Oct 25 1999], and chapter 15-183, Hawaii Administrative Rules, [Eff 02/25/02; R AUG 05 2005]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2021-1 Purpose. These rules shall govern the practice and procedure for hearing a grievance presented by a tenant of a federally-assisted public housing project or state-aided public housing project to the housing and community development corporation of Hawaii. [Eff AUG 05 2005] (Auth: 24 CFR §966.52, HRS §§201G-4) (Imp: 24 CFR §966.50, HRS §201G-4)

§17-2021-2 Applicability. (a) The grievance procedure shall be applicable to all individual grievances as defined in section 17-2021-3 between the tenant of the federally-assisted public housing

projects or the state-aided public housing projects and the corporation.

(b) The grievance procedure shall not be applicable to disputes between tenants not involving the corporation, or class grievances. This procedure shall not be used as a forum for initiating or negotiating policy changes between tenants and the corporation.

(c) All grievances involving an act or omission of the corporation relating to a rental agreement shall be commenced within ten business days of such act or omission.

(d) All grievances involving the corporation's rules shall be commenced within ten business days of an act or omission based on such rule.

(e) The failure to timely request such a hearing within the prescribed limits shall preclude any request for a grievance hearing from occurring unless waived in writing by the corporation. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §§201G-4, 201G-17) (Imp: 24 CFR §966.51; HRS §201G-4)

§17-2021-3 Definitions. Whenever used in this chapter, unless specifically defined:

"Complainant" means any tenant whose grievance is presented to the corporation or at the project management office.

"Corporation" means the housing and community development corporation of Hawaii.

"Drug-related criminal activity" means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, or use the drug.

"Federally-assisted public housing project" means a low-income federally assisted public housing project as established by the United States Housing Act of 1937, as amended.

"Grievance" means any dispute which a tenant may have with respect to the corporation's action or failure to act in accordance with the individual tenant's rental agreement or the corporation's rules 1

which adversely affect the individual tenant's rights, duties, welfare, or status.

"Hearing officer" means a person selected in accordance with sections 17-2021-12 and 17-2021-32 to hear grievances and render a decision with respect thereto.

"State-aided public housing projects" means the housing projects of Hauiki, Puahala, Lokahi, Kawailehua (State), Ka Hale Mua (State), Ke Kumu Elua, Hale Po'ai, Halia Hale, Kamalu, Ho'olulu, and Lai'ola, which are owned by the corporation.

"Tenant" means the lessee or the remaining head of household of any family residing in the corporation's federally-assisted or state-aided public housing projects. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §§201G-4, 201G-17) (Imp: 24 CFR §966.53; HRS §201G-4)

§17-2021-4 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement pursuant to 42 U.S.C. §1437 as it existed on _____. [Eff AUG 05 2005] (Auth: 42 USC §1437; Pub. L. 104-120; HRS §§201G-4, 201G-17, 201G-59) (Imp: HRS §201G-52)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§17-2021-10 Informal settlement of grievances. (a) Any grievance shall be personally presented, either orally or in writing, to the project office of the project in which the complainant resides as a condition precedent to a hearing under this chapter. At the time of the personal presentation, the complainant must explicitly notify the project office that the tenant is invoking the grievance procedure.

If the project office and tenant agree to a resolution in writing, the grievance shall be terminated.

(b) If the matter is not informally resolved as provided in subsection (a), a summary of such discussion shall be prepared within five business days and one copy shall be given to the tenant. 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 this chapter may be obtained if the complainant is not satisfied. [Eff AUG 05 2005] (Auth: 24 CFR §966-52; HRS §201G-4) (Imp: 24 CFR §966.54; HRS §201G-4)

§17-2021-11 Request for hearing. (a) The complainant shall submit a written request for a hearing to the corporation's project office within ten business days after receipt of the summary of discussion pursuant to section 17-2021-10. The written request shall specify:

(1) The reasons for the grievance; and

(2) The action or relief sought.

(b) If the complainant does not request a hearing in accordance with subsection (a), the corporation's disposition of the grievance following the informal settlement shall become final. Failure to request a hearing shall not constitute a waiver by the complainant of the complainant's right thereafter to contest the corporation's action in disposing of the complaint in an appropriate judicial proceeding.

(c) If the complainant shows good cause for failing to proceed in accordance with the informal procedure to the hearing officer the provision of subsection (a) may be waived by the hearing officer in writing with reasons given.

(d) If the corporation and tenant agree to a resolution in writing, the grievance shall be terminated. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §§201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

§17-2021-12 Selection of hearing officer.

(a) A grievance hearing shall be conducted by an impartial person or persons appointed by the corporation after consultation with resident organizations, as described below:

(1) The corporation and resident organizations shall nominate a slate of impartial persons to sit as hearing officers. Such persons may include corporation board members, corporation staff members, tenants in compliance with the lease agreement, professional arbitrators or mediators, or others. The initial slate of nominees shall consist of not more than twenty persons, of whom at least two shall be from each county.

(2) The corporation will check with each nominee to determine whether there is an interest in serving as a hearing officer, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.

(3) Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical will be withdrawn and other names will be substituted.

(b) The slate of potential hearing officers shall be submitted to the resident organizations. Written comments from the organizations shall be considered by the corporation.

(c) The corporation shall appoint the final list of nominees as hearing officers. The final list of hearing officers shall be provided to the resident organizations. The corporation shall contact the hearing officers in random order to request their participation as hearing officers.

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(d) After the hearing officer is selected, said hearing officer shall promptly inform the corporation in the event that there may be a conflict of interest issue. The hearing officer shall be disqualified if the conflict raised prevents them from serving impartially.

(e) "Conflict of interest" or "conflict" includes the following:

(1) The hearing officer is related by blood or marriage to the complainant;

(2) The hearing officer has a documented history of personal conflict with the complainant or the corporation; or

(3) The hearing officer has some personal or financial interest in common with the complainant or the corporation.

(f) The corporation shall review the list of hearing officers annually to determine whether new nominees are required. New nominees shall be selected in accordance with section 17-2021-12(a)(1).

[Eff AUG 05 2005] (Auth: 24 CFR §966.52, §966.55; HRS §§201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

§17-2021-13 Escrow deposit. (a) Concurrent with filing a request for hearing pursuant to section 17-2021-11, and before a hearing is scheduled in any grievance, the complainant shall pay to the corporation the full amount of rent due and payable as of the first of the month and the full amount of rent for the current month. The complainant shall thereafter make a timely deposit of the amount of the monthly rent monthly to the corporation until the complaint is resolved by decision of the hearing officer. If the dispute involves the amount of rent which the corporation claims is due, the complainant shall specify what portion of the current rent is in dispute and the reasons therefor. The corporation shall hold the rent amount in dispute until the disposition of the grievance is final.

(b) The requirements in subsection (a) may be waived by the corporation for good cause shown by the tenant to the corporation, and unless so waived, the failure to make the payments shall result in a termination of the grievance procedure, provided that failure to make the payments shall not constitute a waiver of any right the complainant may have to contest the corporation's disposition of the complainant's grievance in any appropriate judicial proceeding. Such waivers shall be in writing with reasons therefore given. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS 201G-4) (Imp: 24 CFR §966.55)

§17-2021-14 Scheduling of hearings. Upon complainant's compliance with sections 17-2021-11 and 17-2021-13, and selection of a hearing officer pursuant to section 17-2021-12, a hearing shall be scheduled promptly by the hearing officer for a time and place reasonably convenient to both the complainant and the corporation. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate official of the corporation. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

SUBCHAPTER 3

HEARING PROCEDURE

§17-2021-20 Procedures governing the hearing. (a) The hearing shall be held before a hearing officer.

(b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

(1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and rules of the corporation that are relevant to the hearing. Any document not made available after request with reasonable notice by the complainant may not be relied on by the corporation at the hearing;

(2) The right to be represented by counsel or other person chosen as the complainant's representative;

(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 complaint, to controvert evidence relied on by project management, and to confront and cross-examine all witnesses on whose testimony or information the project management relies; and

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

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

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

(e) The complainant must first show that the complainant is entitled to the relief sought and thereafter the corporation must sustain the burden of

justifying the corporation's action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer 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 shall require the corporation, the complainant, counsel, and other participants or spectators to conduct themselves in orderly fashion. Failure to comply with the directions of the hearing officer 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 corporation 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 the transcript. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §§201G-4) (Imp: 24 CFR §966.56)

§17-2021-21 Decision of the hearing officer. (a) The hearing officer shall prepare a written decision, together with the reasons therefor, within ten business days after the hearing. A copy of the decision shall be sent to the complainant and the corporation. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the corporation and made available for inspection by a prospective complainant, the complainant's representative, or the hearing officer.

(b) The decision of the hearing officer shall be binding on the corporation which shall take all actions or refrain from any action, necessary to carry out the decision unless the corporation determines within ten business days of the written decision and promptly notifies the complainant of its determination, that:

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(1) The grievance does not concern the corporation's action or failure to act in accordance with or involving the complainant's rental agreement or the corporation's rules, which adversely affect the complainant's rights, duties, welfare, or status; or

(2) The decision of the hearing officer is contrary to applicable federal, state, or local law, Department of Housing and Urban Development regulations, or requirements of the annual contributions contract between Department of Housing and Urban Development and the corporation.

(c) A decision by the hearing officer or corporation in favor of the corporation or which denies 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.

(d) If the complainant has requested a hearing on a complaint involving the corporation's notice of proposed termination of the tenancy and the hearing officer upholds the corporation's action to terminate the tenancy, the corporation shall not commence a new eviction proceeding until it has served a notice to vacate on the complainant. In no event shall the notice to vacate be issued prior to the decision of the hearing officer having been mailed or delivered to the complainant. The notice to vacate shall be in writing and shall specify that if the complainant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant and the complainant may be required to pay court cost and attorney fees. Unless so determined in the hearing, this section (d) shall not affect the validity and effectiveness of an existing eviction proceeding, notice of proposed termination, notice to

vacate, and other notices served on the complainant by the corporation prior to the complainant's actual submission of a written request for hearing pursuant to section 17-2021-11. [Eff AUG 05 2005] (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.57; HRS §201G-4; section (d) added pursuant to TILEIA v. CHANG, Civ. No. 79-0107)

SUBCHAPTER 4

EXPEDITED GRIEVANCE PROCEDURES

§17-2021-30 Applicability. (a) The expedited grievance procedure is established for any grievance concerning a termination of tenancy or eviction that involves:

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

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

(b) The informal settlement of grievances pursuant to section 17-2021-10 is not applicable under the expedited grievance procedure. [Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-31 Request for hearing - expedited grievance. The complainant shall submit a written request for grievance hearing to the project office within five business days from the date of the written notice of violation from management. The written request shall specify:

(1) The reasons for the grievance; and

(2) The action or relief sought.

[Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-32 Selection of hearing officer - expedited grievance. The hearing officer shall be selected as described in section 17-2021-12. [Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-33 Failure to request a hearing - expedited grievance. If the complainant does not request a grievance hearing as set forth under this expedited grievance procedure, then the corporation's disposition of the grievance shall become final, provided that failure to request a grievance hearing shall not constitute a waiver of the complainant's right to contest the corporation's disposition of the grievance in a court of competent jurisdiction. [Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-34 Scheduling of hearings - expedited grievance. Once the complainant has requested a grievance hearing under this section, the hearing officer shall promptly schedule a hearing for a time and place reasonably convenient to both the complainant and the corporation. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the corporation. [Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-35 Decision of the hearing officer - expedited grievance. The decision of the hearing officer shall be in accordance with section 17-2021-21. [Eff AUG 05 2005] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

DEPARTMENT OF HUMAN SERVICES

The repeal of Chapter 15-183, Hawaii Administrative Rules, and the adoption of Chapter 17-2021, Hawaii Administrative Rules, on the Summary Page dated June 29, 2005 were adopted on June 29, 2005 following public hearings held on May 23, 2005 and June 28, 2005 after public notice was given in The Honolulu Star-Bulletin, Hawaii Tribune Herald, West Hawaii Today, The Garden Island, and The Maui Times on April 22, 2005 and May 29, 2005.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHARLES A. STED, Chairperson
Housing and Community
Development Corporation of
Hawaii

APPROVED AS TO FORM:

Deputy Attorney General

THEODORE E. LIU, Director
Department of Business,
Economic Development, and
Tourism

APPROVED:

LINDA LINGLE
Governor
State of Hawaii

Dated: JUL 25 2005

Filed