DEPARTMENT OF HUMAN SERVICES

Amendment and Compilation of Chapter 17-2020
Hawaii Administrative Rules
March 20, 2014

SUMMARY

1. Title 17, Subtitle 5 Heading is amended.

2. §§17-2020-1 to 17-2020-22 are amended.

3. §§17-2020-24 to 17-2020-33 are amended.

4. §§17-2020-41 is repealed.

5. §17-2020-42 is renumbered.

6. §17-2020-53 is repealed.

7. Chapter 2020 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2020

EVICTION - PRACTICE AND PROCEDURE

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Historical Note: Chapter 17-2020, Hawaii Administrative Rules, is substantially based upon chapter 17-2020, Hawaii Administrative Rules, [Eff 8/6/04; am and comp MAY 24 2014], 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 8/6/04]

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 Hawaii public housing authority except for rental housing projects governed by chapter 356D-44, HRS. These rules afford tenants an opportunity for a hearing if a tenant disputes any action by the authority 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 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §356D-98)

§17-2020-2 Definitions. Whenever used in this chapter, unless specifically defined:

"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 authority.

"Alcohol abuse" means a tenant or any member of the tenant's household has engaged in abuse or 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.

"Authority" means the Hawaii public housing authority.

"Board" or "eviction board" means the board appointed by the authority to conduct eviction hearings and terminate rental agreements in accordance with this chapter.

"C.F.R." means the United States Code of Federal Regulations.

"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 any conduct constituting a criminal violation of federal law, HRS, or local ordinances 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.

"Document" 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) as it existed on March 28, 2013.

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

"Dwelling unit" means a residential unit in a housing project.

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

"HRS" means the Hawaii Revised Statutes.

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

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

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

"Party" means a person or agency as defined in section 356D-91, HRS, as it existed on March 28, 2013.

"Presiding officer" means the member of the eviction board duly elected by a majority of the board members to serve as its chairman where the eviction board is comprised of more than one member.

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

"Rental agreement" means the agreement or contract containing the terms and conditions of occupancy of a dwelling unit entered into by the tenant and authority.

"Tenant" means the person or persons who enter into a rental agreement with the authority to reside in a dwelling unit and who are subject to eviction proceedings under this chapter.

"U.S.C." means the United States Code.

"Violent criminal activity" means any criminal 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. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§92-6, 356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-92, 356D-93, 356D-94, 356D-98)

§17-2020-3 Communications. (a) Communications to the eviction board may be mailed or delivered to the authority's hearings office.

(b) A quorum of the eviction board, consisting of at least one, but not more than three members, shall be present to validate any action taken.

(c) No employee of the authority shall be an eviction board member, unless specifically designated by the authority.

(d) All documents issued by the eviction board may be executed by facsimile signature. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§92-15, 356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-93, 356D-98)

§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 any person who is not a party and is not less than 18 years of age of the State; 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 eviction board, upon a finding that service by other means is not practicable, a document is posted on the unit occupied by the party. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-92, 356D-93, 356D-98)

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

(b) The grounds for termination of the rental agreement are set forth in section 356D-92, HRS, and section 17-2028-59. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-98)

SUBCHAPTER 2

HEARING PROCEDURE

§17-2020-11 Notice of cause for cases referred for eviction. (a) Project managers within each county may initiate eviction proceedings for any of the reasons set forth in section 356D-92, HRS, as it existed on March 28, 2013, and section 17-2028-59. 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 authority's staff and to request a grievance hearing.

(b) If the violation is for delinquent payment of rent, the authority may negotiate a reasonable payment arrangement with a family in accordance with section 17-2028-58.

(c) The tenant shall be notified in accordance with 24 C.F.R. §966.4(k) and (l)(3) and section 356D-93(a), HRS, as they existed on March 28, 2013.

(d) 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 eviction board that the tenant be evicted. [Eff and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §356D-92, 356D-98)

§17-2020-12 Notice of hearing. Notice of hearing shall meet the requirements of 24 C.F.R. §966.4(k), (l)(3), (m) and section 356D-93(a), HRS, as they existed on March 28, 2013. [Eff: 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-93, 356D-98)

§17-2020-13 Request for subpoena. (a) Only the parties to the hearing may request the issuance of a subpoena, subject to subsection (b). The eviction board or its 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 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§92-16, 356D-4, 356D-13, 356D-98, 607-12) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-98)

SUBCHAPTER 3

HEARINGS

A. Conditions

§17-2020-21 Counsel. (a) Unless otherwise directed by the eviction board, 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 on the tenant's own behalf or with another person as the tenant may authorize. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§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 eviction board 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 eviction board. The eviction board may consider all motions and opposing motions and shall rule on each motion when appropriate. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-93, 356D-98)

§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 8/6/04; comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-24 Records. (a) The hearings clerk shall keep written summaries of all hearings. Neither a full transcript nor recording of the hearing shall be required.

(b) All records of a hearing shall be confidential pursuant to section 92F-13(2), HRS, and released only at the direction of the eviction board, by judicial order, upon request by a tenant who is a party to the hearing, or upon the filing of a notice of appeal pursuant to chapter 91, HRS, and section 356D-96, HRS. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§91, 92F-13(2), 356D-4, 356D-13, 356D-96, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

B. Hearings

§17-2020-31 Eviction Board. (a) In all hearings where the eviction board consists of more than one member, the presiding officer shall preside.

(b) The eviction board 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 eviction board may limit the time of each witness giving testimony upon a particular issue.

(c) The eviction board shall consist of not less than one and no more than three members, of which one member shall be a tenant.

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

(e) The eviction board may remove any person who disrupts a hearing.

(f) 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.

(g) All hearings shall be confidential and closed to the public unless the tenant agrees otherwise.

(h) The hearing may be conducted through the use of video conferencing technology in accordance with section 356D-93(b), HRS, as it existed on March 28, 2013. The authority shall notify the tenant, the tenant's attorney, or the tenant's representative in writing prior to the scheduled hearing date that the hearing shall be conducted using video conferencing technology. [Eff 8/6/04; am and comp MAY 24 2014]
(Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98)
(Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-32 Default. A tenant who fails to appear at a hearing after being duly notified may be found in default and the eviction board may proceed with the hearing. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-33 Curable and Non-Curable Violations. (a) The eviction board shall determine whether or not the violation of the rental agreement constitutes a curable or non-curable violation. 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) Any violations that threaten the health or safety of the other residents or the authority's employees or representatives;

(2) Any drug-related criminal activity or violent criminal activity;

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

(4) 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;

(5) Where any member of the family has been convicted of a felony during the term of the tenancy, and the felony is related to the authority's property or funds, the resident association or tenant association's property or funds, homicide, assault, terroristic threatening, firearms, dangerous weapons, kidnapping, sexual assault, extortion, burglary, unauthorized control of propelled vehicle, and criminal property damage; and

(6) Where 24 C.F.R. §966.4 as it existed on March 28, 2013 requires termination of the rental agreement and eviction.

(c) Where, after considering the circumstances of the case, the eviction board finds the violation is curable, the eviction board may issue a decision and order which stays the issuance of a writ of possession on the condition that the tenant and if applicable, member(s) of tenant's family, comply with certain conditions related to occupancy for a period of time as established by the eviction board.

(d) In the event that the eviction board stays the issuance of the writ of possession subject to conditions as described in subsection (c), and the tenant or if applicable, family member(s), violate any term or condition imposed by the eviction board in its decision and order, the eviction board shall issue the writ of possession and the tenant shall be evicted forthwith provided that:

(1) The authority sends a written notice to the tenant stating:

(i) The grounds for requesting the issuance of a writ of possession;

(ii) The condition of the eviction board's decision and order violated by tenant or if applicable, family member;

(iii) The tenant is not entitled to a grievance hearing; and

(iv) The date the hearing is scheduled before the eviction board to determine whether the tenant violated the board's decision and order; and

(2) At the hearing, the eviction board determines that its decision and order was violated. If the tenant fails to appear at the hearing, the tenant shall be in default and the eviction board shall issue the writ of possession forthwith and the tenant shall be evicted. [Eff 8/6/04; am and comp MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-94, 356D-98) (Imp: 24 CFR §5.100; 24 CFR §966.4; HRS §356D-94, 356D-98)

SUBCHAPTER 4

APPEALS

§17-2020-41 Appeals of contested case hearings. Any person aggrieved by the final decision and order of the eviction board may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 356D-96, HRS. [Eff 8/6/04; am and ren MAY 24 2014] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-96, 356D-98)

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 8/6/04; comp MAY 24 2014] (Auth HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §356D-98)

§17-2020-52 Number. The use of all words used in the singular shall extend to and include the plural.
[Eff 8/6/04; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §356D-98)

Amendments to and compilation of chapter 2020, title 17, Hawaii Administrative Rules, on the Summary Page dated March 20, 2014 were adopted on March 20, 2014 after public notice was given in the Honolulu Star-Advertiser, the Maui news, the Garden Island News, West Hawaii Today, and the Hawaii Tribune Herald on January 28, 2014.

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

DAVID J. GIERLACH, Chairperson
Board of Directors
Hawaii Public Housing Authority

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 5-12-14

Filed

APPROVED AS TO FORM:

Deputy Attorney General

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LIEUTENANT GOVERNOR'S OFFICE

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