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Subject: PH Due Process Determination: New Jersey

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HUD DUE PROCESS DETERMINATION

for the

STATE OF NEW JERSEY

TABLE OF CONTENTS

- I. Jurisdiction
- II. Elements of Due Process
- III. Overview of New Jersey Eviction Procedures
- IV. Analysis of New Jersey Eviction Procedures for Each of the Regulatory Due Process Elements
- V. Conclusion

ANALYSIS

- I. Jurisdiction: New Jersey
- 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;

NEW JERSEY: DUE PROCESS DETERMINATION

- (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 New Jersey to determine if eviction procedures under New Jersey law requires a hearing with all of the regulatory "elements of due process," as defined in § 966.53(c).

HUD finds that the requirements of New Jersey law governing an action for eviction in the Special Civil Part of the Superior Court, Law Division under N.J. Stat. Ann. (N.J.S.A.) 2A:18-61.1 et seq. include all of the elements of basic due process, as defined at 24 CFR 966.53(c). This conclusion is based upon requirements contained in the New Jersey statutes, caselaw and court rules.

III. Overview of New Jersey Eviction Procedures

Under the New Jersey Anti-Eviction Act, a landlord may regain possession of a rental unit for one or more of the causes set forth in the law. N.J.S.A. 2A:18-61.1 et seq. Under New Jersey law, these are the grounds that can be used to establish "good cause" for an eviction. Eviction actions based on criminal activity or drug-related criminal activity are governed by this statute. A tenant is evicted through a summary dispossession proceeding in the Special Civil Part of the Superior Court, Law Division. N.J. Court Rules R.6:1-2(3).

Under N.J. Court Rules R.6:4-1(g), a party may move prior to trial to have a summary dispossession action transferred to Superior Court, Law Division and in an appropriate case, a transfer may be granted. If a transfer to Superior Court, Law Division, is granted, the tenant will have all of the rights available in the Special Civil Part, plus additional rights, such as the right to a jury trial. *Morocco v. Felton*, 112 N.J. Super. 226, 270 A.2d 739 (Law. Div. 1970); *Carr v. Johnson*, 211 N.J. Super. 341, 511 A.2d 1208 (App. Div. 1986).

NEW JERSEY: DUE PROCESS DETERMINATION

The New Jersey summary eviction proceeding has been held

constitutional under the Fourteenth Amendment. *Randell v. Newark Housing Authority*, 384 F.2d 151 (3rd Cir. 1967); cert. denied sub nom. *Avent v. Newark Housing Authority*, 393 U.S. 870, 89 S. Ct. 158 (1968). Tenants' rights have been expanded further since that ruling. *Marini v. Ireland*, 56 N.J. 130, 265 A.2d (1970) established that a tenant must be able to present any legal and equitable defenses, and the court must consider these defenses before issuing a judgment.

In construing the New Jersey Anti-Eviction Act, the courts have repeatedly held that the Act should be liberally construed for the benefit of the tenant to prevent unjustified evictions. Any doubt in the intent or interpretation of the statute is resolved in favor of the tenant. *Daskel Investors v. Rosenbloom*, 244 N.J. Super. 393, 582 A.2d 854 (Law Div. 1990).

IV. Analysis of New Jersey State 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))

1. Statutory notice to quit and demand for possession

Except in evictions for nonpayment of rent, a landlord may not bring a summary dispossession action unless the landlord has served the tenant with a written notice to quit and written demand for possession. N.J.S.A. 2A:18-61.2. The landlord must strictly comply with the statutory notice requirement. *Chambers v. Nunez*, 217 N.J. Super. 202, 524 A.2d 1359 (Law Div. 1986).

Depending upon the grounds for eviction, the statutory notice period varies from three days to eighteen months. N.J.S.A. 2A:18-61.2. The notice required must "specify in detail the cause of the termination of the tenancy." The New Jersey Supreme Court has held that "specify" means to state precisely in detail, to point, or to name in an explicit manner. *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116, 228 A.2d 674 (1967). The Court has concluded that a low-income tenant may be particularly confused by an ambiguous notice. Therefore, a vague, conclusory notice will result in dismissal of the eviction suit. *A.P. Development Corp. v. Bond*, 113 N.J. 485, 550 A.2d 1220 (1988).

If a landlord fails to give the required notice, the Special Civil Part lacks jurisdiction to hear the case. *Schlesinger v.*

NEW JERSEY: DUE PROCESS DETERMINATION

Brown, 116 N.J. Super. 500, 282 A.2d 790 (Dist. Ct. 1971); *Georgia King Associates v. Frazier*, 210 N.J. Super. 146, 509 A.2d 262 (App. Div. 1986). Courts will strictly enforce the time and notice provisions of the Anti-Eviction Act, and will not entertain the notion of substantial compliance. *Sacks Realty Co.*

v. Batch, 235 N.J.Super. 269, 516 A.2d 1216 (Law Div. 1989).

Service of Notice to Quit

The notice must be served either personally upon the tenant or a person in possession of the premises by giving the person served a copy of the notice, or by leaving a copy at the tenant's usual place of abode with some member of the tenant's family above the age of 14 years, or by sending the notice to the tenant by certified mail. If the certified letter is not claimed, notice can be sent by regular mail. N.J.S.A. 2A:18-61.2. The simultaneous mailing of certified and regular mail notices is acceptable. Tower Management v. Podesta, 226 N.J.Super. 300, 544 A.2d 389 (App. Div. 1988).

There is a presumption that a notice correctly addressed, stamped and mailed was received by the party to whom it was addressed. However, the presumption may be rebutted by testimony that the notice was, in fact, never received. Szczesny v. Vasques, 71 N.J.Super. 347, 177 A.2d 47 (App. Div. 1972).

2. Summons and complaint

Summary landlord\tenant actions are cognizable in the Special Civil Part. N.J. Court Rules R.6:1-2(3). The action is commenced by filing a complaint with the court. R.4:2-2. The landlord files a summons and complaint with the Clerk of the Special Civil Part. R.6:2-2(a).

The form of the summons and complaint that must be used for landlord/tenant actions is set forth in Appendix XI-B of the Court Rules. The summons directs the tenant to appear and state a defense at the time and place specified. The time may not be less than ten days nor more than thirty days from the date of service of the summons. R.6:2-1. The summons must state that if the tenant fails to appear, a judgment by default may be rendered.

Under the New Jersey Court Rules, a complaint must "contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief." R.4:5-2. This requirement applies to a summary eviction action in the Special Civil Part. R.6:3-1. The form of complaint for a holdover

NEW JERSEY: DUE PROCESS DETERMINATION

action (for eviction after completion of the statutory notice to quit) includes a statement of the grounds for termination as stated in the written notice and demand for possession. The form also provides that copies of the notice to quit must be attached to the complaint. Appendix XI-B, paragraph 5. As discussed above, the notice to quit must include a specific statement of the grounds for eviction. Thus the general civil pleading requirements, and the authorized form of complaint both provide that the complaint must include a statement of the grounds for

eviction as required by HUD's due process definition at 966.53(c).

Service of Summons and Complaint

The summons and complaint are served by sergeants-at-arms, or by persons authorized by law and designated by the assignment judge. N.J. Court Rules R.6:2-3(a). Requirements for service of process are stated in R.4:4-4 (personal service) and R.6:2-3(b) (service in landlord and tenant actions). In landlord and tenant actions, the tenant must be served either by personal service of process (in accordance with R.4:4-4), or by affixing a copy of the summons and complaint on the door of the premises. In addition, the tenant must also be served by ordinary mail. R.6:2-3(b). The court officer who delivers the summons and complaint must certify to the return of service in the court-prescribed form. See Appendix XI-B of the N.J. Court Rules.

3. Notice: Conclusion

New Jersey law establishes stringent requirements for service on the tenant both of a notice to quit, which must state the grounds for terminating the tenancy and for eviction, and of a summons and complaint, which also contains a statement of such grounds. New Jersey law governing a summary dispossession proceeding requires adequate notice to the tenant of the grounds for terminating the tenancy and for eviction, as required by HUD's due process definition at 966.53(c)(1).

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

Under New Jersey law it is well established that parties to a cause have the right to be present in person and represented by counsel at all stages of trial, except in the deliberations of a jury, and that the right to counsel is basic to due process of law. *Leonard's of Plainfield v. Dybas*, 130 N.J.L. 135, 31 A.2d 496 (1943); *Tower Management Corp. v. Podesta*, 226 N.J. Super. 300, 544 A.2d 389 (App. Div. 1988).

NEW JERSEY: DUE PROCESS DETERMINATION

Under N.J. Court Rules R.6:2-1, the summons in a landlord/tenant case must conform to R.4:4-2 and Appendix XI-A. The summons must include a statement advising the tenant that if the tenant cannot afford an attorney, the tenant may call the county legal services office for legal assistance. The phone number of that office must be stated on the summons. The summons must also advise the tenant that if the tenant can afford to pay an attorney but does not know one, the tenant may call the Lawyer Referral Service of the county of the tenant's residence, or the county in which the action is pending, or, if there is none in either county, the referral service of an adjacent county for assistance in obtaining an attorney.

Based on the New Jersey caselaw and the N.J. Court Rules, it is clear that the tenant has the right to be represented by counsel, in accordance with 966.53(c)(2).

- 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))

The landlord has the burden of proving every element of the claim by a preponderance or a greater weight of the credible evidence. The court's jurisdiction in summary dispossession proceedings depends upon proof of the elements of the claim, including the elements of good cause. *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116, 228 A.2d 674 (1967); *Village Bridge Apts. v. Mammucari*, 239 N.J.Super. 235, 570 A.2d 1301 (App.Div. 1990).

The right of confrontation, including the right of cross-examination, is a basic right in New Jersey civil cases. See, *Long Dock Co. v. State Board of Assessors*, 86 N.J.L. 592, 94 A. 439 (Ct. of E & A 1914). Parties to a civil case are entitled to be present while witnesses testify, and to cross-examine the witnesses. *Seitz v. Seitz*, 1 N.J.Super. 234, 64 A.2d 87 (App. Div. 1949). In an eviction case in the Special Civil Part, the tenant has the same right to confront witnesses and refute evidence as in any other civil case.

The tenant may offer evidence contesting an alleged default, and the court must try the issues, including the merits of any equitable defense raised by the tenant. *Academy Spires Inc. v. Jones*, 108 N.J.Super. 395, 261 A.2d 413 (Law Div. 1970). The tenant can cross-examine any witness about matters to which the witness testified on direct examination and matters which are relevant to the issues of the action or which tend to affect the credibility of the witness. See, *Kiernan v. Mauer*, 13 N.J.

NEW JERSEY: DUE PROCESS DETERMINATION

Super. 18, 80 A.2d 116 (App. Div. 1951). The tenant can cross-examine the landlord about prior admissions which are adverse to the landlord's interest in the case or which affect his credibility as a witness. *Miller v. Henderson*, 41 N.J.Super. 15, 124 A.2d 23 (App. Div. 1956).

The trial judge must follow the rules of evidence in disposing of the case. *NWB Newton Associates v. Gunn*, 224 N.J.Super. 704, 541 A.2d 280 (App.Div. 1988). In *NWB Associates*, the Appellate Division reversed a judgment in favor of the landlord because the trial court had accepted certifications from social workers, who were not subject to cross-examination at trial. *Id.* Therefore, the certifications were inadmissible hearsay. N.J.S.A. 2A:84A; R. Evid. 63(3).

Under N.J. Court Rules R.1:9-1, a subpoena may be issued by the Clerk of the Court upon request of a party or by an attorney

for a party to require a witness to give testimony at trial.

In conclusion, HUD finds that a tenant in New Jersey has the right to refute evidence and to confront witnesses in accordance with 966.53(c)(3).

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

A tenant in a summary dispossess action may not file a written answer to the complaint. N.J. Court Rules R.6:3-4. The tenant answers the complaint by appearing at trial. The tenant presents defenses at trial. The summons and complaint which are served on the tenant must direct the tenant to appear and state a defense at the time and place specified therein. N.J. Court Rules R.6:2-1.

The New Jersey Supreme Court, in the case of *Marini v. Ireland*, 56 N.J. 130, 265 A.2d 526 (1970), held that any legal and equitable defenses are available to a tenant, and must be considered by the court. The court may even direct a tenant to raise an appropriate defense. *Drew v. Pullen*, 172 N.J. Super. 570, 412 A.2d 131 (App. Div. 1980).

In conclusion, a tenant in an eviction action has the opportunity to present any available affirmative legal or equitable defense, in accordance with the HUD due process definition at 966.53(c)(3).

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

NEW JERSEY: DUE PROCESS DETERMINATION

The purpose of the New Jersey Anti-Eviction Act is to allow eviction of a tenant for the specific grounds set forth in the statute. A judgment for possession can only be obtained if one or more of the statutory grounds have been proven by a preponderance of the evidence, after a hearing of the issues and any meritorious defenses. *Marini v. Ireland*, 56 N.J. 130, 265 A.2d 526 (1970). Failure to establish the statutory good cause for termination of the tenancy deprives the court of jurisdiction to enter a judgment for possession. *Housing Authority of the City of Passaic v. Torres*, 143 N.J. Super. 231, 362 A.2d 1254 (App. Div. 1976); *R & D Realty v. Shields*, 196 N.J. Super. 212, 482 A.2d 40 (Law. Div. 1984).

A judgment cannot be entered on the basis of procedural defects in the tenant's response to the allegations. The court is required to reach a decision on the merits, including any equitable or legal defenses that the tenant can raise. *Academy Spires v. Jones*, 108 N.J. Super. 395, 261 A.2d 413 (Law Div. 1970). A judgement entered ex parte, without affording the tenant an opportunity to be heard, is void. *Housing Authority of City of Wildwood v. Hayward*, 81 N.J. 311, 406 A.2d 1318 (1970).

The trial court must make detailed findings of fact and relate them to the applicable law. C.F. Seabrook v. Beck, 174 N.J.Super. 577, 417 A.2d 89 (App. Div. 1980). Due process under the State Constitution requires that the parties have an opportunity to be heard on the facts and that the reviewing court be put in possession of proofs which lead to a decision. Callen v. Gill, 7 N.J. 312, 81 A.2d 495 (1951).

V. Conclusion

New Jersey law governing the eviction procedures in the Special Civil Part of the Superior Court, Law Division 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 New Jersey may evict a public housing tenant pursuant to a Superior Court decision in an eviction proceeding for any grievance involving 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 PHA is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.