

Legal Opinion: GCH-0022

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Subject: PH Due Process Determination: Idaho

December 3, 1991

HUD DUE PROCESS DETERMINATION

FOR THE

STATE OF IDAHO

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ANALYSIS

- I. Jurisdiction: State of Idaho.
- 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;
- (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

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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 procedure satisfies 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 Idaho to determine if an action for unlawful detainer under those laws requires a hearing which comports with all of the regulatory "elements of due process," as defined in 966.53(c).

HUD finds that the requirements of Idaho law governing an action for unlawful detainer in the Idaho District Courts under Title 6, Chapter 3 of the Idaho Code Annotated (I.C.A.) include all of the elements of basic due process, as defined in 24 CFR 966.53(c). This conclusion is based upon requirements contained in the I.C.A., case law and court rules.

III. Overview of Idaho Eviction Procedures.

The State substantive law regulating Idaho landlord and tenant relationships is Title 6, Chapter 3 of the Idaho Code Annotated. I.C.A. 6-303 provides that a person is guilty of unlawful detainer when the person continues in possession of real property (1) after expiration of the term for which it is let (I.C.A. 6-303(1)); (2) after notice for default in payment of rent (I.C.A. 6-303(2)); (3) when the person assigns or sublets the premises contrary to the covenants of the lease, commits waste, or permits or maintains on or about the premises any nuisances (I.C.A. 6-303(4)) and; (4) after notice of failure to perform any conditions or covenants of the lease (I.C.A. 6-303(3)).

HUD's due process determination will primarily analyze use of an Idaho 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 criminal activity that threatens health or safety of a PHA tenant or employee.

Landlord and Tenant proceedings are governed by the Idaho Rules of Civil Procedure (I.R.C.P.). I.R.C.P. Rule 1(a).

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I.C.A. 6-305 provides that the Idaho District Court in which the property or some part of it is situated has jurisdiction of unlawful detainer actions. However, I.C.A. 1-

2208 provides that "subject to rules promulgated by the Supreme Court, the administrative judge in each judicial district or any district judge in the district . . . may assign to magistrates, severally, or by designation of office" matters including "proceedings in . . . forcible detainer, and unlawful detainer."

The Idaho Constitution requires that the fundamental requisite of due process of law, the opportunity to be heard, be afforded by adequate notice. Idaho Constitution, Art. I, sections 1 and 13, *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210, 212.

IV. Analysis - Due Process Elements

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

A landlord commences a civil action for unlawful detainer by serving a three (3) day notice in writing on the tenant requiring in the alternative payment of the rent or surrender of the property (I.C.A. 6-303(2)), or requiring performance of a condition or covenant or surrender of the property (I.C.A. 6-303(3)).

A three day notice required by I.C.A. 6-303 may be served by (a) delivering a copy to the tenant personally; (b) leaving a copy with a person of suitable age and discretion at either the tenant's place of residence or usual place of business; or (c) by sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner (I.C.A. 6-304). After expiration of the notice period, a complaint is filed in District Court pursuant to I.C.A. 6-310 and I.R.C.P. Rule 4(d)(2).

The complaint must contain a short and plain statement showing that tenant/plaintiff is entitled to relief, must set forth facts on which the recovery of the property is based, and must describe the premises (I.R.C.P. Rule 8(a)(1)(2)).

After the complaint has been filed, a summons is issued (I.C.A. 6-310(5), I.R.C.P. Rule 4(d)(2)). The complaint and summons must be served less than five (5) days before the day of trial appointed by the court. I.R.C.P. Rule 4(b). The summons gives the defendant notice of the pendency of the action.

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I.R.C.P. Rule 4(b). The complaint contains a statement of the facts which are grounds for eviction. At the time the summons is issued, the court must schedule a trial within twelve (12) days from the filing of the complaint.

The Idaho procedures require adequate notice of the grounds for eviction. In addition, adequate notice is required under the

Idaho State Constitution. Idaho Constitution, Art. I, sections 1 and 13.

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

Many provisions of I.C.A., Title 6, Chapter 3 and the I.R.C.P refer to the role of counsel, e.g., distinctions are made throughout the I.R.C.P. between those parties represented by an attorney and those not so represented, I.R.C.P. Rules 5(b), 11(a)(1) and 37(e). See also I.C.A. 6-324 referring to the awarding of attorney's fees.

These provisions imply therefore that parties in the Idaho District Court have a 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 966.53(c)(3))

In all trials, testimony of witnesses must be taken orally, in open court, unless otherwise provided by statute or rules (I.R.C.P., Rule 43(a)). All relevant evidence is admissible except as otherwise provided by applicable rules. (The Idaho Rules of Evidence (I.R.E.) Rule 402). The credibility of a witness may be attacked by any party (I.R.E., Rule 607). The I.R.E expressly provides for cross-examination of witnesses (I.R.E., Rules 611(b) and (c)). Any party to a proceeding may cross-examine the adversary party as to any material fact or facts, and cross-examination is not restricted to matters peculiarly within the knowledge of the adversary. *Stearns v. Williams*, 72 Idaho 276, 240 P.2d 833, 843 (1952).

HUD concludes that under Idaho law, there is opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses.

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

Under the I.R.C.A. the defendant is entitled to answer the complaint. I.R.C.P. Rule 8(b) provides that "a party shall state in short and plain terms his defenses to each claim asserted" "In pleading to a preceding pleading, a party shall set forth affirmatively . . . any . . . matter constituting an avoidance or affirmative defense" (I.R.C.P., Rule 8(c)). Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto" (I.R.C.P., Rule 12(b)).

Under Idaho procedures, it does not appear that there are any restrictions limiting the tenant's right to present in the

unlawful detainer proceeding any available equitable or legal defense to the eviction action.

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

The incidents of the Idaho civil procedure and evidence rules are designed to lead to a decision on the merits, based on the facts and the law.

It is ". . . the duty of a trial court to allow evidence adduced by the parties to the action, thereupon to enter findings and conclusions, and adjudge accordingly." Parather v. Loyd, 86 Idaho 45, 382 P.2d 910, 912 (1963). " Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings" (I.R.C.P. Rule 54(c)).

Idaho law requires a decision on the merits.

V. Conclusion

Idaho law governing an action for unlawful detainer in the Idaho District Court requires that a public housing tenant must 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 Idaho may evict a public housing tenant pursuant to a District Court decision in an unlawful detainer proceeding, and is not required to first afford the tenant the opportunity for an administrative hearing on an

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unlawful detainer action 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 PHA or any drug-related criminal activity on or near such premises.

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