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HUD DUE PROCESS DETERMINATION

for the

STATE OF MARYLAND

TABLE OF CONTENTS

- I. Jurisdiction.
- II. Elements of Due Process.
- III. Overview of Maryland Eviction Procedures.
  - A. Eviction Actions.
  - B. Summary Eviction Action in District Court.
  - C. Ejectment Action in Circuit Court.
- IV. Analysis of Maryland Eviction Procedures for Each of the Regulatory Due Process Elements.
  - A. Summary Eviction Action in District Court.
  - B. Ejectment Action in Circuit Court.
- V. Conclusion.

ANALYSIS

- I. Jurisdiction: Maryland
- 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

MARYLAND: DUE PROCESS DETERMINATION

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 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 Maryland to determine if eviction procedures under those laws require a hearing with all of the regulatory "elements of due process," as defined in 966.53(c).

HUD finds that the requirements of Maryland law governing the following forms of action include all of the elements of basic due process, as defined in 24 CFR 966.53(c):

- (1) An action for summary eviction in the Maryland District Court under Title 8, Subtitle 4 ( 8-401 to 8-403) of the Maryland Real Property Code Annotated (R.P.), or
- (2) An action for ejectment in the Maryland Circuit Court under:

MARYLAND: DUE PROCESS DETERMINATION

- (a) 4-402 of the Maryland Courts and Judicial Procedure Code Annotated (C.J.P.) and

- (a) Subtitle T (Ejectment) ( T40 to T46) of Chapter 1100 of the Maryland Rules Annotated (volume 2 (1991)).

HUD's conclusion is based upon requirements contained in the Maryland Code, caselaw and court rules.

### III. Overview of Maryland Eviction Procedures

#### A. Eviction Actions

In Maryland, a landlord may use either of two actions to evict a tenant:

- (1) A summary eviction proceeding in the Maryland District Court for repossession of the premises from a tenant who holds over after termination of the lease, who fails to pay rent, or who breaches the lease. R.P., Title 8, Subtitle 4 ( 8-401 to 8-403).
- (2) An ejectment action in the Maryland Circuit Court. C.J.P. 4-402.

#### B. Summary Eviction Action in District Court

A summary eviction action is brought by a landlord against a tenant in the Maryland District Court. R.P. 8-401 to 8-403. The Maryland District Court has exclusive original civil jurisdiction of actions involving landlord and tenant and forcible entry and detainer actions, regardless of the amount involved. C.J.P. 4-401.

Proceedings in District Court are subject to the General Provisions of the Maryland Rules, which apply to procedure in all Maryland courts unless otherwise specifically provided. Md. Rules (Volume 1), Title 1, General Provisions (here cited as G.P. Rule ---). G.P. Rule 1-101. In addition, District Court proceedings are subject to the special rules of procedure for the Maryland District Court. Md. Rules (Volume 1), Title 3, Civil Procedure - District Court. (The Maryland District Court Rules at Title 3 are cited here as M.D.R. Rule ---.)

Title 3 of the Maryland Rules applies to civil matters in the District Courts except as specifically provided or necessarily implied. G.P. Rule 1-101. The District Court Rules

#### MARYLAND: DUE PROCESS DETERMINATION

provide that landlord-tenant actions are governed by procedural provisions of applicable general statutes, public local laws and municipal and county ordinances which are not inconsistent with the District Court Rules. M.D.R. Rule 3-711. Pretrial discovery under the District Court Rules (Md. Rules, Title 3, Chapter 400) is not permitted in an action for summary ejectment, forcible entry and detainer or holding over. M.D.R.

Rule 3-711.

C. Ejectment Action in Circuit Court

An ejectment action to recover possession of land is brought in the Maryland Circuit court. C.J.P. 4-402.

Proceedings in Circuit Court are subject to the General Provisions of the Maryland Rules, which apply to procedure in all Maryland courts unless otherwise specifically provided. Md. Rules (Volume 1), Title 1, General Provisions. G.P. Rule 1-101. In addition, Circuit Court proceedings are subject to the special rules of procedure for the Maryland Circuit Court, except as otherwise specifically provided or necessarily implied. Md. Rules (Volume 1), Title 2, Civil Procedure - Circuit Court. (The Maryland Circuit Court Rules at Title 2 are cited here as M.C.R. Rule ---.)

Ejectment actions in Circuit Court are also subject to special provisions governing a Special Proceeding for Ejectment in Maryland Rules Code Annotated (Volume 2), Chapter 1100 (Special Proceedings), Subtitle T (Ejectment), Rules T 40 to T 46. (The special rules for an ejectment action are cited Ejectment Rule T ---.)

In an action for ejectment, the plaintiff must prove title and the right to possession. *Green v. Pennsylvania R.R.*, 141 Md. 128, 118 A.127 (1922). While the typical cause of action for eviction of a tenant by a landlord is a summary eviction proceeding in the District Court, Maryland courts have held that a landlord may also proceed against a tenant in Circuit Court in accordance with the special ejectment rules in Subtitle T. *Messall v. Merlands Club, Inc.*, 244 Md. 18, 222 A.2d 627 (1966), cert. denied, 386 U.S. 1009, 87 S.Ct. 1349, 18 L.Ed.2d 1435 (1967).

An action for ejectment is commenced in the Circuit Court, since the District Court does not have jurisdiction to decide the ownership of real property or of an interest in real property. C.J.P. 4-402(b). A plea of not guilty by the defendant in an ejectment action puts into issue the right to

4

MARYLAND: DUE PROCESS DETERMINATION

possession of the land as between the parties. Ejectment Rule T42.b.

IV. Analysis of Maryland Eviction Procedures for Each of the Regulatory Due Process Elements

A. Summary Eviction Action in District Court

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

In a District Court proceeding, the plaintiff is required to file a complaint. M.D.R. Rule 3-302. A complaint is specifically required in an action for breach of a lease. R.P. 8-402.1(a). For each summons to be issued, the plaintiff must provide the clerk with a copy of the complaint and all accompanying exhibits, as well as available information on the name and location of the person to be served. M.D.R. Rule 3-111.

The summons must contain the name and address of the plaintiff and the defendant, the issue date, the time within which it must be served, the assigned trial date, the time within which the defendant must file a notice of intention to defend, and notification to the defendant that failure to file notice of intention to defend may result in a default judgment. M.D.R. Rule 3-114(b).

Each averment of any pleading, including the complaint, must be simple, concise and direct. M.D.R. Rule 3-303(b). In alleging the cause of action, the complaint must state with reasonable certainty, clearness and accuracy the nature of the claim against the defendant. *Smith v. Shiebeck*, 180 Md. 412, 24 A.2d 795 (1942); *Campbell v. Welsh*, 54 Md. App. 614, 460 A.2d 76 (1983).

The summons and copy of the complaint must be delivered or mailed to the defendant with a copy of each paper filed. M.D.R. Rule 3-112(a). See additional service requirements at M.D.R. Rules 3-121 to 3-126.

Under Maryland law, the tenant in a summary eviction action brought in Maryland District Court has the right to adequate notice of the grounds for eviction, as required by HUD's due process definition at 966.53(c).

5

#### MARYLAND: DUE PROCESS DETERMINATION

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

The right of a party to be represented by counsel in a Maryland Court proceeding is specifically provided by the Maryland Rules:

Unless otherwise expressly provided and when permitted by law, a party's attorney may perform any act required or permitted by these rules to be performed by that party.

G.P. Rule 1-331.

The District Court Rules also provide that "an individual may enter an appearance by an attorney . . . ." M.D.R. Rule 3-131(a).

Under Maryland law, the tenant in a summary eviction action brought in Maryland District Court has the right to be represented by counsel, as required by HUD's due process definition at 966.53(c).

3. 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))

Under Maryland caselaw, a party may cross-examine witnesses, subject to direction of the court. The Maryland Court of Appeals has stated that a party may pursue reasonable cross-examination "as a matter of right," if cross-examination relates to the facts in issue in a case, or to the issues themselves. *Ridgeway Shopping Center, Inc. v. Seidman*, 243 Md. 358, ---, 221 A.2d 393, 396 (1966). In *Ridgeway*, the court also noted the important role of cross-examination in the administration of justice.

In a civil case, a party may call an adverse party as a witness, and may interrogate the adverse party as if on cross-examination. C.J.P. 9-113. This provision allows a party to interrogate an adverse party by leading questions, and to contradict or impeach an adverse party. *First Nat'l. Realty Corp. v. State Rds. Comm'n.*, 255 Md. 605, 258 A.2d 419 (1969); *Coffey v. Derby Steel Co.*, 291 Md. 241, 434 A.2d 564 (1981).

Furthermore, the General Provisions of the Maryland Rules, which govern proceedings in all State courts, provide that the credibility of a witness may be attacked by any party.

6

#### MARYLAND: DUE PROCESS DETERMINATION

G.P. Rule 1-501. Thus, in a summary eviction action the tenant defendant may attack the credibility of witnesses for the plaintiff landlord. At trial, the tenant may also present any objections to the plaintiff's evidence (e.g., that the testimony is hearsay or otherwise inadmissible). M.D.R. 3-517.

Landlord witnesses may be impeached by cross-examination, or by contradictory evidence or witnesses offered by the tenant. The tenant may testify on issues in the case. A litigant is competent to give evidence, and is not excluded from testifying because of interest in the matter in question. C.J.P. 9-101.

To refute landlord evidence, the tenant may arrange the issuance of subpoenas under the District Court Rules, to compel testimony of witnesses or production of documents or other tangible evidence at a court proceeding. M.D.R. Rule 3-510. If testimony or production of evidence is necessary for purpose of justice, the court may require production of the person or evidence. M.D.R. Rule 3-514. A subpoena requires attendance at a particular time and place to take the specified action. G.P. Rule 1-202(x).

Under Maryland law, the tenant in a summary eviction action brought in Maryland District Court has the right, as required by HUD's due process definition at 966.53(c), to refute evidence presented by the PHA, including the right to cross-examine witnesses.

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

The Maryland District Court Rules provide that a defendant's notice to defend may raise "any explanation or ground of defense." M.D.R. Rule 3-307(a). In an action to repossess the premises for breach of the lease, the tenant may appear before the court (on a date stated in the summons) to show cause, if any, why the tenant should not be required to make restitution of the premises. R.P. Rule 8-402.1(a). In the District Court proceeding, there is no legal limitation on the tenant's right to present any available legal or equitable defenses.

Under Maryland law, the tenant in a summary eviction action brought in Maryland District Court has the right, as required by HUD's due process definition at 966.53(c), to present any available legal or equitable defense.

7

MARYLAND: DUE PROCESS DETERMINATION

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

After trial of the case, a judgment is entered upon a decision by the court denying or granting relief. M.D.R. Rule 3-601(a), cf. G.P. Rule 1-202(m). The District Court Rules provide that:

in a contested trial, the judge, before or at the time judgment is entered, shall dictate into the record or prepare and file in the action a brief statement of the reasons for the decision and the basis of determining any damages.

M.D.R. Rule 3-522.

The judgment provisions of the Maryland Rules imply that the judgment of the court must be on the merits - based on the law and the evidence. In general, the procedural incidents of a district court trial as defined in the Maryland Rules are intended to lead to a decision on the merits upon the issues framed by the complaint and defense.

M.D.R. Rule 3-519(b) provides for a summary judgment procedure in which:

the court may proceed to determine the facts and render

judgment against the plaintiff or may decline to render judgment until the close of all the evidence.

Disposition of the case on a motion for summary judgment, accelerates a decision on the merits.

M.D.R. Rule 3-534 provides that a party may move to alter or amend a judgment. On such a motion, the court may open the judgment to receive additional evidence, adopt new findings or reasons, or enter a new judgment. This procedure for revision of the judgment previously rendered by the court helps assure that the decision is correctly rendered on the merits.

The Maryland Rules provide the tenant in a summary eviction action in District Court with the right to a decision on the merits, as required by HUD's due process definition at 966.53(c).

8

#### MARYLAND DUE PROCESS DETERMINATION

##### B. Ejectment Action in Circuit Court

1. Adequate Notice of the Grounds for Terminating the Tenancy and for Eviction ( 966.53(c)(1))

##### Complaint

The pleadings and process required for commencement of a action under the Maryland Circuit Court Rules (M.C.R.) (Title 2 of the Maryland Rules) give a tenant adequate notice of the grounds for terminating the tenancy and for eviction.

In a Circuit Court proceeding, the plaintiff's cause of action is stated in the complaint. M.C.R. Rules 2-302, M.C.R. Rule 2-303, and M.C.R. Rule 2-305. The complaint states all averments of the plaintiff's cause of action. M.C.R. Rule 2-303(a). Each averment of the pleading must be "simple, concise, and direct," and contain statements of fact as may be necessary to show the plaintiff's entitlement to relief. M.C.R. Rule 2-303(b). Like other pleadings, the complaint must "contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for relief sought." M.C.R. Rule 2-305. In alleging the cause of action, the complaint must state with reasonable certainty, clearness and accuracy the nature of the claim against the defendant. *Smith v. Shiebeck*, 180 Md. 412, 24 A.2d 795 (1942); *Campbell v. Welsh*, 54 Md. App. 614, 460 A.2d 76 (1983).

##### Service

Service requirements for a Circuit Court Action are stated in Chapter 100 of Title 2 of the Maryland Rules (M.C.R. Rules 2-121 to 2-126).

Ejectment is a quasi in rem action. Greenbelt Consumer



Services, Inc. v. Acme Markets, Inc., 322 A.2d 521, 525 (Md. App. 1974); Rest. Judgments 32a. HUD infers that the complaint in such an action may be served by in personam service as in other Circuit Court civil actions in accordance with M.C.R. Rule 2-121. However, for a quasi in rem action where the plaintiff has shown that whereabouts of the defendant are unknown and that "reasonable efforts have been made in good faith to locate the defendant," the court may authorize service pursuant to the special service procedures provided in M.C.R. Rule 2-122. In such case, M.C.R. Rule 2-122 permits notice by first class mail combined with other alternative forms of notice stated in the rule. HUD finds that either in personam service under M.C.R. Rule 2-121, or the alternative form of service allowed under M.C.R. Rule 2-122 (where the plaintiff is unable

MARYLAND DUE PROCESS DETERMINATION

to accomplish in personam service pursuant to M.C.R. Rule 2-121), would provide adequate notice to a defendant.

Conclusion

Under Maryland law, the tenant in an ejectment action brought in Maryland Circuit Court has the right to adequate notice of the grounds for eviction, as required by HUD's due process definition at 966.53(c).

2. Right to Counsel (Section 966.53(c)(3))

The right of a party to be represented by counsel in a Maryland court proceeding is specifically provided by the general provisions of the Maryland Rules:

Unless otherwise expressly provided and when permitted by law, a party's attorney may perform any act required or permitted by these rules to be performed by that party.

G.P. Rule 1-331.

The Circuit Court Rules also provide that "an individual may enter an appearance by an attorney . . . ." M.C.R. Rule 2-131(a).

Under Maryland law, the tenant in an ejectment action brought in Maryland Circuit Court has the right to be represented by counsel, as required by HUD's due process definition at 966.53(c).

3. Opportunity for the Tenant to Refute the Evidence Presented by the PHA including the Right to Confront and Cross-examine Witnesses ( 966.53(c)(4))

Under Maryland caselaw, a party may cross-examine witnesses, subject to direction of the court. The Maryland

Court of Appeals has stated that a party may pursue reasonable cross-examination "as a matter of right," if cross-examination relates to the facts in issue in a case, or to the issues themselves. *Ridgeway Shopping Center, Inc. v. Seidman*, 243 Md. 358, ---, 221 A.2d 393, 396 (1966). In *Ridgeway*, the court also noted the important role of cross-examination in the administration of justice.

In a civil case, a party may call an adverse party as a witness, and interrogate the adverse party as if on cross-examination. C.J.P. 9-113. Under this provision, an adverse party may be interrogated by leading questions, may be

10

#### MARYLAND DUE PROCESS DETERMINATION

contradicted and may be impeached. *First Nat'l. Realty Corp. v. State Rds. Comm'n.*, 255 Md. 605, 258 A.2d 419 (1969); *Coffey v. Derby Steel Co.*, 291 Md. 241, 434 A.2d 564 (1981).

Furthermore, the General Provisions of the Maryland Rules, which govern proceedings in State courts, provide that the credibility of a witness may be attacked by any party. G.P. Rule 1-501. Thus, in a summary eviction action the tenant defendant may attack the credibility of witnesses for the plaintiff landlord. At trial, the tenant may also present any objections to the plaintiff's evidence (e.g., that the testimony is hearsay or otherwise inadmissible). M.C.R. Rule 2-517.

Landlord witnesses may be impeached by cross-examination, or by contradictory evidence or witnesses offered by the tenant. The tenant may testify on issues in the case. A litigant is competent to give evidence, and is not excluded from testifying because of interest in the matter in question. C.J.P. 9-101.

To refute landlord evidence, the tenant may arrange the issuance of subpoenas under the Circuit Court Rules to compel testimony of witnesses or production of documents or other tangible evidence at a court proceeding. M.C.R. Rule 2-510. If testimony or production of evidence is necessary for purpose of justice, the court may require production of the person or evidence. M.C.R. Rule 2-514. A subpoena requires attendance at a particular time and place to take the specified action. G.P. Rule 1-202(x). To obtain information and evidence for refutation of the plaintiff's case, the defendant may obtain discovery by depositions, interrogatories, or production of documents. M.C.R. Rule 2-401. A party may obtain discovery of any non-privileged matter. M.C.R. Rule 2-402(a).

Under Maryland law, the tenant in an ejectment action brought in Maryland Circuit Court has the opportunity to refute evidence presented by the PHA, as required by HUD's due process definition at 966.53(c).

4. Opportunity to Present Any Affirmative Legal or Equitable Defenses ( 966.53(c)(4))

A tenant-defendant may file an answer to the complaint. M.C.R. Rule 2-323(a). The defendant may raise every defense of law or fact to a claim for relief in a complaint, including specific and general denials and affirmative defenses such as estoppel, fraud, illegality and laches. M.C.R. Rule 2-323. In addition, M.C.R. Rule 2-303 provides that "a party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based on legal or equitable grounds."

11

#### MARYLAND DUE PROCESS DETERMINATION

In an ejectment action, the defendant may plead in answer to the plaintiff's declaration. Defendant's not guilty plea puts "the right to possession of the land" into issue as between the parties. Ejectment Rule T42 (defenses).

Under Maryland law, the tenant in an ejectment action brought by the landlord in Maryland Circuit Court has the opportunity to raise any available affirmative legal or equitable defense, as required by HUD's due process definition at 966.53(c).

#### C. Decision on the Merits ( 966.53(c)(5))

After trial of the case, a judgment is entered upon a decision of the court denying or granting relief. M.C.R. Rule 2-601(a). The clerk of court enters a record of the judgment. M.C.R. Rule 2-601(b). The structure and incidents of the court procedures governing an ejectment action in the Circuit Court imply that the procedures are intended to lead to a determination on the merits - a decision based on the facts and the law.

In a case tried to a jury, the facts are found by the jury pursuant to instruction by the court upon the law of the case. M.C.R. Rule 2-520. The court may refer to or summarize the evidence. However, the jury is the sole judge of the facts, the weight of the evidence, and the credibility of the witnesses. M.C.R. Rule 2-520(d). The jury's finding of the facts must be based on the evidence. M.C.R. Rule 2-521. The court may require the jury to return written findings upon specific issues. M.C.R. Rule 2-522(c). Where the facts are tried to the court, the court must determine both the facts and the law. See M.C.R. Rule 2-522(a).

M.C.R. Rule 2-519(b) provides for a summary judgment procedure in which:

the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to enter judgment until the close of all the evidence.

This procedure accelerates a determination on the merits of the cause.

M.C.R. Rule 2-534 provides that in an action tried to the court, a party may move to alter or amend a judgment. On such a motion, the court may open the judgment to receive additional evidence, adopt new findings or reasons, or enter a new judgment. This procedure for revision of the judgment

12

#### MARYLAND DUE PROCESS DETERMINATION

previously rendered by the court helps assure that the decision is correctly rendered on the merits.

Under Maryland law, the tenant in an ejectment action brought in Maryland Circuit Court is entitled to a decision on the merits, as required by HUD's due process definition at 966.53(c).

#### V. Conclusion

Maryland law governing the following eviction procedures 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:

- (1) An action for summary eviction in the Maryland District Court under Title 8, Subtitle 4 ( 8-401 to 8-403) of the Maryland Real Property Code, or
- (2) An action for ejectment in the Maryland Circuit Court under 4-402 of the Maryland Courts and Judicial Procedure Code and Subtitle T (Ejectment) ( T40 to T46) of Chapter 1100 of the Maryland Rules (volume 2 (1991)).

By virtue of this due process determination under section 6(k) of the U.S. Housing Act of 1937, a PHA in Maryland may evict a public housing tenant pursuant to the court's decision in a District Court action for summary eviction or a Circuit Court action for ejectment, for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the PHA or any drug-related criminal activity on or near the premises. The PHA is not required to first afford the tenant the opportunity for an administrative hearing on the eviction.

13