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Subject: PH Due Process Determination: Tennessee

June 17, 1992

HUD DUE PROCESS DETERMINATION

for the

STATE OF TENNESSEE

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ANALYSIS

- I. Jurisdiction: State of Tennessee
- 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;

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- (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 Tennessee 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 Tennessee law governing an unlawful detainer action or a possessory action under the Uniform Residential Landlord and Tenant Act include all of the elements of basic due process, as defined in 24 CFR 966.53(c). This conclusion is based upon the Tennessee Constitution, statutes, court rules and case law.

III. Overview of Tennessee Eviction Procedures

A. Forms of Eviction Action

In Tennessee, a tenant may be evicted by an unlawful detainer action or by an action for possession under the Uniform Residential Landlord and Tenant Act (U.R.L.T.A.).

An action for unlawful detainer may be brought in the circuit courts, the courts of general sessions, or the chancery courts (T.C.A. 29-18-107). The court which first takes jurisdiction acquires exclusive jurisdiction. *Robinson v. Easter*, 344 S.W.2d 365 (1961). The substantive requirements for an unlawful detainer action are governed by T.C.A. Sections 29-18-101 through 29-18-134.

An action for possession may also be brought under the Uniform Residential Landlord and Tenant Act (U.R.L.T.A.) (T.C.A. Sections 64-2801 through 64-2864, and T.C.A. Sections 66-28-101 through 66-28-517).¹ The circuit courts and courts of general sessions have jurisdiction in actions for possession under the

¹The provisions of the URLTA apply only in counties having a population of more than two hundred thousand (T.C.A. 64-2802).

U.R.L.T.A. (T.C.A. 64-2805). As used in the U.R.L.T.A., the term "action" "includes . . . any . . . proceeding in which rights are determined, including an action for possession."

B. Applicable Rules of Procedure and Evidence

In addition to the specific rules governing possessory actions under the unlawful detainer statute and the U.R.L.T.A., proceedings in the circuit and chancery courts are governed by the Tennessee Rules of Evidence (T.R.E.) and the Tennessee Rules of Civil Procedure (T.R.C.P.).

T.R.C.P. Rule 1 provides that:

these rules shall govern the procedure in the circuit and chancery courts of Tennessee . . . in all civil actions, whether at law or in equity

T.R.C.P. Rule 1 states that the Tennessee Rules of Civil Procedure:

. . . shall not be applicable to courts of general sessions except in cases where such courts by special or private act exercise jurisdiction similar to that of circuit or chancery courts.

In a detainer action, the court of general sessions exercises, by statute, jurisdiction similar to that of a circuit or chancery court in a detainer action. Proceedings before a general sections court are subject to general provisions of the Tennessee Code in regard to actions and other incidents. T.C.A. 19-1-101.

T.R.C.P. 43.01 provides that "in all actions at law or in equity, the testimony shall be taken pursuant to the Tennessee Rules of Evidence."

C. Tennessee Constitution -- "law of the land" clause

Article 1, Section 8 of the Tennessee State Constitution provides that ". . . no man shall be . . . deprived of his life, liberty or property, but by . . . the law of the land." Tennessee courts affirm that the phrase "law of the land" in this section of the State Constitution is synonymous with the due process of law provisions of the United States Constitution. *Daugherty v. State*, 216 Tenn. 666, ___, 393 S.W.2d 739, 743 (1965), cert. den. 384 U.S. 435 (1966); cf. *Illinois Cent. R.R. Co. v. Crider*, 91 Tenn. 489, ___, 19 S.W. 618, 621 (1892). Thus the law of the land provision of the Tennessee Constitution

affords the guarantee of procedural due process, parallel to the guarantee of procedural due process under the Federal Constitution.

IV. Analysis of 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. Unlawful Detainer Action

a. In Circuit or Chancery Court

An unlawful detainer action is commenced by filing a complaint in the circuit or chancery court (T.R.C.P. 3). T.R.C.P. 8.01 provides that the complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief"

When the complaint has been filed, a summons together with a copy of the complaint, is served upon the defendant (T.R.C.P. 4.01). The summons and complaint must be served by delivering a copy to the defendant personally, by leaving a copy at the defendant's dwelling or usual place of abode with some person of suitable age residing therein, or by certified mail (T.R.C.P. 4.04).

b. In Court of General Sessions

An unlawful detainer action in the courts of general sessions is commenced by the issuance of a warrant (summons) by the judge of the court (T.C.A. 19-1-102). The warrant must contain a general statement indicating the grounds of action, so that the defendant may know the charge the defendant is to meet, and may know how to prepare the defense. *Parris v. Brown*, 13 Tenn. 267 (1833); *Watkins v. Kittrell*, 62 Tenn. 38 (1873); *Jett v. Southern Ry.*, 169 S.W. 767 (1914); *Hunt v. Hoppe*, 124 S.W.2d 306 (1938).

Service of the warrant on the defendant must be made by delivering a copy of the warrant personally, by leaving a copy at the defendant's dwelling or usual place of abode with some person of suitable age and discretion residing therein, by delivering a copy to an agent authorized to receive service (T.C.A. 16-15-604), or by certified mail (T.C.A. 16-15-605).

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2. Uniform Residential Landlord and Tenant Act Action

a. Notice to Terminate Rental Agreement

Under the U.R.L.T.A.:

. . . if there is a material noncompliance by the tenant
. . . materially affecting health and safety, the landlord

may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice. If the breach is not remedied in fourteen (14) days, the rental agreement shall terminate as provided in the notice" (T.C.A. 64-2845.)

The U.R.L.T.A. also provides that:

the landlord may terminate a rental agreement within three (3) days from the date written notice is delivered to the tenant if the tenant or any other person on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises. (T.C.A. 66-28-517.)

A notice to terminate must specifically detail the violation. The notice is effective when received by the tenant. Upon receipt of such written notice, the tenant is entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining an injunction against such termination by the landlord (T.C.A. 66-28-517).

b. Pleading

The general sessions and circuit courts exercise original jurisdiction over actions for possession under the U.R.L.T.A. In addition to any other method provided by rule or by statute, personal jurisdiction may be acquired in a civil action or proceeding by service of process in the manner provided by law (T.C.A. 64-2805).

(1) Pleading in Circuit Court

An action for possession under the U.R.L.T.A. is commenced by filing a complaint in the circuit court (T.R.C.P. 3). T.R.C.P. 8.01 provides that the complaint shall contain "a short

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and plain statement of the claim showing that the pleader is entitled to relief"

A summons, together with a copy of the complaint, is served upon the defendant (T.R.C.P. 4.01). The summons and complaint must be served by delivering a copy to the defendant personally, by leaving a copy at the defendant's dwelling or usual place of abode with some person of suitable age residing therein, or by certified mail (T.R.C.P. 4.04).

(2) Pleading In Court of General Sessions

U.R.L.T.A. actions in the courts of general sessions are commenced by the issuance of a warrant (summons) by the judge of the court (T.C.A. 19-1-102). The warrant must contain a general statement indicating the grounds of action, so that the defendant may know the charge, and may know how to prepare the defense. *Parris v. Brown*, 13 Tenn. 267 (1833); *Watkins v. Kittrell*, 62 Tenn. 38 (1873); *Jett v. Southern Ry.*, 169 S.W. 767 (1914); *Hunt v. Hoppe*, 124 S.W.2d 306 (1938).

Service of the warrant on the defendant must be made by delivering a copy of the warrant personally, by leaving a copy at the defendant's dwelling or usual place of abode with some person of suitable age and discretion residing therein, by delivering a copy to an agent authorized to receive service (T.C.A. 16-15-604), or by certified mail (T.C.A. 16-15-605).

3. Notice: Conclusion

Based on the foregoing, adequate notice of the grounds for eviction is required by Tennessee law in both an unlawful detainer action and a possessory action under the U.R.L.T.A. The law of the land clause of the Tennessee Constitution (Article 1, Section 8) also guarantees adequate notice.

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

The right to be represented by counsel is implied throughout the Tennessee rules of civil procedure and the statutes. For example, T.R.C.P. Rule 11 states that every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record; Rule 16 states that in any action the court may direct the attorneys for parties to appear before the court to consider such matters as may aid in the disposition of the action.

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The law of the land clause of the Tennessee Constitution (Article 1, Section 8) also affords the 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 circuit or chancery court, a party's right to refute evidence of the opposing party, including the right to confront and cross-examine witnesses is provided by the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence (T.R.E.). T.R.C.P. 43.01 provides that "in all actions at law or in equity, the testimony shall be taken pursuant to the Tennessee Rules of Evidence."

T.R.E. 611 provides that "a witness may be cross-examined on

any matter relevant to any issue in the case, including credibility . . ."

T.R.C.P. 32.01 permits the use of depositions at trial, so far as admissible under the rules of evidence, for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

In general sessions courts, the general sessions judge may issue subpoenas for witnesses (T.C.A. 29-18-121). A party may interrogate any unwilling or hostile witness by leading questions and the cross-examination of a witness shall not be limited to the subject matter of his examination in chief (T.C.A. 16-15-701). In addition, a party may call an adverse party, or an officer, director or managing agent of a public or private corporation or a partnership, and interrogate him by leading questions and impeach him in all respects as if he had been called by the adverse party (T.C.A. 16-15-701).

Application of the foregoing provisions of Tennessee law provides a tenant with the opportunity to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses, both in an unlawful detainer and in an eviction action under the U.R.L.T.A. The requirements of procedural due process, as expressed in the law of the land clause of the Tennessee Constitution (Article 1, Section 8), also guarantees a defendant the opportunity to refute plaintiff's evidence and 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))

The court rules and statutes provide that the defendant may assert defenses. T.R.C.P. 8.02 states that:

a party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies.

T.R.C.P. 8.03 provides that:

in pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute . . . any other matter constituting an avoidance or affirmative defense.

A party may plead any matter constituting an avoidance or affirmative defense.

In general sessions courts, the defendant is not required to file a written answer or defense to the charge set forth in the warrant. However, the defendant may appear and plead any

affirmative legal or equitable defense. "If the plaintiff fails to appear or file evidences of his claim, the court may hear the allegations and proofs of the defendant, and render such judgment as, in its opinion, the nature of the case requires" (T.C.A. 19-1-108(b)(3)).

Under the court rules and statutes, the tenant has the right to present any available affirmative defense which might defeat the landlord's claim to possession.

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

1. Actions Subject to T.R.C.P.

T.R.C.P 52.01 provides that "In all actions tried upon the facts without a jury, . . . the court shall find the facts specifically and shall state separately its conclusions of law thereon and direct the entry of the appropriate judgment." The court's findings must cover all relevant facts necessary to a determination of the case. *Hodge v. Provident Life and Accident Insurance Company*, 664 S.W.2d 297 (1983).

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In jury cases, the jury is instructed by the court on the applicable law at the close of the evidence (T.R.C.P. 51.01). The jury's verdict must respond to all issues (T.R.C.P. 49).

Whether the facts are found by the court, or by a jury pursuant to instruction of the court, the decision of the court must be rendered on the merits -- based upon the law as applied to the facts found by the court or the jury.

2. Action in General Sessions Court

T.C.A. 29-18-119 provides that in general sessions courts, the judge will "try every case upon its merits . . . and give judgment accordingly." T.C.A. 19-1-109 provides that a judge of a case where the subject matter does not exceed \$10,000:

". . . shall hear and determine such cause upon principles of equity, and render such judgment or decree as the merits of the case may require "

3. Decision on the merits -- conclusion

In an eviction by unlawful detainer or under the U.R.L.T.A., Tennessee law requires a decision on the merits -- based upon the facts and the law. The opportunity for a decision on the merits is required by the law of the land clause of the Tennessee Constitution (Article 1, Section 8).

V. Conclusion

Tennessee law governing an action for unlawful detainer or a

possessory action under the Uniform Residential Landlord and Tenant Act 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. This conclusion applies to eviction actions in the circuit courts, chancery courts, or courts of general sessions,

By virtue of this due process determination by HUD under section 6(k) of the U.S. Housing Act of 1937, a PHA in Tennessee may evict a public housing tenant pursuant to a circuit court, chancery court, or court of general session decision in an unlawful detainer action or in an action for possession under the Uniform Residential Landlord and Tenant Act. When evicting the tenant 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 such premises, the PHA is not required to

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first afford the tenant the opportunity for an administrative hearing on the eviction.

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