

Rules Amending Title 17
Hawaii Administrative Rules

October 3, 2011

1. Chapter 2021 of Title 17, Hawaii Administrative Rules, entitled "Grievance Procedure" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

[HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII] HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2021

GRIEVANCE PROCEDURE

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Historical Note: Chapter 17-2021, Hawaii Administrative Rules, is based substantially upon chapter 17-2021, Hawaii Administrative Rules, [Eff 8/5/05; am and comp], chapter 17-502, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R Oct 25 1999], and chapter 15-183, Hawaii Administrative Rules, [Eff 02/25/02; R Aug 05 2005]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2021-1 Purpose. These rules shall govern the practice and procedure for hearing a grievance presented by a tenant of a federally-assisted public housing project [or state-aided public housing project] to the [housing and community development corporation of Hawaii] Hawaii public housing

authority. [Eff 8/5/05; am and comp]
 (Auth: 24 CFR §966.52, HRS §356D-4) (Imp: 24 CFR
 §966.50, HRS §356D-4)

§17-2021-2 Applicability. (a) The grievance procedure shall [be applicable] apply to all individual grievances as defined in section 17-2021-3 between the tenant of the federally-assisted public housing projects [or the state-aided public housing projects] and the [corporation] authority.

(b) The grievance procedure shall not [be applicable] apply to disputes between tenants not involving the [corporation] authority, or class grievances. This procedure shall not be used as a forum for initiating or negotiating policy changes between tenants and the [corporation] authority.

(c) All grievances involving an act or omission of the [corporation] authority relating to a rental agreement shall be commenced within ten business days of such act or omission.

(d) All grievances involving the [corporation's] authority's rules shall be commenced within ten business days of an act or omission based on such rule.

(e) The failure to timely request such a hearing within the prescribed limits shall preclude any request for a grievance hearing from occurring unless waived in writing by the [corporation] authority.

(f) The grievance procedure shall not apply to state public housing projects, which include the projects of Hauiki, Puahala, Lokahi, Kawailehua (State), Ka Hale Mua (State), Ke Kumu Elua, Hale Po'ai, Halia Hale, Kamalu, Ho'olulu, and Lai'ola.

(g) The grievance procedure shall not apply to any decision and order of eviction made pursuant to chapter 17-2020.

(h) If there is a conflict between subsection (f) and any other rule, subsection (f) shall control.

(i) If there is a conflict between subsection (g) and any other rule, subsection (g) shall control.

[Eff 8/5/05; am and comp] (Auth: 24

CFR §966.52; HRS §§356D-4, 356D-16) (Imp: 24 CFR §966.51; HRS §§356D-4, 356D-44(c), 356D-96, 356D-97; 521)

§17-2021-3 Definitions. Whenever used in this chapter, unless specifically defined:

"Authority" means the Hawaii public housing authority.

"Complainant" means any tenant whose grievance is presented to the corporation or at the project management office.

["Corporation" means the housing and community development corporation of Hawaii.]

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

"Federally-assisted public housing project" means a low-income federally assisted public housing project as established by the United States Housing Act of 1937, as amended.

"Grievance" means any dispute which a tenant may have with respect to the [corporation's] authority's action or failure to act in accordance with the individual tenant's rental agreement or the [corporation's] authority's rules [1]which adversely affect the individual tenant's rights, duties, welfare, or status.

"Hearing officer" means a person selected in accordance with sections 17-2021-12 and 17-2021-32 to hear grievances and render a decision with respect thereto.

["State-aided public housing projects" means the housing projects of Hauiki, Puahala, Lokahi, Kawailehua (State), Ka Hale Mua (State), Ke Kumu Elua, Hale Po'ai, Halia Hale, Kamalu, Ho'olulu, and Lai'ola, which are owned by the corporation.]

"Tenant" means the lessee or the remaining head of household of any family residing in the [corporation's] authority's federally-assisted [or state-aided] public housing projects. [Eff 8/5/05; am and comp _____] (Auth: 24 CFR §966.52; HRS §§356D-4, 356D-16) (Imp: 24 CFR §966.53; HRS §§356D-4, 356D-44(c), 521)

§17-2021-4 Termination of rental agreement based on Public Law 104-120. The [corporation] authority may also terminate a rental agreement pursuant to 42 U.S.C. §1437 as it existed on October 3, 2011. [Eff 8/5/05; am and comp _____] (Auth: 42 USC §1437; Pub. L. 104-120; HRS §§356D-4, 356D-16, 356D-98) (Imp: HRS §356D-92)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§17-2021-10 Informal settlement of grievances.

(a) Any grievance shall be personally presented, either orally or in writing, to the project office of the project in which the complainant resides as a condition precedent to a hearing under this chapter. At the time of the personal presentation, the complainant must explicitly notify the project office that the tenant is invoking the grievance procedure. If the project office and tenant agree to a resolution in writing, the grievance shall be terminated.

(b) If the matter is not informally resolved as provided in subsection (a), a summary of such discussion shall be prepared within five business days and one copy shall be given to the tenant. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under this chapter may be obtained if the

complainant is not satisfied. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.54; HRS §356D-4)

§17-2021-11 Request for hearing. (a) The complainant shall submit a written request for a hearing to the [corporation's] authority's project office within ten business days after receipt of the summary of discussion pursuant to section 17-2021-10. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

(b) If the complainant does not request a hearing in accordance with subsection (a), the [corporation's] authority's disposition of the grievance following the informal settlement shall become final. Failure to request a hearing shall not constitute a waiver by the complainant of the complainant's right thereafter to contest the [corporation's] authority's action in disposing of the complaint in an appropriate judicial proceeding.

(c) If the complainant shows good cause for failing to proceed in accordance with the informal procedure to the hearing officer the provision of subsection (a) may be waived by the hearing officer in writing with reasons given. If the [corporation] authority and tenant agree to a resolution in writing, the grievance shall be terminated. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.55; HRS §356D-4)

§17-2021-12 Selection of hearing officer.

(a) A grievance hearing shall be conducted by an impartial person or persons appointed by the [corporation] authority after consultation with resident organizations, as described below:

- (1) The [corporation] authority and resident organizations shall nominate a slate of impartial persons to sit as hearing officers. Such persons may include

[corporation] authority board members, [corporation] authority staff members, tenants in compliance with the lease agreement, professional arbitrators or mediators, or others. The initial slate of nominees shall consist of not more than twenty persons, of whom at least two shall be from each county.

- (2) The [corporation] authority will check with each nominee to determine whether there is an interest in serving as a hearing officer, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.
- (3) Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical will be withdrawn and other names will be substituted.

(b) The slate of potential hearing officers shall be submitted to the resident organizations. Written comments from the organizations shall be considered by the [corporation] authority.

(c) The [corporation] authority shall appoint the final list of nominees as hearing officers. The final list of hearing officers shall be provided to the resident organizations. The [corporation] authority shall contact the hearing officers in random order to request their participation as hearing officers.

(d) After the hearing officer is selected, said hearing officer shall promptly inform the [corporation] authority in the event that there may be a conflict of interest issue. The hearing officer shall be disqualified if the conflict raised prevents them from serving impartially.

(e) "Conflict of interest" or "conflict" includes the following:

- (1) The hearing officer is related by blood or marriage to the complainant;

- (2) The hearing officer has a documented history of personal conflict with the complainant or the [corporation] authority; or
- (3) The hearing officer has some personal or financial interest in common with the complainant or the [corporation] authority.
- (f) The [corporation] authority shall review the list of hearing officers annually to determine whether new nominees are required. New nominees shall be selected in accordance with section 17-2021-12(a)(1).
[Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52, §966.55; HRS §356D-4) (Imp: 24 CFR §966.55; HRS §356D-4)

§17-2021-13 Escrow deposit. (a) Concurrent with filing a request for hearing pursuant to section 17-2021-11, and before a hearing is scheduled in any grievance, the complainant shall pay to the [corporation] authority the full amount of rent due and payable as of the first of the month and the full amount of rent for the current month. The complainant shall thereafter make a timely deposit of the amount of the monthly rent monthly to the [corporation] authority until the complaint is resolved by decision of the hearing officer. If the dispute involves the amount of rent which the [corporation] authority claims is due, the complainant shall specify what portion of the current rent is in dispute and the reasons therefor. The [corporation] authority shall hold the rent amount in dispute until the disposition of the grievance is final.

(b) The requirements in subsection (a) may be waived by the [corporation] authority for good cause shown by the tenant to the [corporation] authority, and unless so waived, the failure to make the payments shall result in a termination of the grievance procedure, provided that failure to make the payments shall not constitute a waiver of any right the

complainant may have to contest the [corporation's] authority's disposition of the complainant's grievance in any appropriate judicial proceeding. Such waivers shall be in writing with reasons therefore given. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.55; HRS §356D-4)

§17-2021-14 Scheduling of hearings. Upon complainant's compliance with sections 17-2021-11 and 17-2021-13, and selection of a hearing officer pursuant to section 17-2021-12, a hearing shall be scheduled promptly by the hearing officer for a time and place reasonably convenient to both the complainant and the [corporation] authority. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate official of the [corporation] authority. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.55; HRS §356D-4)

SUBCHAPTER 3

HEARING PROCEDURE

§17-2021-20 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer.

(b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

- (1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and rules of the [corporation] authority that are relevant to the hearing. Any document not made available after request with reasonable notice by the complainant may not be relied on by the [corporation]

- authority at the hearing;
- (2) The right to be represented by counsel or other person chosen as the complainant's representative;
 - (3) The right to a private hearing unless the complainant requests a public hearing;
 - (4) The right to present evidence and arguments in support of the complaint, to controvert evidence relied on by project management, and to confront and cross-examine all witnesses on whose testimony or information the project management relies; and
 - (5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the [corporation] authority fails to appear at the hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five business days or may make a determination that the party has waived the party's right to a hearing. Both the complainant and the [corporation] authority shall be notified of the determination by the hearing officer, provided that a determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the [corporation's] authority's disposition of the grievance in an appropriate judicial proceeding.

(e) The complainant must first show that the complainant is entitled to the relief sought and thereafter the [corporation] authority must sustain the burden of justifying the [corporation's] authority's action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to

admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer shall require the [corporation] authority, the complainant, counsel, and other participants or spectators to conduct themselves in orderly fashion. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the [corporation] authority may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of the transcript. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.56; HRS §356D-4)

§17-2021-21 Decision of the hearing officer.

(a) The hearing officer shall prepare a written decision, together with the reasons therefor, within ten business days after the hearing. A copy of the decision shall be sent to the complainant and the [corporation] authority. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the [corporation] authority and made available for inspection by a prospective complainant, the complainant's representative, or the hearing officer.

(b) The decision of the hearing officer shall be binding on the [corporation] authority which shall take all actions or refrain from any action, necessary to carry out the decision unless the [corporation] authority determines within ten business days of the written decision and promptly notifies the complainant of its determination, that:

- (1) The grievance does not concern the [corporation's] authority's action or failure to act in accordance with or involving the complainant's rental agreement or the [corporation's] authority's rules,

which adversely affect the complainant's rights, duties, welfare, or status; or

- (2) The decision of the hearing officer is contrary to applicable federal, state, or local law, Department of Housing and Urban Development regulations, or requirements of the annual contributions contract between Department of Housing and Urban Development and the [corporation] authority.

(c) A decision by the hearing officer or [corporation] authority in favor of the [corporation] authority or which denies relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to [a trial de novo] an administrative proceeding or judicial review in [any] judicial proceedings, which may thereafter be brought in the matter.

(d) If the complainant has requested a hearing on a complaint involving the [corporation's] authority's notice of proposed termination of the tenancy and the hearing officer upholds the [corporation's] authority's action to terminate the tenancy, the [corporation] authority shall not commence a new eviction proceeding until it has served a notice to vacate on the complainant. In no event shall the notice to vacate be issued prior to the decision of the hearing officer having been mailed or delivered to the complainant. The notice to vacate shall be in writing and shall specify that if the complainant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant and the complainant may be required to pay court cost and attorney fees. Unless so determined in the hearing, this section (d) shall not affect the validity and effectiveness of an existing eviction proceeding, notice of proposed termination, notice to vacate, and other notices served on the complainant by

the [corporation] authority prior to the complainant's actual submission of a written request for hearing pursuant to section 17-2021-11. [Eff 8/5/05; am and comp] (Auth: 24 CFR §966.52; HRS §356D-4) (Imp: 24 CFR §966.57; HRS §§356D-4, 356D-96, 356D-97; section (d) added pursuant to TILEIA v. CHANG, Civ. No. 79-0107)

SUBCHAPTER 4

EXPEDITED GRIEVANCE PROCEDURES

§17-2021-30 Applicability. (a) The expedited grievance procedure is established for any grievance concerning a proposed termination of tenancy [or eviction] that involves:

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the [corporation's] authority's public housing premises by other residents or employees of the [corporation] authority, or
- (2) Any drug-related criminal activity on or near such premises.

(b) The informal settlement of grievances pursuant to section 17-2021-10 is not applicable under the expedited grievance procedure. [Eff 8/5/05; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

§17-2021-31 Request for hearing - expedited grievance. The complainant shall submit a written request for grievance hearing to the project office within five business days from the date of the written notice of violation from management. The written request shall specify:

(1) The reasons for the grievance; and

(2) The action or relief sought.

[Eff 8/5/05; am and comp] (Auth: 24
C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R.
§966.55; HRS §356D-4)

§17-2021-32 Selection of hearing officer - expedited grievance. The hearing officer shall be selected as described in section 17-2021-12.

[Eff 8/5/05; am and comp] (Auth: 24
C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55;
HRS §356D-4)

§17-2021-33 Failure to request a hearing - expedited grievance. If the complainant does not request a grievance hearing as set forth under this expedited grievance procedure, then the [corporation's] authority's disposition of the grievance shall become final, provided that failure to request a grievance hearing shall not constitute a waiver of the complainant's right to contest the [corporation's] authority's disposition of the grievance in a court of competent jurisdiction.

[Eff 8/5/05; am and comp] (Auth: 24
C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R.
§966.55; HRS §356D-4)

§17-2021-34 Scheduling of hearings - expedited grievance. Once the complainant has requested a grievance hearing under this section, the hearing officer shall promptly schedule a hearing for a time and place reasonably convenient to both the complainant and the [corporation] authority. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the [corporation] authority.

[Eff 8/5/05; am and comp] (Auth: 24
C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R.
§966.55; HRS §356D-4)

§17-2021-35 Decision of the hearing officer - expedited grievance. The decision of the hearing officer shall be in accordance with section 17-2021-21." [Eff 8/5/05; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

2. Material, except sources notes, to be repealed is bracketed. New material is underscored.

3. Additions to source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 17-2021, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

Deputy Attorney General