

DEPARTMENT OF HUMAN SERVICES

Amendment and Compilation of Chapter 17-2021
Hawaii Administrative Rules

[DATE]

1. Chapter 17-2021, 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

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2021

GRIEVANCE PROCEDURE

Subchapter 1 General Provisions

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Informal Settlement

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~~[Subchapter 4 Expedited Grievance Procedure~~

~~§17-2021-30 Applicability~~

~~§17-2021-31 Request for hearing — expedited
grievance~~

~~§17-2021-32 Selection of hearing officer —
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~~§17-2021-33 Failure to request a hearing —
expedited grievance~~

~~§17-2021-34 Scheduling of hearings — expedited
grievance~~

~~§17-2021-35 Decision of the hearing officer]~~

Historical Note: This chapter is substantially based upon chapter 17-502 [Eff 01/01/81; am and comp 05/26/98; R 10/25/99] and chapter 15-183 [Eff 02/25/02; R 08/05/05]

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 to the Hawaii public housing authority. [Eff 08/05/05; am and comp 06/14/12; comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4)

§17-2021-2 Applicability. (a) [~~The grievance procedure~~] This chapter shall be applicable to all individual grievances as defined in section 17-2021-3 between the tenant of [~~the~~] a federally assisted public housing [~~projects~~] project and the authority, except as provided below.

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

(c) All grievances involving an act or omission of the authority relating to a rental agreement shall be commenced within ten (10) business days of such act or omission.

(d) All grievances involving the authority's rules shall be commenced within ten (10) 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 authority.

(f) The grievance procedure set forth in these rules shall not apply to state-aided public housing

projects[, ~~which include the projects of Hauiki, Puahala, Lokahi, Kawailehua (State), Kahale Mua (State), Kekumu Elua, Hale Po'ai, Halia Hale, Kamalu Ho'lulu, and Lai'ola~~].

(g) The failure to resolve a grievance under section 17-2021-4 shall result in further proceedings under chapter 17-2020.

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

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

~~[(i)]~~ (j) If there is a conflict between subsection ~~[(g)]~~ (h) and any other rule, subsection (h) shall control. [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §§356D-4, 356D-16) (Imp: 24 C.F.R. §966.51; HRS §356D-4)

§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]~~ authority or at the project management office.

"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 authority's action or failure to act in accordance with the individual tenant's rental agreement or the authority's rules 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.

"Tenant" means the lessee or the remaining head of household of any family residing in the authority's federally assisted public housing projects. [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §§356D-4, 356D-16) (Imp: 24 CFR §966.53; HRS §§356D-4, 356D-44)

SUBCHAPTER 1.1

TERMINATION OF RENTAL AGREEMENT - INFORMAL SETTLEMENT

§17-2021-4 Termination of rental agreement procedure [based on Public Law 104-120]. (a) [The authority may also terminate a]Termination of rental agreement shall be pursuant to [42 U.S.C. §1437 as it existed on October 3, 2011] this section and chapter 17-2020. [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 42 U.S.C. §1437; Pub. L. 104-120; HRS §§356D-4, 356D-16, 356D-98) (Imp: HRS §356D-92)

§17-2021-5 Informal settlement procedure. (a) Any request for an informal settlement meeting regarding a notice of proposed termination of rental agreement shall be personally presented, either orally or in writing, by the tenant to the project office of the project in which the tenant resides within ten (10) business days of receipt of the notice. At the time of the personal presentation, the complainant must explicitly notify the project office that the tenant is invoking the grievance procedure.

(b) The project office shall set a date and time to meet to discuss informal settlement of the grievance with the tenant.

(c) If the project office and tenant agree to a resolution, the agreement shall be set forth in writing and the proposed termination of the rental agreement shall be rescinded.

(d) If the matter is not informally resolved as provided in subsection (c), a summary of such discussion shall be prepared by the project management within five (5) business days of the meeting and a copy shall be delivered 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 inform the tenant that a hearing on the proposed termination of the rental agreement shall be conducted under chapter 17-2020.

(e) The informal settlement pursuant to subsection (a) is not applicable for any notice of proposed termination of rental agreement that involves:

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

In such cases, the notice of proposed termination shall inform the tenant that a hearing on the proposed termination of the rental agreement shall be conducted under chapter 17-2020. [Eff and comp]

(Auth: 42 U.S.C. §1437; Pub. L. 104-120; HRS §§356D-4, 356D-16, 356D-98) (Imp: HRS §356D-92)

§§17-2021-7 to 17-2021-9 (Reserved)

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.

(b) The project office shall set a date and time to meet to discuss informal settlement of the grievance with the tenant.

(c) If the project office and tenant agree to a resolution, the agreement shall be set forth in writing~~[7]~~ and the grievance shall be terminated.

~~[(b)]~~ (d) If the matter is not informally resolved as provided in subsection ~~[(a)]~~ (c), a summary of such discussion shall be prepared within five (5) business days of the meeting and ~~[one]~~ a copy shall be ~~[given]~~ delivered 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 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.54; HRS §356D-4)

§17-2021-11 Request for hearing. (a) The complainant shall submit a written request for a hearing to the authority's project office within ten (10) 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 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 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]~~ request an informal hearing in accordance with subsection (a), compliance with the [provision] provisions of subsection (a) may be waived by the hearing officer in writing with specific reasons given. If the authority and tenant instead agree to a resolution, in writing, the grievance shall be terminated. [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

§17-2021-12 Selection of hearing officer. (a) A grievance hearing shall be conducted by an impartial person or persons appointed by the authority after consultation with ~~[resident]~~ tenant organizations, as described below:

- (1) The authority and ~~[resident]~~ tenant organizations shall nominate a slate of impartial persons to sit as hearing officers. Such persons may include authority board members, 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 (20) persons, of whom at least two (2) shall be from each county.

- (2) The 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~~] tenant organizations. Written comments from the organizations shall be considered by the authority.

(c) The authority shall appoint the final list of nominees as hearing officers. The final list of hearing officers shall be provided to the [~~resident~~] tenant organizations. The 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 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 authority; or
- (3) The hearing officer has some personal or financial interest in common with the complainant or the authority.

(f) The 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

08/05/05; am and comp 06/14/12; am and
comp] (Auth: 24 C.F.R. §§966.52,
966.55; HRS §356D-4) (Imp: 24 C.F.R. §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 authority the ~~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]~~ due to the authority until the complaint is resolved by decision of the hearing officer. If the dispute involves the amount of rent which the authority claims is due, the complainant shall specify what portion of the current rent is in dispute and the reasons therefor. The 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 authority for good cause shown by the ~~[tenant]~~ complainant to the 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 authority's disposition of the complainant's grievance in any appropriate judicial proceeding. Such waivers shall be in writing with reasons therefore given. [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

§17-2021-14 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 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 authority. [Eff 08/05/05; am and comp 06/14/12; comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

§§17-2021-15 to 17-2021-19 (Reserved)

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]~~ that provides 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 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 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 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 (5) business days or may make a

determination that the party has waived [~~the party~~ their] right to a hearing. Both the complainant and the 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 authority's disposition of the grievance in an appropriate judicial proceeding.

(e) The complainant must first show that [~~the complainant is~~] they are entitled to the relief sought and thereafter the authority must sustain the burden of justifying the 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 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~~] maintain 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 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 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §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 (10) business days after the hearing. A copy of the decision shall be ~~[sent]~~ delivered to the complainant and the authority. A copy of the decision with all names and identifying references ~~[deleted]~~ redacted, shall also be maintained on file by the 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 authority which shall take all actions or refrain from any action necessary to carry out the decision unless the authority determines within ten (10) business days of the written decision, and promptly notifies the complainant of its determination, that:

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

(c) A decision by the hearing officer or authority in favor of the 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 an administrative proceeding or judicial review in judicial proceedings, which may thereafter be brought in the matter.

~~[(d) If the complainant has requested a hearing on a complaint involving the authority's notice of proposed termination of the tenancy and the hearing officer upholds the authority's action to terminate the tenancy, the 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 authority prior to the complainant's actual submission of a written request for hearing pursuant to section 17-2021-11.] [Eff 08/05/05; am and comp 06/14/12; am and comp] (Auth: 24 C.F.R. §966.52; HRS §356D-4) (Imp: 24 C.F.R. §966.57; HRS §§356D-4, 356D-96, 356D-97)~~

§§17-2021-22 to 17-2021-29 (Reserved)

[~~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 that involves:~~

- ~~(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the authority's public housing premises by other residents or employees of the 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 08/05/05; am and comp 06/14/12; R] (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 08/05/05; am and comp 06/14/12; R] (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 08/05/05; am and comp 06/14/12; R] (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 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 authority's disposition of the grievance in a court of competent jurisdiction.] [Eff 08/05/05; am and comp 06/14/12; R] (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 authority. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the authority.] [Eff 08/05/05; am and comp 06/14/12; R] (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 08/05/05; am and comp 06/14/12;~~

R] (Auth: 24 C.F.R. §966.52; HRS
§356D-4) (Imp: 24 C.F.R. §966.55; HRS §356D-4)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [DATE], and filed with the Office of the Lieutenant Governor.

Robert Hall, Chairperson
Board of Directors
Hawaii Public Housing Authority

APPROVED AS TO FORM:

Deputy Attorney General