



Committee: Committee on Housing
Hearing Date/Time: Monday, February 04, 2013, 8:45 a.m.
Place: Conference Room 229
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1116, Relating to Public Housing

Dear Chair Cabanilla and Members of the Committee on Housing:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1116, Relating to Public Housing, which seeks to use federal law to terminate tenancy or evict tenants from public housing without following proper grievance requirements.

Eliminating administrative requirements and grievance procedures will likely result in the violation of tenants’ constitutional due process rights and the eviction of innocent individuals. The current requirements appropriately balance public housing tenants’ constitutional rights with the needs of the Hawaii Public Housing Authority and should be maintained.

Furthermore, we should not be considering ways to make it easier to evict public housing tenants, some of our most vulnerable citizens, in this time of high and rising unemployment. Evicting these already low-income individuals will stretch our homeless resources to the breaking point. Hawaii would be better served by providing assistance and due process to individuals threatened with eviction.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society’s most vulnerable members are denied, everyone’s rights are imperiled.

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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

February 4, 2013 8:45 A.M.
Room 329, Hawaii State Capitol

In consideration of
House Bill No. 1116
Relating to Public Housing

Honorable Chair and Members of the House Committee on Housing, thank you for the opportunity to provide you with comments regarding House Bill 1116, relating to public housing.

The Hawaii Public Housing Authority (HPHA) strongly supports the enactment of this measure, which will exempt the HPHA from providing a grievance hearing where federal law allows for such an exemption. For example, if a stabbing incident were to occur, federal regulations would determine that there would not be a need for a grievance hearing and proceed with the eviction directly. However, under Section 356D-92 of the Hawaii Revised Statutes (HRS), the HPHA is required to provide a grievance hearing in all eviction actions.

There have been numerous occasions where some tenants have committed criminal acts that have put the health, safety, and lives of other tenants, and non-tenants at risk. Domestic violence has occurred multiple times at our Asset Management Projects. On one occasion, a tenant tried to run over his girlfriend twice with his car. On another occasion, a tenant got into a fight with his wife and proceeded to smash every window in the unit with a shovel. There have been tenants who have fired weapons on the property, and a case where a tenant attacked a non-tenant at the bus stop and continued the attack on the property. The Honolulu Police Department has even conducted drug raids on our units with guns drawn. The agency believes that these, and other serious criminal actions, do not need grievance hearings when executing eviction actions.

Section 356D-92, Hawaii Revised Statutes (HRS), requires the HPHA to provide a grievance hearing in all eviction actions involving the agency's federal low-income public housing program. This is largely consistent with the United States Department of Housing and Urban Development (HUD) regulations (24 C.F.R. part 966), and provides for an open, equitable, consistent process for the prosecution of evictions in most cases.

HUD regulations, however, also provide exceptions in limited circumstances where a public housing agency (PHA) may obtain a "due process determination" from HUD for certain crime related lease violations, and thereafter eliminate the requirement of the grievance hearing, proceeding with the eviction directly.

- (i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in §966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:
 - (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
 - (B) Any violent or drug-related criminal activity on or off such premises; or
 - (C) Any criminal activity that resulted in felony conviction of a household member.

- (iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

24 C.F.R. §966.51(a)(2).

HUD definitions indicate that the following will constitute "due process" as required for a due process determination:

(c) *Elements of due process* shall mean 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;
- (4) A decision on the merits.

24 C.F.R. §966.53(c).

Chapter 356D, part V, "Public Housing; Evictions" and chapter 521 (Residential Landlord-Tenant Code), part VI "Remedies and Penalties", provide that HPHA must process all grievance and eviction actions from the federal low-income public housing inventory through the agency's administrative processes, regardless of the type of lease violation involved. As a result, the eviction process is not as efficient as it could be.

This bill would amend two statutory sections, §356-D-92 and §521-7 HRS, and will permit the agency to process evictions judicially when a HUD due process determination is obtained. This will allow the agency to more quickly remove dangerous criminal tenants from public housing.

The HPHA appreciates the opportunity to provide the House Committee on Housing with the agency's position regarding H.B. No. 1116. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.