

**ACT 227**

S.B. NO. 331

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The process involved in evicting public housing tenants with serious or repeated violations of their rental agreements is slow and protracted. Up to eighteen months can elapse before the housing and community development corporation of Hawaii can evict a tenant from public housing. This protracted process hurts not only the State, which incurs revenue losses when tenants involved in eviction procedures stop paying rent, but also the majority of public housing tenants who abide by their leases and the needy families who are waiting to be placed in public housing.

The purpose of this Act is to streamline the administrative eviction process without impairing the tenant's due process rights.

SECTION 2. Section 201G-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Tenant’ means any person occupying a room, dwelling accommodation, living quarters, or space in any public housing project, under or by virtue of any tenancy lease, license, or permit under or from the corporation.”

SECTION 3. Section 201G-33, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§201G-33[] Delinquent accounts.** (a) Notwithstanding section 40-82, the corporation, with the approval of the attorney general, may delete from its accounts receivable records delinquent accounts for vacated units within federal low rent public housing projects that have been delinquent for at least ninety days.

(b) The delinquent accounts may be assigned to a collection agency.

(c) Before the corporation seeks eviction of a tenant due to delinquency in payment of rent, the corporation shall comply with the procedures set forth in section 201G-52(b) before proceeding with the eviction hearing.”

SECTION 4. Section 201G-52, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-52 Termination and eviction.** (a) Except as [hereinafter] otherwise provided, the corporation may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease rental agreement, permit, or license;
- (3) Violation of any of the rules of the corporation;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the corporation.

(b) When any tenant has been delinquent in payment of rent, the corporation, either directly or through its managing agent, shall provide the tenant with a written notice no later than forty-five days from the date of delinquency that shall inform the tenant of the delinquency and schedule a meeting between the tenant and the corporation or its agent. The written notice shall:

- (1) Inform the tenant that continued delinquency shall result in the tenant’s eviction;
- (2) Inform the tenant of the tenant’s right to apply for an interim adjustment in rent;
- (3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;
- (4) Provide the tenant with a sample letter for demanding a grievance hearing;
- (5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the corporation or its agent to discuss the delinquency in rent; and
- (6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the corporation or the corporation’s agent before the meeting time to reschedule the meeting.

(c) At the meeting described in subsection (b), the corporation or its agent shall:

- (1) Inquire into the cause of the tenant's delinquency and offer suggestions that the corporation may feel appropriate, if any, to address the causes of delinquency;
- (2) Consider whether a reasonable payment plan is appropriate for the tenant's situation and, if appropriate, offer a payment plan to the tenant; and
- (3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).

(d) The corporation shall develop a checklist outlining all of the requirements listed in subsection (c). The corporation or its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.

(e) If the tenant fails to attend or reschedule the meeting provided for in subsection (c), the corporation shall provide the tenant with a second written notice. The notice shall inform the tenant that:

- (1) The corporation shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the corporation's written notice issued pursuant to subsection (b);
- (2) The tenant has thirty days from receipt of the second written notice to request a grievance hearing; and
- (3) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53.

(f) If the tenant meets with the corporation as provided for in subsection (c), the corporation shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The corporation shall notify the tenant of such decision in writing. If the corporation decides to proceed with an action to terminate the tenancy, the corporation shall further inform the tenant in the same written notice that:

- (1) The tenant has thirty days from receipt of this notice to request a grievance hearing; and
- (2) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53."

SECTION 5. Section 201G-53, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§201G-53~~]]~~ Hearings.** (a) Where the corporation proposes to terminate a lease, rental agreement, permit, or license, and evict a tenant, licensee, or other occupant under section 201G-52, a hearing shall be held to determine whether cause exists for the action. The corporation shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The written notice shall further inform the tenant, licensee, or other occupant of the right to inspect and copy the tenant file at the tenant's expense before the hearing is held. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing~~[-]~~ in accordance with the requirements of a contested case hearing provided for under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the agency that is required pursuant to chapter 91.

(b) Hearings shall be conducted by ~~[a trial examiner or]~~ an eviction board appointed by the corporation. The eviction board shall consist of not ~~[less] fewer~~ than three persons. ~~Trial examiners or members of the board may be contract hires or employees of the corporation. At least one trial examiner or board, hereinafter called the hearing examiners,~~ of which one member shall be a tenant. At least one eviction board shall be established in each county of the State. The findings, conclusions, decision, and order of the [hearing examiners] eviction board shall be final unless an appeal is taken as hereinafter provided.

(c) The ~~[hearing examiners]~~ eviction board shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the ~~[hearing examiners,]~~ eviction board, or of any subpoena issued by ~~[them,]~~ the eviction board, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the ~~[hearing examiners,]~~ eviction board, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 6. Section 201G-55, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§201G-55** **Eviction.** (a) If it is proven to the satisfaction of the ~~[hearing examiner]~~ eviction board that there is cause to terminate a lease, rental agreement, permit, or license and evict the tenant, licensee, or other occupant, ~~[a writ of possession shall be issued by the corporation.]~~ the corporation shall provide the tenant with a written notice of the corporation’s decision to terminate the lease. The notice shall inform the tenant that a writ of possession may be issued by the corporation within ten days. The notice shall also inform the tenant of whether the grounds for eviction are considered curable, and if so, what the tenant must do to remedy the grounds, by when it must be done, and what the tenant must do to document for the corporation that the grounds have been remedied.

(b) When the grounds for termination of the lease may be cured by the occupant, licensee, or other occupant, the tenant shall have ten days from receipt of the notice provided for in subsection (a) to cure such grounds. If the grounds are cured within the ten-day period, no writ of possession may be issued. If the condition is not cured within the ten-day period, the corporation may issue a writ of possession forthwith.

(c) The corporation may adopt rules to define curable and non-curable grounds for eviction pursuant to chapter 91. The corporation may consider a tenant’s history in determining non-curable grounds for eviction. A tenant’s history may include chronic or consistent delinquency, or repeated violations of the terms of the rental agreement.

~~[(b) The order of eviction shall not be enforced for five days after its entry.]~~  
(d) Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by the sheriff, or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the corporation in full possession thereof.

~~[(e)]~~ (e) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises incident to the person’s holding, may be removed from the premises and stored by the corporation. If the action is taken, the corporation shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same,

and the corporation is authorized to sell or otherwise dispose of the property, if unclaimed after thirty days.’’

SECTION 7. Section 201G-56, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)201G-56]~~ **Ex parte motion.** If a tenant or licensee cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the ~~[hearing-examiners,] corporation,~~ service to the tenant or licensee may be made according to the special order of the ~~[hearing-examiners,] corporation.~~ The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.’’

SECTION 8. Section 201G-54, Hawaii Revised Statutes, is repealed.

SECTION 9. The housing and community development corporation of Hawaii shall submit a report to the legislature no later than twenty days before the convening of the regular session of 2006 that contains the following information:

- (1) The annual and total numbers of public housing evictions, categorized according to the general nature of the lease violation or grounds for eviction;
- (2) The annual and total numbers of potential evictions that were averted due to the curing of the lease violation;
- (3) For each category of eviction in paragraph (1), the annual average length of time of the eviction proceeding, from the date written notice is first provided to the tenant of a rent delinquency (for nonpayment cases) or of the corporation’s intent to terminate the lease, to the date of execution of the writ of possession;
- (4) Findings as to whether the procedures implemented under this Act have positively or negatively affected the eviction process or impacted upon the due process rights of tenants; and
- (5) Proposed legislation to extend or repeal the sunset, or that improves upon the eviction process while protecting tenants’ rights.

SECTION 10. This Act shall continue to apply to all eviction proceedings commenced hereunder, but pending on July 1, 2007, and all procedures established under this Act shall remain in effect until the completion of the pending proceedings.

SECTION 11. All rules, policies, procedures, guidelines, and other material adopted or developed by the corporation to implement provisions of the Hawaii Revised Statutes that are amended or repealed by this Act, shall remain in full force and effect until amended or repealed by the corporation pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 12. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval and shall be repealed on July 1, 2007; provided that sections 201G-33, 201G-51, 201G-52, 201G-53, 201G-54, 201G-55, and 201G-56, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.