

Legal Opinion: GCH-0041

Index: 2.245
Subject: Lease and Grievance (Public Housing)

February 10, 1992

Mr. Henry N. Gillman
Assistant County Attorney
Metropolitan Dade County, Florida
Suite 2810
Metro-Dade Center
111 N.W. 1st Street
Miami, FL. 33128-1993

Dear Mr. Gillman:

Your letter of January 9, 1992, asks our opinion on whether denial of a public housing tenant's request for transfer to another public housing unit is a grievable adverse action, and whether such denial is subject to the notice requirements and grievance procedures under the HUD lease and grievance regulations (24 CFR Part 966).

The HUD rule provides that the public housing agency grievance procedure is applicable to "all individual grievances" (§ 966.51(a)). "Grievance" includes any dispute with respect to PHA "action or failure to act" in accordance with the lease or PHA regulations which adversely affects the rights of an individual tenant (§ 966.53(a)). A tenant's allegation that the tenant has a right to transfer under the lease or PHA regulations, and that the right was violated by the PHA's refusal to grant the requested transfer, is grievable. There is a dispute respecting the PHA's failure to act (denial of transfer request), the failure adversely affects the individual tenant, and the tenant alleges that the failure violated the tenant's right to a transfer under the lease or PHA regulations. We note that the HUD lease and grievance procedure provisions which define a "grievance" subject to the grievance hearing procedures were not amended in the recent rulemaking, and have remained unchanged since initial promulgation of the rule in 1975.

Under recent amendments of the HUD rule, the public housing lease must provide that a PHA is obligated to notify the tenant of the specific grounds for a proposed adverse action (966.4(e)(8)(i)) (amendments published October 11, 1991, 56 Federal Register 51560). The notice must inform the tenant of the right to request a hearing (966.4(e)(8)(ii)(A)). For a PHA's denial of the tenant's request for action by the PHA, such as the tenant's request for transfer to another unit, the PHA must give notice of the proposed adverse action.

Although the denial of a transfer request is grievable, this does not mean that the tenant has a right to the requested transfer. Rather, it is the responsibility of the hearing officer to determine through the grievance hearing whether the

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transfer denial violates a tenant transfer right under the lease or PHA regulations. HUD required lease provisions only require the PHA to offer alternative accommodations in limited circumstances: where the unit is dangerous and necessary repairs cannot be made in a reasonable time (966.4(h)). It is also possible that the lease form or regulations of an individual PHA may grant tenant a right to transfer in other circumstances.

Very sincerely yours,

Michael H. Reardon
Assistant General Counsel
Assisted Housing Division