

Appendix I: Due Process Checklist

Federally Subsidized Housing Programs

(Please review both HUD directives and CARES Act provisions carefully and be aware of subsequent updates.)

- Is the tenant living or participating in a federally-subsidized rental program covered under the CARES Act or properties covered by HUD directives?
 - Landlord/owner affidavit?
- If NO, continue with review of due process requirements under I.C. § 32-31, *et seq.* and contained in the lease agreement (if applicable)
- If YES, proceed with the following inquiries:
 - Which federally-subsidized program?
 - Most common: Public Housing Program, Section 8 Housing Choice Voucher Program, Low-Income Housing Tax Credit program (“LIHTC”) / Section 42
 - Was the notice of claim for possession filed on or before December 31, 2020 for HUD directive properties, or on or before August 24, 2020 for CARES Act properties?
 - If yes, is the cause of action based on nonpayment of rent (either on the notice of claim form itself, or may require evidence from the parties)?
 - If yes, case must be dismissed
 - If no, continue with inquiry below
 - If no, did Landlord/Owner provide thirty (30) day notice to tenant *before* filing the notice of claim?
 - If yes, was the notice provided *on or after* December 31, 2020 for HUD properties, or after July 24, 2020 for CARES Act properties?
 - If no, violates CARES Act protections and must be dismissed
 - If yes, case may continue
 - If claim is not based on nonpayment of rent, determine the following:
 - Are there any notice requirements for the federally-subsidized program at issue?
 - Was the notice sufficient in content and was it properly served upon the tenant?
 - *Public Housing*
 - Notice requirement
 - Notice must contain:
 - Grounds for termination
 - Tenant’s right to respond
 - Tenant’s right to examine PHA documents
 - Right to request a grievance hearing

- Timing of Notice:
 - 14 days for nonpayment of rent
 - “Reasonable time” for eviction based on criminal activity
 - 30-day notice for all other cause
- Service of Notice:
 - Personal service on adult member of tenant’s household; OR
 - By first-class mail
- *Section 8 HCVP*
 - Notice Requirement
 - Notice must contain:
 - Good cause
 - Notice must list specific grounds for termination
 - Statement that tenant has the right to discuss the termination with the landlord within 10 days
 - Timing and service governed by Indiana law
 - Note: Landlord/Owner **must** also provide a copy of the termination notice to the PHA at the same time that it is provided to the tenant
- *LIHTC / Section 42*
 - No written notice requirement
 - Good cause required to evict or to not renew the lease
 - Note: for most federally subsidized programs **good cause** is required to terminate a tenancy
 - If good cause is not found and/or if Landlord/Owner fails to abide by a program’s notice requirement, then dismissal of the eviction action is appropriate

Indiana (private landlord-tenant)

- Did the landlord take any steps to **initiate** the eviction action during the moratorium period (March 16, 2020 through August 14, 2020)?
 - Examples of “initiating” eviction action: providing notice to quit during the moratorium period as provided by applicable law, taking self-help measures to take possession of rental property, filing a notice of claim for possession during the moratorium period.