



Addressing Discriminatory Housing Barriers For Victims of Domestic Violence

A Toolkit for Attorneys

Domestic violence is a leading cause of homelessness for women and children. In Pennsylvania, local nuisance ordinances that discriminate against domestic violence victims add to the problem. In one case, a private landlord evicted Emma, a victim of domestic violence, after she called police for a third time in one year. She called because her abusive ex-boyfriend broke into her apartment. While the landlord was sympathetic, he was forced to evict her or face fines pursuant to a local nuisance ordinance. As a result of her eviction, the local public housing authority terminated her Section 8 voucher.

Federal and state laws provide protections and remedies that could have protected and preserved Emma's housing.

This toolkit draws from the Pennsylvania eviction process and state and federal laws, including the:

- Pennsylvania Human Relations Act
- Violence Against Women Act
- Fair Housing Act
- Pennsylvania and United States Constitutions

This toolkit provides information, tips, and referrals to:

- **Establish grounds to challenge an actual or threatened eviction**
- **Obtain or prevent the loss of public housing or assistance**
- **Institute a federal or state action for damages on behalf of your client**

Should I Use This Toolkit?

A. Protection From Eviction – Discriminatory Nuisance Ordinances:

- ☐ Is your client afraid she will be evicted if she calls the police?
- ☐ Has your client received an eviction notice because police were called to her home in response to domestic violence?

If you CHECKED EITHER question in A, see Section I.

B. Protection From Loss of Public Housing Assistance – Federal Law:

- ☐ Has your client applied for, or is your client a current or former tenant or assistance recipient in **any** of the programs below:
 - Public Housing
 - Section 8 Housing Choice Voucher
 - Project-Based Section 8 Developments
 - Supportive Housing for the Elderly (Section 202) / (12 U.S.C. § 1701q)
 - Supportive Housing for Persons with Disabilities (Section 811) / (42 U.S.C. § 8013)
 - Housing Opportunities for Persons with AIDS (42 U.S.C. § 12901)
 - McKinney-Vento Homeless Programs (Title IV) (42 U.S.C. § 11360):
 - Emergency Shelter Grant Program
 - Supportive Housing Demonstration Program
 - Supplemental Assistance for Facilities to Assist the Homeless
 - Section 8 Single Room Occupancy / Moderate Rehabilitation
 - HOME Investment Partnerships Program (42 U.S.C. § 12741)
 - Below Market Interest Rate Program (Section 221(d)(3))
 - Section 236 Program (12 U.S.C. § 1715z-1)
 - Rural Housing Programs (42 U.S.C. §§ 1484-86, 1490, 1490p-2)
 - Low Income Tax Credit Properties (IRS Code, Section 42)
- ☐ Is/was your client or someone in your client's household a victim of domestic violence, dating violence, sexual assault or stalking?
- ☐ Did a public housing agency (PHA) or subsidized housing provider
 - Deny housing assistance for a reason related to your client's abuse OR
 - Initiate, threaten to initiate, or follow through with an eviction or termination of your client's housing assistance for a reason related to her abuse or because of something the abuser did?

If you CHECKED ALL of the questions in B, see Section II.

C. Remedies For Discrimination

If your client fits within either section above, she may be able to pursue federal and state anti-discrimination remedies. See Section III.

Toolkit Goal

The goal of this technical assistance toolkit is to provide attorneys who represent victims of domestic violence with the necessary tools and appropriate referrals to address housing issues that may arise as a result of the client's victimization.

The toolkit provides tools to:

- Challenge decisions of private and public landlords, housing agencies, and public assistance providers to terminate a victim's tenancy or rental assistance
- Inform victims about their legal rights
- Engage in systems advocacy to remove current housing barriers and prevent new barriers from arising in the future

A Note on the Use of Gender-Specific Pronouns:

An overwhelming majority of victims of domestic violence, dating violence, sexual assault and stalking are women. Moreover, this toolkit is based in part on the premise that evicting a victim of domestic violence as a result of the violence she endured constitutes unlawful gender discrimination because domestic violence disproportionately impacts women. This argument may not be available for male victims. Thus, the toolkit refers to victims as women.

Protections pursuant to the Violence Against Women Act outlined in this toolkit are gender neutral, however, and apply equally to both male and female victims of domestic violence, dating violence, sexual assault and stalking. Also, some jurisdictions in Pennsylvania, such as Philadelphia, may have laws that explicitly prohibit discrimination against victims of domestic violence, in which case both men and women would be covered.

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Pennsylvania Coalition Against Domestic Violence, *Addressing Discriminatory Housing Barriers For Victims of Domestic Violence: A Resource Toolkit for Attorneys* (2012), available at www.pcadv.org.

Overview of Potential Strategies

There are many avenues that an attorney may explore to assist a victim with a housing issue. Regardless of the strategy a victim chooses, her **SAFETY** must be of paramount concern.

Does she have a strategy for staying safe?

Does she have a place to stay if her own home is not safe?

Has she contacted the local domestic violence service provider?

As a matter of first priority, attorneys should provide victims with information about how to contact the local domestic violence program and what services that program offers, such as safety planning, shelter, counseling, and advocacy.

To find a local domestic violence program, call the National Domestic Violence Hotline, 1-800-799-7233, or visit <http://www.thehotline.org>.

To discuss the strategies that may be most effective for your case, please contact PCADV or the ACLU Women's Rights Project.

PCADV - 717-671-4767

ACLU Women's Rights Project - 212-519-7871

See page 6 for a full list of contact information and referrals.

The following list offers a brief summary of various strategies an attorney could employ in defense of a victim of domestic violence who is or has been threatened with eviction or who stands to lose her public housing or assistance. Each section of this toolkit provides an in-depth review of the strategies, as well as resources, sample forms, and draft documents available to accomplish each strategy.

- **Protect Against Eviction Based on Discriminatory Housing Nuisance Ordinances**
 - Attend the victim's eviction hearing in Magisterial District Court (or Philadelphia Municipal Court)
 - Stay an order of eviction by appealing the victim's eviction to the Pennsylvania Court of Common Pleas
 - Send a demand letter to the landlord, housing manager, mayor, solicitor or city attorney, and the chief of police
- **Employ Violence Against Women Act (VAWA) Protections**
 - Send a demand letter to the Public Housing Agency or other affiliated individual requesting reconsideration or reinstatement of the victim's benefits
 - Request that the abuser be removed from the housing assistance voucher or lease
 - Seek an emergency transfer of benefits that would allow the victim to move to a safer location
- **Pursue Housing Discrimination Remedies**
 - File an administrative complaint with the Pennsylvania Human Relations Commission or the Fair Housing and Equal Opportunity Office of the U.S. Department of Housing and Urban Development
 - File a civil complaint in federal or state court on behalf of the victim, or explain how the victim can file the claim *pro se*
- **Engage in Systems Advocacy**
 - Send an educational letter to the mayor, solicitor, and chief of police
 - Work with the city council or other administrative body to pass legislation specifically protecting victims of domestic violence

Referrals

National and Statewide Agencies

ACLU of Pennsylvania

313 Atwood Street
Pittsburgh, PA 15213
412-681-7736

Sara Rose, Staff Attorney
srose@aclupa.org
<http://www.aclupa.org>

ACLU Women's Rights Project

125 Broad Street, 18th Floor
New York, NY 10004-2400
212-519-7871

Sandra Park, Staff Attorney
spark@aclu.org
<http://www.aclu.org/fairhousingforwomen>

Pennsylvania Coalition Against Domestic Violence

3605 Vartan Way, Ste. 101
Harrisburg, PA 17110
717-671-4767

Laurie Baughman
lbaughman@pcadv.org
<http://www.pcadv.org>

Regional Agencies

Western Region:**Community Justice Project of Pennsylvania**

<http://www.communityjusticeproject.org/>
Pittsburgh, PA 15219
412-434-6002
866-482-3076
Kevin Quisenberry, Atty
kquisenberry@cjplaw.org

Fair Housing Partnership of Greater Pittsburgh

<http://www.pittsburghfairhousing.org/>
Pittsburgh, PA
412-391-2535
Peter Harvey, Exec. Dir.
peter@pittsburghfairhousing.org

Neighborhood Legal Services

<http://www.nlsa.us/>
Pittsburgh, PA
412-255-6700
Eileen Yacknin,
Litigation Director
yacknine@nlas.us

Middle Region:**Community Justice Project of Pennsylvania**

<http://www.communityjusticeproject.org/>
Harrisburg, PA
800-322-7572

Eastern Region:**Community Legal Services**

<http://www.clsphila.org/>
Philadelphia, PA
19102-2505
215-981-3700
Rachel Garland,
Staff Attorney
RGarland@clsphila.org

Table of Contents

| | |
|---|-----------|
| Should I Use This Toolkit?..... | 2 |
| Toolkit Goal | 3 |
| Overview of Potential Strategies | 4 |
| Referrals | 6 |
| Table of Contents | 7 |
| PART I: Discriminatory Nuisance Ordinances | 9 |
| Legal Overview: Discriminatory Nuisance Ordinances | 10 |
| Sample Nuisance Ordinance | 11 |
| Defending Against an Eviction: <i>Procedure, Defenses, and Counterclaims</i> | 14 |
| Samples | 25 |
| Questionnaire & Screening Tool..... | 25 |
| Demand Letter to Management Company or Private Landlord..... | 28 |
| Demand Letter to Local Officials | 30 |
| Landlord / Tenant Complaint Form..... | 32 |
| Civil Complaint Form | 34 |
| <i>Nunc Pro Tunc</i> Petition..... | 36 |
| Notice of Appeal | 38 |
| Answer to Landlord Complaint in Court of Common Pleas | 39 |
| PART II: Violence Against Women Act (VAWA) Housing Protections | 43 |
| Legal Overview: <i>Violence Against Women Act (VAWA) Housing Protections</i>..... | 44 |
| Using VAWA To Appeal a Decision of the Housing Authority | 53 |
| Samples | 60 |
| Questionnaire & Screening Tool..... | 60 |
| HUD Certification Form 50066: <i>Certification of Domestic Violence, Dating Violence, or Stalking [Public Housing & Section 8 Vouchers]</i> | 66 |
| HUD Certification Form 91066: <i>Certification of Domestic Violence, Dating Violence, or Stalking [Project-Based Section 8]</i> | 68 |
| Request to Stop Eviction/Removal of Benefits | 70 |

| | |
|---|------------|
| Request to Reinstate Public Housing Benefits | 72 |
| Request for Emergency Public Housing Transfer | 74 |
| Request to Allow Victim to Retain Housing Voucher..... | 76 |
| Request for Hearing to Allow Victim to Retain Voucher | 78 |
| PART III: Housing Discrimination Remedies – State & Federal Relief | 80 |
| Legal Overview: <i>Pennsylvania Human Relations Act, Fair Housing Act and Federal Court Complaints</i> | 81 |
| Samples | 88 |
| Pennsylvania Human Relations Act Complaint Form..... | 88 |
| Fair Housing Act Complaint and Instructions | 94 |
| Federal Civil Complaint | 101 |
| PART IV: Systems Advocacy | 107 |
| Systems Advocacy: <i>Strategies and Allies Overview</i> | 108 |
| Samples | 112 |
| Education Letter to Local Officials: Nuisance Ordinance | 112 |
| Demand Letter to Local Officials: Nuisance Ordinance..... | 114 |
| Resources | 117 |
| <i>Landlords: Does Your City or State Have a Nuisance or Crime-Free Ordinance?</i> | 117 |
| PART V: Additional Resources | 118 |

PART I: DISCRIMINATORY NUISANCE ORDINANCES

Legal Overview: Discriminatory Nuisance Ordinances

Nuisance ordinances take several different forms and may also be referred to as “disorderly” or “disruptive house” laws. Regardless of what form or name they take, they have at least one thing in common: when applied, these ordinances put victims of domestic violence and stalking at grave risk of harm, either by evicting the victim from stable housing or by deterring victims from accessing the police protection they need.

Tenant Fines:

A tenant-based ordinance requires the caller to pay a sum of money for every subsequent call to the police after exceeding a predetermined number of calls within a certain time period.

Landlord Abatement / Eviction:

Landlord-based ordinances require the landlord to evict a tenant who makes a predetermined number of calls to police within a specific period of time.

Even though a landlord may not want to evict the tenant, many ordinances require the landlord to evict or be penalized with a fine or loss of her or his rental license or certificate.

Crime-Free Ordinances:

“Crime-Free Rental Housing Ordinances” are designed to force eviction of tenants who repeatedly commit crimes, such as drug dealing or gang related crimes. Unfortunately, domestic violence victims may be included in this category of targeted tenants if either the abuser or the victim was charged with a crime such as assault or disorderly conduct at the residence. The tenant may receive an eviction notice even though she was the victim, not perpetrator, of the crime.

Any ordinance that imposes a negative consequence on a tenant for contacting police puts victims of domestic violence, dating violence and stalking at grave risk of harm.

If the victim is a subsidized housing tenant living in public housing, Section 8 project-based housing or Section 8 voucher housing, her right to housing is protected under the Violence Against Women Act (VAWA). VAWA is a federal law that **supersedes any and all local ordinances**. Under VAWA, a subsidized housing tenant cannot be evicted for incidents of actual or threatened domestic violence, dating violence, or stalking, or for actual or threatened criminal activity related to domestic violence, dating violence, or stalking.

Sample Nuisance Ordinance

***Excerpted from Berks County, City of Reading, Bill No. 28, 2007
Ch. 11, Housing – Rental.***

§ 11.102 – Definitions

Disruptive Conduct – Any form of conduct, action, incident, or behavior perpetrated, caused or permitted by any occupant or visitor of a rental unit that is so loud, untimely (as to hour of the day), offensive, riotous, or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises, or causes damage to said premises such that a report is made to a police officer and/or a public officer complaining of such conduct, action, incident, or behavior. It is not necessary that such conduct, action, incident or behavior constitute a criminal offense, nor that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a public officer or a police officer shall investigate and make a determination that such did occur, and keep written records, including a disruptive conduct report, of such occurrences. The tenant and the owner, operator, responsible agent or manager shall be notified of such occurrences, in writing.

§ 11-114 – Owner and Occupant Duties

B. Occupant Duties

...

The occupant(s) shall conduct themselves and require other persons including, but not limited to, guests on the premises and within their rental unit with their consent, to conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises by others and that will not disturb the peaceful enjoyment of adjacent or nearby dwellings by people occupying the same.

The occupant(s) shall not engage in, nor tolerate, nor permit others on the premises to cause damage to the rental unit or engage in disruptive conduct, or other violations of [this ordinance or other city codes or applicable state law].

§ 11-124 – Disruptive Conduct

A. Investigation and Report of Disruptive Conduct

Police officers or public officers shall investigate alleged incidents of disruptive conduct. They shall complete a disruptive conduct report upon a finding that the reported incident constitutes disruptive conduct as defined herein. The information filed in said report shall include, if possible, the identity of the alleged perpetrators of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct described on the prescribed form. A copy of the disruptive conduct report shall be given or mailed to the occupant and mailed to the owner and local responsible agent within 10 working days of the occurrence of the alleged disruptive conduct.

B. Appeals

The occupant, owner or local responsible agent shall have 10 working days from the date of receipt of a disruptive conduct report to appeal the contents of said disruptive conduct report. The appeal shall be made in writing and submitted to the Manager of the Codes Enforcement Division. An appeal of the third disruptive conduct report within a 12-month period shall stop the eviction proceedings against the occupants until the appeal is resolved, only if the eviction proceedings were a direct result of the third disruptive conduct report.

C. Eviction

After 3 disruptive conduct incidents in any 12-month period by an occupant documented by disruptive conduct reports, the owner or local responsible agent shall have 10 working days from the date of his/her receiving the notice to begin eviction proceedings against the occupants. This paragraph is not intended to limit or inhibit the owner or local responsible agent's right to initiate eviction actions prior to the third disruptive conduct incident.

D. Suspension or Revocation of Rental Permit

Failure of an owner of [sic] local responsible agent to take action required in subsection C above will result in the commencement of the process to suspend a Rental Permit per the process established herein, notwithstanding any other requirements therefor [sic].

E. Reinstatement of Rental Property

The rental unit involved shall not have its Rental Permit reinstated until the reinstatement fee is paid and the disruptive occupants have been evicted, the Housing Board of Appeals has ruled in the occupant's favor, the Housing Board of Appeals has ruled in the owner's favor but has not ordered the eviction of the occupant(s), or the occupants have filed an appeal to a higher court thereby preventing their eviction. Notwithstanding this subsection, if there are points assessed against the owner per the provisions of this Ordinance which require suspension or revocation, a Rental Permit shall not be reinstated until compliance with the requirements therefor [sic] have occurred.

F. Reoccupation

The disruptive occupants, upon eviction, shall not reoccupy any rental unit on the same premises involved for a period of at least one (1) year from date of eviction.

G. Report Against All Occupants

The content of the disruptive conduct report shall count against all occupants of the rental unit. The content of the disruptive conduct report shall not count against all occupants of the rental unit if the complaint is initiated by one of the rental unit occupants.

H. Maintenance of List of Evicted Occupants

The Codes Enforcement Office shall maintain a list of the names of all occupants evicted as a result of the preceding paragraph. The names shall remain on the list for a period of five (5) years.

I. Appeals

Any person aggrieved by any decision of a police officer or public officer in regard to a disruptive conduct report or the revocation of a rental permit resulting therefrom may appeal to the Housing Board of Appeals. Such appeal must be filed with the appropriate fee with the Manager of the Codes Enforcement Division in writing, within 10 working days from the date of receipt of the Disruptive Conduct Report or notice of revocation.

Defending Against an Eviction: *Procedure, Defenses, and Counterclaims*

Introduction:

Housing discrimination issues typically arise in the context of eviction cases, in which tenants reveal unfair or discriminatory treatment as they attempt to save their housing. Therefore, it is imperative that attorneys are able to recognize basic landlord-tenant issues in addition to housing discrimination issues because the two are so often intertwined. The tenant's housing may be preserved using pretrial objections and available defenses, deferring the more long-term adjudication of the discrimination issues for the administrative or judicial process.

If the victim is a subsidized housing tenant living in public housing, Section 8 Project-based housing or Section 8 voucher housing, her right to housing is protected pursuant to the Violence Against Women Act, a federal law that supersedes any local nuisance ordinance. For more information about VAWA protections, see Section II of this toolkit.

The following procedures and defenses apply to evictions more generally; however, it is important to keep in mind that *this document is not an exhaustive overview of landlord-tenant law in Pennsylvania*. Attorneys are strongly urged to consult with a colleague or seek out a referral for an attorney who is experienced in landlord-tenant proceedings before undertaking representation of a client with housing issues. See page 6 for referrals.

Magisterial District Court (or Philadelphia Municipal Court) practices may vary, depending on the jurisdiction. Be sure to learn the applicable local rules before you begin representation.

In general there are three categories of eviction cases:

- non-payment of rent,
- breach of the lease, or
- holdover/termination of term (retention of the property by the tenant after the tenancy has been terminated).

Cases of eviction pursuant to a nuisance ordinance will likely present as either breach of lease or holdover, depending on the tenant's response to the eviction and the timing of the process.

Pennsylvania Eviction Law and Procedure

Applicable Law and Procedure

- Pennsylvania Landlord and Tenant Act of 1951, 68 P.S. § 250.101 *et seq.*
- Manufactured Home Community Rights Act / Mobile Home Park Rights Act (MHPRA), 68 P.S. § 398.1 *et seq.*
 - *Note: the MHPRA is supplemental to the Landlord Tenant Act. For the MHPRA to apply, the tenant must own the mobile home but lease space in a mobile home park.
- Plain Language Consumer Contract Act, 73 P.S. § 2201 *et seq.*
- Implied Warranty of Habitability, *Pugh v. Holmes*, 405 A.2d 897 (Pa. 1979).
- Rules of Civil Procedure for Magisterial District Judges (MDJ Rules),¹
- *Rule 501-521 (Actions for the Recovery of Possession of Real Property)*

Pre-Complaint Requirements for Eviction

Notice to Vacate (Notice to Quit)²

Before the landlord can evict the tenant or file a complaint, the landlord must provide the tenant with a *clear and unequivocal* notice to vacate *within the legal timeframe for the alleged breach or violation of the lease*.³

Waiver of Notice to Vacate

If there is a written lease, read it carefully for any clause purporting to waive the notice to vacate requirement. The tenant may be able to challenge the waiver of notice under contract law, invoking arguments such as contract of adhesion, unfair trade practices, or unconscionability. The Plain Language

If notice is not validly waived and the landlord fails to establish that proper notice was given, the tenant's attorney should make a motion to dismiss for lack of subject matter jurisdiction.

Consumer Contract Act may also apply.⁴ Even if the notice to quit was validly waived, the landlord must still proceed in court. Self-help eviction is not permitted.⁵

¹ In Philadelphia, the Municipal Courts handle landlord/tenant issues. However, Philadelphia Municipal Courts are subject to the same rules and procedures as the Magisterial District Courts. Therefore, in the interest of efficiency, the remainder of this outline will refer only to Magisterial District Courts.

² Note: Notice to Vacate is interchangeable with Notice to Quit.

³ The statutory timeframe for serving notice to quit varies depending on the basis of the eviction. See 68 P.S. §§ 250.501, 398.3.

⁴ The Plain Language Consumer Contract Act essentially requires that all consumer contracts including leases be easily understandable and legible, and contain a separate statement acknowledging any waivers of consumer rights. See 73 P.S. §§ 2201, 2205.

⁵ See *Kuriger v. Cramer*, 498 A.2d 1331, n.14 (Pa. Super. 1985) (explaining that, in spite the lack of appellate case law addressing whether a landlord may use self-help, the law does not support it and other jurisdictions have ruled against it).

(1) Defining “Clear and Unequivocal” Notice

The notice to vacate must clearly and unequivocally state the reason for the eviction and the time by which the tenant must vacate. It cannot be conditional or demand an action, such as payment of past-due rent, from the tenant other than to vacate the premises.⁶

(2) Timing for Notice to Vacate

The required pre-suit notice periods are set out in the Landlord-Tenant Act and the MHPRA.⁷ The notice period is dependent on the classification of eviction.

(3) Service of Notice to Vacate

Notice to vacate must be served on the tenant. *Mailed notice is insufficient.*⁸

Service may be made by:

- Handing it personally to the tenant,
- Posting it in a prominent place on the premises, or
- Leaving it at the principal building on the leased premises.

The Eviction Complaint

After properly serving a notice to vacate, the landlord may file a complaint to regain possession of the premises. The form can be found on the website of the Administrative Office of the Pennsylvania Courts (AOPC), and is included as a sample in this toolkit.

- *AOPC, Landlord and Tenant Complaint Form*, <http://www.pacourts.us/Forms/>

Legal Bases for Evictions

(1) Residential Eviction – 68 P.S. § 250.502-1(a)

- Non-payment of rent;
- Expiration of lease agreement; or
- Breach of lease agreement.

(2) Mobile Home Eviction – 68 P.S. § 398.3

- Non-payment of rent;
- Second/subsequent violation of mobile home park rules within 6 months;
- A change in the use of the park;
- Termination of the park; or
- Expiration of the lease term.

⁶ See *Brown v. Brown*, 64 A.2d 506 (Pa. Super. 1949).

⁷ 68 P.S. § 250.501; 68 P.S. § 398.3.

⁸ See, e.g., *Pakyz v. Weiser*, 15 Adams L.J. 196 (C.C.P. Adams 1974).

Pleading Requirements

The landlord must plead and prove the following:

- Facts regarding the creation of the lease
- Grounds for eviction
- Proper service of notice to vacate
- Damages

Service Requirements⁹

Once filed, the magisterial district judge's (MDJ) office will serve the eviction complaint by:

- First class mail, AND
- Personal service by the sheriff or a certified constable.

The complaint must be served at least five (5) days prior to the hearing.

Filing an Answer to an Eviction Complaint

The tenant may file an answer to the complaint in which she can argue affirmative defenses and raise counterclaims. ***It is not necessary to file an answer and may not be the best practice.*** If the tenant files a claim or appears in person, defects of service are deemed waived, but defects of venue are not waived. The tenant can raise affirmative defenses at the hearing in front of the MDJ without making an answer to the complaint.

Affirmative Defenses

There are many affirmative defenses that can be argued for the tenant. These defenses can be raised at the MDJ hearing. Defending at the hearing rather than in the answer prevents the landlord from fixing the defect before the hearing. Therefore, some of the possible affirmative defenses listed below are better raised at the hearing, provided they are not subject to waiver for failure to plead in an answer.

However, defenses related to the discriminatory ordinance should be raised in the answer, as it will alert the landlord and the MDJ to the fact that this is not a typical eviction proceeding, and a detailed answer may result in a more thoughtful and reasoned decision from the MDJ. In fact, pleading in this manner may result in a settlement in your client's favor, saving you and your client a considerable amount of time and energy. Be aware of local practice of the MDJ before whom you will appear.

Defenses related to the discriminatory ordinance should be raised in the answer, as it will alert the landlord and the MDJ to the fact that this is not a typical eviction proceeding. A detailed answer may result in a more thoughtful and reasoned decision from the MDJ.

⁹ MDJ Rule 506 (service of process in eviction proceedings).

(1) Defenses to Eviction Based on Discriminatory Application of a Nuisance Ordinance

a. Violence Against Women Act

The Violence Against Women Act prohibits housing authorities and Section 8 project-based owners and Section 8 voucher landlords from evicting due to an incident of domestic violence. These protections apply only to public housing, Section 8 project-based and Section 8 voucher tenants. VAWA's protections are codified in the Fair Housing Act, 42 U.S.C. 1437.

b. Civil Rights/ Fair Housing Act / PHRA

The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. §§ 951-963, protect tenants from discrimination based on sex, among other classes. The housing ordinance on which this eviction is based disparately impacts and discriminates against women because it prevents victims of domestic violence, who are predominantly women, from contacting the police.

c. First Amendment Right to Petition Government

Eviction on this basis violates the tenant's right to petition the government for a redress of grievances, which includes the right to seek assistance from law enforcement.

Note: You must have a state actor to properly bring this claim. If the action is between your client and a private landlord, you may need to interplead the municipality or local government as a necessary party.

d. Public Policy

Inconsistent with State and Federal Prioritization of Victim Safety:

Pennsylvania prioritizes victim safety from abuse in many areas of the law and provides specific protections for victims of domestic violence to encourage them to come forward to seek assistance from police.

- The Protection From Abuse Act, 23 Pa. C.S. § 6102 *et seq.*, recognizes the importance of creating a system where victims feel safe and protected, and establishes a system whereby victim safety is prioritized in order to encourage victims to seek assistance.
- Act 44 of 1988, 71 P.S. § 611.13, recognizes the threat to public health and safety created by domestic and sexual violence, and in response establishes a funding mechanism through the Department of Public Welfare to support services by domestic violence and sexual assault programs.
- The Pennsylvania Child Custody Law, 23 Pa. C.S. § 5322 *et seq.*, prioritizes safety in all child custody determinations. As such, victims and their children are encouraged to report abuse.

- The Violence Against Women Act (VAWA) creates a broad range of victim protections and service programs as a matter of law and policy. In the context of housing, VAWA prohibits discrimination on the basis of status as a victim of domestic violence and allows victims to maintain their subsidized housing. Rather than punish the victim, VAWA is designed to hold the perpetrator accountable by authorizing his removal from the assistance voucher, lease, and premises. 42 U.S.C. § 41411.

Inconsistent with Consumer Protection Law:

Pennsylvania has enacted several statutes that protect consumers and tenants. These acts evidence a public policy to protect individuals from the superior bargaining power of landlords and other merchants.

- The Unfair Trade Practices and Consumer Protection Law (CPL), 73 P.S. § 201-1 *et seq.*
- The Plain Language Consumer Contract Act, 73 P.S. § 2201 *et seq.*
- The Mobile Home Park Rights Act, 68 P.S. § 398.1 *et seq.*
- The Landlord and Tenant Act, 68 P.S. § 250.101 *et seq.*
- The Utility Service Tenants Rights Act (USTRA), 66 Pa. C.S. § 1521 *et seq.*

These statutory protections are useless to victims of domestic violence, who cannot contact the police for fear they will be evicted from their residence. Such action deters victims from seeking the help they need.

Misplaced Burden:

The nuisance ordinance places the burden on the victim to prevent the abuser from abusing, rather than on the abuser or the police.

See Part III, Housing Discrimination Remedies – State and Federal Relief, for information about other potential avenues for relief.

Other Affirmative Defenses

While the resources in this toolkit focus on challenging an eviction based on a discriminatory housing ordinance, the following defenses should also be considered and, if applicable, raised in the tenant's defense to avoid waiver of any available defenses. Many of these defenses are fact-specific. Be sure to include any facts relevant to the defenses raised.

- **Material Compliance with Lease**
Tenant has at all times been materially compliant with the terms of the lease and has not materially failed to carry out lease obligations.

For additional guidance on how and when to raise affirmative defenses in an eviction proceeding, please contact PCADV at 717-671-4767.

- **No Illegal Activities**
Tenant did not sell, use or supply drugs, and did not know of any person in her unit selling or using drugs, and had no reason to know of any person using or selling drugs in her apartment.
- **Inadequate Notice to Vacate**
Proof of notice is a jurisdictional requirement, so the court cannot hear the landlord's complaint if the tenant was not provided with the notice before the time for service expired.
- **Defective Notice to Vacate**
The notice was defective (e.g., notice was not clear or was equivocal).
- **Improper Service of Notice to Vacate**
The notice was not properly served (e.g., mail is not an acceptable service method for the notice to quit).
- **Waiver of Defect by Landlord**
Landlord waived the conduct complained of by accepting rent or some other affirmative act after the expiration of the notice period.
- **No Demand for Rent**
Landlord did not establish that he demanded the rent.
- **Breach of Warranty of Habitability**
The landlord breached the warranty of habitability by permitting bad conditions in the tenant's unit.
- **Breach of Right to Pay and Stay**
Landlord breached tenant's right to pay and stay.
- **Non-Compliance with Licensing / Registration Ordinances**
Landlord did not follow the licensing and registration ordinances.
- **Retaliation**
The landlord is evicting the tenant because the tenant utilized civil rights (or other rights) and the landlord is retaliating.

Counterclaims and Set-Offs

Counterclaims can be based on contract and trespass theories. These can be raised at the eviction hearing.

- **Warranty of Habitability**
All residential leases in Pennsylvania include an implied warranty of habitability that the premises are safe, sanitary, and fit for human habitation. This warranty of habitability cannot be waived and the landlord cannot shift responsibility for making repairs onto the tenant. Breaches of the warranty of habitability can result in rent abatement calculated by a percentage deduction in use due to the defect(s). The tenant / victim may be able to recover funds

paid to the landlord while the landlord was in breach of the warranty of habitability.

- **Covenant of Quiet Enjoyment (Privacy)**
Landlord misconduct, including entering the leased premises without prior notice or valid reason or malicious interference with a tenant's possessory interest in a leasehold, can result in the tenant's ability to receive actual and punitive damages in egregious cases.¹⁰
- **Tort**
Claims in tort may also be raised either separately or in conjunction with the breach of warranty of habitability or covenant of quiet enjoyment. Possible claims may include intentional infliction of emotional distress, malicious breach of contract, or trespass. Claims for damages from past attempts by the landlord to evict by self-help may also be appropriate.
- **Waiver**
If landlord accepts rent after expiration of notice period, the basis for eviction may be waived.
- **Consumer Protection Laws**
Any claims under the Unfair Trade Practices and Consumer Protection Law may be raised. For example, the Plain Language Consumer Contract Law provides for damages, including one hundred dollars (\$100) per violation, court fees, and costs.

Magisterial District Court Eviction Hearing

Representation at the Hearing¹¹

MDJ Rule 207 spells out specific requirements for representation of corporations or partnerships. For example, an employee (such as an apartment complex office manager) must have personal knowledge and written authorization before entering an appearance on the corporation's behalf. If the landlord's representative at the hearing is not appropriate in accordance with the Rule, the tenant's attorney may object to the representation and request a continuance until the landlord complies.

Timing of Hearing¹²

A hearing must be set by the MDJ not less than 7 or more than 15 days from the date the complaint was filed.

IFP Status¹³

Tenants have a right to proceed *in forma pauperis* (IFP) if they cannot afford the cost of litigation. If applicable, an attorney can file for IFP status on behalf of a client. The

¹⁰ See, e.g., Kohl v. PNC Bank Nat'l Ass'n et al., 912 A.2d 237 (Pa. 2006).

¹¹ MDJ Rule 207.

¹² See 68 P.S. § 250.503; MDJ Rule 504.

¹³ MDJ Rule 206.

form is similar but not identical to the IFP form under the Rule 240 of the Pennsylvania Rules of Civil Procedure.

Hearsay

The landlord must prove his case without the use of hearsay. Unless the landlord personally saw the police or unless the landlord brings the complaining neighbor, the landlord may not be able to substantiate his claim of nuisance or police presence.

Magisterial Court Judgment and Order of Possession

(2) MDJ Judgment¹⁴

The MDJ may enter judgment either at the conclusion of the hearing or within 3 days after the hearing on the form prescribed for entry of judgment. The judgment shall either grant or deny the landlord's request for possession, and/or award money damages on the claims of the parties. Copies of the judgment form must be given or mailed to each party or party's attorney.

(3) Order for Possession¹⁵

If the landlord's request for possession is granted in the judgment, the landlord can file a request for an Order for Possession with the MDJ after the 10th day following the date of entry of judgment.

(4) Supersedeas of the Order of Possession

If the tenant files **a timely appeal, in accordance with the requirements outlined below, the appeal will act as a supersedeas** and will prevent the landlord from obtaining an order of possession, pending resolution of the appeal.¹⁶

Appealing an MDJ's order for eviction to the Court of Common Pleas will prevent the landlord from obtaining an order of possession until the appeal is complete.

Appealing the Magisterial District Court Judgment in the Court of Common Pleas

If the client is unsuccessful in the magisterial district court, she can file an appeal to the county court of common pleas.¹⁷ On appeal, the case is *de novo* and the Order of Possession is stayed until a decision is rendered on appeal.¹⁸

Consult MDJ Rules 1001-1082 for additional guidance for filing the appeal and defending the eviction in the court of common pleas. Sample forms for appeal are included in this Part of the toolkit, or can be found at <http://www.pacourts.us/Forms>.

¹⁴ MDJ Rule 514C.

¹⁵ MDJ Rule 515.

¹⁶ MDJ Rule 515.

¹⁷ MDJ Rule 1002.

¹⁸ MDJ Rule 1007, 1008.

(1) Basis of Appeal

a. *Appeal As Of Right*

A Notice of Appeal from an MDJ ruling must be filed within 10 days for a judgment ordering possession, or within 30 days for a judgment of money damages alone.¹⁹ Service must be made on the other party and the MDJ who made the ruling, and may be accomplished by personal service or by certified or registered mail. Proof of service must be filed with the Prothonotary within 10 days after filing the Notice of Appeal.²⁰

b. *Nunc Pro Tunc Appeal*

Nunc pro tunc relief might be available. If the client missed the 10-day window for filing an appeal from an order for possession, she may be permitted to appeal *nunc pro tunc* if she can show unusual and non-negligent circumstances and/or breakdown in court procedure.

An appeal may be allowed to proceed *nunc pro tunc* after the 10-day appeal deadline passes in cases that demonstrate good cause. MDJ Rule 1002 B.

A sample *nunc pro tunc* petition is included in this section of the toolkit.

Judges are often very conservative in granting a *nunc pro tunc* petition, so the petition should be carefully drafted to explain your client's situation with as much clarity as possible. *Please contact PCADV's legal department for assistance.*

(2) Requirements of Appeal

If the MDJ judgment being appealed is a judgment for money damages alone, then the Notice of Appeal itself operates as a supersedeas.²¹

However, if the MDJ judgment being appealed is a judgment for possession for the landlord, then the Notice of Appeal acts as a supersedeas only if, at the time the appeal is filed, the tenant deposits a sum of money in an escrow account with the prothonotary.

(3) Deposit of Funds in Escrow²²

The Notice of Appeal operates as a supersedeas and stops the order for possession from being executed only if, at the time the appeal is filed, the tenant deposits a sum of money in an escrow account with the prothonotary. The appellant must deposit the equivalent of 3 months' rent OR the amount of rent the tenant was determined to owe at the time the appeal was filed, whichever is the lesser amount.

¹⁹ MDJ Rule 1002.

²⁰ MDJ Rule 1005.

²¹ MDJ Rule 1008 A.

²² MDJ Rule 1008B.

Additionally, the tenant must continue paying rent into the escrow account during the pendency of the appeal.²³

Relief from the escrow requirements is available for indigent tenants. To qualify for relief, the tenant must submit an appropriate form. This form is separate from the standard IFP-related processes.²⁴

(4) Landlord Complaint

The landlord is required to file a complaint after receiving notice of appeal. If the landlord does not file a complaint within 20 days of service, the tenant can petition the court to enter a judgment of *non pros*.²⁵

(5) Tenant Response

If the landlord files a timely complaint in the court of common pleas, the tenant is given an opportunity to file a responsive pleading. Potential defenses should be included in the tenant response.

Sample letters, complaints, and pleadings to assist in defending an eviction action are contained in this section of the toolkit. For additional resources, see Section V. Referral agencies and attorneys are found at the start of this toolkit.

²³ MDJ Rule 1008B.

²⁴ MDJ Rule 1008C (providing IFP requirements and forms).

²⁵ MDJ Rule 1004.

Samples

Questionnaire & Screening Tool

1. Have you received an Eviction Notice?
When did you receive the notice? (Date)

When is the hearing scheduled? (Date)
2. Have you received any other notices or letters from the landlord? Please explain:
3. Do you know why you are being evicted? Please explain:
4. Are you still living in the rental property that you are being evicted from?
☐ YES: Do you feel safe?

Do you want to stay at your rental property? Please explain:

☐ NO: Are you safe at your alternative housing?

Do you want to return to your rental property? Please explain:
5. What type of housing are you being evicted from?
☐ I pay my own rent to a private landlord or housing complex manager.
☐ I live in public housing.
☐ I pay some money each month, but a local agency pays most of the money to my landlord. My landlord is a private person or corporation. (I have a Section 8 voucher).
☐ I live in private housing and there is a subsidy that stays with the building. If I leave I will lose the subsidy. (Project-based Section 8).
☐ I live in private housing and if I leave I can get a new voucher to move somewhere else. (Section 8 project-based voucher).
☐ I live in housing for senior citizens or housing for people with disabilities.
☐ I live in a mobile home park.
☐ I own my mobile home, but I rent/lease the land it sits on.
☐ I do not own the mobile home or the land it sits on.
☐ I live in a complex and the name of the complex is:

6. Do you have a copy of the lease?
Whose name(s) is/are on the lease?
7. Does anyone else live there with you? *Example: child(ren), boyfriend, sibling, parent, friend*

Are they allowed to live there with you?
8. Have you ever called the police?
9. Have the police ever come to your residence?
10. Were you ever told by anyone that you could be evicted for calling the police?
Please explain:

Who told you?

Did this ever stop you from calling the police when you needed protection or felt unsafe?
11. Were you ever told by anyone that you could be evicted if someone else called the police on your behalf?

Who told you?

Did this ever stop you from calling the police when you needed protection or felt unsafe?
12. If you live in your own rental unit, did the abuser ever come there uninvited?
How many times?
When?
13. Did the abuser ever do anything that would disturb the other tenants? *Example: pounding on your door, shouting/cursing, graffiti/vandalism, property damage, or other intimidating acts.*
14. Does the abuser come to your apartment to pick up children for custodial time?
15. Were there ever any criminal charges filed against the abuser because of his conduct at your apartment?
What were the charges?

Was the abuser convicted?
Did you participate in the prosecution?

16. Were any criminal charges filed against you?
What were the charges?

Was the abuser convicted?

17. Did the abuser ever damage anything in the rental unit? *Example: hole in the wall; damage to fixtures; damaged carpeting/flooring*

18. Has your landlord/property manager ever done anything to inform the abuser that he cannot come to your rental unit?
What did the landlord/property manager do?

19. Have you taken any other steps to stop the abuser from coming to your rental unit?
Example: Obtained Protection From Abuse Order (PFA), sent a defiant trespass letter, used a confidential address or enrolled in the Address Confidentiality Program

20. Do you have a PFA or have you had one in the past?
When did you get the PFA? (Date)
When does/did it expire? (Date)
What was the abuser ordered to do or not do in the PFA?

Was the abuser evicted and excluded from your residence?

21. Do you feel you need to move to a different residence to be safe?

Would you like to stay in the same complex or move to a different location?

22. If you are evicted, do you have somewhere to go?

23. Have you ever asked your landlord about changing locks on your current apartment?

What was the result?

24. Is there anything else you would like to tell me about your housing situation?

Demand Letter to Management Company or Private Landlord

DATE

BY US MAIL AND FACSIMILE

Name
Management Company
Address
Phone
Fax

Dear [Landlord / Management Company]:

We are writing on behalf of your former tenant, Jane Tenant.

Option 1: Ms. Tenant resided [with her children] at [ADDRESS] from [DATE] until [DATE]. She was forced to move out on the basis of a notice to vacate/quit that she received from [You/Your Management Agency].

Option 2: Ms Tenant current resides at [ADDRESS], where she has lived continuously since [DATE]. Ms. Tenant received notice to vacate/quit on [DATE] from [You/Your Management Agency].

This notice to vacate/quit [was/is] based on an incident of domestic violence by [PERPETRATOR]. [You/Management] informed Ms. Tenant that she had called the police for the third time within a three-month period, triggering [ORDINANCE CITATION], which required [You/Management] to abate the nuisance or face sanctions. [You/Management] chose to abate the nuisance by serving Ms. Tenant with notice to vacate/quit.

[Insert facts of the case and be sure to explain the consequences your client suffered.]

As we assume you are aware, the federal Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*, and the Pennsylvania Human Relations Act (PHRA), 43 P.S. §§ 951-963, prohibit discrimination in rental housing on several bases, including on the basis of sex. These Acts forbid both intentionally discriminatory acts and acts that have a discriminatory impact on persons in protected classes, such as women.

The eviction of Ms. Tenant was premised on violation of an ordinance that has a disparate impact on women and is therefore in violation of the FHA and PHRA. Because the overwhelming majority of victims of domestic violence are women, policies and practices that discriminate against victims of domestic violence have an unlawfully disparate impact on women. Courts and agencies considering the question have repeatedly found that housing practices that discriminate against victims of domestic violence unlawfully discriminate on the basis of sex. In some cases, the owner or

management company was required to pay damages to the victim and/or to change their policies and practices to prevent further discrimination.

In addition, it is unfair and unreasonable to evict a tenant for criminal behavior committed against her. A victim of domestic violence is no more responsible for assaults committed against her than a victim of a mugging or robbery; neither invited nor permitted the crime, and neither should be penalized for being a crime victim. Given that the behavior on which the notice to quit was premised cannot reasonably be construed as a violation of Ms. Tenant's lease, the notice to vacate/quit amounts to a termination of tenancy without cause.

For these reasons, we assert that your eviction of Ms. Tenant violates federal and state law. Moreover, it forced her [and her children] from her home at a time of significant emotional trauma. Please contact me immediately to discuss a resolution of this matter.

[Insert request for remedies]

Sincerely,

Attorney for Jane Tenant

Firm name

Address

E-mail

Phone

Fax

Demand Letter to Local Officials

DATE

BY US MAIL AND FACSIMILE

Borough / Municipality / Police Department / Mayor

Address

Phone

Fax

RE: Protecting Crime Victims from Unjust Eviction

We are writing to you on behalf of our client, Jane Tenant, a resident of [city/municipality]. As a result of [city/municipality]'s [nuisance ordinance / disorderly house ordinance / Crime Free Rental Housing Ordinance], Ms. Tenant [and her children] [are being threatened with eviction / were evicted] based on an incident of domestic violence perpetrated against them at their home. We believe that enforcement of this ordinance against Ms. Tenant, the victim of a crime, constitutes illegal discrimination and we request that you remediate the situation immediately.

[Insert facts of the case and be sure to explain the details surrounding the incident and the consequences your client suffered.]

On [DATE], Ms. Tenant received notice of termination of her tenancy from the owner of her home. The notice explained that [NAME of City Code Enforcement Person] directed the property owner to send the termination notice by [DATE] in a letter dated [DATE]. The letter from [NAME of City Codes Enforcement Person] cited the incident with Ms. Tenant's perpetrator as a violation of the [nuisance ordinance / disorderly house ordinance / Crime Free Rental Housing Ordinance]. A copy of the notice of termination and the letter from [NAME of City Code Enforcement Person] are enclosed.

The [city / municipality]'s actions in enforcing the ordinance in this case constitute unlawful sex discrimination in violation of the federal Fair Housing Act and the Pennsylvania Human Relations Act. The federal Fair Housing Act, 42 U.S.C. § 2501 *et seq.*, and the Pennsylvania Human Relations Act, 43 P.S §§ 951-963, prohibit discrimination based on sex, including both intentional discriminatory acts and acts that have a discriminatory impact based on sex. The overwhelming majority of victims of domestic violence are women; therefore, policies and practices that have a disparate impact on victims of domestic violence have a discriminatory impact on women. Courts and agencies considering the question have repeatedly found that housing practices that disparately affect victims of domestic violence unlawfully discriminate on the basis of sex.

The [city/municipality]'s actions have also substantially interfered with Ms. Tenant's constitutional right to petition the government pursuant to the First Amendment of the

United States Constitution. The First Amendment guarantees that the people may petition their government for the redress of grievances. This right has been interpreted by the United States Supreme Court to include a right to contact the police for assistance. Ms. Tenant exercised this right when the police were called to assist her during a domestic assault incident at her home, yet is now being penalized via eviction for doing so. Enforcement of [nuisance ordinance/disorderly house ordinance/Crime Free Rental Housing Ordinance] discourages Ms. Tenant from reporting future crimes committed against her and chills her ability to exercise her First Amendment rights.

We ask that the [City/Municipality] immediately cease all efforts to enforce the ordinance against Ms. Tenant and the property owner of her rental home. Both the property owner and Ms. Tenant should be notified immediately that no further action will be taken against either.

If this matter is not resolved immediately in favor of Ms. Tenant, we will be forced to seek legal recourse with the courts.

Additionally, we ask that you cease enforcement of the City's [Ordinance] against all crime victims to prevent similarly unjust evictions against victims of domestic violence and other crimes. We advise you that we have enclosed model legislation to amend the [Ordinance] that would protect the rights of crime victims, and we welcome the opportunity to discuss its enactment with you.

I encourage you to contact me at the number below to discuss resolution of this matter. Thank you for your consideration.

Sincerely,

Attorney for Jane Tenant
Firm name
Address
E-mail
Phone
Fax

CC: [Mayor, Police Department, Municipality, Other Officials]

Enclosures

Landlord / Tenant Complaint Form

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: _____

LANDLORD AND TENANT COMPLAINT

Magisterial District Number: _____

MDJ Name: Hon. _____

Address: _____

Telephone: () _____

PLAINTIFF:

NAME and ADDRESS

DEFENDANT:

NAME and ADDRESS

VS.

Pa.R.C.P.D.J. No. 206 sets forth those costs
 recoverable by
 the prevailing party.

Docket No.: _____

Date Filed: _____

TO THE DEFENDANT: The above named plaintiff(s) asks
 judgment together with costs against you for the
 possession of real property and for:

(a)

Lease is ☐ Residential ☐ Nonresidential.

☐ Damages for injury to the real
 property, to wit: _____

| | | |
|---|-------------------|----|
| _____ | in the amount of: | \$ |
| <input type="checkbox"/> Damages for the unjust detention of the real property in the amount of | | \$ |
| <input type="checkbox"/> Rent remaining due and unpaid on filing date in the amount of | | \$ |
| <input type="checkbox"/> And additional rent remaining due and unpaid on hearing date | | \$ |
| <input type="checkbox"/> Attorney fees in the amount of | | \$ |

Total: \$

THE PLAINTIFF FURTHER ALLEGES THAT:

1. The location and address, if any, of the real property is _____
2. The plaintiff is the landlord of that property.
3. He leased or rented the property to you or to _____ under
 whom you claim.
4. ☐ Notice to quit was given in accordance with law, or
☐ No notice is required under the terms of the lease.
5. ☐ The term for which the property was leased or rented is fully ended, or
☐ A forfeiture has resulted by reason of a breach of the conditions of the lease, to wit: _____
☐ Rent reserved and due has, upon demand, remained unsatisfied.
6. You retain the real property and refuse to give up its possession.

I, _____ verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904) relating to unsworn falsification to authorities.

(Signature of Plaintiff)

The plaintiff's attorney shall file an entry of appearance with the magisterial district court pursuant to Pa.R.C.P.M.D.J. 207.1.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

Civil Complaint Form

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: _____

2. CIVIL COMPLAINT

| |
|------------------------------|
| Magisterial District Number: |
| MDJ Name: Hon. |
| Address: |
| Telephone: () |

PLAINTIFF:

NAME and ADDRESS

┌

┐

┌

┐

VS.

DEFENDANT:

NAME and ADDRESS

┌

┐

┌

┐

Docket No.:

Date Filed:



| | | |
|---------------|----|---|
| FILING COSTS | \$ | / |
| POSTAGE | \$ | / |
| SERVICE COSTS | \$ | / |
| CONSTABLE ED. | \$ | / |
| TOTAL | \$ | / |

(b) DATE PAID

Social security numbers and financial information (e.g., PINS) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.

Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ _____ together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

I, _____ verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904) related to unsworn falsification to authorities.

(Signature of Plaintiff or Authorized Agent)

The plaintiff's attorney shall file an entry of appearance with the magisterial district court pursuant to Pa.R.C.P.M.D.J. 207.1.

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD SO NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five (5) days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

***Nunc Pro Tunc* Petition**

IN THE COURT OF COMMON PLEAS OF

COUNTY

V.

Appellant

Appellee

No. 20

PETITION TO APPEAL NUNC PRO TUNC

1. Pursuant to Pa. R. Civ. P.D.J. 1002(b), _____, Petitioner, hereby applies for leave to appeal *nunc pro tunc* and sets forth the following in support thereof:
2. Magisterial District Justice (MDJ) _____ issued an Order for Possession in the case of _____ v. _____. The date of entry of the Order for Possession was _____.
3. Pursuant to the Pennsylvania Rules of Civil Procedure for Magisterial District Judges, “an appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of filing” may be accepted with “leave of court and upon good cause shown.” Pa. R. Civ. P.D.J. 1002(b).
4. Applying the timeframe for appeal in this case, in accordance with Pa. R. Civ. P.D.J. 1002(b), the last day to appeal the Order for Possession was _____. However, where appellant can demonstrate good cause for missing the initial filing deadline, the court may grant leave to file an appeal *nunc pro tunc*.
5. A *nunc pro tunc* appeal will be granted upon showing “the litigant’s right to appeal has been lost due to ‘extraordinary circumstances.’” *Puckett v. Dep’t of Transp.*, 804 A.2d 140, 143 (Pa. Commw. Ct. 2002).
6. Extraordinary circumstances prevented Petitioner from timely filing her appeal and, as a result, she should be granted leave to appeal *nunc pro tunc*.
 - a. Petitioner was unable to secure counsel prior to the initial eviction proceeding and, after a decision was rendered from the MDJ, Petitioner secured counsel as soon as she was able.
 - b. *[Include facts about when counsel was contacted by the petitioner and any other relevant facts about why the appeal was not made in a timely fashion.]*
7. Petitioner is a victim of domestic violence. In cases where an evicted tenant is a victim of domestic violence, the Pennsylvania Legislature determined that the evicted tenant should be given extended time to appeal a decision from a lower

court. 68 P.S. § 250.513(b) (allowing 30 days for victims of domestic violence to appeal a lower court's decision regarding a residential lease). This statute was repealed in so much as it conflicted with the timeline set forth in Pa. R. Civ. P.D.J. 1002. However, the statute is illustrative of the fact that strong public policy favors a longer appeal period for victims of domestic violence, given the specific circumstances and housing challenges they face.

8. Petitioner has a valid affirmative defense to eviction based on state and federal law. The eviction case against her was pursuant to discriminatory enforcement of [City/municipality]'s [nuisance ordinance/disorderly house ordinance/Crime Free Rental Housing Ordinance], given that she was the victim of the offense triggering this ordinance. Because the overwhelming majority of victims of domestic violence are women, such enforcement constitutes unlawful discrimination on the basis of sex in violation of the Pennsylvania Human Relations Act, 43 P.S. §§ 955-963, and the federal Fair Housing Act, 42 U.S.C. §§ 3604(a), (b).
9. The opposing party in this appeal will not be prejudiced if Petitioner's appeal is granted. Even if Petitioner loses on appeal, the opposing party can still evict within the established timeframe for eviction.
10. Petitioner has compelling and necessitous reasons for delayed appeal based on her extreme and extenuating circumstances stemming from the violence perpetrated against her in her own home.

WHEREFORE, counsel for appellant requests this Court to grant appellant leave to appeal *nunc pro tunc* in this matter.

Attorney Name
Attorney for Defendant
Pa. Attorney ID # _____
Name of firm
Address
Phone

DATE: _____

[ATTACH VERIFICATION AND PROOF OF SERVICE]

Notice of Appeal

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of

NOTICE OF APPEAL

FROM

MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No. _____

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

| | | |
|----------------------|----------------|----------------|
| NAME OF APPELLANT | MAG. DIST. NO. | NAME OF MDJ |
| ADDRESS OF APPELLANT | CITY | STATE ZIP CODE |

| | | |
|------------------|----------------------------|-------------|
| DATE OF JUDGMENT | IN THE CASE OF (Plaintiff) | (Defendant) |
|------------------|----------------------------|-------------|

| | |
|------------|---|
| DOCKET No. | SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT |
|------------|---|

This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.
This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.

Signature of Prothonotary or Deputy

If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon _____ appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. _____) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or attorney or agent

RULE: To _____, appellee(s)
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: _____, 20____

Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

AOPC 312-05

Answer to Landlord Complaint in Court of Common Pleas

*Sample Answer provided by Rachel Garland, Staff Attorney, Community Legal Services.

IN THE COURT OF COMMON PLEAS FOR THE _____ JUDICIAL DISTRICT

| | | |
|------------|---|----------------|
| |) | |
| , |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. _____ |
| |) | |
| , |) | |
| |) | |
| Defendant. |) | |

ANSWER OF DEFENDANT X TO THE COMPLAINT WITH NEW MATTER AND AFFIRMATIVE DEFENSE – CIVIL ACTION

Defendant, X (hereinafter “X” or “Defendant”), by her undersigned attorney, Community Legal Services, Inc., hereby files this Answer, New Matter and Affirmative Defense in response to the complaint filed by Plaintiff, X (hereinafter “X” or “Plaintiff”), and avers the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is denied that on or about October 25, 2004, Plaintiff entered into a written lease agreement with Defendant for a residential unit located at X Street, Philadelphia, Pennsylvania. It is averred that Defendant and Plaintiff executed the lease on October 15, 2004. A copy of the 2004 Lease Agreement is attached hereto as Exhibit “A”.

5. Denied. Denied as a conclusion of law to which no further response is required.

COUNT I - EVICTION / POSSESSION

6. Defendant incorporates herein by reference paragraphs 1 through 5 of this answer.

7. Denied. Denied as a conclusion of law to which no further response is required.

8. Admitted in part and denied in part. It is admitted that on or about March 28, 2008, Defendant was served with a “Notice of Lease Termination.” A copy of the March 28, 2008 Notice is attached hereto as Exhibit “B”. It is denied that Defendant was served with the additional documents attached to Plaintiff’s Complaint as part of Plaintiff’s Exhibit “B” on March 28, 2008. It is specifically denied that on or about March 28, 2008, Defendant was served with a letter dated June 5, 2008, which is included in Plaintiff’s Complaint Exhibit “B”.

9. Admitted.
10. Admitted.
11. Admitted.

WHEREFORE, the Defendant prays that this Honorable Court dismiss the complaint.

NEW MATTER

12. On or about [DATE], Plaintiff entered into a written lease agreement with Defendant for a residential unit located at X Street, Philadelphia, Pennsylvania. See Exhibit "A".

13. Defendant had been in a relationship with X since [DATE]. She and X were married in [DATE]. Defendant and X have four children together, each of whom are listed on Defendant's lease.

14. At no point during the course of Defendant's residency has X been on the lease. On or about 2005, Defendant approached Plaintiff about adding X to her lease, but chose not to pursue doing so.

15. Defendant has repeatedly suffered verbal, emotional and physical abuse from X during the course of their relationship. The abuse has escalated since 2006.

16. Defendant has called the police on multiple occasions as a result of X's abuse, resulting in at least three arrests on May 21, 2006, January 16, 2007, and February 22, 2008, and one conviction.

17. Plaintiff inspected Defendant's home on December 18, 2006, and February 6, 2008.

18. Prior to both the December 18, 2006, and February 6, 2008, inspections, in the course of physical domestic violence incidents, X purposefully and intentionally caused Defendant's home to be unclean and unfit for passing inspection.

19. X rendered the unit unclean and unfit for passing inspection in, but not limited to, the following ways:

- A. Emptying the contents of dresser drawers onto the floors;
- B. Emptying the contents of the closet onto the floors;
- C. Scattering kitchen objects, such as food and utensils, around the unit;
- D. Emptying the contents of garbage and waste baskets onto the floor of the apartment;
- E. Punching and kicking holes into walls; and
- F. Kicking cabinets and doors so that they broke.

20. To protect her safety and that of her children, Defendant occasionally stayed with her mother following domestic violence incidents, as was the case in the above two incidents.

21. As a result of these domestic violence incidents before each of the two inspections, Defendant was unable to render her unit clean and fit in enough time to pass inspection on either December 18, 2006, or February 6, 2008.

22. After failing her first inspection on December 18, 2006, Plaintiff conducted a re-inspection of Defendant's home on or about January 5, 2007. At the re-inspection, Defendant's home passed inspection.

23. After failing her second inspection on February 6, 2008, Plaintiff did not conduct a re-inspection prior to pursuing eviction proceedings.

24. On or about March 28, 2008, Defendant received a Notice of Lease

Termination. See Exhibit "B".

25. Defendant is no longer in a relationship with X. She has cleaned her home, repaired the holes in the walls and replaced broken cabinets and doors. She continues to maintain her home in her customary clean and tidy manner.

AFFIRMATIVE DEFENSE

VIOLENCE AGAINST WOMEN ACT: SERIOUS OR REPEATED VIOLATION OF THE LEASE / GOOD CAUSE

26. Defendant incorporates herein by reference paragraphs 1 through 25 as if fully set forth at length.

27. In 2013 the Violence Against Women Act (hereinafter "VAWA") was reauthorized with expanded protections for domestic violence victims. Title VI of VAWA further amended federally funded and subsidized housing programs to protect victims from discrimination in admissions, terminations, and evictions. Pub. Law 113-4.

28. VAWA's protections apply to a tenant or immediate family member who is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, who living in, or seeking admission to publically funded housing programs. Pub. Law 109-162.

29. Under VAWA, an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. 42 U.S.C. § 41411(b)(2); see *also* Exhibit "C".

30. Plaintiff should not have issued a Notice of Termination of Lease on [DATE], as a result of a failed inspection on [DATE], and cannot evict Defendant for serious or repeated violation of the lease, as Defendant was the victim of domestic violence in this incident. The above incidents do not constitute grounds for a good cause eviction under the Lease Agreement, Section XI. See Exhibit "A", Section XI, page 9.

31. Plaintiff's continual attempts evict Defendant based upon the above incidents is in violation of the Violence Against Women Act. 42 U.S.C. § 41411(b)(2); see *also* Exhibit "C".

WHEREFORE, the Defendant prays that this Honorable Court dismiss the complaint and grant such additional or alternate relief as may be deemed just and proper.

____/S/____

Dated:

Attorney for Defendant

PART II: VIOLENCE AGAINST WOMEN ACT (VAWA) HOUSING PROTECTIONS

Legal Overview: *Violence Against Women Act (VAWA) Housing Protections*²⁶

The Violence Against Women Act (VAWA) acknowledges the strong link between domestic violence and homelessness.²⁷ Amendments passed in 2005, and again in 2013, strengthen the housing protections for women and families across the country who are discriminated against and denied access to or evicted from public and subsidized housing because of their status as victims of domestic violence.²⁸ Without these protections, victims are often forced to return to an abusive partner to maintain stable housing.

The purpose of VAWA's housing provisions is to “reduce domestic violence, dating violence, sexual assault, and stalking, and to prevent homelessness” by protecting the safety of victims, creating long-term housing solutions, and building collaborations between victim service and housing providers.²⁹

Scope of the Violence Against Women Act

Programs Covered by VAWA

To determine whether a client may be protected by VAWA, attorneys must first determine whether the victim is applying for or living in federally subsidized housing covered by VAWA.

The following housing programs are covered by VAWA:

- Public Housing³⁰
- Section 8 Housing Choice Voucher³¹
- Project-Based Section 8 Developments³²
- Supportive Housing for the Elderly (Section 202)
- Supportive Housing for Persons with Disabilities (Section 811)³³
- Housing Opportunities for Persons with AIDS³⁴
- McKinney-Vento Homeless Programs (Title IV)³⁵

²⁶ The contents of this overview are derived from the following materials:
Nat'l Housing Law Project, *The Violence Against Women Act: A Housing Toolkit for Advocates* (2008), available at <http://nhlp.org/node/82>.

Kelly Miller, *Domestic Violence/Sexual Assault Survivors' Housing Rights under VAWA, FHA, ADA and Section 504: Training for Attorneys*, Presenter's Guided Curriculum (2010) (on file with PCADV).

²⁷ 42 U.S.C. § 14043e.

²⁸ 42 U.S.C. § 14043e(3).

²⁹ 42 U.S.C. § 14043e-1(1)-(4).

³⁰ 42 U.S.C. § 1437d.

³¹ 42 U.S.C. § 1437f(o).

³² 42 U.S.C. §§1437f (c), (d).

³³ 24 C.F.R. §§ 891.575, 891.610, 891.630. VAWA only provides protections for applicants to and tenants of public housing, Section 8 voucher and Section 8 project-based housing. When HUD issued the VAWA regulations in 2010, it amended the regulations governing 202 and 811 to state that VAWA applies to admissions and evictions in those programs. However, the statutes governing those programs haven't been amended to match the change in regulations.

³⁴ 42 U.S.C. §§ 41411, 12901.

- *Emergency Shelter Grant Program
- *Supportive Housing Demonstration Program
- *Supplemental Assistance for Facilities to Assist the Homeless
- *Section 8 Single Room Occupancy / Moderate Rehabilitation
- HOME Investment Partnerships Program³⁶
- Below Market Interest Rate Program³⁷
- Section 236 Program³⁸
- Rural Housing Programs³⁹
- Low Income Tax Credit Properties⁴⁰

These programs are also subject to the Fair Housing Act and the Pennsylvania Human Relations Act, discussed in Part III of this toolkit.

For more information about each housing program, see National Coalition for the Homeless, *Federal Housing Assistance Programs*, <http://www.nationalhomeless.org/publications/facts/Federal.pdf>.

Individuals Protected by VAWA

VAWA's protections extend to:

- Victims of actual or threatened⁴¹
 - domestic violence⁴²
 - dating violence⁴³
 - sexual assault⁴⁴
 - stalking⁴⁵
- Immediate family members of the victim⁴⁶

VAWA's protections are gender neutral. In addition to protecting women, VAWA also protects victims of domestic violence who are male or in same-sex relationships as well as **all** victims of sexual assault.

³⁵ 42 U.S.C. §§ 41411, 11360.

³⁶ 42 U.S.C. §§ 41411, 12741.

³⁷ 42 U.S.C. § 41411, 221(d)(3).

³⁸ 42 U.S.C. § 41411; 12 U.S.C. § 1715z-1.

³⁹ 42 U.S.C. §§ 1484-86, 1490, 1490p-2, 41411.

⁴⁰ 42 U.S.C. § 41411; IRS Code, Section 42.

⁴¹ 42 U.S.C. §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

⁴² 42 U.S.C. § 13925(a)(6); 24 C.F.R. § 5.2003; see also 42 U.S.C. §§ 1437d(u)(3)(A), 1437f(f)(8).

VAWA's definition of domestic violence includes "family or household members" defined by the Protection From Abuse Act. 23 Pa. C.S. § 6102 (definitions).

⁴³ 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.

⁴⁴ 42 U.S.C. § 13925(a)(23); see also 18 U.S.C. Chapter 109A.

⁴⁵ 42 U.S.C. §§ 13925(a)(24), 1437d(u)(3)(C) (public housing), 1437f(f)(10) (project-based Section 8 and vouchers); see also 24 C.F.R. § 5.2003.

⁴⁶ See 42 U.S.C. § 41411; 42 U.S.C. §§ 1437d(u)(3)(D) (public housing), 1437f(F)(11) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

VAWA Prohibitions

No Discrimination in Housing Application

VAWA prohibits PHAs and subsidized housing providers or owners from denying housing benefits to an otherwise qualified applicant based on the applicant's status as a victim of domestic violence, dating violence, sexual assault or stalking.⁴⁷

Few housing providers will explicitly deny an application on the basis of an applicant's victimization.⁴⁸ Victims are more often denied on the basis of negative tenancy, credit, or criminal history related to the abuse.⁴⁹ VAWA does not specifically address denials on these bases; however, the following strategies could be used to argue for VAWA's protections in these instances.

(1) Connect the Cited Reason for Denial to the Applicant's Victimization

You could challenge a denial based on negative tenancy, credit, or criminal history by showing the causal relationship between the reason cited for denial and the applicant's victimization. Argue that the denial amounts to a denial based on the applicant's victimization in violation of VAWA.⁵⁰

(2) Ask the PHA to Exercise Its Discretion

When there is unfavorable information about an applicant, HUD Guidance requires PHAs to consider the nature and extent of the negative history.⁵¹ In particular, HUD advises PHAs to ask whether domestic violence was a factor in the applicant's poor rental history and authorizes PHAs to approve such applicants, even when the applicant's victimization is not directly related to the reasons for denial.

For applicants to the voucher program, PHAs have discretion to consider mitigating circumstances, as do owners and managers of other HUD multifamily-assisted housing.⁵²

No Discrimination in Eviction or Termination of Assistance

VAWA prohibits PHAs and subsidized housing providers from evicting tenants or terminating benefits on the basis of actual or threatened domestic violence, dating violence, sexual assault or stalking against the tenant.⁵³

⁴⁷ 42 U.S.C. § 41411(b)(1); see also 42 U.S.C. §§ 1437d(c)(3) (public housing), 1437f(c)(9)(A) (project-based Section 8), 1437f(o)(6)(B) (vouchers); 24 C.F.R. § 5.2005(a) (public housing and section 8).

⁴⁸ Nat'l Housing Law Project, Domestic Violence and Housing, A Manual and Toolkit for California Advocates, at 69 (2009) [hereinafter California Advocate Packet], available at <http://nhlp.org/files/NHLP%20Domestic%20Violence%20&%20Housing%20Manual.pdf>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 70 (citing 24 C.F.R. § 960.203(d)).

⁵² *Id.* (citing HUD, Public Housing Occupancy Guidebook, 218 (2003), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phgui_debook).

⁵³ 42 U.S.C. § 41411(b)(2).

(1) Criminal Activity Directly Related to Victimization⁵⁴

VAWA explicitly provides that “no person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking” for a tenant or an immediate member of a tenant’s family who is a victim of domestic violence, dating violence, or stalking.⁵⁵

*A victim of domestic violence, dating violence, sexual assault or stalking may be evicted for criminal activity not directly related to violence or for other violations of the lease, but may not be held to a higher standard than other tenants.*⁵⁶

(2) Repeated Incidents of Actual/Threatened Violence⁵⁷

VAWA creates an *express* exception to the federal “One-Strike Rule” by providing that incident(s) of “actual or threatened domestic violence, dating violence, sexual assault or stalking” may not be construed as “serious or repeated violation of the lease” by a victim tenant and, thus, such incident(s) do not constitute “good cause” for terminating a victim’s tenancy or occupancy rights.⁵⁸

(3) Self-Defense

In *Metro N. Owners, LLC v. Thorpe*,⁵⁹ a landlord sought to evict a woman who stabbed her former partner during a domestic dispute. The landlord alleged that the tenant engaged in illegal and violent behavior during domestic disturbances that she created in and around the building. The court found that the woman was a victim of domestic violence and was entitled to VAWA’s protections. VAWA forbid the landlord from terminating her Section 8 tenancy and precluded the landlord from evicting her.⁶⁰

(4) *Exception:* Actual and Imminent Threat to Other Tenants / Employees

Victims may be evicted if the PHA or landlord shows that allowing the victim to remain would pose “an actual and imminent threat to other tenants or those

⁵⁴ 42 U.S.C. § 41411(b)(3). VAWA does not define “criminal activity” relating to abuse, so it is important to show how the criminal activity is directly related to the tenant’s victimization. NATIONAL HOUSING LAW PROJECT, DOMESTIC VIOLENCE AND HOUSING: A MANUAL FOR CALIFORNIA ADVOCATES, at 74 (2009) (citing 24 C.F.R. § 960.203(d)).

⁵⁵ 42 U.S.C. § 41411(b)(3)(A); *see also* 42 U.S.C. §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher); 24 C.F.R. § 5.2005(b).

⁵⁶ 42 U.S.C. § 41411(b)(3)(C)(ii); *see also* 42 U.S.C. §§ 1437d(l)(6)(D) (public housing), 1437f(o)(7)(D)(iv) & (o)(20)(D)(iii) (Section 8 voucher), 1437f(c)(9)(C)(iv) & (d)(1)(B)(iii)(IV) (Project-based Section 8).

⁵⁷ 42 U.S.C. § 41411(b)(2).

⁵⁸ 42 U.S.C. § 41411(b)(2)(A)-(B); *see also* 42 U.S.C. §§ 1437d(l)(5) (public housing); 1437f(c)(9)(B) (project-based section 8); 1437f(o)(20)(B) (Section 8 voucher); 24 C.F.R. § 5.2005(a).

⁵⁹ *Metro N. Owners, LLC v. Thorpe*, 870 N.Y.S. 2d 768 (N.Y. Civ. Ct. 2008).

⁶⁰ *Id.*

employed at or providing service to the property.”⁶¹ An actual *and* imminent threat is a very high threshold, as it requires the threat to other tenants to be both immediate and certain and could result in serious injury or death.⁶²

Documentation of Status as Victim

Victim Statement

Housing providers have discretion to provide VAWA’s protections based solely on the tenant’s statement or corroborating evidence.⁶³

Certification⁶⁴

If a housing provider requires certification, the provider must submit a written request for certification to the victim. The victim then has 14 business days to provide certification.⁶⁵ *Failure to provide timely certification does not “waive” the right to raise domestic violence, dating violence, or stalking as a defense.*⁶⁶

Any of the following methods may be used to certify that the individual is a victim of domestic violence, dating violence, or stalking:

- Self-Certification HUD Forms⁶⁷
- Statement by a Qualified Third Party⁶⁸
- Police, Court, or Administrative Agency Record⁶⁹

Attorneys should avoid certifying on behalf of their clients to protect attorney/client privilege.

⁶¹ 41 U.S.C. § 41411(b)(3)(C)(iii) (emphasis added); *see also* 42 U.S.C. §§ 1437d(l)(6)(E) (public housing), 1437f(o)(7)(D)(v) and (o)(20)(D)(iv) (Section 8 voucher), 1437f(c)(9)(C)(v) & (d)(1)(B)(iii)(V) (project-based Section 8).

⁶² “Actual or imminent threat” is defined as:

[A] physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. . .

[T]he factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

²⁴ C.F.R. § 5.2005(d).

⁶³ 42 U.S.C. § 41411(c)(1), (3); *see also* 42 U.S.C. §§ 1437d(u)(1)(D), 1437f(ee)(1)(D) (project-based Section 8 and vouchers).

⁶⁴ 42 U.S.C. § 41411(c)(3); *see also* 42 U.S.C. § 1437f(ee)(1)(A) (project-based Section 8 and vouchers).

⁶⁵ 42 U.S.C. §§ 1437d(u)(1)(B) (public housing), 42 U.S.C. § 1437f(ee)(1)(B) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

⁶⁶ 42 U.S.C. § 41411(c)(6).

⁶⁷ 42 U.S.C. § 41411(c)(3)(A); *see also* 24 C.F.R. § 5.2007(a)(1). Form HUD-50066 is for public housing or Section 8 voucher program participants and Form HUD-91066 is for project-based Section 8 development program participants. Sample forms can be found in this toolkit or online at www.hud.gov/offices/adm/hudclips/forms/.

⁶⁸ 42 U.S.C. § 41411(c)(3)(B). Qualified third parties include domestic violence advocates, medical professionals, and attorneys. ***It is not advised for attorneys to certify on a client’s behalf, as it may destroy attorney/client privilege.*** 42 U.S.C. §§ 1437f(ee)(1)(C) (project-based Section 8 & vouchers), 1437d(u)(1)(C) (public housing).

⁶⁹ 42 U.S.C. § 41411(c)(3)(C).

Confidentiality⁷⁰

Information provided to certify incidents of domestic violence, dating violence, sexual assault, or stalking *must remain confidential and may only be subject to disclosure in very limited circumstances.*⁷¹

Competing Claims of Victimization

If both the victim and the perpetrator assert victim status, the PHA or owner may require third-party documentation to determine the true victim.⁷²

VAWA Protections

Portability – Section 8 Vouchers

Tenants with a Section 8 voucher can use it anywhere within the jurisdiction of the PHA or the county in which a PHA is administering a voucher program. The tenant can, in certain circumstances, move outside the jurisdiction. This is called portability, and moving to another jurisdiction is called “porting.”

A family who has complied with other obligations of the program may port their voucher to another jurisdiction “to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remain[s] [in the unit].”⁷³ *PHAs may not restrict the timing or frequency of a victim’s moves and may not deny portability in cases where, as a result of domestic violence, dating violence, sexual assault, or stalking, the voucher recipient left her unit in violation of the lease.*

The portability feature of the Section 8 voucher program is a particularly important protection for domestic violence victims who may need to leave the jurisdiction to keep themselves and their families safe.

If a victim is denied portability because she owes back rent or money for repairs related to domestic violence, she can ask for an informal hearing. The victim or her attorney can argue that her safety needs must be considered, and VAWA reflects strong public policy to protect victims.

⁷⁰ 42 U.S.C. § 41411(c)(4); see also 42 U.S.C. §§ 1437d(u)(2)(A), 1437f(ee)(2)(A).

⁷¹ PHAs or owners may not enter the information into a database or provide it to another entity: A PHA or owner may disclose the information only if disclosure is (1) requested by the victim in writing, (2) required for use in an eviction proceeding, or (3) otherwise required by law. 42 U.S.C. § 41411(c)(4). **Thus, an abuser may have the right to see the documentation of abuse if it is relevant to an eviction or criminal proceeding involving the defendant.** *Id.*

⁷² 42 U.S.C. § 41411(c)(7). The PHA or owner is obligated to honor any court order addressing the rights of access or control of the property, including civil protection orders. 24 C.F.R. § 5.2007(e).

⁷³ 42 U.S.C. §§ 1437f(r)(5), 1437f(ee).

Emergency Transfer – Public Housing

VAWA requires agencies that administer covered housing programs (HUD, IRS, Department of Agriculture) to adopt model emergency transfer plan for victims of domestic violence, dating violence, sexual assault, and stalking.⁷⁴

The model plan must allow a victim to transfer if she reasonably believes that she is at imminent risk of harm or was sexually assaulted on the premises during the 90 days prior to the request.⁷⁵ The model plan must also include reasonable confidentiality measures to ensure that the victim's new location is not disclosed to the perpetrator of domestic violence, dating violence, sexual assault, or stalking.⁷⁶

An advocate or attorney should ask to see a copy of the transfer policy to ensure that the victim is not unjustly denied the right to transfer.

If a victim needs to leave her unit temporarily, she should inform the PHA in writing that she temporarily moved out of her unit but wishes to remain in public housing. She may need to continue to pay rent for her unit. HUD is in the process of developing model policies that would allow a victim requesting an emergency transfer to receive voucher assistance if a transfer is not available.⁷⁷

Lease Modification

A PHA, owner, or housing provider may bifurcate a lease to evict, remove, terminate occupancy rights, or terminate assistance to any tenant who engages in criminal acts of physical violence against a family member or others.⁷⁸ When evicting a perpetrator, the landlord must follow federal, state and local eviction laws, which can involve a very lengthy process. As a result, the victim may need to take steps, such as obtaining a protection from abuse order or temporarily relocating, to protect her safety during the eviction process.

If the abuser is the sole tenant eligible to receive assistance under the covered program, the PHA or owner must provide the remaining family members or tenants with the opportunity to establish eligibility and give them a reasonable time to find new housing.⁷⁹

The victim may ask the PHA to recertify her household income after the abuser is removed from the lease. This may reduce the victim's rent contribution because the abuser's income is no longer part of the calculation.

⁷⁴ *Id.* HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, Ch.19.4 (2003), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidbook. This VAWA provision applies to all families in public housing or project-based Section 8 housing as well as those with Section 8 vouchers.

⁷⁵ 42 U.S.C. § 41411(e).

⁷⁶ *Id.*

⁷⁷ 42 U.S.C. § 41411(f).

⁷⁸ 42 U.S.C. § 41411(b)(3)(B); see also 42 U.S.C. §§ 1437d(l)(6) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437F(o)(20)(C) (Section 8 voucher); 24 C.F.R. § 5.2005(c).

⁷⁹ 42 U.S.C. § 41411(b)(3)(B).

After an abuser is removed from the victim's lease, she may ask the PHA to recertify the household income. The victim may end up paying less because the abuser's income is no longer included in the rent calculation.

Removing the abuser from a lease may create problems in the future if the victim wishes to reconcile with the abuser. The PHA may use the record of domestic violence to prevent the former abuser from residing in the housing unit. It is important to counsel clients about this possibility when deciding a course of action.

Section 8 Voucher Modification

PHAs have authority to terminate voucher assistance for perpetrators of criminal activity and may permit innocent family members to continue to receive voucher assistance. In such cases, the PHA *must* allow the victim to retain assistance.⁸⁰

Notice Requirements

PHAs, owners, and managers must inform tenants of their rights and obligations under VAWA.⁸¹ Notice of VAWA's provisions must be included in all public housing leases, Housing Assistance Payments (HAP) contracts, lease addendums in Section 8 voucher and project-based voucher programs, and contracts in the project-based Section 8 program.⁸² Notice of VAWA protections also must be given when housing is denied, when a tenant is admitted, and with any notice of eviction or termination.

Planning Requirements

In its annual plan for public housing and the voucher program, each PHA must include a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, stalking, or sexual assault. The PHA must include in its five-year plan a description of goals, objectives, policies, or programs it uses to serve victims' housing needs.⁸³ For more information about VAWA's PHA planning requirements, see Part IV, Systems Advocacy.

Recognition of Court Orders

PHAs and owners must honor court orders addressing the rights of access to or control of property.⁸⁴ This requirement includes recognition of a PFA order granting exclusive possession or other housing-related remedies and the duty to recalculate a household's rent to reflect the new family composition.

⁸⁰ 24 C.F.R. § 982.315(a)(2); see also Nat'l Housing Law Project, *Maintaining Safe and Stable Housing for Domestic Violence Survivors* para. 6.9.2 (2012), available at <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>.

⁸¹ 42 U.S.C. § 41411(d); see also 42 U.S.C. §§ 1437d(u)(2)(B), 1437f(ee)(2)(B).

⁸² 42 U.S.C. § 41411(d); see also 42 U.S.C. §§ 1437(d)(1)(5), (6), 1437f(o)(20), 1437(o)(7)(C), (D). See Forms 52641 (Tenancy Addendum Section 8 Tenant-based Assistance Housing Choice Voucher Program) (8/2009) and 52530-C (Tenancy Addendum Section 8 Project-based Voucher Program) (8/2010).

⁸³ 42 U.S.C. §§ 1437c-1(a)(2), 1437c-1(d)(13), 12705(b)(1).

⁸⁴ 42 U.S.C. § 41411(b)(3)(C).

Resources:

- National Housing Law Project, www.nhlp.org
- American Civil Liberties Union (ACLU), <http://www.aclu.org/fairhousingforwomen>
- HUD Forms & Publications
 - *General Forms*, www.hud.gov/offices/adm/hudclips/forms/
 - *Certification: Domestic Violence, Dating Violence, or Stalking*, <http://nhlp.org/node/427>
 - *Public Housing Occupancy Guidebook, Domestic Violence – Pt. 7 (2003)*, <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>
 - *HUD Notice 09-15: Implementation of the Violence Against Women and Justice Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payment Program*, <http://www.hud.gov/offices/adm/hudclips/notices/hsg/09hsgnotices.cfm>
- Federal Regulations:
 - Violence Against Women Act, Federal Register, 24 CFR Pts. 5, 91, 880, *et al.*, <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>

Using VAWA To Appeal a Decision of the Housing Authority

The review and grievance procedures for challenging a decision by a PHA vary, depending on the housing program and whether the complainant is an applicant or a participant. HUD has issued regulations as well as specific guidance documents for PHAs to follow. While these regulations and guidance documents provide structure for PHA grievance procedures, each PHA has discretion to set its own policies, including specific timelines for review. It is imperative to obtain the local Section 8 administrative plan, the PHA's public housing admissions and continued occupancy policy, or other planning document for the relevant housing program.

The following summary reviews the general rights and obligations of public assistance applicants and recipients as well as the steps necessary to challenge either the denial of an application or the eviction and/or termination of benefits from a covered housing program.⁸⁵ Refer to the relevant section of the code for specific information about the process and procedure for each type of housing or subsidy, or contact PCADV for assistance.

Application for Assistance Denied

As explained in the overview to this part of the toolkit, a victim cannot be denied housing on the basis of her status as a victim of domestic violence, dating violence, sexual assault or stalking.⁸⁶ And, as a matter of policy, HUD encourages preferential treatment for victims of domestic violence.⁸⁷ PHAs have the discretion to consider all relevant circumstances, including an applicant's status as a victim, in their decision-making.⁸⁸ If a victim's application for public assistance is denied in spite of such legal protections and strong public policy, the victim may be able to appeal.

Notice of Denial

PHAs must provide notice to the applicant that states its reasons for denying assistance.⁸⁹ The notice must inform applicants of their right to request an informal review or hearing. Contents of the notice vary, depending on the type of housing at issue.

Review of Denial

The PHA's administrative plan must state the procedures for conducting an informal review and informal hearing. Some PHAs may require an applicant to make her

⁸⁵ 24 C.F.R. §§ 960.206, 966.51-57 (public housing), 982.551-553 (Section 8 voucher program), pt. 247 (Section 8 project-based program and Section 202/811 supportive housing programs); 891.430 (Section 202/811 supportive housing programs).

⁸⁶ 42 U.S.C. § 41411(b)(1); *see also* 24 C.F.R. §§ 5.2005 (b), 960.103. *See* Legal Overview: Violence Against Women Act (VAWA) Housing Protections in this section of the toolkit for more on the specific protections for public housing, section 8 voucher, project-based section 8, and supportive housing programs.

⁸⁷ 24 C.F.R. § 960.206.

⁸⁸ 24 C.F.R. §§ 960.203(d) (public housing), 982.552 (c)(2) (Section 8 voucher).

⁸⁹ 24 C.F.R. §§ 982.554 (Section 8 voucher), 960.208 (public housing).

request for an informal review or hearing within five days of receipt of the negative decision while others allow seven days for such a request.

The PHA's review must comply with the following general guidelines:⁹⁰

- *The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.*
- *The applicant must be given an opportunity to present written or oral objections to the PHA decision.*
- *The PHA must notify the applicant of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.*

For specific details about your local PHA's review or hearing process, contact the PHA and request a copy of the public housing admissions and continued occupancy policy, the Section 8 administrative plan, or other relevant planning or procedure document for the applicable housing program.

Termination of Housing Subsidy or Assistance⁹¹

As explained in the overview, a PHA may not terminate benefits or evict tenants on the basis of actual or threatened domestic violence, dating violence, sexual assault, or stalking.⁹² If a victim receives notice stating that her subsidized housing will be terminated, she has a right to a review of the termination decision. The process and procedures for pre-eviction administrative hearings vary, depending on the type of assistance the victim receives. Regardless of the program, participants in federally subsidized housing are typically entitled to written notice with specific grounds for termination and an opportunity to be heard prior to eviction or subsidy termination.

The following summary outlines the general PHA procedures relevant to each stage of the termination process and offers tips and suggestions for representation.

Regardless of the particular program, participants in federally-subsidized housing programs are typically entitled to written notice with specific grounds for termination and an opportunity to be heard prior to eviction or subsidy termination.

⁹⁰ 24 C.F.R. § 982.554.

⁹¹ This section is based on material, used with permission, from Meliah Schultzman, Nat'l Housing Law Project, *Maintaining Safe and Stable Housing for Domestic Violence Survivors* 80-83 (2012), available at <http://nhlp.org/node/1428>.

⁹² See Legal Overview: Violence Against Women Act (VAWA) Housing Protections, in this section of the toolkit for more on the protections for victims receiving benefits through a covered housing program.

Contact the PHA⁹³

It may be beneficial to attempt to resolve the problem for your client informally prior to a review or hearing by the PHA. Note, however, that the timelines for requesting review are quite short and may not provide sufficient time for an informal resolution to occur.

Request a Hearing

Tenants facing eviction from public housing or termination of their Section 8 vouchers can request a grievance hearing (from the public housing program), an informal hearing (from the Section 8 voucher program), or an informal meeting (from Section 202/811 supportive housing or Section 8 project-based programs). Below is an examination of the applicable procedures in the most common types of covered housing programs. For information about the hearing procedures for other types of public housing programs, you can contact PCADV for additional assistance.

(1) Termination of Public Housing:

a. *Initial Grievance*⁹⁴

If a tenant is facing termination of public housing benefits, she may file a grievance. To resolve the grievance, the PHA may hold an informal settlement meeting. At this meeting, the tenant presents the substance of her complaint either orally or in writing. The complaint is then discussed and an attempt is made to settle the matter with the PHA office or project office where the tenant resides.

A grievance is defined as “any dispute which a tenant may have with respect to PHA action or failure to act in accordance with tenant’s lease or PHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status.”⁹⁵

If termination is based on criminal activity that threatens health or safety or involves drug-related activity, a PHA need not offer the grievance procedure and may go directly to eviction, even if the abuser committed the activity. 24 C.F.R. § 966.51(2).

If the basis of the termination is due to the abuser’s conduct, ask the PHA to reconsider and provide the victim with review of its decision through the grievance process.

⁹³ Depending on the housing program, informal review of a termination or eviction decision may be called a grievance hearing, an informal hearing, or a meeting. 42 U.S.C. § 1437d(k); 24 C.F.R. pt. 966 (public housing); 24 C.F.R. pt. 982 (Section 8 voucher); HUD, Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook 4350.3 (2003) (project-based Section 8).

⁹⁴ 24 C.F.R. § 966.54.

⁹⁵ 24 C.F.R. § 966.53(a).

The PHA must prepare and furnish a summary of the discussion to the tenant that specifies:

- Names of participants
- Meeting dates
- Nature of proposed disposition of complaint with specific reasons
- How a tenant obtains a hearing if the complaint is not satisfied

*b. Hearing Request*⁹⁶

If the initial grievance process does not yield a favorable outcome, a victim may request a grievance hearing. To do so, the victim must submit a written request to the PHA or project office that provides the reasons for the grievance and the action or relief sought. Tenants must receive a written notice of the time, place and procedures for the hearing.

The deadline for requesting a hearing is specified in the PHA administrative plan and may vary from one PHA to another, but is generally between five and 15 days. The PHA can waive the hearing if the victim did not participate in the informal settlement meeting or have good cause for not doing so.

(2) Termination of Section 8 Voucher:

*a. Informal Hearing*⁹⁷

The PHA must give the tenant (voucher recipient) an opportunity for an informal hearing to determine whether the PHA decision is in accordance with the law. The PHA must provide notice that the tenant may ask for an explanation of the basis for termination and may request an informal hearing to review the decision.

Termination of the Section 8 Housing Voucher is a separate procedure from an actual eviction of the tenant from the residence. The PHA handles the subsidy termination but the private landlord handles the eviction through state law. See Section I for more information on how to defend against an eviction in Pennsylvania.

(3) Section 202/811 Supportive Housing or Project-Based Section 8 Programs:

*a. Informal Meeting*⁹⁸

A victim must be given 10 days from receiving notice of termination to request a meeting where the victim can discuss the proposed eviction with the landlord. This meeting provides the victim an opportunity to explain the circumstances of the alleged lease violation. There is no process for further review. After this meeting, the tenant's relief is with the court.⁹⁹

⁹⁶ 24 C.F.R. § 966.55.

⁹⁷ 24 C.F.R. § 982.555.

⁹⁸ 24 C.F.R. pt. 247. For more information about the process and procedures for challenging a termination of HUD-subsidized or Project-based Section 8 developments, see HUD, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Handbook 4350.3, REV-1, at para. 8-13.

⁹⁹ 24 C.F.R. §§ 247.4, .6 ("the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense."). For more on the Pennsylvania eviction process, see Section I of this toolkit.

Gather Documents and Other Evidence

The victim or her representative has a right to examine her file. In reviewing her file, it is recommended that you:

- (1) Make copies of relevant documents
 - The lease
 - Written complaints
 - Agreements to pay back rent or repairs
 - Witness statements
 - Notes of conversations
 - Damage claims
 - Police reports
- (2) Ask the housing provider to identify all documents it intends to rely on as evidence of grounds for terminating the client's tenancy or assistance.
- (3) Decide which documents prove facts that victim needs to defend against regarding the eviction or termination. Examples include police reports, court records, letters, medical records, pictures, and notes from phone calls.

Contact Potential Witnesses

Consider which individuals might be helpful in proving the victim's case, for example, neighbors and service providers. Consider using an expert witness to assist the fact finder in understanding the victim's behavior. For instance, the PHA may not understand why a victim did not call security or police to respond to an incident. If possible, contact individuals who can bolster the victim's testimony, especially if the victim exhibits signs of trauma or post-traumatic stress disorder.

Explore Settlement

Settlements will contain the terms for the continuation of the tenancy or assistance; the victim must agree to certain conditions. Examples include a probation period, permanent exclusion of the abuser, repayment of back rent, payment of repair costs, and/or periodic inspections by provider.

Because violation of a settlement agreement can be cause for eviction or termination, it is crucial to discuss the terms of the agreement with the victim and assess if the victim can feasibly comply with them. *Do not set up the victim to fail.* Keep the following issues in mind when discussing potential settlement provisions with your client:

(1) Exclusion of an Abuser

An agreement may include a condition for the victim to permanently exclude the abuser, particularly in cases where the abuser has disturbed the other tenants and/or committed criminal acts. Discuss with the victim whether this is feasible, especially if the abuser picks up the children for visits or has previously visited with the children at the residence.

(2) Safety

Ask the housing provider to provide additional safety precautions to assist the victim. These should be written into the settlement agreement.

(3) Protection From Abuse Orders

(4) The agreement should **NOT** include a requirement that the victim get a PFA order. Although protection orders can be effective tools, seeking court intervention may not be the best option for the victim at this time. She needs to be the one to make that decision.

(5) Repayment of Back Rent or Other Costs

If the agreement involves repaying costs or back rent, it will usually involve payment over time. However, if the abuser is the person who created the damages, request that the housing provider seek damages from the abuser. If the housing provider agrees to seek costs from the abuser, the victim may be asked to provide evidence regarding his actions. This may be dangerous for the victim and should be considered carefully in terms of the victim's safety.

Attend Hearing

The hearing procedure as well as the rights and responsibilities of the tenant and the PHA will vary depending on the type of termination. For information about the hearing procedures for other types of covered housing programs, contact PCADV.

(1) Hearing for Termination of Public Housing:

Tenants have the following rights with regard to a review hearing:¹⁰⁰

- The PHA must provide tenants with a reasonable opportunity to examine documents it has that are directly relevant to the eviction.
- A tenant has the right to be represented by counsel or the representative of her choice.
- Tenants have the right to present evidence and arguments, rebut contrary evidence and cross-examine witnesses.

Tenants carry the burden of showing that they are entitled to the relief sought. The PHA has the burden of justifying its action or failure to act.

The PHA's decision must be based solely on the facts presented at the hearing. After considering all the evidence, the hearing officer or panel must issue a written decision that includes the reasons for the decision within a reasonable time after the hearing.¹⁰¹

A decision in favor of the PHA or that denies tenant's relief does not waive or otherwise affect any rights the tenant has to trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

¹⁰⁰ 24 C.F.R. § 966.56.

¹⁰¹ 24 C.F.R. § 966.57.

(2) Hearing for Termination of Section 8 Voucher:

The PHA must provide the tenant (voucher recipient) with a reasonable opportunity to examine documents it has that are directly relevant to the voucher termination.¹⁰²

Moreover, a tenant has the right to be represented by counsel or the representative of her choice. Both the PHA and the tenant must have the opportunity to present evidence and may question any witnesses.¹⁰³

Hearing officers must issue a written decision stating the reasons for the decision. Factual determinations are based on the preponderance of the evidence presented at the hearing.¹⁰⁴

Appeal PHA Decision to State Court or File Action in State or Federal Court

There have been affirmative outcomes for cases filed pursuant to VAWA protections, but the law remains unsettled. Because the law is unsettled, attorneys seeking to file affirmative litigation should explore whether there are any alternative avenues for relief, such as the Fair Housing Act or the Americans With Disabilities Act at the federal level, or the Pennsylvania Human Relations Act at the state level. *See Part III of this toolkit for more information about other avenues of relief pursuant to state and federal housing discrimination laws.*

To discuss options and strategies for appeal, contact The ACLU Women's Rights Project at 212-519-7871.

Resources:

- Meliah Schultzman, Nat'l Housing Law Project, *Maintaining Safe and Stable Housing for Domestic Violence Survivors* (2012), available at <http://nhlp.org/node/1428>.
- HUD, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Handbook 4350.3, REV-1, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4350.3

¹⁰² 24 C.F.R. § 982.555(e).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Questionnaire & Screening Tool

Please answer the following questions about your housing situation.

APPLYING FOR HOUSING ASSISTANCE

1. Have you applied for some type of public housing or housing subsidy program?
If YES, check the program below:

- ☐ Public Housing
- ☐ Section 8 Housing Choice Voucher
- ☐ Project-Based Section 8 Developments
- ☐ Supportive Housing for the Elderly (Section 202) / (12 U.S.C. § 1701q)
- ☐ Supportive Housing for Persons with Disabilities (Section 811) / (42 U.S.C. § 8013)
- ☐ Housing Opportunities for Persons with AIDS (42 U.S.C. § 12901)
- ☐ McKinney-Vento Homeless Programs (Title IV) (42 U.S.C. § 11360)

**Emergency Shelter Grant Program*

**Supportive Housing Demonstration Program*

**Supplemental Assistance for Facilities to Assist the Homeless*

**Section 8 Single Room Occupancy / Moderate Rehabilitation*

- ☐ HOME Investment Partnerships Program (42 U.S.C. § 12741)
- ☐ Below Market Interest Rate Program (Section 221(d)(3))
- ☐ Section 236 Program (12 U.S.C. § 1715z-1)
- ☐ Rural Housing Programs (42 U.S.C. §§ 1484-86, 1490, 1490p-2)
- ☐ Low Income Tax Credit Properties (IRS Code, Section 42)

2. Was your application denied?
3. Did you request a hearing to dispute the denial?
4. Did you receive information about why your application was denied?
Explain:

ALREADY A TENANT

1. What type of housing do you live in?
 - ☐ I pay my own rent to a private landlord or housing complex manager. I do not receive any type of housing subsidy.
 - OR
 - ☐ My housing is subsidized.
2. If your housing is subsidized, check the program below:
 - ☐ Public Housing
 - ☐ Section 8 Housing Choice Voucher
 - ☐ Project-Based Section 8 Developments
 - ☐ Supportive Housing for the Elderly (Section 202) / (12 U.S.C. § 1701q)
 - ☐ Supportive Housing for Persons with Disabilities (Section 811) / (42 U.S.C. § 8013)
 - ☐ Housing Opportunities for Persons with AIDS (42 U.S.C. § 12901)
 - ☐ McKinney-Vento Homeless Programs (Title IV) (42 U.S.C. § 11360)
 - *Emergency Shelter Grant Program*
 - *Supportive Housing Demonstration Program*
 - *Supplemental Assistance for Facilities to Assist the Homeless*
 - *Section 8 Single Room Occupancy / Moderate Rehabilitation*
 - ☐ HOME Investment Partnerships Program (42 U.S.C. § 12741)
 - ☐ Below Market Interest Rate Program (Section 221(d)(3))
 - ☐ Section 236 Program (12 U.S.C. § 1715z-1)
 - ☐ Rural Housing Programs (42 U.S.C. §§ 1484-86, 1490, 1490p-2)
 - ☐ Low Income Tax Credit Properties (IRS Code, Section 42)
3. Do you have a copy of your lease?
 - a. Whose name(s) is/are on the lease?
 - b. Does anyone else live there with you? *Example: child(ren), boyfriend, sibling, parent, friend*
 - c. Are they allowed to live there with you?
 - d. Does the abuser live there?
 - e. Is he/she on the lease?
4. Have you ever called the police to your residence?
5. Have the police ever come to your residence?
 - a. If YES, who called the police?

6. Were you ever told by anyone that you could be evicted for calling the police?
If YES,
 - a. Who told you?
 - b. Did this ever stop you from calling the police when you needed protection or felt unsafe?
7. Were you ever told by anyone that you could be evicted if someone else called the police on your behalf?
If YES,
 - a. Who told you?
 - b. Did this ever stop you from calling the police when you needed protection or felt unsafe?
8. If you live in your own rental unit, did the abuser ever come there uninvited?
 - a. When? / How many times?
9. Did the abuser ever do anything that disturbed the other tenants?
Example: Pounding on your door, shouting/cursing, graffiti/vandalism, property damage, or other threatening acts.
10. Does the abuser come to your apartment to pick up children for custodial time?
11. Was the abuser ever arrested or charged with a crime because of his conduct at your apartment?
If YES,
 - a. What were the charges?
 - b. Was he convicted or did he plead guilty?
 - c. Did you participate in the prosecution?
12. Were any criminal charges filed against you?
If YES,
 - a. What were the charges?
 - b. Were you convicted or did you plead guilty?
13. Did the abuser ever damage anything in the rental unit? *Example: Hole in the wall, damage to fixtures, damaged carpeting/flooring*
14. Has your landlord/property manager ever done anything to inform the abuser that he cannot come to your rental unit?
 - a. If so, please tell what the landlord or property manager did?

15. Have you taken any other steps to stop the abuser from coming to your rental unit? *Example: Obtained a Protection From Abuse (PFA) order or sent a Defiant Trespass Letter.*
16. Do you have a PFA order or did you have one in the past?
If YES,
a. When did you get it?
b. When does/did it end or expire?
c. What was the abuser ordered to do or not do in the PFA order?
d. Was the abuser evicted and excluded from your residence?
17. Do you feel you need to move to a different residence to be safe?
If YES,
a. Would you like to stay in the same complex or move to a different location?
b. Would certain locations or apartment complexes be safer than others? If so, where?
c. Do you need assistance in asking your housing provider to transfer you to another unit?
d. Do you need assistance in taking your Section 8 voucher to another location?
18. Have you received a notice of a lease violation or a notice of termination?
If YES,
a. When?
b. Did you respond to this notice? If so, how did you respond? *Example: Requested a hearing or meeting regarding the termination.*
19. Have you received a notice of eviction?
If YES,
a. When did you receive the notice?
b. When is the hearing scheduled?
20. Have you received any other notices or letters from the property management company, housing authority or landlord?
a. If YES, what were the letters or notices about?

21. Has the housing authority or your landlord ever tried to evict you for unauthorized occupants, damage, criminal activity, police activity, failure to recertify, noise, or disturbances?
22. Have you received court papers for an eviction hearing?
If YES,
a. When is the hearing scheduled?
b. What are the grounds for the eviction?
23. If you are being evicted, do you know why? Explain.
24. Are you still living in the rental property that you are being evicted from?
If YES:
a. Do you feel safe?
b. Do you want to stay at your rental property?
c. Is there anything that would help you feel safer at your property? *Example: Changing the locks or fixing a broken window.*

If NO:
d. Are you safe at your alternative housing?
e. Do you want to return to your rental property?
25. If you are evicted, do you have somewhere to go?
26. Have you received a Section 8 termination notice?
If YES,
a. What was the stated reason for termination?
b. Did you request a hearing within 10 days?
c. When is the hearing?
27. Are you able to pay your rent?
If NO,
a. Are you unable to pay rent because the abuser is no longer helping you financially?
b. Did your abuser keep you from earning money or accessing joint accounts?
28. If you live with the abuser, do you need assistance with any of the following?
a. Removing the abuser from the lease
b. Removing the abuser from the Section 8 voucher
29. Have you ever asked the housing authority or your landlord to remove the abuser from your lease or voucher?
a. If YES, what was the result?

30. Have you ever tried to “port” (move with) your voucher to another area of the county?
- a. If YES, what was the result?
31. Have you ever asked the housing authority or your landlord to transfer to another unit?
- a. If YES, what was the result?
32. Is there anything else you would like to tell me about your housing situation?

HUD Certification Form 50066: *Certification of Domestic Violence, Dating Violence, or Stalking [Public Housing & Section 8 Vouchers]*

| | | |
|--|--|--|
| CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING | U.S. Department of Housing and Urban Development Office of Public and Indian Housing | OMB Approval No. 2577-0249, Exp. (02/28/2014) |
|--|--|--|

Purpose of Form: The Violence Against Women and Justice Department Reauthorization Act of 2005 ("VAWA") protects qualified tenants, participants, and applicants, and family members of tenants, participants, and applicants, who are victims of domestic violence, dating violence, or stalking from being denied housing assistance, evicted, or terminated from housing assistance based on acts of such violence against them.

Use of Form: This is an optional form. A PHA, owner or management agent presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating violence or stalking (herein referred to as "Victim") has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. The Victim has the option of either submitting this form or submitting third-party documentation, such as:

- (1) A Federal, State, tribal, territorial, or local police or court record; or
- (2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation.

If this form is used by the Victim, the Victim must complete and submit it within 14 business days of receiving it from the PHA, owner or management agent. This form must be returned to the person and address specified in the written request for the certification. If the Victim does not complete and return this form (or provide third-party verification) by the 14th business day or by an extension of the date provided by the PHA, management agent or owner, the Victim cannot be assured s/he will receive VAWA protections.

If the Victim submits this form, the PHA, owner or management agent cannot require any additional evidence from the Victim.

Confidentiality: All information provided to a PHA, owner or management agent concerning the incident(s) of domestic violence, dating violence, or stalking relating to the Victim shall be kept confidential by the PHA, owner or management agent, and such details shall not be entered into any shared database. Employees of the PHA, owner, or management agent are not to have access to these details unless to afford or reject VAWA protections to the Victim; and may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by the Victim in writing; (ii) required for use in an eviction proceeding; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING:

Date Written Request Received by Victim: _____

Name of Victim:

Names of Other Family Members Listed on the Lease:

Name of the Perpetrator:

Perpetrator's Relationship to Victim:

Date(s) the Incident(s) of Domestic Violence, Dating Violence or Stalking Occurred:

Location of Incident(s):

Description of Incident(s) (This description may be used by the PHA, owner or management agent for purposes of evicting the perpetrator. Please be as descriptive as possible.):

I hereby certify that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence, or stalking, and that the incident(s) in question are bona fide incidents of such actual or threatened abuse. I acknowledge that submission of false information is a basis for denial of admission, termination of assistance, or eviction.

Signature _____ Executed on (Date) _____

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by PHAs and Section 8 owners or management agents to request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

HUD Certification Form 91066: *Certification of Domestic Violence, Dating Violence, or Stalking [Project-Based Section 8]*

| | | |
|--|---|--|
| CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING | U.S. Department of Housing and Urban Development Office of Housing | OMB Approval No. 2502-0204, Exp. 03/31/2014 |
|--|---|--|

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by owners and management agents administering Section 8 project-based assistance under the United States Housing Act of 1937 (42 U.S.C. 1437) to request a tenant to certify that the individual is a victim of domestic violence, dating violence, or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Purpose of Form: The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking (collectively "domestic violence") from being evicted or terminated from housing assistance based on acts of such violence against them.

Use of Form: If you have been a victim of domestic violence, you or a family member on your behalf must complete and submit this certification form, or submit the information described below under "Alternate Documentation," which may be provided in lieu of the certification form, within 14 business days of receiving the written request for this certification form by the owner or management agent. The certification form or alternate documentation must be returned to the person and the address specified in the written request for the certification form. If the requested certification form or the information that may be provided in lieu of the certification form is not received by the 14th business day or any extension of the date provided by the owner or management agent, none of the protections afforded to victims of domestic violence under the Section 8 project-based assistance program will apply. Distribution or issuance of this form does not serve as a written request for certification.

Alternate Documentation: In lieu of this certification form (or in addition to it), the following documentation may be provided:

(1) A federal, state, tribal, territorial, or local police or court record; or

(2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident(s) in question are bona fide incidents of abuse, and the victim has signed or attested to the documentation.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE:

1. Date written request is received from owner or management agent: _____

2. Name of victim:

3. Your name (if different):

4. Name(s) of other family members listed on the lease:

5. Name of the abuser:

6. Relationship of the abuser to the victim:

7. Date of incident:

8. Time of incident:

9. Location of incident:

{Page two must be completed and attached to this form.}

Description of Incident:

In your own words, describe the incident (Attach more sheets if needed. Initial and number each attachment.):

This is to certify that the information provided is true and correct, and that the individual named above in Item 2 is a victim of domestic violence, dating violence, or stalking. The incident(s) in question is a bona fide incident(s) of such actual or threatened abuse. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for termination of Section 8 project-based assistance or eviction from assisted property.

Signature _____ Executed on (Date) _____

Pursuant to 42 U.S.C. 1437f(ee)(2)(A), all information provided to an owner or management agent related to the incident(s) of domestic violence, dating violence or stalking, including the fact that an individual is a victim of domestic violence, dating violence or stalking shall be retained in confidence by the owner or management agent and shall neither be entered into any shared database nor provided to any related entity, except to the extent that such disclosure is:

- (1) Requested or consented to by the victim in writing;
- (2) Required for use in an eviction proceeding or termination of assistance; or
- (3) Otherwise required by applicable law.

Request to Stop Eviction/Removal of Benefits

DATE

BY US MAIL AND FACSIMILE

Name
Public Housing Agency
Address
Phone
Fax

Re: [Eviction/ Termination of Benefits] of [CLIENT]
Case Number: [Insert Case Number / Identifier If Available]

Dear [Public Housing Agency]:

Please be advised that [CLIENT] contacted our office regarding an eviction proceeding that [LANDLORD] pursued against her. This eviction may have negative consequences for her Section 8 housing voucher administered by your office.

[CLIENT] is a victim of domestic violence and, as such, she is entitled to certain legal protections under both federal and state law — specifically, the federal Violence Against Women Act (VAWA), 42 U.S.C. §§ 41411, 1437 *et seq.*, the federal Fair Housing Act (FHA), 42 U.S.C. § 3600 *et seq.*, and the Pennsylvania Human Relations Act, 43 P.S. § 953 *et seq.*

VAWA prohibits the eviction of, and removal of assistance from, certain persons living in public or Section 8 assisted housing if the basis for such action is an instance of domestic violence, dating violence, sexual assault, or stalking. **All public housing authorities administering public housing assistance must comply with this law.** VAWA specifically states:

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

42 U.S.C. § 41411(b)(3)(A). Given that these provisions of VAWA were added in January 2006, and again enhanced in 2013, some housing authorities may not yet be aware of the protections and, hence, have not yet had the opportunity to incorporate the

protections into existing practice and procedure. Accordingly, I am enclosing the relevant section of the Violence Against Women Act.

In addition to violating VAWA, eviction of [CLIENT] for incidents related to her victimization violates the federal Fair Housing Act and the Pennsylvania Human Relations Act. These Acts protect against discriminatory conduct that violates individuals' civil rights, such as the right to fair and equal treatment regardless of sex. The vast majority of victims of domestic violence are women and, thus, refusing to rent, evicting, terminating assistance, or otherwise making housing unavailable to someone because she is a victim of domestic violence constitutes sex discrimination.

It is our understanding that [LANDLORD] believes [ORDINANCE] requires [him/her] to evict [CLIENT] or face sanction. But enforcement of [ORDINANCE] in a manner that punishes victims of domestic violence, dating violence, or stalking violates the above-cited federal and state law, both of which unquestionably trump local ordinances. Any action by the [Housing and Redevelopment Authority] to terminate [CLIENT]'s housing assistance would, thus, subject the Authority to legal liability.

We understand that [LANDLORD] has allowed [CLIENT] to remain in the property through [DATE] notwithstanding the eviction order. We also understand that [CLIENT]'s Section 8 subsidy is in jeopardy due to the eviction proceeding, but has not yet been terminated.

It is our position that the eviction and any ensuing consequences stemming from it are in violation of the above-cited federal and state laws. At this time, we ask that you refrain from any action to terminate [CLIENT]'s housing assistance and/or otherwise penalize her in any way or we will have no choice but to enforce her federal and state civil rights through litigation.

I would be happy to speak to you about this matter. Please call my office at [PHONE NUMBER]. I look forward to hearing from you.

Sincerely,

Attorney for Jane Tenant
Firm name
Address
E-mail
Phone
Fax

CC: [LANDLORD/PHA]

Request to Reinstate Public Housing Benefits

DATE

BY US MAIL AND FACSIMILE

Name
Public Housing Agency
Address
Phone
Fax

Re: Request to Reinstate Public Housing Benefits for Jane Tenant
Case Number: [Insert Case Number / Identifier If Available]

Dear [Public Housing Agency]:

As you know, the Housing Authority terminated Jane Tenant's housing assistance after a hearing on [DATE]. The Housing Authority stated that it terminated Ms. Tenant's assistance because she broke her lease by vacating the property prior to expiration of the lease. However, Ms. Tenant was forced to vacate the property to seek shelter and safety from her [abusive spouse/boyfriend or stalker]. Thus, as is more thoroughly explained below, federal law clearly prohibits the public housing authority from terminating Ms. Tenant's assistance.

The U.S. Department of Housing and Urban Development's PIH 2006-42 states,

The Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA) protects tenants and family members of tenants who are victims of domestic violence . . . from being evicted or terminated from housing assistance based on acts of such violence against them. These provisions apply to both public housing agencies . . . and Section 8 programs.

In early February, Ms. Tenant informed her caseworker that she was in an abusive situation, that the abuser punched a hole in the wall, and that the violence was escalating. Ms. Tenant also informed the Housing Authority of the abuse in her request for a hearing. At the hearing, she explained that there was a history of domestic violence and that she vacated the apartment to protect herself and her children. She did not call the police because she feared further abuse from her [spouse / boyfriend]. The Housing Authority noted in its hearing notes that it was aware of the domestic violence, but still chose to terminate her housing because she broke the lease.

[Outline abuse that occurred]

The Violence Against Women Act (VAWA), 42 U.S.C. § 41411(b)(3); 42 U.S.C. § 1437d & f, to forbid housing authorities from using domestic violence as a basis for termination of assistance. In pertinent part, VAWA states:

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

42 U.S.C. § 41411(b)(3).

Housing authorities may terminate assistance on grounds other than domestic violence, but are expressly prohibited from terminating assistance for incidents or actions related to domestic violence. 42 U.S.C. § 41411(b)(3)(C)(ii).

Here, the Housing Authority claims it terminated Ms. Tenant's assistance because she wanted to break the lease, but in doing so it ignores the underlying reason Ms. Tenant left the apartment. Ms. Tenant was in an actively abusive situation and was frightened for her own safety and that of her children. Abuser's long record of verbal and physical abuse establishes an ample record to show that Ms. Tenant's fear was legitimate and that she was compelled to leave to protect herself and her children.

The Housing Authority's decision is in violation of VAWA and we urge you to reconsider and restore Ms. Tenant's assistance as soon as possible.

Sincerely,

Attorney for Jane Tenant

Firm name

Address

E-mail

Phone

Fax

CC: [LANDLORD/PHA]

Request for Emergency Public Housing Transfer

The facts of this sample letter are taken from Robinson v. Cincinnati Metro. Hous. Auth., 2008 WL 1924255, No. 08cv238 (S.D. Ohio 2008).

[Housing authority staff member]
[Housing Authority of [jurisdiction]]

[Date]

Re: Jane Tenant's Request for Emergency Transfer
Case Number: [Insert Case Number / Identifier If Available]

Dear [Name]:

I represent Jane Tenant, a public housing tenant who lives at [address]. I am writing to request that the housing authority reconsider its decision to deny Ms. Tenant an emergency transfer to another public housing unit. As Ms. Tenant explained in her transfer request, her ex-boyfriend [PERPETRATOR] attacked her at her public housing unit and tried to stab her. Ms. Tenant's safety will remain in jeopardy if she is not transferred to another unit. To avoid liability under state and federal law, as well as future injury to Ms. Tenant, the housing authority should assist her in moving to a safe public housing unit as soon as possible.

While Ms. Tenant continues to pay rent and utilities at her current public housing unit, she has been unable to live there since [Date], after being severely beaten by Mr. [PERPETRATOR]. Mr. [PERPETRATOR] threatened to kill Ms. Tenant if she returned to the unit. Since that time, she has feared for her safety and the safety of her family, and has been staying at various undisclosed locations.

[INSERT FACTS ABOUT VICTIMIZATION]

On [Date], Ms. Tenant completed a transfer request form and returned it to her property manager, _____. A copy of the transfer request is attached to this letter. _____ subsequently informed Ms. Tenant that her request for a transfer was denied and that her situation did not qualify for a transfer under the housing authority's policy.

Housing authority's denial of Ms. Tenant's request directly contradicts the Violence Against Women Act, as well as its own policies regarding transfers. The Violence Against Women Act requires PHAs to allow housing assistance recipients to transfer to a new location when the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking and reasonably believes that they are at risk of imminent harm from further violence if they remain in the same unit. 42 U.S.C. § 41411(e). And, as I am sure you are aware, housing authority's Admissions and Continued Occupancy Policy allows tenants to transfer when the unit "poses an immediate threat to resident life, health, or safety" and when residents who "are victims of federal hate crimes or extreme harassment."

As Ms. Tenant's [police report, physician's letter and restraining order] indicate, remaining in her unit would pose an immediate threat to her life, health and safety. Further, Mr. [PERPETRATOR]'s acts of violence against her constitute extreme harassment, and Ms. Tenant will be subject to continued harassment if she remains in her existing unit. Accordingly, Ms. Tenant clearly qualifies for a transfer under housing authority's policy and should be permitted to relocate to a safe unit as soon as possible.

In addition to violating VAWA housing protections and the housing authority's own practices and policies, denial of transfer for Ms. Tenant violates the federal Fair Housing Act (FHA), 42 U.S.C. § 3600 *et seq.*, and the Pennsylvania Human Relations Act, 43 P.S. § 953 *et seq.* These Acts prohibit discrimination based on sex. Domestic violence overwhelmingly impacts women and, thus, discrimination based on an individual's status as a victim of domestic violence constitutes sex discrimination. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *Bouley v. Young-Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005); *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995). Housing authority discriminated against Ms. Tenant on the basis of sex when it refused to grant Ms. Tenant occupancy rights granted to other tenants. Namely, housing authority refused to grant permission for Ms. Tenant to transfer to a safe location based on the criminal behavior of her abuser, even though such rights are available under existing law.

As I am sure you are aware, the housing authority is required to take reasonable steps to mitigate the risk of harm to a resident by a third party. Failure to do so exposes the housing authority to state tort liability if the resident is injured. Thus, for the reasons discussed above, the housing authority should immediately grant Ms. Tenant's request for a transfer. It is particularly important to take immediate action, given the housing authority's potential for liability if it does not.

I will call you this week to discuss how we can resolve this matter in a way that minimizes housing authority's administrative burden while protecting Ms. Tenant's safety to the maximum extent possible.

Sincerely,

Attorney for Jane Tenant

Firm name

Address

E-mail

Phone

Fax

CC: [LANDLORD/PHA]

Request to Allow Victim to Retain Housing Voucher

DATE

Name

Public Housing Agency

Address

Phone

Fax

**RE: Family Break-Up: Request to Transfer Voucher to Jane Tenant
Case Number: [Insert Case Number / Identifier If Available]**

Dear [Public Housing Agency]:

This office represents Ms. Jane Tenant regarding her family's Section 8 voucher. Enclosed you will find a release, which permits you to speak with me about her case.

Ms. Tenant and [PERPETRATOR] are participants in the Section 8 program administered by [Housing Authority] and are currently leasing a property at [Location]. [PERPETRATOR] is listed as the head of household; however, throughout the family's participation in the Section 8 program, Ms. Tenant and her two children have been listed on the voucher and the lease, and their income has been counted towards household income for rent calculation purposes.

For many years Ms. Tenant has been the victim of emotional abuse and physical abuse by [PERPETRATOR]. [INSERT FACTS ABOUT VICTIMIZATION]

On [DATE], Mr. [PERPETRATOR] voluntarily vacated the premises, and the family has broken up. Ms. Tenant does not know where he is residing. However, he has continued to harass Ms. Tenant, and she continues to be afraid of him. Since leaving the household, Mr. [PERPETRATOR] has contributed nothing towards household income, and Ms. Tenant has been managing with difficulty to pay the full rent herself.

This letter is a request on Ms. Tenant's behalf that she be made head of household on the voucher and that [PERPETRATOR]'s name be removed. She also requests that the family's portion of rent be recalculated based upon her income alone.

The Violence Against Women Act provides:

"[A] public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or

otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

42 U.S.C. § 41411(b)(3)(B).

Pursuant to the [Housing Authority]'s Section 8 Administrative Plan section XXX, (Family Break-Up Policy) where a family breaks up, the Section 8 voucher does not necessarily remain with the head of household. Any adult assuming responsibility for one or more minor family members could retain the voucher. Where, as here, no court has determined which family member retains the voucher, the [Housing Authority] makes this determination considering the following factors:

- a. The interests of any minor children
- b. The interests of any ill, elderly or disabled persons who are family members
- c. Whether family members fled the unit because of actual or threatened violence by a spouse or other member of the household.
 - *The PHA will take this factor into consideration regardless of whether the individuals leaving the unit are the victims or the perpetrators.
- d. Whether the assistance should remain with family members remaining in the original assisted unit or those who have fled or left the unit
- e. The amount of time since the Household members were added to the Family Composition.

The PHA will consider this factor, on a case-by-case basis, and will look at the circumstances surrounding the addition of a household member.

[Cite section of local administrative plan.]

Pursuant to the above criteria, Ms. Tenant should retain the voucher. She is the victim of violence, which was perpetrated against her by [PERPETRATOR]. She has custody of the children and intends to remain in the assisted unit.

The [Housing Authority]'s Family Break-Up Policy also provides at [CITE] that when a family breaks up and there is a change in household composition, [Housing Authority] should recalculate the family's rent share to reflect the current family composition.

It is our understanding that Mr.[PERPETRATOR] may have contacted you to obtain a new voucher for himself alone. Ms. Tenant did not receive any information from the [Housing Authority] to this effect, but Mr. [PERPETRATOR] attempted to procure Ms. Tenant's signature on a related document. Should this be the case, I trust [Housing Authority] will not grant Mr. [PERPETRATOR]'s request. Such an action would place Ms. Tenant at risk of eviction, placing her and her children at risk of substantial harm.

Please contact me at [NUMBER] to discuss the transfer and income recalculation. I would also like to schedule a time, at your earliest convenience, to view the file.

Very truly yours,
Attorney for Jane Tenant
CC: [LANDLORD/PHA]

Request for Hearing to Allow Victim to Retain Voucher

DATE

Name

Public Housing Agency

Address

Phone

Fax

**RE: Request for Remedies - Section 8 Voucher Program: Ms. Tenant
Case Number: [Insert Case Number / Identifier If Available]**

Dear [Public Housing Agency]:

This is an urgent situation. Imminent eviction of a family is in process. Our office represents Ms. Tenant, who resides with her three (3) children at [Address].

Ms. Tenant was living with her husband and children at the above address for approximately [TIME] under the HUD Section 8 voucher program with [Housing Authority]. During this time, XYZ Authority considered Mr. [PERPETRATOR] “head of household.” Each year, Ms. Tenant and Mr. [PERPETRATOR] went to the [Housing Authority] to execute the requisite income certification forms. Mr. [PERPETRATOR] was then and is now a recipient of SSD from the Social Security Administration. Mr. [PERPETRATOR] vacated the family residence on [DATE].

Ms. Tenant came to our office about three days ago with a summons and complaint for non-payment of the contract rent on the above apartment of \$967 a month from [Date (partial rent) through Date], totaling [#]. The trial date is set for [Date], 2012.

On [DATE], Mr. [PERPETRATOR] contacted [Housing Authority] and requested that it issue a “Request for Tenancy Form” so that he could leave the present apartment and live by himself in a new apartment at [Address]. While Mr. [PERPETRATOR]’s request was in the process of being reviewed, Ms. Tenant contacted _____ at the [Housing Authority] to ask that she be allowed to continue her Section 8 status, notwithstanding Mr. [PERPETRATOR]’s notice to the Authority that he wanted to take the Section 8 status with him to a new address. Ms. Tenant was told that the [Housing Authority] could do nothing about her husband’s request because he was the head of household under Authority’s records, and he was disabled.

[Housing Authority] gave the family’s Section 8 voucher to Mr. [PERPETRATOR] when he vacated the family residence on [DATE]. As a result, our client now faces a summary dispossession action for the contract rent on the apartment.

[Insert facts about victimization, including any information about Protection Orders granting exclusive possession of the home or other relief relevant to the housing issue]

Our office has reviewed our client's rights under the federal Violence Against Women Act (VAWA), 42 U.S.C. § 41411; 42 U.S.C. 1437f(o)(D)(ii)-(vi), the attached HUD regulation, 24 CFR § 982.315(a) and (b), and the [Housing Authority]'s "Housing Choice Voucher Program Administrative Plan" [Effective Date] (attached).

VAWA provides:

"[A] public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

42 U.S.C. § 41411(b)(3)(B)(i).

If housing assistance is terminated for one household member, PHAs, owners and/or managers are required to provide the remaining tenants an opportunity to establish eligibility for the housing program. 42 U.S.C. § 41411(b)(3)(B)(ii).

Likewise, HUD regulation 24 CFR § 982.315(b) sets forth certain criteria that PHAs, such as [Housing Authority], must follow in the establishment of their Section 8 Administrative Plans. These include assessing factors when a family break-up occurs, such as whether the assistance should remain with the family members remaining in the original assisted unit, the interests of minor children, and whether family members are facing or have faced actual or threatened physical violence from a spouse. Other factors are also considered pursuant to the individual housing authority's annual plan.

When [Housing Authority] interviewed Ms. Tenant, it failed to place sufficient weight on her needs and the needs of her children in deciding to award the Section 8 voucher to her husband at the time of the family break-up. This is in stark contradiction to VAWA, as well as the Housing Authority's Administrative Plan and the HUD regulation cited above.

We hope that this matter can be resolved informally. If not, we kindly request that [Housing Authority] hold a *prompt administrative hearing on the issue of Ms. Tenant's right to continue receiving Section 8 housing assistance*. In part, this hearing should address whether Mr. [PERPETRATOR] committed fraud, 24 CFR § 982.551-553, in the representations he made to [Housing Authority] on the Request for Tenancy Form.

I look forward to hearing from you on this important and urgent matter.

Sincerely,
Attorney for Jane Tenant
CC: [LANDLORD/PHA]

**PART III: HOUSING DISCRIMINATION REMEDIES –
STATE & FEDERAL RELIEF**

THE PENNSYLVANIA HUMAN RELATIONS ACT

THE FAIR HOUSING ACT

AND

FEDERAL COURT COMPLAINTS

Legal Overview: Pennsylvania Human Relations Act, Fair Housing Act and Federal Court Complaints

There are various legal options available to vindicate the fair housing rights of domestic violence victims who have been evicted pursuant to a housing nuisance/disorderly house/crime-free ordinance. Options include:

- Filing an administrative complaint with either the federal Department of Housing and Urban Development (HUD) or the Pennsylvania Human Relations Commission (PHRC)
- Filing a lawsuit in either federal or state court, or both

Additionally, local remedies may be available, depending on the jurisdiction.

Filing an Administrative Complaint with the Pennsylvania Human Relations Commission

The Pennsylvania Human Relations Act (PHRA) establishes an enforceable right to housing free from discrimination based on, *inter alia*, sex. Prohibited acts include both direct intentional discrimination and indirect acts that have a disparate impact on a protected group. The PHRC is the administrative agency charged with enforcing the provisions of the PHRA.

A PHRA complaint regarding a discriminatory housing ordinance may potentially be raised under 43 P.S. §§ 955(h)(1) (refusal to lease or otherwise deny or withhold housing based on sex), (h)(3) (discrimination in the terms or conditions of housing based on sex), or (h)(6) (discriminatory inquiries concerning an applicant's sex).

How to Initiate a Complaint

- Complaints must be filed within 180 days of the last discriminatory act.
- An aggrieved party can file pro se or with the help of an attorney.
- Complaints may be filed either online or by mail. An example of the complaint form is in this Part of the toolkit.

Visit www.phrc.state.us to file a complaint or for more information.

Contents of a Complaint

The complaint must be specific and must state more than a general allegation of discrimination.

Service of Complaint

- The PHRC will serve the complaint on the other party within 30 days.
- If the case is filed with HUD as well as with PHRC, HUD will serve the other party within 10 days.

Answer

- The other party is entitled to answer the complaint.
- An answer must be submitted within 30 days of service.
- The answer period may be extended an additional 30 days on request.
- The opposing party must serve his or her answer within the time allowed.

Investigation

PHRC staff investigates the complaint after the pleadings are filed. Approximately 25% of cases settle at the investigation stage.

The PHRC may, but is not required to:

- Schedule a fact-finding conference, at which the staff allows each party to present evidence and documents
- Issue a subpoena to uncover documents or question witnesses

Dual HUD / PHRC Cases

There are two ways that a dual case may be initiated:

- (1) When a complaint is filed with the PHRC that also violates the Fair Housing Act (FHA), the PHRC will file the complaint with the Department of Housing and Urban Development (HUD).
- (2) A petitioner may submit a complaint to both the PHRC and HUD.

Dual cases are investigated within 100 days.

Investigation Results

There are two possible results of an investigation.

- (1) No Finding of Probable Cause

PHRC may conclude that no probable cause exists to substantiate the allegations in the complaint. The complainant may request reconsideration and/or a preliminary hearing within 10 days.

- (2) Finding of Probable Cause

If the investigation reveals probable cause that unlawful discrimination occurred, the investigation moves into the next phase:

- a. Conciliation*

If the PHRC finds probable cause for discrimination, it will attempt to broker a settlement through the conciliation process.

The PHRC will ask the opposing party to cease and desist from the discriminatory act/practice and implement actions, programs or compensation deemed necessary to remedy the aggrieved party.

- b. Public Hearing*

If conciliation fails, the PHRC will hold a hearing.

At the hearing, three commissioners preside over the case. Discovery is available for both parties, and parties may choose to be represented by a PHRC attorney, a private attorney, or *pro se*.

*In certain housing cases, parties are permitted to elect court action in lieu of a PHRC Public Hearing.

It is important to note that an aggrieved party may still file in federal court even if the PHRC or HUD has not found probable cause for the discrimination. But keep in mind that an unfavorable decision at the administrative level will substantially impact your client's ability to succeed in federal court.

Relief

If the PHRC finds for the respondent, the case is dismissed.

If the PHRC finds for the complainant, broad relief is available.

- Cease and desist order
- Reports of compliance
- Monetary damages, which may include compensation for humiliation and embarrassment.

Appeal

The aggrieved party can appeal to Commonwealth Court within 30 days of the decision.

*If the case goes before the Commonwealth Court, the prevailing party may receive attorney's fees and costs.

Filing a PHRA Complaint in the Court of Common Pleas

The complainant may be able to file a complaint in the Pennsylvania Court of Common Pleas if:

- The PHRC dismisses the complaint.
- The PHRC fails to resolve the complaint to the satisfaction of complainant within one year of filing (or in some situations, two years).

When filing with the Court of Common Pleas, the complainant must serve the PHRC with the complaint.

Filing an Administrative Complaint with HUD

Like the PHRA, the federal Fair Housing Act (FHA) prohibits housing discrimination based on, *inter alia*, sex. Prohibited acts include both direct intentional discrimination and indirect acts that have a disparate impact on a protected group. The Fair Housing and Equal Opportunity Office (FHEO) of the U.S. Department of Housing and Urban Development (HUD) is the administrative agency charged with enforcing the provisions of the PHRA.¹⁰⁵

¹⁰⁵ See FHEO Memorandum, Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA) (Feb. 9,

How to Initiate a Complaint

A tenant who wishes to bring a discrimination action may choose to submit an FHA complaint with HUD within one year of the alleged discriminatory act.

HUD complaints may be filed either online, by phone or by mail. An example of the complaint form is in this Part of the toolkit.

Visit www.portal.hud.gov to file a complaint or for more information.

Intake Investigation

Before beginning a full investigation, an intake specialist will contact the complainant and interview her to determine whether HUD has jurisdiction to investigate. If the intake specialist determines that HUD has jurisdiction, then HUD will file the complaint.

HUD may, in some circumstances, remand the complaint to the PHRC for investigation. If the case is remanded to the PHRC, the PHRC must begin work on the case within 30 days.

Filing a Formal Complaint

If HUD accepts the complaint, it will draft a formal complaint that the complainant will be asked to sign.

Within 10 days of signing the formal complaint, the complaint will be served on the opposing party.

Answer

Within 10 days of receiving the notice, the opposing party must file an answer to the formal complaint.

Investigation

The investigator has the power to:

- Interview the complainant, the opposing party and any witnesses
- Collect relevant documents
- Conduct on-site visits
- Take depositions
- Issue subpoenas and interrogatories
- Compel testimony or production of documents

HUD's investigation may produce information useful to the victim regardless of whether a charge of discrimination is made. However, if the investigation determines that no discrimination occurred, the victim should withdraw the complaint. A finding of no discrimination does not prohibit the tenant from suing, but could be detrimental.

2011), *available at* <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.

Conciliation

HUD is required to attempt to settle every fair housing complaint through the conciliation process. However, parties are not compelled to conciliate if they do not wish to resolve matters through this process.

Outcome of Investigation

There are three potential outcomes of an investigation:

(1) Settlement

The parties agree to settle through the conciliation process, and the case is closed.

(2) No Reasonable Cause

If HUD does not find reasonable cause to believe that housing discrimination occurred, it will issue a determination of “no reasonable cause” and the case will be closed.

The aggrieved party can ask for reconsideration by sending a letter to the Director of the Office of Enforcement.

(3) Reasonable Cause

If HUD finds reasonable cause to believe that housing discrimination occurred, it will issue a determination of “reasonable cause.”

The opposing party will be charged with violating the law, and the charges will go before an Administrative Law Judge. If requested by either party within 20 days of the charge, the case may be heard in federal court.

Hearing in Federal Court

If either party elects to have the case heard in federal court, the Department of Justice will initiate a civil case on behalf of the aggrieved party. The court may award actual and punitive damages, as well as attorneys’ fees.

Hearing Before HUD Administrative Law Judge (ALJ)

An attorney from HUD will represent the aggrieved party.

The ALJ will issue an initial decision and, if the ALJ finds that discrimination occurred or is certain to occur, he or she can award punitive damages up to \$11,000, as well as actual damages and attorneys’ fees. Injunctive and/or equitable relief is also available.

Appealing the ALJ:

(1) Appeal within HUD:

- An aggrieved party has 15 days to appeal an ALJ’s decision to the Secretary of HUD.
- The Secretary can, within 30 days, affirm, modify, or set aside the ALJ’s decision. If the Secretary does not take action, the ALJ’s decision is considered final.

(2) Appeal to Federal Court

- After HUD issues a final decision, it can be appealed to the appropriate federal court of appeals.

Filing A Civil Lawsuit in Federal Court

There is no requirement that the victim/plaintiff begin with an administrative complaint (PHRC or HUD). She may file a civil lawsuit in federal court without initiating an administrative complaint. However, the investigation by HUD or PHRC is free and may produce useful information for a civil lawsuit. So, as a practical matter, she may want to begin with an administrative complaint before moving forward with a federal civil suit.

A sample federal complaint can be found in this Part of the toolkit. A list of resources and appropriate referrals is found in the last Part of this toolkit.

Requirements For Filing Federal Civil Suit

The complaint must be filed within 2 years of the last discriminatory act.

An attorney representing a client in federal court must be admitted to practice before the federal court.

Potential Causes of Action in Federal Court

(1) Constitutional Challenges

Note that constitutional arguments require a state action. In cases involving a private landlord with no accompanying state action – such as a discriminatorily applied nuisance ordinance – these arguments may fail.

a. Due Process

Nuisance ordinances that compel eviction often lack provisions for the tenant to challenge disturbance reports that form the basis of an eviction. This may amount to a violation of a tenant's right to housing.¹⁰⁶

b. Right to Petition (First Amendment)

Petitioning the Government for Redress of Grievances: The First Amendment of the U.S. Constitution provides that the government shall not infringe on the rights of citizens to petition the government for redress of grievances.

Initially this right was exclusively applied to Congress, but it has since been expanded to include calling the police. This expansion included the recognition that citizens should not be discouraged from contacting the police with information about criminal activity. *Forro Precision, Inc. v. I.B.M.*, 673 F.2d 1045, 1060 (9th Cir. 1982).

This theory would apply to those victims who call the police and who must pay for the police call and for those who are evicted because they called the police. It would also apply to victims who do not call the police for

¹⁰⁶ Cf. *Berwick Area Landlord Ass'n v. Borough of Berwick*, No. 766 C.D. 2011 (Pa. Commw. Ct. June 27, 2012) (holding that the structure of the local ordinance satisfied due process in relation to the landlords).

assistance because they believe that they will be fined or evicted if they call the police again. Penalizing or threatening to penalize an individual for exercising the right to petition the police would have a chilling effect on actualizing this right.

(2) Fair Housing Act (FHA)

There are three possible theories for the FHA to apply:

a. *Direct Discrimination*

It may be possible to show direct discrimination, such as oral or written communications, which demonstrate that the landlord deliberately discriminated against the victim.

b. *Disparate Impact*¹⁰⁷

Disparate impact is viable when a facially neutral policy, procedure, or practice disproportionately affects a protected class. The overwhelming majority of domestic violence victims are female. Thus, when a local ordinance or other government act affects victims of domestic violence, it disparately impacts women, a protected class under the FHA.

c. *Disparate Treatment*¹⁰⁸

A woman may state a claim if she shows that she was evicted because she called the police, but a man who also called the police was not evicted.

(3) State Law Claims

A PHRA or other state law claim could be added to the federal complaint under pendant jurisdiction.

***If your client wishes to pursue a federal civil suit,
please contact the ACLU Women's Rights Project at 212-549-2644
(womensrights@aclu.org) or PCADV's Legal Department at 717-671-4767 or
888-235-3425. We can provide referrals, information, and assistance.***

¹⁰⁷ 42 U.S.C. § 3604(a) and (b).

¹⁰⁸ *Id.*

Pennsylvania Human Relations Act Complaint Form

Revised 08.05

PA Human Relations Commission Use Only

Docket No.

HUD No.

Social Security No.

PHRC can investigate complaints of discrimination in: (1) Employment based upon race, color, religion, ancestry, age (40 and above), sex, national origin, non-job related handicap or disability, known association with a handicapped or disabled individual, possession of a diploma based on passing a general education development test, or willingness or refusal to participate in abortion or sterilization; and (2) Public Accommodations based upon race, color, religion, sex, ancestry, national origin, handicap or disability, known association with a handicapped or disabled person, use of a guide or support animal due to blindness, deafness or physical handicap or because the user is a handler or trainer of such animals.

H FORM - HOUSING QUESTIONNAIRE

Questionnaire on the incident you are complaining about

To avoid rewriting your answers, please read this short questionnaire from beginning to end before filling out your answers to individual questions. Please answer every applicable question as fully as possible, and to the best of your present knowledge, information and belief. If you are unsure of your answer, please say so. It is your responsibility to notify this Agency of a change of address or times of unavailability. Failure to notify this Agency may result in dismissal of the matter.

Name _____

Address _____

City _____ State _____ Zip Code _____

County _____ Phone H: _____ Phone W: _____

May we call you at work? (Circle one) **YES** **NO**

Information about the Organization your complaint is against:

Name _____

Address _____

City _____ State _____ Zip Code _____

Type of Business _____

County _____ Phone No. _____

Number of units owned or managed by above. Please circle one.

| | | | |
|-------------|------------|-----------|---------|
| Less than 2 | 2 to 14 | 15 to 100 | Unknown |
| 101 to 200 | 201 to 500 | 501 plus | |

Name and address of person who will know how to contact you and who does not reside in your home.

Name _____

Address _____

City _____ State _____ Zip Code _____

Phone No. Home _____ Phone No. Work _____

In this Questionnaire, you will see the word "class" mentioned. **Class means the person's race, sex, age, ancestry, religion and so on.** Depending on the issues in the complaint, you may belong to two or more classes. For example, a Black female could belong to two classes: race/Black and sex/female. A White male could belong to race/White and sex/male. All persons named in the complaint or questionnaire should be identified by their class as follows: John Doe (White male), John Doe (under age 40), Jane Doe (Black female). or example, if your complaint is based on race, include the race of all persons mentioned. If it is a sex complaint, mention the sex of all persons mentioned.

- 1 Please indicate your class (i.e. race (Black), sex (male), etc.) for each class you feel was a factor in discrimination.

_____ Sex _____ National Origin _____ Age

_____ Race _____ Retaliation

_____ Color _____ Religion

_____ Disability

Identify your disability: _____

_____ Familial Status (1 or more children under age 18 and housed by parent or person with legal custody or pregnant)

_____ Number of children _____

_____ Under age 18 _____

_____ Pregnancy/Birth of a child

_____ Association with someone with a disability

_____ Trainer/Handler/User of support animal(s)

- 2 Discrimination means difference of treatment. Please explain what happened to you and why you feel you were treated differently. In other words, what happened to persons of a different class that makes you feel they received more favorable treatment than you. Give specific dates.

3 How was your class a factor in your treatment? _____

4 Has anyone else been treated as you were? Please list them and identify by race, sex, age, etc.

| Name | Race, Age, Sex, etc. |
|------|----------------------|
|------|----------------------|

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

4a What happened to him or her?

5 Name other people who have been treated differently. Please list them and identify by race, sex, age, etc.

| Name | Race, Age, Sex, etc. |
|------|----------------------|
|------|----------------------|

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

5a What happened to him or her?

6 Do you have any documents, such as receipts, letters, applications to back up what you are saying?

YES

NO

If yes, please attach copies.

7 Were there any witnesses to what happened to you?

YES

NO

If yes, please list them.

Name/Title _____

Class _____

Address _____

Phone No. _____

What will he/she be able to tell us? _____

8 What do you hope to achieve by filing your complaint? _____

9 What other relevant information do you want the Commission to review that pertains to your complaint? _____

10 Have you filed a complaint about this matter with any other commission or agency? If so, please specify the Commission or agency and the date you filed, to the best of your recollection.

Name of Agency or Commission _____

Date Filed _____

Docket No. _____

- 11 Have you taken any court action regarding this matter? If so, please specify in what court and the date you filed, to the best of your recollection.

Name of Court _____

Date Filed _____

City _____

County _____

State _____

- 12 Is an attorney representing you in this matter? **YES** **NO**

Name _____

Address _____

Phone No. _____

If there are other facts you feel should be considered, record these on the last page of the questionnaire (Continuation Page).

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA.C.S. Section 4904, relating to unsworn falsification to authorities.

Signature _____ Date _____

Address _____

City, State and Zip Code _____

Phone No. Home _____

Phone No. Work _____

Phone No. Cell _____

CONTINUATION PAGE

For use if additional pages are needed to answer any question(s). Indicate the question number that is being answered before each response below.

This image shows a full page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, providing a template for handwriting practice. There are no margins, text, or other markings on the page.

Fair Housing Act Complaint and Instructions

Are You a
Victim of
Housing
Discrimination?

Fair Housing is Your Right!

If you have been denied your
housing rights...you may have
experienced unlawful discrimina-
tion.



U.S. Department of Housing and Urban Development

WHERE TO MAIL YOUR FORM OR INQUIRE ABOUT YOUR CLAIM

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: NEW ENGLAND OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 321
Boston, MA 02222-1092
Telephone (617) 994-8320 or 1-800-827-5005
Fax (617) 565-7313 • TTY (617) 565-5453
E-mail: Complaints_office_01@hud.gov

For New Jersey and New York: NEW YORK/NEW JERSEY OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, NY 10278-0068
Telephone (212) 264-1290 or 1-800-496-4294
Fax (212) 264-9829 • TTY (212) 264-0927
E-mail: Complaints_office_02@hud.gov

For Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia: MID-ATLANTIC OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107
Telephone (215) 656-0663 or 1-888-799-2085
Fax (215) 656-3419 • TTY (215) 656-3450
E-mail: Complaints_office_03@hud.gov

For Alabama, the Caribbean, Florida, Georgia, Kentucky, Missis- sippi, North Carolina, South Carolina, and Tennessee: SOUTHEAST/CARIBBEAN OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
Five Points Plaza
40 Marietta Street, 16th Floor
Atlanta, GA 30303-2808
Telephone (404) 331-5140 or 1-800-440-8091
Fax (404) 331-1021 • TTY (404) 730-2654
E-mail: Complaints_office_04@hud.gov

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: MIDWEST OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard, Room 2101
Chicago, IL 60604-3507
Telephone (312) 353-7776 or 1-800-765-9372
Fax (312) 886-2837 • TTY (312) 353-7143
E-mail: Complaints_office_05@hud.gov

For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: SOUTHWEST OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
801 North Cherry, 27th Floor
Fort Worth, TX 76102
Telephone (817) 978-5900 or 1-888-560-8913
Fax (817) 978-5876 or 5851 • TTY (817) 978-5595
E-mail: Complaints_office_06@hud.gov

For Iowa, Kansas, Missouri and Nebraska: GREAT PLAINS OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
Gateway Tower II
400 State Avenue, Room 200, 4th Floor
Kansas City, KS 66101-2406
Telephone (913) 551-6958 or 1-800-743-5323
Fax (913) 551-6856 • TTY (913) 551-6972
E-mail: Complaints_office_07@hud.gov

For Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: ROCKY MOUNTAINS OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
1670 Broadway
Denver, CO 80202-4801
Telephone (303) 672-5437 or 1-800-877-7353
Fax (303) 672-5026 • TTY (303) 672-5248
E-mail: Complaints_office_08@hud.gov

For Arizona, California, Hawaii, and Nevada: PACIFIC/HAWAII OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
600 Harrison Street, Third Floor
San Francisco, CA 94107-1300
Telephone (415) 489-6524 or 1-800-347-3739
Fax (415) 489-6558 • TTY (415) 436-6594
E-mail: Complaints_office_09@hud.gov

For Alaska, Idaho, Oregon, and Washington: NORTHWEST/ALASKA OFFICE

Fair Housing Hub
U.S. Dept. of Housing and Urban Development
Seattle Federal Office Building
909 First Avenue, Room 205
Seattle, WA 98104-1000
Telephone (206) 220-5170 or 1-800-877-0246
Fax (206) 220-5447 • TTY (206) 220-5185
E-mail: Complaints_office_10@hud.gov

If after contacting the local office nearest you, you still have ques-

tions – you may contact HUD further at:
U.S. Dept. of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 7th Street, S.W., Room 5204
Washington, DC 20410-2090
Telephone (202) 708-0836 or 1-800-669-9777
Fax (202) 708-1425 • TTY 1-800-927-9275

To file electronically, visit: www.hud.gov

PLACE
POSTAGE
HERE

MAIL TO:

Public Reporting Burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department of Housing and Urban Development is authorized to collect this information by Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, (P.L. 100-430); Title VI of the Civil Rights Act of 1964, (P.L. 88-352); Section 504 of the Rehabilitation Act of 1973, as amended, (P.L. 93-112); Section 109 of Title I- Housing and Community Development Act of 1974, as amended, (P.L. 93-35); Americans with Disabilities Act of 1990, (P.L. 101-336); and by the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6103).

The information will be used to investigate and to process housing discrimination complaints. The information may be disclosed to the United States Department of Justice for its use in the filing of pattern and practice suits of housing discrimination or the prosecution of the person(s) who committed that discrimination where violence is involved; and to State or local fair housing agencies that administer substantially equivalent fair housing laws for complaint processing. Failure to provide some or all of the requested information will result in delay or denial of HUD assistance.

Disclosure of this information is voluntary.



HOUSING DISCRIMINATION INFORMATION

Departamento de Vivienda y Desarrollo Urbano Oficina de Derecho Equitativo a la Vivienda
U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

Instructions: (Please type or print) Read this form carefully. Try to answer all questions. If you do not know the answer or a question does not apply to you, leave the space blank. You have one year from the date of the alleged discrimination to file a complaint. Your form should be signed and dated.

Your Name _____

Your Address _____

City _____ State _____ Zip Code _____

Best time to call _____ Your Daytime Phone No _____ Evening Phone No _____

Who else can we call if we cannot reach you?

Contact's Name _____ Best Time to call _____

Daytime Phone No _____ Evening Phone No _____

Contact's Name _____ Best Time to call _____

Daytime Phone No _____ Evening Phone No _____

1 What happened to you?

How were you discriminated against?

For example: were you refused an opportunity to rent or buy housing? Denied a loan? Told that housing was not available when in fact it was? Treated differently from others seeking housing?

State briefly what happened.

HOUSING DISCRIMINATION INFORMATION

Departamento de Vivienda y Desarrollo Urbano Oficina de Derecho Equitativo a la Vivienda
U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

2 Why do you think you are a victim of housing discrimination?

Is it because of your:

• race • color • religion • sex • national origin • familial status (families with children under 18) • disability?

For example: were you denied housing because of your race? Were you denied a mortgage loan because of your religion? Or turned down for an apartment because you have children?

Briefly explain why you think your housing rights were denied and circle the factor(s) listed above that you believe apply.

3 Who do you believe discriminated against you?

For example: was it a landlord, owner, bank, real estate agent, broker, company, or organization?

Identify who you believe discriminated against you.

Name

Address

4 Where did the alleged act of discrimination occur?

For example: Was it at a rental unit? Single family home? Public or Assisted Housing? A Mobile Home?

Did it occur at a bank or other lending institution?

Provide the address.

Address

City

State

Zip Code

5 When did the last act of discrimination occur?

Enter the date

____/____/____

Is the alleged discrimination continuing or ongoing?

Yes No

☐☐

Signature

Date

Send this form to HUD or to the fair housing agency nearest you. If you are unable to complete this form, you may call that office directly. See address and telephone listings on back page.



It is Unlawful to Discriminate in Housing Based on These Factors...

- Race
- Color
- National origin
- Religion
- Sex
- Familial status (families with children under the age of 18, or who are expecting a child)
- Handicap (if you or someone close to you has a disability)

If You Believe Your Rights Have Been Violated...

- HUD or a State or local fair housing agency is ready to help you file a complaint.
- After your information is received, HUD or a State or local fair housing agency will contact you to discuss the concerns you raise.

Detach here. Fold and close with glue or tape (no staples)

Keep this information for your records.

Date you mailed your information to HUD: _____/_____/_____

Address to which you sent the information:

Office _____

Telephone _____

Street _____

City _____

State _____

Zip Code _____

If you have not heard from HUD or a State or local fair housing agency within three weeks from the date you mailed this form, you may call to inquire about the status of your complaint. See address and telephone listings on back page.

ARE YOU A VICTIM OF HOUSING DISCRIMINATION?

"The American Dream of having a safe and decent place to call 'home' reflects our shared belief that in this nation, opportunity and success are within everyone's reach. Under our Fair Housing laws, every citizen is assured the opportunity to build a better life in the home or apartment of their choice — regardless of their race, color, religion, sex, national origin, family status or disability."

Alphonso Jackson
Secretary

HOW DO YOU RECOGNIZE HOUSING DISCRIMINATION?

Under the Fair Housing Act, it is Against the Law to:

- Refuse to rent to you or sell you housing
- Tell you housing is unavailable when in fact it is available
- Show you apartments or homes only in certain neighborhoods
- Set different terms, conditions, or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Advertise housing to preferred groups of people only
- Refuse to provide you with information regarding mortgage loans, deny you a mortgage loan, or impose different terms or conditions on a mortgage loan
- Deny you property insurance
- Conduct property appraisals in a discriminatory manner
- Refuse to make reasonable accommodations for persons with a disability if the accommodation may be necessary to afford such person a reasonable and equal opportunity to use and enjoy a dwelling.
- Fail to design and construct housing in an accessible manner
- Harass, coerce, intimidate, or interfere with anyone exercising or assisting someone else with his/her fair housing rights

Federal Civil Complaint

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|-----------------------------------|---|------------------|
| Jane Tenant, individually and as |) | Civil No. |
| next friend of Child 1 and |) | |
| Child 2, Minors |) | Hon. |
| |) | |
| Plaintiff, |) | |
| |) | <u>COMPLAINT</u> |
| |) | |
| vs. |) | |
| |) | |
| Larry Landlord and Municipality / |) | |
| Local Officials |) | |
| Defendants |) | |
| |) | |

PRELIMINARY STATEMENT

1. This action arises from sex discrimination in the unlawful termination of the tenancy of Ms. Jane Tenant, and her two minor children, Child 1 and Child 2.
2. Plaintiffs bring this action to enforce their rights under the federal Fair Housing Act, the Pennsylvania Human Relations Act, and the right to petition the government pursuant to the First Amendment of the United States Constitution.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; under 28 U.S.C. § 1343(a)(4), as a case seeking relief under an Act of Congress providing for the protection of civil rights; and under 28 U.S.C. § 1367, as a case alleging state law claims warranting the exercise of this Court's supplemental jurisdiction.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o)(1) because all or a substantial part of the events that gave rise to the claims in this matter took place in the Middle District of Pennsylvania.

JURY DEMAND

5. Plaintiff demands a trial by jury in each and every claim to which they are so entitled.

PARTIES

6. Plaintiff [Name] is a United States citizen and a resident of [city], Pennsylvania. Ms. [Name] is a woman and is protected from discriminatory practices pursuant to 42 U.S.C. § 3600 *et seq.* and 43 P.S. § 955.
7. [Name] was a tenant of _____, a *[describe the former residence - including the address - whether it was private, public, or subsidized housing - and the dates of residence]*.
8. Plaintiff Child 1 is the minor son/daughter of Ms. Tenant.
9. Plaintiff Child 2 is the minor son/daughter of Ms. Tenant.
10. At all times relevant to this action, Defendant _____ was a [Pennsylvania] limited partnership and has been the owner of [Name/Address of leased premises].
11. At all times relevant to this action, Defendant [Management Company] provided management services to Defendant [owner] for the property located at [address].
12. At all times relevant to this action, Defendant [individual employee] was the [position title] of [the property located at ((address))] and an employee of Defendant [Management Company].
13. At all times relevant to this action, Defendant [Municipality/Local Officials] was/were the governing body and/or individual(s) charged with overseeing implementation and enforcement of local ordinances.

STATEMENT OF FACTS

[In numbered paragraphs, set forth the facts necessary to support the claim.]

Federal courts use notice pleading, which requires the plaintiff to set forth the allegations with enough specificity to provide notice to the defendant of the wrong done. The plaintiff must write a short and plain statement of the case that shows her entitlement to relief. Thus, the statement must show how the plaintiff is entitled to relief, not just a bare claim that she is entitled to relief. In numbered paragraphs, lay out the facts of the case to show the wrong committed and who did what.

14. The [leased premises] is located at [address], Pennsylvania, and is owned by Defendant [Owner].
15. At all times relevant to this action, Defendant [Management Company] provided management services to Defendant [Owner], including establishing and implementing rental policies, rules and practices governing the property located at [address].
16. On or about [date], Plaintiff [name] moved into a unit in [address] and lived there continuously until [date].
17. On or about [date], Plaintiff [name]'s former boyfriend/spouse, [abuser name] entered her apartment and [describe acts of abuse here].
18. [Describe other acts of abuse, including those that triggered police response.]
19. On or about [date], Defendant [owner and/or Management Company employee] called/Plaintiff received a letter from [owner/Management Company] notifying her

that her tenancy was being terminated because the police responded to her home [one/three/etc.] times within a period of [three/six/twelve/etc.] months, thereby triggering the [City/municipality]'s [nuisance ordinance/disorderly house ordinance] and requiring eviction.

20. On or about [date], Plaintiff [name] contacted/called/wrote to Defendant [Owner and/or Management Company] to explain that she was the victim, not perpetrator, of the incident(s) to which the police responded at her address.
21. On or about [date], Defendant [Owner and/or Management Company] nonetheless informed Plaintiff [name] that she was to vacate the leased premises no later than [date].
22. As a result of Defendant [Owner and Management Company]'s discriminatory termination of Plaintiff's tenancy, Plaintiff was forced to [stay with relatives/stay in homeless shelter/live in her car/sell her possessions/be separated from her children/transfer her children to a different school/lose her job/live in fear of further abuse/lease an apartment at a higher rate of monthly rent/etc.]
23. In the United States and in Pennsylvania, the vast majority of victims of domestic violence are women, and women are much more likely than men to be the victims of domestic violence.
24. Upon information and belief, at all times relevant to this action, Defendants knew or should have known that the vast majority of victims of domestic violence are women and that women are much more likely than men to be the victims of domestic violence.

PROCEDURAL HISTORY

25. On [date], Plaintiff [name] filed a timely charge of discrimination with HUD pursuant to Section 810(a) of the Fair Housing Act, as amended, 42 U.S.C. § 3610(a) and with the Pennsylvania Human Relations Commission pursuant to 43 P.S. § 955.
26. [HUD deferred to the Pennsylvania Human Relations Commission for investigation of the complaint.]
27. In her complaints, Plaintiff [name] charged that Defendants discriminated against her by refusing to continue renting to her, terminating her tenancy, and subjecting her to disparate terms and conditions of tenancy because of her sex and because she was a victim of domestic violence.
28. On [date], the Pennsylvania Human Relations Commission issued a determination of [no] reasonable/probable cause [but acknowledged that Defendants knew Plaintiff was a victim of domestic violence].

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the Fair Housing Act, § 3604(a) and (b))

29. Plaintiff incorporates by reference all allegations in paragraphs 1 through ___ of this Complaint.
30. As a woman, Plaintiff is a member of a class protected by the Fair Housing Act, 42 U.S.C. § 3604(a), (b).

31. By terminating Ms. [Plaintiff's name]'s tenancy due to her status as a victim of domestic violence, Defendants intentionally discriminated against Plaintiff on the basis of sex, adversely affecting her opportunity to rent a dwelling and in the terms, conditions, and privileges of the rental of a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(a), (b).
32. Defendants engaged in such discrimination intentionally, willfully, and in reckless disregard of the rights of the Plaintiff.
33. Plaintiff has suffered injury as a result of Defendants' discriminatory conduct.

SECOND CAUSE OF ACTION
(Violation of the Fair Housing Act, § 3604(a), (b))

34. Plaintiff incorporates by reference all allegations in paragraphs 1 through ___ of this Complaint.
35. By adopting a policy or practice of holding tenants who are victims of domestic violence responsible for the behavior of their criminal perpetrators, Defendants engaged in practice that has a disparate impact on women, because the great majority of domestic violence victims are women and, as such, are protected against such discrimination by the Fair Housing Act, 42 U.S.C. § 3604 (a), (b).
36. Defendant engaged in such discriminatory conduct intentionally, willfully, and in reckless disregard of the rights of Plaintiff and others similarly situated.
37. Plaintiff has suffered injury as a result of Defendants' application of this discriminatory policy or practice to her.

THIRD CAUSE OF ACTION
Violation of the Right to Petition the Government under the U.S. Constitution,
Amendment I

38. Plaintiff incorporates by reference all allegations in paragraphs 1 through ___ of this Complaint
39. Defendants have engaged in a practice of interfering with Plaintiff's right to petition the government for redress of grievances under the First Amendment of the U.S. Constitution by chilling Plaintiff's access to the police.
40. Petitioner will be fined or evicted from her residence due to Defendants' practice of fining the victim for calling the police more than a set number of times or evicting domestic violence victims if they call the police or within a specific time frame. This practice chills the Plaintiff's right to petition the police for redress of wrongs committed against her by a third party not a resident of her household.
41. Chilling a victim's right to petition for police assistance interferes with the police ability to fight crime and provide some measure of safety to society.
42. Defendants engaged in the chilling and thwarting of Ms. Tenant's right to petition the government under the First Amendment of the United States Constitution intentionally, willfully and in disregard of Ms. Tenant's rights.
43. Plaintiff suffered injury as a result of Defendants' illegal conduct.

FOURTH CAUSE OF ACTION
(Violation of the Pennsylvania Human Relations Act, 43 P.S. § 955 (1), (3))

44. Plaintiff incorporates by reference all allegations in paragraphs 1 through ___ of this Complaint.
45. By adopting a policy or practice of holding tenants who are victims of domestic violence responsible for the behavior of their criminal perpetrators, Defendants engaged in practice that has a disparate impact on women, because the great majority of domestic violence victims are women and, as such, are protected against such discrimination by the Pennsylvania Human Relations Act, 43 P.S. § 955 (1), (3).
46. Defendants engaged in such discriminatory conduct intentionally, willfully, and in reckless disregard of the rights of Plaintiff and others similarly situated.
47. Plaintiff has suffered injury as a result of Defendants' application of this discriminatory policy or practice to her.

FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

48. Plaintiff incorporates by reference all allegations in paragraphs 1 through ___ of this Complaint.
49. Defendants' conduct in terminating Plaintiff's tenancy because she was the victim of domestic violence was extreme and outrageous.
50. Defendants engaged in said conduct recklessly, knowing that it was substantially certain to cause Plaintiff emotional distress.
51. Plaintiff suffered extreme emotional stress and injury as a result of Defendants' conduct.

[Add any additional relevant tort claims, etc.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- a. Award all damages to which Plaintiff is entitled as a result of Defendants' unlawful conduct, including compensatory damages, punitive damages, damages for emotional distress, and interest thereon;
- b. Declare that the discriminatory practices of the Defendants, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. § 3604(a), (b) and the Pennsylvania Human Relations Act, 43 P.S. § 955(h)(1), (3).
- c. Enjoin Defendants and their agents, employees, and successors, and all other persons acting in concert or participation with any of them from discriminating on the basis of sex against any person in any aspect of the rental of a dwelling pursuant to 42 U.S.C. § 3613(c) and state law.
- d. Enjoin Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them from interfering with Plaintiff's right to petition the government, including the police, in derogation of her right to so petition under the First Amendment of the U.S. Constitution.

- e. Order Defendants to take such affirmative steps as necessary to restore Plaintiff as nearly as practicable to the position she would have been in but for the discriminatory conduct and to take such affirmative steps as may be necessary to prevent such discrimination, harassment, and retaliation in the future.
- f. Award Plaintiff reasonable attorneys' fees and costs, pursuant to 42 U.S.C. 3613(c) (and applicable state law, if available).
- g. Grant such other and further relief as this Court deems just and proper under the Circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Respectfully Submitted,

Attorney Name

Attorney for Plaintiff

Pa. Attorney ID # _____

Name of firm

Address

Phone

PART IV: SYSTEMS ADVOCACY

Systems Advocacy: *Strategies and Allies Overview*

Successful systems advocacy impacts more than just one client, and provides victims of domestic violence with a more responsive system designed to protect them from both unintentional and intentional discrimination.

Collaborating with Allies

The old adage “there is strength in numbers” is true in systems advocacy. Working with other interested stakeholders in your community can add leverage and increase the effectiveness of your advocacy to produce better results with local government or the housing authority. The Pennsylvania Coalition Against Domestic Violence (PCADV) is always available to [provide support and technical assistance](#).

Potential allies include:

- Local domestic violence programs
- Housing and/or legal aid attorneys
- Legal services organizations
- Anti-poverty service providers
- Mental health and intellectual disability service providers
- Community/social organizations/agencies
e.g., churches, volunteer programs, special interest groups
- Consumer advocacy organizations/agencies
- District attorneys’ offices
- Landlord organizations
- Tenant associations
- Members of the housing authority’s board of commissioners
- Members of the public housing resident advisory board (RAB)

Discriminatory Nuisance Ordinances: Potential Strategies

Once you have gathered potential allies, develop an appropriate strategy that will take into account the dynamics in your community. For example, if your area has a nuisance ordinance, but it is not enforced, you may want to start by approaching the appropriate local official to discuss how the ordinance can be amended or repealed. If your area is aggressively enforcing an ordinance against victims of domestic violence, it may be more appropriate to start by sending an education or demand letter. Or, if you do not currently have a nuisance ordinance in place, but your local government is considering one, you may want to contact the solicitor or other local official to discuss the far-reaching implications that a nuisance ordinance may have.

Potential strategies may include:

(1) Education letter to local officials

The local officials may not be aware of the heightened housing protections for victims of domestic violence. They also may not realize the implications that a nuisance or crime-free ordinance has on victims of domestic violence.

A letter outlining the issue may be sufficient to stop inappropriate evictions from occurring. Sample education letters are included in this part of the toolkit.

If a polite letter or call is not sufficient, a demand letter may be helpful. Sample demand letters are also included in this section of the toolkit.

Local officials may be receptive to offers for training and technical assistance. PCADV and the ACLU can assist with the development and delivery of trainings for your area.

(2) Negotiation with landlord or local officials

(3) Use of local media

(4) Proactive reform

Approach local policy and ordinance drafters to explain why these ordinances hurt victims of domestic violence. Repealing or amending the discriminatory provisions may also be an option to pursue.

Violence Against Women Act Compliance: Potential Strategies

Develop a Relationship with the Local Public Housing Authority/Authorities

If your organization does not already have a working relationship with your local housing authority consider building one. PCADV is engaged in a statewide outreach strategy and, as part of that effort, we may have been in contact with your PHA. Please contact PCADV for more information about our PHA outreach efforts.

PCADV and its partners, including the ACLU Women's Rights Project, provide training and technical assistance and can assist you with this advocacy. (See page 5 for contact information.)

Advocates should request a meeting with the housing authority's executive director and staff members who oversee the public housing and Section 8 voucher programs. Issues that should be raised with the housing authority include:

- Whether the housing authority has trained its staff, owners, and managers on domestic violence issues and VAWA
- Whether and how the housing authority notified tenants and Section 8 landlords of their rights and obligations under VAWA
- Whether the housing authority has procedures to keep information regarding domestic violence confidential
- Whether the housing authority has written procedures for staff members who become aware that a participant is experiencing domestic violence

Consider meeting periodically with housing authority staff members periodically to discuss issues related to domestic violence and to give staff members an opportunity to discuss best practices for handling cases involving domestic violence.

Become Involved in the Public Housing Agency (PHA) Planning Process

It is important to be aware of key phases in the PHA planning process. Understanding the planning process will allow you to impact this process positively for victims and your community.¹⁰⁹

Most PHAs that administer public housing units and Section 8 vouchers are required to submit annual and five-year plans to the Department of Housing and Urban Development (HUD).¹¹⁰ To obtain a copy of the annual plan, contact your local PHA. PHAs must make their annual plans available to the public.

As a practical matter, it is better to begin working with the PHA before the official comment period opens, as it increases the likelihood that officials will be receptive to your suggestions.

(1) VAWA Plan Requirements:

Five-year plans must contain a statement regarding the housing needs of victims of domestic violence, dating violence, stalking, and sexual assault.¹¹¹ Annual plans must describe the activities, services, or programs offered to victims of domestic violence, dating violence, sexual assault, and stalking.¹¹²

(2) Timeline for PHA Plans

PHAs must follow a federally mandated timeline when developing and submitting plans.¹¹³ The PHA must give the public 45 days' notice of the public hearing on the plan, which is typically published in local newspapers.¹¹⁴ The public is generally invited to submit written comments on the plan within this notice period.

(3) Written Comments

PHAs must provide a written comment period for the public's input on the annual and five-year plans. Written comments should be submitted by the deadline provided by the PHA. Consider submitting the comments in

¹⁰⁹ This section is excerpted, with permission, from: Meliah Schultzman, Nat'l Housing Law Project, *Maintaining Safe and Stable Housing for Domestic Violence Survivors*, at 85-89 (2012), *available at* <http://nhlp.org/node/1428>.

¹¹⁰ See HUD, Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs, PIH 2008-41 (Nov. 13, 2008).

¹¹¹ 42 U.S.C. § 1437c-1. In the Five-Year Plan, PHAs are required to include a statement of the goals, objectives, policies, or programs that will enable the PHA to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking. In the Annual Plan, the requirements are more extensive. A PHA's description of the activities, services, or programs offered to victims of domestic violence must be readily available to the public. *HUD, Instructions Form HUD-50075, at 1 (2005)*.

¹¹² 42 U.S.C. § 1437c-1; *see also HUD, Instructions Form HUD-50075, at 1 (2005)*.

¹¹³ The plans must be submitted to HUD 75 days before the end of the PHA's fiscal year. 24 C.F.R. § 903.23(b)(2).

¹¹⁴ 24 C.F.R. § 903.17(b); *see also HUD, View Approved Plans—By State*, <http://www.hud.gov/offices/pih/pha/approved/>.

conjunction with other organizations. Written comments are generally due the day of or shortly before the public hearing.

(4) Public Hearing

The PHA must hold a public hearing before the PHA's board of commissioners to hear comments on its proposed plans. This is often a vital tool for influencing the plans, as the board can pressure PHA staff to make changes.

(5) Follow-Up

PHAs are required to respond in writing to comments from their residents regarding plans. PHA response letters must be submitted to HUD with its annual plan. Most PHAs will also respond to comments from the general public.

After submitting comments, request a follow-up meeting with the PHA to discuss your concerns and offer assistance with compliance efforts.

(6) HUD Review

HUD reviews PHA annual plans to determine whether the plans contain all the information required by law. Once HUD approves a plan, it must be made available to the public.

(7) Enforceability

HUD requires that a PHA follow the rules and policies set forth in its approved plan. HUD has the authority to respond to complaints of noncompliance.

**PCADV is available to assist with advocacy efforts in your county.
Please contact the PCADV Legal Department at 717-671-4767.**

Samples

Education Letter to Local Officials: Nuisance Ordinance

DATE

BY US MAIL AND FACSIMILE

Name
Management Agency
Address
Phone
Fax

Re: Ordinance No. ____ [Insert Title of Ordinance]

Dear :

It has come to our attention that [you/the Municipality/etc.] recently passed an ordinance that requires landlords to evict tenants who contact police X times. Enforcement of this nuisance ordinance against victims of domestic violence violates the Fair Housing Act and the Pennsylvania Human Relations Act. Moreover, such enforcement would violate the First Amendment right to petition the government for redress, resulting in irreparable damage for victims of domestic violence. We ask that you consider amending this ordinance to prevent such harm from occurring.

Enforcement of this ordinance against a victim of domestic violence would constitute unlawful sex discrimination in violation of the federal Fair Housing Act and the Pennsylvania Human Relations Act. The federal Fair Housing Act, 42 U.S.C. § 2501 *et seq.*, and the Pennsylvania Human Relations Act, 43 P.S §§ 951-963, prohibit discrimination based on sex, including both intentional discriminatory acts and acts that have a discriminatory impact based on sex. The overwhelming majority of victims of domestic violence are women; therefore, policies and practices that have a disparate impact on victims of domestic violence have a discriminatory impact on women. Courts and agencies considering the question have repeatedly found that housing practices that disparately affect victims of domestic violence unlawfully discriminate on the basis of sex.

Moreover, such enforcement against a victim of domestic violence would substantially interfere with the victim's constitutional right to petition the government pursuant to the First Amendment of the United States Constitution. The First Amendment guarantees that the people may petition their government for the redress of grievances. This right has been interpreted by the United States Supreme Court to include a right to contact the police for assistance. Enforcement of [nuisance/disorderly house/crime-free housing ordinance] would discourage victims from reporting future crimes committed against them and would have a chilling effect on their ability to exercise First Amendment rights.

We ask that the [City/Municipality] cease any effort to enforce the ordinance as written and take steps to redraft the ordinance in such a way to exempt victims of domestic violence from its scope.

Enclosed, please find suggested language for amending the [nuisance /disorderly house/crime-free housing ordinance] in order to protect the rights of crime victims. We welcome the opportunity to discuss its enactment with you.

Sincerely,

[Joint Signatures of Appropriate Collaborating Partners]

Demand Letter to Local Officials: Nuisance Ordinance



November 18, 2011

Mayor Dwight Welch
City Hall
4200 West Main Street
Country Club Hills, Illinois 60478

RE: Crime Free Rental Housing Ordinance

Via U.S. Mail, Fax and Email

Dear Mayor Welch:

We are writing to you on behalf of our client, Country Club Hills resident [REDACTED], who currently resides at [REDACTED]. As a result of Country Club Hills' Crime Free Rental Housing Ordinance Ms. [REDACTED] and her young daughter are being threatened with eviction because of an incident of domestic violence against them at their home. The city's actions here constitute sex discrimination in violation of the Fair Housing Act of 1964 as well as interference with an individual's right to petition the government in violation of the First Amendment of the United States Constitution. We ask that Country Club Hills immediately cease all efforts to enforce the ordinance against Ms. [REDACTED] and the property owner of her home.

Factual Background

On [REDACTED] 2011, Ms. [REDACTED] husband, [REDACTED], physically threatened and assaulted her in their home. Ms. [REDACTED] was able to briefly break free from him and ask a guest in the home to call the police. This call for police assistance was the first time in 12 years that Ms. [REDACTED] sought help to end her husband's long history of domestic violence. When the police arrived to assist Ms. [REDACTED], Mr. [REDACTED] refused to cooperate and a struggle ensued. Mr. [REDACTED] was arrested and charged with several felonies, including aggravated battery of a peace officer, resisting a peace officer, and disarming a peace officer. He was also charged with misdemeanor domestic battery against Ms. [REDACTED]. Police advised Ms. [REDACTED] to secure a plenary Order of Protection granting her exclusive possession of the home against Mr. [REDACTED], which she did a few days later (see enclosed Order of Protection).

On [REDACTED] 2011 Ms. [REDACTED] received a notice of termination of her tenancy from the property owner of her home. The property owner sent this notice of termination of tenancy after the Country Club Hills Police Department directed her to do so by a letter dated [REDACTED] 2011. The letter cited the [REDACTED] arrest of Ms. [REDACTED] husband [REDACTED] as a violation of the city's Crime Free Rental Housing Ordinance (see enclosed Letter from Country Club Hills Police Department). Knowing full well that the arrest was based on a call for assistance with an incident of domestic violation against Ms. [REDACTED], the Police Department nonetheless pursued enforcement of the ordinance.

Although Ms. [REDACTED] is a victim of domestic violence who took the necessary steps to secure her safety and to prevent [REDACTED] from returning to the property, the enforcement letter from the Country Club Hills Police Department pursuant to the Crime Free Rental Housing Ordinance demanded that the property owner remove all the tenants from the property, including Ms. [REDACTED] and her daughter. When the property owner informed the Police Department that Ms. [REDACTED] is a victim of domestic violence and that she has obtained an Order of Protection, the property owner was informed that this meant that Ms. [REDACTED] could continue to live in Country Club Hills but that she could no longer live at her current residence.

The city's unlawful enforcement of the Crime Free Rental Housing Ordinance has caused Ms. [REDACTED] severe emotional distress and a fear that she and her daughter will become homeless.

The City Has Violated Civil Rights Laws by Penalizing Ms. [REDACTED] as a Victim of Domestic Violence for the Acts of Her Abuser

Title VIII of the U.S. Civil Rights Act of 1964 (the Fair Housing Act), 42 U.S.C. §§ 3601 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, prohibit discrimination in rental housing on the basis of sex. These statutes forbid actions based on gender stereotypes or animus, or those actions that have a disparate impact on women. Furthermore, the Illinois Civil Rights Act of 2003 prohibits local governments from "utiliz[ing] criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their... gender." 740 ILCS 23/5(a)(2). Because the overwhelming majority of domestic violence victims are women,¹ those policies and practices that discriminate against or otherwise adversely affect victims of domestic violence have an unlawful disparate impact on women.² The city's "zero tolerance" enforcement of the Crime Free Rental Housing Ordinance to require a property owner to evict an entire household whenever a crime that is related to domestic violence occurs at a rental property constitutes just such a practice.³ Therefore the city's enforcement actions have violated Ms. [REDACTED] right under federal and state law to be free from sex discrimination.

The City Has Violated Ms. [REDACTED] First Amendment Right to Petition the Government

The First Amendment of the U.S. Constitution guarantees "the right of the people . . . to petition the government for a redress of grievances," and this includes the right to seek assistance from

¹ In 2010, women were more than four times more likely than men to experience intimate partner violence. See JENNIFER L. TRUMAN, CRIMINAL VICTIMIZATION, 2010 10 (2011), available at <http://www.bjs.gov/content/pub/pdf/cv10.pdf>.

² See U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* 2 (2011), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.

³ Federal courts and HUD have recognized that eviction of domestic violence victims after an incident of abuse can constitute sex discrimination under the Fair Housing Act. *Meister v. Kansas City, Kansas Housing Auth.*, 2011 WL 765887 (D. Kan. 2011); *Bouley v. Young-Sabourin*, 394 F.Supp.2d 675, 678 (D. Vt. 2005); *HUD v. C.B.M. Group*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001) (United States filed case in federal court after HUD issued its charge).

law enforcement. Because Ms. [REDACTED] exercised her constitutional right to contact the police regarding an incident of domestic violence she now faces the loss of her housing. Ms. [REDACTED] is being punished for seeking the assistance of law enforcement in violation of the First Amendment. Furthermore, the City's "zero tolerance" enforcement of the Crime Free Rental Housing Ordinance has discouraged Ms. [REDACTED] from reporting future crimes that may be committed against her, thereby unlawfully chilling her exercise of her First Amendment right.

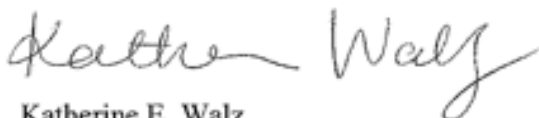
The City's Enforcement Actions Against Ms. [REDACTED] as a Victim of Domestic Violence are Contrary to State Law Governing Evictions

The Illinois General Assembly passed legislation last year recognizing the need to protect the housing rights of victims of domestic violence, dating violence, stalking, and sexual assault. This legislation provides that such victims may not be evicted based on an incident of violence committed against them by giving victims an affirmative defense in eviction actions. See 735 ICLS 5/9-106.2. By demanding that Ms. [REDACTED] property owner terminate her tenancy the city is forcing the property owner to improperly pursue an eviction to which Ms. [REDACTED] has a clear defense.

We urge that the city immediately cease all steps being taken to encourage or force the property owner to evict Ms. [REDACTED] and to formally notify the property owner and Ms. [REDACTED] that no further action will be taken against them as a result of the [REDACTED] 2011 incident of domestic violence. We further propose that the city amend the Crime Free Rental Housing Ordinance to ensure that tenants who are crime victims, including victims of domestic violence, dating violence, sexual assault, or stalking, are not subject to termination of their tenancy based on the criminal actions of the perpetrator. We believe that doing so will only improve law enforcement in the city, as it will lift the chilling effect the ordinance has on residents, like Ms. [REDACTED], who need to reach out to the police for help.

Please contact Kate Walz at (312) 368-2679 or Emily Werth at (312) 368-8575 to resolve this matter, or we will have no choice but to seek legal recourse. In light of the upcoming holiday and the threat of imminent eviction of Ms. [REDACTED] and her daughter, we request that the city contact us by November 22 to confirm that you are looking into this matter and have instructed the Police Department not to put any further pressure on the property owner in the interim.

Sincerely,



Katherine E. Walz
Emily Werth
Sargent Shriver National Center on Poverty Law
50 E. Washington Street, Suite 500
Chicago, Illinois 60602
Phone: 312.263.3830
Fax: 312.263.3846

Resources

Landlords: Does Your City or State Have a Nuisance or Crime-Free Ordinance?

Landlords: Does Your City or State Have A Nuisance or Crime-Free Ordinance?



PROTECT VICTIMS OF DOMESTIC VIOLENCE – DO NOT DISCRIMINATE
KNOW YOUR RESPONSIBILITIES – AVOID LIABILITY

WHAT IS A “NUISANCE ORDINANCE” OR “CRIME-FREE ORDINANCE?”

A “nuisance ordinance,” sometimes called a “crime-free ordinance,” holds landlords and property owners responsible for the criminal activity, noise or other disturbances occurring on their properties. Typically, these laws consider too many calls to the police from one address within a month or another time frame a “nuisance” or penalize landlords when crimes occur at the property. Unless landlords and property owners take action to eliminate (or “abate”) the nuisance, they will be penalized. Too often, landlords will try to resolve the problem by evicting all those who reside in the unit causing the nuisance.

Unfortunately, victims of domestic violence, stalking, or sexual assault often have to call the police for help, and almost always to the home. As a result, the landlord may receive a notice stating that a violation of the nuisance ordinance has occurred.

THE SCENARIO

The landlord receives a notice stating that, as a result of the criminal activity or number of calls to the police coming from a unit in the building, he or she is violating the nuisance ordinance. The notice also states that the landlord will be fined or imprisoned if no action is taken to “abate” the nuisance.

The landlord decides to take one or more of the following actions: (1) issue an eviction notice citing violation of the nuisance law; (2) warn the tenant to stop calling the police; (3) refuse to renew a lease because the police have come to the property numerous times; or (4) adopt a “zero tolerance” or “one-strike” policy that allows the landlord to evict a tenant upon violation of a nuisance ordinance.

WHAT ARE LANDLORDS’ RESPONSIBILITIES?

When facing a nuisance ordinance violation, the landlord should first investigate whether the incident related to domestic violence, stalking or sexual assault. By and large, victims of domestic violence, stalking or sexual assault are women. As a result, a landlord who punishes those who call the police frequently may be (a) discriminating against women and, as a result, (b) violating state and federal laws, which protect women from housing discrimination. In addition, landlords should not penalize a domestic violence victim if another tenant called the police for help.

Various laws protect victims of domestic violence, stalking or sexual assault in the housing context:

STATE AND LOCAL LAWS

Some state and local nuisance ordinances recognize that calls to police from victims of domestic violence, stalking or sexual assault should not be categorized as a “nuisance.” In addition, many states prohibit landlords from terminating a lease based on the tenant’s status as a victim of domestic violence.¹ Further, other states² protect tenants from eviction if it was based on the tenants’ status as a domestic violence victim.

¹ AK, DE, DC, IN, LA, NH, NC, OR, RI, VA, and WA.

PART V: ADDITIONAL RESOURCES

Legal Information

ACLU Women's Rights Project

- <http://www.aclu.org/fairhousingforwomen>
- Provides "Know Your Rights" materials, sample court documents, policy advocacy information and letters/memos.

National Housing Law Project

- <http://www.nhlp.org>
- Provides access to a bank of webinars, online training and resources for pursuing federal litigation. NHLP also distributes information about domestic violence and housing, including a manual for working with victims of domestic violence from the federal perspective.

National Law Center on Homelessness and Poverty

- <http://www.nlchp.org>
- Provides information about the intersection of domestic violence and homelessness/poverty. Also provides links to emergency housing programs, relevant legislation protecting victim housing rights, and other resources.

PA Law Help

- <http://www.palawhelp.org>
- Provides a wealth of information related to landlord/tenant proceedings as well as public and subsidized housing. It is recommended that you review the information about representation in an eviction proceeding prior to taking on representation of a client.
- Key information found on this website includes:
 - Sample Notices
 - Sample Filings
 - Sample Petition for Cost Waiver
 - Tenant Rights Brochures
 - Legal Assistance Referrals
 - Local Court Information

PA Housing Law Project

- <http://rhls.org/practice-areas/pa-housing-law-project>
- Provides information and support for legal services programs that address issues related to affordable housing, including landlord/tenant law, foreclosures, fair housing, and state and federal programs.

Statutes and Regulations

State Law:

- Landlord/Tenant Law
- Pennsylvania Landlord / Tenant Act of 1951, 68 P.S. § 250.101 *et seq.*
 - Manufactured Home Community Rights Act / Mobile Home Park Rights Act (MHPRA), 68 P.S. § 398.1 *et seq.*
 - *Note: the MHPRA is supplemental to the Landlord Tenant Act. For the MHPRA to apply, the tenant must own the mobile home but lease space in a mobile home park.*
 - Plain Language Consumer Contract Act, 73 P.S. § 2201 *et seq.*
 - Implied Warranty of Habitability, *Pugh v. Holmes*, 405 A.2d 897 (Pa. 1979).
 - Rules of Civil Procedure for Magisterial District Judges (MDJ Rules), *Rule 501-521 (Actions for the Recovery of Possession of Real Property)*
- Pennsylvania Human Relations Act
 - 43 P.S. §§ 951-963

Federal Law:

- Fair Housing Act, 42 U.S.C. § 3604
- Violence Against Women Act:
 - *General Housing Protections*
42 U.S.C. § 14141
 - *Protections for Project-Based Section 8 and Section 8 Vouchers*
42 U.S.C. § 1437f
 - *Protections for Public Housing*
42 U.S.C. § 1437d
 - *Public Housing Agency Plan Provisions*
42 U.S.C. § 1437c-1
 - *Findings*
42 U.S.C. § 14043e
- Federal Regulations:
 - *Protections for Victims of Domestic Violence - Public / Section 8 Housing*
24 CFR part 5
 - *VAWA Implementation*
24 C.F.R. pts 91, 880, 882, 883, 884, 886, 891, 903, 960, 982, & 983.

State and Federal Housing Information

Pennsylvania Human Relations Commission

- www.phrc.state.pa.us
- Provides overview of housing protections and information about the complaint process. Also provides access to online complaint form.

Department of Housing and Urban Development (HUD): Pennsylvania

- <http://portal.hud.gov/hudportal/HUD?src=/states/Pennsylvania>
- Provides access to complaint forms and local housing office information.

HUD, Office of Public Housing in Pennsylvania

- <http://www.hud.gov/local/pa/working/ph/index.cfm>
- Provides contacts for HUD staff overseeing public housing agencies in Pennsylvania

HUD, Multifamily Housing Contacts, Philadelphia, PA

- <http://portal.hud.gov/hudportal/HUD?src=/states/pennsylvania/working/mf/phicontacts>
- Provides contacts for HUD staff overseeing project-based Section 8 owners in Pennsylvania

HUD Client Information and Policy System (HUDCLIPS)

- http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips
- Provides access to client benefit information and local housing office information, including contact information, policies, procedures and compliance plans.

Office of Fair Housing and Equal Opportunity

- <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>
- Memorandum: Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA) (Feb. 9, 2011).

Court Resources

Administrative Office of Pennsylvania Courts: Forms

- <http://www.pacourts.us/Forms/>
- Provides forms and instructions for various stages in an eviction proceeding.

This toolkit was created in coordination with the
ACLU Women's Rights Project.

PCADV is grateful for the contributions of Sandra Park with
the ACLU Women's Rights Project, Meliah Schultzman and
Catherine Bishop with the National Housing Law Project,
Sara Rose with the ACLU-PA, and Rachel Garland with
Community Legal Services.



**Civil Legal Representation
is an initiative of the
Pennsylvania Coalition Against Domestic Violence
and is funded through a contract with the
Pennsylvania Department of Public Welfare.**