

LEGAL TOOLS FOR PROTECTING DOMESTIC VIOLENCE SURVIVORS FROM HOMELESSNESS

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What we're covering today

- Brief summary of the applicable law
 - Violence Against Women Act (VAWA): housing provisions for subsidized tenants
 - Fair housing laws and protections for survivors
- Case studies that examine common housing issues that survivors of domestic violence face
- Update on advocacy

Violence Against Women Act (VAWA)

Federal protections against discrimination,
evictions and subsidy terminations for federally
subsidized tenants

VAWA: Who Is Protected?

VAWA covers these categories of housing ONLY:

1. Public housing
2. Section 8 Voucher housing
3. Project-Based Section 8 Housing
4. Supportive housing for the elderly or disabled

VAWA covers these categories of victims:

1. A survivor of domestic violence
2. A survivor of dating violence
3. A survivor of stalking

VAWA: Admissions & Assistance

- ❑ The fact that an individual is a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denying him or her housing.
- ❑ Most commonly arises where a victim has been denied housing for negative tenancy, credit, or criminal history that is related to acts of domestic violence committed against him or her.

VAWA: Evictions/Terminations

- ❑ Incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the victim or terminating the rental subsidy.
- ❑ Housing authority or Section 8 landlord may evict a tenant who commits acts of violence while preserving the survivor’s tenancy rights.
- ❑ PHA may terminate Section 8 assistance to the abuser while preserving assistance to survivor.

Fair Housing Act and Michigan Elliott-Larsen Civil Rights Act

Policies and practices that negatively impact domestic violence survivors may constitute sex discrimination under fair housing laws

Fair Housing and DV: Theories

- DV survivors are not a protected class under the FHA or Michigan's fair housing laws, so advocates have used sex discrimination theories.
- **Disparate treatment:** Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
- **Disparate impact:** Has been used to challenge neutral policies that have the effect of treating DV victims more harshly.

DV and Disparate Treatment Theory

- *Bouley v. Young-Sabourin* (D. Vt. 2005):
 - Tenant evicted after being assaulted by her husband.
 - Landlord stated that tenant did not act like a "real" victim of domestic violence because tenant seemed angry & unconcerned about what would happen to her husband.
 - Court denied landlord's motion for summary judgment. Case settled.

DV and Disparate Impact Theory

- *Alvera v. Creekside Vill. Apts.* (Ore. 2001):
 - Landlord sought to evict tenant under a “zero tolerance for crime” policy, because her husband had assaulted her at the rental unit.
 - The federal Department of Housing and Urban Development (HUD) investigated the tenant’s complaint.
 - HUD found cause to believe that the tenant had been discriminated against on the basis of her sex, because the “zero tolerance” policy had a disproportionate impact on women.

Advocacy Strategies

- Informal advocacy, i.e., letters and calls to the landlord or housing authority
- Eviction defense representation
- Using media to “embarrass” housing providers
- Filing administrative complaints (or threatening to)
- Working with housing providers to improve their policies regarding domestic & sexual violence
- Affirmative litigation

Barriers to Applying for Housing: Jan

- Five years ago, at the advice of her attorney, Jan pleaded guilty to assaulting her abuser, even though she acted in self-defense.
- Jan later applied for a Rural Development unit. Her application was denied because of her criminal record.
- At a meeting with the manager, Jan submitted letters of support from her employer and DV agencies.
- The manager refused to reconsider Jan’s application.

**Barriers to Applying for Housing:
Jan**

- Jan’s attorney contacted the manager by phone and mail and explained that:
 - Before denying Jan’s application, the manager had a duty to examine mitigating factors, such as the age of her conviction and her letters of support.
 - It was unlikely that Jan would be involved in another abusive relationship.
 - The criminal history policy was unreasonable.
- The manager later offered a unit to Jan.

**Barriers to Keeping Housing:
Sonya**

- Sonya had a Section 8 voucher.
- One night, Sonya’s abuser forced his way into her apartment. He cut himself on broken glass after he destroyed a cabinet in her apartment.
- Sonya’s abuser told a security guard that he was bleeding because Sonya stabbed him.
- Sonya’s landlord filed an eviction action against her on grounds of nuisance based on the alleged “stabbing.”

**Barriers to Keeping Housing:
Sonya**

- Sonya’s attorney raised VAWA and the Fair Housing Act as a defense to the eviction and also filed a motion for summary judgment.
- Sonya provided police reports, her restraining order, and evidence that the city declined to prosecute her for the “stabbing.”
- Court found that VAWA prohibited Sonya’s eviction, *Metro N. Owners v. Thorpe*, 870 N.Y.S.2d 768 (2008).

Barriers to Keeping Housing: Mia

- ❑ Mia, her husband AJ, and their 3 kids had a Section 8 voucher. AJ was listed as the head of household.
- ❑ Mia obtained a restraining order against AJ.
- ❑ AJ asked the housing authority to let him use the voucher to move into a unit by himself.
- ❑ Mia asked the housing authority to let her keep the voucher in the interest of her children.
- ❑ The housing authority let AJ move with the voucher and terminated Mia's assistance.

Barriers to Keeping Housing: Mia

- ❑ Mia's attorney wrote a letter to the housing authority arguing:
 - Termination of Mia's assistance violated VAWA
 - The housing authority failed to follow HUD regulations and its own policies when it assigned the voucher to AJ
- ❑ Mia's attorney requested:
 - An administrative hearing
 - Homeless prevention funds to cover Mia's back rent
- ❑ The housing authority agreed to issue Mia a voucher and homeless assistance.

Barriers to Keeping Housing: Tanica

- ❑ Tanica and her two young children rented an apartment in a complex funded by the Low Income Housing Tax Credit.
- ❑ Tanica obtained a protective order against Reuben, the father of her children. He was not a tenant in her apartment.
- ❑ Reuben broke into her apartment, caused damage, and was arrested for home invasion.
- ❑ Tanica's landlord sent her a notice to quit, stating she was responsible for the acts of her guests.

Barriers to Keeping Housing:

Tanica

- ❑ Tanica filed a federal lawsuit challenging her eviction based on the federal Fair Housing Act.
- ❑ She alleged sex discrimination based on disparate treatment and disparate impact, and violation of the LIHTC law.
- ❑ The landlord and management company settled the case for monetary damages and adoption of a new policy that includes early lease termination and relocation to other units managed by the company.

Barriers to Staying Safe: Yolaunda

- ❑ Yolaunda was beaten at her public housing unit. Her abuser threatened to kill her if she returned to the unit.
- ❑ Yolaunda asked the housing authority for an emergency transfer to another public housing unit.
- ❑ The housing authority refused, saying that its policy did not provide for emergency transfers for domestic violence victims.

Barriers to Staying Safe: Yolaunda

- ❑ Based on the federal Fair Housing Act, Yolaunda's attorneys filed for a preliminary injunction in federal court to have her immediately transferred to another public housing unit.
- ❑ The case received media coverage.
- ❑ The court denied the motion, but encouraged the PHA to adopt a domestic violence transfer policy, *Robinson v. Cincinnati Metro. Housing Auth.*, 2008 WL 1924255 (S.D. Ohio 2008).
- ❑ The housing authority agreed to amend its public housing policy to include transfers for domestic violence survivors.

Information needed to evaluate cases:

- What kind of housing is involved?
- Who is on the lease, who occupies apartment?
- Would the landlord take the adverse action against any tenant who was victimized by any sort of crime?

If you are thinking about litigating, particularly affirmative claims, feel free to reach out for consultation.

Update on Advocacy Developments

VAWA Reauthorization
State legislative advocacy
Nuisance ordinances

Contact Information

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