

**Fair Housing Rights of Domestic
and Sexual Violence Survivors**

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GoToWebinar Interface

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Housekeeping

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- Materials were emailed to registrants and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at www.nhlp.org in the Attorney/Advocate Resource Center.
- MCLE certificates will be emailed to California attorneys.

What We'll Cover

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- Examples of how the Fair Housing Act's protections arise in the context of domestic and sexual violence
- Fair housing protections for survivors of domestic violence, sexual assault, and stalking
- Advocacy strategies

What We Won't Cover

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- We will not cover the housing provisions of the Violence Against Women Act (VAWA), as this was discussed in a prior webinar.
 - Recording & materials available at <http://nhlp.org/node/1484>
 - For more information on VAWA:
 - ✦ NHLP: <http://nhlp.org/resourcecenter?tid=62>
 - ✦ ACLU Women's Rights Project: www.aclu.org/fairhousingforwomen

Case Examples

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SEVERAL CASES HAVE BEEN BROUGHT ON BEHALF OF DOMESTIC VIOLENCE SURVIVORS FACING LOSS OF HOUSING DUE TO ACTS OF VIOLENCE AGAINST THEM.



Jane

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- Jane rented a private housing unit using her Section 8 voucher for approximately two years.
- Jane's ex-boyfriend, and father of her daughter, came to the unit on multiple occasions and assaulted her.
- Jane requested that the public housing agency (PHA) allow her to move her voucher elsewhere.
- The PHA began the process to allow Jane to move her voucher, but required that she receive the landlord's permission to terminate the lease early.
- After more incidents of violence, Jane repeated her request, and the housing authority required that she get police reports for each incident of violence.
- The PHA initiated voucher termination proceedings alleging that Jane allowed her former boyfriend to reside with her.

Kathy

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- Kathy resided in private rental housing, operated by a major national property management company, with her fiancé and daughter.
- After moving into the unit, Kathy's fiancé became abusive
- When she attempted to remove her fiancé from the unit, he threatened to kill both her and himself.
- Kathy called the police, had her fiancé arrested, and pressed charges. She informed the management that she wanted to remove him from the lease.
- A few days later, she was served with an eviction notice.

Tanica

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- Tanica, living in a low income housing tax credit (LIHTC) property, had a restraining order against her ex-boyfriend.
- On one occasion, the ex-boyfriend came to Tanica's home, kicked in the door, and broke her windows.
- The property management evicted Tanica for violating her lease because it stated that her failure to properly supervise a guest led to property damage.

The Fair Housing Act

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THE FAIR HOUSING ACT COVERS MOST HOUSING AND PROHIBITS DISCRIMINATION ON THE BASIS OF SEVERAL PROTECTED CHARACTERISTICS, INCLUDING SEX.



Federal Fair Housing Act (FHA)

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- 42 U.S.C. § 3601 et seq
- Passed in 1968 as Title VIII of the Civil Rights Act
- Prohibits discrimination in the sale or rental of housing on the basis of race, color, national origin, religion, **sex**, familial status, and disability
- Two overarching theories: Intentional Discrimination (Disparate Treatment) and Disparate Impact

The FHA's Scope

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- Covers all dwellings (including private housing), except:
 - Owner-occupied homes
 - dwellings with four or fewer units, one of which is owner-occupied
 - single family homes if the owner does not own more than 3 at one time
 - certain religious housing
 - certain housing run by private clubs for their members
 - certain housing targeted at senior and disabled populations.
- Note: State fair housing laws may be broader in scope

FHA Theories: Disparate Treatment

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- A housing provider intentionally discriminates when it treats people differently explicitly because of their membership in the protected group.
- Examples of prohibited behavior
 - communications that indicate a preference as to a protected group
 - refusal to rent or provide a housing benefit
 - discouraging access to the unit or housing benefit
 - offering different terms in agreements, rules, or policies
 - harassing or evicting tenants

FHA Theories: Disparate Impact

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- Occurs when a policy is neutral on its face, but has a disproportionate impact on a protected group.
- Statistics are vital to demonstrating disparate impact.

FHA Enforcement: Affirmative Litigation

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- Two-year statute of limitations
 - It's critical to refer these cases to pro bono attorneys ASAP
- Can be filed concurrently with HUD complaint, but HUD complaint is not required
- State or federal court
- Compensatory damages, injunctive or equitable relief, punitive damages, and attorney fees

FHA Enforcement: HUD Complaint

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- **Individuals can file FHA complaints with HUD:**
 - One year statute of limitation
 - Can be filed quickly – online, by mail, or by phone
 - Duty to conciliate (settle)
 - If conciliation fails and HUD finds cause, may proceed to an administrative law judge, or through Dept. of Justice (DOJ) in federal court
 - Will often push the housing provider to settle
 - Compensatory damages, injunctive or equitable relief, and civil penalties in the public interest
 - http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination

Domestic Violence and Fair Housing

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THE FAIR HOUSING ACT MAY PROVIDE REMEDIES FOR DOMESTIC VIOLENCE SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM.



New HUD Guidance

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- A memo from HUD's Office of Fair Housing and Equal Opportunity sets forth the theories HUD will use to analyze discrimination against DV survivors.
 - See <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>
 - Also included with the webinar materials.
- "HUD is committed to using the Fair Housing Act to protect victims of abuse from unlawful denial of access to decent, affordable housing." – Asst. Secretary John Trasviña.

Domestic Violence, Sex, Race, and National Origin

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- Statistics in HUD's recent domestic violence memo:
 - "[W]omen are five to eight times more likely than men to be victimized by an intimate partner. . ."
 - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women
 - Black women experience intimate partner violence at a rate 35% percent higher than white women
 - Native American women are victims of violent crime, including rape and sexual assault, at more than double the rate of other racial groups

Fair Housing and DV: Theories

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- DV survivors aren't a protected class under the FHA or most state fair housing laws, so advocates have used sex discrimination theories.
 - Disparate impact: Has been used to challenge neutral policies that have the effect of treating DV victims more harshly.
 - Disparate treatment: Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
- It may strengthen the survivor's case to raise both theories in tandem.

Discussion

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- What are some policies and practices that housing providers use that may have a negative impact on survivors of domestic and sexual violence?
- Please enter your examples in the questions box.

Common Discriminatory Policies

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- Evictions under “zero tolerance” for crime policies
- Evictions for property damage
- Refusal to rent to an applicant because of a criminal history or poor credit history related to domestic violence
- Refusal to rent to an applicant because of stereotypes about survivors.
- Refusal to break a lease early in order to allow a person to escape an abusive situation.

Disparate Impact Analysis

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- In its memo, HUD states there are 4 steps to a disparate impact analysis:
 - Discriminatory policy, practice, or procedure
 - Was the policy, practice, or procedure consistently applied?
 - Does the policy, practice, or procedure have a disproportionate impact on women who are victims of domestic violence?
 - Is there a substantial business justification with no less discriminatory alternative?

Disparate Impact: Other Issues

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- Can policies, practices, or procedures that discriminate against survivors of domestic violence, dating violence, stalking, or sexual assault be considered discrimination on the basis of race or national origin?

Other Issues: State and Local Laws

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- Advocates often raise state and local fair housing laws in tandem with the federal Fair Housing Act.
- Some jurisdictions have enacted housing laws that specifically protect DV survivors.
 - For a state law guide, see <http://nhlp.org/node/1436>

WASH. REV. CODE ANN. § 59.18.580

(1) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

Sexual Harassment and Fair Housing

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FAIR HOUSING LAWS MAY PROVIDE REMEDIES FOR TENANTS WHO HAVE BEEN SEXUALLY HARASSED BY LANDLORDS OR EMPLOYEES AT THEIR RENTAL HOUSING.



Sexual Harassment and Fair Housing

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- Sexual harassment in housing is a form of sex discrimination under fair housing laws.
- What are some examples of sexual harassment in housing that you've heard of, or that your clients have reported? (Please enter answers in questions box)
 - A landlord or employee threatens to evict or refuses to make repairs unless tenant engages in sexual acts
 - A landlord or employee subjects a tenant to unwanted touching or sexual advances
 - A landlord or employee makes sexually derogatory comments

Sexual Harassment: Two Types

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- Courts recognize two forms of sexual harassment:
 - Quid pro quo
 - A provider, employee, or agent conditions access to or retention of housing on a victim's submission to sexual conduct
 - Hostile Environment
 - A provider, employee, agent, or, in certain circumstances, another tenant, engages in sexual behavior of such severity or pervasiveness that it alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable
 - Hostile environment is based upon the perspective of a reasonable person in the tenant's position

Sexual Harassment: Who Is Liable?

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- Information from HUD's Questions & Answers on Sexual Harassment (2008), at <http://nhlp.org/node/429>
 - Sexual harassment does not have to be motivated by sexual desire but could be motivated by hostility toward a particular sex, even if the harasser is the same sex.
 - A property manager/owner has a duty not to engage in sexual harassment and to ensure employees do not engage in sexual harassment.
 - An owner can be held either directly or vicariously liable for sexual harassment – in other words, harassment that occurred without the owner's knowledge by an agent or employee of the owner.

Sexual Harassment: Example

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- Boswell v. GumBayTay (D. Ala. 2007)
 - Real estate agent demanded additional rent beyond what Section 8 tenant was obligated to pay unless she provided him with sexual favors. When she refused, he attempted to evict.
 - After Ms. Boswell's lawsuit was filed, many more tenants came forward. DOJ filed a separate action against multiple landlords who had used the real estate agent.
 - Pleadings and information available at www.aclu.org/fairhousingforwomen

Sexual Harassment: Example

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- **United States v. Veal (W.D. Mo. 2005)**
 - Landlord demanded sexual favors from tenants & evicted some who denied his advances.
 - One resident testified that landlord forced her to have sex twice, once in the presence of her children
 - Most victims were low-income, single mothers who had limited housing opportunities
 - DOJ prosecuted case, and jury awarded damages totaling \$1.1 million to 11 residents. Court later upheld the jury verdict. 365 F. Supp. 2d 1034 (2004).

Sexual Harassment: Impact on Tenants

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- **Testimony from the *Veal* trial demonstrates that:**
 - Vulnerable, low-income tenants are often victims:
 - ✦ "I desperately needed a place to stay. I didn't have anywhere to go, and my Section 8 was about to expire."
 - Harassment is difficult to disclose:
 - ✦ "I was trying to prove . . . that I was a . . . big enough person to go out there and find something and be responsible for something."
 - Victims move to substandard housing or become homeless:
 - ✦ With no other place to go, one plaintiff moved into her mother's 3-bedroom house, which she then shared with 13 other people.
 - Harassment has lasting effects:
 - ✦ One plaintiff thought about the abuse "all the time" and suffered from nightmares.

Advocacy Strategies

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A VARIETY OF STRATEGIES HAVE BEEN USED ON BEHALF OF DOMESTIC AND SEXUAL VIOLENCE SURVIVORS, INCLUDING DEMAND LETTERS, AFFIRMATIVE DEFENSES IN EVICTION CASES, HUD COMPLAINTS, MEDIA OUTREACH, AND AFFIRMATIVE LITIGATION.



Jane

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- Jane's attorney sent a letter to the PHA demanding reinstatement of her voucher.
- When the PHA refused, her attorney filed an administrative complaint with HUD.

The Complainant also alleges that she was denied the right to present evidence, question witnesses, and the Hearing Officer did not consider any of numerous findings of fact as presented by the Complainant's two attorneys. The Complainants allege the unauthorized tenant issue was a pretext for discrimination based on gender for seeking a transfer to escape domestic violence and to seeking legal and police protection from the domestic violence at her dwelling. The Complainants also allege the Respondent PHA and the hearing officer ignored the issue of domestic violence during the informal hearing and refused to consider that the Complainant had not been advised of her rights under VAWA.

Jane

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- HUD investigated Jane's claims that the PHA had violated the Fair Housing Act.
- The PHA later agreed to reinstate Jane's voucher and allow her to move out of state.
- The conciliation agreement included a requirement that the housing authority receive training regarding the Fair Housing Act.

Kathy

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- Kathy's attorneys filed a lawsuit in federal court, alleging both intentional discrimination, as well as disparate impact.

47. By terminating Ms. Milan's tenancy based on the criminal acts of domestic violence perpetrated against her, Defendants intentionally discriminated against Ms. Milan on the basis of sex, by denying her the opportunity to rent a dwelling and adversely affecting the terms, conditions, and privileges of the rental housing, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

Kathy

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- The complaint alleged that the complex’s application of a zero-tolerance for crime policy to situations of domestic violence had a disparate impact on women.

49. By adopting a policy or practice of holding tenants who are domestic violence victims responsible for the criminal behavior of their abusers, Defendants engaged in a pattern and practice that has a disparate impact on women, because the great majority of domestic violence victims are women. Defendants actions therefore discriminate on the basis of sex in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

Kathy

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- In addition to filing a federal complaint, Kathy’s attorneys used a media strategy to get her story out to the public.

Tenant reported abuse -- then suffered eviction
 She sues owner of apartment complex: 'I was punished for protecting myself'



By Sara Olson
 Tribune reporter
 October 15, 2009

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Kathy Cleaves-Milan is a victim of domestic violence and last week evicted from her apartment. (Zigraev-Batali / Chicago Tribune)

Kathy Cleaves-Milan called police to report that she was the victim of domestic violence. She got help -- but she also got evicted.

A day after she told a judge that her live-in boyfriend had brandished a gun and promised to end both of their lives, the managers of her Elmhurst apartment complex served her with eviction papers for violating the terms of the lease, citing the criminal activity she had reported to police.

An article on Kathy's case that was published in the Chicago Tribune

Kathy

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- Kathy’s case settled, and the property management company, AIMCO, is now required to abide by the terms of the settlement agreement in all of its properties.
- The case also prompted Illinois to enact an eviction defense for domestic and sexual violence victims. See 735 Ill. Comp. Stat. Ann. 5/9-106.2
- For more information, see <http://www.povertylaw.org/poverty-law-library/case/56100/56145>

Tanica

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- **Tanica’s attorneys sent a demand letter to the owner, stating that its conduct constituted sex discrimination.**

As we assume you are aware, both the federal Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and the Michigan Elliot-Larsen Act, M.C.L. §§ 37.2501 et seq., prohibit discrimination in rental housing on the basis of sex. These statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. The eviction of Ms. Lewis was apparently based on gender stereotypes about battered women—namely, the stereotype that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. In addition, because most domestic violence victims are women, those policies and practices that discriminate against victims of domestic violence have an unlawful disparate impact on women. Management Systems Incorporated’s interpretation of the word “guest” to mean those individuals who enter a property uninvited and in violation of personal protection orders constitutes just such a practice.

Tanica

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- **When the owner did not respond to the letter, Tanica’s attorneys filed a federal suit alleging sex discrimination.**
- **The case settled, with the management company and property owner agreeing to:**
 - not evict or discriminate against individuals because they have been victims of domestic violence, dating violence, sexual assault or stalking, whether or not the abuser resides in the tenant’s household.
 - offer early lease termination and relocation to victims.
 - monetary damages and attorney’s fees.
- **News coverage helped lead to the settlement**
- **Pleadings and information are available at: www.aclu.org/fairhousingforwomen**

Takeaway Points and Next Steps

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- **Strategies for using fair housing laws for survivors:**
 - Advocate with housing providers to adopt policies that address the needs of survivors of domestic & sexual violence.
 - In demand letters, consider raising the federal FHA, state and local laws, and VAWA (if client is in public housing or Sec. 8).
 - Complaints to HUD should be framed as sex discrimination under the Fair Housing Act. Read HUD’s recent memo for clues for framing complaints.

Takeaway Points and Next Steps (cont'd)

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- Strategies for using fair housing laws for survivors:
 - Use caution in examining whether discrimination against a domestic violence survivor can be framed as a fair housing violation, as these theories are still new. Feel free to reach out to the trainers to discuss cases.
 - Build contacts with fair housing groups and pro bono attorneys that can take fair housing cases.
 - Consider a media strategy.
 - Special outreach and partnerships are needed in sexual harassment cases.

Help Is Available

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 The ACLU takes cases for representation from across the U.S.

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