

HOUSING JUSTICE

National Housing Law Project

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HUD Issues Guidance Regarding Fair Housing Rights of Domestic Violence Survivors

The Department of Housing and Urban Development (HUD) recently issued a memorandum to employees of its Office of Fair Housing and Equal Opportunity (FHEO) on investigating housing discrimination claims by domestic violence victims. The memorandum is titled "Assessing Claims of Housing Discrimination Against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act." It makes clear that residents who are denied or evicted from housing as a result of domestic violence may have basis to file a discrimination complaint with HUD under the federal Fair Housing Act (FHA). Overall, the memo provides important cues for advocates who are seeking to determine the best way to frame a fair housing complaint that is based on domestic violence discrimination.

Fair Housing Act Protections

The FHA forbids discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of race, color, religion, sex, familial status, or national origin." Statistical evidence is crucial to establishing that victims of domestic violence fall under one or more of the protected classes under the FHA, generally sex, race or national origin.

In its memorandum, HUD provides statistics showing that women are overwhelmingly the vic-

tims of domestic violence. Citing Centers for Disease Control and Department of Justice statistics, HUD points out that an estimated 1.3 million women are the victims of assault by an intimate partner each year. Further, about one in four women will experience intimate partner violence in her lifetime. Additionally, 85% of victims of domestic violence are women, and in 2009, women were about five times as likely as men to experience domestic violence. According to HUD, "These statistics show discrimination against victims of domestic violence is almost always discrimination against women." Consequently, victims of domestic violence who are evicted, denied housing, or have their housing terminated may have a cause of action for sex discrimination under the FHA. HUD notes that domestic violence by same-sex partners would be analyzed in the same manner and would be based on sex and any other applicable classes.

In addition, statistics show that African-American women and Native American women experience disproportionately high rates of domestic violence. Women of certain national origins and immigrant women also experience domestic violence at disproportionate rates. Thus, HUD states that victims of domestic violence also may have a cause of action for race discrimination and national origin discrimination under the FHA.

Legal Theories

The HUD memorandum discusses three legal theories domestic violence survivors may have for

(Continued on page 2)

IN THIS ISSUE

HUD Memo on Domestic Violence & Fair Housing Lawsuit to Challenge Survivor's Voucher Termination

**Resources on the Web
Attorney General's Language Access Letter**

(Continued from page 1)

bringing a housing discrimination claim under the FHA: direct evidence, unequal treatment, and disparate impact.

Direct Evidence

HUD states that the direct evidence framework is applicable where landlords enforce facially discriminatory policies that explicitly treat women differently than men. These policies usually are based on stereotypes about abused women. An example is a situation where a landlord tells a female victim of domestic violence that he does not rent to women with a history of domestic violence incidents because they always go back to their abusers. HUD states that FHEO investigations should focus on finding evidence about whether a discriminatory statement was made and whether it reflects a policy or practice by the landlord.

Unequal Treatment

HUD states that an unequal treatment analysis applies when housing provider treats victims of domestic violence differently from victims of other crimes. The analysis also can be used where a landlord unequally applies a gender-neutral policy, resulting in different treatment based on sex. For example, unequal treatment analysis would apply to a criminal activity eviction policy that is selectively applied against female victims of domestic violence, rather than the male perpetrators of that violence. HUD states that if there is evidence of unequal treatment, investigators should examine the housing provider's reasons for the differences and determine whether evidence supports each reason.

Disparate Impact

HUD states that a disparate impact framework applies where there is no evidence of unequal treatment, but a facially neutral policy, procedure or practice disproportionately affects victims of domestic violence. According to HUD, this often arises in the context of zero tolerance for crime policies, where an entire household is evicted because of domestic violence perpetrated by one household member.

“People in abusive relationships are not only victims of abuse, but potential victims of housing discrimination.”

HUD Assistant Secretary John Trasviña

HUD provides examples of two cases where, subsequent to an incident of domestic violence, a landlord tried to evict a victim based on a zero tolerance for crime policy. In the first case, *Alvera v. CBM Group*, a woman who was assaulted by her husband in their apartment received a 24-hour eviction notice based on the incident of domestic violence. The victim filed a complaint with HUD, which issued a charge of discrimination after investigating her case. In *Warren v. Ypsilanti Housing Authority*, a housing authority tried to evict a woman and her son after learning of an incident of domestic violence where the woman's ex-boyfriend broke into her apartment and physically abused her. In a suit against the housing authority, the woman argued that because victims of domestic violence are almost always women, a one-strike policy of evicting victims based on the violence perpetrated against them had a disparate impact based on sex in violation of the FHA.

Investigation of a disparate impact case seeks evidence that “a specific policy of the landlord's caused a substantial, disproportionate, adverse impact on a protected class of persons.” HUD outlines four steps that FHEO investigators should follow while reviewing allegations of housing discrimination brought by victims of domestic violence:

1. Identify the policy, procedure or practice of the landlord that is allegedly discriminatory in its effect on women.
2. Determine whether the policy, procedure or practice is consistently applied. If applied unequally, the unequal treatment framework applies, not disparate impact. If applied consistently, then a disparate impact analysis applies.
3. Determine whether the policy, procedure or practice has a significant adverse impact on

(Continued on page 3)

(Continued from page 2)

victims of domestic violence, and if so, how many of these victims are women (or those of a particular race or national origin). Statistics are used to demonstrate the scope of the adverse impact. Statistics should be particularized, and they should demonstrate a causal link between the policy and the adverse impact.

4. If the investigation reveals a disparate impact, the analysis shifts to determining the landlord's reasons for enforcing the policy and determining whether the proffered reasons are real and supported by a substantial business justification. HUD states that "[i]t is critical to thoroughly investigate these reasons." Even if there is a substantial business justification, HUD directs investigators to examine whether there are less discriminatory alternatives available to the landlord. For example, HUD states that "in a case of discriminatory eviction under a zero-tolerance policy, a landlord could adopt a policy of evicting only the wrongdoer and not the innocent victims."

In sum, HUD states that discriminatory intent is irrelevant to proving a disparate impact claim. Rather, such claims "will generally depend on statistical data demonstrating the disparity and a causal link between the policy and the disparity."

Conclusion

The HUD memorandum is significant to advocates because it makes clear that FHEO offices should be investigating whether alleged discrimination against domestic violence victims constitutes a violation of the FHA. As HUD Assistant Secretary John Trasviña stated, "People in abusive relationships are not only victims of abuse, but potential victims of housing discrimination." The memorandum also gives advocates a sense of the evidence and theories FHEO staff will examine in analyzing fair housing complaints that allege discrimination against domestic violence survivors. Advocates should share copies of this memorandum with housing providers and property managers so that they become aware that discrimination against domestic violence victims may give rise to claims under the FHA. ■

Domestic Violence Survivor Files Suit to Challenge Termination of Her Section 8 Voucher

A federal court recently held that a domestic violence survivor could proceed to trial on her lawsuit against a housing authority challenging the termination of her Section 8 voucher. The court's opinion, *Meister v. Kansas City, Kansas Housing Authority*, 2011 WL 765887 (D. Kan. Feb. 25, 2011), is one of the first decisions issued in an action alleging that a housing authority violated the Violence Against Women Act (VAWA).

The housing authority terminated plaintiff Melanie Meister's voucher due to damages to her unit. Meister alleged that the damages occurred when a former partner criminally attacked her and broke windows and blinds at her apartment. Meister filed suit against the housing authority, alleging that the termination of her voucher violated the Violence Against Women Act (VAWA) and constituted sex discrimination under the Fair Housing Act (FHA).

The housing authority filed a motion for summary judgment on all of Meister's claims. The court refused to grant summary judgment to the housing authority on Meister's FHA claims, finding that there was a material issue of fact as to whether the housing authority knew that the damage to Meister's unit was caused by domestic violence. The court noted that the hearing officer's decision terminating Meister's voucher stated that she had testified that she was victimized by the fathers of her children, who routinely vandalized her home. Further, the court noted that the housing authority was aware that Meister had received a notice from her landlord stating that her lease would not be renewed due to broken windows "which your boyfriend broke [for] which we have [a] police report." The record also contained the police report that Meister filed after her former partner damaged the unit.

The court also addressed Meister's claim under VAWA. The court noted that under VAWA, an incident of domestic violence cannot be good cause

(Continued on page 4)

(Continued from page 3)

for terminating the housing assistance of the victim of such violence. Although the housing authority asserted that Meister had no private right of action to enforce VAWA, the court also refused to grant summary judgment to the housing authority on the tenant's VAWA claims. Citing the limited briefing on the issue, the court declined to rule whether Meister had a right of action, enforceable under 42 U.S.C. § 1983, pursuant to the provisions of VAWA.

Because the court denied the housing authority's motion for summary judgment, the case is scheduled to proceed to trial. While the ultimate outcome of the case could be decided by a jury, the district court's opinion reinforces the theory that negative housing actions taken against a tenant based on the domestic violence committed against her may violate the FHA. Further, while the court did not conclusively decide that VAWA's housing provisions are enforceable via 42 U.S.C. § 1983, it at least indicated that there is a possibility that VAWA may be enforced in this manner. ■

Resources on the Web

HUD's Memo on Housing Discrimination Against Domestic Violence Survivors:

<http://www.nhlp.org/node/1529>

National Housing Law Project, Domestic Violence and Fair Housing: A Toolkit:

<http://nhlp.org/resourcecenter?tid=96>

Meister v. Kansas City, Kansas Housing Authority:

https://ecf.ksd.uscourts.gov/cgi-bin/show_public_doc?2009cv2544-80

Attorney General Holder's Letter on Language Access Obligations:

http://www.justice.gov/crt/lep/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf

Federal Agencies Directed to Reassess Efforts to Serve Limited English Proficient Individuals

Federally assisted housing providers are required to make their programs accessible to people with limited English proficiency. While this requirement has long been recognized as a requirement of Title VI of the Civil Rights Act of 1964, many federal agencies have moved to implement appropriate language measures only during the past decade. The availability of appropriate language services can be vital in ensuring that survivors of domestic violence can access assisted housing and that they know their rights under the Violence Against Women Act and fair housing laws, especially where the abuser has withheld information from the survivor because of her limited English proficient (LEP) status. Because some agencies and recipients of federal financial assistance have not complied with their language access requirements, on February 17, 2011, United States Attorney General (AG) Eric Holder issued a letter titled "Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166" to all heads of federal agencies, general counsels, and civil rights heads.

The AG's letter reiterates the mandates of Executive Order 13166. The Order required that all federal agencies develop and implement systems to make themselves accessible for LEP persons, and if the agency provided federal financial assistance, to develop guidance for the recipients of such assistance. A 2006 survey found that compliance with the Order varied significantly across agencies. This is evident in housing, where the Department of Housing and Urban Development (HUD) has issued guidance for recipients of federal financial assistance, but the United States Department of Agriculture, which operates Rural Development Housing, and the Internal Revenue Service, which runs the Low Income Housing Tax Credit program, have not. Even within HUD housing programs, many recipients of federal financial assistance have not made their services accessible

(Continued on page 5)

(Continued from page 4)

to LEP persons.

In order to address the varying degrees of compliance, the AG's letter recommends eight action items that agencies should take to recommit themselves to the purpose of the Executive Order. First, the AG requests that all agencies create a language access working group that will be responsible for language access implementation. Each working group should be chaired by an LEP coordinator, should include members from multiple subdivisions of the agency, and from field offices. This group should identify barriers to language access, work with stakeholders, and develop strategies to eliminate those barriers. This group would be held accountable for the agency's provision of meaningful language access.

The next two action items ensure that language access plans remain current. An agency should determine what languages it frequently encounters, identify the primary ways in which the agency interacts with LEP persons, and review all of its programs and activities for accessibility. The third action item asks that agencies create a schedule for evaluating and updating their LEP policies and protocols, beginning with submitting an updated plan to the Department of Justice's Federal Coordination and Compliance Section within six months of the issuance of the letter.

A number of the action items are designed to address the practical implementation of LEP access policies. For example, the letter directs agencies to ensure their staff can identify situations in which interpretation will be necessary, how to identify the LEP person's language, and utilize the methods for interpretation available. Another important item is for agencies to notify the public about its LEP access policies through town halls, public notifications, and more.

One of the most common concerns of housing providers who are required to create LEP policies is the cost of translation. The letter urges agencies to work with other agencies to standardize federal terminology, and streamline the translation process. The AG's letter urges agencies to participate in the federal Interagency Working Group on language access's efforts to collaborate to produce

quality and effective translations. The letter also discourages the use of free translations from community groups, noting that quality is as important as efficiency; however, it does encourage input from such groups. Housing providers can take heed of such a directive by utilizing HUD translated documents and working with other recipients of federal financial assistance to share translated documents.

The final action item directs agencies that have not done so to draft guidance for recipients of federal financial assistance on how to fulfill their obligations to provide meaningful language access under Title VI. In the housing context, this is especially important for the United State Department of Agriculture's Rural Development department. Additionally, the Low Income Housing Tax Credit program, run by the Internal Revenue Service, lacks guidance.

Language services are vital to ensuring that all families can access assisted housing, regardless of their ability to fluently speak English. This most recent letter guidance can help advocates push their local federally assisted housing providers to develop and implement appropriate language access plans, which will help create greater access to programs for LEP survivors. ■

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