

# QUICK TIPS: ASSISTING SURVIVORS WITH HOUSING ISSUES

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# Housekeeping

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# What we're covering today

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- 5 case studies that examine common housing issues that survivors of domestic and sexual violence face
- Brief summary of the applicable law
  - State law protections for survivors
  - Fair housing laws and protections for survivors
  - Violence Against Women Act (VAWA): housing provisions for subsidized tenants
- Advocacy strategies that were used in the case studies, with a focus on non-litigation strategies

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## Common Housing Issues

Survivors face many obstacles to accessing and maintaining housing

# Barriers to Applying for Housing: Jan

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- ❑ Five years ago, at the advice of her atty, 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.

## The criminal history policy that resulted in Jan's denial

2. Home ownership will be verified through the county tax assessor's office. Mortgage payments must be current to reflect positive rental history.
3. Home ownership negotiated through a land sales contract must be verified through the contract holder.
4. Seven years of eviction free rental history will be required.
5. 4 or more 72-hour notices (or 144-hour notices) within a period of one year will result in denial.
6. 3 or more NSF checks within a period of one year will result in denial.
7. Rental history reflecting unpaid damage and/or past due rent will be denied.
8. Rental history demonstrating documented noise or disturbance complaints caused or contributed to by applicant, will be denied when the former manager would not re-rent.

### CREDIT REQUIREMENTS

1. A credit report will be obtained.
2. Eleven (11) or more collections being reported on the credit bureau will result in denial. A bankruptcy listed on the credit report is acceptable, however any subsequent negative credit information will result in denial.

### CRIMINAL CONVICTION CRITERIA

1. Upon receipt of the rental application and screening charge, landlord will conduct a search of public records to determine whether the applicant or any proposed tenant has been convicted of, or pled guilty to or no-contest to, any crime.
  - a) A conviction, guilty plea or no-contest plea for any felony ever involving serious injury, kidnapping, death, arson, rape, sex crimes and/or child sex crimes, extensive property damage or drug-related offenses (sale, manufacture, delivery or possession with intent to sell) class A/felony burglary or class A/felony robbery shall be grounds for denial of the rental application.
  - b) A conviction, guilty plea or no-contest plea for any other felony (other than listed above) where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.
  - c) A conviction, guilty plea or no-contest plea for any misdemeanor or gross misdemeanor involving assault, intimidation, sex related, drug related (sale, manufacture, delivery or possession with intent to sell) property damage, weapons charges, obscenity and related violations where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.
  - d) A conviction, guilty plea or no-contest plea, for any B or C misdemeanor in the above categories, or those involving criminal trespass I, theft, dishonesty, prostitution, where the date of disposition, release, or parole have occurred within the last five (5) years shall be grounds for denial of the rental application.
2. Pending charges for any of the above (a, b, c, or d) will result in a suspension of the application process until the charges are resolved. Upon resolution, if an appropriate apartment is still available, the processing of the application will be completed. No apartment will be held awaiting resolution of pending charges.

### DISABLED ACCESSIBILITY

1. The property will make any reasonable changes to the common areas of the apartment complex or buildings that will make those areas accessible to all residents.
2. Cambridge Real Estate Services will alter, or allow the resident to have altered, any apartment

# Barriers to Staying Safe: Yolaunda

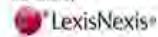
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- Yolaunda was beaten at her public housing unit. Her abuser threatened to kill her if she returned to the unit.
- Yolaunda asked the housing authority for an emergency transfer to another public housing unit.
- The housing authority refused, saying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



# Press coverage of Yolaunda Robinson's Case

## Housing rule change sought



CMHA official doubts move will ensure safety

dhorn@enquirer.com

A federal judge and housing officials will consider next week whether a woman's fear of her ex-boyfriend is reason enough to transfer her to another rent-subsidized home.

Yolaunda Robinson's case heads to U.S. District Court on Monday and to the Cincinnati Metropolitan Housing Authority's board meeting Tuesday.

Robinson sued the authority this week after the agency refused to transfer her and her two children to a different home, even after police issued an arrest warrant for the man she claims beat her and threatened her life.

She said Charles E. Davis Sr. broke into her Springfield Township home in January, beat her with a vacuum cleaner and threatened her life.

Housing Authority officials refused to transfer her and that decision has raised questions about the agency's responsibility to residents.

The agency's priority is to provide a structurally sound house or apartment that is in compliance with fire and health codes.

Domestic problems, such as an abusive boyfriend, are left to the renters and law enforcement to solve.

"My personal opinion is this was a matter for police," said Arnold Barnett, a Housing Authority board member. "If we had any inkling at all that this would have stopped him, she would have been moved."

He said such a move probably would not have made a difference because Robinson's new address would not be a secret.

Barnett said requests such as Robinson's put housing officials in a tough spot. That's why agency policy allows emergency transfers only when a house or apartment is no longer habitable.

"You're damned if you do and you're damned if you don't," Barnett said.

But Robinson and her lawyer, Nick DiNardo, said the agency's inflexibility endangers her life and the lives of her two children.

They say a big part of the problem was Davis' proximity to Robinson: He lived on the same street and frequently came to her house unannounced. She said he slashed her tires, made threatening calls and, on at least one occasion, broke into the home.

"He lived right down the street," Robinson said. "It was always a threat."

After the January attack, which left her with a gash on her head, Robinson went to the police and to court. Springfield Township police charged Davis with aggravated burglary, but they have not arrested him because they can't find him.

"We took the incident very seriously," said Sgt. Paul Szymik.

A Hamilton County magistrate later granted a protective order requiring Davis to stay away from Robinson.

Robinson said she isn't taking any chances. She has not spent a night in the house since the January attack, although she does continue to pay rent and utilities totaling about \$500 a month.

She said her 9-year-old daughter refuses to go with her to pick up things. When she complained to an agency official about her daughter's fears, Robinson said, she was told to "teach her not to be afraid."

"How can I teach her not to be afraid when I'm afraid?" Robinson said.

Her lawsuit challenges the agency's transfer policy under the Fair Housing Act, claiming that the failure to consider domestic violence as a factor in transfers discriminates against women.

The Housing Authority grants emergency transfers only when the home is no longer habitable.

She wants U.S. District Judge Michael Barrett to order the agency to grant her transfer and to change its policy. A conference among the lawyers and the judge is set for Monday.

State Sen. Eric Keamey, D-Cincinnati, urged the board to reconsider its transfer policy. He said he's received other complaints about the agency that suggest officials there too often choose strict interpretations of policy over common sense.

Info needed

Anyone with information about Charles E. Davis Sr. can contact Crime Stoppers at 513-352-3040 or the Springfield Township Police Department at 513-729-1300. Davis

# Barriers to Keeping Housing: Sonya

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- ❑ 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."

## The 10-day notice to vacate that Sonya received

*Amended*  
10 DAY NOTICE TO TERMINATE

TO: Sonya Thorpe - Tenant  
John Capers - Sub-tenant  
"JOHN DOE"/"JANE DOE" - Sub-tenant(s)  
[REDACTED]  
New York, NY 10029

PLEASE TAKE NOTICE, that your landlord elects to terminate your tenancy on the grounds that you are permitting and/or committing a nuisance in the subject premises, or are maliciously, or by reason of gross negligence, substantially damaging the accommodation, or your conduct is such as to interfere substantially with the comforts and safety of other tenants, thereby creating an objectionable tenancy, in that:

a) You have engaged in anti-social, disruptive, destructive, dangerous and/or illegal behavior in and around the building, in violation of Paragraphs 28 and 33 of your Lease Agreement and the Building Rules and Regulations. This conduct has annoyed and disturbed other tenants and severely interfered with other tenants' rights to comfort, safety and quiet enjoyment of the premises. This conduct has also interfered with management and security's ability to control and protect the premises. This conduct includes, but is not limited to, the following:

1. On or about April 1, 2008, there was a domestic dispute between you, Sonia Thorpe and John Capers. The landlord did receive information that you, Sonya Thorpe, did stab John Capers on the complex causing him serious harm. John Capers was removed from the premises by Emergency Medical Services to a local hospital. Upon information and belief, you, Sonia Thorpe were arrested by the New York City Police Department due to the attack on John Capers. Upon information and belief, the charges are pending.
2. The landlord has also received information that there has been several other domestic disputes between you, Sonia Thorpe and you, John Capers in and around the building. Upon information and belief, you, Sonia Thorpe had an Order of Protection against John Capers previously.
3. Other tenants and building employees advised that there has been numerous domestic disputes, loud fighting, yelling and screaming between you, Sonia Thorpe and you, John Capers. This has occurred on numerous occasions.
4. The above conduct has been chronic and persistent and constitutes a nuisance. Nuisance conduct is noncurable.

PLEASE TAKE FURTHER NOTICE, that unless you remove from the above premises on *7/14/08*, the date on which your tenancy terminates, the landlord will commence summary proceedings under the statute to remove you therefrom.

jdd040808

# Barriers to Keeping Housing: Mia

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- 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 Leaving: Luz

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- An employee at Luz's apartment complex had repeatedly sexually harassed and threatened her and other tenants.
- One day, the employee sexually assaulted Luz.
- Luz did not file a police report due to feelings of shame and self-blame.
- Luz asked her landlord to let her out of the lease, because she couldn't pay the lease-breaking fee.
- The landlord refused, saying he had no proof that the assault had occurred.

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## Fair Housing

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

# DV and Fair Housing Laws

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- Fair housing laws apply to most landlords, regardless of whether they are subsidized:
  - Federal Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq.
  - Most states have antidiscrimination laws that mirror the FHA's protections
- These laws prohibit landlords from discriminating against an applicant or tenant because of sex
- However, DV survivors are not a protected class under the FHA or most state fair housing laws

# DV and Fair Housing Laws

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- Advocates have challenged “zero tolerance” policies, which state that the entire family may be evicted when an act of violence occurs at or near the rental unit
- “Zero tolerance” policies have a disparate impact on women, because women constitute the majority of DV victims
- Advocates have successfully argued that these policies discriminate on the basis of sex



# Fair Housing: Case Example

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- *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

## Alvera v. Creekside Vill. Apartments, HUD Determination of Reasonable Cause (Apr. 31, 2001)

revealed that there were at least three incidents of domestic violence at Creekside Village Apartments, all involving female victims, but respondents knew only about the August, 1999 incident involving Ms. Alvera. The evidence showed that the respondents issued three other 24 hour notices. One notice was for criminal activity, one was because the INS took the entire family away, and one was because a tenant threatened other tenants with a baseball bat. The evidence also showed that the resident manager filed six incident reports with upper management during the period June 1, 1999 to January 31, 2000. The only incident report involving violence, domestic or otherwise, was that involving Ms. Alvera.

It is the respondents' policy, expressed by respondent Corenevsky, that where there is any threat or act of violence by a tenant or their guest, the household is terminated. She stated that the subject property has a "zero tolerance" for violence or threats of violence, and this policy was affirmed by the ADA/504 Coordinator for CBM Group. Ms. Corenevsky stated: "As is often the case in a domestic violence situation the victim does not take steps to prevent a recurrence of violent acts, subjecting other tenants to witness the scene play out time and time again. The reasons we take such a hard stance on the issue of violence is to maintain a peaceful living environment for all tenants."

Nationally, each year from 1992 to 1996 about 8 in 1,000 women and 1 in 1,000 men experienced a violent victimization by an intimate—a current or former spouse, girlfriend or boyfriend. National statistics also showed that, although less likely than males to experience violent crime overall, females are 5 to 8 times more likely than males to be victimized by an intimate. Other national studies have found that women are as much as ten times more likely than men to be victimized by an intimate.

National statistics show that 90% to 95% of victims of domestic violence are women. National estimates are that at least one million women a year are victims of domestic violence. A 1998 Oregon Domestic Violence Needs Assessment stated that more than one in eight (13.3 %) women in the state were the victims of physical abuse by an intimate in the prior year. Evidence obtained during the investigation showed that 93% of the victims of domestic violence reported to Clatsop County in 1999 were women. The 1998 Oregon Domestic Violence Needs Assessment compared the Oregon statistics to national statistics on the prevalence of domestic violence and found them to be comparable. National studies using a similar methodology reported that 1 out of every 9 to 1 out of every 12 women had been victims of physical assault by an intimate partner within the previous year. This compares to the Oregon study's finding that 1 of every 10 Oregon women have been victims of physical assault.

These statistics demonstrate that the respondents' policy of evicting all members of a household because of an incident of domestic violence, regardless of whether the household member is a victim or a perpetrator of the domestic violence, has an adverse impact based on sex, because of the disproportionate number of women victims of domestic violence.

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## Violence Against Women Act (VAWA)

Protections against evictions and subsidy terminations for federally assisted tenants

# VAWA: Who Is Protected?

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## 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
- \* Survivors of sexual assault may be covered

# VAWA: Admissions & Assistance

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- An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denying him or her housing.
- What about poor credit, tenancy, or criminal history that is directly related to DV?

# VAWA: Evictions/Terminations

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- ❑ Crimes against a survivor “directly relating to” DV are not grounds for evicting the survivor or terminating her rental subsidy.
- ❑ Incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
- ❑ There are limits to these protections.

# VAWA: Removing the Abuser

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- Public Housing Agency (PHA) or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV while keeping the survivor in place.
  - ▣ PHA or landlord must follow federal, state, and local law in evicting the perpetrator
  - ▣ Safety planning is essential in these cases
- PHA may terminate Section 8 assistance to the abuser while preserving assistance to survivor

## State Law Protections

A growing number of states and local jurisdictions are adopting specific housing protections for survivors



# State & Local Protections for Survivors

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- Many states have enacted housing laws specifically protecting DV survivors because:
  - The landlord-tenant relationship is usually governed by state law
  - FHA doesn't explicitly protect survivors, & the Violence Against Women Act only covers subsidized tenants
- For assistance in determining what protections your state has, contact NHLP

# Examples of state protections

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- Laws that protect survivors' housing rights include:
  - Laws that prohibit survivors from being evicted or denied housing because of violence committed against them (AR, DC, IN, NC, RI, WA)
  - Laws that provide a defense to eviction (CO, DC, IA, LA, NM, VA, WA)
  - Early lease termination (AZ, CA, CO, DE, DC, IL, IN, MN, NJ, NY, NC, OR, TX, WA, WI)
  - Right to call police (AZ, CO, DC, MN, TX, WI)
  - Lock changes (AZ, AR, DC, IL, IN, NC, OR, UT, VA, WA)

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## Advocacy Strategies

What strategies were employed in the five case studies?

# Basic tools used in DV/housing cases

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- Informal advocacy, i.e., letters and calls to the landlord or housing authority
- Helping clients get together documents and witnesses for administrative & judicial proceedings
- Using media to “embarrass” housing providers
- Filing administrative complaints (or threatening to)
- Working with housing providers to improve their policies regarding domestic & sexual violence

# Barriers to Applying for Housing: Jan

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- 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 Staying Safe: Yolaunda

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- 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.
- The housing authority has agreed to amend its public housing policy to include transfers for domestic violence survivors.

# Revised Public Housing Transfer Policy, Cincinnati Metro. Hous. Auth.

5. If the family includes children that are temporarily absent due to placement in foster care, CMHA will determine when they will be returned home. If the children will be absent for 90 days or more, they will be removed from the certification and the unit size may be reduced.
6. Whenever an adult member leaves the household for more than 30 calendar days, the family is required to notify CMHA whether the absence is temporary or permanent. Permanent moves from the household will trigger an interim recertification.

## Section V - Transfer Policy

### A. General Transfer Policy

1. It is CMHA's policy that transfers will be made without regard to race, color, national origin, sex, religion, or familial status. Residents can be transferred to accommodate a disability.
2. The good cause standard applicable to new admissions for refusal of a housing offer shall also apply to transfers.
3. It is CMHA's policy to offer the first available units of the appropriate bedroom size that complies with HUD rules related to Occupancy Standards. These units will be offered from an authority-wide vacancy list.

### B. Types of Transfers

This policy sets forth the transfer categories. Priority for transfer, and the order in which families are transferred, shall be subject to the hierarchy, by category, set forth below.

1. Emergency Transfers are mandatory. When the unit or building conditions poses an immediate threat to resident life, health or safety, as determined by CMHA, an emergency transfer will be required. Emergency transfers within sites or between sites may be made to: permit repair of unit defects hazardous to life, health, or safety; or to alleviate verified disability problems of a life threatening nature. Refusal of an immediate transfer offer, without good cause, will result in lease termination.

Emergency transfers shall take priority over new admissions.

2. Category 1 Administrative Transfers include mandatory transfers to provide housing options to residents who are victims of federal hate crimes<sup>15</sup> or extreme harassment<sup>16</sup> or to witnesses of crimes,<sup>17</sup> or

<sup>15</sup> Following consultation with and upon recommendation of Housing Opportunity Made Equal that such a transfer is appropriate and recommended.

to victims of domestic violence<sup>18</sup>, or to alleviate verified disability problems of a serious (but not life-threatening) nature; permit modernization or demolition of units; or to permit a family that requires a unit with accessible features to occupy such a unit. Residents will receive three transfer offers.

Refusal of all three transfer offers, without good cause, may result in the removal of the household from the transfer list for voluntary transfers, or lease termination in the case of a mandatory transfer.

Category 1 Administrative transfers shall take priority over new admissions.

Requests for these transfers will be made to the property manager. The resident shall provide the necessary documentation to substantiate the need for such a transfer. Transfers may also be initiated by CMHA (e.g. moving a person with mobility problems to a unit with accessible features).

3. Category 2 Administrative Transfers are mandatory transfers within or between sites to correct serious occupancy standard problems (over or under CMHA's standards) as described below. Residents will receive three transfer offers. Refusal of all three transfer offers, without good cause, may result in the removal of the household from the transfer list for voluntary transfers, or lease termination in the case of a mandatory transfer.

Category 2 Administrative transfers will take priority over new admissions.

Category 2 transfers to correct occupancy standards will only be made if the family size is so small that it includes fewer persons than the number of bedrooms, or so large that the household members over age 3 would equal more than two persons per bedroom. These transfers are mandatory.

If a family's size is between the smallest and largest size permissible for the unit, the family may request a transfer, but it shall be considered a Category 3 transfer.

4. Category 3 Administrative Transfers are mandatory transfers within sites or between sites may be made to correct and avoid concentration of the most economically and socially deprived families or to correct occupancy standards (voluntary if the family is between the minimum and maximum occupancy standard but the family requests a transfer, e.g. to permit older children of the

<sup>16</sup> Following consultation with and upon recommendation of Housing Opportunity Made Equal that such a transfer is appropriate and recommended.

<sup>17</sup> Following consultation with and upon recommendation of the local prosecutor that such a transfer is appropriate and recommended.

<sup>18</sup> Following consultation with and upon recommendation of the local prosecutor that such a transfer is appropriate and recommended.

# Barriers to Keeping Housing: Sonya

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- 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 Sonia's eviction. *Metro N. Owners v. Thorpe*, 870 N.Y.S.2d 768



# The answer Sonya's attorney filed to the eviction complaint

14. On February 28, 2007 Ms. Thorpe again called the police when she was assaulted by John Capers and a police report was filed.

15. On March 15, 2007 Ms. Thorpe obtained an order of protection against John Capers due to his repeated physical assaults. The order indicates Mr. Capers is to have no contact with Ms. Thorpe and no contact through third parties. The order of protection was issued through March 20, 2007.

16. Ms Thorpe did provide a copy of this order of protection along with a picture of Mr. Capers to building security and management so that they could prevent him from entering the building. They have failed in this regard.

17. On March 20, 2007 Ms. Thorpe obtained an order of protection against John Capers. This order indicates there is to be no personal contact and no third party contact. The order is valid until March 19, 2012 and was served on Mr. Capers while he was incarcerated.

18. Ms. Thorpe did provide a copy of the March 20, 2007 order of protection to her building security and management along with a picture of Mr. Capers so that they could assist in preventing Mr. Capers from entering the building. They have failed in this regard.

19. On April 1, 2008 Ms. Thorpe was again physically assaulted by Mr. Capers. The police were called and both Ms. Thorpe and Mr. Capers were arrested. All Charges against Ms. Thorpe were dropped and the District Attorney declined to prosecute Ms. Thorpe in any capacity.

20. On April 2, 2008 Ms. Thorpe again obtained a temporary order of protection against Mr. Capers because Mr. Capers was released on bail.

21. Ms. Thorpe provided copies of the April 2, 2008 order of protection to building management and security along with a picture of Mr. Capers.

22. Pursuant to the Violence Against Women Act 205 42 U.S.C. 1437 f. C 9 (B) and (C), it is unlawful for a private landlord to terminate the tenancy of a section 8 tenant based solely on incidents of domestic violence. As this proceeding is based solely on incidents of domestic violence it must be dismissed in it's entirety.

## AND AS FOR A SECOND AFFIRMATIVE DEFENSE

23. Respondent hereby reaffirms and realleges the facts in paragraphs (10) through (21) above.

24. The Fair Housing Act makes it unlawful "refuse to sell or rent after the making of a bonafide offer or to otherwise refuse to negotiate for the sale or rental of or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status or national origin". 42 USC 3604(a).

25. Terminating the tenancy of a domestic violence victim because of incidents of domestic violence is sex discrimination under the Fair Housing Act, Bouley v. Young 394 F Supp 2d 675 ( D. Vt. 2005).

26. This holdover proceeding is based entirely on incidents of domestic violence.

27. Petitioner's attempt to terminate respondent's tenancy based on incidents of domestic violence is sex discrimination and unlawful pursuant to the Fair Housing Act.

## AND AS FOR A THRID AFFIRMATIVE DEFENSE

## Metro N. Owners, LLC v. Thorpe, 870 N.Y.S.2d 768

and a threat to the tenants of the subject premises on inadmissible hearsay and prior, ambiguous, unspecific, undated acts.

Even if petitioner's evidence were not based on hearsay and conclusory statements, the court would find that the supposed stabbing incident is a domestic dispute and that respondent is a victim or a threatened victim of domestic violence. Although petitioner alleges that respondent allowed Capers access to the subject premises shortly after obtaining a protection order, her behavior, even if true, does not determine that respondent was not a victim of domestic abuse. The battered-woman syndrome, a well-established concept in law and science, explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior. (*E.g. People v Torres*, 128 Misc 2d 129, 135 [Sup Ct, Bronx County 1985].) The battered-woman syndrome explains the behavioral pattern of abused women and how the abuse affects their conduct. (*People v Hryckewicz*, 221 AD2d 990, 991 [4th Dept 1995].) The syndrome is "a series of common characteristics found in women who are abused both physically and emotionally by the dominant male figures in their lives over a prolonged length of time." (*People v Ellis*, 170 Misc 2d 945, 950 [Sup Ct, NY County 1996], quoting Christine Emerson, *United States v. Willis: No Room for the Battered Woman Syndrome in the Fifth Circuit?*, 48 Baylor L Rev 317, 320 [1996].) One "characteristic is that [i]f charges are filed, the battered woman may change her mind about prosecuting the batterer and withdraw her complaint, refuse to testify as a witness, or recant." (*Id.*, quoting Joan M. Schroeder, *Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer*, 76 Iowa L. Rev. 553, 560 [1991].)

Respondent might have changed her mind after she obtained the March 2007 protection order and allowed Capers access to the subject premises. Unrepresentative and inconsistent victim behavior toward an alleged aggressor fits into the cycle of domestic violence. Domestic violence is cyclical in nature. The battered woman's inconsistent behavior allows the victim to anticipate oncoming violence and entices her to remain with her abuser after the violence ends. (*Id.*, quoting Joann D'Emilio, *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use as Defenses to Criminal Liability*, 59 St John's L Rev 558, 563-564 [1985].) Respondent's seemingly inconsistent behavior toward Capers, even if true, characterizes a battered woman.

Respondent's motion for summary judgment is granted. Because the only admissible evidentiary proof submitted is respondent's affidavit, the court rests its decision on the factual scenario she presents. Petitioner failed properly to raise a triable issue of fact about whether respondent was a victim or aggressor. Accordingly, the court finds that respondent was a victim of domestic violence. As such, VAWA 2005 forbids petitioner to terminate respondent's Section 8 tenancy. Respondent is either a victim of incidents of domestic violence under 42 USC § 1437 f (c) (9) (B) or a victim of criminal activity relating to domestic violence under 42 USC § 1437 f (c) (9) (C) (i).

The petition is dismissed.

This opinion is the court's decision and order.

# Barriers to Keeping Housing: Mia

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- 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

# Sample Demand Letter, Break-Up of Section 8 Voucher Family

October 3, 2008

Ms. D.H.  
State of New Jersey  
Department of Community Affairs

RE: Request for Remedies: Section 8 Voucher Program & HPP  
Ms. M.M.

Dear Ms. H:

This is an urgent situation. Imminent eviction of a family is in process. Our office represents Ms. M. M. who resides with her three (3) children at ..., N.J. She had been living there with her husband, Mr. A. M., who is an unemployed Social Security recipient of SSD. She was living with her husband, Mr. A.M., and these children at the above address for about five years under the HUD Section 8 voucher program with DCA. Mr. M. was then, and is now, a recipient of SSD from the Social Security Administration. During the period of his residence with the family—he left sometime in April 2008—DCA considered Mr. M. “head of household”, although, during the five years that the couple lived in the apartment they both would go to the DCA each year and execute the income recertification forms.

Ms. M. came to our office in the last few days with a summons and complaint for non-payment of the contract rent on the above apartment of \$967 a month from June 2008 (partial rent) through October 2008: totals about \$4,420. The trial date is October 9, 2008.

Mr. M. for many months had been verbally abusing our client and in April 2008, he decided to contact DCA and request that it issue a “Request for Tenancy Form” for him to leave the present apartment and move-in by himself into a new apartment at ..., N.J. When he was in the act of requesting that DCA cooperate with him, Ms. M. contacted Mrs. X at the DCA office in Elizabeth, N.J. and asked DCA to give her to continue her Section 8 status notwithstanding Mr. M’s notice to DCA that he wanted to take the Section 8 status with him to a new address. Ms. M. states that Ms. X told her that DCA could do nothing about her husband’s request because he was the head of household under DCA’s records and he was disabled.

The problem is that DCA gave the Section 8 voucher to the husband when he vacated in May 2008 and now our client is facing a summary dispossession action for the contract rent on the apartment. It appears that the HAP contract was terminated for the May and/or June 2008 rent because DCA started to pay a new landlord a HAP payment for Mr. M. starting in May or June 2008 at [second address], N.J.

On May 20, 2008, our client obtained a TRO DV order against the husband. The order states that the husband is prohibited from returning to the scene of the violence (the apartment) and he was barred from “the residence of the plaintiff.” The order further stated that the defendant was “granted exclusive possession of ...the residence.”

On May 29, 2008, our client obtained a final DV restraining order that states that the defendant was barred from the residence of the plaintiff and that the plaintiff was “granted exclusive possession of the residence” and the apartment’s address is expressly stated. Ms. M. brought this final DV order to DCA’s Elizabeth, N.J. office but the intake receptionist refused to take it and said Ms. M. could leave the police report, which she did.

Our client only receives \$560 a month from the husband for herself and the three children which is from the husband’s Social Security Disability. She faces imminent homelessness without the receipt of Section 8 status in the future and without immediate help to pay back rent from DCA’s Homelessness Prevention Program.

Our office has reviewed client’s rights under the federal Violence Against Women’s Act (VAWA), 42 U.S.C. 1437f(o)(D)(i) through vi., the attached HUD regulation, 24 CFR §982.315(a) and (b), and DCA’s attached “Housing Choice Voucher Program Administrative Plan” (July 2008). See definition in the latter of “applicant break-up” (p. 1-2), “Family Break-up” (p. 1-4 to 1-5) and “Violence Against Women Act”, pp. 7-13 through 7-15.

HUD regulation 24 CFR §982.315(b), sets forth certain criteria that PHAs, such as DCA, need to 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 interest of minor children, and whether family members are or have faced actual or threatened physical violence against a spouse; as well as “other factors specified” in the PHA Section 8 Administrative Plan. DCA’s Administrative Plan, under the definition of “Family Break-up” (p. 1-4 to 1-5) and “Violence Against Women Act”, pp. 7-13 through 7-15, has embodied the HUD regulatory standards but it has not followed them in this case.

It would appear that DCA has not properly exercised its discretion under the HUD regulation and DCA’s Administrative Plan in that when DCA interviewed Ms. M. in April 2008, it did not place sufficient weight on her needs and those of her children in deciding to award the Section 8 voucher to her husband at the time of the family break-up. Therefore, Ms. M. requests the following remedies:

- Ms. M. requests and immediate administrative hearing on this. Part of the hearing should establish whether Mr. M. committed fraud, 24 CFR §982.551-553, in the representations he made to DCA in his request for a Request for Tenancy Form. (For this, it is requested that I have access to the DCA file for discovery.) See DCA’s Administrative Plan, at p. 7-12, which states that DCA must determine whether Mr. M. was “eligible” for the issuance of a new Voucher. It is submitted that his eligibility had to be based on the factors found in the HUD regulation and the DCA Administrative Plan found under the definition of “family break-up” at pp. 1-4 and 1-5. Ms. M. is without a realistic remedy against Mr. M. under the State Domestic Violence Act, N.J.S.A. 2C:25-29(b)(2), to require him to pay for alternative housing at a contract rent because of Mr. M.’s income is Social Security Disability. Rather, Ms. M. depends on the need to obtain Section 8 eligibility from DCA.
- In addition, it is requested that DCA consider invoking that part of its Section 8 Administrative Plan—see definition of “Applicant break-up”, pp. 1-2 and 1-3—which permits DCA to open its waiting list for former members of an applicant family that breaks-up. That provision gives the regional supervisor on a case-by-case basis the ability to give consideration “to former members of an applicant family who retain custody of the children...and to actual or threatened physical violence against the former members by a spouse...”
- In addition, because DCA did not properly assess the situation adequately when it issued the Section 8 voucher to Mr. M., rather than deciding that Ms. M. would retain the Section 8 status in her present apartment, it is appropriate that DCA utilize its Homeless Prevention Program in issuing back rent so that Ms. M. can avoid the entry of a Judgment for Possession at the eviction trial date which is scheduled for October 9, 2008.

It is hoped that this matter can be resolved informally. If not, kindly consider this a request for an administrative hearing under DCA’s Section 8 Administrative Plan.

Very truly yours,

# Barriers to Leaving: Luz

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- Luz's advocate wrote a letter to the landlord explaining that the landlord could be liable for failing to prevent the assault, and could also be liable if Luz was harmed again.
- Luz's advocate also told the landlord she was considering filing a fair housing complaint with HUD.
- The landlord agreed to allow Luz to break the lease without financial penalty.

# Takeaway Points

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- This area of the law is rapidly changing
- There are a variety of advocacy strategies—informal advocacy, demand letters, agency complaints, media, and working with PHAs and landlords on their policies
- Many housing providers, hearing officers, and judges will need to be educated regarding the basics of domestic violence, sexual assault, and stalking.

# Contact Information

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NHLP's LAV grantees website:

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

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