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Using Federal and State Laws to Promote Secure Housing for Survivors of Domestic Violence

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Housing instability and domestic violence are intimately linked. For instance, women living in rental housing experience intimate partner violence at more than three times the rate of women who own their own homes.¹ Low-income women are at a substantially greater risk of domestic violence.² Additionally, domestic violence tends to render women economically vulnerable, as violent partners often seek to limit a woman's ability to find or keep a job and otherwise restrict her access to money. Moreover, the violence itself can pose a significant barrier to employment. For all these reasons, women who are the most vulnerable to the loss of housing and who are the least likely to be able to locate affordable replacement housing are at the greatest risk of domestic violence, and domestic violence in turn increases this housing insecurity.

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¹ Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, NCJ 178247, *Intimate Partner Violence* 5 (2000).

² Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ 181867, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Study* 47 (2000).

Local and regional studies across the United States confirm that domestic violence is a primary cause of homelessness. Between 22 and 50 percent of homeless women report that they are homeless as a direct result of domestic violence.³ Many other women remain trapped in violent relationships by the threat of homelessness; they know that attempts to stop the violence might leave them and their children on the streets.⁴

While some women and families lose their homes when they flee abuse, other domestic violence survivors become homeless because of eviction. Many landlords react to criminal activity in a unit by evicting the tenant, regardless of whether she is perpetrator or victim. Others refuse to rent to women whom they identify as having previously experienced domestic violence. This is not only unjust, but also sends the pernicious message that battered women must keep abuse secret or risk homelessness.

This message is dangerous because the steps that a victim undertakes to end an abusive relationship are the very steps likely to escalate an abuser's violence, make the abuse public, and expose her to the risk of eviction. A woman who knows that she may lose her home if her landlord learns about the abuse is far less likely to bar her abuser from her home and risk angering him, call the police for help, seek a personal protection order, or alert her landlord to a need for an accommodation (such as an emergency transfer to another apartment or an improvement in building security) that will enhance her safety and that of the property, because these acts that expose the violence also threaten her with homelessness. The abuse is thus more likely to continue, because the risk of eviction makes it impossible to take the actions necessary to change the situation.

Legal tools are available, however, to fight housing discrimination against victims of violence. This article introduces claims that can be made under the federal Fair Housing Act (FHA), state fair housing laws, and under a number of state laws that have been passed in recent years that specifically address domestic violence victims' housing-related needs. As discussed in Naomi Stern's article in eNewsletter, *Housing Rights Under VAWA 2005*, the housing protections included in Violence Against Women Act of 2005 (VAWA 2005) only apply to individuals living in public housing or using federally-subsidized housing vouchers. The federal FHA and the state laws that are discussed below, by contrast, generally apply to both public and private housing.

³ See generally ACLU Women's Rights Project, "Domestic Violence and Homelessness" (2006) (collecting studies), at <http://www.aclu.org/womensrights/violence/24323res20060321.html>

⁴ See, e.g., Wilder Research Center, *Homeless in Minnesota 2003* (February 2004) (finding 44 percent of homeless women had previously stayed in violent relationships because they had nowhere else to go).

THE FAIR HOUSING ACT

In many instances, the federal Fair Housing Act's (FHA's) prohibition of sex discrimination in the sale or rental of housing may also reach discrimination against an individual because of her status as a victim of domestic violence.⁵ Comparable claims can be made under state fair housing laws. While relatively novel, the claim that discrimination against a victim of domestic violence constitutes sex discrimination has had some success. The FHA prohibits both intentional sex discrimination and policies and practices that have a discriminatory effect on women. Both kinds of discrimination may be at work when a victim is threatened with eviction or denied housing. A FHA claim may either be brought as an affirmative federal or state case or (in most states) raised as a defense in a state court eviction proceeding.

1. Disparate treatment claims. A claim of intentional sex discrimination (also called disparate treatment discrimination) may be brought if a landlord treats a woman differently from a similarly situated man. For example, if a landlord evicted a female victim of domestic violence for damage to an apartment caused by domestic violence but did not evict a male tenant whose apartment was comparably damaged during a party, the victim might be able to bring a disparate treatment claim.

A disparate treatment claim can also be brought if a landlord evicts a victim of domestic violence (or refuses to rent to her) based on gender stereotypes about battered women. Courts have long recognized that adverse actions based on gender stereotypes constitute intentional sex discrimination.⁶ Since intimate relationships are not "supposed" to be violent, battered women are often assumed to have violated norms, giving rise to the common stereotypes that battered women must provoke, enjoy, or deserve the abuse and so are to blame for their abusers' actions, or that battered women are untrustworthy and cannot be taken at their word. Such stereotypes underlie much housing discrimination against victims of domestic violence. Indeed, the more that a victim of domestic violence departs from a traditional ideal of femininity, the more likely she is to be blamed for the violence against her. Thus women of color, poor women, women who are not married to their intimate partners or who have non-monogamous relationships or same-sex relationships, and women who openly express anger are all more likely to be blamed for the violence against them. Plaintiffs' attorneys who can show that a landlord relied on this sort of stereotype in evicting or denying housing to a victim of domestic violence must help courts understand that these stereotypes about domestic violence are gender stereotypes. In other contexts, courts have recognized that the belief that

⁵ 42 U.S.C.A. § 3604 (2006).

⁶ *E.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989); *Los Angeles Dep't of Water and Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978).

domestic violence victims must deserve or cause the violence can be evidence of or demonstrate discrimination on the basis of sex.⁷

In 2005, a federal district court issued the first published decision holding that discrimination against a victim of domestic violence can violate the FHA, in a case that relied on this gender stereotype theory.⁸ Quinn Bouley, the plaintiff in that case, had lived in an apartment in rural Vermont with her husband and two children. One night in 2003, when she arrived home her husband physically attacked her. She managed to call the police and escape; her husband was arrested and did not return to live at the apartment thereafter. Two days later, Ms. Bouley's landlord visited her to discuss the incident. At that meeting, the landlord asked about Ms. Bouley's religion and encouraged her to seek help through Christ. Ms. Bouley angrily responded that she did not want to discuss her religious beliefs with her landlord. Later that day the landlord sent a letter to Ms. Bouley demanding that she vacate the apartment because it was clear given Ms. Bouley's behavior in their meeting that the violence in her apartment would continue. In deposition testimony, the landlord explained that she didn't believe that Ms. Bouley acted like a real victim of violence, because she seemed angry and unconcerned about what would happen to her husband. Therefore, the landlord concluded, Ms. Bouley was likely at least partly responsible for the previous violence.

Ms. Bouley's attorneys argued that she was evicted because she failed to conform to the landlord's gender stereotypes about how "real" battered women should behave. In 2005, the court denied the landlord's motion for summary judgment in the case, holding that a plaintiff makes a prima facie case of sex discrimination under the federal Fair Housing Act if she shows that she was threatened with eviction immediately after a domestic assault. While the opinion does not discuss the gender stereotyping issue, the court's conclusion that the plaintiff survived summary judgment on her intentional sex discrimination claim suggests that this theory was persuasive, as does the court's citation of *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994), a case in which a police department's reliance on gender stereotypes about battered women was found to be evidence of intentional sex discrimination. Ms. Bouley's case settled immediately thereafter.

2. Disparate impact claims. If the landlord has a policy or practice of denying housing to survivors of domestic violence or evicting individuals who experience violence in the home, this policy will fall more heavily on women than on men, because women are the great majority of domestic violence victims. A policy or practice that can be statistically shown to have much greater impact on women than on men will violate the FHA unless a landlord can demonstrate a business necessity for it. It is irrelevant whether or not the landlord intended to

⁷ E.g., *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir. 1990); *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994).

⁸ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).

discriminate against women in adopting such a policy. Even if the landlord can show a business necessity for relying on the policy or practice, the policy or practice will violate the FHA if a less discriminatory alternative would be equally effective.⁹ Given the attenuated connection between punishing victims of domestic violence and (for example) preventing crime in a property, a landlord would presumably have difficulty in showing business necessity. Moreover, many less discriminatory alternatives are available to a landlord for addressing any concerns regarding disturbances or property damage, such as pursuing civil or criminal complaints against the abuser, increasing building security, or permitting a victim to transfer to another unit in order to hide her location from her abuser.

While this theory is still fairly novel, it has had some success in courts and administrative agencies. In 2001, for example, based on this theory, the U.S. Department of Housing and Urban Development (HUD) found probable cause to believe that an apartment management company violated the FHA when, pursuant to what it claimed was a “zero tolerance for violence” policy, it sought to evict a tenant because her husband had assaulted her in their home.¹⁰ (Her husband had been arrested and prohibited from returning to the property by a personal protective order.) The U.S. Department of Justice and the individual tenant pursued the discrimination claim against the company, which resulted in a settlement awarding damages to the tenant and implementing policy changes in the company’s many properties in multiple states. In addition, in the 1980s, the New York Attorney General issued an opinion reasoning that discrimination against victims of domestic violence would violate state law prohibiting housing discrimination on the basis of sex because of the disparate impact such discrimination would have.¹¹ A Wisconsin state court came to the same conclusion under Wisconsin fair housing law in a case challenging a landlord’s refusal to rent to women coming out of a domestic violence shelter.¹²

STATE LAW CLAIMS

In the past ten years, there has been an extremely rapid growth of state laws providing housing rights to victims of domestic violence. These laws vary considerably but they fall into several categories: permitting victims to terminate a lease early so that they can move to a safer location; protecting tenants from being denied housing or evicted from housing based on being a victim of domestic violence; offering victims defenses to evictions as a result of the violence against them; prohibiting limitations on victims’ right to call the police or seek other kinds of emergency assistance; and permitting victims to have the locks changed or requiring landlords to change the locks. Many of these laws cover victims of sexual assault and stalking in addition to domestic violence.

⁹ See generally Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 10.6 (2005).

¹⁰ *HUD v. CBM Group, Inc., et al.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001).

¹¹ 1985 Op. N.Y. Att’y Gen. 45 (1985)

¹² *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995).

Even in states that do not have specific laws on point, individual advocacy or litigation may be able to secure comparable protections for victims.

1. Early lease termination provisions. Victims of domestic violence often seek to terminate a lease so that they can move to a new safe location. Several states explicitly permit victims to terminate their leases. As of January 2007, Colorado, Delaware, Illinois, North Carolina, Oregon, Texas, and Washington state have laws that either grant victims an affirmative right to terminate a lease or that excuse them from liability for early lease terminations because of the violence; additionally, the District of Columbia has passed a bill that includes a lease release provision that is pending Congressional approval.¹³ Most lease release laws either require tenants to provide landlords with notice of their intent to terminate a lease (generally at least fourteen days) or to pay an additional few weeks or a month of rent after termination. Most of these laws also require the tenant to provide “proof” that the individual is a victim of domestic violence. All of the laws accept protective orders as proof; some accept statements from qualified professionals who may have assisted the victim with the violence, police reports, or other forms of documentary evidence. Many laws specify that such documentation must be from an incident that occurred within a relatively short time of the termination request.

2. Non-discrimination protections. Victims of domestic violence are often evicted or denied housing simply because of the violence against them. A growing number of jurisdictions specifically prohibit discrimination against victims. All of these laws cover discrimination in rentals; a few also cover discrimination in sales. As of January 2007, North Carolina, Rhode Island, Washington state, and Westchester county in New York protect victims of domestic violence from housing discrimination, either by adding victim status as a protected class under the jurisdiction’s fair housing laws or by enacting separate provisions that protect victims. Additionally, the District of Columbia has passed a bill that includes non-discrimination provisions that is awaiting review by Congress.¹⁴

These non-discrimination laws provide similar substantive protections to those provided by the federal Fair Housing Act or state fair housing laws without requiring victims to prove that the discrimination against them was a form of sex discrimination. In other words, the laws remove the need to show that the

¹³ Colo. Rev. Stat. § 38-12-402(2); 25 Del. Code Ann. § 5314(b)(6); 765 Ill. Comp. Stat. 750/1 et seq. (does not apply to public housing); N.C. Gen. Stat. § 42.45.1; Or. Rev. Stat. § 90.453; Tex. Prop. Code § 92.016; Wash. Rev. Code § 59.18.575; D.C. Council Bill B-16-703.

¹⁴ N.C. Gen. Stat. § 42-47(a); R.I. Gen. Laws §§ 34-37-1, -2, -3, -4; Wash. Rev. Code § 59.18.580; Westchester County Code §§ 700.02, 700.05, 700.11(h)(2); D.C. Council Bill B-16-703. As discussed in Naomi S. Stern, *Housing Rights Under VAWA 2005*, in this eNewsletter, VAWA 2005 also provides that public housing authorities cannot deny access to housing or to voucher assistance on the basis of an applicant being a victim of domestic violence, dating violence, or stalking. Additionally, Illinois law prohibits discrimination against victims of domestic violence, sexual assault, or stalking in public assistance where public assistance is defined to include income-based housing assistance.

property owner's decision was the result of preferential treatment for men over women, animated by sex stereotypes, or caused a disparate impact on women. Victims *do* still need to show that the motivation for a challenged eviction or denial of housing was discrimination based on their being a victim of such violence rather than a non-discriminatory reason such as failure to pay rent. Non-discrimination claims can generally be raised as a defense to an eviction proceeding or as an affirmative cause of action against the landlord.

3. Eviction defenses. Many state laws and/or leases provide that tenants may be evicted if a member of the household or the tenant's guest engages in certain criminal activity, threatens the safety of other persons, or causes substantial damage to property. Such provisions are frequently the basis for eviction actions against a victim of domestic violence, whether or not the perpetrator is also a tenant. However, several states have passed laws that provide victims of domestic violence with a defense against such evictions, although some of the laws specifically permit an eviction against the perpetrator to proceed. (These laws provide protections similar to those included in VAWA 2005.) As of January 2007, Colorado, Iowa, Minnesota, New Mexico, Virginia, Washington, and Wisconsin have laws that provide some kind of eviction defense; additionally, the District of Columbia has passed a bill that includes eviction defenses that is pending Congressional approval.¹⁵ Like the lease termination laws, most eviction defense laws require the victim to provide "proof" of her status, such as a protective order or a police report. Some require that the victim obtain a protective order that bars the perpetrator of the violence from the property.

4. Right to call the police or other emergency services. Landlords frequently cite a victim's call to police or emergency services—or the "noise" that results from such calls (such as sirens)—as a basis for an eviction or other punitive action against a tenant. Several states have responded to this practice by passing laws that prohibit lease provisions that waive or limit a tenant's right to seek emergency assistance in response to domestic violence and that ban penalties against tenants for exercising their right to seek such assistance. As of January 2007, Arizona, Colorado, Minnesota, and Texas had such laws; additionally, the District of Columbia has passed a bill that is pending Congressional approval.¹⁶ Even in the absence of a specific law on point, if a public housing provider or a local law or ordinance penalizes a tenant for seeking

¹⁵ Colo. Rev. Stat. § 13-40-104; Colo. Rev. Stat. § 13-40-107.5(5)(c); Iowa Code §§ 562A.27A, 562B.25A(3); Minn. Stat. § 50B-285; N.M. Stat. Ann. § 47-8-33(J); Va. Code Ann. § 55-248.31; Wash. Rev. Code §§ 59.18.130(8)(b)(ii); 59.18.580; Wis. Stat. Ann. § 106.50(5m)(d); D.C. Council Bill B-16-703. Additionally, as discussed in Naomi S. Stern, *Housing Rights Under VAWA 2005*, in this eNewsletter, VAWA 2005 also provides victims of domestic violence, dating violence, or stalking living in public or subsidized housing with defenses for evictions based on criminal activity or incidents of such violence. Also, Louisiana state law provides defenses to victims living in public housing. La. Rev. Stat. § 40:506(D).

¹⁶ Ariz. Rev. Stat. §§ 33-1315, 33-1414; Col. Rev. Stat. § 38-12-402(1); Minn. Stat. § 504B.205; Tex. Prop. Code § 92.015; D.C. Council Bill B-16-703.

to obtain emergency services, this may violate her First Amendment right to petition the government for redress of grievances.

5. Lock changes. A victim of domestic violence who wishes to remain in her home frequently seeks to have the locks changed to protect her from future incidents of violence. Several states have passed laws that grant a victim the right to change the locks herself or to require the landlord to change the locks within a short period of time. As of January 2007, Illinois, North Carolina, Oregon, Utah, Virginia, and Washington had lock change laws; additionally, the District of Columbia has passed a bill with lock change provisions that is pending Congressional approval.¹⁷ Most laws provide that the victim bears the cost of such lock changes (though she may well be able to seek reimbursement from victims' compensation funds or through economic relief provisions in a protective order). If the perpetrator was a co-tenant, a victim generally must provide the landlord with a copy of a protective order or other court order requiring the perpetrator to vacate the dwelling.

6. Other state housing rights. When considering a victim's housing rights, it is also essential to consider her rights under general housing laws. For example: Does the building fail to meet code? Has the landlord failed to remedy a lease violation? Has the landlord failed to take basic security precautions? Are there grounds for claiming that the tenant has been constructively evicted? Partnering with housing attorneys in your jurisdiction can help you understand the full range of your client's housing rights and develop a strategy for negotiating with a landlord to meet your client's needs.

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¹⁷ 765 Ill. Comp. Stat. 750/1 et seq. (does not apply to public housing); N.C. Gen. Stat. §§ 42-47(b), (c), (d); Or. Rev. Stat. § 90.459; Utah Code Ann. § 57-22-5.1; Va. Code Ann. §§ 55-225.5, 55-248.18:1; Wash. Rev. Code § 59.18.585.