



Quarterly eNewsletter

Volume 6

Winter 2007

Fair Housing for Victims of Domestic Violence: Practice Tips

Emily J. Martin, ACLU Women's Rights Project*
Deborah A. Widiss, Legal Momentum**

- **When conducting intakes on other legal issues or doing safety planning, be sure to assess housing needs.** Safe housing is essential for a victim's security and needs to be considered when you are representing a victim. Important questions to ask include: Does the victim need to get out of a lease? Has the abuser caused significant property damage to an apartment? Has the victim been threatened with eviction in connection with the abuse? Will the victim be able to continue to pay the rent without the abuser's contribution?
- **Learn the law in your state.** Legal Momentum (www.legalmomentum.org/ehrvdv) and the National Law Center on Homelessness and Poverty (www.nlchp.org) both track state laws providing housing protections for victims. Understand what rights victims have in your state and what notice and documentation requirements the laws include.

* Emily J. Martin is the Deputy Director of the American Civil Liberties Union Women's Rights Project (<http://www.aclu.org/womensrights/index.html>). The ACLU Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg and based in the national ACLU's New York office, has been a leader in the legal battles to ensure women's full equality in American society and focuses primarily on violence against women, economic justice, and women and the criminal justice system. One of Ms. Martin's primary areas of concentration at the ACLU Women's Rights Project is protecting the civil rights of women who have experienced domestic violence, with a particular focus on housing discrimination against victims of domestic violence, and she has co-counseled in multiple cases asserting battered women's rights under the Fair Housing Act.

** Deborah A. Widiss is a Staff Attorney at Legal Momentum (<http://www.legalmomentum.org/legalmomentum/>) with principal responsibilities for its Employment and Housing Rights for Victims of Domestic Violence project. The project helps survivors of domestic violence, sexual assault, and stalking enforce their employment- and housing-related legal rights through providing direct representation, technical assistance, and informational materials. Deborah has litigated cases regarding employment rights and housing rights for survivors in federal and state courts across the country, including Iowa, New York, Wisconsin, California, and North Carolina. Deborah has also helped draft federal and state legislation addressing employment and housing rights of survivors.

- **Develop relationships with local housing attorneys.** You can serve as a resource for housing attorneys on the nature and dynamics of domestic violence and they can serve as a resource for you on housing law and common practices in your jurisdiction. Help ensure that victims of domestic violence who are represented at eviction proceedings are taking advantage of housing protections available to victims in your jurisdiction.
- **If your client is facing eviction and you believe she has a strong FHA claim of sex discrimination, act quickly.** A federal court may abstain from hearing your FHA case if a state court eviction proceeding is already underway. If a state court has already ruled against your client in an eviction action, a federal FHA case challenging the eviction may be impossible. If you want to bring an affirmative claim in federal court, with the rights of discovery and the possibility of injunctive relief and damages that this provides, the best practice is to file your case after your client receives a notice to quit, but before an eviction action is initiated in state court, and to seek a temporary restraining order prohibiting the landlord from moving forward with the eviction pending a decision on the merits in the case.
- **Approach disparate impact claims with some caution.** Though all federal courts of appeals considering the issue have held that disparate impact discrimination is actionable under the FHA, conservative judges tend to view these cases with skepticism. In addition, while HUD issued a probable cause finding based solely on a disparate impact theory in a domestic violence eviction case in 2001, it might be less willing to do so today. Thus, ideally in framing your case you should partner disparate impact claims with disparate treatment claims and gender stereotyping theories.
- **Seek out experts.** Experts can be very helpful for both FHA disparate treatment claims based on gender stereotyping and disparate impact claims. For the former, seek out an expert who can explain to the court how people perceive victims of domestic violence and how gender roles and expectations affect these perceptions. Sociology or psychology academics with an interest in domestic violence might be able to provide helpful testimony on this point. For the latter, seek out an expert who can help you establish that women are more likely than men to be victimized by domestic violence in your state or city, and who can estimate the percentage of women who will experience such violence in their life. Local statistics are especially compelling in disparate impact litigation. Experts may also be helpful for certain state law claims, though they are less likely to be necessary.
- **Even when there isn't a law on point, consider advocacy or litigation with the landlord.** Even if your state doesn't have a law that meets your

client's needs (e.g., changing the locks or breaking a lease), you may be able to advocate or litigate on other grounds for such accommodations.

- **Resources are available to assist in litigating these claims.** The ACLU Women's Rights Project (<http://www.aclu.org/womensrights/>) and Legal Momentum (www.legalmomentum.org) are available to consult and co-counsel in these cases. Contact them for assistance and further information.

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