

# HOUSING JUSTICE

National Housing Law Project

Newsletter November 2010

## Update on State Laws Providing Housing Rights for Survivors of Domestic and Sexual Violence

During 2010, several states enacted new housing protections for survivors of domestic and sexual violence. These protections include eviction defenses for survivors who are being evicted due to acts of violence committed against them; laws that require landlords to change the locks where tenants have provided documentation of domestic or sexual violence; and laws that permit tenants to end the lease early where they provide landlords with documentation of domestic or sexual violence. This article outlines protections that were recently enacted in California, Illinois, Maryland, Michigan, and Texas.

### California

On September 30, 2010, California Governor Arnold Schwarzenegger approved Senate Bill 782, which will become effective January 1, 2011. The law provides a defense to eviction for victims of domestic violence, stalking, and sexual assault. Specifically, the law prohibits a landlord from terminating a tenancy based upon an act of domestic violence, stalking, or sexual assault committed against a tenant. The act of domestic violence, sexual assault, or stalking must be documented by either a restraining order or police report issued within the past 180 days. The eviction defense can only be used in cases where the perpetrator of the domestic violence, sexual assault, or stalking does

not reside with the victim.

Additionally, the law requires landlords to change a tenant's locks after an incident of domestic violence, sexual assault, or stalking. The tenant must request the lock change in writing. If the tenant lives with the perpetrator of the violence, the tenant must provide the landlord with a restraining order that excludes the perpetrator from the unit. If the tenant does not live with the perpetrator of the violence, the tenant can provide either a restraining order or a police report to the landlord. If the landlord fails to change the locks within 24 hours after receiving the documentation of domestic violence, sexual assault, or stalking, the tenant may change the locks without the landlord's permission.

### Illinois

Like California, Illinois recently enacted a law providing a defense to eviction for victims of domestic violence, dating violence, stalking, or sexual violence. The law, 735 Illinois Compiled Statutes 5/9-106.2, became effective July 22, 2010. It prohibits a landlord from evicting a tenant based solely upon an incident of domestic violence, dating violence, stalking, or sexual assault against the tenant. When asserting the affirmative defense, the tenant must provide either a medical, court, or police record documenting the violence, or a statement from an employee of a victim service organization or from a medical professional from whom the tenant has sought services.

Additionally, the law gives landlords the power to bar from the premises any person who is not a

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member of the tenant's household. The landlord must provide written notice to the tenant that the person is no longer allowed on the premises. The notice must state that if the tenant invites the barred person onto the premises, then the landlord may treat this as a breach of the lease and evict the tenant.

### **Maryland**

Like California and Illinois, Maryland has enacted an eviction defense for victims of domestic violence and sexual assault. The law, Maryland Code Annotated Real Property § 8-5A-01 through 8-5A-06, became effective October 1, 2010. The eviction defense applies in cases where the basis for the alleged breach of a tenancy agreement is an act of domestic violence or sexual assault. A tenant is deemed to have raised a rebuttable presumption that the alleged breach does not warrant eviction if the tenant provides a copy of a protective order. If a tenant does not provide a protective order, the court still may issue judgment in favor of the tenant.

Similar to California, Maryland now requires a landlord to change the locks upon written request of a victim of domestic violence or sexual assault. The victim must provide a copy of a protective order. If the landlord fails to change the locks by the close of the next business day after receiving the victim's request, the tenant may change the locks without the landlord's permission.

Additionally, a tenant may terminate the lease if she is a victim of domestic violence or sexual assault. The tenant must provide the landlord with at least 30 days' written notice of her intent to vacate, along with a copy of a protective order.

### **Michigan**

Like Maryland, Michigan has enacted a law allowing a tenant to be released from a rental agreement if the tenant is the victim of domestic violence, sexual assault, or stalking. The law is codified as Mich. Comp. Laws § 554.601b. The tenant must give the landlord written notice of

### **For More Information About Housing Laws in Your State**

NHLP has created a compendium of state and local laws that affect the housing rights of survivors of domestic and sexual violence.

To download the compendium, visit  
<http://nhlp.org/node/1436>

her intent to end the rental agreement. The notice must be accompanied by one of the following documents: a protection order; a probation order, conditional release order, or parole order indicating that the individual subject to the order is barred from contacting the tenant; a police report that has resulted in the filing of charges by the prosecuting attorney; or a report from a qualified third party, defined as a sexual assault or domestic violence counselor, a licensed health professional, a mental health professional, or a clergy member.

### **Texas**

As of January 1, 2010, Texas expanded its existing early lease termination law for victims of family violence to cover victims of sexual assault. The sexual assault victim must give the landlord documentation from a licensed health care services provider, a licensed mental health services professional, or a sexual assault program, or a protective order. The victim must give the landlord 30 days' written notice that she intends to terminate the lease.

### **Conclusion**

A growing number of states are enacting housing protections for survivors of domestic and sexual violence. Advocates in these states should engage in outreach and training to inform tenants and landlords about these new laws. ■

## HUD's Emergency Homeowner Loan Program to Take Applications By End of Year

The Department of Housing and Urban Development (HUD) recently released information on its \$1 billion Emergency Homeowners Loan Program (EHLF). The program will offer zero-interest "bridge loans" of up to \$50,000 to assist struggling homeowners with payments of arrearages, plus up to 24 months of monthly payments on their mortgage principal, interest, mortgage insurance premiums, taxes, and hazard insurance. HUD intends for the program to begin taking applications from homeowners by the end of the year.

EHLF is available for homeowners who have become unemployed or have had their income reduced due to adverse economic conditions or medical conditions. As a result, the program could be a resource for domestic violence survivors who are behind on their mortgage payments due to a loss of income but who are likely to be able to resume payments within two years. For example, a survivor who lost her job due to injury or intimidation by the batterer who likely will be able to begin working again may be eligible for EHLF.

### Eligibility

To be eligible for EHLF, a homeowner must meet the following requirements:

- **Income Thresholds:** The homeowner must have a total pre-event income equal to, or less than, 120% of the area median income. "Pre-event income" is defined as the homeowner's income prior to the onset of unemployment, underemployment, or medical condition
- **Significant Income Reduction:** The homeowner must have a current gross income that is at least 15% lower than the pre-event income.
- **Delinquency and Likelihood of Foreclosure:** The homeowner must be at least three months delinquent on payments and have received notification of an intention to fore-

### States and Territories Receiving EHLF Allocations

Alaska	New Hampshire
Arkansas	New Mexico
Colorado	New York
Connecticut	North Dakota
Delaware	Oklahoma
Hawaii	Pennsylvania
Idaho	Puerto Rico
Iowa	South Dakota
Kansas	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Massachusetts	Washington
Minnesota	West Virginia
Missouri	Wisconsin
Montana	Wyoming
Nebraska	

close.

- **Ability to Resume Repayment:** The homeowner must have a reasonable likelihood of being able to resume repayment of the first mortgage obligations within two years.
- **Principal Residence:** The homeowner must reside in the mortgaged property as her principal residence.

### Amounts Allocated to States

The amount of EHLF funding allocated to each state was based on each state's share of unemployed homeowners with a mortgage. The amounts range from \$135.4 million for Texas to \$1.3 million for North Dakota. EHLF funding will be distributed to 32 states (see box accompanying this article) and Puerto Rico. States that already received funding from the Treasury Department's Innovation Fund for Hardest Hit Housing Markets will not receive EHLF funding.

For more information about EHLF or the Hardest Hit Innovation Fund, visit HUD's website at [www.hud.gov](http://www.hud.gov). ■

## HUD Files Sexual Harassment Charge Against Iowa Property Owner and Manager

The Department of Housing and Urban Development (HUD) is charging an Iowa property owner, a property management company, and an employee of the company with sexual harassment against two female tenants. HUD alleges that property manager Michael Nieman requested sexual favors in exchange for rent, cable service, and other housing services in violation of the Fair Housing Act (FHA). HUD also alleges that Nieman subjected the women to a hostile housing environment based on sex in violation of the FHA.

The two women lived in a project-based Section 8 development that was designated for low-income persons who are elderly or disabled. The complex does not have a sexual harassment policy that applies to employees or residents of the property or a grievance policy to address tenant complaints. The women allege that Nieman repeatedly made unwelcome and offensive sexual comments and gestures toward them. Both women eventually moved from the complex. HUD's charge of housing discrimination asserts that Nieman's actions were sufficiently severe and pervasive to unreasonably interfere with the women's tenancy and cause them emotional distress, economic loss, and other damages.

HUD is seeking an order that declares that the property owner, property management company, and Nieman violated the FHA. HUD also seeks an order that enjoins retaliation or discrimination against any person because of sex, that awards damages to the women, and that awards a \$16,000 civil penalty for each violation of the FHA.

HUD's charge of discrimination will be heard by an administrative law judge unless any party elects to have the case heard in federal district court. If the judge finds that discrimination has occurred, he or she may award damages, injunctive relief, other equitable relief, and attorney's fees. The judge may also impose civil fines. If the matter is decided in federal court, the judge may also award punitive damages. ■



### Assisting Survivors of Domestic Violence in Applying for Housing



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## Free Resource Available Online

National Housing Law Project is pleased to announce the publication of "Assisting Survivors of Domestic Violence in Applying for Housing." The manual provides a comprehensive review of domestic violence survivors' rights in applying for housing. It is available for download at <http://nhlp.org/resourcecenter?tid=96>

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*This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*