

SPOTTING AND ADDRESSING BARRIERS TO PERMANENT HOUSING

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BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

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WHO ARE WE?

- ❑ Bay Legal is the largest nonprofit law firm in the Bay Area providing free legal services to low income clients

- ❑ Main Legal Practice Areas
 - Housing Law
 - Consumer Law
 - Family Law
 - Health Access Law
 - Public Benefits Law
 - Reentry Law
 - Youth Law

TRAINING OBJECTIVES

- Increase knowledge of common barriers to housing:
 - criminal history
 - disability
 - domestic violence
 - poor/inadequate credit
 - past evictions
- Identify when a household should seek legal assistance and how to refer clients to Bay Area Legal Aid

HOW ARE CLIENTS DENIED HOUSING?

- Rules for federally subsidized housing vs. private housing
- What must a Landlord/housing provider consider?
- Where do housing providers have discretion?
- What remedies/protections do clients have?

Keep an eye out for fair housing - discrimination and harassment - issues

SUBSIDIZED HOUSING – FREQUENT MANDATORY EXCLUSIONS

- Sex offenders subject to **lifetime** registration
- Convicted of manufacturing meth **on** federally assisted housing **premises**
- Evicted from federally assisted housing **within the past 3 years** for **drug-related** criminal activity
 - Unless completed drug rehabilitation program approved by Public Housing Authority (PHA)
- *Some variation at the local level and not all subsidized housing is screened through PHAs.*

SUBSIDIZED HOUSING – DISCRETIONARY EXCLUSIONS

- **Drug-related criminal activity**
- **Violent criminal activity**
- **Other criminal activity**

What factors do housing providers/PHAs look at?

What does discretion really look like?

SUBSIDIZED HOUSING – CRIMINAL ACTIVITY CONSIDERATIONS

- Criminal activity must have occurred within a “reasonable time” of application in order for PHA to consider it as basis for exclusion.
 - Lookback periods for Alameda County’s 5 housing authorities – between 3-5 years
- “Criminal activity” does not require a criminal conviction. But note: fact of arrest does not prove criminal activity.

FEDERALLY SUBSIDIZED HOUSING – BACKGROUND CHECKS

- Background checks provided by a public agency (eg. Dept. of Justice) = all convictions
 - Does NOT include: incidents where there was no conviction
 - **Advocacy Note:** participants are required to self-report “criminal activity;” failure to do so can be independent basis for denial or termination

FEDERALLY SUBSIDIZED HOUSING – APPLICATION DENIALS

- Client denied federally assisted housing **must** be provided with:
 - A **written** explanation of the decision containing the specific reasons for the denial;
 - Opportunity to request a **hearing** to appeal the factual basis for the decision and to present evidence of rehabilitation, disability, and/or domestic violence;
 - A **copy of any criminal record or private tenant screening report used** to review it for accuracy and compliance with credit reporting laws.

BARRIERS TO PRIVATE HOUSING

- Background check = convictions going back 7 years
 - Does NOT include: arrests not leading to convictions, “expunged” convictions, successful completion of diversion.
 - Private landlords obtain background checks from tenant screening companies.
- Blanket bans against anyone with a criminal record are unlawful.

We represent clients challenging housing denials, background checks that exceed legal limits, and defending eviction actions.

CRIMINAL HISTORY RELATED DENIAL HYPO

- Client mentions she, her partner and their 3 year old son are homeless and have been denied an apartment based on a felony drug conviction from around 10 years ago.
- She recalls that she pled to several years of probation and thinks she was discharged successfully. She's been clean for several years, and has completed an intensive substance abuse program.
- Someone from the apartment called her and told her that she was denied and that “no felons” are allowed. **What is relevant? What would you advise?**

CRIMINAL RECORDS REMEDIES AND ADVOCACY TIPS

- Expungements
- Reductions
- Special Cases
 - Sex offenders
 - Disability
 - Domestic Violence

EXPUNGEMENTS

- Definition
- Eligible convictions (with some exceptions):
 - Misdemeanors and felonies where probation was part of the sentence
- Additional requirements:
 - Completed probation/parole in all counties
 - Not serving an active sentence in any case
 - No pending charges in any county
 - No active warrants in any county
 - Fines, fees, restitution paid, or on payment plan

REDUCTION OF FELONIES TO MISDEMEANORS

○ Eligibility

- Felony conviction for a “wobbler” offense
- Felony probation granted
- No state prison sentence

○ Timing

- May be reduced at sentencing, while sentence is being served, or after sentence is completed

WHAT DOES IT MEAN TO GET A REDUCTION?

- The felony becomes a misdemeanor “for all purposes.”
Can generally report that you have never been convicted of a felony.
 - “Private” background checks – appears as a misdemeanor
 - “Public” (DOJ) background checks – appears as a felony reduced to a misdemeanor
- BUT:
 - Still considered a felony for purposes of federal gun laws
 - Reduced strike offenses remain priorable as strikes unless the reduction occurred at initial sentencing

REGISTERED SEX OFFENDERS: SPECIAL CONSIDERATIONS

- Mandatory exclusion from federally subsidized housing for lifetime registrants
- Deeply problematic: currently all registrable offenses are lifetime registrations in CA, and registrable offenses include many with little nexus to risk of reoffending:
 - indecent exposure or lewd displays related to substance abuse, mental health issue or homelessness
 - women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from abuse
 - Consensual relationships where one partner is older than the other by a few years

REGISTERED SEX OFFENDERS: ADVOCACY TIPS

- Out-of-state convictions/registrations – does the out-of-state offense of conviction have elements equivalent to the least adjudicated elements of a CA offense requiring registration?
- Is expungement + Certificate of Rehabilitation a possibility?
- For subsidized housing admissions *before June 25, 2001*, no basis for eviction or termination solely based on a household member's sex offender registration status (Your client is still entitled to a hearing and procedural protections (HUD))
- **NEW LAW:** Revised Penal Code section 290 (effective 2021) – creates a tiered registry system, ends universal lifetime registration.

PERSONS WITH DISABILITIES: SPECIAL CONSIDERATIONS

- If a tenant has an obstacle to obtaining or maintaining housing because of a disability, the tenant can **request a reasonable accommodation**.
 - Mental or physical impairment that (substantially) limits one or more life activities; and/or
 - A history of such impairment; and/or
 - Regarded as having such impairment.
- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

REASONABLE ACCOMMODATION EXCEPTIONS

A housing provider can deny a RA if it poses:

- ❑ Undue financial or administrative burden
- ❑ Fundamental Alteration
- ❑ Direct Threat

A **current** illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation.

REASONABLE ACCOMMODATIONS: ADVOCACY TIPS

To get a RA a person with a disability must show:

- **DISABILITY+ CHANGE IS NECESSARY & REASONABLE = THERE IS A NEXUS**

If the housing provider believes that the requested accommodation is not reasonable, then it is required to engage in an “interactive dialog”

to get more information about the disability related need and to find a reasonable alternative accommodation.

DISABILITY RELATED DENIAL HYPO

- Client denied housing by a nonprofit housing provider for a handful of misdemeanor convictions – drug possession, evading an officer, concealed weapon (a 2" pocket knife). Most of the activity occurred 2-3 years ago, but he only recently pled to the drug case.
- Client has mental health issues occurring when he was homeless and without any medical care. He is now in transitional housing with case management, sober and has a lot of support for his permanent housing application.

What advocacy can be done for this client?

DOMESTIC VIOLENCE-RELATED BARRIERS

- 38% of all victims of domestic violence become homeless at some point in their lives.
- Difficulties finding permanent housing because of poor employment history, evictions, poor credit, etc.
- Average Shelter Stay is 60 days – can take 10-12 months to find permanent housing

DOMESTIC VIOLENCE SURVIVORS: VIOLENCE AGAINST WOMEN ACT (VAWA)

- A subsidized housing provider cannot deny program assistance to a survivor of domestic violence, dating violence, sexual assault or stalking – when the decision to deny, evict or terminate is related to the domestic violence
- Special notice requirements
- Applies to all HUD-assisted and Tax Credit properties

CREDIT CHECKS: PUBLIC VS. PRIVATE HOUSING

- Subsidized housing providers will perform a credit check on each adult member of the household when the household nears the top of the waitlist AND a “live scan” criminal record check.
- Private Housing will likely obtain “commercial” background check product
- Consumer credit protections apply if outside screening company is used to conduct a criminal record background check – lookback periods and ways to challenge inaccuracies in the record

PAST EVICTIONS ON A RECORD

- Up until January 2017, most unlawful detainers (“UDs” or “eviction action”) would show up on a tenant screening report and a landlord could use that to deny the application
- If a past eviction is on a record, it is difficult to get removed – e.g. stipulations or motions to set aside with very compelling facts (DV, disability, fraud by landlord)
- New UD masking law – provides that an eviction action will remain “masked” (not show up) unless the landlord wins a judgment within 60 days of filing the lawsuit

REFER TO BAY AREA LEGAL AID

WHEN:

- A criminal or credit check reports information that is inaccurate or should not have been reported under the law;
- The client is interested in seeking criminal record remedies to improve their housing opportunities;
- Client receives a notice from the landlord or faces an eviction;
- The client is disabled and needs assistance making a reasonable accommodation request;
- A housing application is denied;
- Client faces termination of a housing subsidy.

HOW TO REFER A CLIENT TO BAY AREA LEGAL AID

- For **housing** legal assistance call the:
Tenant's Rights Line at
1-888-382-3405
- For **reentry** legal assistance (take your pick!):
 - Drop-in hours every Thursday from 1pm-4pm at Bay Area Legal Aid's Oakland office (1735 Telegraph Ave., Oakland, CA 94612)
 - Fax referral (attn: Catherine and Stacey) to: 510-663-4740
 - Call/email Catherine and Stacey with client or referral questions!
 - Catherine Kimel – 510-250-5231, Ckimel@baylegal.org
 - Stacey Guillory – 510-318-7231, Sguillory@baylegal.org