

Eviction Prevention for Tenants with Serious Mental Illness

Community Legal Services

Presented by

CLS HOUSING UNIT FOR ACMI

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Community

Legal Services

Advocate. Litigate. Educate.

HOUSING STABILITY

- “For someone with a mental health condition, the basic necessity of a stable home can be hard to come by. The lack of safe and affordable housing is one of the most powerful barriers to recovery. When this basic need isn’t met, people cycle in and out of homelessness, jails, shelters and hospitals. Having a safe, appropriate place to live can provide stability...”
- National Alliance on Mental Illness:
(<https://www.nami.org/find-support/living-with-a-mental-health-condition/securing-stable-housing#sthash.j5y8cj4h.duf>)

MODULE ONE

(ARLTA)

ARIZONA RESIDENTIAL LANDLORD AND TENANT OVERVIEW

- Landlord's Statutory Responsibilities are found at A.R.S. § 33-1324.
- A landlord/property manager must provide a habitable rental unit under the Arizona Residential Landlord and Tenant Act ("ARLTA").
- For more information see, §§ 33-1323, 33-1324, 33-1362(B).
- For more information see, CLS' Arizona Tenants' Rights And Responsibilities Handbook, clsaz.org-website

TENANTS' STATUTORY RESPONSIBILITIES

(A.R.S. § 33-1341)

- Pay the rent in full and on time.
- Even if landlord does not make requested repairs tenant must still pay the rent.
- Tenant must maintain the dwelling unit.
- Tenant must not negligently or deliberately damage any part of the dwelling unit or let any guest cause damage.
- Tenant and his/her guest should not disturb the neighbor's quiet enjoyment of the premises or engage in criminal activity on the premises.
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LANDLORD/PROPERTY MANAGER FAILS TO PROVIDE ESSENTIAL SERVICES (A.R.S. § 33-1364)

- If landlord/property manager fails to supply running water, gas, electrical service, hot water, heat, air conditioning or essential services, tenant must give reasonable notice to the landlord/property manager and then may do the following:
 - Obtain reasonable amounts of the service and deduct the actual reasonable costs from the rent.
 - Sue landlord/property manager based upon the reduced rental value of the dwelling unit.
 - Obtain reasonable substitute housing. Tenant does not have to pay rent during this time.
 - It is best to have proof that tenant gave the landlord/property manager written notice of the violations.
 - ALL VERY HARD TO DO ALONE

LANDLORD/PROPERTY MANAGER FAILS TO MAKE REPAIRS (A.R.S. § 33-1361)

- If landlord/property manager fails to maintain dwelling unit, tenant may (should) give written notice specifying the needed repairs.
- If landlord/property manager does not correct the breach, tenant has three options:
 - Tenant can terminate the rental agreement/lease.
 - Tenant can sue the landlord/property manager for damages.
 - Tenant can go to superior court and seek injunctive relief to make the landlord/property manager correct the breach.
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OTHER TENANT REMEDIES FOR LANDLORD/ PROPERTY MANAGER'S BREACH OF RENTAL AGREEMENT

- “Retaliation (A.R.S. § 33-1381) – If tenant asserts right to decent and safe housing (such as by complaining to his/her landlord/property manager) or if joins a tenants’ organization, the landlord cannot retaliate against the tenant.
- Examples of retaliation include increased rent, eviction, threatening eviction, or reduction of services to tenant within six (6) months of tenant’s actions listed above.
- Illegal Lock Outs and Turning Off Services – (A.R.S. § 33-1367) Landlord/property manager cannot lock tenant out of dwelling unit or turn off essential services such as electricity, water or heat, without a court order or take any of tenant's personal belongings. If this happens, tenant should call police and may sue for an amount up to two months’ rent or twice the actual damages, whichever is greater.

RETURN TENANT'S SECURITY DEPOSIT

(A.R.S. § 33-1321)

- Tenant should find out if the rental agreement requires a security deposit and/or cleaning deposit. Tenant should find out the amount of the deposit and whether it is refundable when tenant moves out.
- Tenant can ask for the return of the security deposit when he/she moves out and requests final walk-through of dwelling unit.
- A landlord/property manager may subtract unpaid rent from eviction and repair costs from the security deposit.
- Tenant only has sixty (60) days from the time landlord/property manager mails the itemized list of deductions and refund to dispute the amount refunded.
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MODULE TWO

(EVICTIONS & FHA)

POVERTY AND HOUSING STATUS

2020 Federal Poverty Guidelines

100% of the Federal Poverty Level Guidelines

Family Size	Annual	Monthly	Weekly
1	\$12,760	\$1,063	\$245
2	\$17,240	\$1,437	\$332
3	\$21,720	\$1,810	\$418
4	\$26,200	\$2,183	\$504
5	\$30,680	\$2,557	\$590
6	\$35,160	\$2,930	\$676
7	\$39,640	\$3,303	\$762
8	\$44,120	\$3,677	\$848
Each Add'l	\$4,480	\$373	\$86

EVICTON RATES

Metros with highest eviction rates

Metro	Eviction Rate (^{'15-'17})	Poverty Rate (^{'16})	Foreclosure Rate (^{'07-'08})
Memphis, TN	6.1%	19.4%	5.1%
Phoenix, AZ	5.9%	15.0%	5.9%
Atlanta, GA	5.7%	13.1%	5.1%
Indianapolis, IN	5.6%	13.3%	6.0%
Dallas, TX	5.6%	12.7%	3.3%
Las Vegas, NV	5.5%	14.2%	9.2%
Louisville, KY	5.3%	12.7%	4.6%
Houston, TX	5.0%	14.8%	4.0%
Virginia Beach, VA	4.9%	11.4%	3.4%
Cincinnati, OH	4.8%	12.6%	5.4%

Sources: AL 2017 Renter Survey, Census; AL calculations.



EVICTON RATES (cont'd)

Metro	Eviction Rate: Overall	Eviction Rate: Low-Income	Eviction Rate: Middle-Income	Eviction Rate: High-Income
San Francisco, CA	1.6%	3.1%	1.6%	0.9%
Phoenix, AZ	5.9%	9.2%	5.8%	2.6%
Riverside, CA	3.6%	4.7%	3.4%	2.5%
Detroit, MI	4.5%	6.4%	3.6%	2.0%
Seattle, WA	2.3%	4.0%	2.5%	1.1%
Minneapolis, MN	3.1%	4.9%	2.9%	1.2%
San Diego, CA	1.9%	3.0%	1.8%	1.2%
Tampa, FL	4.5%	6.8%	4.1%	2.1%
St. Louis, MO	3.2%	4.6%	2.8%	1.4%
Baltimore, MD	3.6%	5.2%	4.1%	1.9%

SOURCES: AL 2017 Renter Survey, Census; AL Calculations

RENT SPIKES – LOSS OF HOUSING

- The average apartment rent in metro Phoenix climbed more than 8% during past year (August 18, 2019/Arizona Republic)
- Average rents city from Phoenix – based on ABI Multifamily compared with last year:
 - Phoenix - \$1,680 up 9%
 - Mesa - \$1,045 an 11% increase
 - Scottsdale - \$1,493 an increase of 9.2%
 - Tempe - \$1,363 increasing 6.2%
 - Glendale - \$981 an increase of 8%

LEGAL BACKGROUND FOR ARIZONA'S EVICTION LAWS

- The legal term for an eviction is a 'special detainer action'.
- Special detainer intended to provide the rightful owner with a summary, speedy, and adequate remedy for obtaining possession of the premises withheld by a tenant.
- The right to actual possession is the only issue to be determined in an eviction action. This standard has been reiterated in numerous decisions. *Gangadean v. Erickson*, 17 Ariz. App. 131, 134, 495 P.2d 1338, 1341 (Ct. App. 1972).

EVICTIION PROCESS

Evictions usually take place in Justice Courts

- An eviction is a lawsuit by the landlord asking the court to:
 1. Find that the tenant has broken the lease agreement.
 2. Order that the tenant be removed from the property.
 3. Order that the tenant pay money to the landlord for rent, late fees, attorney fees and other costs.

TYPES OF LEASE/RENTAL AGREEMENT VIOLATIONS

(See Handout No. 1)

- Not paying the rent
- Material non-compliance of rental agreement.
- Material non-compliance affecting health and safety
- Material and irreparable breach

LANDLORDS' WRITTEN NOTICES

- The key issue to any eviction in Arizona is the question of actual or written notice.
- Landlord/property manager must provide tenant with written notice prior to eviction.
- See A.R.S. § 33-1313 (A) and (B). (“Notice”)
- See A.R.S. § 33-1368 (A) and (B), noncompliance with rental agreement and failure to pay rent are the most common legal reasons given for eviction.

FIVE DAY NOTICE TO PAY OR VACATE

- A tenant may not withhold rent for any reason not authorized by The Arizona Residential Landlord / Tenant Act. (“ARLTA”)
- Review notice with tenant. See A.R.S. § 33-1368(B).
- Get all of the facts.
- Discuss notice with property manager / landlord as soon as possible.
- Ensure tenant corrects or fixes problem(s) within notice cure period and documents such in writing.

FIVE-DAY NOTICE HEALTH AND SAFETY VIOLATION

- Tenant to maintain dwelling unit and fails to do so.
 - A.R.S. § 33-1341 / Tenant's Obligations.
- Review notice with tenant. See A.R.S. § 33-1368(A)(2).
- Get all of the facts.
- Discuss notice with property manager/landlord as soon as possible.
- Ensure tenant corrects or fixes problem(s) within notice cure period and documents such in writing.

TEN-DAY NOTICE OF MATERIAL NON-COMPLIANCE

- The property manager/landlord has determined that the tenant has committed a material non-compliance of lease/rental agreement.
- See A.R.S. § 33-1341 /Tenant's Obligations.
- Review notice with tenant. See A.R.S. § 33-1368(A) & (A)(2).
- Get all of the facts.
- Discuss notice with property manager/landlord as soon as possible.
- Ensure tenant corrects or fixes problem(s) within notice cure period and documents such in writing.

NOTICE OF IRREPARABLE AND MATERIAL BREACH

- The property manager/landlord has determined that the tenant has materially and irreparably breached the lease/rental agreement and has to leave premises immediately.
- Tenant can be removed from dwelling unit within 12-24 hours, if evicted in justice court.
- Tenant cannot correct or fix problem(s).
- **Assist tenant in applying for legal representation from Community Legal Services promptly.**

JUSTICE COURT CASE ACTIVITY (RPEA)

- Forcible detainers and special detainers filed in Maricopa County Justice Courts 2016-2019.
- Rules of Procedure for Eviction Actions – RPEA RULE 5 and Rule 10 - Effective January 1, 2020.

JUSTICE COURT CASE ACTIVITY

2016 - 2019

		2016	2017	2018	2019
EA Filed		<u>61,221</u>	<u>62,789</u>	<u>65,876</u>	<u>68,343</u>
	Plaintiff Represented	52,673	55,275	59,529	62,049
	Defendant Represented	217	181	240	229
	Plaintiff Win	42,110	42,522	43,776	44,938
	Plaintiff Win \$	41,732	42,159	43,413	44,616
	Defendant Win	51	59	39	38
	Defendant Win \$	26	21	19	24
Bench Trial		<u>1,218</u>	<u>1,332</u>	<u>1,473</u>	<u>1,523</u>
	Plaintiff Represented	957	1,066	1,264	1,328
	Defendant Represented	48	49	56	70
	Plaintiff Win	817	836	974	1,009
	Plaintiff Win \$	790	785	935	987
	Defendant Win	23	38	19	18
	Defendant Win \$	9	10	6	7

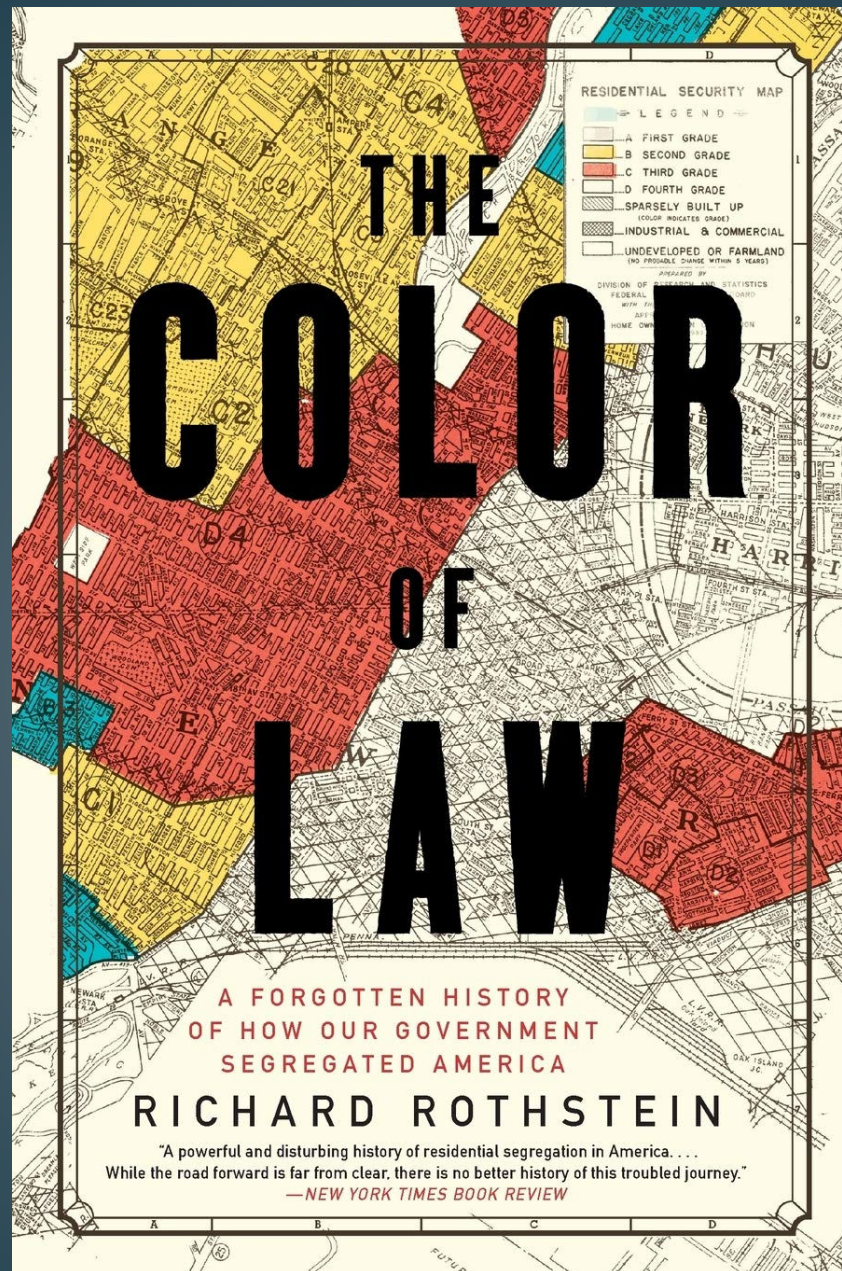
SOURCE: Scott Davis, Maricopa County Justice Courts

RPEA RULE 5-SUMMONS & COMPLAINT

- A copy of the provisions of any lease agreement and any addendum related to the underlying basis of the eviction action must be served with the complaint.
- If the action is based on non-payment of rent, a copy of the accounting of charges and payments for the preceding six months must be served with the complaint.

RPEA RULE 10-DISCLOSURE

- Upon request, a party must provide to the other party prior to the hearing or trial;
 1. a complete copy of any lease agreement and any addendums;
 2. a list of witnesses and exhibits; and
 3. copies of any documents the party intends to introduce as a exhibit.



A BRIEF HISTORY OF THE FAIR HOUSING ACT

- APRIL 11, 1968 - President Lyndon Johnson signed into law the Federal Fair Housing Act ('FHA') (Title VIII of the Civil Rights Act of 1968).
- The 'Act' originally prohibited discrimination in the sale, rental, and financing of housing on the basis:
 - Race
 - Color
 - Religion
 - National Origin

HISTORY OF THE FAIR HOUSING ACT (Continued)

- Sex discrimination was added in the 1974 amendment.
- 1988 - Fair Housing Amendments Act (42 U.S.C. §§ 3601-3619) FHAA.
- Arizona Fair Housing Article §§ 41-1491-41-1491.36, effective September 21, 1991, provides substantially equivalent protections as FHAA.
 - Amendments added prohibition on discrimination based upon:
 - Handicap/Disability
 - Familial Status

WHAT DWELLINGS ARE COVERED UNDER FHA

- Apartments
- Condos
- RV parks (long-term)
- Homeless shelters
- University dormitories
- Nursing homes
- Group homes
- Motels (long-term)

WHAT DWELLINGS ARE **NOT** COVERED UNDER FHA

- Owner occupied buildings with 4 or fewer units
- Single family houses sold/rented by owner without assistance of real estate agent
- Housing operated by religious organizations and private clubs that limit occupancy to members.

THE FAIR HOUSING ACT'S SEVEN PROTECTED CLASSES

1. **RACE** – all races are protected. It is just as unlawful for a black landlord to discriminate against a white tenant as vice versa.
2. **COLOR** – all colors are protected (usually refers to skin tone).
3. **RELIGION** – no preference or difference in treatment regarding members of a particular religious group.
4. **NATIONAL ORIGIN** – protections of the 'Act', afforded to all residents, not just citizens. Refers to origin or birth.

THE FAIR HOUSING ACT'S SEVEN PROTECTED CLASSES (Continued)

5. **SEX DISCRIMINATION** – The 'FHA' prohibits gender preference.
 - Sexual preference or orientation is not covered under FHA or by Arizona's fair housing article. Sexual harassment in housing is covered.
6. **FAMILIAL STATUS** – Refers to the presence of children under the age of 18 living in a household including: pregnant women, foster parents or a written designee of a minor child's parent.

THE FAIR HOUSING ACT'S SEVEN PROTECTED CLASSES (Continued)

7. **HANDICAP/PERSON WITH DISABILITY**

- Has a physical or mental impairment which substantially limits one or more of such person's 'major life activities', or has a record of having such an impairment, or is regarded as having such an impairment. 24 C.F.R. §100.201
- A 'Major Life Activity' life is an activity that is of central importance to daily life such as:
 - Seeing, sleeping, eating, hearing, walking, breathing, working, performing manual tasks, caring for one's self, thinking, reading, learning, speaking, communicating, and interacting with others.

WHAT ARE MENTAL IMPAIRMENTS?

- (1) HUD includes in its list of disabilities any mental or psychological disorder such as mental retardation, emotional or mental illness, and specific learning disabilities.
- (2) HUD also includes orthopedic, visual, speech, hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV/AIDS, and drug addition and alcoholism as conditions that constitute a mental impairment.

PRACTICES PROHIBITED UNDER THE 'FHA'

- It is unlawful to discriminate on the basis of membership in any of the **SEVEN PROTECTED CLASSES** by:
- Discriminating in the **SALE** or **RENTAL** or **NEGOTIATION** of a dwelling.
- Discriminating in the **TERMS, CONDITIONS** or **PRIVILEGES** of **SALE** or **RENTAL** of a dwelling.
- Discriminating in providing **SERVICES** or **FACILITIES IN CONNECTION WITH** a Sale or Rental of a dwelling.

PRACTICES PROHIBITED UNDER THE 'FHA' (Continued)

- Representing that a dwelling is not available, when, in fact, the dwelling is available for **INSPECTION, SALE or RENTAL**.
- Discriminatory **NOTICE, STATEMENT, or ADVERTISEMENT** for **SALE or RENTAL** of dwelling that indicates any **PREFERENCE, LIMITATION or DISCRIMINATION**.
- **Examples of housing discrimination**

PRACTICES PROHIBITED UNDER THE 'FHA' (Continued)

- **Disability Discrimination Under FHA:**
 - Refusal to make reasonable accommodation in rules, policies, practices or services.
 - Refusal to allow a person with a disability to make reasonable physical modifications to the premises
 - Modifications are at the disabled tenant's expense.

REASONABLE ACCOMMODATION

- **What is a “reasonable accommodation?”**
 - A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
 - A failure to make a reasonable accommodation is unlawful under the FHA and Arizona Fair Housing Article

REQUESTING A REASONABLE ACCOMMODATION

- Request does not need to be made in any particular manner or at a particular time.
- Request does not have to be made personally by person needing the accommodation.
- The words “reasonable accommodation” do not have to be used.
- Request just needs to be made in a manner that a reasonable person would understand that the tenant is requesting an exception, change or adjustment to a rule, practice or service because of a disability.
- Applicant/resident is not entitled to receive a reasonable accommodation unless one is requested.

ELEMENTS OF REASONABLE ACCOMMODATION REQUEST

- Request is necessary to verify that the person meets FHA'S disability definition.
- Request describes the accommodation sought.
- Request shows the relationship between the person's disability and the need for the accommodation.
- According to HUD, in most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary to support a reasonable accommodation request.

TYPES OF SATISFACTORY DISABILITY DOCUMENTATION

- In evaluating a reasonable accommodation request, disability documentation may include:
 - Credible statement by the applicant/resident.
 - Statement by doctor or other healthcare provider, a peer support group leader, a non-medical service agency or a reliable third party.
 - Disability status: e.g. Proof of eligibility for Social Security Disability or Social Security Disability Insurance.
 - Disability not obvious or need not obvious-need documentation

REASONABLE ACCOMMODATIONS MAY BE AVAILABLE AT ANY STAGE

- **APPLICATION** (e.g., alternative format for application)
- **QUALIFICATIONS FOR TENANCY** (e.g., co-signer)
- **DURING TENANCY OR RESIDENCY** (e.g., accessible parking space)
- **EVICTIION** (e.g., waiver of eviction to get treatment or monitoring)

REASONABLE ACCOMMODATION AND JUSTICE COURT EVICTIONS

EXAMPLE: TENANT WITH SERIOUS MENTAL ILLNESS (SMI)

- A tenant who engages in disruptive behavior on the premises because of mental illness diagnosed as “schizoaffective disorder and auditory hallucinations, may be entitled to a reasonable accommodation to obtain treatment, counseling and monitoring in lieu of an eviction.
- **Material and Irreparable Breach Violation**

TENANT'S DISABILITY CONTRIBUTED TO LEASE VIOLATION

- In trying to stop eviction and save tenant's housing, tenant and advocates must do more than prove tenant has a disability. For more information see, DOJ and HUD "Joint Statement" May 2004.
- Tenant must demonstrate their disability caused or contributed to the lease violation and propose a change that would prevent future similar lease violations.
- Concepts of fair housing are not addressed within the ARLTA.
- Justice court judges are not trained in fair housing law.
- The requirements to be justice of the peace are that you be at least 18 years old, a registered voter in Arizona, reside in the justice court precinct and understand the English language. There is no requirement that a justice court judge be an attorney.

ACCOMMODATION MUST BE REASONABLE

- Federal and state statutes and implementing regulations only require “reasonable accommodations.” There must also be an identifiable relationship, or nexus between the requested disability and the individual’s disability. The nexus requirement does not mean the requested accommodation is reasonable.
- The accommodation must be necessary because of the tenant’s disability and not because of some non-disability related reason.
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- The accommodation must be reasonable, but an accommodation is reasonable unless it requires a fundamental alteration in the nature of the provider’s operations or imposes undue financial and administrative burdens. (*Canady v. Prescott Canyon Estates Homeowner Assn*, 204 Ariz. 91, 60 P.3d 231).
- To succeed, the tenant must show that without an accommodation he/she will be denied an equal opportunity to enjoy housing of their choice.

FHA OBLIGATIONS OF LANDLORDS/PROPERTY MANAGERS

- The landlord is legally required to respond promptly to a reasonable accommodation request.
- If the landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is the landlord's responsibility to request documentation or open a dialogue with the tenant.
- When landlords have questions of the requester, they should initiate an “interactive process” to attempt to come to an agreement about the appropriate accommodation.
- Requested accommodation may even require that the landlord bear certain costs so long as they are reasonable.

FHA OBLIGATIONS OF LANDLORDS/PROPERTY MANAGERS (continued)

- If a reasonable accommodation can eliminate or significantly reduce the threat, the landlord must grant the accommodation.
- The landlord may proceed with an eviction only if the tenant constitutes a threat after the landlord made an effort to accommodate the tenant.
- The only exception to this requirement occurs if the landlord can demonstrate “that no reasonable accommodation will eliminate or acceptably minimize any risk [the tenant] poses to other residents.

STEPS TO PREVENT TENANT'S EVICTION FOR DIRECT THREATS OR WHERE TENANCY WOULD RESULT IN SUBSTANTIAL PHYSICAL DAMAGE TO THE PROPERTY OF OTHERS

- Landlord/property manager reject request for reasonable accommodation and proceed with eviction on the basis that no reasonable accommodation is required because tenant is a direct threat to the health and safety of other individuals.
- Tenant should immediately contact clinical coordinators / housing specialist upon receipt of landlord's verbal decision or written notice.
- Housing providers and clinical coordinators should submit written assurance to landlord of plan to reduce tenant's future direct threat violations.

STEPS TO PREVENT TENANT'S EVICTION FOR DIRECT THREATS OR WHERE TENANCY WOULD RESULT IN SUBSTANTIAL PHYSICAL DAMAGE TO THE PROPERTY OF OTHERS

- Housing providers and clinical coordinators should immediately seek eligibility determination by CLS if tenant wishes legal representation.
- CLS requests reasonable accommodation to prevent imminent eviction..
- “Tenant wins when they demonstrate a high-intensity intervention after a lease violation compared with the landlord’s low-intensity response to the request for accommodation.”

NONDISCRIMINATION IN FEDERALLY ASSISTED HOUSING PROGRAMS

- The landlord must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with Part C of the HAP Contract: Tenancy Addendum. 24 C.F.R. Part 982.552. (2019) Section 8 Housing Voucher Program .
- Owners of HUD-subsidized multifamily properties are subject to the nondiscrimination requirements of the Fair Housing Act. 24 C. F. R. part 100 – Discriminatory Conduct under the Fair Housing Act.

DAMAGES FOR FHA VIOLATIONS

- Proof of violation of FHA entitles plaintiff to actual damages.
- Plaintiff may recover for emotional distress, embarrassment and humiliation.
- Plaintiff may recover economic damages resulting from discrimination:
 - Expenses incurred in finding another place to live.
 - Difference in the cost of housing denied and housing obtained.
- ‘Plaintiff may recover damages for lost housing opportunities where the denied housing had a location, amenities or other characteristics that made it particularly valuable to a complainant.’
- The prevailing party is generally entitled to attorney’s fees under the FHA.

FAIR HOUSING REFERRALS

- Southwest Fair Housing Council - swfhc.com
- Arizona Center for Disability Law - www.azdisabilitylaw.org
- HUD's Office of Fair Housing and Equal Opportunity - https://www.hud.gov/program_offices/fair_housing_equal_opp
- Office of the Attorney General – Civil Litigation Division/Division of Civil Rights Section - <https://www.azag.gov/civil-rights>
- Community Legal Services – clsaz.org
- Arizona Residential Landlord and Tenant Act - <https://housing.az.gov/general-public/landlord-and-tenant-act>

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THANK YOU



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Legal Services

Advocate. Litigate. Educate.

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