



# Santa Clara County Homelessness Continuum of Care

## Fair Housing and Tenant Rights Training Series

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PRESENTED BY BAY AREA LEGAL AID

April 11, 2024

# 3- Part Series

## Part 1:

### Tenants' Rights

- Rental Applications and Screenings
- Criminal History Information
- Security Deposits
- Habitability
- Best Practices
- Rights Related to Survivors (including Violence Against Women Act (VAWA))
- Tenant Protection Act

## Part 2:

### Fair Housing Protections

- Federal and State Protections
- Reasonable Accommodations
- Source of Income Discrimination
- Protection for Immigrant Tenants

## Part 3:

### Eviction Process Overview

# Today's Agenda

1. Bay Area Legal Aid Overview of Services & Eligibility
2. General Overview of Tenants' Rights
  - Rental Applications and Screenings
  - Criminal History Information
  - Security Deposits
  - Habitability
  - Best Practices
  - Rights Related to Survivors (including Violence Against Women Act (VAWA))
  - Tenant Protection Act

Bay Area Legal Aid provides free legal services to eligible low-income residents in the Bay Area. We are the largest legal aid provider serving seven Bay Area Counties:

**Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo & Santa Clara**

**Our 8 Practice Areas in Santa Clara County include:**

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**Housing Preservation And Homelessness Prevention**

- Landlord-Tenant Matters
- Eviction Defense
- Fair Housing and Discrimination
- Subsidized Housing Issues

**Domestic Violence And Sexual Assault Prevention**

- Restraining Orders
- Family Law
- Domestic Violence Related Immigration

**Immigration**

- Services for Immigrant Survivors of Domestic Violence and Sexual Assault

**Economic Justice**

- Public Safety Net Programs

**Health Consumer Center**

- Health Care Access
- Public Health Insurance Programs
- Health Consumer Issues

**Consumer Law**

- Debtor's Rights
- Fair Credit Reporting

**Youth Justice Project**

# Client Eligibility

**Live in the counties of:** Alameda, Contra Costa, Napa, Marin, Santa Clara, San Francisco, or San Mateo.

**Citizen or eligible immigrant:**

- U.S. citizen, or certain family members of a citizen, with a pending application for permanent residency
- Permanent resident, refugees, asylees, etc.
- Any immigrant who is a victim of domestic violence, sexual assault, human trafficking, or other violent crime.
- We can represent eligible children in public benefits or domestic violence matters, even if their parents are not eligible

**Gross income generally has to be under 200% of federal poverty line. EXCEPT for our health work.**

# Ways to Access Our Services

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LEGAL ADVICE LINE  
(ALL PRACTICE AREAS)

1-800-551-5554

Monday -Thursday 9:30AM -  
1PM

HEALTH CONSUMER  
CENTER

1-855-693-7285

Monday – Friday 9AM – 5PM

# Tenants' Rights

# Rental Applications and Screenings

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## Application Screening

- Applications usually ask for names and contact information of current and past landlords, employers, and references
- Landlords may require applicants to provide a screening fee to cover the costs of obtaining a credit report

## Financial Qualifications

- Sometimes, tenants may use proof of rent payment and proof of income to demonstrate their financial qualifications



# Criminal History

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California regulations interpreting anti-discrimination laws prohibit landlords from considering certain types of criminal history including:

- Arrests that did not lead to a conviction
- Participation in a pretrial or post-trial diversion program
- Any record of a conviction that has been sealed by the court, or
- Any conviction that came from the juvenile justice system

Regulations also prohibit landlords from having “blanket bans” on all applications with criminal histories:

- Landlords must look at the individual circumstances involving a conviction to decide whether it is directly related to an applicant’s ability to be a good tenant

# Criminal History

Housing Provider may NOT:

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- Access criminal or civil records older than 7 years
- Ask for/use information about arrests not leading to convictions
- Have a blanket “No felons” policy or otherwise exclude all individuals with criminal records
- Ask for/use information about juvenile adjudications
- Ask for/use information about convictions that have been “expunged”
- Deny someone on the basis of convictions or other criminal records that were a function of a disability (“Reasonable Accommodation”)
- Deny someone on the basis of convictions or other criminal records that are related to a history of domestic violence (VAWA, if federally subsidized housing, otherwise potentially discriminatory under fair housing laws)

# Criminal History

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Housing providers who obtain investigative consumer reports or criminal history information from third parties

- are subject to the Fair Credit Reporting Act, and
- must notify applicants if they take an adverse action based partly or completely on criminal history information they find.

# Hypo

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## Hypo 1

A landlord posts an advertisement for an available 1-bedroom unit. The advertisement specifically states: NO INDIVIDUALS WITH CRIMINAL RECORDS

Is this permissible: Yes or No?

## Hypo 2

A landlord posts an advertisement for an available 1-bedroom unit. The advertisement specifically states: NO INDIVIDUALS WITH PRIOR FELONIES

Is this permissible: Yes or No?



# Security Deposits

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Currently, landlords may require two times the monthly rent for security deposits for unfurnished units and three times the monthly rent for furnished units.

**Beginning July 1, 2024**, landlords can only require one month's rent for security deposits (furnished or unfurnished)

A landlord may only charge two times the monthly rent for security deposits if all the following apply:

1. The landlord is a natural person or LLC comprised of all natural persons
2. The landlord owns two or less properties that collectively include no more than 4 units
3. The tenants are not service members

# Return of Security Deposits

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A landlord must return a security deposit or provide an itemized list of any deductions within 21 days of the tenant vacating the unit.

If a landlord retains any of the security deposit, they must provide the tenant with an itemized list of lawful deductions along with receipts or good faith estimates of the costs if repairs have not been completed.

Lawful deductions include:

- Costs for repairs beyond normal wear and tear
- Unpaid rent
- Cleaning fees

If a landlord improperly retains the security deposit, a tenant may send a letter to the landlord demanding the return of their security deposit and file a small claims action.

# Habitability

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A landlord has a legal duty to provide a habitable unit.

## **What does habitability mean?**

- Habitable means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.
- The Civil Code, the Health & Safety Code, or local Municipal Codes outline specific features of a habitable unit.

## **What must a landlord do before renting a unit?**

- Landlord must make the unit fit to live in

## **What must a landlord do during the tenancy?**

- Landlord must repair problems that make the rental unit unfit to live in, or uninhabitable

# Habitability

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**What should a tenant do if repairs are needed or the unit becomes uninhabitable?**

- Tenants should give notice in writing to their landlords immediately
- Keep a copy of your notice for your records.

**What if a tenant substantially caused an unlivable condition?**

- Then the tenant may be responsible for the cost of the repairs

**Tenants' remedies if landlord does not conduct repairs:**

- Contact Code Enforcement
- “Repair and Deduct” remedy (not recommended)
- “Abandonment”
- Withhold rent (not recommended)
- File a lawsuit for breach of implied warranty of habitability and/or constructive eviction



# Best Practices

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## Duty of good faith and fair dealing

Parties have the obligation to engage in good faith and fair dealing

Parties cannot unreasonably interfere with the right of the other party to receive the benefits of the agreement



## Inspect the unit

Before moving in, and upon moving out thoroughly inspect the unit

For the move-out inspection, document the condition of the premises with pictures and videos



## Communicate

Communication is key to avoiding and resolving most problems

All communication, especially any requests or agreements, should be made in writing



## Pay rent on time

Best to pay by money order or check

If paying cash, tenant should obtain receipt and keep safe for records

# Hypo

Tammy Tenant has a rental agreement where she agrees to pay \$2000 in rent. A year into her tenancy, a pipe in her bathroom burst, leaking into the unit. She verbally told her landlord. Landlord immediately repaired the pipe and replaced Tammy's carpets. A month later, Tammy noticed water damage in her walls and started smelling a mildew odor. She didn't inform the landlord and began withholding rent.

What best practices should Tammy have done?

- a) provided initial notice about the pipe bursting in writing
- b) inform landlord after habitability issue started again
- c) take pictures of the habitability issues
- d) contact Code Enforcement
- e) all of the above

# Violence Against Women Act (VAWA)

# What is VAWA?

VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse against them, without being afraid of being evicted.

VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them.

Applies to survivors regardless of sex, gender, identity, or sexual orientation.

It only applies to federal housing programs.

## Programs Covered Under VAWA

### HUD Programs

Public Housing	§ 236 Multifamily rental housing
Section 8 vouchers	§ 221d3/d5 Below Market Interest Rate (BMIR)
Project-based Section 8	HOME
Section 202 Supportive Housing for the Elderly	HOPWA (Housing Opportunities for People w/AIDS)
Section 811 Supportive Housing for People with Disabilities	McKinney-Vento Homelessness Programs (includes ESG; CoC)
Housing Trust Fund	

### Department of Agriculture

Rural Development (RD) Multifamily

### Department of Treasury/IRS

Low Income Housing Tax Credit (LIHTC)

# VAWA Covers Persons Who Are Subject to:

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**Domestic violence:** Any felony or misdemeanor crimes of violence committed by: a current/former spouse or intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim; a person against a victim protected from acts under state/local domestic and family violence laws.

**Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim.

**Sexual assault:** Any nonconsensual sexual act prohibited by law

**Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for their safety or suffer substantial distress

**VAWA Applies to Both Applicants and Tenants**



# VAWA: Eviction Protection

Generally, a person cannot be denied housing or assistance based solely on criminal activity that is **on the basis of, or as a direct result of**, their status as a survivor.

- Adverse factors resulting from the abuse (e.g., criminal history)

An incident of domestic violence is not a “serious or repeated lease violation” by the survivor or “good cause” (reason) for evicting the survivor

## Exceptions

- Housing providers can still evict or terminate assistance due to “actual and imminent threat” to other tenants or employees if the survivor is not evicted

# VAWA: Removing the Abuser

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A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay

- The remaining tenant generally has **at least 90 calendar days or until lease expiration (with possible 60-day extension)** to establish eligibility for the existing program, establish eligibility for another covered housing program, or find alternative housing.

The landlord must follow federal, state, and local law in evicting the abuser



# VAWA: Documentation Options

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SELF-CERTIFICATION  
FORM (HUD FORM  
5382)



POLICE, COURT OR  
ADMINISTRATIVE  
RECORD



STATEMENT FROM  
THIRD PARTY



STATEMENT OR  
OTHER EVIDENCE  
(HOUSING  
PROVIDER'S  
DISCRETION)

# VAWA: Notice Rights

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Housing provider must provide Notice of VAWA Occupancy Rights and self-certification form to applicants and tenants at these times:

- at the time an applicant is denied admission or assistance;
- at the time individual is admitted or given assistance; and
- with any notification of eviction or assistance termination.

The forms are available in 14 other languages.

If a covered housing provider fails to provide the required VAWA forms along with a termination notice, the notice is invalid.

# VAWA: Emergency Transfers

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Emergency transfers (ET) are an important means by which survivors can find safe and affordable housing

Covered housing providers must have developed and implemented emergency transfer (ET) plans.

ET plan must indicate that tenant qualifies for ETs if:

- (1) the tenant expressly requests the transfer; and
- (2) either the tenant reasonably believes that they are threatened with imminent harm from further violence if they remain OR the tenant is a victim of sexual assault that occurred on premises within 90 days of request (can permit more than 90 days)

# VAWA: Confidentiality

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Information submitted by survivor under VAWA, including the fact that the individual is a victim of DV, dating violence, sexual assault, or stalking must be maintained in “**strict confidence**”.

Confidential information must not be entered into any shared database or disclosed to others, except if disclosure is:

- Requested or consented to in writing by survivor in **time-limited** release;
- Required for use in eviction proceeding; or
- Otherwise required by applicable law.

# VAWA Complaint

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For VAWA violations, persons may submit a complaint form to the United States Department of Housing and Urban Development (HUD)

- Online: <https://www.hud.gov/fairhousing/fileacomplaint>
- By Phone: 1-800-669-9777
- By Mail:
  - San Francisco Regional Office of FHEO
  - U.S. Department of Housing and Urban Development
  - One Sansome Street Suite 1200
  - San Francisco, CA 94104

HUD has updated its complaint form to include VAWA protections. On the complaint form, explain in the narrative section how VAWA rights were violated.

# Hypo

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Tim Tenant (he/him) is a survivor of domestic violence and wants to assert VAWA protections and request an emergency transfer.

**True or False.** Tim Tenant cannot request an emergency transfers because VAWA only applies to women.

# California Laws Protecting Domestic Violence Survivors



# California has several laws that help domestic violence survivors maintain safety in housing

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Right To Have Locks Changed



Right To Break The Lease



Right To Protection From Eviction



Housing Provider's Duty To Provide Safe Housing



# Right to Have Locks Changed

**If the abuser is a tenant**, a Landlord must change the locks within 24 hours after the survivor provides the landlord with a copy of a court order that excludes the abuser from the home

- Request must be made in writing
- Court order must have been issued within past 180 days

**If the abuser is NOT a tenant**, a Landlord must change the locks within 24 hours after the survivor provides the landlord with a copy of a police report OR court order

- Request must be made in writing
- Police report/court order must have been issued within past 180 days

**If landlord refuses to change lock**, the survivor may change the locks without landlord's permission

- Must use a similar or better quality lock
- Must notify landlord within 24 hours after changing the locks and provide the landlord with a key

# Right to Break the Lease

**A survivor has a right to break the lease agreement. To do so, he/she/they must:**

- Notify landlord in writing
- Attach proper documentation (copy of restraining order or protective order, police report, or documentation by a qualified third party)
- Provide the notice within 180 days of the documentation

**A survivor is only responsible for 14 days of rent following notice**

- If the survivor vacates before the 14-day period and the premises is re-rented, the survivor's rent must be prorated.

# Right to Protection from Eviction

A landlord cannot evict a tenant based upon an act of domestic violence, sexual assault, human trafficking or stalking, or abuse of an elder or dependent adult

- If the abuser is not a tenant in the same unit, this defense is easier to raise—but even if the abuser is a tenant in the same unit the victim can still raise this defense (CCP 1161.3 with CCP 1174.27)
- Tenants wishing to assert this defense can do so in a demand letter and/or on the judicial council form answer (UD-105)

Tenant must have documentation by a qualified third party, a restraining order, or police report issued within the last 180 days

Exceptions: a landlord may still evict the survivor if they allow the abuser to return, or if the abuser poses a physical threat. Landlord must give the survivor an opportunity to cure.

# Right to Protection from Eviction for Contacting Emergency Assistance

A landlord may not prohibit, limit, or threaten to prohibit or limit a person's right to contact emergency assistance if a person believes emergency assistance is necessary

Affirmative defense in eviction proceedings.

- No documentation required to demonstrate belief, but can use documentation by a qualified third party, a restraining order, or police report issued within the last 180 days

# Housing Provider's Duty to Provide Safe Housing

A landlord owes a general duty to maintain property in a safe condition

Tenants may request simple safety improvements like

- Better exterior lighting
- Changing or providing more durable locks on exterior doors

Landlords who breach duty to maintain property in a safe condition may be subject to civil liability

# Hypo

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Tammy Tenant has a stalker. She obtained a restraining order from the court. Her stalker continues to harass her but stays in the common areas of the apartment complex. Tammy frequently contacts the police. Her neighbors have complained to the property manager that the police come to the apartments frequently. The property manager then issues a termination notice based on frequent police activity.

True or False. Tammy has a right to be protected from eviction

# AB 1482: Just Cause & Rent Cap

# Just Cause Protections

Civ. Code 1946.2

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For covered properties, a landlord may not terminate the tenancy without just cause if a tenant has lived at the unit for at least 12 months

- If tenants have been added to or left the unit, “just cause” protections apply either when everyone has been in the unit for 12+ months; or when at least one of the tenants has continuously lived there for 24 months
- The “just cause” reason for termination must be stated in the notice

Two types of “just cause” terminations: “at fault” and “no fault”



# Just Causes: At-Fault

- Non-payment of rent
- Lease violation
- Nuisance
- Waste
- Refusal to enter into similar lease agreement
- Criminal Activity
- Assigning or subletting in violation of lease
- Refusal to Allow Owner to Enter the Premises
- Using Premises for Unlawful Purposes
- Employee, agent, or licensee's failure to vacate after termination of employment or license
- Failure to vacate after tenant provides notice

# Just Causes: No-Fault

- Owner Move-in
- Withdrawal of the residential real property from the rental market
- Owner complying with an order to vacate, for example, regarding habitability
- Intent to demolish or substantially remodel
  - Effective April 1, 2024, new law adds extra tenant protection
- Tenant may be entitled to relocation assistance equal to one month's rent
  - Local ordinances may have greater relocation assistance requirements

# Rent Cap

Civ. Code 1947.12

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For a covered property:

- Landlords cannot increase the rent in any 12- month period by more than 5% plus the percentage change in cost of living, or 10%—whichever is lower
- No more than 2 rent increases per 12-month period

Properties exempt from just cause protections and rent cap include most single-family homes; housing that has been issued a certificate of occupancy in the last 15 years; LIHTC properties

# Thank You/Q & A

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**LEGAL ADVICE LINE**

**1-800-551-5554**

**Monday -Thursday 9:30AM - 1PM**

