2015’s statewide housing protections for domestic violence victims

Statewide DV Task Force Meeting
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Today’s Presenters

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New DV-Related Anti-Discrimination and Anti-Eviction Protections in NY

• DV advocate community seeking statewide housing-related anti-discrimination protections for many years
  – Different bill vetoed by then Gov. Paterson in 2010 (Veto Message 6760)

• Part of the “Women’s Equality Agenda” (WEA) package

• **Signed 10/21/15** (L.2015 ch.366) and became effective 90 days later on **1/19/2016**
  – Adds new sections of Real Property Law §227-d and RPAPL §744
  – Protections are contained in the housing laws, **not** in the Human Rights Law (SO no Division of Human Rights enforcement)
RPL 227-d
REMEDYING DISCRIMINATION BASED UPON DOMESTIC VIOLENCE STATUS
Discrimination based on DV status is prohibited

- Discrimination based on domestic violence (DV) status is prohibited
  No person, firm, or corporation and/or their agent owning or managing a building for dwelling purposes shall, based on a person or family member’s DV status:
  - Refuse to rent to any person or family;
  - Discriminate in the terms, conditions, or privileges of the rental; or
  - Print or circulate any statement, publication, or advertisement which directly or indirectly expresses any limitation, specification, or discrimination.
Definition of “Domestic Violence Victim”

• A person or accompanying parent of a minor child who is or has been the victim of an act that:
  – Constitutes a family offense pursuant to FCA §812 (1) OR a violent felony offense pursuant to PL §70.02 AND

• Such act is alleged to have been committed by a member of that person’s same family or household pursuant to FCA §812 (1);
The Offenses that Trigger Protection Under the Law

• **Family offenses** as defined by FCA §812(1) and the Penal Law:
  – Assault 3rd & 2nd; Attempted Assault
  – Stalking 1st-4th; Harassment 1st & 2nd
  – Aggravated Harassment; Disorderly Conduct; Criminal Mischief
  – Sexual Abuse 3rd & 2nd, Sexual Misconduct, and Forcible Touching
  – Strangulation 1st & 2nd and Criminal Obstruction of Breathing
  – Menacing 2nd & 3rd; Coercion 2nd (parts 1, 2, and 3 only)
  – Reckless Endangerment; Identity Theft 1st-3rd and Grand Larceny 3rd & 4th

• **Violent Felony Offenses** pursuant to Penal Law §70.02 include:
  – Classes B, C, D, and E
  – Such as, arson, robbery, attempted murder, manslaughter, gang assault, rape and other sexual offenses, criminal possession or use of a weapon or firearm, kidnapping, and more
FCA §812: “Family & Household Member”

• **Family or household members** means the following individuals:
  – persons related by blood or marriage;
  – persons legally married to one another;
  – persons formerly married to one another; and
  – persons who have a child in common regardless of whether such persons have been married or have lived together at any time
  – parties in current or former intimate relationship
Consequences of Discrimination

• Violation is a misdemeanor, punishable by a fine of not less than $1000 and up to $2000 for each offense.

• A defense to the misdemeanor is that there is another, lawful ground that the LL refused to rent the unit.
Right to File a Civil Suit

• If discriminatory conduct occurred, the victim can sue for:
  – Compensatory Damages
  – Punitive Damages
  – Declaratory and Injunctive Relief
  – Attorney Fees

• Actions would be filed in any court of appropriate jurisdiction
Compensatory and Punitive Damages

• **Compensatory Damages** generally cover:
  – Out of pocket costs such as: moving expenses, storage, increased costs associated with different rental
  – Emotional Distress

• **Punitive Damages**
  -- May not exceed $2,000 for each offense
Attorney Fees to the Prevailing Party

• May be awarded to victim if the prevailing party
• Court will determine what attorneys fees are reasonable
  – NOTE: Access to attorney’s fees is important--means that victims of this discrimination more likely to receive representation from counsel when they assert their rights and seek relief
• If Defendant-LL prevails, may make a motion to recover reasonable attorney fees from the plaintiff-victim, but ONLY upon showing that the civil action was “frivolous”
“Frivolous” Defined in Law

• To determine if the action was frivolous, court must find one or more of the following:
  – Action was commenced, used or continued in bad faith solely to delay or prolong resolution of litigation, or to harass or maliciously injure another; or
  – Action was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law

• Bad Faith *does not* include where an action or proceeding was promptly discontinued when party or attorney learned or should have learned that action or proceeding lacked a reasonable basis
“Reasonable” Standard to Deny Housing

• Statute is not intended to limit ability of housing providers or their agents from applying “reasonable standards” to deny housing

• However, denial may not be based on or derived from domestic violence victim status
Properties *Not Subject to the Anti-Discrimination Protections*

- Owner-occupied dwellings that have two or fewer residential units

- SO
  - if not owner-occupied, places with less than 2 units are subject to the law
Housing Providers’ Protection from Civil Liability

• Housing Provider shall not be civilly liable to other tenants, guests, invitees or licensees

• Arising from reasonable and good faith efforts to comply with this law
What the law does not bar or address

• Makes clear that landlords in public or private housing can continue to
  – Create a *rental preference* for DV survivors
  – Provide assistance to DV survivors in obtaining and retaining rental housing
  – Respond to an inquiry or request by a DV victim

• Does not provide ability to bifurcate joint tenancy (with abuser)

• Important to remind LL and the court: Similar to the need to make clear in the law that survivors cannot “violate” an order of protection by contacting their abuser. (FCA §§ 842 and 846)
Local Laws & Anti-Discrimination Protections

• Some municipalities already have local anti-discrimination protections for DV victims (i.e. Monroe & Westchester Counties)

• Does not prohibit localities from retaining or promulgating local laws or ordinances imposing additional or enhanced protections prohibiting discrimination against victims of DV
  – Can go keep existing law or pass news ones going farther
Collateral DV History Concerns That Impact Access to Housing

• It may be reasonable grounds for a LL to deny housing/discriminate against DV victim based on issues that are directly/indirectly related their DV history, but are not an enumerated family offense or violent felony offense, such as:
  – **Criminal background check** and DV victimization (victim mis-arrest, self defense, coerced criminal conduct)
  – **Poor credit report screening** (economic abuse, coerced debt, etc.)
  – **Prior rental history** (evictions due to DV history?) or poor landlord references
  – **Adverse actions based on conduct of tenant’s guests**
ANTI-EVICTION PROTECTIONS
Prohibiting eviction based on DV status in RPAPL

- A tenant shall not be evicted because of their DV status as defined in RPL 227-d.

- A defense to an eviction proceeding shall be that the landlord is attempting to recover possession due to the tenant’s status as a DV survivor.
  - LL can rebut that defense by showing that they are seeking eviction for another lawful reason
Housing Provider Protections

• Law not intended to restrict a LL’s legal rights to evict on grounds not based on or derived from DV victim status

• Not civilly liable to other tenants, guests, invitees or licensees arising from reasonable and good faith efforts to comply with the law

• As with RPL, LAW DOES NOT APPLY to owner occupied dwellings that have two or fewer residential units
Source of Income Discrimination

• Authorizes a Task Force to study impact on how source of income affects housing access
  – Study to include reviewing Section 8 Housing Choice Voucher program and recommend changes to increase participation of landlords and improving over-all access to quality and affordable housing

• Members to be selected by governor and speakers of senate and assembly

• Report and recommendations to be submitted to governor (and others) on January 15, 2016

• Already some local anti-discrimination laws based on source of income in: NYC, Nassau and Westchester Counties, Buffalo, Hamburg, and West Seneca
The Continued Challenge of

NUISANCE ORDINANCES
The New Protections and the Problem of Local Nuisance Ordinances

• Many communities have local ordinances that declare property a “nuisance” where a certain # or type of call for police service or criminal conviction at the residence triggers a violation
  – Frequently do not have exceptions for crime or DV victims who have legitimate, appropriate police response at their residence or were victimized by certain conduct
  – May indirectly or directly require removal (“abatement of nuisance”) of tenant from residence or impose sanctions and pressure on the LL
  – Disproportionately impact DV victims in NY and in other parts of country

• May undermine the new housing protections:
  – New DV laws apply to housing providers, not municipalities
  – Puts LL in bad position between municipality and state law—”Damned if you do and damned if you don’t”
  – Is evicting subject to violation of nuisance ordinance a “lawful ground” for defense?
  – If LL loses rental permit, DV victim out anyway
  – Front end response vs. back end response

• Empire Justice nuisance ordinance resource page:
  http://www.empirejustice.org/policy-advocacy/articles/nuisance-ordinances-resources.html#.VtCRhsyru70
A Quick Look at Selected Other

HOUSING-RELATED STATUTES THAT MAY PROTECT DV SURVIVORS
VAWA 2013 [42 U.S.C.A. Section 1404e-11]

• Covers many different federally subsidized housing providers, including Low Income Tax Credit Projects
  - Prevents tenants from being evicted or applicants from being denied housing due to dv status
  - Allows housing provider to bifurcate lease and evict abuser
    - Allows dv survivor to become leaseholder even if not originally head of household
  - Allows for emergency transfers
Local Anti-Discrimination Protections

• Prohibit housing discrimination against victims of DV
  – Monroe County Code §§ 260-1, 260-2
  – Westchester County Code §§ 700.02, 700.05, 700.11(h)(2)
Real Property Law 227-c (Early Lease Termination)

- Allows dv survivor with Order of Protection to petition issuing court to be released from lease early without financial penalty
- Must first ask landlord before commencing proceeding and be denied
- Must demonstrate that, despite OP, there is a continuing substantial risk and that relocation substantially reduces such risk
- Empowers court to sever (bifurcate) joint tenancies
- Not a quick fix given notice requirements and deadlines in law
NYC Administrative Code: §§26-403(e)(2)(i)(10); 26-502(a)(1)(f)

• Amends NYC Code and various sections of NYS law that govern rent-regulated housing, to allow DV victims to maintain their rental unit as their primary residence if they have left the unit because of the violence.

• Landlord may not commence proceedings to recover possession of the housing on the grounds that it is not the tenant’s primary residence, unless the landlord first gives 30 days notice to the tenant.

• To be eligible, the tenant must:
  – be a victim of domestic violence, as defined in Social Services Law §459-a; and
  – must state an intent to return to live in the unit.