



# North Penn Legal Services Overview of Landlord/Tenant Law and Fair Housing



# Landlord/Tenant Basics

- Landlord/tenant relationship is based on an agreement (lease/contract)
  - Written or oral (verbal)
  
- Landlord and Tenant Act of 1951
  - PA. law that spells out obligations for landlord and tenant, including:
    - (1) Lease terms
    - (2) Notice to terminate
    - (3) Security deposit

# Eviction Process: Introduction

- A landlord cannot lock a tenant out **or** make the unit uninhabitable to force the tenant out
- Landlords must follow a legal process to evict tenants (must take them to court)
- A tenant has at least 21 days to vacate the property from the day of their court hearing

# Eviction Process

- Notice to Quit (unless waived by lease)
- Landlord files Landlord\Tenant (eviction) complaint in court (hearing scheduled 7-15 days later)
- Tenant receives complaint and notice of hearing
- Tenant attends hearing (brings proof like rent receipts, pictures, letters, witnesses)
- Judge issues judgment

## How do you get 21 days?

- You attend a hearing and the judge issues a decision a\k\a judgment
- You have a right to appeal for 10 days after the judgment date
- Anytime after the 10th day, the landlord can get an Order of Possession
- Order gives the tenant 10 more days before they must vacate
- Judgement issued (1 day) + appeal period (10 days) + Order (10 days) = 21 days

# Eviction Process: Judgment Types

## ➤ Two types of judgments

### (1) Possession Granted:

Tenant must move out by eviction date unless they file an appeal

### (2) Possession Granted If Money Judgment Is Not Satisfied (“pay and stay”):

Tenant can remain in unit if they pay the full judgment amount (satisfy the judgment) before constable forces them to leave

## Possession Granted:

Must file  
appeal or be  
out in about  
21 days

- 10 days to file appeal and then can remain in unit pending appeal (all days count)
- Must pay filing fee (can be waived)
- Must pay monthly rent to courthouse pending appeal
- If decision not appealed, landlord can get an Order of Possession anytime after 10<sup>th</sup> day
- Order gives tenant 10 more days to vacate (eviction date)
- If tenant doesn't vacate by eviction date, the Constable will forcibly evict the tenant

Possession  
Granted if  
Money  
Judgment Not  
Satisfied  
(Pay and Stay):

Tenant can pay  
the judgment in  
full to avoid the  
eviction

- Appeal rights still apply (tenant can appeal if they disagree with judgment amount)
- Landlord can still get Order of Possession after 10 days if judgment not appealed timely
- **But**, tenant has right to pay judgment in full anytime before eviction date to avoid the eviction
- Can even pay to the Constable, but must have cash
- If tenant doesn't satisfy judgment or vacate by eviction date, the Constable will forcibly evict the tenant



# Holding & Returning Tenant's Personal Property After Move Out

- Landlord can not hold tenant's property hostage (until tenant pays back rent, damages, etc.)
- Tenant must give written notice within 10 days of vacating unit that the property is not abandoned
- Landlord must safeguard tenant's property for at least 30 days
- Landlord can charge storage fees after 10 days



# Return of Security Deposit

- When tenant vacates property and returns keys, they must give landlord written notice of where to send the security deposit
- Landlord has 30 days to either return the security deposit in full **or** give the tenant an itemized list of damages
- If Landlord fails to return or send list of damages:
  - Landlord loses right to keep deposit for damages
  - Tenant can sue landlord for double the amount of the security deposit
- Tenant cannot waive these rights in the lease.

# Warranty of Habitability

- Case law - implied by law in every residential PA lease
- Landlord has an obligation to a place that is “safe, sanitary and fit for human habitation” (addresses serious problems)
  - Working heat, Working smoke detectors, Free of insect or rodent infestation
- Landlord can't get around the warranty of habitability by renting the apartment “as is”
- Cities & municipalities can set higher standards that are more specific (example, inside temperature at least 68° in winter)

# Warranty of Habitability

- Problem must interfere with habitability of apartment
- Tenant must notify landlord of problem and request repair (written notice is best)
- Tenant must give landlord chance to make repairs (the amount of time that landlord has to make repairs depends on severity of problem)
- If landlord doesn't make repairs, tenant has options:
  - Repair & Deduct - Notify landlord in writing
  - Break Lease & Move Out - Notify landlord in writing
  - Withhold the Rent - Notify landlord in writing
  - Sue Landlord for Back Rent & Other Expenses

What do  
we mean  
when we  
say:

## FAIR HOUSING

- Federal, state and other laws that prohibit discrimination in housing-related transactions based on being a member of a protected class
- The laws apply to "dwellings" (structures designed or occupied as residences or land offered for sale where a residence will be built)

# Fair Housing laws

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- Prohibit specific actions based on an individual being a member of a protected class, including:
  - Refuse to rent or sell housing or otherwise make housing unavailable
    - Including imposing different terms for loans
  - Set different terms, conditions or privileges for sale or rental of a dwelling
  - Provide different housing services or facilities
  - Falsely deny that housing is available for inspection, sale, or rental
  - Advertise or make any statement that indicates a limitation or preference based on being a member of a protected class
  - Take action against someone exercising a fair housing right
- Additional protections if you have a disability



# Coverage



- Fair Housing Act (federal)
  - Title VIII of the Civil Rights Act of 1968
  - 42 U.S.C. 3601, Section 800
    - Sets the minimum protections
- Pennsylvania Human Relations Act (state)
- Cities, municipalities, etc. can also have laws
  - Allentown, Bethlehem, Easton
- HUD's Equal Access Rule (federal)
  - recipients of federal funding
- Section 504 of the Rehabilitation Act (federal)
  - recipients of federal funding

# FHA

## Protected Classes



- **RACE**
- **COLOR**
- **NATIONAL ORIGIN**
- **RELIGION**
- **SEX (1974)**
- **FAMILIAL STATUS (1988)**
  - families with minor children (parents or legal custodians)
  - people securing custody of children under 18
  - pregnant women
- **DISABILITY (1988)**



# Additional State and Local Protections

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## PENNSYLVANIA HUMAN RELATIONS ACT

- Makes it illegal to discriminate in a housing related transaction on the basis of age, above the age of 40.

## ALLENTOWN, BETHLEHEM & EASTON

- Cannot discriminate on the basis of sexual orientation, gender identity and gender expression
- Cannot discriminate on the basis of marital status



# Laws & Regulations Specific to Federally Funded Housing

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## HUD'S EQUAL ACCESS RULE

➤ Requires equal access to HUD programs without regard to actual or perceived sexual orientation or gender identity or marital status in:

- HUD assisted housing (public housing, Section 8 Housing Choice Vouchers, project-based Section 8)
- Housing whose financing is insured by HUD
- FHA-insured mortgage financing

## SECTION 504 OF THE REHABILITATION ACT

(DHHS §504 45 CFR PART 84)

- Prohibits discrimination on the basis of disability in programs & activities conducted by HUD or recipients of financial assistance from HUD
- Enforces the right of individuals to live in federally subsidized housing free from discrimination on the basis of disability.
- Covers all HUD programs except for its mortgage insurance and loan guarantee programs.
- Forbids organizations from excluding or denying individuals with disabilities equal opportunity to receive program benefits and services

What type  
of housing  
is covered?

Dwellings

- **Place a person considers their home** (places designed or occupied as residences or land offered for sale where a residence will be built )
- **Place a person would receive mail, have meals, keep their belongings**

# Dwellings

What is  
considered a  
dwelling?

- Private housing
- Public housing and subsidized housing
- Manufactured home communities
- Group homes
- Rooming or boarding houses
- Nursing homes and assisted living centers
- Residential drug & alcohol treatment facilities
- Homeless shelters
  - (case-by-case basis)
- University housing (dorms)
- Vacant land offered for sale or lease

# Dwelling Exemptions

(housing not covered)

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➤ Fair Housing Act: does not apply to:

(1) *owner-occupied* buildings with *no more than four* units;

(2) *single-family* housing *sold or rented without the use of a broker* and

(3) housing operated by organizations and private clubs that limit occupancy to *members or organizations and private clubs*.

➤ Pennsylvania Human Relations Commission: *owner-occupied* buildings with *no more than two* units



# What is considered discrimination?


(race, ethnicity, national origin, religion and sex examples)

- Race: Refusing to rent to a biracial couple
- National Origin: Refusing to rent to potential tenants who do not speak English
- Religion: Charging a higher rent to tenants who are Muslim
- Sex: Includes claims of sexual harassment
- Sex: May include discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals if discrimination is based on gender nonconformity or sex stereotyping

# What is considered discrimination? (familial status examples)

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## Familial status:

- Refusing to rent to a family with minor children
  - Requiring a family with children to live in a specific area
  - Charging rent per child
  - Telling a family they can't have a 2<sup>nd</sup> floor apartment because children make too much noise
  - Housing provider offering an apartment they think will work instead of letting the family choose
  - Refusing to rent an apartment because the landlord thinks it is too small for the family (e.g., a 1-bedroom to a pregnant woman)
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# Family Status (Keating Memo)

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- HUD finds that an occupancy policy of two persons per bedroom is reasonable under FHA, but...
- notes that in “appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as:
  - the number and size of sleeping areas or bedrooms and
  - The overall size of dwelling unit”

If discrimination is alleged, HUD will determine whether restrictions “...operate unreasonably to limit or exclude families with children.”



# Disability (defined)



- 
- Individual with a physical or mental impairment that substantially limits one or more major life activities, OR
  - is regarded or has a record of such an impairment

- **Individuals with disabilities have additional rights:**

can make requests for changes if such changes are needed to allow them the same full use and enjoyment of the premises as an individual without a disability



## What are those requests for changes called?

# Requests for...

### REASONABLE MODIFICATIONS

- Structural change to
  - Interior
  - Exterior
  - Common areas

(Costs paid by housing provider if receives federal funding)

### REASONABLE ACCOMMODATIONS

- Change, exception, or adjustment to a rule, practice, service or lease policy



# Request must be related to your disability

- Because of your disability, a change is necessary to allow you the same use of the premises as an individual without a disability
- The change required must be directly related to the disability
  - E.g., Tenant with a mobility impairment can show a connection between disability and a RA request for additional time to clean the apartment.
  - E.g., Tenant with a mental health disability cannot show a connection between disability and RM request of a ramp.

# What counts as a RA/RM request?

- Any request asking for modification or accommodation because of a disability
  - E.g., Lease says tenant must pay rent in person. Tenant tells housing provider: “Sometimes I get really anxious about leaving my apartment. Can I pay my rent another way? Can I mail a money order?”
- Does not have to use the magic words “reasonable accommodation”
- May be oral or in writing
- Does not have to use housing provider’s request form

## What information can the housing provider request?

- Can ask tenant, medical provider or social service provider to confirm tenant has a disability
- Can't ask for tenant's diagnosis
- Can't ask tenant for more information or medical verification if:
  - Disability is obvious, or
  - Housing provider already knows tenant has a disability and need for reasonable accommodation is clear

# When can a tenant request a RA?

Tenant can request a reasonable accommodation at any time prior to actually being evicted, including:

- During application process
- While living in unit
- When housing provider changes a rule or policy
- In response to housing provider's complaint or adverse action
- At informal hearing
- At eviction hearing
- Appeal to a higher court

# What makes an RA/RM request unreasonable? (which means it could be denied)

➤ Undue financial and administrative burden on housing provider

- Financial burden determined by scope of operation
- Administrative burden (e.g., asking housing provider to notify tenant of all cleaning supplies used in entire building)

**OR**

➤ Fundamental alteration of housing provider's operations

- E.g., Asking housing provider to provide tenant ride to doctor or grocery store due to tenant's mobility impairment is unreasonable

## Other reasons a request can be denied

Accommodation not required if:

- Tenant poses a direct threat to the health or safety of other residents or housing provider's staff
- Tenant would cause substantial physical damage to another person's property

Housing provider has the burden to show tenant is a direct threat or will cause substantial physical damage – high burden



# If request denied, housing provider must discuss alternatives (Open a Dialogue)

- Tenant's RA/RM request should open a dialogue between the housing provider and the tenant about the tenant's needs
- If the request is denied, that is not the end
  - Even if housing provider denies request alleging that it is unreasonable or that tenant is a direct threat or would cause substantial damage, *they must talk to the requester about options*

# Reasonable Modifications examples

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- Individual with mobility impairment can request:
  - Installation of a ramp or stair glide, replacement of carpeting with tiles, accessible bathroom, stove with knobs in front, safe and accessible entry and exit
- Individual with cognitive or memory impairment can request:
  - Installation of automatic faucet, replacement of stove with microwave

# Reasonable Modifications examples, con't.

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- Individual with vision impairment can request:
  - Special lighting, color contrasting , tactile assistance system, extension of side rails of stairs, replacement of curtains with blinds, grab bars, additional lighting installed, slip-resistant flooring, removal of “lips” between rooms
- Individual with hearing impairment can request:
  - Installation of a peep hole in door, installation of flashing lights for doorbell and smoke alarm

# Reasonable Accommodation examples

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- Housing provider allows for early termination of lease so tenant with mobility impairment can move from third floor to ground floor
- Housing provider notifies tenant with chemical sensitivities in advance of painting and exterminations
- Tenant is allowed to transfer to different unit to get away from conditions that amplify effects of disability (e.g., loud noise)
- Housing provider reserves a parking space near the ramp for a tenant who uses a wheelchair

# Reasonable Accommodation examples, con't.

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- Housing provider stops an eviction action to allow tenant time to fix lease violation
  - Time to clean
  - Time to get services in place to address behavior that is causing eviction
- Housing provider allows caregiver to move into apartment
- Housing provider allows tenant more time to move (no legal defense to prevent eviction)
- Housing provider allows assistance animal

# Assistance Animals

## (Service & Emotional Support Animals) RA request as exception to no-pet policy

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- Service and emotional support animals are not pets
- Person with disability may request reasonable accommodation for assistance animal, if person can show relationship between needing animal & his or her disability
- Housing provider cannot charge pet deposit or extra monthly rent for assistance animals
- Animal does not require specific training or certification
- HUD guidelines allow all dogs to be assistance animals, even if breed is considered dangerous or dog is larger than housing provider allows pet dogs to be

# Enforcing the Fair Housing Act

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- Tenant Raising a Defense in Eviction Action
  - negotiating with housing providers
  - representing in court
  
- Filing complaint:
  - Dept. of Housing & Urban Development (HUD): 1 year
  - PA Human Relations Commission (PHRC): 180 days
  - City Human Relations Commission
    - Allentown & Bethlehem: 180 days
    - Easton: 300 days
  
- Lawsuit Filed in State or Federal Court: 2 years

# North Penn Legal Services

## [www.northpennlegal.org](http://www.northpennlegal.org)

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Information on self-help legal topics, latest news & events updated regularly

559 Main Street, Suite 200, Bethlehem, PA 18018

**Phone:** (610) 317-8757;

**Fair Housing Issue:** 610-317-5322 (leave message)

➤ **Office hours:**

- Monday - Friday 9:00 – 12:00 / 1:00 - 5:00



**North Penn**  
LEGAL SERVICES

➤ **Intake :** 1-877-953-4250

- Mon-Thurs. 9:00 – 11:30 A.M. / 1:30 – 4 :00 P.M.
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