

## 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:  
Lease terms, notice to terminate, security deposit

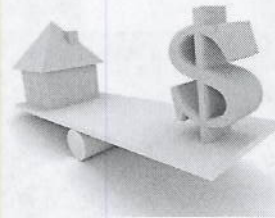
## Income Based Housing

Options in Pennsylvania

-Overview



1. USDA-RD Multi-Family Housing
2. Low-Income Housing Tax Credit Program (LIHTC)
3. Housing and Urban Development (HUD) Project Based
4. Public Housing Authority: Public Housing
5. Public Housing Authority: Housing Choice Voucher (Section 8)



## Income Based Housing: USDA-RD Multi-Family Housing

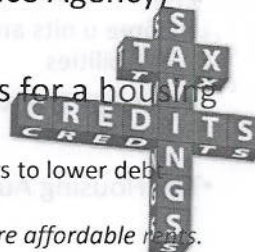
- Provides affordable multi-family rental housing in rural areas by financing projects
  - Affordable projects are geared for low-income, elderly and disabled individuals and families as well as domestic farm laborers.
- Provides project-based Rental Assistance for over 250,000 apartment units throughout the nation. Tenants receiving Rental Assistance pay no more than 30% of their adjusted income for rent.
  - Eligibility is determined by income standards set at the state and county level.



## Income Based Housing: Low-Income Housing Tax Credit Program (LIHTC)



- \*Administered by the IRS and state housing finance agencies (Pennsylvania Housing Finance Agency) not HUD
- Tax credits are awarded to developers for a housing project
  - Tax credits are sold to investors (allows developers to lower debt incurring on project)
  - *Theory: Developers with lower debt can offer more affordable rents.*
  - \*\*Building owners funded by LIHTC must set aside a certain percentage of units for low or moderate income residents.
  - Tenants in these units receive a rental subsidy based on their income level



## Income Based Housing: HUD Project Based

- Project Based Section 8 housing is a government-funded program that provides rental housing to low-income households in *privately* owned and managed rental units
  - Subsidy stays with the rental unit → when you move out, you no longer have the assistance
- Types of housing offered include: single-family homes, townhomes, or apartments
- Some units may be reserved for households that are for the elderly or for people with disabilities

## Income Based Housing: Public Housing Authority – Public Housing

- Public housing units for eligible low-income households owned by the Housing Authority
  - Some units are designated for elderly and persons with disabilities
  - Can any type of unit from single family houses to high rise apartments
- The Housing Authority is your landlord.

## Income Based Housing: Public Housing Authority – Housing Choice Voucher (Section 8)

- Housing assistance is provided to the individual or family from the Public Housing Authority in the form of a voucher.
  - Individuals find their own housing (owner must agree to rent under the Housing Choice Voucher program).
- A housing subsidy is paid to the landlord directly by the PHA on behalf of the individual.
- The family pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.
- Have two landlords: PHA + private landlord

## Warranty of Habitability

- Case law provides this right (Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979))
- Means that the landlord has an obligation to provide safe and sanitary conditions for tenants:
  - Working heat, Working smoke detectors, Free of insect or rodent infestation
- Implied by law in every residential PA lease
- A landlord can't get around the warranty of habitability by claiming the tenant is renting the apartment "as is"
- Cities & municipalities often impose higher standards that are more specific (example, inside temperature at least 68° in winter)

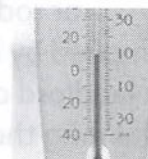
## Process for requesting repairs (general problems)

- Tenant should notify landlord in writing of bad conditions
- If no response in about a week, tenant should write to landlord again
- If no response after second written notice, tenant can explore options we just talked about
- Keep proof of the problems
  - Pictures of leak in ceiling, mold, holes in walls, etc.
  - Notes of number of insects or rodents you see per day
  - Notes of when bed bug bites started

## Process for requesting repairs (Uninhabitable Conditions)

Very serious conditions that make a home uninhabitable include:

- No heat in cold weather,
- No drinkable water
- Sewer system does not work
- Dangerous structural problems
- Extreme rodent or insect infestation



Tenant should call landlord immediately and follow-up with request in writing

If no timely response, tenant can call Code Enforcement and explore options we discussed above

## Options available if repairs not made (after tenant followed process)

### 1) Repair & Deduct

Notify landlord of intent in writing

### 1) Break Lease & Move Out

Notify landlord of intent in writing

### 1) Withholding the Rent

Notify landlord of intent in writing

Not generally recommended as landlord can sue for non-payment of rent

### 1) Sue Landlord for Back Rent & Other Expenses

## Eviction Process: Introduction

- A landlord **cannot** lock a tenant out **or** make the unit unlivable to force the tenant out
- Landlords must follow a legal process to evict tenants (must take them to court)
- Tenants can appeal judge's decision  
10 days to appeal to remain in unit  
30 days to appeal money judgement
- From the time a tenant has a court hearing until they have to vacate the property is at least 21 days

## Eviction Process

- Notice to Quit (unless waived by lease)
- Landlord files Landlord\Tenant (eviction) complaint in court  
(hearing scheduled 7-10 days later)
- Tenant receives complaint and notice of hearing
- Tenant files cross-complaint (if it applies)
- Tenant attends hearing (brings proof like rent receipts, pictures, letters, witnesses)
- Judge issues judgement

## Eviction Process: Judgment Types

### ➤ Two types of judgements

#### Possession Granted:

Tenant must move out by eviction date unless they file an appeal within 10 days after judgement date  
(all days count)

#### Possession Granted If Money Judgment Is Not Satisfied ("pay and stay"):

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

## Eviction Process: Timeline

➤ Ten (10) days to appeal judgment to remain in unit pending appeal

➤ If decision not appealed, landlord will get an Order of Possession

➤ Order gives tenant ten (10) more days to vacate (eviction date)

➤ If tenant doesn't vacate by eviction date or satisfy judgement (if pay & stay), the Constable will forcibly evict the tenant

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

- Landlord can't hold tenant's property until tenant pays back rent, damages, etc.
- When tenant gives written notice (within 10 days of vacating unit) that the property isn't abandoned, landlord must safeguard tenant's property – can't throw it out or sell it for at least 30 days
- Landlord can charge storage fees after 10 days
- Landlord must follow procedures outlined in amendments to Landlord and Tenant Act



## Return of Security Deposit

Within 30 days of tenant moving out, as long as tenant gives Landlord written notice of address to return security deposit, Landlord must return the security deposit in full **or** give the tenant an itemized list of damages and return the balance

If Landlord fails to return or send list of damages:

- Landlord loses right to keep deposit or sue for damages,
- Tenant can sue landlord for double the amount of the security deposit if gave landlord new address.

Tenant cannot waive these rights in the lease.

## FAIR HOUSING a/k/a HOUSING DISCRIMINATION

Laws that protect certain individuals  
(protected classes) from discrimination  
in housing transactions (few exemptions)

### ➤ **Fair Housing Act**

Federal law, 42 U.S.C. 3601, Section 800

- Sets the minimum protections
- Applies to "dwellings" (structures designed or occupied as residences or land offered for sale where a residence will be built)

## Fair Housing Act

- Prohibits 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

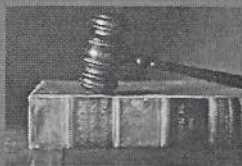


## Protected Classes



- RACE
- COLOR
- NATIONAL ORIGIN
- RELIGION
- SEX (1974)
- FAMILIAL STATUS (1988)
- DISABILITY (1988)
- AGE
  - (under PHRA, 40 years and older)

## 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
- HUD's Equal Access Rule (federal)
  - recipients of federal funding
- Section 504 of the Rehabilitation Act (federal)
  - recipients of federal funding
- Pennsylvania Human Relations Act (state)
- Cities, municipalities, etc. can also have laws
  - Allentown, Bethlehem, Easton

## Laws & Regulations Specific to Federally Funded Housing

### 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 receipt 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

## Additional State and Local Protections

### 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



## Defining 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

- FHA: exempts *owner-occupied* buildings with *no more than four units, single-family housing sold or rented without the use of a broker*, and housing operated by organizations and private clubs that limit occupancy to *members or organizations and private clubs*.
- Pennsylvania Human Relations Commission: two unit building where one of the units is occupied by the owner



## Class Specific Protections

- RACE
- COLOR
- NATIONAL ORIGIN
- RELIGION
- SEX (1974)
- FAMILIAL STATUS (1988)
- DISABILITY (1988)
- AGE (under PHRA, 40+ years and older)

- The Department of Housing and Urban Development enforces the Fair Housing Act and the other federal laws that prohibit discrimination against individuals who are a member of a protected class.

- Discrimination occurs in various ways – some are obvious while other can be more subtle. Either way they are illegal.

## Examples of Housing Discrimination

- Race Discrimination: Refusing to rent to a biracial couple
- National Origin Discrimination: Refusing to rent to potential tenants who do not speak English
- Religious Discrimination: Charging a higher rent to tenants who are Muslim

## Sex Discrimination

- Discrimination on the basis of sex is prohibited
- Sex discrimination includes claims of sexual harassment
  - Ex. tenant's refusal to have sex with landlord results in adverse action or landlord creates a hostile housing environment
- May include discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals if discrimination is based on gender nonconformity or sex stereotyping

## Familial Status

Definition of Familial Status:

- Children under 18 living with parents or legal custodians
- People securing custody of children under 18
- Pregnant women



## Familial Status



### HOUSING: KEATING MEMO

➤ HUD's default rule for subsidized housing is 2 people per bedroom but it recognizes a lot of exceptions to this rule, such as:

- Size of unit
- Configuration of unit
- Age of children

### ADDITIONAL PROTECTIONS

- Housing provider should not charge per person for rent or other fees
- Housing provider can only set the number of people who can live in a unit



## Disability: *defined*



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

## What is a major life activity?

Major life activities include activities of central importance to daily life:

- Seeing
- Hearing
- Speaking
- Walking
- Breathing
- Caring for one's self
- Performing manual tasks, and
- Learning

## Additional Rights for Individuals with Disabilities for Equal Enjoyment

### REASONABLE MODIFICATIONS

- Structural change to
  - Interior
  - Exterior
  - Common areas
- Under Section 504, costs paid by housing provider if receives federal funding

### REASONABLE ACCOMMODATIONS

- Change, exception, or adjustment to a rule, practice, or service
- Can be requested at any time prior to actually being evicted
  - Landeck v. Lebanon County Housing Authority, 967 A.2D 1009 (Pa. Super 2009)
- Exceptions allowing landlords to say no



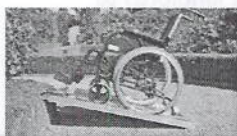
## Reasonable Accommodation Examples

- Housing provider allows tenant with mobility impairment to 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 Modification Examples

- Individual with mobility issues may install a ramp or stair glide
- Resident with hearing disability may install a peep hole in door
- Individual who cannot remember to turn off water may install automatic faucet



## Request Process for Accommodations or Modifications

- Individual gives the housing provider the request  
(we recommend all requests in writing)
- Housing provider reviews the request
- Housing provider should respond within 1-2 weeks
- If no response within 1-2 weeks, requester should follow-up
- Please note: A unreasonable delay in responding is viewed as a denial

## **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

## Requests Requires a Nexus

- RA/RM must be necessary to allow the tenant full enjoyment of the unit.
- RA/RM is necessary if the request is directly related to the disability.
  - E.g. Tenant with a mobility impairment can show a nexus between disability and RA request of additional time to clean the apartment.
  - E.g. Tenant with a mental health disability cannot show a nexus between disability and RM request of a ramp.

## 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 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

## Reasonable Modification - Costs

### PRIVATE HOUSING

- Homeowner/tenant responsible
- Landlord must pay if structural changes should have been included in the unit or public or common area because multi-family dwelling constructed after 1991.
- When reasonable, landlord may require the tenant to restore the interior of the unit to the pre-modification condition before moving out.

### FEDERALLY-FUNDED HOUSING PROVIDER

- Housing provider responsible, UNLESS:
  - Undue financial and administrative burden,
  - Fundamental alteration of the program, or
  - Housing provider can accommodate the individual's needs through other means

(Section 504 of the Rehabilitation Act of 1973)

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

Undue financial and administrative burden on housing provider

E.g. Asking housing provider to notify tenant of all cleaning supplies used in entire building is unreasonable

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 an RA/RM 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

## 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

## Service & Emotional Support Animals as RAs

- 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
- 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



