

## Oregon at the Forefront: Housing Law Protections for Victims of Domestic and Sexual Violence

Victims of domestic and sexual violence in Oregon often face great barriers in finding and maintaining safe shelter and housing for themselves and their children.<sup>1</sup> Some victims and their children lose their homes when forced to flee to escape abuse. Others are evicted from or denied access to housing because of the violence perpetrated against them.

Oregon victims of domestic and sexual violence who seek assistance in emergency circumstances are faced with the cold, hard reality that there is inadequate shelter space available. While victim advocacy programs do their best to provide shelter, motel, or safe house assistance to those fleeing violence, they are unable to meet the need. In 2006 alone, there were 8,546 victim requests for emergency shelter that could not be granted due to lack of resources.<sup>2</sup>

Even if a victim is able to secure temporary emergency shelter for herself and her children, she faces great barriers to securing safe and affordable permanent housing. Frequently, the behavior of a perpetrator has saddled victims with poor credit, employment, and/or rental histories. In addition, victims are often discriminated against simply on the basis of the abuse that has been perpetrated against them.

Exacerbating these access issues is the severe shortage of affordable housing in Oregon. Currently, Oregon has the sixth-highest per-capita homeless population, according to a 2007

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report from the National Alliance to End Homelessness.<sup>3</sup> And between now and 2013, almost 7,300 rent-subsidized apartments in Oregon and millions of dollars in federal rent assistance attached to these apartments are at risk of converting to market rates, due to the expiration of government subsidy contracts.<sup>4</sup>

Lack of sufficient community resources, coupled with discrimination, creates a backdrop against which survivors are trapped between the threat of homelessness and the threat of violence in the home. That so many vulnerable Oregonians and their children face this untenable choice is a public health and safety crisis requiring concerted response. The implementation of housing protections for survivors, coupled with the development and securing of safe and affordable temporary and permanent housing options, will play an important role in reducing the incidence and severity of abuse in our families and communities.

In recent years, Oregon's service providers and policy makers have begun to craft and implement important responses intended to protect victims and their families. Attorneys have important opportunities to be a part of this solution.

An Oregon case with national implications provides an example of

the need for housing protection for victims:

*Tiffanie Alvera, a tenant in good standing at a large apartment complex, was served with a 24-hour eviction notice immediately after informing her landlord that she had obtained an order of protection prohibiting her husband, who had physically assaulted her, from entering the apartment complex. Even though the landlord had received no complaints from neighbors, and even though Ms. Alvera had promptly sought help and court protection prohibiting the abuser from accessing the property, the landlord chose to evict her, simply because she was a victim of domestic violence. The landlord asserted that he was merely applying his "zero tolerance" of domestic violence policy.*

Ms. Alvera sought legal assistance, and national and local experts collaborated in filing a complaint on her behalf, alleging discrimination against Ms. Alvera in violation of the Fair Housing Act, Oregon fair housing laws, and Oregon common law.

In a consent decree settling the lawsuit, the managers of Ms. Alvera's apartment complex agreed not to

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# Supreme Court Update

## Decided

### ***Baze v. Rees*, No. 07-5439 (April 16, 2008)**

In a 7–2 deci-  
sion, the Court af-

firmed the Kentucky Supreme Court's holding that capital punishment by the use of a three-drug lethal injection does not violate the Eighth Amendment's prohibition of "cruel and unusual punishment" because it does not pose a "substantial" or "objectively intolerable" risk of serious pain or harm.

### ***CBOCS West, Inc. v. Humphries*, No. 06-1431 (May 27, 2008)**

In a 7–2 opinion, the Court affirmed the Seventh Circuit by holding that 42 USC § 1981 encompasses claims of retaliation by plaintiffs pursuing race and color claims under that statute. Here, the plaintiff alleged that he was terminated from his position as an associate manager at a Cracker Barrel restaurant owned by CBOCS because he is black and because he complained that a black co-worker was terminated based on race.

### ***Crawford v. Marion Co. Election Bd.*, No. 07-21 (April 28, 2008); *Indiana Democratic Party v. Rokita*, No. 07-25 (April 28, 2008)**

The Supreme Court affirmed the Seventh Circuit in a 6–3 decision in these consolidated cases, holding that an Indiana statute requiring voters to present photo identification in order to vote in person did not violate voters' Fourteenth Amendment rights because it did not pose such a burden on voters as to outweigh the state's interests in protecting the electoral process. The Court found that the statute provided sufficient benefits to the state, including fraud detection and deterrence, voter confidence, counting only eligible votes, and promoting accurate recordkeeping. Meanwhile, there was a low burden on voters for obtaining sufficient photo identification because the state provides such identification for free.

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### ***Federal Express Corp. v. Holowecki*, No. 06-1322 (Feb. 27, 2008)**

In this case out  
of the Second Cir-

cuit, the Supreme Court held 7–2 that the Equal Employment Opportunity Commission (EEOC) acted within its authority in formulating the rule that a filing is deemed a charge if the document reasonably can be construed to request agency action and appropriate relief on the employee's behalf. Here, the plaintiff argued that by filing an "Intake Questionnaire" and an affidavit with the EEOC in a timely fashion, she satisfied the requirement in the Age Discrimination in Employment Act (ADEA) that a "charge" alleging unlawful discrimination be filed with the EEOC at least 60 days before a civil action is commenced.

### ***Gomez-Perez v. Potter*, No. 06-1321 (May 27, 2008)**

In this case from the First Circuit, the Supreme Court held 6–3 that the federal-sector provision of the ADEA, 29 USC § 633a(a), prohibits retaliation against a federal employee who complains of age discrimination. The plaintiff had worked as a clerk for the U.S. Postal Service in Puerto Rico and alleged that she was subject to retaliatory treatment after filing an age discrimination complaint against her supervisors under the ADEA.

### ***Snyder v. Louisiana*, No. 06-10119 (March 19, 2008)**

The Supreme Court reversed the Louisiana Supreme Court in this 7–2 decision, holding that the prosecution in a capital murder case discriminated in jury selection, in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). The prosecution had used a peremptory strike to eliminate an African American juror who had survived challenges for cause. The Court held that the prosecution's reasons for striking this juror were not supported by the evidence.

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to provide information on current  
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# National Trends in Housing Rights for Victims of Domestic Violence, Sexual Assault, and Stalking

Domestic violence and sexual violence are leading causes of homelessness for women and children in the United States. Between 22% and 57% of homeless women indicate that domestic violence is the cause of their homelessness.<sup>1</sup> A 2005 study found that one out of every four homeless women is homeless because of violence committed against her.<sup>2</sup>

Some survivors of domestic violence become homeless when they flee their homes. Although some emergency shelters exist for battered women, they are not appropriate for or available to all victims of intimate partner violence, and they are only a temporary solution, usually requiring the victim to move again within a short period of time.

Transitional housing programs for battered women have increased in recent years, but these are also limited. Many battered women seek to remain in their homes or apartments, only to become homeless when they are evicted from housing because of their status as victims of domestic violence or because of violence perpetrated against them on the property. Then, when they seek new housing, victims increasingly are denied housing based on their status as a victim.

In April 2008, the Equal Rights Center released a report regarding the discrimination that survivors of domestic violence face when searching for housing in the District of Columbia. The report examined whether, and to what extent, domestic violence survivors in the District were subjected to discriminatory treatment when inquiring about available rental properties. Discriminatory treatment was defined as being denied housing (both outright and indirectly) or being offered adverse terms and conditions in order to obtain housing.

The study found that 65% of the test applicants associated with domestic violence were subjected to at least one form of discriminatory treatment.

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Nine percent of the test applicants associated with domestic violence were denied housing outright or had housing made unavailable to them—something that never happened to test applicants who were not associated with domestic violence. The other 56% of test applicants associated with domestic violence were subjected to adverse terms and conditions.<sup>3</sup>

There are several sources of protection for victims of domestic and sexual violence, including the federal Fair Housing Act, state and local fair housing laws, federal and state housing laws, and international human rights laws. Moreover, in 2003, the American Bar Association adopted the following policy:

RESOLVED, That the American Bar Association supports federal, state, local and territorial legislation to prohibit discrimination in housing against victims of domestic violence;

FURTHER RESOLVED, That the American Bar Association urges all relevant federal, state, local and territorial administrative agencies to adopt and vigorously enforce regulations to combat such discrimination.

Over the last ten years, legislative advocacy and litigation have developed to address housing discrimination against victims, by allowing a battered tenant to terminate a lease early without penalties to flee violence, providing a defense to eviction for victims in housing court, prohibiting landlords from refusing to permit victims to summon police or emergency assistance, and requiring landlords to change the locks of a victim who is a tenant. Additionally, in 2005 the federal Violence Against

Women Act reauthorization included extensive new protections for victims of domestic violence and stalking in public housing.

## Protections for Victims in Private Housing

The federal Fair Housing Act and many state housing laws prohibit discrimination based on disparate treatment of women and policies that have a disparate impact on women and are not justified by a landlord's business necessity, whether or not a landlord intends to discriminate against women.<sup>4</sup> Because women are the vast majority of domestic violence victims, policies that penalize domestic violence survivors and discriminate against victims of domestic violence have been found to violate the federal Fair Housing Act.<sup>5</sup>

In addition, seven states and the District of Columbia have adopted statutes that prohibit discrimination against victims of domestic violence, sexual assault, and stalking in rental housing, including lease termination and entering into a rental agreement. Five states and the District of Columbia have provisions specifically addressing limits on a tenant's right to summon the police or emergency assistance, some, including Texas, expressly stating that monetary penalties may not be imposed on any tenant who invokes his or her right to summon the police or emergency services in response to family violence.<sup>6</sup>

Ten states and the District of Columbia permit a tenant who is a victim of domestic violence to terminate her lease early without further liability.<sup>7</sup> Eleven states and the District of Columbia provide a tenant who is a victim of domestic violence with a defense against eviction if the victim has a civil protection order or can provide other evidence of her status as a victim of domestic violence. In some states, however, the defense is limited to situations in which one of

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the tenant's guests has engaged in unlawful criminal behavior.<sup>8</sup>

Four states allow a landlord to bifurcate a lease of a domestic violence offender and victim.<sup>9</sup> Three states allow a landlord to seek damages from a domestic violence offender for unpaid rent and other damages.<sup>10</sup> Nine states and the District of Columbia permit or require a landlord to change the lock for a tenant who is a victim of domestic violence.<sup>11</sup>

### Protections for Victims in Public Housing

Enacted in January 2006, the Violence Against Women Act of 2005 (VAWA) includes specific new protections for victims of domestic violence and stalking from denial of housing, eviction, or termination of federal housing assistance.<sup>12</sup> VAWA also includes new local planning requirements for housing agencies regarding violence against women, and it authorizes new federal pilot grant programs to promote housing agency best practices on violence against women and to develop local affordable housing collaborations targeted at survivors of violence.

These protections apply to a victim of domestic violence, dating violence, or stalking (and her immediate family member) who is seeking to reside in, or who resides in, federal public housing, any housing subsidized by a federal "Section 8" voucher (which eligible low-income people use to rent housing on the private market), or any building receiving a direct federal Section 8 subsidy. Local public housing authorities and landlords and building owners who participate in the federal Section 8 program are all required to comply with the new law.<sup>13</sup> Extensive education and outreach about the new law is being conducted.<sup>14</sup>

VAWA clarifies that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of public housing admission or assistance.<sup>15</sup> VAWA also establishes an exception to the federal "one-strike" drug-and-

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criminal-activity eviction rule for tenants who are victims, explicitly providing that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy, or occupancy rights of a victim.<sup>16</sup>

VAWA also establishes that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for terminating a victim's tenancy<sup>17</sup> and that public housing authorities (PHAs) and Section 8 landlords and owners must honor civil protection orders and other court orders from domestic violence and family court judges that address rights of access to or control of the property.<sup>18</sup> VAWA also clarifies that a PHA or landlord may "bifurcate a lease" in order to evict, remove, or terminate the voucher of the abuser while allowing the victim, who is the tenant or lawful occupant, to remain.<sup>19</sup>

However, a PHA or Section 8 landlord still may evict a victim for unrelated drug or criminal activity as long as in doing so, the PHA or Section 8 landlord does not hold the victim to a more demanding standard than it holds other residents.<sup>20</sup> Additionally, an exception to the VAWA provisions states that if a PHA or Section 8 landlord can demonstrate "an actual and imminent threat to other tenants or those employed at or providing service to the property" unless the tenant's tenancy is terminated, then the PHA or Section 8 landlord may proceed with an eviction or termination action against the victim.<sup>21</sup>

The new housing provisions follow the federal definitions of domestic violence, dating violence, and stalking as the terms have been defined elsewhere in VAWA, but the housing provisions do not explicitly extend to victims of sexual assault. If a survivor chooses to move to another jurisdiction with the housing voucher to escape abuse, he or she can now do so at any time, as long as the family otherwise has complied with all other obligations of the program and can show that it is moving "to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remained" in the unit.

The next few years are critical as attorneys, housing authorities, and others implement and enforce these new state and federal housing protections for victims of domestic violence, sexual assault, dating violence, and stalking. ♦

Robin Runge is the director of the American Bar Association Commission on Domestic Violence.

### Endnotes

1. Wilder Research Center, *Homeless in Minnesota 2003* (2004); Center for Impact Research, *Pathway to and from Homelessness: Women and Children in Chicago Shelters* 3 (2004); National Center on Family Homelessness & Health Care for the Homeless Clinicians' Network, *Social Supports for Homeless Mothers* 14, 26 (2003); Institute for Children and Poverty, *The Hidden Migration: Why New York City Shelters Are Overflowing with Families* (2004); Homes for the Homeless & Institute for Children and Poverty, *Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America* 3 (1998).

2. Jana L. Jasinski et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report* 2, 65 (2005).

3. For a full copy of the Equal Rights Center's report, go to [www.equalrightscenter.org/](http://www.equalrightscenter.org/) and click on "Publications, Studies & Research."

4. 42 USC § 3604.

5. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677-78 (D. Vt. 2005) (finding that eviction proceedings based on the tenant's status as a victim of domestic violence could constitute unlawful discrimination under the Fair Housing Act); *T.J. v. St. Louis Hous. Auth.* (Mo. Cir. Ct. 22d

“evict, or otherwise discriminate against tenants because they have been victims of violence, including domestic violence.” They also agreed to revise all employee manuals with respect to current eviction proceedings, and to participate in education about discrimination and fair housing laws.<sup>5</sup>

### Oregon Has Crafted a Model Response

Well ahead of national trends, and in reaction to the *Alvera* case, Oregon has taken significant steps to protect the housing rights of victims. There is now a new section in the Oregon Residential Landlord Tenant Act (ORLTA) entitled “Domestic Violence, Sexual Assault, and Stalking,” comprising ORS 90.445–90.459. It is important to note that these protections apply to victims of dating violence as well. The new statutes provide important safety protections and establish new standards of fairness. However, the challenge remains to ensure full implementation of and access to these rights and remedies across the state.

### Lock Changes

*Gale (not her real name) was sexually assaulted outside her apartment building. During the course of the assault, the key to her apartment was lost. Gale was terrified that the perpetrator*

*had retrieved the key, but she could not afford to move from her home. She needed a lock change on her apartment door to protect her safety.*

ORS 90.459 now provides that a tenant who is a victim of domestic violence, sexual assault, or stalking may ask the landlord to change the locks. The landlord must respond promptly, or give the tenant permission to have the locks changed herself. Lock change requirements provide an obvious and practical safety protection for survivors who want to maintain their homes, but who need help in preventing perpetrators from entering those homes. The landlord’s obligation is simply to provide the lock change or to allow it in a prompt manner; the cost of the lock change may be charged to the requesting tenant. To access this relief, a tenant must notify her landlord that she (or a minor child living in the household) has been a victim, and request the lock change. The request need not be in writing, and no documentation of the violence is required.

The application of lock change protection is relatively simple when the perpetrator is not a co-tenant living in the same dwelling as the victim. Things get more complex when the abuser is a co-tenant (as is often the case when family violence occurs).

The law takes this complexity into account by providing that when a perpetrator is a co-tenant, the victim may change the locks only if she has obtained a court order of protection (such as a restraining order or other similar order) requiring the perpetrator to move out of the dwelling unit. Before a victim tenant may qualify for a lock change in this scenario, she must provide the landlord with a copy of the requisite court order. The landlord has no duty to allow the perpetrator access to the home, and if the court order ousting the perpetrator from the home becomes a final order, the perpetrator’s tenancy is terminated by operation of law. The landlord may not require the victim tenant to pay additional rent or an additional deposit or fee, other than the change-of-locks fee.

### Early Lease Termination

*Sarah (not her real name) had previously escaped an abusive marriage. Sarah was able to find an apartment for herself and her young, disabled child pursuant to a one-year lease. Sarah’s ex-husband was released from jail and discovered where she lived. He began to threaten her and their child, and Sarah was afraid for their safety. She determined that she*

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Jud. Cir. 2005)(settled); *Warren v. Ypsilanti Hous. Comm’n* (E.D. Mich. 2003)(settled). See also Complaint at 11, *United States ex rel Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or. July 10, 2001)(consent decree), available at [www.legalmomentum.org](http://www.legalmomentum.org) (“by adopting a policy of terminating the tenancy of and refusing to rent apartments to victims of domestic violence, the vast majority of whom are women, after an incident of domestic violence at the Creekside Village Apartments”); Lenora M. Lapidus, “Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence,” 11 *Am. U. J. Gender Soc. Pol’y & L.* 377, 381 (2003).

6. Tex. Prop. Code Ann. § 92.015 (2006).

7. See, e.g., ORS 90.453 (2006).

8. See, e.g., N.M. Stat. Ann § 47-8-33(J) (2006).

9. See, e.g., N.Y. Real Prop. Law § 227-c(2)(c)(II)(B).

10. See, e.g., Ark. Code Ann. § 18-16-112(c)(3)(C).

11. See, e.g., N.C. Gen. Stat. §§ 42-42.3(2006).

12. Pub. L. No. 109-162, 119 Stat. 2960 (2006).

13. See “Implementation of the Violence Against Women and Justice Department Reauthorization Act 2005,” PIH 2006-23 (June 23, 2006).

14. See, e.g., National Association of Housing and Redevelopment Officials (NAHRO), “Overview of Housing Provisions Violence Against Women Act (VAWA) Reauthorization (2006)”;

“Violence Against Women Act Calls Foul on ‘One-Strike’ Policies” and “Local and National Agencies Are Eager to Augment Your VAWA Compliance,” *Assisted Housing Alert* (June 2006).

15. 42 USC §§ 1437d(c)(3), 1437f(c)(9)(A), 1437f(d)(1)(A), 1437f(o)(B) (West WESTLAW

through P.L. 109-279 (excluding P.L. 109-248, 109-270, 109-271) approved 08-17-06 ).

16. 42 USC §§ 1437d(l)(5), 1437f(c)(9)(B), 1437f(d)(1)(B), 1437f(o)(7)(C), 1437f(o)(20)(A).

17. 42 USC §§ 1437d(l)(6), 1437f(c)(9)(C), 1437f(d)(1)(C), 1437f(o)(7)(D), 1437f(o)(20)(B).

18. 42 USC §§ 1437d(l)(6)(C), 1437f(o)(7)(D)(iii), 1437f(o)(20)(D)(ii), 1437f(c)(9)(C)(iii), 1437f(d)(1)(B)(iii)(III).

19. 42 USC §§ 1437d(l)(6)(B) (Public Housing), 1437f(o)(7)(D)(ii) (Housing Choice Voucher Program), 1437f(c)(9)(C)(ii), 1437f(d)(1)(B)(iii)(II) (Project-Based Section 8).

20. 42 USC §§ 1437d(l)(6)(D), 1437f(o)(7)(D)(iv), 1437f(o)(20)(D)(iii), 1437f(c)(9)(C)(iv), 1437f(d)(1)(B)(ii)(IV).

21. 42 USC §§ 1437d(l)(6)(E), 1437f(o)(7)(D)(v), 1437f(o)(20)(D)(iv), 1437f(c)(9)(C)(v), 1437f(d)(1)(B)(ii)(V).

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*ORS 90.453 provides essential protection to survivors who can no longer be safe from abuse in their homes and need to move quickly to escape the abuse.*

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*needed to move for their protection, but her landlord refused to let her out of her lease.*

Oregon law (ORS 90.453) now provides that a survivor of domestic violence, sexual assault, or stalking may terminate a tenancy early, on 14 days' written notice to the landlord. To qualify for this relief, the survivor (or a minor child living in the household) must have been a victim within the 90 days preceding the notice, or must be currently protected by a valid protection order. The written notice given by the tenant must set forth a release date and must be accompanied by verification that the tenant is a survivor of abuse. Verification may be a copy of a court protective order (such as a restraining or stalking order), a copy of a police report or conviction, or a statement from a qualifying third party (law enforcement officer, attorney, victim advocate, or licensed health professional). The terminating tenant is not liable for rent or damages occurring after the 14-day notice period. If there are other people on the lease, the remaining tenants will continue to be responsible for rent, and if there are no other tenants, the tenancy is terminated. ORS 90.453 provides essential protection to survivors who can no longer be safe from abuse in their homes and need to move quickly to escape the abuse.

As of January 1, 2008, Oregon law mirrors and expands upon the new federal discrimination protections set forth in the Violence Against Women Act of 2005. (Please see the article on page 3.) The federal discrimination provisions apply only to public housing landlords, and they do not provide protection for victims of

sexual assault. The new Oregon law extends discrimination protection to victims of sexual assault, as well as victims of domestic violence, dating violence, and stalking, and applies to both public and private landlords.

### **Discrimination Against Victims Is Prohibited in Both Public and Private Rental Housing**

*Dominique (not her real name) was married to a man who became violent over the course of their relationship. She sought a restraining order, but later dismissed the order when her husband promised he would seek counseling. The violence continued, so she again sought and received a court order of protection. However, her husband violated the order multiple times, resulting in his arrest and prosecution. She sought new housing to move away from the abuse, but was told at screening that she had "too much domestic violence on her record."*

*Angela (not her real name) lived in a large apartment complex that had shared laundry facilities. Angela was groped and aggressively harassed one night in the laundry room by a male tenant who lived down the hall. The next day, the perpetrator was lingering outside the door to her apartment when she arrived home. Angela discovered in talking to neighbors that this behavior had been going on for some time. When she reported the incident to the landlord and complained about the aggressive tenant, she was served with an eviction notice.*

Oregon landlords may not impose different rules or standards on a tenant or applicant, and may not terminate, fail to renew, or deny a tenancy or applicant on the basis that the tenant or applicant is or has been a victim of domestic violence, sexual assault, or stalking. (See ORS 90.449.) In addition, and more specifically, a landlord may not discriminate against a victim because of a violation of the rental agreement that was caused by an incident of abuse committed against the tenant, or because of criminal

activity or police response relating to abuse of which the tenant is the victim. These more specific protections are an important recognition of the fact that many innocent victims face eviction or other sanctions as a direct result of the abusive actions of perpetrators. For example, victims often face eviction notices based on noise complaints as a result of an assault committed against them, or as a result of the emergency response to that assault. The new nondiscrimination laws stand for the principle that it is fundamentally against public policy to punish a victim of domestic or sexual violence for the actions of the perpetrator.

Under this section, a tenant who is a victim has a defense to an action for possession by the landlord if the grounds for the termination were based on domestic or sexual violence perpetrated against her. If the victim's defense is successful, she not entitled to prevailing party fees, attorney fees, or costs and disbursements if the landlord did not know, or have reasonable cause to know, that the action was based on an incident related to violence, or if the landlord dismissed the victim from the action upon becoming aware that incident was related to violence against the victim.

Oregon law echoes federal law in providing two other substantive provisions to address complexities surrounding this issue. One complexity arises in the context of family violence, when both victim and perpetrator are tenants. Landlords have an interest in terminating the tenancies of violent offenders, but victims of violence should not suffer housing consequences because of a batterer's violent actions. The law (ORS 90.455) tries to balance these principles by specifically allowing a landlord to bifurcate, or divide, a tenancy in order to evict an abuser for criminal acts of physical violence related to domestic violence, sexual assault, or stalking, without evicting the victim tenant(s).

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*It is fundamentally against public policy to punish a victim of domestic or sexual violence for the actions of the perpetrator.*

To pursue this remedy, the landlord must serve the offending tenant with 24 hours' written notice specifying the cause and the date and time of termination. The law prohibits the landlord from charging extra rent, deposits, or fees to the remaining victim tenant due to the perpetrator's exclusion, and the perpetrator is jointly liable with any other remaining tenants for rent or damages incurred prior to the termination date.

Another complexity arises in cases in which a perpetrator continues to offend, and to return to the premises, even after a bifurcation. ORS 90.449(3) now provides that notwithstanding the general discrimination protections, a landlord may terminate the tenancy of a victim based on the actions of the perpetrator in very narrow circumstances. If the perpetrator is an actual and imminent threat to the safety of other persons on the premises, or if the perpetrator is an unauthorized occupant, and the victim tenant permits or consents to the perpetrator's presence on the premises, then the landlord may proceed with eviction. However, before the landlord may proceed, she must have previously given the tenant a written warning regarding the conduct of the perpetrator. In these circumstances, the question of whether or not the victim truly permitted or consented to the perpetrator's presence on the premises

must be carefully considered. Victims of violence are subjected to many threatening patterns of perpetrator behavior, and what may look like "consent" to an outside, uninformed observer may frequently have been manipulated or forced by an abuser.

### **The Role for Attorneys as We Move Forward**

There is a great role for attorneys to play in ensuring that the rights of vulnerable survivors are protected in housing across this state. Legal practitioners interested in working on these issues can help by volunteering to provide education and outreach to landlords, public housing authorities and other housing agencies, nonprofits, victim advocates, law enforcement, and other professionals interacting with victims. Practitioners can also help by ensuring that their housing clients know about and understand these important new rights.

When working with clients who are facing eviction or other sanctions related to domestic or sexual violence, there are many important physical safety, medical, emotional, psychological, and other issues that may come up as a result of the violence. Housing practitioners should be ready to make referrals to victim advocates who can help survivors identify and address pressing needs. And as always, practitioners can help by supporting efforts to preserve and develop safe and affordable emergency and permanent housing in our communities, so that survivors have more options when fleeing abuse. ♦

Sybil Hebb is the director of legislative advocacy for the Oregon Law Center.

### **Resources**

See [www.ocadsv.com](http://www.ocadsv.com) and [www.oregon.gov/DHS/abuse/domestic/index.shtml](http://www.oregon.gov/DHS/abuse/domestic/index.shtml) for more information about domestic and sexual violence, and for a list of victim advocacy services in your area.

See [www.oregonlawhelp.org](http://www.oregonlawhelp.org) and click on "Protection from Abuse" for a list of client-friendly brochures summarizing protections for survivors, including housing protections, employment protections, public benefits programs, family law protections, and more.

See [www.oregonhousingalliance.org](http://www.oregonhousingalliance.org) for information about joining the effort to increase affordable housing resources in Oregon.

See [www.ncadv.org/files/housing.pdf](http://www.ncadv.org/files/housing.pdf) for more information about domestic violence and homelessness.

### **Endnotes**

1. Throughout this article I use the terms "victim" and "survivor" interchangeably to refer to people who experience domestic or sexual violence. At times, I may refer to survivors as "she" and perpetrators as "he," since the majority of victims and survivors of domestic and sexual violence are women and the majority of perpetrators are men. Men, however, may be victims and women may be perpetrators, especially in same-gender relationships.
2. Oregon Department of Human Services, "Summary of Services Provided by Domestic and Sexual Violence Service Programs . . . January 2006 through December 2006" (2007).
3. Mary Cunningham and Meghan Henry, *Homelessness Counts* (The Homelessness Research Institute of the National Alliance to End Homelessness, January 2007).
4. The Neighborhood Partnership Fund, database of at-risk subsidized properties, [www.preserveoregonhousing.org](http://www.preserveoregonhousing.org).
5. *United States ex rel Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or. July 10, 2001)(consent decree).

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## *Save the Date*

Litigating Public Discourse: How High Is the Cost of Free Speech?  
The OSB Civil Rights Section will present a one-day CLE on this topic on  
Friday, October 10, 2008, at the Oregon Convention Center in Portland.  
Please mark your calendar and plan to attend.

***United States v. Williams,*  
No. 06-694 (May 19, 2008)**

The Court reversed the Eleventh Circuit in a 7–2 decision, upholding the constitutionality of a pandering statute that criminalizes subjective offers to buy or sell actual or purported child pornography. The defendant pled guilty to a pandering charge based on evidence that he made statements online that material to be exchanged was child pornography when it was actually not. In upholding the pandering statute, the Supreme Court reasoned that the statute was neither overbroad under the First Amendment nor impermissibly vague under a Fifth Amendment due process analysis.

***Virginia v. Moore,* No. 06-1082 (April 23, 2008)**

The Supreme Court reversed the Virginia Supreme Court in a unanimous decision, holding that a search incident to an arrest based on probable cause did not violate the Fourth Amendment, even though Virginia state law prohibited the arrest because the officers should have issued a citation for driving on a suspended license instead. After the officers had arrested the individual, they searched his vehicle and found crack cocaine.

***Washington State Grange v. Washington State Republican Party,* No. 06-713 (March 18, 2008);  
*Washington v. Washington State Republican Party,*  
No. 06-730 (March 18, 2008)**

The Court ruled 7–2 on these consolidated cases from the Ninth Circuit, upholding the constitutionality of a law providing that candidates for office shall be identified on the ballot by their self-designated party preference. The Court held that the law did not present an undue burden on the political parties’ First Amendment rights.

**Certiorari Granted**

***14 Penn Plaza LLC v. Pyett,* No. 07-581 (Feb. 19, 2008)**

The Court agreed to hear a case from the Second Circuit regarding whether unions can waive individual members’ rights to pursue employment discrimination claims in federal court. Specifically, the Court will decide the enforceability of collective bargaining agreement arbitration clauses that waive an employee’s right to a federal forum with respect to statutory claims.

***Arizona v. Gant,* No. 07-542 (Feb. 25, 2008)**

The Court will decide whether the Fourth Amendment requires law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime or arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle’s occupants have been arrested and secured. This case comes from the Arizona Supreme Court, which found the warrantless search of Gant’s car unjustified.

***Pearson v. Callahan,* No. 07-751 (March 24, 2008)**

The Court agreed to hear a case from the Tenth Circuit

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regarding whether entering a person’s home pursuant to a “consent once removed” exception to the warrant requirement violates the Fourth Amendment right to protection from unreasonable searches and seizures. Here, officers searched Callahan’s home after Callahan gave consent to the officers’ informant to enter the home. The officers ultimately found evidence of drug sale and possession in the home.

***Pleasant Grove City v. Summum,*  
No. 07-665 (March 31, 2008)**

The Court will decide this First Amendment free speech case from the Tenth Circuit, determining whether a city may deny the request of a religious group to place a religious-themed monument in a public park that already contains a religious monument from a different religious group. Here, Summum, a religious organization, seeks permission from Pleasant Grove City, Utah, to place a monument containing the “Seven Aphorisms of Summum” in a city park that already has a monument of the Ten Commandments. ♦

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