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Fair Housing Program

The Fair Housing Act of Delaware makes it unlawful to discriminate in housing transactions based upon race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation, gender identity or disability. One of the many groups who benefit from this protection is victims of domestic violence. How are victims of domestic violence covered by the Fair Housing Act when they are not listed as one of the protected classes in the law? Since domestic violence disproportionately affects women, discrimination against its victims can be construed as discrimination on the basis of sex. This is known as disparate impact and it extends the safeguards provided by the Fair Housing Act to victims of domestic violence.

There are a number of issues related to housing that can arise for domestic violence victims. Victims often live in rental properties where there are rules written into the lease pertaining to criminal activity. If the police respond to a call at a rental property and arrest a perpetrator of domestic violence on criminal charges, it is possible that the victim may find herself facing eviction due to violation of a rule pertaining to criminal activity. In that scenario, there is a legal basis for the victim to make a complaint of discrimination on the basis of sex, since the effects of domestic violence are experienced disproportionately by women. In Delaware, eviction cases are heard in the Justice of the Peace court, so it is there that the victim would have an opportunity to present as a defense that she is being unfairly discriminated against by her landlord. She would have a compelling argument that she is being unfairly punished for

the actions of her abuser and that her right to not be discriminated against in her rental agreement is guaranteed by the Fair Housing Act.

Another similar example would be if a perpetrator of domestic violence who is also a co-tenant caused damage to a rental unit. Under normal circumstances, both tenants would be liable for damage to the property, but as with a lease termination due to a rules violation, the victim is protected by the Fair Housing Act and it would be discriminatory to hold her responsible for damage done to the rental unit by her abuser. It should be noted that this would only be true if the damage was caused directly by an act or acts of domestic violence.

There are times when a domestic violence victim may not be interested in remaining in a current lease. In fact, the situation may be that for the victim's safety it is essential that she move to a new location unknown to her abuser. In such cases, Delaware state law provides a remedy. According to Section 5314 in Chapter 53 of the Delaware Code, a lease may be terminated early "by a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service."

Another remedy available to victims of domestic violence in the state of Delaware is to obtain a Protection from Abuse (PFA) order at the Family Court. It is typical for a PFA order to address the issue of housing. A PFA will often include language such as, "The petitioner is granted exclusive use and possession of the residence specified herein." It is possible for a PFA to remove an abuser from a rental unit and grant possession to the victim irrespective of her lessee status. In some cases, a landlord may not respond well to such an order. The landlord may argue that the victim did not go through the standard application process for renting, such as

providing references and submitting to a credit check. The landlord, for whatever reason, may align him or herself with the dis-possessed perpetrator, perhaps based on their previous relationship and may resist granting possession of the property to the victim. In such a case, the PFA overrides the landlord's objections and the victim's right to use of the rental unit is protected by the Fair Housing Act.

In addition to the protections provided by the Fair Housing Act, victims of domestic violence benefit from the Violence Against Women Act (VAWA), which also addresses some issues pertaining to housing. For example, persons living in federally subsidized housing are subject to a "one strike" policy, which means that even a first time instance of criminal activity can be grounds for lease termination. VAWA provides an exception to that rule for victims of domestic violence. Additionally, VAWA allows that a public housing authority or landlord may bifurcate a lease in order to evict or terminate the voucher of an abuser who is a co-tenant, while allowing the victim to remain. This is a crucial protection as the loss of a housing voucher, for many domestic violence victims, could lead to homelessness, at least temporarily.

If a victim of domestic violence believes she has experienced discrimination in a housing transaction, where does she go? In Delaware, she can file a discrimination complaint with the Division of Human Relations (DHR), a division of the Delaware Department of State. Community Legal Aid Society, Inc., a non-profit legal services provider, can assist victims in filing a complaint with DHR. After a complaint is filed, the DHR initiates a fact-finding process and will attempt to negotiate a settlement between the parties.

If you are a victim of domestic violence and believe you have been discriminated against in a housing transaction in Delaware, please contact Community Legal Aid Society, Inc.

Sussex County (302) 856-0038

Kent County (302) 674-8500

New Castle County (302) 575-0660

or visit [www.declasi.org](http://www.declasi.org)

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