

LIFTING CIVIL LEGAL BARRIERS TO HOUSING

ADAM POE
& MAYA IYYANI
DECEMBER 5, 2018



BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

OBJECTIVES

- Increase knowledge of barriers to housing such as criminal history, poor credit, and disability.
- Become familiar with rights and advocacy strategies, such as reasonable accommodations, VAWA and other Fair Housing ideas
- Identify when a household should seek legal assistance
- Imagine a dynamic system of care and the role that you/your organization plays!





BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

Contra Costa County Regional Office

1025 MacDonald Avenue,
Richmond, CA 94801
(510) 233-9954



WHO WE ARE

BayLegal: Regional non-profit law firm providing free civil legal services to eligible low-income individuals and families in the following Bay Area Counties
Offices:

1. Alameda,
2. Contra Costa
3. Marin
4. Napa
5. San Francisco
6. San Mateo
7. Santa Clara





AREAS OF PRACTICE

BayLegal focuses on wrap-around civil legal services in the following areas:

- **DOMESTIC VIOLENCE PREVENTION:** family law (Divorce, child custody/visitation, support, property and protective orders) and immigration relief for survivors of domestic violence and sexual assault
- **ECONOMIC JUSTICE:** income security, removal of barriers to employment, SSI/SSDI, CalWorks, General Assistance, CalFresh, and county-based indigent programs
- **HEALTH CARE ACCESS:** Medi-Cal, Medi-Care, Covered California, medical debts and terminations, and county-based indigent programs
- **HOUSING PRESERVATION and HOMELESSNESS PREVENTION:** landlord-tenant matters, subsidized and public housing issues, unlawful evictions, foreclosures, habitability, and enforcement of fair housing laws
- **CONSUMER PROTECTION:** unfair and deceptive business practices, debt collection abuses and harassment, student loan collection, credit access and inaccurate reporting, and enforcement of other consumer rights and remedies
- **MEDICAL LEGAL PARTNERSHIP:** collaborative model in which BayLegal partners with health service providers to address social determinants of health (i.e. housing, public benefits, reentry, family law)





AREAS OF PRACTICE CONT'D

BayLegal also has specific projects focusing on particular vulnerable populations, providing holistic support and representation to individuals who are:

- SENIORS
- SERVED IN THE MILITARY
- YOUTH
- FORMERLY INCARCERATED OR FACING BARRIERS DUE TO CRIMINAL JUSTICE SYSTEM





WHO IS ELIGIBLE

Serves low income Bay Area residents – less than 125% of federal poverty line:

125% of the Federal Poverty Level Guidelines

Family Size	Annual	Monthly	Weekly
1	\$15,175	\$1,265	\$292
2	\$20,575	\$1,715	\$396
3	\$25,975	\$2,165	\$500
4	\$31,375	\$2,615	\$603
5	\$36,775	\$3,065	\$707
6	\$42,175	\$3,515	\$811
7	\$47,575	\$3,965	\$915
8	\$52,975	\$4,415	\$1,019
Each Add'l	\$5,400	\$450	\$104





HOW DO CLIENTS GET HELP

Legal Advice Line (LAL)

(800) 551-5554

Hotline staffed with multilingual attorneys who: assess for eligibility, provide counsel and advice, referrals and schedule for an appointment with the local office if appropriate.

Mondays & Thursdays 9:30 a.m. – 3:00 p.m.

Tuesdays & Wednesdays 9:30 a.m. – 1:00 p.m.





WHAT WE DO

Staff attorneys, advocates and volunteers provide a **full spectrum of legal services** to low-income individuals and families including:

- Advice/counsel
- Assist with pro per pleadings
- Community education and advocacy,
- Individual and impact litigation





LEGAL CLINICS AND PARTNER LOCATIONS

Bay Area Legal Aid hosts legal clinics and client appointments throughout Contra Costa County, including:

- o Calli House
- o Family Justice Center – West & Central
- o GoodWill
- o Monument Crisis Center
- o Reentry Success Center
- o Shelter Inc.
- o SparkPoint – West and East Centers
- o Superior Court of Contra Costa County





CONTRA COSTA COUNTY LEGAL CLINICS

BayLegal attorneys & volunteers assist self-represented individuals prepare paperwork, understand the legal process and procedure in the following clinics:

- Domestic Violence Restraining Order Clinics
 - **Pittsburg:** Tuesdays 9 am; Superior Court 1000 Center Drive, Self-Help
 - **Richmond:** Wednesdays 9 am; Superior Court 100 37th Street, Richmond
 - **Central:** Thursdays 9 am (888) 215-5555 by appointment
- Debtors' Rights Clinics
 - **Richmond:** 1st Friday/month 9:30 & 1 pm: RSVP (510) 779-3200
 - **Bay Point:** 3rd Friday/month 9:30 & 1 pm: RSVP (925) 252-2300



HOMELESSNESS & CONTRA COSTA

○ Housing Instability

- High rent
- Lack of affordable housing
- Poverty

○ Resulting Homelessness

- 80% of the homeless individuals in CCC lost their housing within the county
- 21% reported being chronically homeless
- 29% reported having mental health disabilities
- 17% reported being survivors of domestic violence



SCOPE OF LEGAL SERVICES IN CONTRA COSTA COUNTY

- Housing
 - Appealing Section 8/public housing denials, eviction defense, reasonable accommodation
- Public benefits
 - Appealing denials or disputing overpayments of food stamps, general assistance, CalWorks, Medi-Cal
- Family Law/Domestic Violence
 - P.C. 1203.4 dismissals (“expungements”) Prop 47, Felony Reductions, Employment, Drivers Licenses, Consumer and Court debt
- Reentry, Veterans, Medical Legal Partnership, Foster/Delinquency Involved Youth,
 - Employer background checks, occupational licensing



CASE STUDY – “Ms. C.”

- A former Alameda County employee and youth advocate, Ms. C's life took a turn for the worst when her fiancé and daughter's father was killed in a car accident.
- Depressed and grief stricken, she was the victim of severe domestic violence in a subsequent relationship that resulted in her hospitalization with 3rd degree burns when her abuser pressed a hot iron to her face and back.
- After her release, she struggled with depression, PTSD and drug dependency which led to her arrest and eventual plea to misdemeanor possession of prescription painkillers and shoplifting.
- While incarcerated awaiting trial she was evicted by default and is presently homeless.
- She applies to join her mother's household at a LIHTC property and is DENIED.
- What do you do? What is important? What info do you need?



WHAT IS THE SCREENING POLICY (& WAS IT FOLLOWED)?

“An applicant who has been convicted of the following in the last seven (7) years will not be admitted:

- Drug related criminal activity or violent criminal activity will not be admitted;
- Other criminal activity that would threaten the health, safety.... Will not be admitted.” *Tenant Selection Plan, Acalanes Court, Walnut Creek (LIHTC)*



IS THE SCREENING POLICY LEGAL?

- No “blanket” ban, i.e., “no felons” policy.
“...criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.” HUD OGC, April 2016
- May also implicate intentional discrimination. *Id.*
- No arrests. “the mere fact that a man ha been arrested has very little, if any, probative value in showing that he engaged in any misconduct. An arrest shows nothing more than someone probably suspected the person apprehended.” *Schware v. Bd. of Bar Examiners, 353 U.S. 232, 241 (1957)*
- “Ban the Box” Ordinances – SF and Richmond



IS THE SCREENING POLICY LEGAL?

RICHMOND FAIR CHANCE ORDINANCE

- The Richmond City Council has adopted the “Fair Chance Access to Affordable Housing Ordinance” to assist formerly incarcerated people to get access to housing. Ordinance 20-16 (adopted December 20, 2016) applies to all providers of affordable housing. The ordinance limits what a landlord can consider about an applicant’s criminal history when deciding whether to rent to someone.
- When considering your application for housing, a landlord **cannot** consider, or ask you for, this information:
 -
 - If you have been arrested but that arrest did not lead to a conviction;
 - If you have participated in a diversion or a deferral of judgment program;
 - If you had a conviction that has now been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative;
 - If you had a conviction or other matter processed through the juvenile justice system;
 - If you have a conviction on your record that is more than two years old. (The date of the conviction begins at the date of sentencing); or
 - If you were involved or convicted of any offense other than a felony or misdemeanor, such as an infraction.
 - A landlord **cannot** ask you for conviction history that is less than two years old until they first:
 - Decide whether you are otherwise qualified to rent the unit.
 - Provide you with a lease agreement that gives you the unit as long as you pass a review of your conviction history.



*DOES MS. C HAVE THE OPPORTUNITY TO PRESENT “MITIGATING CIRCUMSTANCES”? **

- ***Mitigating Factors***
- Seriousness of offense
- Length of time since offense
- Age at time of offense
- Number of offenses
- Effect of denial on household and community
- ***Evidence of rehabilitation***
 - Letters of support critical
 - Employer
 - Teacher
 - Case worker
 - Drug or alcohol treatment program
 - Current or prior landlord
 - Parole or probation officer
 - Information from prison or jail about programs completed in custody
- * If so, what are deadlines??? What is the forum?



RIGHTS OF INDIVIDUALS WITH CRIMINAL RECORDS

- Housing Provider may NOT:
 - Access Housing records older than 7 years old (ICRAA)
 - Ask for/use information about arrests not leading to convictions (FHA/ICRAA)
 - Ask for/use information about juvenile adjudications (W&I Sec. 827, *et seq.*)
 - Ask for/use information about convictions that have been “expunged”
 - Deny someone whose criminal record is a function of a disability (“Reasonable Accommodation”)
 - Deny someone whose criminal record is related to a history of domestic violence (“VAWA”)
 - Have a blanket “No felons” policy or otherwise exclude all individuals with criminal records
- 

DOES MS. C. HAVE ANY RIGHTS AS AN INDIVIDUAL WITH DISABILITIES?

- If a tenant has an obstacle to obtaining or maintaining housing because of a disability, the tenant can **request a reasonable accommodation**.
- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.
- **RA Formula:**
- **DISABILITY+ NECESSARY & REASONABLE (NEXUS) =**
 - **MUST GRANT ACCOMMODATION**
 - Unless:
 - **Undue financial or administrative burden**
 - **Fundamental Alteration 24 C.F.R. §8.11**
 - **“Direct Threat”**



DOES MS. C HAVE ANY RIGHTS AS A DOMESTIC VIOLENCE SURVIVOR?

- “That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate basis for denial of program assistance.” Violence Against Women Act
- “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking”
- Applies to HUD-assisted and LIHTC

FAIR HOUSING & DOMESTIC VIOLENCE: OTHER THEORIES

- DV survivors aren't a protected class under the FHA or most state fair housing laws, so advocates have used sex discrimination theories.
 - Disparate impact: Has been used to challenge neutral policies that have the effect of treating DV survivors more harshly.
 - ✦ Ex: Failing to make an exception to a “zero tolerance for violence” policy for a DV survivor
 - Disparate treatment: Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
 - ✦ Ex: “I never rent to abused women because they always go back to the men who beat them.”
- It may strengthen the survivor's case to raise both theories in tandem.



DOES MS. C HAVE ANY RIGHTS UNDER CREDIT REPORTING LAWS?

- If housing provider takes an “Adverse Action” (denies or increases rent or security deposit) due to information in report, it must give **notice** to applicant:
 - Name, address, and phone of agency
 - Statement that agency did not make decision
 - Notice of right to dispute report
- Private Owners/Management Companies may **NOT** Receive:
 - Arrest only incidents (unless case is still pending)
 - Convictions older than 7 years
 - Dismissed Convictions
- Public Agencies receive expanded records from the DOJ



A DYNAMIC SYSTEM OF SUPPORT

- ***Housing Providers*** – Look critically at admissions policies and assumptions regarding criminal records. “Screen in not out”;
- ***Case managers and Navigators***
 - Housing Portfolio – application materials (see handout)
 - Letters of Support/Other Documentation
- ***Health Professionals***
 - Support Requests for “Reasonable Accommodation” (see handout)
- ***Public Defenders***
 - Explain circumstances of criminal cases
 - Clean Slate work
- ***Domestic Violence Advocates***
 - Critical support and transitional housing.
 - Documentation of survivor status
- ***Civil Legal Aid***
 - Representation at hearing
 - Credit and eviction remediation
 - Disability and Domestic Violence



Working with Individuals who are Required to Register as sex offenders

Using registry status as standard for disqualification is problematic:

- States operate Registries very differently; a “lifetime offense” in California may not be elsewhere;
 - Little nexus to risk of reoffending. For example, registrants might include:
 - indecent exposure or lewd displays related to substance abuse, mental health issue or homelessness
 - women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from abuse
 - Consensual relationships where one partner is older than the other by a few years
- 

PC 290 ADVOCACY TIPS

- Is your client eligible for Certificate of Rehabilitation? (P.C. 290.5)
- Theoretical possibility for reasonable accommodation (Non HUD housing)
- SB 384 (Coming... 2021)
- Is your client definitely a “*lifetime* registrant”? (HUD)
- For admissions *before June 25, 2001*, no basis for eviction or termination solely based on a household member’s sex offender registration status (HUD)
- Your client is still entitled to a hearing and procedural protections (HUD)



HOUSING ISSUES

- Who Can I Refer?
- Anyone:
 - Denied Housing because of a criminal record (esp. if disabled);
 - Anyone is facing eviction or program termination because of a criminal record;
 - Anyone with a history of unlawful detainers judgments;
 - Anyone who requires a “reasonable accommodation”
 - Anyone denied housing or being evicted because of DV
- What can I look for:
 - Any housing program that says they don’t accept any individuals with criminal records (or felons, or other “blanket bans”);
 - Any housing provider who says they “can’t” change policies for individuals when requested
- We represent on evictions, administrative hearings and fair housing cases and more ****Strict deadlines apply****



QUESTIONS OR REFERRALS?

- Please don't hesitate to reach out – many issues have strict deadlines.
- Office hours – Thursdays 1-4 at 1735 Telegraph, Oakland, CA.
- Questions → contact Catherine Kimel at (510) 250-5231 or CKimel@baylegal.org
- Adam Poe – apoe@baylegal.org

