

by Meris L. Bergquist, Esq.

After the Violence: Using Fair Housing Laws to Keep Women and Children Safe at Home

Victims of domestic violence often return to abusive partners because they cannot find long-term housing¹

Home is the most important place in the world.² Most people experience home as a safe haven and refuge from the outside world. This experience of home is shattered when a woman suffers domestic violence from an intimate partner and tries to end the relationship. Victims who attempt to terminate an abusive relationship face tremendous barriers, including the very real possibility of homelessness.³ Domestic violence is a leading cause of homelessness in Vermont and across the nation.⁴ Thus, at the very moment when the need for a safe, stable home is the greatest, a female victim of domestic violence is most likely to be evicted and unable to secure new housing because she is a victim.

This article will explore the ways in which federal and state fair housing laws can be used to prevent the homelessness of women and children who experience domestic violence in Vermont. The federal Fair Housing Act (FHA) and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), provide critical civil rights protections for some female victims of domestic violence who are discriminated against in their efforts to maintain or secure housing.⁵ Unfortunately, these protections are not available to every woman who needs them. Many landlords and tenants are unaware of the protections available to female victims under these federal statutes, and even if a woman knows her rights under the law, she may not have the resources to initiate a federal civil rights action. Therefore, to protect the housing rights of female victims of domestic violence in Vermont, and to make it less likely that a woman will return to an abusive partner, I will argue that Vermont's fair housing statute, the Vermont Fair Housing and Public Accommodations Act,⁶ should be amended to provide equal housing opportunities to victims of domestic

violence.

The correlation between domestic violence and homelessness is very well documented. In 2004, 44 percent of the nation's mayors (including Peter Clavelle of Burlington, Vermont) identified domestic violence as a primary cause of homelessness.⁷ The lack of affordable housing, often combined with loss of employment, leads many victims of domestic violence and their children into homelessness if they try to leave abusive relationships.⁸

Undoubtedly, the practice of evicting female victims of domestic violence—because of the violence committed against them—contributes to these statistics and is a national problem. In 2005, the National Law Center on Homelessness & Poverty (NLCHP) and the National Network to End Domestic Violence (NNEDV), conducted a survey of seventy-six legal and social services providers around the country to analyze the extent to which victims of domestic violence were subject to housing denials and evictions.⁹ This study showed that 11 percent of all evictions were evictions of victims of domestic violence because of the domestic violence against them. Some women were evicted for calling the police or requesting emergency assistance. Some women were evicted because of the abuser's behavior or crimes. Some were evicted after obtaining a civil protection order against the abuser.

The inability of victims of domestic violence to secure new housing is also a national problem. The NLCHP/NNEDV found that 28 percent of all housing denials handled by the service providers were based on a woman's status as a victim of domestic violence.¹⁰ Some women were denied housing because they had resided in a shelter for victims of domestic violence. Some women were denied because the victim had a history of obtaining a civil protection order, or

a record of calling the police, or simply because the previous landlord stated that the applicant had experienced domestic violence.

There is much evidence that the problem is even worse in Vermont, where domestic violence is the leading cause of violent death.¹¹ When Congress studied the problem of housing discrimination against female victims of domestic violence prior to passage of VAWA 2005, it found that rural women faced greater adversity: "[v]ictims of domestic violence in rural areas face additional barriers, challenges and unique circumstances, such as geographical isolation, poverty, lack of public transportation systems, shortages of health care providers, underinsurance or lack of health insurance, difficulty ensuring confidentiality in small communities, and decreased access to many resources."¹² These factors underscore the urgent need to promote equal housing opportunities for female victims of domestic violence in Vermont.

To date, the FHA and VAWA 2005 have been the primary sources of legal protection for female victims of domestic violence who seek to be free of housing discrimination. The FHA generally prohibits housing discrimination on the basis of race, color, national origin, religion, sex, family status, and handicap.¹³ A female victim of domestic violence who believes she has suffered discrimination because of the violence committed against her can file a complaint in state or federal court claiming sex discrimination under the FHA.¹⁴

She can base her claim on a "disparate impact" theory or a "disparate treatment" theory. Essentially, disparate impact discrimination occurs when policies that are neutral on their face have a more negative effect on members of classes protected under the FHA. It is not necessary to prove discriminatory

intent to prevail in a disparate impact case. Disparate treatment discrimination refers to various forms of intentional discrimination. It occurs when a housing provider treats some people less favorably than others because of their membership in a protected class.¹⁵

One of the first cases to challenge the eviction of a victim of domestic violence under the FHA succeeded on a disparate impact theory. This case was brought by a woman in Oregon named Tiffany Alvera.¹⁶ Ms. Alvera was assaulted in her apartment by her husband. Her husband was arrested and Ms. Alvera obtained a civil protection order. Her landlord, acting through a property management company, responded to this chain of events by serving Ms. Alvera with an eviction notice that referred to the domestic violence as grounds for the eviction. The property management company claimed it was enforcing a neutral policy of evicting all members of a household whenever any member of the household threatens the safety and well-being of other tenants.

Ms. Alvera's attorneys initially filed a housing discrimination complaint with the Department of Housing and Urban Development (HUD). They argued that the relevant statistical evidence shows that the overwhelming majority of victims of domestic violence are women.¹⁷ Therefore, the landlord's "neutral" eviction policy amounted to sex discrimination because of its disparate impact on women. HUD accepted this argument and issued a finding of sex discrimination in violation of the FHA. Later, HUD sued the property management company in federal court and Ms. Alvera intervened. The case eventually settled and the management company agreed not to evict or discriminate against tenants because of the domestic violence committed against them.

Alvera paved the way for future cases under the FHA. The next case was brought in 2004 in a federal court in Vermont. A Vermont landlord attempted to evict a victim of domestic violence, after she was assaulted by her husband, and after she had obtained a restraining order. The woman pursued two theories of discrimination: disparate impact and disparate treatment. As the case evolved, it became clear that the landlord had acted intentionally, based on her belief in several false stereotypes about female victims of domestic violence, including the belief that the victim was to blame for the violence.

Thus, the evidence strongly supported the woman's disparate treatment housing discrimination claim. In deciding cross-motions for summary judgment, the Court ruled that the federal FHA protects victims of domestic violence from housing discrimination on the basis of sex.¹⁸ This was an important decision because it was the first time a federal court recognized the right of a female victim of domestic violence to pursue a claim of sex discrimination under the FHA.

Further progress in creating equal housing opportunities for female victims of domestic violence occurred in January 2006, when President Bush signed the Violence Against Women and Department of Justice Reauthorization Act of 2005. VAWA 2005 amended the Public Housing Program, the Section 8 Housing Choice Voucher Program, and the Project-Based Section 8 Program to prohibit all public housing authorities and Section 8 landlords from evicting or otherwise denying housing to victims of domestic violence, dating violence, and stalking. VAWA 2005 was a gigantic step forward in protecting the victims of domestic violence from evictions and other forms of housing discrimination. Unfortunately its reach is limited to tenants living in public housing and government-assisted housing. Victims of domestic violence who reside in non-Section 8, private rentals are not covered by VAWA 2005.

Due to the limitations of VAWA 2005 and the prohibitive cost of litigating a federal fair housing case—like *Alvera* or *Bouley*—many female victims of domestic violence are unable to challenge unfair evictions and other housing denials. One way to resolve this problem would involve amending federal and state fair housing laws to provide explicit protections to victims of domestic violence. However, it is unlikely that Congress will take any action in the near future to amend the FHA to add a new protected class. The last time Congress amended the FHA to add two protected classes was twenty years ago. Legislation to address housing discrimination against victims of domestic violence is much more likely to occur at the state level, as shown by the increasing number of states that have taken the lead on this issue.

Many states have passed laws to enhance the housing rights of victims of domestic violence.¹⁹ Seven states and the District of Columbia have statutes that expressly prohibit housing discrimination against victims of domestic violence.²⁰

For example, Rhode Island added a provision to its anti-discrimination law to prohibit landlords from terminating or failing to renew or enter into a rental agreement because the tenant is a victim of domestic violence, sexual assault, or stalking, or based on a police or emergency response due to domestic violence.²¹

Eleven states and the District of Columbia permit early lease termination by a victim of domestic violence. Some of these states—Oregon, Washington, Colorado, North Carolina, and Texas—allow victims to terminate a lease without financial penalty.²² A good example is Washington's statute, which permits a tenant who has been the victim of domestic violence, sexual assault, or stalking, to terminate the rental agreement with no further obligation after the end of the month when the incident occurred. The tenant must have a valid protection order or a written record of the tenant's report of the incident to a third party acting in his or her official capacity (law enforcement officer, court employee, clergy member, attorney, social worker, mental health professional, licensed counselor, or advocate at an agency that assists victims of domestic violence).²³

Eleven states and the District of Columbia allow victims of domestic violence to defend an eviction if the grounds for the eviction are related to the domestic violence.²⁴ Four states permit a landlord to bifurcate a lease.²⁵ In New York, a landlord can bifurcate the lease to allow early lease termination by a victim of domestic violence.²⁶ In Oregon, a landlord can evict the perpetrator only; the non-perpetrator can remain on the lease.²⁷ Three states permit a landlord to seek damages from the perpetrator for unpaid rent and other damages related to the domestic violence.²⁸

Vermont has not taken any legislative action to protect the housing rights of victims of domestic violence. Since there is a high rate of homicide related to domestic violence in Vermont, and, as Congress has found, women return to their abusers because they cannot find long-term housing, it is possible that legislation prohibiting housing discrimination against victims of domestic violence could save lives.²⁹ Such legislation would certainly make it easier for a woman to leave an abusive relationship and avoid homelessness. Shelter is a basic human necessity and should be available on a nondiscriminatory basis to women who

have experienced domestic violence. It is time for Vermont to join the many other states that have enacted legislation to protect the equal housing rights of victims of domestic violence.

Meris L. Bergquist, Esq., specializes in housing discrimination cases. She is currently employed by the Housing Discrimination Project and represents plaintiffs in Vermont and Massachusetts.

¹ This was one of twelve Congressional findings that led Congress to pass the Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. § 14043e(7).

² The phrase is taken from an Ikea advertising slogan. "Ikea believes that homes are not just made of bricks and mortar with four walls. Home is an emotion—a feeling of security, safety, comfort, peace, about being yourself and being together with your loved ones. Home is the place where memories are made, relationships are built, where children and families grow together. IKEA believes that regardless of where you live or who you are, home is the most important place in the world." See http://www.ikea.com/ms/en_US/home_campaign/americaathome.html.

³ Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A., Why Abuse Victims Stay*, COLO LAW., Oct. 1999, at 19; Anne C. Johnson, *From House to Home: Creating A Right To Early Lease Termination For Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1862 (2006) (at the time a woman separates from her abuser, she also faces a heightened risk of serious violence and death).

⁴ "Congress finds that: (1) There is a strong link between domestic violence and homelessness. Among cities surveyed, 44 percent identified domestic violence as a primary cause of homelessness." 42 U.S.C. § 14043(e)(1).

⁵ The federal Fair Housing Act is codified at 42 U.S.C. § 3601-3619. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) is codified at 42 U.S.C. § 13701 et seq.

⁶ 9 V.S.A. § 4501 et seq.

⁷ United States Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities* (2004), at 86, available at <http://www.usmayors.org/uscm/hungersurvey/2004/onlinereport/HungerAndHomelessnessReport2004.pdf>.

⁸ Eliza Hirst, Note, *The Housing Crisis for Victims of Domestic Violence: Disparate Impact Claims and Other Housing Protections for Victims of Domestic Violence*, 10 GEO J. ON POVERTY L. & POL'Y 131, 133 (2003).

⁹ National Law Center on Homelessness & Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* (2007), available at http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20_February_20072.pdf.

¹⁰ A different study of housing discrimination against victims of domestic violence was conducted by the Anti-Discrimination Center of Metro New York in 2005. The results of this survey of the Staten Island, Brooklyn, and Queens rental market matched the NLCHP/NNEDV results: 27.5 percent of

housing providers flatly refused to rent to a victim of domestic violence or failed to follow up as promised. Anti-Discrimination Ctr. of Metro N.Y., *Adding Insult to Injury: Housing Discrimination Against Survivors of Domestic Violence: Center Study Finds Significant Incidence of Discrimination Against Survivors of Domestic Violence* (Aug. 2005), at 1-2, available at <http://antibiaslaw.com/DVReport.pdf>.

¹¹ Troy, *Vermont Takes Aim at Domestic Violence*, VERMONT GUARDIAN, Apr. 19, 2007, available at <http://www.vermontguardian.com/local/042007/DomesticSeries1.shtml> ("Contradicting some national reports that show domestic violence incidents decreasing along with overall crime statistics, domestic abuse in Vermont is rising both in numbers and in brutality.")

¹² 42 U.S.C. § 14043e(11).

¹³ 42 U.S.C. §§ 3601-3619.

¹⁴ She can also file a complaint with the United States Department of Housing and Urban Development.

¹⁵ *Teamsters v. United States*, 431 U.S. 324, 335-36, n.15 (1977).

¹⁶ *United States ex rel. Alvera v. C.B.M. Group*, No. Cv. 01-857-PA (D.Or. 2001) (consent decree).

¹⁷ 86.6 percent of violent victimizations committed by intimate partners from 1993-1998 were committed against women. Women are 7.4 times more likely than men to be victims of domestic violence in rental homes. Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 710-711 (2002).

¹⁸ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).

¹⁹ For a thorough and up-to-date compilation of existing state laws and pending legislation drafted to address the housing needs of victims of domestic violence, see National Law Center on Homelessness & Poverty, *State Laws and Legislation to Ensure Housing Rights for Survivors of Domestic and Sexual Violence*, available at http://www.nlchp.org/content/pubs/DV_Housing_State_Laws_Feb%20_20081.pdf.

²⁰ D.C. Code § 2-1401.01-.12 (2007); 820 Ill. Comp. Stat. 180/30 (2006); Ind. Code Ann. § 32-31-9(1)-(15) (2007); N.C. Gen. Stat. § 42-42.2; Or. Rev. Stat. § 659A.431(4) (2007); R.I. Gen. Laws §§ 34-37-1, -2, -3, -4 (2006); Wash. Rev. Code § 59.18.580 (2006); Wis. Stat. Ann. § 106.50 (2006).

²¹ R.I. Gen. Laws §§ 34-37-1, -2, -3, -4 (2006).

²² Johnson, *supra* note 3, at 1877.

²³ The tenant must give notice to the landlord in writing and the request to terminate the rental agreement must be within ninety days of the act giving rise to the protection order or report. A landlord may not discriminate against an individual because he or she has terminated a lease under this provision. Wash. Rev. Code Ann. § 59.18.575 (2006).

²⁴ Colo. Rev. Stat. § 13-40-104(2006); D.C. Code § 42-3505.01(2007); Minn. Stat. § 504B.285 (2006); Wash. Rev. Code Ann. § 59.18.580; Colo. Rev. Stat. Ann. § 13-40-107.5(5)(B)(I) (2006); Iowa Code §§ 562A.27A, 562B.25A(3) (2006); LA. Rev. Stat. Ann. § 40:506(D)(2006); N.M. Stat. Ann. 47-8-33(J)(2006); Or. Rev. Stat. § 659A.431(4)(2007); VA Code Ann. § 55-248.31 (2006); VA Code Ann. § 55-248.31(2006); Wash. Rev. Code

Ann. § 59.18.130(8)(B)(II)(2006).

²⁵ Ark. Code Ann § 18-16-112(C)(3)(A)-(B); Ind. Code Ann § 32-31-9(14)(2007); N.Y. Real Prop. Law § 227-C(2)(C)(II)(B); Or. Rev. Stat. § 659A.431(4); Or. Rev. Stat. § 90.456.

²⁶ N.Y. Real Prop. Law § 227-C(2)(C)(II)(B). The Court can also sever a co-tenancy if individuals other than the victim and perpetrator are tenants.

²⁷ Or. Rev. Stat. § 659A.431(4); Or. Rev. Stat. § 90.456.

²⁸ Ark. Code Ann § 18-16-112(C)(3)(C); Ind. Code Ann. § 32-31-9(1)-(15)(2007); Mont. Code Ann. § 45-5-206(5)(2007).

²⁹ According to the 2007 Domestic Violence Fatality Review Commission Report, in the last twelve years 49 percent all Vermont homicides can be linked to domestic violence. When the data includes suicides, the percentage increases to 61 percent. Troy, *supra* note 11.

