




WELCOME TO THE VAP PRO BONO COLLABORATIVE ECHO

SESSION 3
11/30/2023

Landlord Tenant
Process Essentials for
Low Income Clients

Agenda



 **Introductions** - Zac Addison, Esq., NMLA VAP Project ECHO Coordinator

 **Announcements for Session:** Zac Addison, Esq.

 **Topic Presentation: Landlord Tenant Process Essentials for Low-Income Clients**

 **Topic Presenter:** Riley Masse, Esq., Housing Stability Manager, New Mexico Legal Aid

 **Case Analysis and Q&A:** Riley Masse, Esq.

 **Overview & Closing Remarks:** NMLA Volunteer Attorney Program

I. LAWS APPLICABLE TO NEW MEXICO RESIDENTIAL TENANCIES

- Uniform Owner Resident Relations Act (UORRA)
- HUD law and regulations
- USDA rural housing law and regulations
- U.S. Internal Revenue Code (LIHTC)
- Violence Against Women Act (VAWA)
- Fair Housing Act
- CARES Act
- New Mexico Human Rights Act
- Local human rights ordinances
- Local municipal codes



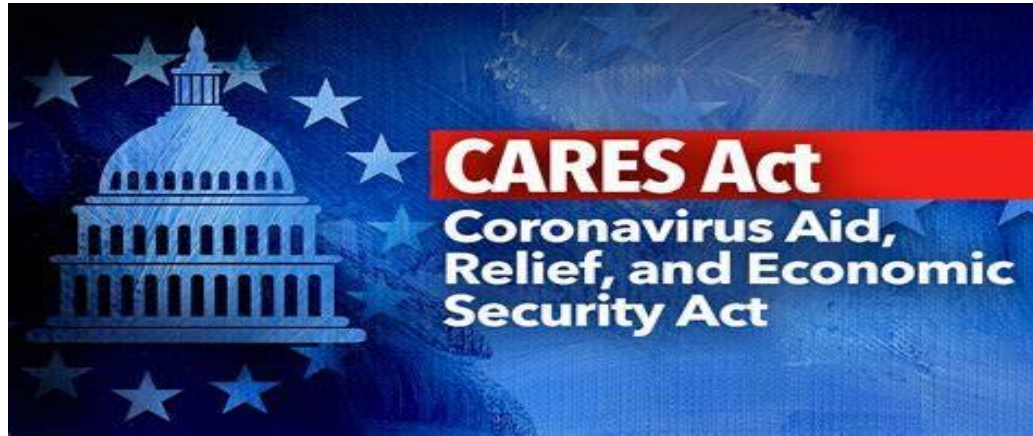
UORRA Pre-Termination Notices (cont'd)

- SUBSTANTIAL VIOLATION - NMSA 47-8-3(T) and -33(I)
 - 3 days with **NO** right to cure
 - 7 discrete violations (see 3-Day Notice form)
 - Not a substantial violation if:
 - Tenant herself did not do it or consent to it
 - Oral threats, without more, are not substantial violations
- END OF TERM – NMSA 47-8-37
 - 30-day notice
 - No cause needed
 - Does not apply to HUD multifamily, public housing, USDA, LIHTC
 - Must be given 30 days before next rent due date. If given later, the termination date is end of the following month.

UORRA Pre-Termination Notices (cont'd)

- Owner must wait until notice period expires before filing suit
- If last day for tenant to vacate or cure falls on a weekend or holiday, the tenant has until the end of the next business day to vacate or cure.
- Calendar days vs. business days?
- Judges are required to dismiss prematurely filed restitution petitions and require owner to re-file
- Grounds for eviction are limited to those listed in a proper pre-termination notice

III. CARES Act Notice



- Moratorium expired July 2020
- “Covered Properties” to provide 30 days’ notice before evicting for nonpayment.

Supplemental Guidance to the Interim Final Rule “Extension of Time and Required Disclosures for Notification of Nonpayment of Rent”, PIH 2021-29, at 2 (Oct. 7, 2021)

Covered Properties:

- Subject to VAWA Protections
 - Public housing
 - Section 8
 - Continuum of Care
 - HOME
 - HOPWA
 - HUD Multifamily
 - USDA
 - LIHTC
- Federally backed
 - Mortgages
 - Multifamily mortgages

V. Repairs NMSA 47-8-27.2

- Tenant gives written notice
- Landlord must repair within 7 days



- If repair not completed within 7 days tenant may withhold (abate):
 - 1/3 of daily rent from date of notice until repair completed
 - Subsidized properties = 1/3 of TOTAL rent (not just tenant portion)
 - 100% Abatement if:
 - unit is uninhabitable AND
 - tenant vacates until repair completed
- Tenant may not abate for an amenity

VI. Right of Entry – NMSA 47-8-24

- Owner's Notice of Intent to Enter:

- 24 Hour Written Notice
- Purpose of Entry
- Date & reasonable estimate of timeframe
 - "8am to 5pm" is not a reasonable timeframe
- If tenant proposes alternative times and dates, owner shall attempt to reasonably accommodate

- No Written Notice required:

- Entering within 7 days of repair request
 - Accompanied by public official or utility co. representative
 - Emergency
- "The owner shall not abuse the right of access."

VII. Fair Housing Laws

• Owners of 4+ Units:

- May not discriminate based on race, gender, national origin, disability
- Must reasonably accommodate Tenant with disability
- May request letter from doctor verifying non-obvious disability & nexus with requested accommodation
- Interactive process

• Examples of Reasonable Accommodations:

- Rent due date to coincide w/ benefits receipt date
- Extra BR for live-in caregiver or medical equipment
- Disregard violation that is due to tenant's disability
- Service animals (dog or miniature horse, trained)
- Companion animals (any animal, no training)

VIII. Albuquerque's New Source of Income (SOI) Ordinance

- Amends ABQ HRO to bar discrimination in sale or rental of housing based on SOI https://www.cabq.gov/clerk/documents/c_s-o-22-16.pdf
 - SOI includes wages, benefits, vouchers
 - Landlord may not: refuse to accept vouchers, set higher rent or security deposit based on tenant's SOI, exclude benefits or voucher payments from minimum income calculations
 - Landlord may set rent higher than PHA payment standard (if uniform with non-voucher tenants) or reject voucher tenant if PHA does not perform HQS inspection within 5 business days
 - Does not apply to buildings with 1-4 units if one is owner-occupied
- Penalties: Section 1-1-99: up to \$500 and/or up to 90 days in jail
- Federal law already requires LIHTC owners to accept vouchers

IX. Domestic Violence

VAWA:

- Applies to LIHTC, HUD-subsidized, USDA-subsidized tenancies
- In most cases, bars eviction or subsidy termination of victim for incident directly related to domestic violence
- All termination notices must be accompanied by VAWA notice of occupancy rights
- Provisions on transfer and confidentiality



UORRA – NMSA 47-8-33(J):

- Bars eviction of the victim for DV incident if tenant gets DV order of protection.
- In all other circumstances where DV raised as defense, judge has discretion not to evict.

X. The Court Process

- After notice expires, LL files Petition for Restitution (Mag./Metro Ct where rental located)
- Court sets hearing 7-10 days after service of summons (or longer)
- Trials are usually remote (Zoom or phone) in Bernalillo County Metro Court (Other courts may vary)
- Exhibits?
- If landlord wins: court may enter judgment for restitution, including
 - Writ of restitution/eviction order to sheriff in 3 to 7+ days
 - Rent, utilities and court costs
- For damage issues (deposit, damages) – either party can ask for a damages hearing on later date
- Appeal: stays execution of the writ of restitution
 - Tenant must pay post-judgment rent as it comes due during appeal

XI. Subsidized Housing Considerations

- No Cause Evictions Prohibited
 - Applies to most site-based subsidized programs
 - Public Housing
 - USDA Rural Housing
 - LIHTC
 - HUD Multifamily (Examples: 202, 811, PRAC, project-based vouchers, other project-based programs)
- UORRA 47-8-37 does not apply!!!

XII. Public Housing Evictions

- UORRA Petition for Writ of Restitution
 - Notice periods differ
 - Nonpayment: 14 days
 - Other Grounds: 30 days
- Typical Grounds:
 - Nonpayment
 - Unreported income
 - Unauthorized household members
 - Violation of Housing Quality Standards (HQS)
 - “Drug-related criminal activity,” violent crime, other crime affecting health, safety or welfare of other residents.
- Tenant has right, but not obligation, to:
 - Request pre-termination grievance hearing
 - Review resident’s file at PHA (Always do both)
- If nonpayment, ask for repayment plan at hearing



XII. Public Housing Evictions (Cont.)

- PHA may file action for restitution under UORRA if resident loses or does not request hearing
- Defenses:
 - City of Albuquerque v. Brooks (a court may use equitable powers to deny restitution & set up a payment plan)
 - PHA failed to grant timely requested grievance hearing
 - Improper/untimely notices
 - ACOP
 - UORRA defenses



XIII. Eviction from Section 8 Housing

- Private landlord may evict by Writ of Restitution (UORRA)
- Payment plan under City of Albuquerque v Brooks and Serna v. Gutierrez
- Owner may not evict for non-payment by PHA. See 24 CFR 982.310(b) and HAP Contract
- Tenant Document Requests:
 - Request ledger from owner
 - Review client's file at PHA / IPRA
 - Get HAP contract and rent determination letter(s)
 - HAP contract supersedes lease
 - Tenancy Addendum is enforceable by resident
 - Rent amount and owner/resident responsibility for utilities. If lease conflicts with HAP on these terms, may give rise to defense by resident and/or federal False Claims Act claim. (*Do not raise this in eviction case.*)

XIII. Eviction from Section 8 Housing (Cont.)

- Eviction = loss of voucher
- Better Plan:
 - Resident agrees to:
 - Move in lieu of eviction
 - Request Transfer Voucher (especially for non-rent issues)
 - Parties sign mutual lease rescission, or
 - Judge enters order terminating lease by mutual agreement of parties and reserving \$\$ issues.
- Defenses:
 - Tenant is not liable for nonpayment by PHA (PHA has abated rent due to habitability, etc.)
 - Landlord failure to send termination notice to PHA
 - Improper charges (late fees on non-rent items, charges in violation of HAP contract)

XIV. PHA Termination of Section 8 Voucher

- Resident property interest in voucher entitled to due process protections under US and NM Constitutions.
Goldberg v. Kelly, 397 U.S. 254 (1970)
- Written Notice of Termination Required:
 - Reasons for termination
 - Right to pre-termination hearing & deadline to request
 - Right to view file
 - Right to counsel
 - See 24 CFR 982.555(c)(2)
- Grounds for termination:
 - “Serious or repeated violation of lease”
 - Drug-related criminal activity
 - Violent crime
 - Other criminal activity affecting health, safety or peaceful enjoyment of other residents.
 - Failure to Report:
 - Change in Income
 - Household Composition
 - Unauthorized resident
- Read Admin. Plan

XIV. PHA Termination of Section 8 Voucher (Cont.)

- Right to Pre-termination Hearing (“informal hearing”)
 - Right to counsel
 - Preponderance of evidence
 - Hearsay *might* be admissible
 - Can termination be based solely on uncorroborated hearsay?
 - Some cases say hearsay must have indicia of reliability
 - New Mexico – hearsay “residuum rule”
 - Admin Plan might say that hearsay is admissible, but cannot be sole basis for decision.
- Appealing a Termination
 - Petition for Writ of Certiorari to District Court NMRA 1-075
 - On the record review
 - 30 days to file
 - Motion to Stay Agency Decision Pending Review NMRA 1-075(Q)
 - Advise client to continue paying her portion of rent during appeal

XIV. PHA Termination of Section 8 Voucher (Cont.)

Appealing a Termination:

- Complaint for Damages, Declaratory Judgment & Injunction
- In state or federal district court
- Available after the 30-day deadline of NMRA 1-075 (i.e., if client did not receive notice of termination)
- Section 1983 and 1988 (attorney fees)
- Motion for TRO & Preliminary Injunction (to continue rent payments pending a final order)
- Advise client to keep paying her portion of the rent (clean hands)
- Is there a requirement that tenant go through writ of cert appeal process first?



Case Presentation



JUDICIAL DISTRICT: Bernalillo County Metropolitan Court (2nd JD)



LEGAL ISSUE: Petition for Writ of Restitution based on nonpayment of rent

Factual Summary

- Client has a Section 8 voucher: her portion of the rent is \$126, while the housing authority pays \$1825.00 per month. + ●
- Client signed a lease agreement with landlord in September 2023, and the Housing Assistance Payment (“HAP”) contract was signed by landlord and the housing authority at the end of September. ○
- Client has timely paid her portion of the rent for October 2023 and November 2023, but landlord did not accept November rent.
- There are no outstanding repair issues.
- The housing authority made payments to the landlord, but then recouped the payments due to an unrelated debt landlord owed to the housing authority.

PROCEDURAL SUMMARY

- Landlord served a three-day notice of nonpayment on Thursday, November 2 alleging the following amounts owed:

by failure to pay rent as due as follows:

Rent

Rent for October 2023	\$1,825.00
Late Fee for October 2023	\$ 190.00
Rent for November 2023	\$1,951.00
Late Fee for October 2023	\$ 190.00
Total Amount Due	\$4,156.00

Notice was served by regular mail and texting.

- The Petition for Restitution was filed on Monday, November 6, seeking possession and a money judgment of \$4156, plus costs.
- What are the defenses?



The Next Session

Thursday, January 25, 2024

11:30 am-1:00 pm

Topic: Empowering Family Law
Clients: Income Tax Perspective

Part 1 of 3-Part Family Law/Income
Tax Series on 4th Thursdays



Upcoming Pro Bono Opportunities

- **Teleclinic:** January 25, 2024, 1:00 – 4:00 PM



THANK YOU FOR JOINING THE VAP PRO BONO COLLABORATIVE ECHO!

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Topic Presenters:

Riley Masse, Esq., Housing Stability Manager, NM Legal Aid +

Case Presenter:

Riley Masse, Esq., Housing Stability Manager, NM Legal Aid

Facilitated By:

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