



**VOLUME 3, ISSUE 1**

**Serving Bucks, Chester,  
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Counties Since 2001**

**Mission**

Our mission at LASP is to provide quality legal representation to low-income people, to empower them to solve problems without legal representation through legal education and increased access to the courts, and to change community practices and systems that cause or aggravate poverty.

**David Bennethum, Esq.**  
Editor

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## **Legal Aid Works with Bucks Co. Landlords**

Legal Aid recently participated in the third workshop for Bucks County landlords held in recent years. The breakfast presentation was held at the Bristol Township Building and sponsored by the Bucks County Fair Housing Committee. In addition to a presentation by David Bennethum, managing attorney of Legal Aid's Bristol office, it also included presentations given by the Honorable District Justice Joseph P. Falcone, Jim Berry of the Fair Housing Council of Suburban Philadelphia and Bristol Township Code Enforcement officers.



The turnout for the workshop was excellent, with nearly 50 landlords in attendance. The presenters offered practical advice on a variety of topics related to housing and landlord and tenant law. Prior to the workshop the landlords had requested that the workshop include information on security deposits, a landlord's duty concerning personal property left behind by tenants, prohibited lease clauses, and liability for dangerous conditions. Legal Aid addressed each one of these topics in turn and provided each landlord with a packet containing detailed information on these issues and a model residential lease. Jim Berry gave an overview of the Fair Housing Act and other laws covering fair housing.

Landlords in attendance included both managers of large commercial apartment complexes and small proprietors with one or two rental units. Following the formal presentations, the group of landlords enthusiastically participated in the Q&A session and asked for contact information for follow-up advice and information.

Legal Aid looks forward to participating in future workshops with landlords and invites those interested to contact David Bennethum, Esquire of the Bristol office at 215-781-1111.



## **PA Case Addresses Reasonable Accommodation as Defense to Eviction**

The Superior Court of Pennsylvania recently addressed a reasonable accommodation defense under the Fair Housing Act (FHA)—an issue of first impression in Pennsylvania. A tenant was facing eviction by the Lebanon County Housing Authority (LCHA) for failure to meet the housekeeping requirements of her lease. The issue in this case was not whether she actually violated the lease, but whether she could prove that she deserved a reasonable accommodation for her disability, depression.

The Superior Court ruled that the lower court was wrong in finding that the Authority didn't know or shouldn't have known of the tenant's disability. It found that the tenant did make a clear and reasonable accommodation request, asking for time to get therapy to help her with housekeeping issues and for the LCHA's guidance in their housekeeping requirements. The court further held that the LCHA had a duty to "promptly respond" to the tenant's request for reasonable accommodation if they found it unclear, and in so doing to determine if the accommodation requested was indeed reasonable under the circumstances.

Under the FHA, evidence is admissible up to the day of trial if the tenant involved is still living in the residence, i.e. not actually evicted. Also, for purposes of showing a need for reasonable accommodation, lay people can testify to a tenant's mental health.

The case was sent back to the trial court so that the tenant could present the evidence that was wrongfully excluded. If the next trial court holds that all elements are present, the tenant will be able to remain at her residence, with reasonable assurances that she will comply with the lease in the future.

### What is Reasonable Accommodation?

**A reasonable accommodation is a change or waiver of rules, policies, practices, or services, which is necessary for the disabled individual to have an equal opportunity to use and enjoy a dwelling. Under the FHA, a refusal to make reasonable accommodations is considered discrimination against the disabled.**

**For a person to use a reasonable accommodation as a defense to a claim against her, she must prove five elements:**

- that she has a handicap/disability,
- that the landlord knew or should have known of the disability,
- that an accommodation may be necessary for her use and enjoyment of the dwelling,
- that she had requested a reasonable accommodation, and
- that the landlord refused to grant it.



## Drug Addiction and the Fair Housing Amendments Act

The definition of a “handicap” according to the FHAA includes specific exclusions related to illegal drugs. It is unclear whether these exclusions apply to those recovering from drug addiction.

Are recovering drug or alcohol addicts covered by the protections of the Fair Housing Amendments Act (FHAA)? Courts have struggled in such cases. Those seeking protection under the FHAA for a disability must meet the definition of “handicap” under the Act. This requires a “physical or mental impairment which substantially limits ... major life activities”, a “record of having such an impairment”, or “being regarded as having such an impairment.”

However, the definition includes specific exclusions related to illegal drugs. People who have been convicted of “the illegal manufacture or distribution of a controlled substance” are not protected, nor are people with “current, illegal use of or addiction to a controlled substance” (known as the *current use exception*).

It is unclear whether this second exclusion applies to those recovering from addiction, including those in rehabilitation programs.

The Americans with Disabilities Act (ADA) explains that the term “handicap” may apply to those who have completed a drug rehabilitation program or who have otherwise been rehabilitated, those who are currently participating in a program, and those who are wrongly regarded as using drugs. With the “current use exception,” a person participating in a rehabilitation program while also using drugs would not be protected by the FHAA. But a person who previously used should, after a period of not using drugs and after rehabilitation of some sort, no longer be considered an “addict” under the FHAA.

In *U.S.A v. Southern Management Corp.*, a federal circuit case, an apartment complex corporation refused to rent to participants in a treatment program who had not been using for at least one year. The court held that the corporation’s negative reactions to the participants’ impairment could limit the participants’ abilities to rent an apartment, even if the participants did not have actual mental or physical limitations. Therefore, the participants were handicapped because they were regarded as having an impairment.

An ADA case held that the current use exclusion would prevent protection of former users in rehabilitation if their use was too “current.” “Current” could include use in past months, depending on whether the use was recent enough to suggest a real and ongoing problem. Another FHAA case held zoning ordinances that prevented recovering addicts from living in residential areas to be discriminatory under the Act.

*Legal research and writing for this Fair Housing newsletter was done by Meghan Anderson, a second year law student at Penn State Dickinson School of Law. She is working with Legal Aid this summer with the support of an IOLTA (Interest on Lawyer Trust Accounts) Fellowship.*





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W 1-3:30pm

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Doylestown, PA 18901  
215-340-1818  
Walk-ins:  
M-F 8:30am-4:30pm

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## ***Mortgage Foreclosure Diversion Program starts in Bucks County***

A new pilot program to help Bucks County homeowners facing mortgage foreclosure launched the week of July 6. Bucks residents served with mortgage foreclosure papers will now also receive an “urgent notice” announcing a free program that could help them stay in their homes. They will be directed to the Home Hotline, 866-760-8911, where they will get information about meeting with a counselor and applying for a pro bono attorney. At their request they will have a conference scheduled with the mortgage lender overseen by a court appointee.

The goal is to avoid mortgage foreclosure by working out a plan for the borrower to be able to keep her home. Legal Aid will train and assign volunteer attorneys and is also able to provide help through its Don't Borrow Trouble helpline, 1-888-275-8843.

## ***Need Legal Help? Call Us!***

Legal Aid of Southeastern Pennsylvania provides free legal advice and representation to eligible low-income clients on a variety of civil matters. The primary issues handled by LASP include, but are not limited to: custody, Chapter 7 bankruptcy, employment law, protection from abuse for plaintiffs, landlord/tenant law, welfare benefits, Social Security, public housing and elder law issues.

***If you need legal help, the first step is to call the LASP toll-free Helpline at 1-877-429-5994 (Monday through Friday, 9am-1pm).***

During your first call, an intake worker will determine if you are eligible for our services and if your legal problem is one that we handle. The degree of assistance LASP provides is determined on a case-by-case basis.