Legal Aid Services of Oregon
& Oregon Law Center

A Safe Place to Live.

Housing Rights for Domestic Violence, Sexual Assault, and Stalking Victims.

Prepared by Legal Aid Services of Oregon and the Oregon Law Center. This information is current as of December 2016. For copies of this pamphlet or more information about the law, contact your local legal aid office or go to our website at **www.oregonlawhelp.org**. This pamphlet is for general education use only. It is not a substitute for the advice of an attorney. If you have specific legal questions, you should contact an attorney. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice or grant-making component. This project was supported by Award No. VOCA-OT-2016-LASO-00069 awarded by the Office for Victims of Crime, Department of Justice.

Basic housing rights for victims in Oregon

If you are a victim of domestic violence, sexual assault, or stalking you have the following rights:

- **You can end your lease early to move to safety;**
- **You can ask your landlord to terminate the tenancy of the abuser without terminating your tenancy;**
- **You can change your locks for safety;**
- **Your landlord cannot treat you differently because you (or your children) have been the victim of domestic violence, sexual assault, or stalking; and**
- **You cannot be held responsible for property damage caused by an abuser during a domestic violence incident.**

Early termination of your lease

If you (or a child living with you) have been the victim of dating or domestic violence, sexual assault or stalking within the last 90 days, or if you have a current protection order, you can end your lease or rental agreement with 14-days written notice. Any time the abuser was incarcerated or residing more than 100 miles from your home does not count as part of the 90-day period.

Breaking your lease early because of abuse

1. Make a request to your landlord in writing (See Sample Letter 1 on page 7); and
2. Provide the landlord with documentation showing that you were the victim of domestic violence, sexual assault or stalking within the last 90 days, or have a current protection order.

Documentation of abuse

Any of the following documents can be used to prove to your landlord that you were the victim of abuse:

- A copy of a court protective order, such as a restraining order, stalking order, emergency protective order, or criminal no contact order;
- A copy of a police report showing that you or a child living with you has been the victim of dating or domestic violence, sexual assault, or stalking;
- A copy of a conviction for an act of dating or domestic violence, sexual assault, or stalking; **OR**
- A statement from a law enforcement officer or other qualified third party (attorney, licensed health professional or victim advocate) stating you have reported an act of dating or domestic violence, sexual assault, or stalking (*See Sample Letter 2 on page 8).*

Removing other household members from your lease

You can also end the tenancy of immediate family members that live with you so they can also move. Immediate family members include:

- an adult who is related by blood, adoption, marriage or domestic partnership;
- your boyfriend or girlfriend;
- the other parent of your child; and
- grandchildren or foster children.

You should include the names of other household members who will be moving with you in your written request for early termination of your lease.

No fees allowed for early termination

If you provide your landlord with the proper notice and documentation, you are only responsible for rent up to the termination date given in your notice. Your landlord cannot charge you a lease break fee or any other fee for breaking your lease due to abuse.

Security deposits

Your security deposit will not be refunded until all the remaining tenants move out. If you cannot afford the security deposit at a new rental unit, you may want to contact your local Department of Human Services Self-Sufficiency office to see if you qualify for Temporary Assistance for Domestic Violence Survivors (TADVS). TADVS provides temporary financial assistance for families fleeing domestic violence situations.

Responsibility for rent payments & damage

You are not responsible for rent or for additional damage that occurs after your termination date. You are

also not responsible for damage that occurred prior to your move-out if the damage was related to abuse. However, you do need to provide your landlord with verification of your abuse (see "Documentation of abuse" on page 2).

If possible, document the condition of the rental unit when you move out by taking photos and making notes of any existing property damage. You can also ask a friend to do a walk through with you so that you have a witness who can speak to the condition of the unit when you moved out.

If a tenant, who lives with you, commits a criminal act of physical violence against you, your landlord may terminate the abuser's tenancy without terminating yours.

Termination of the abuser's tenancy

Termination of abuser's tenancy by landlord

If a tenant, who lives with you, commits a criminal act of physical violence related to dating or domestic violence, sexual assault, or stalking against you, the landlord may terminate the abuser's tenancy without terminating yours.

Your landlord must give 24 hours written notice of termination to the abuser and file an eviction if the abuser does not move out.

Termination of abuser's tenancy by restraining order

If you live with your abuser, you may be able to get them out of your home by obtaining either a Family Abuse Prevention Act (FAPA) or Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) restraining order. For more information on obtaining a restraining order, visit *OregonLawHelp.org* or contact your local legal aid office for advice.

As part of your restraining order, you can request that the judge order your abuser to move out of your residence if:

- The rental agreement is solely in your name;
- The residence is jointly rented by you and the abuser; **or**
- You are married to the abuser.

If this provision is included in your restraining order, the abuser's tenancy is automatically terminated once the restraining order becomes "final." A restraining order is considered final if the abuser fails to request a hearing within 30 days or if the order is upheld by a judge after a contested hearing.

Responsibility for rent and damage

The abuser and all other tenants on the rental agreement are responsible for rent *prior* to the termination of the abuser's tenancy. After the abuser moves out, you and any remaining tenants are responsible for paying rent.

The abuser and co-tenants also share responsibility for any property damage that occurred to the unit during the tenancy—unless the damage was caused by the abuser and was related to abuse. If the property damage was caused by the abuser, you will need to provide your landlord with verification of your abuse (see "Documentation of abuse" on page 2). Any property damage that occurs after the abuser moves out is the responsibility of the remaining tenants.

No fees allowed for early termination of an abuser's lease

The landlord may not require the remaining tenants to pay additional money, such as a higher security deposit or increased rent, as a result of the abuser moving out.

Changing your locks

Changing the locks if the abuser doesn't lives with you

If the abuser does not live with you, your landlord must promptly change your locks or allow you to change

your locks if you notify your landlord that you (or a child living with you) are a victim of dating or domestic violence, sexual assault or stalking and that you want your locks changed. Written notice is best. *(See Sample Letter 3 on page 9.)* You do not need to provide your landlord with proof of the abuse to have your locks changed.

Changing the locks if the abuser lives with you

If the abuser is on your rental agreement, before you or the landlord may change the locks, you must provide the landlord with a copy of a FAPA restraining order or any other court order that requires the abuser to move out of the rental unit. Once your landlord receives this information and your request to change the locks, he/she must promptly change your locks or allow you to change your locks.

Changing the locks if landlord fails to act

If your landlord takes too long or refuses to change your locks, you can change the locks on your own, but you must provide a copy of the new key to the landlord.

Responsibility for cost of changing the locks

You are responsible for the cost of the new locks. The landlord should not require you to pay the cost before the locks are changed.

Allowing the abuser access to the rental unit after termination of their lease

Once your locks are changed, the landlord should not give the abuser access to the rental unit unless ordered by a court—even if the abuser's personal property remains in the unit.

Unlawful discrimination

A landlord may not treat you differently because you are or have been a victim of domestic violence, dating violence, stalking, or sexual assault. Your landlord may not have different rules or standards for you because you are a victim.

A landlord is not allowed to deny your application, evict you, threaten to evict you, increase rent, decrease services, or fail to renew your lease:

- Because you or your child have been a victim (present or past);
- Because of a violation of the rental agreement caused by an incident of domestic violence, dating violence, sexual assault, or stalking;
- Because of criminal activity or police response related to domestic violence, dating violence, stalking, or sexual assault where you or your child are the victim; **or**
- Because of a bad landlord reference caused by having been a victim of, or an incident of, domestic violence, dating violence, stalking, or sexual assault.

Remember, you can still be evicted for unrelated violations of your rental agreement.

When you can be evicted for abuse

In rare situations, your landlord may lawfully evict you for conduct related to domestic violence, sexual assault, or stalking in which you were the victim. In order for your landlord to do this, the following requirements must be met:

1. The landlord gave you a written warning about the actions of the abuser relating to domestic violence, sexual assault, or stalking; **and**
2. You either:
   - Permitted the abuser to remain on the premises and the abuser is an actual and imminent threat to the safety of others on the premises; **or**
   - Allowed the abuser to live with you without your landlord's permission.

What to do if you experience unlawful discrimination

If you were subjected to unlawful discrimination, you may sue your landlord for money damages. Unlawful discrimination is also a defense to eviction. You should contact an attorney to discuss your rights. If you cannot afford an attorney, contact your local legal aid office (visit *oregonlawhelp.org* to find your local office).

Confidentiality requirement for landlords

In general, landlords are prohibited from disclosing any of the information you tell them about your abuse. The only time a landlord can disclose this information is if:

- You consent to the disclosure in writing;
- Disclosure is required for use in an eviction proceeding; or
- The disclosure was required by law (for example the landlord's records are subpoenaed or there is a court order that requires disclosure)

Housing rights for victims living in subsidized housing

The Violence Against Women Act (VAWA) provides additional protections for victims (regardless of their gender) of domestic or dating violence, sexual assault, and stalking who live in subsidized housing.

Subsidized housing defined

In order to receive the protections of VAWA you must be living in federally-subsidized housing. This includes the following types of housing:

- Private housing paid for by a Section 8 voucher
- Project-based Section 8 housing
- Supportive Housing for People with Disabilities
- Supportive Housing for the Elderly
- Low-Income Housing Tax Credit properties
- USDA Rural Housing properties

If you're not sure what type of subsidized housing you live in, but you think your rights have been violated, you may want to contact your local legal aid office for advice (see *OregonLawHelp.org* for a directory).

Additional VAWA protections

VAWA protections mirror many of the previously discussed housing rights for victims of abuse. However VAWA provides some additional protections for survivors living in subsidized housing.

Notice of rights

A Public Housing Authority (PHA) must provide you with notice of your rights under VAWA when you apply for housing, are accepted as a tenant, and when you are threatened with eviction or termination of your housing benefits. Failure to provide you with this notice may be a defense to eviction.

"Actual and imminent threat" requirement

A PHA or landlord may not terminate your housing assistance simply because you have been the victim of domestic violence, dating violence, sexual assault, or stalking. You can only be evicted due to abuse if the landlord or PHA can show there is an "actual and imminent threat" to other tenants or staff. This means it must be likely that (1) real physical danger will occur very soon, (2) that will result in death or serious bodily harm, and (3) there is no other option that would reduce or eliminate the threat.

Emergency transfers

Under VAWA, PHAs must also allow survivors to transfer to a new and safer unit under the same housing program. To get an emergency transfer you must:

- Expressly request the transfer (in writing), **and**
- Either:
  - ☐ Reasonably believe that there is threat of imminent harm from further violence if you remain in the unit, **or**
  - ☐ Have been the victim of sexual assault in the unit in the 90 days prior to the request.

The PHA is required to keep the details of your transfer confidential so that the abuser does not learn the location of your new unit.

If the abuser was the sole tenant eligible for housing assistance, the PHA or landlord must provide you with an opportunity to establish eligibility for housing assistance or provide you with a reasonable time to move.

Special protections for Section 8 Housing Choice Voucher holders

VAWA provides additional protections for victims of abuse who have a Section 8 Housing Choice Voucher:

- If your PHA prohibits moving during the first year of your tenancy, there is an exception under VAWA if the move is necessary to keep you safe from abuse.
- If you are no longer living with a family member whose name is on your voucher because of abuse, you can request that the voucher be transferred to your name.

Proving eligibility for VAWA protection

If you assert any of your rights under VAWA, your landlord or PHA is allowed to ask for documentation. In addition to the methods mentioned in the "Documentation of abuse" section on page 2, you can also use a form provided by your PHA called "Certification of domestic violence, dating violence, sexual assault, or stalking." It's important to note that if you use this form, your PHA cannot require you to provide additional documentation of abuse, such as police reports or a protective order.

Sample Letters

Sample Letter 1: 14-Day Notice to Landlord to Terminate Lease

(Date)

Dear _____ (landlord's name):

I am a tenant at _____ (your address). I (or a minor child who lives with me) am (choose one):

- ❑ a victim of dating or domestic violence, sexual assault or stalking within the past 90 days, not counting any time the abuser was in jail or was living more than 100 miles away, **or**
- ❑ a victim of dating or domestic violence, sexual assault or stalking and am currently protected by a restraining order

Pursuant to the Oregon Residential and Landlord Tenant Act (ORS 90.453), this is my 14-day notice to end my rental agreement on _____ (enter a date 14 days from today if you are personally delivering the notice to your landlord and a date 17 days from today if you are mailing the notice to your landlord).

Enclosed is (choose one):

- ❑ a copy of my protective order;
- ❑ a copy of a police report showing that I (or a minor child who lives with me) was the victim of an act of dating or domestic violence, sexual assault or stalking;
- ❑ a copy of a conviction for an act of dating or domestic violence, sexual assault or stalking; **or**
- ❑ a statement from a law enforcement officer or other qualified third party.

The following qualified household members will be ending their rental agreement along with me: _____(list names of qualified household members moving with you).

Please refund my deposit to the following address: _____.

Thank you,

(Your name)

Sample Letter 2: Qualified Third Party Verification

_____ _____

(Name of Qualified Third Party) (Name of Tenant)

Part 1: Statement by Tenant:

1. I, (or a minor member of my household) have been a victim of domestic violence, sexual assault, or stalking.
2. The most recent incident(s) that I rely on in support of this statement occurred on the following date: _____.
3. The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. (If applicable): The perpetrator was incarcerated from _____ to_____. The perpetrator lived more than 100 miles from my home from _____ to_____.
4. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____ _____

Signature of Tenant Date

Part 2: Statement by Qualified Third Party:

I, _____ , (name of qualified third party), do hereby verify as follows:

1. I am a law enforcement officer, attorney, licensed health professional or victim's advocate.
2. My name, business address, and business telephone are as follows:
   _____
3. I verify that the person whose signature is listed above has informed me that the person (or minor member of the person's household) is a victim of domestic violence, sexual assault, or stalking, based on the incidents listed above.
4. I reasonably believe the statements of the person above. I understand that this document may be used as a basis for gaining release from a rental agreement with the person's landlord.
5. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____ _____

Signature of Qualified Third Party Date

Sample Letter 3: Request to Change Locks

(Date)

Dear (landlord's name):

I am a tenant at _____ (your address). Pursuant to the Oregon Residential and Landlord Tenant Act ORS 90.459, I request that you promptly change the locks to my unit because I am a victim of dating or domestic violence, sexual assault, or stalking.

(Only include this section if the abuser is on the lease. If you are the only tenant on the lease you do not need to provide verification of the violence): Enclosed please find a copy of the restraining order that orders the abuser out of the dwelling unit ("ouster"). You may not give a new key to the abuser. You also may not allow the abuser back into the unit to collect his personal effects unless there is a court order requiring you to do so.

Please change my locks by _____ (date). If the locks are not changed by this date, I will change the locks myself and provide you with a key.

Thank you,

(Your Name)