

RECOVERY

The official newsletter of the RCORP Rural Center of Excellence on SUD Recovery at the Fletcher Group



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GET IT IN WRITING

by Founder and Chief Medical Officer Dr. Ernie Fletcher

Though a rural recovery home may feel more like a family unit than a business, operators are still subject to many of the same federal and state laws that govern landlords and tenants.

In our July 11 webinar, Brandon Pauley, partner with the law firm Brett Amanda Diamond in Columbus, Ohio offered a variety of practical tips to help operators protect themselves from the legal jeopardy that can ensue from landlord/tenant conflict.

Though by no means a substitute for professional legal advice, Pauley's insights—condensed here in the 52nd issue of our monthly newsletter—are meant to provide recovery home operators with a kind of 'North Star' for understanding their legal rights and responsibilities so that the residents they serve can continue on a successful path to recovery as amicably, harmoniously, and efficiently as possible.

LANDLORD/TENANT BASICS

If there's one rule in tenant/landlord interaction it's this: write it down.

"I've seen all sorts of situations that degrade into something you don't want to have to deal with," says recovery housing advisor Brandon Pauley. "The only thing that protects you from a 'he said, she said' misunderstanding that can get you into legal hot water is having everything—lease agreement as well as policies and procedures—all written down and signed." One example: House rules are legally unenforceable if not written down and acknowledged.

How To Start

Whether it's a lease agreement or a resident handbook, begin with a clear and compelling description of your recovery home and what it provides. Include location, the names of all parties, NARR level, and house rules. The latter can appear either within the lease agreement or as a second, clearly referenced document that should be signed by the resident on the first day of arrival.

Sobriety Requirements

House rules can include a general requirement of sobriety but stipulating that a resident participate in a specific recovery program may violate federal compliance laws.

Lease Duration

Week-to-week is best. "When a house rule is breached," says Pauley, "most states give residents 30 days to 'cure' their behavior, but a lot of damage can occur in those 30 days. Revoking a week-to-week lease makes it possible to more quickly and efficiently evict a troublesome resident."

Spell It Out

Discounts or free accommodation should be carefully worded and described as needs-based, says Pauley. "If you're providing free rent with the expectation that a resident will walk to the clinic next door for services, write it in a way that justifies the arrangement as a good-faith business decision to provide needed services."

The same due diligence applies to work requirements. "Make sure residents acknowledge receipt of any house rules that specify a work requirement," says Pauley. "But don't stipulate where the resident must work. Tethering free or discounted rent to a specific social enterprise can violate compliance laws."



WATCH THE VIDEO

To view our July 11 webinar featuring Brandon Pauley, simply...

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What's Private and What's Not

Residents renting a room have a right to privacy, including the ability to lock their bedroom door. House rules, however, can specify if and when the room may be inspected for suspected substance use. "My advice," says Pauley, "is to be as intentional and detailed as possible when describing landlord rights in your house rules."

One More Thing

"If you charge, collect it," says Pauley. "If you forego collecting rent over a period of time, some courts may interpret that as waiving the rent, making it difficult if not impossible to recover the loss."

DUTIES AND OBLIGATIONS

Though laws vary from state to state, landlords are generally obliged to keep properties clean, safe, and sanitary with appliances in good working order. Tenant obligations include paying rent on time, keeping the premises clean, using appliances properly, not causing property damage, and making sure associates and visitors don't disturb neighbors.

Tenants are also obliged to comply with reasonable requests from a landlord to enter and inspect the premises, but here things get a little tricky. What exactly is 'reasonable?' "The answer will depend in large part on what's written in your house rules," says Pauley. "And that quickly brings us to the subject of relapse."

When relapse is suspected, recovery home operators naturally want to enter as quickly as possible. The ability to do so can even have life and death consequences as in the case of an overdose. But many states require 24-hour notice before a landlord can enter a tenant's private quarters.

"That's why lease agreements and/or house rules should include detailed descriptions of a landlord's entry rights when a relapse is suspected," says Pauley. "Be sure to outline a variety of scenarios so that you're covered no matter what happens. The more detail you provide the better you'll be protected when an emergency requires urgent action."

Double Duty

Though such detailed policies are challenging to write, the same language that provides legal protection when written into your house rules can be reused to good effect in a "Good Neighbor Policy" that operators can use to educate and win the respect of municipal administrators, zoning inspectors, and other influential members of the community.

Physical Entry

When it's time to enter a resident's quarters, such as a private bedroom, be sure to knock and announce your presence before opening the door or crossing the threshold.

Evictions

What can you do when a resident stops being a good tenant and begins harming the recovery and well-being of other residents?



"When a tenant fails to pay rent," says Pauley, "you usually have to give three calendar days or three business days notice before starting the eviction process. But 30 days notice is usually needed when a lease is violated. That's the time most states give residents to 'cure' their behavior. During that time the tenant can say, 'Yes, I was disruptive. I got into a verbal altercation and threatened somebody, but I don't do that anymore.' Even though they've jeopardized the safety of others, the court may rule that the resident has cured the original breach and there are no further grounds for eviction."

That scenario is precisely why Pauley recommends lease durations be no longer than week-to-week. "I'd much rather go to court with an expired lease than have to wait 30 days to get into court and then have to prove failure to cure."

Avoid DIY Evictions

Resist the temptation to shut off utilities, change locks, or seize possessions. "Self-help evictions are probably the quickest way to get sued," says Pauley. "And if you lose, you may be liable for sizable attorney fees."

COMPLIANCE CHALLENGES

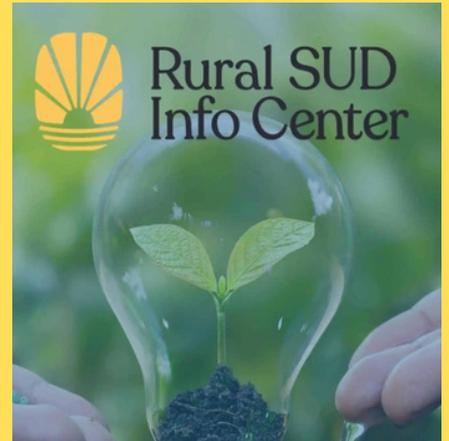
Compliance with the Federal Housing Act begins with the recognition that people in recovery are a protected class whose housing rights cannot be waived. Nor can they be refused accommodation because of their disability. If your recovery home is under FHA jurisdiction, as most are, residents must also be provided with facilities or modifications that give them “an equal opportunity to use and enjoy a dwelling and public and common use areas.”

“What that means” says Pauley, “is that although your home may prohibit drugs on the premises, you nevertheless must accommodate those who need prescribed drugs to sustain medication-assisted treatment. The same goes for pets. Your recovery home may prohibit them, but you’ll need to accommodate an emotional support animal if it’s deemed essential by a healthcare provider. And because there can be disagreement about what’s reasonable accommodation and what’s not, make sure your house rules describe in detail how an accommodation is requested, who reviews it, and who approves it.”

There are a few other compliance-related issues that should be addressed in your house rules. In the case of a relapse, for example, what is the process for referring a resident to a treatment provider or crisis center? How are referrals processed when a resident wishes to move to a different home? “Having all those contingencies addressed in your house rules,” says Pauley, “is the only way to insulate you against claims lodged by an opportunistic plaintiff’s counsel.”

Never Retaliate

Federal Fair Housing laws are particularly sensitive to accusations of retaliation. “Let’s say you have a bad tenant you wish to expel and you think removing their appliances or raising their rent from \$500 to \$1,000 will get the job done. Don’t do it. Impulsive decisions that have the appearance of retaliation can get you in a lot of hot water and not just with federal authorities. Most states have strong statutes protecting tenant rights and even allow tenants to sue for damages and recovery of legal fees. Even if the lease is for a relatively low-dollar amount, an opportunistic plaintiff’s counsel might view a retaliation claim as an open checkbook to accrue legal fees.”



CHECK IT OUT!

The new Rural SUD Info Center offers a wealth of evidence-based resources to support the prevention, treatment, and recovery efforts of rural communities. To go there now, simply...

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More Info Coming!

Other compliance issues will be explored by Pauley colleague Daphne Kackloudis in the Fletcher Group’s August 1 webinar. Did you know, for example, that recovery homes risk non-compliance if, in providing clinical services, housing is used as an inducement to solicit non-housing payments, particularly those coming through a federal or state agency such as Medicaid.

“Illegal inducement is one of the fastest ways to get sued,” says Pauley. “So be sure to hear Daphne’s take on inducement and other no-no’s in next month’s webinar.”