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# **A Practical Guide to Landlord/Tenant Issues in Recovery Housing**

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This presentation is prepared for general informational purposes only. It is not intended and should not be used for specific legal advice in a specific factual situation. Questions about the legal issues discussed in these materials should be presented to knowledgeable legal counsel with respect to any given factual situation before deciding on a specific course of action.

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# Agenda

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- Recovery Housing Overview
- Applicability of Landlord Tenant Law
- Leasing and Lease Agreements
- Eviction Law
- Fair Housing Considerations
- Best Practices
- Questions

# Objectives

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- Provide tips for providers and organizations to follow when furnishing recovery housing and substance use disorder services.
- Basic Obligations in Landlord/Tenant relationships.
- Discuss the eviction process.
- Highlight key compliance

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# Recovery Housing Basics

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- 'Recovery Housing' generally means housing for individuals recovering from drug addiction that provides an alcohol and drug-free living environment, peer support, assistance with obtaining drug addiction services and other drug addiction recovery assistance.

# Recovery Housing Principles

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A recovery housing residence should have protocols for all of the following:

- Administrative oversight;
- Quality standards;
- Policies and procedures, including house rules, for its residents to which the residents must agree to adhere.

# Landlord/Tenant Laws

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Landlord Tenant Law is state specific. Many states have laws providing prescriptive guidance.

- Tenant rights under require that landlords must supply running water, comply with all housing, building, health and safety laws, keep rental properties safe and sanitary, and make all necessary repairs in a reasonable time period.
- All electrical, plumbing, appliances, heating and ventilation systems and fixtures must also be kept in good working order.
- A landlord does not have the right to enter the premises of a rental property at any time.



# Rental Agreements

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- Resident Lease Agreements: Leases, housing or resident agreements refer to written agreements between residents and owners/ operators. The agreement must be written, in compliance with state and local landlord-tenant law, Fair Housing, non-discrimination policies and must be legally enforceable by both parties.
- A lease is a mutually agreed upon document. Broadly, the tenant agrees to (1) pay rent when due and (2) live by the house rules (including being sober). In exchange, the landlord agrees to provide a safe and clean space to a tenant.
- Operators cannot allow residents to waive their housing rights under federal and state laws.

# Lease Basics

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- A 'Rental Agreement' or 'Lease Agreement' means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.
- Put agreement in writing to avoid disagreements over what was said/included in the rental agreement
  - Parol Evidence Rule (For example: bars alleged prior oral promises)
- Key terms:
  - Names of the parties
  - Identify property
    - Levels of treatment and transfers
  - Duration
  - Rent
  - Rules and Responsibilities

# Duration of Lease

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- No set requirement for duration.
  - Week to week
  - Month to month
  - Annual
- Renewals
  - Outline the procedures and conditions for lease renewal, including notice periods and any changes in rent or terms.

# Rent

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- When you charge rent, collect it!
- Be cognizant of regulatory issues related to rent.
  - Discounts should be case by case and based on need.
    - Document process.
    - Research and implement compliant policies.
- The Eliminating Kickbacks in Recovery Act (“EKRA”) prohibits accepting or paying kickbacks for referrals to recovery homes.
  - EKRA is broader than the AKS because the law applies to services payable by all insurers, rather than just federal payors.

# Rent – Compliance Perspective

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To avoid violating the federal Anti-Kickback Statute (AKS), Civil Monetary Penalties Law (CMPL), and Eliminating Kickbacks in Recovery Act (EKRA), operators should implement the following processes if it has not already done so:

- Charge fair market value rent to each recovery housing client regardless of where they receive treatment services.
- Develop a financial need policy and procedure to assess *all* housing clients (not just those who are receiving treatment) for a financial discount off their rent.
- For *each* housing client (not just those who are also receiving treatment), complete a thorough and standardized review of financial need. If it is determined based on objective financial criteria that a housing client cannot afford to pay rent, provide a discount in accordance with your financial need policy and procedure.

# Requirements for sobriety

- Residents should be actively involved in their recovery, which includes participation in services.
- All resident expectations should be clearly spelled out in policies and procedures and made clear to applicants prior to entrance to the recovery residence.

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# Duties

# Duties of Landlord

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- General Guidance:
  - Make all repairs to put and keep premises in a fit and habitable condition
  - Keep all electrical, plumbing, heating, and ventilation systems in good working order
  - Maintain all appliances and equipment supplied or required to be supplied by him/her ( no duty to supply appliances)
  - NOTE: Beware of damages for entry in an unreasonable manner, or making repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.



# Duties of Tenant

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- General Guidance:
  - Keep the premises safe & sanitary
  - Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner
  - Use electrical and plumbing fixtures properly
  - Refrain from damaging the premises
  - and keep guests from damaging
  - Keep the plumbing fixtures as clean as their condition permits
  - Maintain the appliances supplied by the landlord in good working order
  - The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, ... supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

# Tenant Obligations, con't

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- Tenants' legal obligations include paying rent when due, keeping the premises in clean, sanitary condition and not damaging or destroying any part of the property.
- Tenants must also use all appliances, electrical and plumbing fixtures properly.
- Tenants must require that all other persons living in or visiting the property to conduct themselves "in a manner that will not disturb his neighbors' peaceful enjoyment of the premises."
- Tenants are not permitted to deny reasonable requests by the landlord to enter the premises.

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# Fair Housing and Reasonable Accommodations

# Fair Housing Laws

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- People in recovery from substance use disorders are protected from housing discrimination. All landlords (public and private) are required to follow fair housing laws, treating residents fairly and equitably.
- Importantly, alcoholism and past drug use are considered disabilities under the Fair Housing Act.
- Depriving such individuals of housing, discriminating in any way or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery.
  - However, federal laws do not protect individuals who are currently engaging in the illegal use of drugs.
- Residents of recovery housing have the right to request reasonable accommodations or modifications to allow them equal access and opportunities.
  - For example, a resident on medication-assisted treatment plan that wants to live in a recovery home with a rule against using any medications in the recovery process. Since the medication prescribed to the resident is necessary in connection to their disability (and recovery), that resident could request a reasonable accommodation to continue with MAT while living at the home.

# Fair Housing Laws

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- Fair housing is a person's right to choose, without unlawful discrimination, where to live and protects people who are denied housing based on stereotypes or prejudices about groups of people.
- Most housing providers, including recovery housing operators, are covered under fair housing laws.
- Federal and state discrimination laws protect everyone. The laws make it illegal to discriminate in the sale, rental or financing of housing, or otherwise interfere with someone's housing rights based on his or her membership in the following protected classes:
  - Race
  - Color
  - Religion
  - Sex
  - Familial status (having at least one child who is younger than 18)
  - **Disability**
  - National origin
  - Military status

# Fair Housing Laws – Federal

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- The federal Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.) provides fair housing protections to individuals with disabilities in virtually every housing activity or transaction.
- The federal law specifically prohibits discrimination because of any of the following protected characteristics:
  - Race
  - Color
  - Religion
  - Sex (including Sexual Orientation or Gender Identity (LGBTQ+))
  - National Origin (country of origin or ancestry)
  - Disability (a physical or mental impairment that substantially limits an individual's major life activity or bodily function, being regarded as having such an impairment, or having a record of such an impairment)
  - Familial Status (parent(s) or guardian(s) living with a child or children under age 18 or pregnancy)

# Reasonable Accommodations

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- Substance abuse is a disability under the FHA.
  - Disabled = current alcohol users and former users of illegal controlled substances
  - This means tenants can ask for reasonable accommodations (RAs)

# What is a 'Reasonable Accommodation?'

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- Referral to a treatment provider to get help
- Referral to a crisis center
- Referral to another recovery provider
  
- An administrative due process system , laid out in writing, that includes a meeting is an ideal way to facilitate such requests/actions
  
- Permit emotional support animals even if residence has a pet ban; support animals are not pets.
- For example: Ohio law does not require that a landlord have administrative due process before going to court to evict.



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# Retaliation/Discrimination

# Retaliation

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What is retaliation?

- Landlord increases rent, decreases services, or threatens to bring/actually brings eviction action for these specific reasons:
  - Tenant complained to government agency about code violation
  - Tenant complained to landlord that landlord violated their legal duties
  - Tenant organized with other tenants to negotiate/deal with landlord about lease terms
- Remedies include recovery of legal fees.

# Compliant Recovery Housing

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- Under federal laws, requiring rent only from individuals not participating in SUD treatment could lead to a challenger attempting to show that the operator had unlawful intent by arguing that, if the sole purpose of offering reduced-cost housing were truly to facilitate effective treatment, then it would not matter where the client elected to receive that treatment.
- Additionally, the few cases that have been prosecuted under EKRA show that EKRA is targeting providers that effectively reduce a patient's freedom of choice of provider.

# Compliant Recovery Housing

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- If the only way for a resident to remain in housing is to get clinical treatment, then that effectively removes the patient's ability to choose their own provider.
- Recovery home operators should **never** provide remuneration (in the form of financial need) to induce residents to use their associated clinical services, which is a major concern under both the AKS and EKRA.

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# Right of Entry

# When can you enter?

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- General Principles:
  - 24 hours notice is presumed reasonable by statute
  - Other tips:
    - Knock before entering
    - Announce presence before opening door/crossing the threshold
    - Timing can be negotiated
- Purpose and time of day must also be reasonable
- Suspected drug and/or alcohol use?

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# Evictions

# Eviction – Why and when?

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- A landlord can bring an eviction action (3 day):
  - Tenant failed to pay rent on time
  - Stayed in the unit after the termination or expiration of rental agreement (holdover)
- Tenant breaches lease or law (30 day)
  - Notice to cure from Landlord to Tenant to cure problem because Tenant not fulfilling duties
  - Tenant's breach is "materially affecting health and safety"
  - If Tenant cures, then no grounds to pursue in court



# When and why?

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- Landlord or attorney files an eviction action at the local court where property is located
  - After 3 Day Notice to Vacate
- The local Court will schedule a hearing and send a summons to the tenant
- First Cause - Right to the Possession of the Property
  - This is usually an expedited proceeding
- If landlord gets favorable decision, tenant has to move
- Landlord can arrange to remove tenant's belongings
- Second cause is generally for monetary damages.

# Defenses to Eviction

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- Landlord failed to give the tenant a 3 Day Notice before filing an eviction action in court or did not wait 3 days
- The Notice didn't include language required by law
- 3 Day Notice served during "grace period"
- Landlord accepted "current" rent after giving 3 Day Notice
- Landlord routinely accepted late rent (pattern & practice)
- Tenant offered rent in full on time, but landlord refused
- Attorney didn't file on behalf of corporate entity
- Retaliation and/or Discrimination
- Unconscionable lease provision

# Self-Help Eviction

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Any action of landlord outside of court approval to remove tenant, or:

- Shut off utilities
- Change the locks
- Seize the tenant's possessions
- Consequences: Landlords who violate the prohibition on self help evictions and utility shut-offs are liable for damages and attorney fees and may be subject to injunctive relief

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# Discussion: Best Practices

# Questions?

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