

# Housing Law 101 for Advocates



May 12, 2021

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# Part 2

## Emerging Issues in Housing & What you need to know



# Avoiding Discrimination in leasing/ listing of Rental Properties.

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Federal Law prohibits discrimination in housing including rental properties on the basis of

- Race
- Color
- Sex
- Religion
- Nation of origin
- Disability (physical or mental)
- Family status

## **Discriminatory practices includes**

- Placing all families in the same building or on the same floor of a building where multiple units are available throughout.
- Falsely claiming that no units are available for rental because of one of the above reasons
- Using targeted language in Ads or listing such as No Mexicans, Christians only, able bodied community
- Refusing to make reasonable accommodations for individuals with disabilities



# HUD Rules and Criminal Records Discrimination

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Any owner/manager that performs a criminal background check or in any way considers criminal history as part of their approval criteria must ensure that the criteria has no “disparate impact on individuals of a particular race, national origin, or other protected class”.

Violations include

- Use of arrest records as a blanket ban
- Prior convictions as a blanket ban
- Use of criminal history related to non housing specific misdemeanors or petty crimes

In Pennsylvania criminal records related to some criminal crimes can be expunged.



# Expungements

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Under 18 Pa. C.S.A. § 9122, expungement is available for:

- Non-convictions (charges withdrawn, dismissed, nolle prossed, or not-guilty)
- ARD/Section 17 if the program was completed
- Summary convictions if arrest-free for five years
- Felony & misdemeanor convictions if you are 70+ and have been free from arrest for 10 years

# Sample CHR



## First Judicial District of Pennsylvania Court Summary

Closed

Philadelphia

Proc Status: Migrated Case (Closed) DC No: [REDACTED] OTN: [REDACTED]  
Arrest Dt: 05/17/1982 Disp Date: 05/17/1982 Disp Judge: McCabe, Joseph

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 5902		PROSTITUTION	Dismissed
2	18 § 5507		DISORDERLY CONDUCT HARM OR INCONVENIENCE	Dismissed
3	18 § 5502		DISORDERLY CONDUCT PERSISTENT	Dismissed

Can be  
expunged

Proc Status: Completed DC No: [REDACTED] OTN: [REDACTED]  
Arrest Dt: 07/26/1997 Disp Date: 11/13/1997 Disp Judge: McCaffery, Seamus P.  
Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Sentence Length</u>	
1	18 § 5902		PROSTITUTION	Guilty
		11/13/1997 Probation		
2	18 § 902		CRIMINAL SOLICITATION	Withdrawn

# Hypo 1

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All of the following are prohibited forms of discrimination in housing except

- A. A designated senior living community.
- B. Placing all families with children on the first floor or in a single building where multiple units/ buildings are available.
- C. Use of non expungable criminal records related to drug distribution or crimes against children to deny housing .
- D. A community that requires proof of US citizenship or permanent residency for admission.

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# Reasonable Accommodations



# Reasonable Accommodations

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A change in a rule, policy , practice or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

Accommodation must be

- Necessary
- Not create an undue financial burden on the landlord
- Not be a fundamental alteration in the service provide by the landlord

Accommodations can be made for both physical and mental health disabilities.

- Fair Housing Amendments Act
- Americans with Disabilities Act

Must be verified that the tenant has a qualified disability and there must be a relationship with the disability and the accommodation.



# Hypo # 2

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True or False all of the following are examples of reasonable accommodations that do not place a significant burden on the landlord financial or otherwise.

- A. Changing the way rental payments are made for a mentally ill tenant who may need to have a rep payee agency mail in checks where online payment portal are used or required.
- B. Assigning a disable resident a parking space near the door in a lot where unassigned parking is available and provided to all residents.
- C. Allowing a disabled resident to have a service animal where service animal are otherwise not allowed.

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# Rehousing in a Post Covid –world



# End of lease considerations/Holdover Tenancy what you need to know

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- Eviction Moratoriums
  - State or City
- Availability of Rental assistance
- Eviction filing restrictions put in place by the Courts
- Disclosure requirements
- Covid limitation of speedy vacates.
- Illegal lockouts are still illegal



# Leasing

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## Good leases

- Clear state the obligations of both landlord and tenants
- Have clear deadline or notice provisions
- Do not attempt to side step or avoid court process
- Complies with all applicable housing ordinances such as lead laws
- Severability clause

## Red flags (unenforceable provisions)

- Leases that waives the right Court proceedings
- Waiver of landlord obligations for repairs (waiver of habitability)
- Waiver of security deposit return
- Waiver of landlord's duty to mitigate damages if a tenant vacates early
- Late fees in excess of 10% of monthly rent
- Provision that allow landlord to terminate lease without notice for non payment where notice is otherwise required.



# Center for Disease Control (CDC) Moratorium

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# What is the CDC Moratorium?

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- Applies to every state and territory with reported cases of COVID-19, except those with a moratorium that provides “the same or greater level of public health protections”
- For jurisdictions with their own moratoriums, the stronger of the state/local moratorium and CDC moratorium will be in effect
- It is in effect as of September 4, 2020 and lasts through June 30, 2021;
- Renters should still pay as much of their rent as possible; all back rent will need to be paid by June 30, 2021 to avoid evictions or lockouts.



# When does it apply?

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- Order applies to evictions related to non-payment of rent and other fees
- Tenants can still face eviction for other lease violations, including:
  - Conducting criminal activity on the property
  - Threatening the healthy/safety of other residents
  - Damaging or posing an immediate risk of damage to the property
  - Violating building codes, health ordinances, or other regulations related to health/safety
  - Violating any other contractual obligation other than timely payment of rent/fees/penalties/interest
- Should stop all phases of the eviction process, but courts have been interpreting “evictions” broadly



# Who does it cover?

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- Tenants in all standard rental housing, including HUD- or USDA-covered housing, mobile homes, or land in a mobile home park
- Tenants must present a signed declaration to their landlords by certified mail, text, or email to prove the declaration was delivered, and should make a copy of the signed declaration for their records

# CDC Declaration

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- All adults on the lease must certify that they:
  - Expect to have income less than \$99,000 in 2020, or have received a stimulus check, or not have been required to report income to the IRS in 2019;
  - be unable to pay full rent due to an income loss or “extraordinary” medical bills
  - have used best efforts to obtain governmental rent assistance,
  - be likely to become homeless or forced to “live in close quarters” in another residence if evicted, and
  - promise to “make timely partial payments that are as close to the full payment as the individual’s circumstances may permit.”
- The order does not require the tenant’s financial hardship be COVID-related or require proof (though we suggest that you attach proof)
- Criminal penalties for violations for LL, penalty of perjury for tenants





## Eviction Protection Declaration

The Centers for Disease Control and Prevention (CDC) has issued an order that may protect you from being evicted or removed from where you are living. **This means that you may be able to stay at the place where you live through JUNE 30, 2021, if you qualify.**

### How to use this form

1. See if you qualify for eviction protection under the CDC order. If you'd like help from an expert, contact (800) 569-4287 or go to <https://www.hudexchange.info/programs/housing-counseling/rental-eviction/> to get contact information for a local HUD-approved housing counselor.
2. Sign the declaration that you qualify, on the next page.
3. Give the signed declaration page to the individual or company you rent from (for example, building management, landlord, etc.). Keep a picture or copy for your records and call your expert back if there's a problem.

## 1. Do I qualify?

If you can check at least one box in each column, you qualify.

### Column A

- I received a stimulus check (Economic Impact Payment) in 2020 or 2021
- I was not required to report any income to the IRS in 2020
- In 2020 or 2021, I earned (or expect to earn) **less than** \$99,000 as an individual or **less than** \$198,000 as a joint filer

You are likely to have earned under **this amount if you receive** any of the following benefits:

- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- Supplemental Security Disability Income (SSDI)

**None of the above — You do not qualify.**

AND

### Column B

I cannot pay my full rent or make a full housing payment because:

- My household income has gone down substantially
- I have been laid off from work
- My work hours or wages have been cut
- I have extraordinary out-of-pocket medical expenses<sup>1</sup>

**None of the above — You do not qualify.**

You checked at least one item in each column? Your income level qualifies.

[Check the first box on the next page]

## 2. My Declaration that I qualify

By checking the boxes below, I declare that each statement is true.

- My income level qualifies for the reasons explained above
- I have done my best to make timely partial payments that are as close as possible to the full payment and to get government assistance in making my rent or housing payments.<sup>2</sup>
- If I were evicted, I have no other available housing options, so I would:
  - Probably become homeless, **or**
  - Have to move to a homeless shelter, **or**
  - Have to move in with others who live in close quarters.
- I understand that after I sign:
  - Unless I come to an agreement with my landlord, I am still responsible for rent, back rent, and any fees, penalties or interest under my lease.
  - I must still follow the conditions of my lease.
  - Unless I come to an agreement with my landlord, if I fail to make my required payments, I could be evicted when this temporary halt of evictions ends.
  - I can still be evicted for reasons other than not paying rent or not making a housing payment.

### Troubleshooting tools for tenants

**Find emergency rental financial assistance**  
Call (800) 569-4287 to find a listing for local HUD-approved housing counselors

**Report problems with debt collection**  
Submit a complaint to CFPB [cfpb.gov/complaint](https://cfpb.gov/complaint)

**Report discrimination**  
Submit a complaint.  
Call HUD at (800) 669-9777

**I sign this declaration<sup>3</sup> under penalty of perjury. That means I promise that the statements above are the truth and that I understand that I can be criminally punished for lying.**

You sign here:

X \_\_\_\_\_ Date: \_\_\_\_\_

## 3. Give this signed page to the individual or company you rent from.

**ATTN LANDLORDS:** Thank you for your compliance. If you violate the CDC's eviction Order, you and/or your business may be subject to criminal penalties, including fines and a term of imprisonment.

<sup>2</sup>Calling a local expert is the best way to figure out all the help that is available to you. Find a listing for a local HUD-approved housing counselor by calling (800) 569-4287.

<sup>3</sup>If you have already signed an eviction moratorium declaration, you do not need to submit another one.



# What are some limitations and risks?

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- Informing tenants about the CDC's protections
- Landlords proceeding with evictions before tenants know protections are available, or despite protections
- Landlord are able to file challenges to declaration

# Notice & the CDC Eviction Moratorium

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Bureau of consumer Protection interim Rule (effective may 3,2021)

Fair Debt Collection Practices Act of 1977

Section 1006.9(c) prohibits certain deceptive and unfair acts by debt collectors. As discussed further below, § 1006.9(c)(1) generally prohibits debt collectors from filing an eviction action against a consumer to whom the CDC Order reasonably might apply without disclosing that the consumer may be eligible for temporary protection from eviction under the CDC Order. Section 1006.9(c)(2) prohibits debt collectors from falsely representing or implying to a consumer that the consumer is not eligible for temporary protection from eviction under the CDC Order.

FDCPA defines debtor “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. FDCPA section 803(6)’s definition of “debt collector” also includes any creditor who, in the process of collecting its own debts, uses any name other than the creditor’s own which would indicate that a third person is collecting or attempting to collect such debts. (includes attorneys)

## Requirements

- Must be sent at the same time as the eviction notice
- If notice is waived must sent same date as the eviction complaint (should accompany service)
- Must inform tenants of their rights under the CDC Moratorium

# Illegal Lockouts

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An illegal lockout is an eviction that does not go through the legal court process. It is illegal for a landlord to evict a tenant by:

- Changing the locks without a sheriff or a landlord tenant officer
- Using force or intimidation
- Turning off the tenants utilities
- Removing tenants possession
- Removing doors or windows from the house
- Any other means except using a landlord tenant officer



## Hypo # 3

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True or False?

Any situation outside of a court ordered eviction where a tenant does not leave or move out of a residence voluntarily is an illegal lockout/ eviction.

# Illegal Lockout Referrals

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- Attorney General's office has prioritized complaints about landlord tenant issues during the pandemic. We've been told that an investigator or an attorney will try to investigate/mediate these complaints quickly.
- Direct clients to file complaints to AG's Consumer Protection Hotline:
  - 800-441-2555



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# Housing Resources for Survivors of Domestic Violence & Sexual Assault



# What kind of legal issues might survivors face related to their housing?

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- Evictions
  - Nuisance
  - Police Activity
  - Property Damage
- Credit Issues
- Passing Criminal Background Checks
- Escaping Abuser
  - Breaking a lease
  - Subsidized housing transfer

# Facts & Figures

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- According to one national survey up to 20% of victims and survivors struggle to find or keep housing because of sexual violence. (National Sexual Violence Resource Center, 2010).
- Among mothers with children experiencing homelessness more than 80% had previously experienced domestic violence. (Yumiko Aratani, Homeless Children & Youth, 2009).
- In one Study nearly half of the domestic violence survivors surveyed reported homelessness as the result of an inability to find suitable and affordable housing away from the abuser. (Kershner, M., Ough, J, When There's Nowhere to Go, 2003).
- A 2008 Equal Rights Center investigation found that 65% of test applicants seeking housing on behalf of a domestic violence survivor were either denied housing or offered less advantageous terms than an applicant not associated with domestic violence. (Equal Rights Center, No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia, 2008).



# Are there laws that offer specific protections to survivors?

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- The Violence Against Women Act (VAWA)
- The Federal Fair Housing Act
  - Prohibits direct intentional discrimination against a protected group.
  - Prohibits indirect acts that have a disparate impact on a protected group.
  - You can file a FHA lawsuit or make a complaint to HUD
- Pennsylvania Human Relations Act
  - Prohibits discrimination in public accommodations against a protected group
- Check local ordinances:
  - Philadelphia: Philadelphia's Fair Practices Ordinance § 9-1108: Prohibits discrimination on the basis of a Philadelphia applicant or tenant's status as a victim of domestic or sexual violence. ([www.phila.gov/humanrelations/](http://www.phila.gov/humanrelations/))
  - Pittsburgh: Fair Housing Ordinance, Chapter 659.03 Prohibits discrimination on the basis of status as a victim of domestic violence ([www.pittsburgpa.gov/chr](http://www.pittsburgpa.gov/chr))



# The Pennsylvania Human Relations Act (PHRA)

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- Prohibits direct intentional discrimination against a protected group. ( race, nation of origin, use of support animal, disability, familial status, religious creed, ancestry, age, sex)
- Prohibits indirect acts that have a disparate impact on a protected group.
- If you believe a landlord has violated the PHRA you can file a complaint with the Pennsylvania Human Relations Commission

PHRA prohibits housing discrimination based on sex. Prohibited acts include *direct, intentional discrimination* against a protected group (e.g., a landlord has a policy to never rent to women) and *indirect acts that have a disparate impact* on a protected group (e.g., a landlord evicts a victim because the police were called to respond when her boyfriend caused a disturbance). Landlord can however sue for property damage that results from domestic disturbances at their property.



# VAWA

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- Prohibits landlords from denying admission or evicting tenants of subsidized housing for incidents or criminal activity related to domestic violence, stalking, dating violence or sexual assault.
- Who does this apply to?
  - This applies only to subsidized housing tenants:
    - Public Housing
    - Section 8 Housing Choice Voucher
    - Low Income Tax Credit Housing
    - Section 8 Project Based
- City and State ordinances like the Philadelphia & Pittsburgh ordinance may apply to all different types of housing

# When To Use These Laws

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Landlord files eviction complaint for breach of the lease due to excessive noise, disturbances, police activity, damage to the unit, unauthorized occupants. Defendant raises these laws as a defense alleging that the breach was due to incidents of domestic violence (abusive incident, calling 911 for protection, police coming to unit to serve Protection from Abuse Order, abuser causing damage to unit, abuser refusing to move out of unit).

Landlord wants to keep the security deposit as a penalty for tenant moving out prior to the end of the regular lease term. Tenant alleges that she terminated the lease early according to the Unfair Rental Practices Ordinance and is entitled to her full security deposit, minus any charges for tenant-caused damages. Or landlord sues for nonpayment of rent for the months after tenant allegedly terminated the lease early in accordance with the Unfair Rental Practices Ordinance.

Housing Authority denies admission to a tenant because of a previous eviction case where the tenant was evicted due to damages to the previous unit

Housing Authority denies admission due to a criminal record where the client was arrested after the police were called due to domestic violence and arrested both parties.

The client recently ended things with an abusive partner. Since ending the relationship the ex has come by the unit several times and threatened the client. Client is afraid for the safety of his/her family.

The abuser is co-tenant.



# What kind of documentation do these laws require?

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- Local ordinances such as the Philadelphia Fair Practices Ordinance does not require any documentation unless the tenant is trying to terminate the lease early
  - Protection From Abuse Order
  - Police Report
  - Written Certification from a healthcare professional or professional guidance counselor, or victim's services organization from whom the tenant sought assistance as a victim of domestic violence or sexual assault.
- VAWA
  - Subsidized housing owners may request in writing that subsidized housing tenants provide documentation of the violence (VAWA does not require that they ask for documentation)
    - A HUD self-certification form (<https://www.jurha.org/hc/vp/docs/VAWA%20HUD%20Certification%20Form.pdf>)
    - Third party verification (e.g., police or court record; letter from a victim services provider; or a letter from victim services provider or attorney, or a letter from a medical professional or mental health professional)



# Emergency Rental Assistance Program

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## (ERAP)



# What is ERAP ?

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- The Emergency Rental Assistance Program (ERAP) was created as part of the Consolidated Appropriations Act of 2021. \$25 billion was allocated for eviction prevention across the US.
- Pennsylvania received \$ 847 million. A portion of which was distributed directly to cities and counties that qualify as direct grantees. The largest chunk, \$ 569 million, was distributed by the states to all 67 PA Counties.
- Additional \$21.55 billion was allocated for ERAP 2.0 in the American Rescue Plan. PA is expected to receive \$760 Million.



# ERAP logistics

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## **Who is in charge of ERAP?**

- ERAP is been run through the Department of Human Services. This mean that eligible Pennsylvanian can apply through Compass. However for those Counties that are running their own program, the applications are been managed by the counties through a web based applications.

## **How much is available?**

- (12 + 3) A minimum the statute provides for ERAP 1 to provide up to 12 months of rental assistance with an additional 3 months of assistance at the discretion of the

## **How is ERAP different from other rental assistance program?**

- ERAP ties a households' eligibility for assistance to financial hardship during Covid-19 not as a result of Covid -19 as was done in prior programs.
- ERAP can also provide utility assistance for individuals are responsible for and behind on utility bills.



# Hypo # 4

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Jane has been unemployed since March 2020, She receives unemployment compensation but it is only enough cover household expenses. The last time she was able to pay rent was June of last year. Her monthly rent is \$1000. Additionally, Jane landlord has filed an eviction against her, she has found a new place but cannot afford to move.

How many months of rental assistance are is she entitled to under ERAP ?

- A. 5 months
- B. 11 months
- C. 12 months

Is Jane protected from Eviction ?

- A. Yes
- B. No

# Eligibility Requirements

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- Household is responsible for paying rent on a residential property
- Rental arrears accrued post March 13,2020
- Household income at or below 80% AMI
- One or more household member
  - Qualified for unemployment benefits.
  - Had a decrease in income.
  - Had increase household cost or other financial hardship because of the pandemic or during the pandemic.
  - is at risk of homelessness or housing instability.



# Other expenses covered by ERAP

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- ERAP can also cover other housing related expenses directly or indirectly linked to the Covid-19 Pandemic
- Examples include
  - Relocation expenses such as security deposits and rental fees (applications and screen fees)
  - Reasonable late fees
  - Hotel/motel costs
  - Internet service fees

Coverage of these additional expenses vary county by county. Internet specifically not included in PA State program



# How to apply

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- Most people can apply online through COMPASS, which is the DHS benefits portal
- Paper applications are available in several languages
- COMPASS website will list agencies in your county that are assisting individuals with the application process.
- Information needed for application
  - IDs for household members over 18 yrs.
  - Income information for household members over 18 yrs.
  - The lease or evidence of rental arrangement
  - Other information confirming monthly housing costs
  - Landlord and utility provider information



# Hypo # 5

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All of the following are covered expense under ERAP except

- A. Unpaid rent
- B. Relocation expenses such as security deposits
- C. Utility debts
- D. Increased food expenses due to homeschooling/ virtual learning.



# What if I can't pay rent due to COVID-19?

If you can't pay your rent due to Covid-19 reach out your landlord. Explain your situation in writing and request an accommodation

- Ask for payment plan
- Ask for a waiver of late fees
- Make a partial payment
- Ask your landlord to apply prepaid rent to missed month(s)
- Complete the CDC Declaration form and provide it your landlord
- Apply for ERAP

If you need to move out

- Ask your landlord to schedule a move out date
- Ask your landlord to waive any early lease termination fees
- Take photos of your clean house the day you move out
- Return your keys and get a receipt

If you are able to make an agreement with your landlord, be sure to get the agreement in writing and comply with the agreement.



# Strategies for Preventing Utility Termination

## Assistance Programs

- CAP, Hardship Funds, LIHEAP, etc.

## Payment Arrangements

### Winter Moratorium

- Households with income at or below 250% FPL cannot be terminated from 12/1 – 03/31
- Not a guarantee to have service restored if it is already off

### Medical Certificates

### Protections for Customers with PFA or Other Court Order

- Cannot be charged for or terminated because of debt accrued in someone else's name – even if they lived at the home when debt accrued
- Additional / longer payment arrangements
- Additional 48-hour notice of termination

### 4-Year Rule

- Arrears over 4 years old cannot form the basis of termination



# Utility Assistance

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- Call your utility or home energy provider
- County Assistance office or LIHEAP hotline at **1-866-857-7095**
- PA Public Utility Commission. Call us at **1-800-692-7380**
- Pennsylvania residents may be eligible for free legal help  
Call 1-844-645-2500 or Email [utilityhotline@palegalaid.net](mailto:utilityhotline@palegalaid.net)



# Hypo # 6

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True or false

All of the following are available forms of utility assistance for tenants.

- A. Emergency Rental assistance program
- B. LIHEAP
- C. Customer Assistance Programs

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# Questions



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Thank you for attending!

