

## Note

### From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims

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“Martha Smith’s” boyfriend assaulted and raped her in the Wilmington, Delaware, apartment where they had lived for over two years.<sup>1</sup> Although he did not live there at the time of the assault, he knew when Martha would be home and how to break into the apartment. Martha called the police after the assault. The investigating officer provided her with sage advice: to guarantee her safety she must move immediately, allowing neither the perpetrator nor anyone with whom he associated to know her whereabouts. Soon thereafter, Martha discussed the incident and the officer’s advice with the landlord of her apartment complex. The landlord assured her that she could vacate her apartment without any penalty because she had paid through the end of the month. Nevertheless, Martha soon received a bill for two months’ rent. The landlord’s action was consistent with the Delaware landlord-tenant code, which prohibits the termination of month-to-month tenancies without sixty days’ prior notice.<sup>2</sup> Not only did Martha forfeit her security deposit, but she also paid more than \$400 in damages in order to preserve her credit.

Domestic violence victims like Martha Smith who flee their abusers must consider the financial penalties that exist under

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1. Documentation of these facts is on file with Community Legal Aid Society, Inc., in Wilmington, Delaware [hereinafter “Martha Smith” Documentation]. The client, whose name has been changed in this Note, has given the author permission to use the story.

2. DEL. CODE ANN. tit. 25, § 5106(d) (2004).

state landlord-tenant codes.<sup>3</sup> In an effort to protect landlord rights, state landlord-tenant codes often require notice before lease termination.<sup>4</sup> Landlord-tenant codes typically recognize certain exceptions to the standard notice provisions, allowing early termination for military service,<sup>5</sup> death, illness, or change in employment.<sup>6</sup> Until recently, however, the codes have not recognized being a victim of a violent crime in one's own home as a worthy exception. Several states have enacted legislative reforms to remedy this glaring omission by creating a victim's right to early termination.<sup>7</sup>

This Note will examine the necessity and legitimacy of state laws that provide domestic violence victims with the right to terminate a rental agreement without penalty in order to escape abuse. Part I describes how early-termination statutes benefit domestic violence victims, landlords, other tenants, and society as a whole. Part II explains why more states must enact early-termination statutes in order to protect domestic violence victims in rental housing. Part III demonstrates how early-termination statutes fit into property theory and how they relate to property law in practice. Part IV proposes strategies for garnering support for early-termination statutes at the state level. These laws remove a financial barrier that may otherwise discourage victims from leaving their abusers.<sup>8</sup> With the help of advocates, landlords, and legislators, states can reform their landlord-tenant codes to remove this barrier.<sup>9</sup>

## I. THE BENEFICIARIES OF EARLY TERMINATION LEGISLATION

Domestic violence is a serious and complex problem.<sup>10</sup> Due to the complexity of the problem, the law ignores the emotional

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3. Naomi Stern, *Early Lease Termination by Battered Tenants*, 10 DOMESTIC VIOLENCE REP. 33, 33 (2005).

4. See, e.g., FLA. STAT. ANN. § 83.57 (West 2004); KAN. STAT. ANN. § 58-2570 (2004).

5. See, e.g., FLA. STAT. ANN. § 83.682; KAN. STAT. ANN. § 58-2570(b); TEX. PROP. CODE ANN. § 92.017 (Vernon 2005).

6. DEL. CODE ANN. tit. 25, § 5314(b) (2004).

7. See COLO. REV. STAT. § 38-12-402 (2005); N.C. GEN. STAT. § 42-45.1 (2005); OR. REV. STAT. ANN. § 90.453 (West 2005); WASH. REV. CODE ANN. § 59.18.575 (West 2006).

8. See Stern, *supra* note 3, at 33.

9. *Id.* at 47.

10. See DAWN BRADLEY BERRY, THE DOMESTIC VIOLENCE SOURCEBOOK 1-11 (3d ed. 2000).

and psychological components and instead concentrates on the more easily identifiable physical effects of abuse.<sup>11</sup> The combination of social ignorance and legal obstacles adds to the challenges victims face when attempting to leave their abusers.<sup>12</sup> Early-termination statutes eliminate one legal barrier while improving the overall situation for landlords and neighbors as well.

#### A. DOMESTIC VIOLENCE VICTIMS

Domestic violence is prevalent but widely misunderstood.<sup>13</sup> Although many people recognize that domestic violence overwhelmingly victimizes women,<sup>14</sup> they tend to believe most instances of abuse are minor and infrequent, occurring as a result of stress or poverty.<sup>15</sup> In reality, a woman in the United States is abused every seven seconds,<sup>16</sup> regardless of her culture, race, occupation, income level, or age.<sup>17</sup> Four million incidents of domestic violence are reported each year, but estimates project that up to ninety percent of battered women never report their abuse.<sup>18</sup> Moreover, domestic violence constitutes “one of the foremost causes of serious injury to women ages 15 to 44.”<sup>19</sup> Official statistics are not definitive,<sup>20</sup> however, and cultural mis-

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11. See LINDA G. MILLS, *INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE* 76–77 (2003).

12. See Emily J. Martin & Naomi S. Stern, *Domestic Violence and Public Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy*, 38 CLEARINGHOUSE REV. 551, 560 (2005) (describing the misconceptions public housing administrators have in regard to tenants who experience domestic violence); Stern, *supra* note 3, at 33 (“Landlord-tenant laws can trap tenants who are trying to flee abuse by providing no flexibility for a battered tenant to terminate her lease early, or by financially penalizing a tenant who terminates her lease early to flee abuse.”).

13. See BERRY, *supra* note 10, at 1–11.

14. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *SELECTED FINDINGS: VIOLENCE BETWEEN INTIMATES 2* (1994). Women constitute more than ninety percent of all domestic violence victims in the United States. *Id.*

15. BERRY, *supra* note 10, at 11.

16. *Id.* at 8.

17. PUB. HOUS. MGMT. & OCCUPANCY DIV., U.S. DEP’T OF HOUS. & URBAN DEV., *PUBLIC HOUSING OCCUPANCY GUIDEBOOK 216* (2003) [hereinafter HUD GUIDEBOOK].

18. BERRY, *supra* note 10, at 7.

19. OFFICE OF THE SURGEON GEN., U.S. DEP’T OF HEALTH & HUMAN SERVS., *MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 231* (1999), available at <http://www.surgeongeneral.gov/library/mentalhealth/home.html>.

20. EVE S. BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 8 (2d ed. 1996).

conceptions about the nature of domestic violence and its victims ultimately prevail.

Some people—including police, prosecutors, judges, and jurors—believe that victims “provoke” their abusers, thereby holding victims responsible for their abuse.<sup>21</sup> Nevertheless, these people fail to realize that domestic violence entails more than men beating women.<sup>22</sup> For victimized women, domestic violence encompasses physical *and* emotional abuse.<sup>23</sup> Although emotional abuse is an integral part of domestic violence,<sup>24</sup> it is difficult to define or quantify.<sup>25</sup> As a result, the law traditionally focuses on the physical aspects of abuse and provides victims of emotional abuse with virtually no legal recourse.<sup>26</sup>

Domestic violence victims stay with their abusers for myriad and complex reasons that are unique to each victim.<sup>27</sup> Due to psychological abuse or cultural conditioning, some victims are unable to examine their relationships rationally and leave.<sup>28</sup> Victims with fewer resources must weigh the advantages of escaping abuse against the risk of becoming homeless.<sup>29</sup> Approximately fifty percent of homeless women and children are escaping domestic violence,<sup>30</sup> and the need for shelters exceeds the available funding necessary for their maintenance.<sup>31</sup> Additionally, the risks of serious violence and death increase dramatically when a woman separates from her

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21. See Barbara Hart, *Battered Women and the Criminal Justice System*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 98, 101 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

22. See RICHARD L. DAVIS, DOMESTIC VIOLENCE: FACTS AND FALLACIES 3 (1998).

23. See MILLS, *supra* note 11, at 23.

24. See *id.* at 1, 3.

25. *Id.* at 77.

26. See *id.*

27. *Id.* at 60 (“The leaving and staying reflect not indecision per se but a complex pattern of behavior that involves not only the effect of the violence and the partner’s influence but also other psychological and sociocultural factors.”).

28. See DAVIS, *supra* note 22, at 2.

29. Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A., Why Abuse Victims Stay*, 28 COLO. LAW. 19, 24 (1999).

30. See WOMEN’S RIGHTS PROJECT, ACLU, DOMESTIC VIOLENCE AND HOMELESSNESS 2 (2006), available at <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>.

31. See Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J. L. & POL’Y 237, 249–50 (1994).

abuser.<sup>32</sup> Although protection orders mitigate the risks associated with domestic violence and homicide,<sup>33</sup> they fail to provide complete protection for victims.<sup>34</sup>

Once victims make the difficult decision to leave their abusers,<sup>35</sup> those who occupy rental housing face the challenge of avoiding fees related to early lease termination.<sup>36</sup> In the absence of laws that exempt domestic violence victims from standard lease-termination procedures, negotiation with landlords serves as victims' only recourse.<sup>37</sup> Some tenants, often with the help of attorneys and advocates, succeed in negotiating an early end to their lease.<sup>38</sup> Because this method depends upon a landlord's discretion, victims lack the guaranteed escape that early-termination statutes provide.<sup>39</sup> Without these statutes, a victim must convince their landlord that it is in the landlord's best interest to release the victim from the rental agreement.<sup>40</sup> Unfortunately, a landlord may not realize the advantages of releasing a domestic violence victim from her lease.

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32. See RONET BACHMAN & LINDA E. SALTZMAN, U.S. DEP'T OF JUSTICE, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 4 (1995). Women separated from their husbands were three times more likely to report having been victimized by spouses than divorced women and twenty-five percent more likely to report having been victimized by spouses than married women. *Id.*

33. See Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK?, *supra* note 21, at 214, 218 (showing that nearly eighty percent of women with a temporary protection order said the order was somewhat or very helpful in sending the batterer a message that his actions were wrong and that less than half of the women thought that the batterer believed he had to obey the order).

34. See *id.* at 239–40 (indicating that despite high volumes of calls to police reporting violations of protection orders, arrests are rare).

35. See MILLS, *supra* note 11, at 61 (explaining that women do not leave an abusive relationship without considering the social, emotional, religious, and economic costs).

36. See, e.g., FLA. STAT. ANN. § 83.575 (West 2006) (allowing a lease to assign liability for liquidated damages to a tenant who fails to provide the requisite notice of termination to the landlord); see also Stern, *supra* note 3, at 33.

37. See Stern, *supra* note 3, at 34.

38. *Id.*; see also Rhonda McMillion, *A Wider Net: ABA Backs Bills That Would Expand Support Services for Domestic Violence Victims*, A.B.A. J., Dec. 2005, at 73, 73 ("Recent studies indicate that the single most important factor cited by domestic violence victims in their ability to leave their abuser is having legal counsel . . .").

39. See, e.g., COLO. REV. STAT. § 38-12-402 (2005).

40. See Stern, *supra* note 3, at 34.

## B. LANDLORDS AND NEIGHBORS OF DOMESTIC VIOLENCE VICTIMS

Landlords respond to statutory protection for tenants who experience domestic violence with concern for the safety and quiet enjoyment of other tenants.<sup>41</sup> With early-termination laws, landlords struggle to understand the policy behind releasing a tenant from a lease who has introduced criminal activity at the unit.<sup>42</sup> The beauty behind policies that accommodate domestic violence victims lies in the fact that they encourage victims to take steps toward leaving their abusers and ending the violence.<sup>43</sup> If victims know they have a range of options, they are less likely to keep the violence a secret, and the community is spared from future violence.<sup>44</sup> Although some landlords raise concerns about perpetrators returning to the rental unit after the victim vacates, these concerns are generally unfounded; abusers target specific intimates or family members, not random individuals.<sup>45</sup> Also, allowing victims to terminate their leases early may prevent or reduce physical damage to the unit caused by violence.<sup>46</sup> Indeed, early-termination statutes may save landlords the inconvenience of repairing units.

If landlords realize the benefits of early-termination statutes for themselves and all their tenants, they may embrace negotiations and legislative proposals that benefit domestic violence victims.<sup>47</sup> Although domestic violence victims may be able to terminate a lease early by negotiating with their landlords, they have no guarantee that every landlord will accommodate such a request.<sup>48</sup> Early-termination statutes provide victims with the assurance that negotiations lack, in addition to offering a palatable alternative to enduring more abuse.

## II. THE NEED FOR EARLY-TERMINATION LEGISLATION

The overwhelming majority of states fail to provide domestic violence victims with a right to early lease termination.<sup>49</sup> At

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41. See, e.g., H.R. 58-1645, at 4 (Wash. 2004).

42. See *id.*

43. See Martin & Stern, *supra* note 12, at 560.

44. See *id.*

45. *Id.*

46. *Id.*

47. See Stern, *supra* note 3, at 45.

48. *Id.*

49. See COLO. REV. STAT. § 38-12-402 (2005); N.C. GEN. STAT. § 42-45.1 (2005); OR. REV. STAT. ANN. § 90.453 (West 2005); WASH. REV. CODE ANN.

the federal level as well, such protections are scarce.

The Supreme Court has declined to recognize a fundamental right to be free from private acts of violence,<sup>50</sup> and Congress protects only victims in federally assisted housing through its recently expanded Violence Against Women Act.<sup>51</sup> In addition, landlord reluctance to negotiate with victims creates an obstacle for those trying to leave their abusers.<sup>52</sup> State early-termination statutes expand existing protections to protect victims who remain vulnerable under existing law.

#### A. NO FUNDAMENTAL RIGHT TO BE FREE FROM VIOLENCE

The Fourteenth Amendment of the United States Constitution prohibits states from depriving “any person of life, liberty, or property, without due process of law.”<sup>53</sup> The Due Process Clause not only guarantees fair procedure, but also protects liberty interests.<sup>54</sup> To defend against a substantive due process claim, states must provide a compelling state interest to justify state action that limits a fundamental right.<sup>55</sup> If the federal government were to recognize a fundamental right to be free from violence, states might be barred from penalizing domestic violence victims who terminate their leases early in order to escape abuse.<sup>56</sup> A state’s asserted interests in such penalties would almost certainly involve respect for private contracts and the promotion of stability in the housing market.<sup>57</sup> With strict scrutiny as the appropriate standard, however, the state would carry a substantial burden of showing that the penalty provisions are “narrowly drawn to express only the legitimate state interests at stake.”<sup>58</sup>

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§ 59.18.575 (West 2006).

50. See *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989) (“[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.”).

51. *E.g.* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 606(5), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3046–47 (to be codified at 42 U.S.C. § 1437f(r)(5)).

52. See Stern, *supra* note 3, at 334, 345.

53. U.S. CONST. amend. XIV, § 1.

54. See *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997).

55. See *Roe v. Wade*, 410 U.S. 113, 155 (1973).

56. See Robin West, *Rights, Capabilities, and the Good Society*, 69 *FORDHAM L. REV.* 1901, 1923 (2001).

57. See H.R. 58-1645, at 4 (Wash. 2004).

58. See *Roe*, 410 U.S. at 155.

At present, courts do not recognize a fundamental right to be free from violence.<sup>59</sup> Nevertheless, the seeds of judicial support for such a right exist in the established fundamental right to bodily integrity.<sup>60</sup> This right encompasses a woman's right to control her own person.<sup>61</sup> Moreover, "intimate and personal choices" that are "central to personal dignity and autonomy[,] are central to the liberty protected by the Fourteenth Amendment."<sup>62</sup> In considering the traditional right to bodily integrity in *Cruzan v. Director, Missouri Department of Health*,<sup>63</sup> the Supreme Court noted that the common law characterizes the touching of one person by another without consent or legal justification as battery.<sup>64</sup> Since then, at least one federal district court has declared that the government has some duty to protect victims of domestic violence from their partners.<sup>65</sup> Despite this headway, courts are unlikely to recognize a fundamental right to be free from violence.<sup>66</sup>

The Supreme Court has repeatedly expressed reluctance to "expand the concept of substantive due process"<sup>67</sup> to new liberty interests "without the guidance of the more specific provisions of the Bill of Rights."<sup>68</sup> In addition to this unwillingness to create a new fundamental right through judge-made law,<sup>69</sup> the Court views the Fourteenth Amendment as protecting citizens

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59. See *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 191 (1989) (holding that the state had no constitutional duty to protect a child after receiving complaints of possible abuse at the hands of his father).

60. *Rochin v. California*, 342 U.S. 165, 172-73 (1952) (deciding that the act of a police officer forcing the defendant to vomit in order to obtain evidence "shocks the conscience").

61. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 915 (1992) (Stevens, J., concurring in part and dissenting in part).

62. *Id.* at 851 (majority opinion).

63. *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 269-70 (1990).

64. *Id.* at 269 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 9 (5th ed. 1984)).

65. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 252 (E.D.N.Y. 2002) ("Just as the government has a responsibility to protect children from an abusive parent, so too does the government have a responsibility to protect a victim of domestic violence from her partner . . .").

66. See *Casey*, 505 U.S. at 953 (Rehnquist, C.J., concurring in part and dissenting in part) ("The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution." (quoting *Bowers v. Hardwick*, 478 U.S. 186, 194 (1986))).

67. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992).

68. *Moore v. City of E. Cleveland*, 431 U.S. 494, 502 (1977).

69. See *id.*

from the state, not from each other.<sup>70</sup> This principle shields citizens from state-conducted violence, but not from private acts of violence.<sup>71</sup> Therefore, the Supreme Court's jurisprudence presents formidable obstacles to judicial recognition of a fundamental right to be free from violence.<sup>72</sup> As a result, domestic violence victims must look elsewhere for protection from early-lease-termination penalties.

#### B. LANDLORD RESISTANCE

When domestic violence victims approach their landlords about terminating their lease, they may encounter outright hostility or—as evidenced by Martha Smith—sympathy coupled with reluctance to forfeit damages.<sup>73</sup> In states without early-termination statutes, victims face tedious negotiations with their landlords.<sup>74</sup> Victims who secure an advocate gain an advantage by having a skilled negotiator parlay a formal, mutual lease-termination agreement.<sup>75</sup> Nevertheless, an advocate often fails to convince the landlord that the gravity and urgency of the tenant's situation justifies breaking the lease.<sup>76</sup> As a result, many victims face the unconscionable choice of staying with an abuser or instead opting to incur financial lease-termination penalties, ruin their credit rating, and risk homelessness.<sup>77</sup>

According to early-termination bill sponsors, landlords

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70. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 196–97 (1989).

71. See Susan Bandes, *The Negative Constitution: A Critique*, 88 MICH. L. REV. 2271, 2272, 2285 (1990).

72. See *DeShaney*, 489 U.S. at 195–97; see also *Jackson v. City of Joliet*, 715 F.2d 1200, 1203 (1983) (describing the Constitution as a “charter of negative rather than positive liberties” and the Fourteenth Amendment as “protect[ing] Americans from oppression by state government, not . . . secur[ing] them basic governmental services”).

73. Katrina Johnson, Gov't Affairs Coordinator, Jane Doe Inc., Testimony Presented to the Massachusetts General Court Senate Housing Committee in Support of S. 2328 (June 16, 2005), <http://www.janedoe.org/involved/S793-Housing%20Testimonyweb.pdf>; see also “Martha Smith” Documentation, *supra* note 1.

74. See Stern, *supra* note 3, at 34, 44.

75. See *id.* at 45.

76. See *id.*

77. See Editorial, *Family Violence: A Residential Lease Should Not Stand Between Victims of Family Violence and Safety*, HOUSTON CHRON., Apr. 8, 2005, at 8B [hereinafter *Family Violence*] (“Victims who are compelled to flee to save their life or ensure their children's safety should not hesitate to leave because breaking their lease would harm their credit rating, rental history and ability to find other housing.”).

typically oppose domestic violence housing legislation.<sup>78</sup> Public housing authorities, landlord associations, and even law firms that represent landlords monitor legislative proposals that may carry a negative impact.<sup>79</sup> Some landlords voice concerns that tenants will abuse such protections in order to break a lease.<sup>80</sup> Others worry that early-termination statutes create a special class of people exempt from general leasing rules and eventually will lead to domestic violence victims having the freedom to violate other contractual obligations.<sup>81</sup> Most importantly, landlords comprehend the risk of financial losses if they are unable to locate a new renter soon after a domestic violence victim terminates a lease.<sup>82</sup> In sum, many landlords remain unconvinced that the “emergency nature of the domestic violence situation” merits a lease-termination exception for victims.<sup>83</sup>

### C. VAWA 2005 AND DOMESTIC VIOLENCE VICTIMS IN FEDERALLY ASSISTED HOUSING

Although landlords often fail to recognize the severity of domestic violence, Congress acknowledged the epidemic<sup>84</sup> over a decade ago when it began policing domestic violence with the Violence Against Women Act of 1994 (VAWA).<sup>85</sup> VAWA made

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78. Telephone Interview with Bryan Baker, Legislative Assistant to Fla. State Representative Anne Gannon (Aug. 22, 2005); Telephone Interview with Janet Cowell, N.C. State Senator (July 29, 2005); Telephone Interview with Jeremy Powers, Legislative Assistant to Mass. State Senator Brian Joyce (July 29, 2005); Telephone Interview with Matthew J. Heckles, Executive Assistant, Del. State Hous. Auth. (Aug. 1, 2005).

79. See, e.g., *Legislature Takes Aim at Landlords*, 7 LANDLORD NEWS, Mar. 2005, at 1, 1–3, available at <http://www.htspc.com/media/uploads/e3a1d4606a.pdf>; Letter from Nat'l Hous. Conference et al. to Arlen Specter, Chairman, Senate Judiciary Comm. (June 8, 2005), <http://www.nhc.org/index/policy-action-sign-on-060805J>; PROP. MGMT. ASS'N OF MICH., 2005 LEGISLATIVE REPORT AND 2006 FORECAST (2005), <http://www.pmamhq.com/courses.asp?id=25063&page=3>.

80. H.R. 58-1645, at 4 (Wash. 2004) (“[The early-termination provision] is based on self-reporting. Now anyone can say I am a victim and then get out of a lease.”); Telephone Interview with Matthew J. Heckles, *supra* note 78.

81. Wash. H.R. 58-1645.

82. See *Family Violence*, *supra* note 77.

83. Stern, *supra* note 3, at 45.

84. See BERRY, *supra* note 10, at 11 (“In the words of Senator Joseph Biden, ‘If the leading newspapers were to announce tomorrow a new disease that, over the past year, had afflicted from three to four million citizens, few would fail to appreciate the seriousness of the illness. Yet, when it comes to the three to four million women who are victimized by violence each year, the alarms ring softly.’”).

85. Pub. L. No. 103-322, §§ 40001–703, 108 Stat. 1796, 1902–55 (1994).

domestic violence a federal crime under certain circumstances,<sup>86</sup> mandated creation of the National Domestic Violence Hotline,<sup>87</sup> provided training to help local, state, and federal agencies deal with domestic violence crimes,<sup>88</sup> and authorized funding to ensure legal representation for domestic violence victims.<sup>89</sup> On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005).<sup>90</sup> In light of VAWA's success in improving the criminal justice response to domestic violence, Congress expanded the original criminal focus to housing and employment protections.<sup>91</sup> Additionally, VAWA 2005 effectively creates a right of early lease termination for domestic violence victims who participate in the federal Section 8 and public housing programs.<sup>92</sup>

Federally assisted housing refers to the broad category of housing either owned or subsidized by the government, including *inter alia* Section 8 and public housing.<sup>93</sup> Under the Section 8 housing program,<sup>94</sup> the U.S. Department of Housing and Urban Development (HUD) helps very low-income families, the elderly, and the disabled "afford decent, safe and sanitary housing" in the private housing market.<sup>95</sup> There are several variants of the Section 8 program.<sup>96</sup> Under the more common pro-

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86. *See id.* § 40221, 108 Stat. 1796, 1926–27 (codified as amended at 18 U.S.C. § 2261 (2000)) (punishing anyone who crosses state or tribal lines and either intends to or in fact commits an act of domestic violence).

87. *Id.* § 40211, 108 Stat. 1796, 1925–26 (codified as amended at 42 U.S.C. § 10416).

88. *Id.* § 40231, 108 Stat. 1796, 1932–34 (codified as amended at 42 U.S.C. § 3796hh).

89. *Id.* § 40114, 108 Stat. 1796, 1910; *see also* McMillion, *supra* note 38, at 73.

90. Pub. L. No. 109-162, 2006 U.S.C.C.A.N. (119 Stat.) 2960.

91. *See* McMillion, *supra* note 38, at 73.

92. *See* Pub. L. No. 109-162, §§ 606(5), 607(3)–(4), 2006 U.S.C.C.A.N. (119 Stat.) 2960, 3046–47, 3049 (to be codified at 42 U.S.C. §§ 1437d(1)(5)–(6), 1437f(r)(5)).

93. *See generally* Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs*, 25 CLEARINGHOUSE REV. 782, 782–92, 990–1000 (1991) (describing the various types of federally assisted housing programs).

94. 42 U.S.C. § 1437f (2000). Congress enacted this program through the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633.

95. 24 C.F.R. § 982.1 (2005); *see* 42 U.S.C. § 1437f; 24 C.F.R. § 982.201.

96. *See* Fuchs, *supra* note 93, at 990 (naming the different section 8 programs created by the Housing and Community Development Act of 1974).

grams,<sup>97</sup> HUD provides federal funds to public housing agencies (PHAs), which administer the program locally.<sup>98</sup> If an individual meets Section 8 criteria,<sup>99</sup> the local PHA subsidizes the private landlord's rent at a rate based on the tenant's income.<sup>100</sup> Public housing, on the other hand, constitutes housing owned by the government,<sup>101</sup> wherein the local PHA serves as the landlord,<sup>102</sup> and rent is calculated based on what each tenant can actually pay.<sup>103</sup> The guidelines governing these programs are relied upon widely by other forms of subsidized housing as well.<sup>104</sup>

Before VAWA 2005, Section 8 tenants could move and continue to receive housing assistance only if they notified the PHA ahead of time, terminated their existing lease within the lease provisions, and located acceptable housing.<sup>105</sup> Now, Section 8 tenants can circumvent these requirements if they (1) complied with all other Section 8 obligations, (2) moved in order to protect someone who is or has been a domestic violence victim, and (3) "reasonably believed" that they were "imminently threatened by harm from further violence" by staying in the subsidized unit.<sup>106</sup>

Similarly, Section 8 and public housing tenants originally faced losing their federal assistance if they or a family member were involved in criminal activity related to domestic violence anywhere on the rental property.<sup>107</sup> With VAWA 2005, PHAs cannot consider this type of activity as cause for terminating either the tenancy or the "occupancy rights" of the victim.<sup>108</sup>

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97. Amy R. Bowser, *One Strike and You're Out—Or Are You?: Rucker's Influence on Future Eviction Proceedings for Section 8 and Public Housing*, 108 PENN. ST. L. REV. 611, 617 (2003) (explaining that the two main types of section 8 housing are tenant-based housing and project-based housing).

98. See 24 C.F.R. §§ 982.103, 982.104.

99. See *id.* § 982.202.

100. *Id.* § 982.1.

101. See Fuchs, *supra* note 93, at 782.

102. *Id.*

103. *Id.* at 787.

104. See, e.g., 42 U.S.C. §§ 1437d(c), 1437f(d) (2000) (governing lease terms and policies); see also Fuchs, *supra* note 93, at 998 (showing that subsidized housing programs rely on § 1437f(d) in determining preferences for applicants).

105. See 42 U.S.C. § 1437f(r)(5); 24 C.F.R. § 982.314.

106. Pub. L. No. 109-162, § 606(5), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3046-47 (to be codified at 42 U.S.C. § 1437f(r)(5)).

107. See 42 U.S.C. § 1437d(l)(5)-(6); *id.* § 1437f(o)(7)(C)-(D).

108. Pub. L. No. 109-162, §§ 606(5), 607(3)-(4), 2006 U.S.C.C.A.N. (119

The “occupancy rights” language may prevent PHAs from denying public housing eligibility to tenants who need to move in order to escape future violence.<sup>109</sup> Moreover, victims in other federally assisted programs could potentially claim the same right by relying on the same provision.<sup>110</sup> If this language fails to protect domestic violence victims in these situations, Congress presumably may extend VAWA with future amendments in order to ensure victims in public housing—and possibly other federally assisted programs—the right to early lease termination. Despite the potential limitations of VAWA 2005, many domestic violence victims no longer have to choose between losing their federal assistance and living in an abusive environment.<sup>111</sup> Unfortunately, even the broadest interpretation of VAWA 2005 fails to protect domestic violence victims outside federally assisted housing programs.<sup>112</sup>

Despite a few provisions addressing early-termination rights, federal law fails to protect all domestic violence victims who reside in rental housing.<sup>113</sup> Landlord opposition frustrates legislative proposals that would protect domestic violence victims,<sup>114</sup> and the courts hesitate to extend constitutional jurisprudence to create broad protections for victims of private violence.<sup>115</sup> Nevertheless, legislators can find a basis for creating a victims’ right to early termination in the theory and practice of American property law.

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Stat. 2960) 3046–47, 3049 (to be codified at 42 U.S.C. §§ 1437d(1)(5)–(6), 1437f(r)(5)).

109. *Id.*

110. *See* Fuchs, *supra* note 93, at 998.

111. *Compare* 42 U.S.C. § 1437f(r)(5) (requiring tenants to legally terminate their lease and provide advance notice to the local PHA before leaving their unit in order to retain their section 8 vouchers), *with* § 606(5), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3046–47 (allowing domestic violence victims to retain their section 8 vouchers if they fail to meet the prior requirements but are threatened by future violence). *Compare* 42 U.S.C. §§ 1437d(l)(5)–(6), 1437f(o)(7)(C)–(D) (terminating the tenancy of any tenant who “threatens . . . the right to peaceful enjoyment of the premises”), *with* §§ 606(4)(B)–(C), 607(3)–(4), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3044–46 (to be codified at 42 U.S.C. §§ 1437d(1)(5)–(6), 1437f(o)(7)(C)–(D)) (excluding “incidents of actual or threatened domestic violence” and “criminal activity directly relating to domestic violence” from the acceptable grounds upon which PHAs may terminate tenancies).

112. § 606(5), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3046–47.

113. *See, e.g.*, 42 U.S.C. § 1437f(r).

114. *E.g.*, Telephone Interview with Bryan Baker, *supra* note 78.

115. *See* *Deshaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 191 (1988).

## III. EARLY-TERMINATION STATUTES AND THE LAW

A. EARLY LEASE TERMINATION FOR DOMESTIC VIOLENCE  
VICTIMS IN THEORY

The Framers of the Constitution believed that the right to acquire and own property was fundamental to the enjoyment of liberty.<sup>116</sup> As a result, the Supreme Court has defended property rights against legislative restriction throughout American history.<sup>117</sup> The Court has also adopted balancing tests that assess the government's interest in regulating property ownership,<sup>118</sup> despite a popular belief that zealous protection of ownership interests restricts equitable redistribution of property rights.<sup>119</sup> Developments in property law that allow the government to reallocate property rights between parties challenge the traditional view of property heralded by the Framers.<sup>120</sup> Moreover, these legal developments demonstrate the law's redistributive nature in its attempts to achieve fairness.<sup>121</sup> Looking beneath the absolutist impressions, established property law and intuition about human dignity challenge the widespread misconceptions about unconditional ownership.

On the surface, absolutist rhetoric pervades "common sense" notions about property rights in that most people presume that individuals' exclusive possession and control over property characterizes ownership.<sup>122</sup> Upon closer examination, however, theorists argue that this absolutist rhetoric is not an accurate depiction of property rights in the United States.<sup>123</sup>

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116. JAMES W. ELY, JR., *THE GUARDIAN OF EVERY OTHER RIGHT* 43 (2d ed. 1998).

117. *See id.* at 160.

118. *Id.* at 160–61; *see also* Laura S. Underkuffler-Freund, *Takings and the Nature of Property*, 9 *CAN. J. L. & JURISPRUDENCE* 161, 204 (1996) ("The United States Supreme Court has responded to this problem with an answer of deceit: a rigid or absolute model of property is articulated, while a contingent model is in fact (silently) used.").

119. Cass R. Sunstein, *On Property and Constitutionalism*, 14 *CARDOZO L. REV.* 907, 915–16 (1993).

120. *See* Joan Williams, *Recovering the Full Complexity of Our Traditions: New Developments in Property Theory*, 46 *J. LEGAL EDUC.* 596, 601 (1996); *see also* Underkuffler-Freund, *supra* note 118, at 203 ("The idea of property as 'rights,' bounded and protected, will persist in our society and culture.").

121. Joseph William Singer, *The Reliance Interest in Property*, 40 *STAN. L. REV.* 611, 663–83 (1988).

122. Williams, *supra* note 120, at 598–99.

123. *See* Singer, *supra* note 121, at 663–83; Underkuffler-Freund, *supra* note 118, at 204.

For example, the common law doctrines of adverse possession,<sup>124</sup> the public trust doctrine,<sup>125</sup> and the implied warranty of habitability (IWH)<sup>126</sup> operate in opposition to absolutist rhetoric by altering “common sense” notions of property rights.<sup>127</sup> First, the doctrine of adverse possession transfers title from an owner to a trespasser who occupies the owner’s land for a statutorily determined time period (among other requirements).<sup>128</sup> Second, the public trust doctrine requires the government to limit an owner’s exclusive use of property when that use interferes with the general welfare.<sup>129</sup> Third, IWH permits tenants to withhold rent payments until landlords make necessary improvements in order to render units habitable.<sup>130</sup> These legal devices constitute a common and dynamic enterprise in which the initial allocation of property rights does not necessarily dictate future outcomes between original parties.<sup>131</sup>

American law routinely redistributes rights in order to remedy social inequalities.<sup>132</sup> The public’s absolutist conception of property rights to the contrary results from the Framers’ focus on protecting property from redistribution.<sup>133</sup> In order to

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124. Under the doctrine of adverse possession, a person who wrongfully occupies another person’s land will gain title to that land if the possession is (1) actual, (2) open and notorious, (3) hostile, (4) exclusive, (5) continuous, (6) for a period of time defined by the statute of limitations, (7) under a claim of right or of title (sometimes), and (8) in good faith. ROGER A. CUNNINGHAM ET AL., *THE LAW OF PROPERTY* § 11.7 (2nd ed. 1993).

125. The public trust doctrine is a collection of common law principles dictating that some natural resources are held in trust by the government for the public’s benefit. WILLIAM H. RODGERS, JR., *HANDBOOK ON ENVIRONMENTAL LAW* § 2.16 (1977).

126. The implied warranty of habitability refers to the interpretation of common law or state housing codes to require a nondisclaimable warranty of habitability in all residential leases. See CUNNINGHAM ET AL., *supra* note 124, §§ 6.38–40. Landlords must keep apartments in a habitable condition or else be liable for breach of the lease, in which case the tenant may be able to pay little or no rent until the landlord improves the living conditions. See Singer, *supra* note 121, at 679–80.

127. See Singer, *supra* note 121, at 663–83.

128. See CUNNINGHAM ET AL., *supra* note 124, § 11.7.

129. Singer, *supra* note 121, at 674–75.

130. See *id.* at 679–80.

131. *Id.* at 657. Singer wants “to recognize the reliance interest in property . . . by vulnerable persons on relationships with others as legitimate and good . . . and as worthy of legal protection.” *Id.* at 699–700.

132. JENNIFER NEDELSKY, *PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM* 3 (1990).

133. See *id.* (“It was thus not property as such, but the effort to protect

leave this absolutism behind, one commentator insists on conceiving of property rights as the “ever shifting product of collective decision-making.”<sup>134</sup> Skeptics criticize this approach as it smacks of eliminating any possibility of stability and predictability in determining property rights within and beyond instances of social injustice.<sup>135</sup> Rather than deny existing dualistic conceptions of property, these critics argue for a legal system that accommodates both notions.<sup>136</sup> This task could be accomplished by preserving stable property rights while providing for instances in which the current distribution of property changes in order to prevent inequities.<sup>137</sup>

Another method designed to reallocate property rights focuses on the language surrounding property.<sup>138</sup> This approach examines the rhetoric of property both outside of, and within, the law in order to highlight redistributive notions in the public’s complex and conflicting beliefs about property.<sup>139</sup> In formulating themes of property rights, supporters of this theory pinpoint the intuition that, at times, property rights present a threat to human dignity.<sup>140</sup> Because arguments based on human dignity appear vague and sentimental in juxtaposition to an economic—albeit misleading—presentation, they function best through statements of facts in cases at issue.<sup>141</sup> For example, one theorist describes an IWH case in which a conscientious tenant had occupied an apartment that reeked of excrement and in which plaster collapsed on a crib, broken windows threatened toddlers’ hands, locks were inadequate, and the plumbing did not work.<sup>142</sup> These details appeal to the public’s intuition that human dignity trumps absolutist conceptions of property rights,<sup>143</sup> while creating an environment in which al-

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property . . . that has had distorting consequences.”).

134. *Id.* at 274.

135. See Laura S. Underkuffler, *The Perfidy of Property*, 70 TEX. L. REV. 293, 315 (1999).

136. See Underkuffler-Freund, *supra* note 118, at 203–04.

137. See *id.* at 191–93.

138. Joan Williams, *The Rhetoric of Property*, 83 IOWA L. REV. 277, 304–08 (1998).

139. *Id.* at 305.

140. See Williams, *supra* note 120, at 605. Williams discusses the emergence of human dignity themes in discussions of commoditization and implied warranty of habitability cases. *Id.*

141. *Id.* at 606.

142. *Id.* (citing *Hilder v. St. Peter*, 478 A.2d 202 (Vt. 1984)).

143. See Williams, *supra* note 120, at 605.

ternative visions of property and ownership can reclaim a central role in the law.<sup>144</sup>

Domestic violence embodies an affront to victims' human dignity.<sup>145</sup> Upon hearing about terrifying assaults like that of "Martha Smith,"<sup>146</sup> it is difficult to understand why most states' laws fail to provide victims with an exception to normal lease-termination procedures.<sup>147</sup> At the same time, "common sense" impressions about property teach that a landlord has a right to receive rent payments for the duration of a lease.<sup>148</sup> This conception, however, need not prevent the law from redistributing a property right from a landlord to a victimized tenant. Indeed, the existing legal tools of adverse possession, the public trust doctrine, and the IWH demonstrate the reallocation of property rights from landlords to tenants.<sup>149</sup>

#### B. EARLY LEASE TERMINATION FOR DOMESTIC VIOLENCE VICTIMS IN PRACTICE

In granting victims a right to early termination, the law places victims' human dignity and what would otherwise constitute social inequality above landlords' economic interests. Landlords lose relatively little under an early-termination scenario compared to what the law takes from owners in applying the IWH, public trust, and adverse possession doctrines.<sup>150</sup> When an individual owns beachfront property, for example, she lacks the right to exclude the public from using her land up to the high water mark because use of such land benefits the general welfare.<sup>151</sup> The existence of early-termination laws likewise benefits the general welfare by protecting victims and neighbors from violence, but without creating a windfall for victims.<sup>152</sup> As long as victims remain in the unit—and in some in-

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144. See Williams, *supra* note 138, at 361.

145. See BERRY, *supra* note 10, at 2–3.

146. See "Martha Smith" Documentation, *supra* note 1.

147. See Williams, *supra* note 120, at 605–06.

148. See Thomas C. Grey, *The Disintegration of Property*, in PROPERTY: NOMOS XXII 69, 69 (J. Roland Pennock & John W. Chapman eds., 1980) ("To own property is to have exclusive control of something—to be able . . . to sell it . . .").

149. See CUNNINGHAM ET AL., *supra* note 124, §§6.38–40, 11.7; RODGERS, *supra* note 125, § 2.16.

150. See CUNNINGHAM ET AL., *supra* note 124, § 11.7; Singer, *supra* note 121, at 674–75, 679–80.

151. Singer, *supra* note 121, at 674–75.

152. See, e.g., WASH. REV. CODE ANN. § 59.18.575(2) (West 2006) ("The ten-

stances for a time period after vacating—they must continue to pay rent.<sup>153</sup>

Similarly, the IWH allows tenants to live in an apartment at reduced or no cost, but they receive less of a windfall than the public enjoys under the public trust doctrine due to the uninhabitable conditions of their residence.<sup>154</sup> Nevertheless, tenants exercising their rights under the IWH use landlords' property without full compensation.<sup>155</sup> Victims utilizing an early-termination statute stop paying rent only upon vacating the premises,<sup>156</sup> and the landlord then may generate rent from a new tenant. Additionally, cotenants of victims who terminate their lease early are still liable for rent.<sup>157</sup>

In a more severe redistribution, adverse possession seizes title from the original owner and vests it in a trespasser due to society's preference for productive land use.<sup>158</sup> An early-termination exception for domestic violence victims allows landlords to retain full title to their property, while simply restricting their cash flow temporarily.<sup>159</sup> Once a victim terminates her lease, the landlord is free to rent to another tenant immediately or to continue collecting rent from any remaining cotenants.<sup>160</sup> By comparison, early-termination statutes appear much more reasonable.

In fact, many states allow tenants enlisted in the armed services to terminate a rental agreement upon providing proof of orders for active duty, transfer, or discharge that require re-

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ant shall remain liable for the rent for the month in which he or she terminated the rental agreement . . .").

153. See, e.g., COLO. REV. STAT. § 38-12-402(2)(b) (2005) (holding tenants responsible for one month's rent following vacation of the premises).

154. See Singer, *supra* note 121, at 674–75.

155. See *id.* at 679–80.

156. See, e.g., WASH. REV. CODE ANN. § 59.18.575(2).

157. See, e.g., OR. REV. STAT. ANN. § 90.453(4) (West 2005) (“Notwithstanding the release from a rental agreement of a tenant who is a victim, any other tenant remains subject to the rental agreement.”).

158. CUNNINGHAM ET AL., *supra* note 124, § 11.7. Policy also supports the doctrine of adverse possession due to its ability to stabilize uncertain boundaries over time and to protect persons who have invested in the land or dealt with the adverse possessor in reliance upon her apparent ownership. *Id.*

159. See, e.g., TEX. PROP. CODE ANN. § 92.016 (Vernon 2005) (explaining that a domestic violence victim may vacate the rental unit before the end of the lease term and avoid liability for future rent).

160. See N.C. GEN. STAT. § 42-45.1 (2005); OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575(2); see also H.R. 5, 108th Leg., Reg. Sess., § 1 (Fla. 2006); S. 2328, 184th Gen. Ct, Reg. Sess. § 9 (Mass. 2006).

location.<sup>161</sup> Delaware even allows serious illness, acceptance into public housing, admittance into a home for the elderly, and a change in location of employment to create a tenants' right to terminate their lease early.<sup>162</sup> In states allowing military personnel to terminate rental agreements early, the legislature redistributes landlords' property interests on behalf of individuals who have voluntarily—excluding rare instances of a draft—chosen a lifestyle that may require unpredictable transfers. Moreover, illness and work relocation often prove equally unpredictable. Nonetheless, most states are unwilling to interfere with the same property rights in order to protect domestic violence victims who are abused against their will and require relocation for their safety.

The aforementioned legal mechanisms redistribute ownership rights to others out of concern for the general welfare, habitable living conditions, and—in the most drastic reallocation under adverse possession—productivity in land use.<sup>163</sup> Early-termination exceptions for domestic violence victims also promote the general welfare and habitable living conditions of victims, families, and all tenants in a shared complex.<sup>164</sup> For instance, a residence wrought with abuse is just as dangerous and uninhabitable as one without working plumbing and broken windows. Yet in promoting interests similar to those endorsed by the public trust doctrine and the IWH, early-termination provisions impose fewer restrictions on landlords' rights.

#### IV. THE NUTS AND BOLTS OF CREATING A RIGHT TO EARLY TERMINATION

Oregon, Washington, Colorado, North Carolina, and Texas have laws that allow domestic violence victims to terminate a rental agreement without financial penalty.<sup>165</sup> Five states have

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161. See, e.g., DEL. CODE ANN. tit. 25, § 5314(b)(5) (2004); FLA. STAT. ANN. § 83.682 (West 2004); KAN. STAT. ANN. § 58-2570(b) (2004); N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.475; TEX. PROP. CODE ANN. § 92.017; VA. CODE ANN. § 55-248.21:1 (2003); WASH. REV. CODE ANN. § 59.18.200(b).

162. DEL. CODE ANN. tit. 25, § 5314.

163. See CUNNINGHAM ET AL., *supra* note 124, § 11.7; Singer, *supra* note 121, at 674–75, 679–80.

164. See generally BERRY, *supra* note 10, at 2–11 (describing the frequent occurrence and severity of domestic violence along with the effects on victims and others).

165. COLO. REV. STAT. § 38-12-402 (2005); N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE

proposed legislation aimed at providing this same right with varying levels of success.<sup>166</sup> By examining the approaches of each proposal, other states can create a strategy for generating their own early-termination statutes. A survey of existing laws, victim needs, and landlord concerns suggests that new laws should amend existing landlord-tenant codes, make landlord rights and obligations explicit, guarantee victims the right to stay if they so choose, and employ dialogue among advocates, legislators, and landlords during the legislative process.

#### A. EXISTING EARLY-TERMINATION STATUTES

States that have succeeded in creating early-termination statutes utilize similar techniques in drafting their legislation. In framing the class of tenants who qualify for early termination, legislators refer to state domestic violence statutes for definitions and verifications of victim status.<sup>167</sup> Early-termination statutes also provide procedural guidelines for when and how victims may terminate their leases without financial penalties.<sup>168</sup>

Early-termination statutes do not establish a novel definition of what constitutes domestic violence.<sup>169</sup> The trend in existing law is to refer to preexisting definitions of domestic violence in the state code.<sup>170</sup> Similarly, preexisting statutory definitions of sexual assault, stalking, and abuse often accompany domestic violence as valid reasons for early termination of a rental agreement.<sup>171</sup> Early-termination statutes require tenants to

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ANN. § 59.18.575. See J. Norton Cabell, *Rental Forum: Domestic Violence Laws Benefit Tenants*, OREGONIAN, Aug. 29, 2004, at H24.

166. H.R. 5, 2006 Leg., 108th Reg. Sess. (Fla. 2006); S. 2328, 184th Gen. Ct. Reg. Sess. § 9 (Mass. 2006); H.R. 194, 56th Leg. Gen. Sess. (Utah 2005); H.R. 2317, 46th Leg., 2d Reg. Sess. (Ariz. 2004); H.R. 2864, 80th Leg., Reg. Sess. (Kan. 2004).

167. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE ANN. § 59.18.570.

168. See, e.g., COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE ANN. § 59.18.575.

169. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE ANN. § 59.18.570; see also Fla. H.R. 5; Mass. S. 2328; Utah H.R. 194; Ariz. H.R. 2317; Kan. H.R. 2864.

170. See, e.g., WASH. REV. CODE ANN. § 59.18.570 (“‘Domestic violence’ has the same meaning as set forth in [Section] 26.50.010.”).

171. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV.

verify their status as domestic violence victims according to the statutory definition.<sup>172</sup> Providing the landlord with a valid protection order<sup>173</sup> or a copy of a police report<sup>174</sup> constitutes the most common way in which a tenant may prove victim status.<sup>175</sup> Some states allow a “qualified third party” who is acting in her official capacity to submit a report verifying the tenant is a victim of domestic violence.<sup>176</sup> Such statutes provide a form that illustrates the type of information a qualified third party should include in a report.<sup>177</sup> These forms generally include a signed statement by the tenant that he or she or a minor member of the household suffered abuse on a particular date and that the statement supports his or her request to be released from a rental agreement.<sup>178</sup> The form also contains the name and contact information of a law enforcement officer who

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STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575; Fla. H.R. 5; Mass. S. 2328; Utah H.R. 194; Kan. H.R. 2864.

172. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE ANN. § 59.18.575; see also Fla. H.R. 5; Mass. S. 2328; Utah H.R. 194; Ariz. H.R. 2317.

173. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; WASH. REV. CODE ANN. § 59.18.575; see also Fla. H.R. 5; Mass. S. 2328; Utah H.R. 194; Ariz. H.R. 2317.

174. See COLO. REV. STAT. § 38-12-402; OR. REV. STAT. ANN. § 90.453; see also Mass. S. 2328; Utah H.R. 194; Ariz. H.R. 2317; Kan. H.R. 2864.

175. The North Carolina Code requires tenants to provide either a safety plan along with a permanent protection order or a criminal restraining order, or a valid “Address Confidentiality Program” card. N.C. GEN. STAT. § 42-45.1(a). A valid safety plan (1) must be dated during the term of the tenancy at issue, (2) must be provided by a domestic violence program that meets applicable statutory requirements, and (3) must recommend relocation of the victim. *Id.* The Texas Property Code requires a temporary injunction for verification purposes, as well. TEX. PROP. CODE ANN. § 92.016. Both state laws and Kansas’s bill would allow a criminal restraining order to constitute verification of domestic violence victim status. *Id.*; see also N.C. GEN. STAT. § 42-45.1(a); Kan. H.R. 2864 § 3.

176. WASH. REV. CODE ANN. § 59.18.570; see also Kan. H.R. 2864 § 3; Mass. S. 2328 § 9. Washington’s law classifies law enforcement officers, employees of a court of the state, licensed mental health professionals or other licensed counselors, employees of crime victim/witness programs who are trained advocates for the program, and members of the clergy as qualified third parties. WASH. REV. CODE ANN. § 59.18.570. Massachusetts Senate Bill 2328 adds attorneys and social workers to Washington’s list of qualified third parties. Mass. S. 2328 § 9.

177. See OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575; see also Mass. S. 2328 § 9. Oregon allows only law enforcement officers to complete a verification form. § 90.453.

178. See, e.g., OR. REV. STAT. ANN. § 90.453.

verifies the victim's statement by signing the document.<sup>179</sup>

Typically, victims of domestic violence who wish to terminate a lease early also must provide written notice of termination to the landlord.<sup>180</sup> Many provisions require filing the notice within two or three months of the reported violence.<sup>181</sup> In some states, the rental agreement terminates as soon as the landlord receives written notice.<sup>182</sup> Other states specify the lease terminates after a set time period that follows the delivery of written notice to the landlord.<sup>183</sup> Domestic violence victims who terminate a lease subject to an early-termination statute avoid rent liability after the termination date in most cases.<sup>184</sup> In addition,

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179. *Id.*

180. *See* COLO. REV. STAT. § 38-12-402 (2005); N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575; *see also* Fla. H.R. 5, 2006 Leg., 108th Reg. Sess., § 1 (Fla. 2006); Kan. H.R. 2864 § 4; Mass. S. 2328 § 9. Utah House Bill 194 does not require the notice to be in writing. H.R. 194, 56th Leg., Gen. Sess. § 3 (Utah 2005). Arizona House Bill 2317 does not require the victim to provide to the landlord a notice of intent to terminate the rental agreement that is separate from the verification documentation. *See* H.R. 2317, 46th Leg., 2d Reg. Sess. § 2 (Ariz. 2004).

181. Oregon and Washington require a written termination notice within ninety days of the reported act of domestic violence. OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575. In Colorado, a victim must provide written notice of termination within sixty days of the issuance of a police report or protection order. COLO. REV. STAT. § 38-12-402. Floridians would have to deliver written notice of termination to the landlord no later than fifteen days after the permanent injunction against the perpetrator is entered. Fla. H.R. 5 § 1. Texas does not indicate a specific time period in which a victim must submit a written termination notice in relation to the act of domestic violence. TEX. PROP. CODE ANN. § 92.016 (Vernon 2005). The Kansas and Arizona bills similarly do not indicate a specific time period. *See* Kan. H.R. 2864 § 4; Ariz. H.R. 2317 § 2.

182. COLO. REV. STAT. § 38-12-402; WASH. REV. CODE ANN. § 59.18.575. Under the Texas Property Code, termination is effective as soon as (1) a judge has signed an injunction or order against the perpetrator, (2) the victim has delivered a copy of the order to the landlord, and (3) the victim has vacated the rental unit. TEX. PROP. CODE ANN. § 92.016; *see also* Mass. S. 2328 § 9(2)(b).

183. Oregon, Utah, and Arizona provisions allow termination to occur no sooner than fourteen days after delivery of written notice. OR. REV. STAT. ANN. § 90.453; Utah H.R. 194 § 3; Ariz. H.R. 2317 § 2. The North Carolina Code permits victims to terminate a rental agreement thirty days after providing written notice. N.C. GEN. STAT. § 42-45.1(a); *see* Fla. H.R. 5 § 1. Kansas House Bill 2864 would allow victims to terminate a lease in fifteen days or less. Kan. H.R. 2864 § 4.

184. *See* N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575; *see also* Fla. H.R. 5 § 1; Mass. S. 2328 § 9; Ariz. H.R. 2317 § 2. In Colorado, victims may be liable for the rent of the month following notice of termination if the landlord produces documents to support the existence of damages as a result of the victim's early termination. COLO. REV. STAT. § 38-12-402. Under Texas law, a victim is liable for delinquent, unpaid

landlords may not withhold any money from a victim's deposit on the sole basis of the early termination.<sup>185</sup> Despite a victim's proper early lease termination, any other tenant on the lease remains liable to the landlord.<sup>186</sup>

## B. CONSTRUCTING AN EARLY-TERMINATION PROVISION

### 1. Working Within the Existing Landlord-Tenant Framework

The states that have succeeded in passing legislation that allows domestic violence victims to terminate a lease early have done so by amending their existing landlord-tenant codes.<sup>187</sup> This approach allows landlords to readily determine their obligations to tenants who suffer from domestic violence without having to comb through scattered provisions of law. By situating an exception for domestic violence victims within the section addressing standard lease-termination procedures, the legislature provides fair notice to landlords.

From the legislative perspective, focusing on the landlord-tenant code in crafting a right to early termination for domestic violence victims has two notable advantages. First, legislators can tailor the actual language creating the domestic violence exception to the structure and policy behind each state's code. In a state like Delaware that already allows for several exceptions to the standard lease-termination procedure, the legislature simply can add domestic violence victims to the list of other tenants that qualify for exemption.<sup>188</sup> States with limited or no exceptions to termination procedures, such as Oregon, require the legislature to construct a provision consistent with the landlord-tenant code.<sup>189</sup> In both instances, the lawmakers

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rent owed before the lease was terminated unless the victim's lease contains language explaining that tenants may have special statutory rights to terminate the lease early in certain situations. TEX. PROP. CODE ANN. § 92.016.

185. See OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575; see also Mass. S. 2328 § 9; Ariz. H.R. 2317 § 2; Kan. H.R. 2864 § 4. Colorado law allows a landlord to withhold a victim's deposit if the victim has not paid rent within ninety days of termination. COLO. REV. STAT. § 38-12-402. Massachusetts and Arizona would require landlords to provide victims with a pro rata refund for any prepaid rent. Mass. S. 2328 § 9; Ariz. H.R. 2317 § 2.

186. See N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575(2); see also Fla. H.R. 5 § 1; Mass. S. 2328 § 9.

187. See COLO. REV. STAT. § 38-12-402; N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.459; WASH. REV. CODE ANN. § 59.18.585.

188. See DEL. CODE ANN. tit. 25, § 5314 (2004).

189. See OR. REV. STAT. ANN. § 90.453.

can defer to the definitions of domestic violence that exist elsewhere in state law as a result of the reforms of the 1980s.<sup>190</sup>

Second, relying on prior determinations prevents the current legislature from struggling to define the complex issue of domestic violence.<sup>191</sup> The benefits are two-fold: legislators can focus their efforts on the procedure by which tenants provide notice and verification of domestic violence to their landlords, and bill sponsors can emphasize the housing aspects of the amendment rather than the controversial issue of domestic violence.<sup>192</sup> Despite the legal system adopting definitions and policies surrounding domestic violence in the late twentieth century, domestic violence remains a delicate topic in the political sphere.<sup>193</sup> The dirty work completed by prior legislators in the realm of domestic violence thus affords current and future lawmakers the ability to utilize existing definitions and reporting procedures in drafting victims' right to terminate a rental agreement.

## 2. Preventing Landlord Opposition to Early Termination

An approach that has aided this type of legislation involves ensuring that landlords clearly understand their rights and obligations under a new proposal.<sup>194</sup> In other words, landlords want to know how the amendments affect them. Because granting domestic violence victims the right to early termination alters the distribution in property rights between landlord and tenant, landlords understandably scrutinize whether such legislation preserves their interests while benefiting victims. Landlord associations voice concern regarding the following issues: (1) whether domestic violence victims can face eviction for lease violations; (2) what constitutes sufficient verification of domestic violence; (3) whether the law creates a protected class for domestic violence victims; (4) how a victim's deposit should be dealt with upon early termination when damages are the result of a domestic violence incident; and (5) whether a victim's

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190. See, e.g., WASH. REV. CODE ANN. § 59.18.570 (referring to a separate statute in defining "domestic violence").

191. See BERRY, *supra* note 10, at 1–12 (describing the complex nature of domestic violence).

192. See, e.g., WASH. REV. CODE ANN. § 59.18.570.

193. See BERRY, *supra* note 10, at 11; BUZAWA & BUZAWA, *supra* note 20, at 13–25 (describing the social controversy behind domestic violence).

194. Telephone Interview with Bryan Baker, *supra* note 78.

cotenants remain liable to the lease despite the victim's early termination.<sup>195</sup> Adding a clarifying statement under the landlord-tenant provisions of concern easily address all of these issues. For example, under the landlord-tenant code section pertaining to security deposits, the legislature can elucidate the circumstances (if any) in which a landlord may retain a portion or all of a victim's deposit in the event of early termination.

Bill sponsors need to be aware of and understand the underlying rationale for these and any other concerns that their state's landlords may possess when presenting their proposal. A proactive approach involves working with landlords in developing the legislation. As a result, landlords and domestic violence advocates understand each other and can compromise rather than disregard valid concerns. Bill sponsors' success likely depends on forging cooperation between landlords and domestic violence advocates before introducing their legislation.<sup>196</sup> Moreover, a bill that passes through the legislature but confuses landlords would fail to fully benefit domestic violence victims.

### C. LIMITATIONS AND REWARDS OF EARLY-TERMINATION LEGISLATION

#### 1. Exclusion of Victims

A drawback to creating precise procedures for domestic violence victims to take advantage of early-termination provisions in landlord-tenant codes is underinclusion. Many domestic violence victims have limited access to reporting channels. Abusers employ tactics that isolate victims from family, friends, and coworkers.<sup>197</sup> In addition, victims become prisoners in their own homes when their abusers force them to relinquish their cars or threaten to harm them if they leave.<sup>198</sup> Victims who are unable to contact a "qualified third party"<sup>199</sup> in order to report

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195. *Id.*; see H.R. 58-1645, at 4 (Wash. 2004).

196. Telephone Interview with Bryan Baker, *supra* note 78; Telephone Interview with Janet Cowell, *supra* note 78; Telephone Interview with Jeremy Powers, *supra* note 78.

197. See BERRY, *supra* note 10, at 2-3.

198. *Id.* at 32.

199. See, e.g., WASH. REV. CODE ANN. § 59.18.570 (West Supp. 2006); S. 2328, 184th Gen. Ct. § 9 (Mass. 2006); H.R. 2864, 80th Leg., Reg. Sess. § 3(p)(5) (Kan. 2004) (listing professionals that may legally vouch for a victim, although not specifically labeled as a "qualified third party").

their abuse cannot provide their landlords with requisite verification of domestic violence.

While domestic violence advocates find this limitation objectionable, landlords demand clarity in the law when it comes to relinquishing their right to receive rent.<sup>200</sup> Increased clarity for landlord approval of early-termination legislation comes at the expense of some victims' opportunities to flee domestic violence. Additionally, landlord concerns regarding monetary damages sometimes result in statutes that simply decrease early-termination fees.<sup>201</sup> Given a choice between no early-termination provision and one that reduces financial penalties, however, advocates and legislators accept the latter.<sup>202</sup> Despite these shortcomings, early-termination statutes provide an escape hatch for many domestic violence victims who otherwise find themselves discouraged by full early-termination fees.<sup>203</sup> Furthermore, the existence of these kinds of laws may motivate other victims to take the first steps toward leaving their abusers.<sup>204</sup>

Another limitation lies in the novelty of laws granting victims of domestic violence the right to early termination.<sup>205</sup> Subsequent interpretations of these statutes could result in the exclusion of more victims. Once advocates know the effects of the existing laws, they can propose changes that fine-tune the early-termination procedures for victims in order to provide greater safety.<sup>206</sup> Nevertheless, a potential positive side effect of these new laws could be landlords' increased sensitivity to the problem of domestic violence in their housing.<sup>207</sup> Although

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200. Telephone Interview with Bryan Baker, *supra* note 78; see H.R. 58-1645, at 4 (Wash. 2004).

201. See N.C. GEN. STAT. § 42-45.1 (2005); OR. REV. STAT. ANN. § 90.453 (West Supp. 2005); WASH. REV. CODE ANN. § 59.18.575; see also H.R. 5, 2006 Leg., 108th Reg. Sess. § 1 (Fla. 2006); S. 2328, 184th Gen. Ct. § 9 (Mass. 2006); H.R. 2317, 46th Leg., 2d Reg. Sess. § 2 (Ariz. 2004).

202. See N.C. GEN. STAT. § 42-45.1; OR. REV. STAT. ANN. § 90.453; WASH. REV. CODE ANN. § 59.18.575.

203. See Stern, *supra* note 3, at 33.

204. See Martin & Stern, *supra* note 12, at 560.

205. Many of these laws became effective rather recently. COLO. REV. STAT. § 38-12-402 (2005) (promulgated July 1, 2005); N.C. GEN. STAT. § 42-45.1 (effective October 1, 2005); WASH. REV. CODE ANN. § 59.18.575 (effective March 15, 2004); Cabell, *supra* note 165 (noting that Oregon's law became effective in 2003).

206. See Cabell, *supra* note 165 (predicting that legislators "will tinker with [the new laws] in the upcoming session").

207. See S. REP. NO. 103-138, at 38 (1993) (describing one of the goals of

they would have no legal obligation to release victims from their leases, landlords may increasingly accept verifications not enumerated by law.<sup>208</sup> HUD already encourages PHA-sensitivity to tenants experiencing domestic violence<sup>209</sup> and to accept “a broad range of evidence as proof of domestic violence.”<sup>210</sup> With the enactment of state legislation, both public and private landlords may develop heightened awareness and greater patience for domestic violence issues.

## 2. Creating Victims’ Right to Leave While Preserving Their Right to Stay

The ability of domestic violence victims to terminate a rental agreement without financial penalty does not translate into promoting a policy that supports uprooting all victims of domestic violence. In circumstances in which victims cannot leave or are preparing to leave their rental unit, they require enhanced safety measures that protect them from their abusers and emphasize the landlord’s continued obligation to victims until they physically leave the premises.<sup>211</sup> HUD recommends that PHAs carefully consider alternatives to eviction for victims of domestic violence,<sup>212</sup> despite the statutory authority to evict tenants associated with criminal activity on the premises.<sup>213</sup> HUD further empowers PHAs to bar abusers from the premises.<sup>214</sup> Although HUD recognizes the importance of maintaining housing for victims, PHAs wield ultimate authority over which victims stay and which face eviction.<sup>215</sup> On the other

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VAWA as educating the public and providing women the assurance that their attackers will not be tolerated).

208. See HUD GUIDEBOOK, *supra* note 17, at 217–18 (encouraging PHAs to accept a wide variety of documentation as proof of victim status).

209. Telephone Interview with Matthew J. Heckles, *supra* note 78.

210. HUD GUIDEBOOK, *supra* note 17, at 217–18 (permitting as evidence *inter alia* a victim’s statement, testimony or affidavit describing the facts or cruelty of each incident; restraining or civil protection orders; medical records; police reports; telephone records; criminal court records; statements from domestic violence advocates; and statements from counselors).

211. See Stern, *supra* note 3, at 45 (reminding advocates about the “privacy and confidentiality needs of the tenant”).

212. See HUD GUIDEBOOK, *supra* note 17, at 219.

213. Pub. L. No. 109-162, §§ 606(4)(B)–(C), 607(3)–(4), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3044–46 (to be codified at 42 U.S.C. §§ 1437d(1)(5)–(6), 1437f(o)(7)(C)–(D)).

214. See HUD GUIDEBOOK, *supra* note 17, at 219.

215. See §§ 606(4)(B)–(C), 607(3)–(4), 2006 U.S.C.C.A.N. (119 Stat.) at 3044–46.

hand, early-termination statutes with built-in protections require—rather than encourage—landlords to protect domestic violence victims' housing rights.<sup>216</sup>

North Carolina's, Oregon's, and Washington's laws provide for victims' safety in these situations by permitting victims to request lock changes upon providing the landlord with a court order that excludes the abuser from the rental unit.<sup>217</sup> Going a step further, North Carolina and Oregon allow victims to change the locks themselves if the landlord does not respond to their lawful request.<sup>218</sup> In order to gain landlord support for such provisions, domestic violence advocates would need to clarify (1) the requisite documentation that a victim must provide to the landlord in order to exclude a tenant; (2) who is responsible for the cost of the lock change; (3) that the landlord has no liability to the excluded tenant for unlawful ouster when acting in accordance with such provisions; (4) whether or not the landlord has a duty to allow the excluded tenant to retrieve property from the unit; (5) a concrete time period in which a landlord must act before tenants may change locks themselves; and (6) the time period in which victims must provide a new key to landlords after changing the locks themselves.

Victims also need protection from landlord discrimination and retaliation on the basis of their status as a domestic violence victim<sup>219</sup> or their history of utilizing an early-termination procedure.<sup>220</sup> Disparate impact claims under the Fair Housing Act<sup>221</sup> may already protect female victims from these sorts of activities.<sup>222</sup> Additionally, many states have statutes prohibit-

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216. See, e.g., N.C. GEN. STAT. § 42-45.1 (2005); OR. REV. STAT. ANN. § 90.459(2) (West Supp. 2006); WASH. REV. CODE ANN. § 59.18.585(1) (West Supp. 2006).

217. N.C. GEN. STAT. § 42-42.3; OR. REV. STAT. ANN. § 90.459(2); WASH. REV. CODE ANN. § 59.18.585(1); see also H.R. 194, 56th Leg. Gen. Sess. § 3 (Utah 2005).

218. N.C. GEN. STAT. § 42-42.3(c); OR. REV. STAT. ANN. § 90.459(2).

219. See Press Release, ACLU, ACLU Testifies on Housing Problems for Victims of Violence and Immigrant Domestic Workers (Oct. 17, 2005), <http://www.aclu.org/womensrights/gen/21228prs20051017.html>, (discussing the testimony of three clients who were evicted or threatened with eviction because they were domestic violence victims).

220. See WASH. REV. CODE ANN. § 59.18.580(1).

221. 42 U.S.C. §§ 3601–19 (2000). The Fair Housing Act prohibits discrimination against tenants or potential tenants “because of race, color, religion, sex, familial status, or national origin.” *Id.* § 3604(a).

222. Eliza Hirst, Note, *The Housing Crisis for Victims of Domestic Violence: Disparate Impact Claims and Other Housing Protection for Victims of Domes-*

ing housing discrimination.<sup>223</sup> States lacking these protections for domestic violence victims should seize the opportunity to propose them alongside early-termination legislation.<sup>224</sup> For example, Colorado's, North Carolina's, and Washington's early-termination laws include provisions prohibiting landlords from retaliating against victims of domestic violence.<sup>225</sup> If domestic violence victims face the choice of remaining with their abusers or enduring discrimination from landlords, research suggests that victims more often than not will stay in the familiar setting of abuse.<sup>226</sup> As such, laws preventing landlords from denying rental applications, raising rent, or decreasing services of domestic violence victims should promote a policy that supports victims' decision to leave their abusers.

### CONCLUSION

Victims of domestic violence face numerous and complex obstacles in deciding to leave their abusers. For those who reside in rental housing, the cost of terminating their rental agreement constitutes one more barrier to escaping the abuse. Although prevailing culture may presume that landlords' right to the benefit of their bargain trumps any rights of their tenants, in practice, tenants often prevail when their human dig-

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*tic Violence*, 10 GEO. J. ON POVERTY L. & POL'Y 131, 141-42 (2003). In constructing a disparate impact claim under the Fair Housing Act, domestic violence victims must prove four elements: (1) discriminatory effect, (2) evidence of discriminatory intent, (3) that the landlord had an interest in taking the allegedly discriminatory action, and (4) that affirmative relief (requiring the landlord to house the protected tenants) would adequately remedy the situation. *Id.* at 142-43. The Fair Housing Act has been rather uniformly applied to protect the rights of domestic violence victims. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677-78 (D. Vt. 2005) (holding that discrimination against a domestic violence victim constitutes sex discrimination under the Fair Housing Act); *United States ex. rel. Alvera v. C.B.M. Group, Inc.*, CV 01-857-PA (D. Or. filed June 8, 2001), <http://www.nhlp.org/lalshac/decreedecree.pdf>.

223. See, e.g., ALA. CODE § 24-8-4 (LexisNexis 2000); IDAHO CODE ANN. § 67-5909 (Supp. 2005); N.M. STAT. ANN. § 28-1-7 (West Supp. 2005) (repealed effective July 1, 2006).

224. Rhode Island is one of the few states that explicitly prohibits housing discrimination against domestic violence victims. R.I. GEN. LAWS §§ 34-37-1, -2, -2.4, -3, -4 (Supp. 2005).

225. COLO. REV. STAT. § 38-12-402(1) (2005); N.C. GEN. STAT. § 42-45.1 (2005); WASH. REV. CODE ANN. § 59.18.580(1); see also H.R. 2864, 80th Leg., Reg. Sess. § 2(a) (Kan. 2004); S. 2328, 184th Gen. Ct. § 9 (Mass. 2006).

226. See generally BERRY, *supra* note 10, at 8, 10 (providing useful domestic violence statistics); MILLS, *supra* note 11, at 60-63 (explaining the difficulty women have leaving abusive relationships).

nity is at risk. Fortunately, a few states are blazing the trail by amending their landlord-tenant codes to exempt victims from standard termination procedures, thereby improving the ability of victims to leave their abusers. Until more states follow suit, however, many domestic violence victims like Martha Smith who are prepared to leave their abusers must overcome the financial penalties associated with early lease termination.