



Housing Rights ADVOCATE

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The Austin Tenants' Council

www.housing-rights.org

Mary Dulan Leaves ATC Brancart to Represent in Lawsuit Against Carter

Unfortunately, the Austin Tenants' Council must announce that Mary Daniels Dulan has left its staff effective 12/31/04, after serving over 8 years as the Fair housing Program Director. Ms. Dulan has made innumerable contributions to the Austin community and to the Fair Housing Program during those years. She will continue in the struggle for equal housing rights as the Director of a new statewide program at Metro Fair Housing of Oklahoma City.

Mary had planned to return to Oklahoma after five years at ATC, but fortunately for our agency and clients, she stayed longer. Mary brought over thirty years of housing and community activism to the Fair Housing Program and has been instrumental in its current success.

But we weren't the only ones who recognized her importance in housing advocacy. When Austin Mayor Will Wynn learned of her leaving, he wanted to honor Mary with a proclamation for her service in the fight for fair housing. Former Mayor Gus Garcia presented the proclamation at Mary's farewell party. Also in attendance were friends and well-wishers from the myriad groups she worked with over the years including Texas RioGrande Legal Aid (TRLA), the Austin Human Rights Commission, the Texas Commission on Human Rights and ADAPT of Texas.

Mary was especially touched by a gift from TRLA presented by attorney Fred Fuchs. It was a photograph from the 1960's showing Mary teaching young children as

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Christopher Brancart, a nationally renowned fair housing attorney, has agreed to represent the Austin Tenants' Council and Chenitha Burluson in a lawsuit against Henry Carter et al.

Mr. Carter is a landlord in Bryan, Texas near Texas A&M University. The lawsuit alleges that for the past 10 years Mr. Carter has discriminated against female tenants of his rental properties on the basis of sex in violation of the Texas Fair Housing Act.

With the assistance of ATC, Ms. Burluson filed a HUD 903 complaint in July 2003 and the Texas Workforce Commission (TWC) investigated it, with a

determination of "reasonable cause" in the complaint.

The lawsuit alleges that, according to the findings of the TWC investigation, "Mr. Carter has subjected and continues to subject current and past female tenants living in properties in which he has an ownership and/or management interest to unwelcome sexual advances and threatening behavior."

"Further, the investigation reveals that when Mr. Carter's victims do not capitulate to his harassment, an anonymous report is filed with the Brazos County Housing Authority alleging that the female tenants have unauthorized occupant(s) living in the home." "These retaliatory reports can result in the tenants being forced to vacate the property, being removed from the Section 8 housing program, and ultimately losing their federal grant for housing."

After Ms. Burluson filed the HUD Administrative Complaint, Mr. Carter entered into an Agreement on 8/5/04 to "...not physically go to the rental properties that he owns or has an interest in, and agreeing not to make contact, either verbally or physically, with any of his current or former tenants of these properties." The lawsuit alleges "...that Mr. Carter's harassing and intimidating behavior continues..." despite this agreement

The Austin Tenants' Council and Ms. Burluson are seeking actual and punitive damages along with court costs and attorneys fees. ATC is pleased that Mr. Brancart has agreed to assist Ms. Burluson seek the remedies to which she is entitled and to ensure that justice is done in this matter.



Icenogle Annuity Helps When Needed Most

The Austin Tenants' Council would like to express its continued appreciation for the generosity shown by Jerry Icenogle, who established a charitable trust on behalf of the Austin Tenants' Council in 2002. The funds the trust provides have never been more important as ATC, along with most non-profit social service agencies, has been facing reductions in funding over the last several years. The trust is providing invaluable resources to support ATC's tenant-landlord and fair housing programs.



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Important News for Those in the Military

When military personnel must move while serving their country, there are a number of financial obligations that must be addressed before they leave. One issue is the servicemember's house. If the person is renting, the question arises, "Can I get out of my lease?" Austin Tenants' Council has received many calls from military personnel asking about their ability to terminate a lease in these situations.

The legal protections of any member of the US Military are defined in the Servicemembers Civil Relief Act of 2003 (SCRA). It provides relief from certain civil obligations, including lease agreements, when a soldier enters military service, receives permanent change of station orders, or deployment orders of at least 90 days.

Unfortunately, the law allows a tenant to waive most rights provided under the Act if there is a written lease. Since the vast majority of tenants sign form leases, they often include provisions that benefit the owner, and hold our service personnel liable when they are possibly making the ultimate sacrifice for their country.

The SCRA gives anyone that signs a lease the right to terminate it if they subsequently enter military service. Unfortunately, the TAA lease states that the ability to terminate a lease does not extend to co-residents or dependents.

The Austin Tenants' Council believes that this is an incorrect interpretation of the provisions of the SCRA and is unenforceable. The Act does not state that the person entering military service only has the right to terminate his or her individual liability under the contract, but states the person has the right to "terminate the lease", meaning the entire contract. Thus, all persons that signed the contract would be released from liability.

On the other hand, if a lease is signed while someone is already in the military, they can waive their right to terminate the lease. Thus, the TAA lease provision that hold dependents and co-residents liable for the lease is enforceable.

ATC has repeatedly seen this provision of the contract used to the detriment of our service personnel and it makes little sense. Texas is a community property state, and if a person's spouse breaks a lease or otherwise incurs bad credit, it appears on the credit record of both. The net effect is that the servicemember cannot terminate their lease if their spouse or other dependent also signed it.

The TAA lease does allow the servicemember's spouse or dependents to terminate the lease, but only if they first apply to a court and demonstrate that their ability to comply with the lease is materially affected by reason of the servicemember's military service. This means that the spouse or dependent would have to seek declaratory relief from a court, necessitating hiring an attorney and paying other legal expenses.

Apparently, TAA believes that being sent to Iraq or elsewhere to fight for your country isn't a good enough reason for your family to be able to terminate a lease early without jumping through complicated legal hoops first.

Under the SCRA and the TAA lease, for those who are able to terminate the lease early, the servicemember must submit a written notice of lease termination and a copy of their military orders to the landlord at least 30 days in advance. The lease will terminate 30 days after the next rental due date.

Beyond the right to terminate the lease, the SCRA includes other protections. For example, landlords are prohibited from evicting service personnel in certain situations, and guarantors and others who have a secondary liability under a contract could get a court to extend the legal protections of the SCRA to them as well.

Military personnel should seek legal advice and assistance when being told they are liable for a contract. Such advice may be available at their military base or otherwise from their branch of service.

New Testing Coordinator

The Austin Tenants' Council would like to announce that in December Jim Currier was hired as the new Fair Housing Testing Coordinator. Mr. Currier is a Ph.D. candidate at the University of Texas at Austin School of Social Work. He has worked for several years in the non-profit sector, primarily in the field of crime victim services, and has already received training at the National Fair Housing Alliance's Fair Housing School. Jim will be in charge of organizing all testing activities including complaint-based tests, systemic tests and accessibility audits.

Fair Housing Testing provides an objective means to determine whether prospective homebuyers, tenants and home loan seekers are treated differently in violation of the Fair Housing Act.

Testers are matched based on income, credit history and other factors relevant to the homebuying or leasing process. If for example, African American applicants at an apartment complex are told there are five apartments available to lease whereas matched white applicants are told there are no units available, this evidence supports a claim of discrimination based on race.

The seven protected classes identified under the Fair Housing Act are: race, color, national origin, sex (including sexual harassment), religion, disability and familial status (i.e. discrimination against families with children).

Testers receive training and a stipend for being comparison shoppers along with reimbursement for actual costs such as mileage. Anyone interested in becoming a fair housing tester can contact Jim at 474-7007 x106 or by email at jim@housing-rights.org.



Mary Dulan Leaves ATC
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part of an after school program for disadvantaged children. This gift was the perfect symbol of her enduring commitment to better the community where she lives.

Mary will be sorely missed, and the clients she helped and the staff with whom she worked will never forget her contributions. From the staff and Board of Directors at the Austin Tenants' Council, we would like to say once again thanks and best wishes with all of your new opportunities, and we expect to continue seeing you on the fair housing trail.



LANDLORDS

- Protect yourself and your investment. Purchase a lease packet from ATC and become a more confident and well informed landlord. Call or come by for details.

TENANTS

- Learn how to protect yourself and get a good night's sleep. Purchase a tenant informational packet from ATC. Call or come by for details.

Noticias Importantes para Los en el Ejército

Cuando soldados tienen que moverse como servicio a su país, tienen que atender a un número de obligaciones financieras antes de que se vayan. Un asunto es la vivienda. Si el soldado está alquilando su domicilio, la pregunta se presenta, "Puedo salir de mi contrato?" El Austin Tenants' Council ha recibido muchas llamadas de soldados preguntando por su capacidad de terminar un contrato en estas situaciones.

Las protecciones legales de cualquiera miembro del ejército de los E.E.U.U. se definen en el Servicemembers' Civil Relief Act de 2003 (SCRA, como sus siglas en inglés). Proporciona desagravio de ciertas obligaciones civiles, incluyendo contratos de alquiler, cuando un soldado entra en servicio militar, recibe ordenes del cambio permanente, u órdenes del despliegue por lo menos de 90 días.

la ley permite que un inquilino renuncie la mayoría de los derechos

Desafortunadamente, la ley permite que un inquilino renuncie la mayoría de los derechos proporcionados bajo el Acto si hay un contrato escrito. Como la mayoría de inquilinos firman contratos en forma, ellos a menudo incluyen las provisiones que benefician al dueño, y mantienen al personal del militar responsable cuando posiblemente ellos están haciendo el máximo sacrificio para su país.

El SCRA da cualquiera persona que firme un contrato el derecho de terminarlo si él entra en servicio militar después de firmarlo. Desafortunadamente, el contrato de TAA indica que la capacidad de terminar un contrato no extiende a los co-residentes ni a los dependientes.

El Austin Tenants' Council cree que esta es una interpretación incorrecta de las provisiones del SCRA y no se puede hacer cumplir. El Acto no indica que la persona que entra en servicio militar tiene solamente el derecho de terminar su responsabilidad individual bajo el contrato, sino indica que la persona tiene el derecho "de terminar el contrato", significando el contrato entero. Por lo tanto, condonarían las obligaciones del contrato a todas las personas que lo firmaron.

Por otra parte, si se firma un contrato mientras que ya está en los militares,

puede renunciar su derecho de terminar el contrato. Así, la provisión del contrato de TAA que mantienen a los dependientes y a co-residentes obligados al contrato es válida.

El ATC ha visto varias veces como esta provisión del contrato está usado al detrimento de los soldados y tiene poco sentido. Texas es un estado de propiedad comunal, y si un esposo rompe un contrato o incurre mal crédito, aparece en el historial del crédito de ambos. El efecto global es que el soldado no puede terminar su contrato si su esposo u otro dependiente también lo firmó.

El contrato de TAA permite que el esposo o los dependientes del soldado terminen el contrato, pero solamente si primero se aplican a una corte y demuestran que su capacidad de cumplirse con el contrato está afectada materialmente por causa del servicio militar del soldado. Esto significa que el esposo o el dependiente tendría que buscar desagravio declaratorio de una corte, haciendo necesario emplear un abogado y pagar otros costos legales.

Al parecer, TAA cree que estar mandado a Iraq para luchar por su país no es suficiente razón para que su familia pueda terminar un contrato temprano sin enfrentarse primero con obstáculos complicados.

Bajo el SCRA y el contrato de TAA, para los que puedan terminar el contrato temprano, el soldado debe someter un aviso por escrito de la terminación del contrato y una copia de sus ordenes militares al propietario por lo menos 30 días por adelantado. El contrato terminará 30 días después de la próxima fecha cuando debe renta.

Más aparte del derecho de terminar el contrato, el SCRA incluye otras protecciones. Por ejemplo, prohíben a los propietarios de desalojar a un soldado en ciertas situaciones, y los fiadores y otros que tienen una responsabilidad secundaria bajo el contrato podrían conseguir las mismas protecciones legales del SCRA por una corte.

El soldado debe buscar asesoramiento y ayuda legal al estar dicho que es obligado por un contrato. Tal asesoramiento puede estar disponible en su base militar.

Brancart Representará en Pleito Contra Carter

Christopher Brancart, un abogado de vivienda justa conocido nacionalmente, ha acordado representar el Austin Tenants' Council y la Chenitha Burleson en un pleito contra Henry Carter et al.

El Sr. Carter es un propietario en Bryan, TX cerca de la Universidad Texas A&M. El pleito alega que por los últimos 10 años el Sr. Carter ha discriminado contra las inquilinas de sus propiedades en razón de su sexo, en violación del acta de vivienda justa de Texas.

Con la ayuda del ATC, la Srta. Burleson archivó una queja de HUD 903 en julio de 2003. La Comisión de Fuerza Laboral de Texas (TWC, como sus siglas en inglés) la investigó y determinó que la queja tenía una "causa razonable".

El pleito alega que, según los resultados de la investigación de TWC, "El Sr. Carter ha sujetado y continúa sujetando a los inquilinos femeninos actuales y anteriores que viven en las propiedades en las cuales él tiene un interés como el dueño o gerente a los avances sexuales incómodos y al comportamiento amenazador."

"Además, la investigación revela que cuando las víctimas del Sr. Carter no capitulan a su hostigamiento, un informe anónimo está archivado con el Brazos County Housing Authority que alega que las inquilinas tienen ocupante(s) no autorizado(s) que vive(n) en el hogar." "Estos informes vengativos pueden causarles a las inquilinas ser forzadas desocupar la propiedad, ser quitada del programa de la Sección 8, y en última instancia perder su concesión federal."

Después de que la Srta. Burleson archivó la queja administrativa de HUD, el Sr. Carter aceptó los términos de un acuerdo el 8/5/04 para "... no físicamente ir a las propiedades de alquiler en las cuales él posee o tiene un interés financiera, y acordar no hacer el contacto, verbalmente o físicamente, con cualesquiera de sus inquilinas actuales o anteriores de estas propiedades." El pleito alega "... que el comportamiento de acosamiento y intimidación del Sr. Carter continúa..." a pesar del acuerdo.

El ATC está contento que el Sr. Brancart decidió asistir a la Srta. Burleson y asegurarse de que la justicia está hecha.





Housing Rights Advocate

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The Austin Tenants' Council, as a sub-recipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modification and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

Programs and Services / Programas y Servicios

FAIR HOUSING VIVIENDA JUSTA

THE FAIR HOUSING PROGRAM / EL PROGRAMA DE VIVIENDA JUSTA - This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under State and Federal fair housing laws have been violated.

Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las víctimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

TENANT-LANDLORD INQUILINO-PROPIETARIO

TELEPHONE COUNSELING / CONSEJOS POR TELEFONO - Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. *Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.*

IN-HOUSE COUNSELING / CONSEJOS EN LA OFICINA - Counseling information and materials are provided to clients in need of more in-depth assistance. *Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7007.*

CRISIS INTERVENTION / INTERVENCION CRISIS - Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. *Consejeros median en nombre del inquilino a resolver una emergencia que amenass su vivienda. Call / llame al 474-1961.*

RENTAL REPAIR ASSISTANCE / AYUDA CON REPARACIONES EN SU VIVIENDA - The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. *El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7007.*

LEASE FORMS / CONTRATOS - ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. *ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.*

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