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Where Is Home? The Challenge of Finding Safe Housing Via Early Lease Termination for Victims of Domestic Violence

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Where Is Home? The Challenge of Finding Safe Housing Via Early Lease Termination for Victims of Domestic Violence

Charlotte Gerchick*

Abstract

This Note addresses the legal recourse of domestic violence victims who are attempting to terminate a lease early for the purpose of escaping domestic violence at home. In March 2013, President Barack Obama signed the reauthorization of the Violence Against Women Act (VAWA). This version of the Act includes Title VI, which protects victims of domestic violence and stalking. Title VI applies to federally subsidized housing. It allows domestic violence victims to terminate a lease early for the purpose of removing themselves from an abusive household. Title VI also makes it illegal to deny or terminate housing assistance based on an individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking. Even with federal legislation in place, domestic violence victims in nearly half of the United States cannot terminate leases early for the purpose of escaping abuse because their leases are private and therefore not subject to the federal law. In response to this barrier, some states are enacting laws that allow victims to terminate their private leases early. The various state statutes are inconsistent with one another, however. Therefore, some statutes protect victims more thoroughly than others. The inconsistencies may confuse individuals about what protections various statutes actually offer. This Note includes a model universal statute that addresses gaps in victim protection and clarifies which rights victimized tenants should have.

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I. Introduction

A. The Case of Caren Burnett

On June 3, 2010, Mrs. Caren Burnett filed a petition in Florida for a domestic violence civil protection order (CPO) against her husband, Mr. Alan Burnett.¹ The purpose of the CPO was to protect Mrs. Burnett and her three minor children from Mr. Burnett.² During the process of filing a petition to receive the CPO, Mrs. Burnett alleged that for seven years her husband repeatedly threatened to kill her in a variety of ways.³ After briefly detailing the threats to a judge and affirming she was in fear for her safety and well-being, the court granted Mrs. Burnett a temporary ex parte CPO.⁴ Additionally, the court assigned a future court date at which Mrs. Burnett and her husband could address the allegations in a fully adjudicated hearing, potentially extending the lifetime of the CPO for up to a year.⁵

During the hearing, Mrs. Burnett testified about Mr. Burnett's infliction of emotional abuse, noting that incidences of abuse occurred in Florida, Ohio, and Michigan.⁶ Mrs. Burnett testified that her husband had devised a "wood-chipper" plan, "indicating that he could shoot a wood-chipper's contents into a lake and then dump bleach into it to get rid of the evidence."⁷ The implication was that the "contents" would be Mrs. Burnett's remains.⁸ In addition to specific murder plans, Mr. Burnett also made more

1. See *Burnett v. Burnett*, No. S-10-050, slip op. at 1 (Ohio Ct. App. June 15, 2012) ("On June 3, 2010, appellee filed a petition for a domestic violence CPO in the court below, pursuant to R.C. 3113.31.").

2. See *id.* ("Through the petition, appellee sought protection for herself and the three children.").

3. See *id.* ("She alleged that over the course of seven years, appellant had threatened her with death by means of a handgun or wood chipper if she ever left him.").

4. See *id.* ("Following an ex parte hearing on the same day, the lower court issued an ex parte domestic violence CPO, naming appellee and the parties' three minor children as protected persons.").

5. See *id.* ("The court further ordered that the case proceed to a full hearing before the lower court magistrate.").

6. See *id.* (describing Mr. Burnett's interest in handguns while in Florida and, later, threats to kill Mrs. Burnett in Ohio and Michigan).

7. *Id.*

8. *Id.*

generalized death threats toward Mrs. Burnett involving their children.⁹

In an attempt to escape her husband's abuse, Mrs. Burnett took a risk and strategically removed her children from the home.¹⁰ Mrs. Burnett moved to Ohio without Mr. Burnett's knowledge.¹¹ Mr. Burnett thought Mrs. Burnett planned to live in Florida with him because they had signed a lease together.¹² However, Mrs. Burnett actually intended to leave her husband.¹³ She signed the lease out of fear of her husband's retaliation if he knew she wanted to leave.¹⁴ Mrs. Burnett testified that "on the same day [she and her husband signed a lease], outside the presence of [her husband], she initialed a document pertaining to the termination of the lease; she also secured a storage unit and . . . shipped back all of her materials for her business."¹⁵ While planning the move to Ohio, Mrs. Burnett contacted an Ohio legal aid office to help her find a way to get out of her lease in Florida, find a new place to live in Ohio, and find schools and doctors for her children.¹⁶ After considering all of the evidence, the trial court concluded Mrs. Burnett and her children should be granted a permanent domestic violence CPO, providing them with protection from Mr. Burnett for a full year.¹⁷ Mrs. Burnett was able to leave her husband and move

9. *See id.* (quoting her husband as saying, "If you leave me, I'll kill you and then I'll go to jail and the kids will have to stay with my parents").

10. *See id.* (detailing how Mrs. Burnett tried to leave her husband without his knowledge).

11. *See id.* ("[Mrs. Burnett] admitted that she went to Florida with [Mr. Burnett] but that she never intended to remain there. She went because appellant took their oldest two children in the moving van with him.").

12. *See id.* (describing Mrs. Burnett's experience).

13. *See* Burnett v. Burnett, No. S-12-041, slip op. at 2 (Ohio Ct. App. Nov. 22, 2013) (revealing via testimony exactly how Mrs. Burnett tried to escape the abuse).

14. *See id.* (noting why Mrs. Burnett signed a lease with her husband).

15. *Id.*

16. *See id.* ("[Mrs. Burnett] testified that while in Florida, she made several calls to an Ohio legal aid office. [She] also stated that during that time she was making calls to set up where she and the boys would live, and making inquiries as to schools, dentists, and doctors.").

17. *See id.* ("Accordingly, the [trial] court issued a full civil protection order against appellant for a period of one year. In that order, the court named [Mrs. Burnett] and [her] three children as protected persons.").

to Ohio.¹⁸ While Mr. Burnett continued to harass Mrs. Burnett by including her name in legal proceedings for various claims, she was at least able to successfully terminate the lease and move to a safer place with her children.¹⁹ She was fortunate.

Mrs. Burnett's story—a woman with children trying to leave an abusive husband—exemplifies the experience of thousands of women and children in the United States.²⁰ In fact, one in four women will be a victim of severe domestic violence by a partner in her lifetime.²¹ When leaving her husband to protect her children, Mrs. Burnett was burdened by the need to leave an existing home and find a new one.²² Housing is a major concern of those who try to escape domestic violence.²³ The existing law does not make the process of leaving easy, resulting in a high likelihood of homelessness.²⁴

Several states have begun to legally address the difficulty many domestic violence victims face when trying to escape an abuser with whom they live.²⁵ Some states have adopted statutory provisions that allow victims to terminate their leases early

18. *See id.* (sharing that Mrs. Burnett was able to leave Florida).

19. *See id.* (addressing other cases the Burnetts were involved in).

20. *See* Alanna Vagianos, *30 Shocking Domestic Violence Statistics that Remind Us It's an Epidemic*, HUFFPOST (Dec. 6, 2017), https://www.huffingtonpost.com/2014/10/23/domestic-violence-statistics_n_5959776.html (last visited Nov. 28, 2019) (noting that ten million children are exposed to domestic violence every year) [<https://perma.cc/U3NB-WF9X>].

21. *See id.* (sharing statistics from 2017).

22. *See* Burnett v. Burnett, No. S-10-050, slip op. at 2 (Ohio Ct. App. Nov. 22, 2013) (addressing the ways Mrs. Burnett tried to remove herself and her children from Mr. Burnett's abuse).

23. *See* Vagianos, *supra* note 20 (addressing the prevalence of homelessness among victims of domestic violence).

24. *See* *Domestic Violence and Homelessness*, NAT'L ALLIANCE TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/domestic-violence/> (last visited Nov. 28, 2019) ("On a single night in 2017, homeless services providers had more than 55,000 beds set aside for survivors of domestic violence.") [<https://perma.cc/4VHS-ZQ84>].

25. *See* *State Laws Protecting Tenants in Domestic Violence Situations*, NOLO (Nov. 2017), <https://www.nolo.com/legal-encyclopedia/state-laws-protecting-tenants-in-domestic-violence-situations.html> (last visited Nov. 28, 2019) [hereinafter *State Laws*] (identifying states having early lease termination statutes for domestic violence victims) [<https://perma.cc/HC66-HZR7>].

without penalty of consequence or discrimination when attempting to find a new home.²⁶

Had Mrs. Burnett lived in Georgia, for example, she could have provided notice to her landlord that she needed to terminate her lease early, provided a police report and an ex parte temporary CPO, and then would have been able to terminate the lease without consequence.²⁷ Many states do not allow early lease termination with only an ex parte temporary CPO, however, and require a copy of a permanent CPO to terminate a lease early.²⁸

As another example, in Colorado, in addition to the ability to terminate a lease early, Mrs. Burnett would have been able to receive a referral letter from her former landlord whose lease she had terminated without fearing discrimination by a new landlord due to her status as a victim or fearing that her previous landlord could disclose her status.²⁹ Mrs. Burnett was lucky, but other victims continue to suffer, as neither Ohio nor Florida have any state statutes permitting early lease termination for domestic violence victims.³⁰

In Mrs. Burnett's case, all she could do was hope the Florida landlord would release her from the existing lease without consequence and hope to receive a new lease in Ohio without the Florida landlord disclosing why she left or warning against her as a tenant.³¹ Sadly, many women in the United States are unsuccessful when attempting to escape domestic violence.³² Many

26. See *id.* (noting the different provisions that states have).

27. See GA. CODE ANN. § 44-7-23 (2018) (“The notice to the landlord pursuant to subsection (b) of this Code section shall be accompanied by a copy of the applicable civil family violence order or criminal family violence order and a copy of the police report if such order was an ex parte temporary protective order.”).

28. See N.J. STAT. ANN. § 46:8-9.6 (West 2008) (noting that a domestic violence victim may terminate a lease early with “a certified copy of a permanent restraining order”).

29. See COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (clarifying that when a domestic violence victim terminates a lease early the “landlord shall not disclose such fact to any person except with the consent of the victim”).

30. See *State Laws*, *supra* note 25 (indicating that neither state has statutes regarding early lease termination for domestic violence victims).

31. See *Burnett v. Burnett*, No. S-10-050, slip op. at 2 (Ohio Ct. App. Nov. 22, 2013) (describing how Mrs. Burnett made arrangements to move to Ohio on the same day that she signed the lease in Florida).

32. See *Vagianos*, *supra* note 20 (noting that 18,000 women have been killed by men because of domestic violence since 2003).

are hindered in their efforts to leave because landlords reject early lease termination efforts, discriminate against victims, or apply various penalties to those who abandon existing leases.³³

This Note addresses the legal tools available to victims of domestic violence when they wish to terminate a lease early in an effort to escape an abuser.³⁴ This Note also considers why the tools currently available are insufficient to protect victims.³⁵

B. Domestic Violence in America

1. Definitions and Forms of Abuse

“Domestic violence—also called intimate partner violence, domestic abuse or relationship abuse—is a pattern of behaviors executed by one partner to maintain power and control over another partner in an intimate relationship.”³⁶ Potentially, anyone could become a victim of domestic violence because it affects all genders, races, sexual orientations, socio-economic groups, and ages.³⁷ It is a common misconception that victims of domestic violence only suffer physical abuse.³⁸ While physical abuse is one

33. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005) (demonstrating discriminatory actions by a landlord due to the tenant’s status as a domestic abuse victim); see also *Knudsen v. Lax*, 842 N.Y.S.2d 341, 343 (Ct. Ct. 2007) (penalizing a tenant who terminated his lease in order to move away and protect his kids from a sex offender by withholding his security deposit); *Robinson v. Cincinnati Metro. Hous. Auth.*, No. 1:08-CV-238, 2008 WL 1924255, at *1 (S.D. Ohio Apr. 29, 2008) (refusing to transfer a victim of domestic violence to another vacant unit in the complex so that she could escape her abuser).

34. See, e.g., N.J. STAT. ANN. § 46:8-9.6 (West 2008) (noting that a domestic violence victim may terminate a lease early with “a certified copy of a permanent restraining order”).

35. See Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013) (providing protection from housing discrimination for female victims of domestic violence, but only for federally subsidized housing).

36. *Abuse Defined*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/abuse-defined/> (last visited Nov. 28, 2019) [<https://perma.cc/MAZ7-G72S>].

37. See *id.* (“Domestic violence does not discriminate. Anyone of any race, age, sexual orientation, religion or gender can be a victim—or perpetrator—of domestic violence. It can happen to people who are married, living together or who are dating. It affects people of all socioeconomic backgrounds and education levels.”).

38. See *id.* (detailing the various types of abuse).

form of domestic violence, psychological and emotional abuse are also types of domestic violence.³⁹ Often domestic violence begins as psychological or emotional abuse but later escalates to physical violence.⁴⁰

Those who commit domestic violence do so to control their partner, often due to their own insecurity.⁴¹ “Abusive people believe they have the right to control and restrict their partners They often believe that their own feelings and needs should be the priority in their relationships.”⁴²

There are various methods of abuse.⁴³ Physical abuse can include slapping, hitting with a closed fist, strangulation, and physical restraint.⁴⁴ Sexual violence is another form of physical domestic violence.⁴⁵ Emotional and psychological abuse typically include “yelling, name-calling, blaming, and shaming,” and threatening the victim with physical violence or death, as well as efforts to isolate the victim from others.⁴⁶

With the development of new technology, abusers have discovered how to use devices and social media to perpetuate abuse.⁴⁷ As social media has gained popularity, perpetrators of

39. *See id.* (“Domestic violence includes behaviors that physically harm, arouse fear, prevent a partner from doing what they wish or force them to behave in ways they do not want. It includes the use of physical and sexual violence, threats and intimidation, emotional abuse and economic deprivation.”).

40. *See* Melinda Smith & Jeanne Segal, *Domestic Violence and Abuse*, HELPGUIDE.ORG (Sept. 2018), <https://www.helpguide.org/articles/abuse/domestic-violence-and-abuse.htm> (last visited Nov. 28, 2019) (“Domestic abuse often escalates from threats and verbal abuse to violence.”) [<https://perma.cc/429B-LTF2>].

41. *See Why Do People Abuse?*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/why-do-people-abuse/> (last visited Nov. 28, 2019) (“Domestic violence and abuse stem from a desire to gain and maintain power and control over an intimate partner.”) [<https://perma.cc/7HK3-36CG>].

42. *Id.*

43. *See* Smith & Segal, *supra* note 40 (explaining that there is physical, emotional, and psychological abuse).

44. *See* Smith & Segal, *supra* note 40 (“Physical abuse is the use of physical force against someone in a way that injures or endangers that person. Physical assault or battering is a crime, whether it occurs inside or outside of the family.”).

45. *See* Smith & Segal, *supra* note 40 (“Any situation in which you are forced to participate in unwanted, unsafe, or degrading sexual activity is sexual abuse.”).

46. Smith & Segal, *supra* note 40.

47. *See* Delanie Woodlock, *The Abuse of Technology in Domestic Violence and Stalking*, 23 VIOLENCE AGAINST WOMEN 584, 584 (2017) (“[T]echnology—including

domestic violence have begun to use various platforms to commit abuse.⁴⁸ For example, a perpetrator might post nude pictures of the victim online in an effort to publicly shame the victim, harass a victim's friends and family on social media in an effort to gain the victim's attention, and publish derogatory messages about the victim for the public to read.⁴⁹ With the development of smartphone applications and smart home devices, abusers have been able to modernize their tactics further.⁵⁰ For example, several applications allow abusers to disguise their phone numbers, allowing them to contact their victims from different numbers once the victims have blocked their contact number.⁵¹ Additionally, this allows perpetrators to remain anonymous, making it difficult for a victim to convince a judge that the same person is calling from a variety of numbers.⁵² Smart home applications have recently been recognized as helping perpetrators abuse their victims.⁵³ “[A]ir

phones, tablets, computers, and social networking websites—is commonly used in intimate partner stalking.”).

48. See Interview with Domestic Violence Victim One, Client, Atlanta Volunteer Lawyers Found., in Atlanta, Ga. (July 19, 2018) (explaining how her abuser would harass her on Facebook, Twitter, and Instagram by pestering her friends and family so they would contact the victim on the perpetrator's behalf); see also *Tech & Social Media Safety*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/help/tech-social-media-safety/> (last visited Nov. 28, 2019) (detailing how perpetrators of domestic violence utilize social media) [<https://perma.cc/Y44Z-Y54E>].

49. See Interview with Domestic Violence Victim One, *supra* note 48 (describing the various social media methods in which the perpetrator would abuse the victim).

50. See Interview with Domestic Violence Victim Two, Client, Atlanta Volunteer Lawyers Found., in Atlanta, Ga. (July 3, 2018) (explaining how her abuser would use spoof apps to repeatedly change his phone number each time she blocked him); see also *Caller ID Spoofing 101: The Definitive Guide to Call & Text Spoofing*, SPOOF CARD (Nov. 30, 2017), <https://www.spooftcard.com/blog/caller-id-spoofing/> (last visited Nov. 28, 2019) [hereinafter *Caller ID Spoofing 101*] (explaining how the spoof app works) [<https://perma.cc/RP9B-38LT>].

51. See *Caller ID Spoofing 101*, *supra* note 50 (“Caller ID spoofing services . . . give you the power to communicate anonymously when you otherwise could not.”).

52. See Interview with Joel Correa, Staff Attorney, Atlanta Volunteer Lawyers Found., in Atlanta, Ga. (July 20, 2018) (explaining how the law has yet to catch up with advancements in technology).

53. See Nellie Bowles, *Thermostats, Locks and Lights: Digital Tools of Domestic Abuse*, N.Y. TIMES, June 24, 2018, at A1 (identifying the various ways abusers have used technology to target victims).

conditioners, doorbells, and so many other household items are able to be controlled remotely, making them prime targets for driving a partner crazy—or at least making them feel that way.”⁵⁴ For example, one victim described “thermostats suddenly turning themselves up to 100 degrees or smart speakers suddenly blasting music.”⁵⁵ These are all methods to control and exert power over a victim.⁵⁶

2. Domestic Violence Today

Millions of individuals in the United States qualify for a protective order.⁵⁷ “1 in 3 women and 1 in 4 men have been victims of [some form of] physical violence by an intimate partner within their lifetime.”⁵⁸ While both men and women are victims of domestic violence, statistics reveal that more women than men are victimized.⁵⁹ “The number of American women who were murdered by current or ex male partners [between 2001 and 2012] was 11,766.⁶⁰ That is nearly *double* the number of American casualties lost during [the War on Terror].”⁶¹ Indeed, 6488 American troops were killed in Afghanistan and Iraq between 2001 and 2012.⁶²

54. Wendy L. Patrick, *Remote Controlled: Domestic Abuse Through Technology*, PSYCHOL. TODAY (July 22, 2018), <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201807/remote-controlled-domestic-abuse-through-technology?amp> (last visited Nov. 28, 2019) [<https://perma.cc/4D3W-CZCU>].

55. *Id.*

56. *See id.* (“Abusive relationships are about power and control, and [the abuser] uses technology.”).

57. *See Statistics*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/statistics> (last visited Nov. 28, 2019) (“On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than 10 million women and men.”) [<https://perma.cc/Y7RW-9R45>].

58. *Id.*

59. *See id.* (“Women are much more likely to be victims of intimate partner violence with 85 percent of domestic abuse victims being women and 15 percent men.”).

60. Vagianos, *supra* note 20.

61. Vagianos, *supra* note 20.

62. Vagianos, *supra* note 20.

With such a high number of domestic violence victims in America, many victims try to avoid becoming a murder statistic by moving away from their abusers.⁶³ Removing oneself from an abusive situation is not always simple because many victims cannot financially afford to leave, do not want to live in a shelter with their children, or do not know of a safe place to go.⁶⁴ “Domestic and sexual violence is a primary cause, and consequence, of homelessness and housing instability for women and girls.”⁶⁵ Many women who are abused by an intimate partner are financially unstable but feel that their lives are so at risk that they must leave, many times becoming homeless.⁶⁶ Housing often becomes a major concern of those who suffer domestic violence because many victims who decide to move away from their abuser must face the challenges of finding new housing and leaving their current home.⁶⁷

Victims endure discriminatory challenges from various sources when trying to establish safe homes.⁶⁸ Often landlords evict victims who create disturbances during the abuse or deny

63. See Melissa Davey, *The Most Dangerous Time*, THE GUARDIAN, <https://www.theguardian.com/society/ng-interactive/2015/jun/02/domestic-violence-five-women-tell-their-stories-of-leaving-the-most-dangerous-time> (last visited Nov. 28, 2019) (detailing the various ways and reasons why women have worked to escape domestically violent situations) [<https://perma.cc/LAR9-4F23>].

64. See Susan Johnson Taylor, *5 Financial Challenges Facing Survivors of Domestic Abuse*, U.S. NEWS & WORLD REP. (Oct. 26, 2018, 10:24 AM), <https://money.usnews.com/money/personal-finance/articles/2016-10-26/5-financial-challenges-facing-survivors-of-domestic-abuse> (last visited Nov. 28, 2019) (explaining the financial difficulty regarding housing when victims try to leave a domestically violent situation) [<https://perma.cc/3Z7F-CB7Y>].

65. See *A General Overview of Disparate Impact Theory: Hearing Before the Subcomm. on Oversight and Investigations of the Comm. on Fin. Servs.*, 113 Cong. 1 (2013) (reporting that nearly a fifth of cities surveyed in 2011 cited domestic violence as one of the three main causes of family homelessness).

66. See, e.g., 42 U.S.C. § 12471 (2012) (finding that an estimated ninety-two percent of homeless mothers have experienced severe physical and/or sexual assault, that sixty percent of all homeless women and children have been abused by age twelve, and that sixty-three percent have been victims of intimate partner violence as adults).

67. See Taylor, *supra* note 64 (detailing the financial challenges that domestic violence victims face).

68. See Brief for ACLU et al. as Amici Curiae Supporting Respondent at 21, *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015) (No. 13-1371), 2014 WL 7405733 (“Discriminatory housing policies contribute to and exacerbate the housing crisis faced by victims.”).

housing to anyone who is a victim of domestic violence.⁶⁹ On the other hand, landlords often refuse to allow domestic violence victims to terminate their leases, which forces the victim to remain in violent circumstances they are trying to escape.⁷⁰

3. *Different Punishments for Different Forms of Abuse*

The law has been slow to provide housing recourse for victims but the law has succeeded in establishing different punishments for different types of abuse.⁷¹ Victims of domestic violence fall into distinct legal categories under the larger umbrella of domestic violence based on the type of relationship they have with the perpetrator and the type of abuse they endure.⁷² While the specific characteristics of each category differ slightly in each state, generally there are uniform definitions for those who suffer intimate partner violence versus stalking.⁷³

In Georgia, for example, intimate partner violence is categorized as “family violence,” requiring a close personal

69. See EQUAL RIGHTS CTR., NO VACANCY: HOUSING DISCRIMINATION AGAINST SURVIVORS OF DOMESTIC VIOLENCE IN THE DISTRICT OF COLUMBIA (2008) (“Domestic . . . violence survivors are also frequently subjected to discrimination when they apply for housing, simply because they have experienced violence. This can occur when . . . their past history of victimization may become known to landlords because they are applying for housing while residing in . . . emergency shelters.”).

70. See Anne C. Johnson, *From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1866 (2006) (“Once victims make the difficult decision to leave their abusers, those who occupy rental housing face the challenge of avoiding fees related to early lease termination.”).

71. See *Violence Prevention*, CDC, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html> (last visited Nov. 28, 2019) (noting the different types of abuse and the various punishments) [<https://perma.cc/W2YH-4WCG>].

72. See *id.* (explaining the differences of the categories of domestic violence).

73. See *Georgia Domestic Violence Laws*, FINDLAW, <https://statelaws.findlaw.com/georgia-law/georgia-domestic-violence-laws.html> (last visited Nov. 28, 2019) (noting the differences between intimate partner violence and stalking according to Georgia law) [<https://perma.cc/M75P-BP35>]; see also *Intimate Partner Violence*, NAT’L INSTIT. OF JUST. (Mar. 30, 2017), <https://www.nij.gov/topics/crime/intimate-partner-violence/Pages/welcome.aspx> (last visited Nov. 28, 2018) (explaining what constitutes different types of domestic violence) [<https://perma.cc/3Z3X-SRGK>].

relationship between the victim and the perpetrator.⁷⁴ These types of relationships include “present or past spouses, parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household.”⁷⁵ Victims of intimate partner violence are protected under the state’s Family Violence Act, which affords victims the opportunity for legal remedies if they suffer abuse, such as obtaining a detailed protective order.⁷⁶ Protective orders “prohibit[] the offender from having contact with the victim for a specified period of time.⁷⁷ If a person is found to violate a . . . protective order, he or she could be jailed and charged with a separate crime, including aggravated stalking,” which is a felony.⁷⁸ The intimate partner protective orders are extensive, allowing a court to provide a victim with a variety of legal remedies.⁷⁹ While these orders are intended to keep perpetrators away from victims, they have been ineffective in helping victims terminate their leases early for the purpose of escaping abuse—that is, until the Georgia legislature specifically enacted an early lease termination statute.⁸⁰

Stalking laws work to protect those who suffer domestic violence but do not fall under the category of intimate partner violence.⁸¹ The categorization of stalking is relatively new, gaining legal prominence over the past ten years.⁸² Those who experience stalking suffer physical, emotional, and psychological abuse but do

74. See *Georgia Domestic Violence Laws*, *supra* note 73 (“The state of Georgia defines domestic violence as an act of ‘family violence.’”).

75. *Georgia Domestic Violence Laws*, *supra* note 73.

76. See *Georgia Domestic Violence Laws*, *supra* note 73 (“Georgia’s Family Violence Act is a law designed to protect individuals who are abused . . .”).

77. *Georgia Domestic Violence Laws*, *supra* note 73.

78. *Georgia Domestic Violence Laws*, *supra* note 73.

79. See *Georgia Domestic Violence Laws*, *supra* note 73 (“A Family Violence Protection Order can: . . . [g]ive the victim possession of the house . . . [m]ake the abuser provide alternate housing . . . [g]ive the victim temporary custody of shared children . . . [a]ward temporary child support and/or spousal support . . . [o]rder the abuser to go to counseling . . .”).

80. See GA. CODE ANN. § 44-7-23 (2018) (detailing how a protective order can help a victim terminate a lease early).

81. See *id.* (explaining what constitutes stalking).

82. See *Stalking*, FINDLAW, <https://criminal.findlaw.com/criminal-charges/stalking.html> (last visited Nov. 28, 2019) (“In most states, stalking laws pertain to the relatively new crime . . .”) [<https://perma.cc/Y6LR-LJV9>].

not have a legally acknowledged “intimate” relationship with the abuser.⁸³ For example, the stalking statute in Georgia would protect individuals who date or dated, but never lived with or had a child with the perpetrator.⁸⁴ “By its nature, stalking is not a one-time event but rather a pattern of behavior meant to cause harm or distress.”⁸⁵ One can file for a stalking protective order but, to have a judge grant the order, the victim must demonstrate that there have been repeated acts of abuse or harassment.⁸⁶ A stalking protective order is less extensive than a Family Violence Protective Order because the former typically only requires the accused “to remain a certain distance away from the alleged victim [and not contact that person] for a specified period of time,” while a Family Violence Protective Order can award damages, asset protection, and other financial benefits for the victim.⁸⁷ Penalties for violating either type of protective order can be “quite severe, including jail time in some states.”⁸⁸

4. *The Process: How to Get a Protective Order*

Continuing to use Georgia as an example, to obtain a protective order, one must first file for an emergency ex parte temporary order that would provide protection for the victim for up to thirty days.⁸⁹ A victim fills out both a petition and the actual ex parte order by writing a brief description of the abuse that has occurred, first noting the most recent incident that drove the victim

83. *See id.* (explaining that stalking “involve[s] a clear pattern of conduct in which the offender follows, harasses, or threatens another person, putting that person in fear for his or her safety”).

84. *See id.* (“An individual may be charged with stalking regardless of any pre-existing relationship with the victim.”).

85. *Id.*

86. *See id.* (“It includes repeated harassing or threatening behavior toward another person, whether that person is a total stranger, slight acquaintance, current or former intimate partner, or anyone else.”).

87. *Id.*

88. *Id.*

89. *See* Interview with Joel Correa, *supra* note 52 (explaining how a victim of domestic violence files for a protective order); *see also* *Victim’s Rights*, FULTONCOUNTYGA.GOV, <http://www.fultoncountyga.gov/sg-victims-rights> (last visited Nov. 28, 2019) (detailing the process of how one receives a protective order in Georgia) [<https://perma.cc/GK7M-HEJE>].

to seek an order.⁹⁰ Once the appropriate forms are completed, the petitioner sees a judge who can grant the emergency ex parte order the same day.⁹¹ The judge can also assign a future court date that falls within those protected thirty days, at which the respondent can be present and plead his or her case and present evidence.⁹² At that hearing the judge can extend the protective order for up to three years, making it a permanent protective order, or can dismiss the matter.⁹³ If the order is dismissed, the petitioner can always refile if other incidents of abuse occur.⁹⁴ During the ex parte hearing the judge could also deny the order without an appeal or could deny the emergency temporary order but still provide a date for a fully adjudicated hearing with both parties if the judge decides not to grant the temporary protective order on ex parte grounds.⁹⁵

Once a protective order is granted, the respondent is served with the paperwork and cannot come near the petitioner—typically within 200 yards.⁹⁶ The respondent also cannot contact the petitioner either directly or indirectly, such as by contacting friends or family.⁹⁷ If he or she does so, the petitioner can call the police or file additional paperwork with the court to

90. See *Victim's Rights*, *supra* note 89 (stating that the filer “must be a victim of family violence or stalking” in order to be qualified to file for a protective order).

91. See Interview with Joel Correa, *supra* note 52 (explaining how a victim of domestic violence files for a protective order); see also *Victim's Rights*, *supra* note 89 (“You will then see a judge who will consider giving you an emergency [temporary protective order].”).

92. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (“If the judge grants the ex parte [temporary protective order], you will be given a date to return to court for a more detailed hearing.”).

93. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (“At this second hearing, you must show that the ex parte [temporary protective order] should be extended.”).

94. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (describing the judicial procedure of filing a claim for a temporary protective order).

95. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (detailing the process of how one receives a protective order in Georgia).

96. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (stating that a temporary protective order prohibits “the abuser from doing certain things”).

97. Interview with Joel Correa, *supra* note 52; see also *Victim's Rights*, *supra* note 89 (stating that a temporary protective order requires “the abuser to do certain things that are needed to keep you and your children safe”).

document the violation.⁹⁸ Under either circumstance the respondent can be arrested, jailed, and prosecuted under various charges.⁹⁹

5. *Leaving the Home*

States and the federal government have enacted laws to address the housing concerns victims of domestic violence have when deciding to leave their abusers.¹⁰⁰ While the Violence Against Women Act (VAWA) works to protect victims from discrimination on the basis of their status as domestic violence victims, landlords have historically been able to find loopholes in the statute that allow them to evict victims because of their status.¹⁰¹ VAWA is limited in its scope, protecting only victims who are residents of federally subsidized housing.¹⁰² State legislatures have attempted to bridge this gap in protection by passing laws that protect victims who reside in privately owned residences.¹⁰³ Newly enacted state statutes go so far as to allow victims of domestic violence to terminate a private lease early so the victim may escape his or her abuser without financial penalty.¹⁰⁴ While older statutes and

98. Interview with Joel Correa, *supra* note 52; *see also Victim's Rights*, *supra* note 89 (detailing the victim's rights and recourses throughout the entire process).

99. Interview with Joel Correa, *supra* note 52; *see Victim's Rights*, *supra* note 89.

100. *See* Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013) (serving as the primary federal law protecting female victims of domestic violence); *see also, e.g.*, COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (explaining the housing protections for domestic violence victims in Colorado).

101. *See* S. 47 (identifying several ways victims are protected from discrimination and landlord mistreatment); *see also* Johnson v. Palumbo, 60 N.Y.S.3d 472, 474 (App. Div. 2017) (exemplifying how a landlord could utilize a loophole to get around VAWA, claiming that the victim did not follow proper procedure of adding a resident to her lease so he evicted her).

102. *See* S. 47 (noting that the act protects victims who reside in government subsidized housing).

103. *See, e.g.*, GA. CODE ANN. § 44-7-23 (2018) (specifying that the statute protects victims who reside in privately owned housing); N.J. STAT. ANN. § 46:8-9.6 (West 2008) (addressing how state law protects victims in privately owned housing).

104. *See* § 44-7-23 (noting that victims of domestic violence may terminate a private lease early to escape a domestically violent situation if they follow the proper procedures).

VAWA mostly protected against discrimination and eviction, the newer state statutes recognize the need for some victims to leave their home to avoid abuse.¹⁰⁵

Still, while laws protecting victims of domestic violence continue to develop, one issue that remains is the discrepancies among the state statutes.¹⁰⁶ Without consistency, domestic violence victims are frequently left uncertain about the protections available and what they must do to satisfy their state's law.¹⁰⁷ Inconsistencies also create problems for lawyers and judges who are unsure about what they can argue and order.¹⁰⁸ This Note will address the discrepancies and offer a potential solution in the form of a model universal statute.

II. Constitutional Law: The Effect of the Constitution on Tenants' Rights

Scholars, lawyers, and judges have considered how several aspects of the Constitution could apply to the protection of domestic violence victims, including the Fourteenth Amendment Due Process Clause, property law concerns, and the Article I Section 10 Contract Clause.¹⁰⁹ These elements of the Constitution

105. See Elly Yu, *Bill Would Let Domestic Violence Victims Break Leases Early*, WABE (Jan. 25, 2018), <https://www.wabe.org/bill-let-domestic-violence-victims-break-leases-early/> (last visited Nov. 28, 2019) (“We know that a number of victims of domestic violence do not leave for many reasons, and one of them is an economic reason that they cannot afford to go somewhere else”) [<https://perma.cc/VH8A-ZS5L>].

106. See WASH. REV. CODE ANN. § 59.18.575 (West 2009) (representing a statute that is very extensive and provides very clear protection for victims); see also MD. CODE ANN., REAL PROP. § 8-5A-02 (West 2011) (representing a statute that is too minimal and does not provide enough protective measures or clarity).

107. See *State Laws*, *supra* note 25 (providing a description of each state's law regarding housing protections for victims of domestic violence in a clear and concise manner).

108. See *Meister v. Kansas City*, No. 09-2544-EFM, 2011 WL 765887, at *5 (D. Kan. Feb. 25, 2011) (explaining a need for further legal development of the topic for the court to feel comfortable adjudicating the case accurately and confidently).

109. See *Johnson*, *supra* note 70, at 1866 (noting how different aspects of the Constitution could be interpreted to protect victims of domestic violence, as well as protect landlords' property and contract rights).

could potentially provide protection for both the domestic violence victims and the landlords.¹¹⁰

A. *The Fourteenth Amendment*

The Fourteenth Amendment states, “nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹¹¹ Lawyers and scholars have attempted to argue that the Fourteenth Amendment Due Process Clause applies to the protection of individuals’ bodies, but several courts have chosen to neither extend the Due Process Clause protection in domestic violence cases nor recognize a “fundamental right to be free from private acts of violence”¹¹² The Supreme Court has determined that “the Due Process Clause[] generally confer[s] 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.”¹¹³ Yet, the judicial system has begun to support that the “intimate and personal choices . . . central to personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment.”¹¹⁴

While the Fourteenth Amendment may protect personal dignity and autonomy, courts have been hesitant to specify that freedom from domestic violence is included in those protections.¹¹⁵

110. See Johnson, *supra* note 70, at 1873–74 (articulating attempts to protect victims and landlords by utilizing property rights aspects, such as redistribution).

111. U.S. CONST. amend. XIV, § 1.

112. Johnson, *supra* note 70, at 1865; see also *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989) (explaining how the Constitution cannot be used to protect private individuals from violence); see also *Jones v. Union County*, 296 F.3d 417, 426–28 (6th Cir. 2002) (finding that the plaintiff did not have a cognizable equal protection claim under the Fourteenth Amendment for the defendant’s failure to serve an ex parte protection order in a timely manner).

113. *DeShaney*, 489 U.S. at 196 (1989).

114. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 915 (1992).

115. See *DeShaney*, 489 U.S. at 186 (noting that applying substantive due process to the protection of individuals from domestic violence is improper because history does not support “such an expansive reading of the constitutional text”); see, e.g., *Jones*, 296 F.3d at 426–28 (emphasizing that due process and Fourteenth Amendment protections do not support special protection of domestic

Some federal courts have recognized that the government has at least some duty to protect domestic violence victims by noting that “[j]ust 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”¹¹⁶ Still, the Supreme Court has chosen not to “expand the concept of substantive due process”¹¹⁷ to these types of liberty interests “without the guidance of the more specific provisions of the Bill of Rights.”¹¹⁸ The Court views the Fourteenth Amendment as protecting citizens from the state and not from one another.¹¹⁹ It shares an unwillingness to create the fundamental right of protecting individuals from domestic violence through common law judicial decisions.¹²⁰

Had the Supreme Court chosen to recognize protection from domestic violence as a fundamental right, both the federal government and states would more likely be able to protect victims.¹²¹ Victims would be better protected if the right were deemed fundamental because courts would review lease termination clauses and other property rights concerns more favorably toward the victim.¹²² Courts would have to review domestic violence victims’ claims against landlords under a strict

violence victims).

116. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 252 (E.D.N.Y. 2002).

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

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

119. *See id.* (noting the role of the State Action Doctrine).

120. *See DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989) (presenting a decision that does not support the recognition of protection from domestic violence as a protected fundamental right); *see also Jackson v. City of Joliet*, 715 F.2d 1200, 1203 (7th Cir. 1983) (addressing the Constitution’s protection of individual private actors, describing it as a “charter of negative rather than positive liberties . . . protect[ing] Americans from oppression by state government, not . . . secur[ing] them basic governmental services”).

121. *See* Symposium, *The Constitution and the Obligations of Government to Secure the Material Preconditions for a Good Society: Rights, Capabilities, and the Good Society*, 69 *FORDHAM L. REV.* 1901, 1923 (2001) (“[W]e might reason that we have a positive right to security against private violence because of a yet more fundamental right to security against extreme deprivation or impoverishment that threatens fundamental human capabilities, regardless of whether that vulnerability can be attributed to . . . undue private aggression.”).

122. *See Johnson, supra* note 70, at 1865 (“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.”).

scrutiny standard of review, which is appropriate when evaluating fundamental rights issues.¹²³ By applying this standard of review, a state would have to show that its actions were legitimate and done for a compelling purpose that is narrowly tailored and necessary.¹²⁴ But the Court has yet to establish this fundamental right and the Fourteenth Amendment Due Process Clause has proven fairly unsuccessful in protecting domestic violence victims thus far.¹²⁵

B. Property Law in the Constitution

Landlords and tenants both have property rights that are rooted in the judicial and constitutional tradition of commitment to individual liberty.¹²⁶ These traditional rights include the concept of absolutist ownership and “protecting property from redistribution.”¹²⁷ Justice John Harlan articulated the absolutist view of property rights in 1897 by recognizing that “[d]ue protection of the rights of property has been regarded as a vital principle of republican institutions.”¹²⁸ Scholar James W. Ely analyzed this statement, concluding that “[h]istorically, property ownership was viewed as establishing the economic basis for freedom from governmental coercion and the enjoyment of

123. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 154 (1938) (explaining that the Court will not interpret and treat all rights the same, as it will apply strict scrutiny to fundamental rights, such as those found in the Bill of Rights).

124. See generally *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (noting how a state’s action must not only be legitimate, but also narrowly tailored and necessary to survive strict scrutiny).

125. See *DeShaney*, 489 U.S. at 196 (1989) (“[The Fourteenth Amendment’s] purpose was to protect the people from the State, not to ensure that the State protected them from each other.”).

126. See JAMES W. ELY, *THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS* 3 (Kermit L. Hall et al. eds., 3d ed. 2008) (“From the time of Chief Justice John Marshall, the Supreme Court has favored the creation of a national market and safeguarded the rights of property owners.”).

127. JENNIFER NEDELSKY, *PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM* 274 (1990); see also ELY, *supra* note 126, at 5 (addressing courts’ historic protection of the “disadvantaged”).

128. *Chi., Burlington, & Quincy R.R. v. City of Chicago*, 166 U.S. 226, 235–36 (1897).

liberty.”¹²⁹ Freedom from government coercion and freedom to enjoy liberty speak to both the landlords’ concerns today and the tenants’ concerns.

Landlords tend to support the absolutist view of property rights and the desire to be free from government intervention.¹³⁰ Many landlords feel that, because they own their property and have established contracts with tenants, the government should respect those private interactions and not intrude for the purpose of allowing tenants to terminate their leases early.¹³¹ In their view, it is not their problem if a tenant has a personal issue and that issue should not mean that landlord rights are infringed upon.¹³² As owners, landlords cherish the right to exploit their property for profit.¹³³ They assert that personal and private relationships of their tenants should not permit governmental interference in the contract between landlords and tenants.¹³⁴

When testifying against a Washington state bill that would allow domestic violence victims to terminate their leases early after fulfilling certain requirements, one landlord expressed his concern for property owners’ rights by claiming that “[t]here are already too many protections in the law for victims.”¹³⁵ This bill opens the door and could impact other types of contracts such as for cars or mortgages.”¹³⁶ Traditionally, this landlord’s concern would be accepted by the government because the historic

129. ELY, *supra* note 126, at 3.

130. See Cary Spivak & Mary Spicuzza, *Some Wisconsin Lawmakers Double as Landlords—and Have Passed Laws that Undermine Renters’ Rights*, MILWAUKEE J. SENTINEL (June 14, 2019, 5:00 AM), <https://www.jsonline.com/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/> (last visited Nov. 28, 2019) (sharing a Republican lawmaker and landlord’s view that “as a conservative, [he] fundamentally believe[s] in the idea of private property rights”) [<https://perma.cc/5Z8C-6AE7>].

131. See H.R. Rep. No. 2EHB-1645, at 4 (Wash. 2004) (documenting landlord testimony claiming there are too many laws that protect victims already).

132. See *id.* (sharing a landlord’s testimony against a bill that would allow domestic violence victims to terminate their lease early for the purpose of escaping an abusive home).

133. See *id.* (providing a landlord’s testimony emphasizing the landlord’s interest in private property rights).

134. See *id.* (emphasizing the landlords’ interest in private property rights).

135. *Id.*

136. *Id.*

“protection given to property was fully consistent with one major theme of American constitutionalism—the restraint of government power over individuals.”¹³⁷

As time has progressed and cultural perceptions of rights have evolved, this absolutist view has begun to fade.¹³⁸ “[A] study of the constitutional status of property and economic interests reveals much about the attitudes and aspirations of successive generations.”¹³⁹ Landlords often still attempt to argue the absolutist view during legislative hearings and court proceedings, but modern courts’ and legislatures’ established rejection of that viewpoint leaves their efforts likely unsuccessful.¹⁴⁰

1. *Human Dignity and Property Rights*

Because traditional interpretations of the Constitution protect human dignity and the freedom to enjoy liberty, courts have construed the Constitution in a way that is contrary to the absolutist view of property rights.¹⁴¹ Early in American history courts began to establish exceptions to the absolutist view of property rights by recognizing assertions of nuisance claims and rights to hunt on unenclosed land.¹⁴² Judicial rulings in favor of eminent domain power further limited the absolutist view.¹⁴³ Ely asserts that “a drastic source of interference with property rights is eminent domain—the power to compel a transfer of property

137. ELY, *supra* note 126, at 3.

138. See ELY, *supra* note 126, at 3 (addressing the changing perception of property rights).

139. ELY, *supra* note 126, at 3.

140. See 2004 Wash. Sess. Laws 4 (proposing a bill to provide domestic violence victims with certain tenant rights, in spite of the opposition of landlords).

141. See ELY, *supra* note 126, at 5 (“[A]t no time has the [Supreme] Court blocked all regulatory or redistributive legislation or sought to impose a strict laissez-faire regime.”).

142. See *Rylands v. Fletcher* [1868] LRE & I. App. 3 (HL) 330 (noting in the dissent that an individual should not have absolute ability to use their land as they chose if it harms another’s enjoyment of his land); see also *Pierson v. Post*, 3 Cai. 175 (N.Y. Sup. Ct. 1805) (articulating whose property a fox is when it is captured on open land).

143. See *Kohl v. United States*, 91 U.S. 367, 371 (1876) (providing an early understanding that the Fifth Amendment provides eminent domain power).

from a private owner to the government for public use.”¹⁴⁴ More recently, courts’ holdings have reflected a recognition of human dignity rights as preeminent over absolute property rights.¹⁴⁵ These judicial rulings have established a new tradition of balancing the absolute right to property with the protection of humanity and enjoyment of liberty, ultimately favoring human dignity and freedom of enjoyment over absolutism.¹⁴⁶ However, while a variety of classes of individuals are protected under precedent, domestic violence victims still suffer in court when trying to argue for the protection of their human dignity.¹⁴⁷

The rejection of absolutism has not spread to cases concerning domestic violence.¹⁴⁸ Landlords have been successful in their claims to either evict a victim or not allow her to terminate her lease early for the purpose of living in a habitable, safe environment, interestingly contradicting the intent of the implied warranty of habitability.¹⁴⁹ The implied warranty of habitability—a property law concept—guarantees a safe and sanitary home, providing a tenant with quiet enjoyment of the dwelling.¹⁵⁰ Landlords’ failure to cooperate with tenants’ reasonable requests

144. ELY, *supra* note 126, at 5.

145. See *Wade v. Jobe*, 818 P.2d 1006, 1010 (Utah 1991) (explaining the concept of implied warranty of habitability and how a tenant can be financially protected when living conditions are inhumane).

146. See ELY, *supra* note 126, at 5 (“[J]udicial review of economic and social legislation, such as health and safety regulations, has not always resulted in rulings favorable to business interests.”).

147. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677–78 (D. Vt. 2005) (exemplifying a case where the victim suffered domestic violence, the landlord violated the Violence Against Women’s Act, but the victim still lost her case); see also *Mangan Realty, LLC v. Anthony*, 64 Misc. 3d 686, 689 (N.Y. Civ. Ct. 2019) (determining that the landlord may have had other legitimate reasons to evict the victim-tenant aside from her status as a domestic violence victim, rejecting her claim).

148. See *Bouley*, 394 F. Supp. 2d at 677–78 (emphasizing that victim who suffered from domestic violence lost her case despite there being little evidence that the landlord had preexisting problems with victim as a tenant; see also *Mangan Realty, LLC*, 64 Misc. 3d at 689 (identifying a case where a victim of domestic violence had her claim dismissed because the landlord presented other reasons for why tenant was evicted).

149. See *Mangan Realty, LLC*, 64 Misc. 3d at 680 (verifying how courts will weigh the law in favor of the landlord and not the victim).

150. See *Scott v. Garfield*, 912 N.E.2d 1000, 1005 (Mass. 2009) (explaining what the implied warranty of habitability entails).

to ensure a safe dwelling contradicts the intent of the implied warranty of habitability.¹⁵¹ Enacting legislation has become the most plausible method to overcome the rejection domestic violence victims face when attempting to use the judicial system to uphold their liberty interests.¹⁵²

2. *The Contract Clause and Property Rights*

Some landlords reference the Contract Clause, Article I, Section 10 of the United States Constitution, when trying to restrict domestic violence victims from terminating their leases early.¹⁵³ The Contract Clause states, “No state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts”¹⁵⁴ Historically, “the [C]ontract [C]lause was the most widely used protection of individual property rights against state regulation.”¹⁵⁵ However, courts’ interpretation of the Fifth Amendment Taking Clause diminished the power of the Contract Clause.¹⁵⁶ The Contract Clause no longer was a shield against government interference with contracts in cases addressing property rights.¹⁵⁷ Courts have continuously

151. *See id.* (explaining that a visitor’s right to collect damages for an injury caused by a breach of implied warranty of habitability is derived from a tenant’s expectation to invite guests and a landlord’s contractual obligation to deliver and maintain a habitable premise).

152. *See* 2004 Wash. Sess. Laws 1 (“By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, and stalking by removing barriers to safety and offering protection against discrimination.”).

153. *See id.* at 4 (noting via landlord testimony how the bill would harm contract credibility).

154. U.S. CONST. art. I, § 10.

155. Janet I. Levine, *The Contract Clause: A Constitutional Basis for Invalidating State Legislation*, 12 LOY. L.A. L. REV. 927, 930 (1979).

156. *See They Can’t Do That, Can They? Constitutional Limitations on the Seizure of Underwater Mortgage*, JONES DAY (June 2012), https://www.jonesday.com/They_Cant_Do_That/# (last visited Nov. 28, 2019) (“Contracts constitute property within the meaning of the Fifth Amendment and are susceptible to a ‘taking’ within the meaning of the Takings Clause. To determine whether a contract right has been taken, courts apply either a categorical test or . . . fact-dependent analysis employed in regulatory takings cases.”) [<https://perma.cc/HVL4-FBKQ>]; *see also, e.g.*, *Pro-Eco, Inc. v. Bd. of Comm’rs of Jay Cty.*, 57 F.3d 505, 511 (7th Cir. 1995) (detailing how the Eminent Domain power supersedes contracts).

157. *See* Michael W. McConnell, *Contract Rights and Property Rights: A Case*

exercised their ability to neglect the Contract Clause when considering property law issues, such as cases involving adverse possession claims.¹⁵⁸ Successful adverse possession cases allow an individual to gain title to a piece of property simply by fulfilling certain elements that demonstrate how that individual utilized the property more than the actual owner, disregarding the contract-holder's legal ownership.¹⁵⁹ Adverse possession reflects the judicial system's waning appreciation for contract sanctity regarding property.¹⁶⁰

Landlords have taken issue with courts and legislatures that discount the Contract Clause, particularly regarding federal and state laws that protect domestic violence victims from unfriendly lease provisions.¹⁶¹ Many landlords have been vocal about their distaste for these laws, fearing "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."¹⁶² During a Washington State House Judiciary Committee hearing regarding the passage of a bill to protect domestic violence victims when renting a residence, several members of housing associations and

Study in the Relationship between Individual Liberties and Constitutional Structure, 76 CALIF. L. REV. 267, 272 (1988) (articulating the effects of the Taking Clause).

158. See generally *Gurwit v. Kannatzer*, 788 S.W.2d 293 (Mo. Ct. App. 1990) (demonstrating that one couple was granted title to land owned by another by fulfilling the requirements of adverse possession); see also *Howard v. Kunto*, 477 P.2d 210 (Wash. Ct. App. 1970) (showing how fulfilling the adverse possession requirements allows an individual to gain title of real property regardless of who actually owned it).

159. See *More v. Stills*, 307 S.W.3d 71, 77–78 (Ky. 2010) (defining adverse possession).

160. See *Gurwit*, 788 S.W.2d at 295 (exemplifying a case where the court granted a couple their quiet title action through adverse possession despite the title for the land being owned by another couple).

161. See 2004 Wash. Sess. Laws 4 (sharing testimony contesting the limited liberty of landlords regarding contracts with domestic violence victims); see also *New Domestic Violence Law Impacts Your Rights*, 7 LANDLORD NEWS 1, 1–3 (Aug. 2005), https://www.thslawfirm.com/wp-content/uploads/2015/10/52_HTSPCLandlordNewsAugust2005.pdf (last visited Nov. 28, 2019) [hereinafter LANDLORD NEWS] (articulating concerns landlords have with the laws) [<https://perma.cc/TR5V-A7L6>].

162. Johnson, *supra* note 70, at 1868.

landlord interest groups testified against the bill.¹⁶³ They claimed that “[t]he bill creates a new special class of people who don’t have to follow the rules . . . Now anyone can say I am a victim and then get out of a lease.”¹⁶⁴

Additionally, Landlord News, a newsletter published by a law firm in Colorado, addressed landlord concerns about legislation allowing domestic violence victims to terminate their leases early.¹⁶⁵ Following the passage of one of these bills, the newsletter published a story expressing “concern[] that the new law will be abused by some residents to escape their rental responsibilities.”¹⁶⁶ Ultimately, the landlord concerns fail to appreciate the measures included in these bills that require proof of domestic violence, such as a court order, and why the tenant needs to terminate his or her lease early.¹⁶⁷

While courts are willing to overlook the Contract Clause when considering certain property law issues, many do not place victims’ rights in that category.¹⁶⁸ Therefore, both federal and state legislatures have stepped in to promulgate laws that provide more protections for domestic violence victims, furthering the modern practice of discounting the Contract Clause in favor of human dignity concerns.¹⁶⁹

Ultimately, legal protections of the United States Constitution have yet to provide proper recourse for domestic violence victims

163. See 2004 Wash. Sess. Laws 4 (sharing landlord testimony against the bill).

164. *Id.*

165. See LANDLORD NEWS, *supra* note 161 (“Only time will tell if our concern becomes reality.”).

166. LANDLORD NEWS, *supra* note 161.

167. See COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (detailing each of the requirements that must be satisfied to be able to terminate a lease early).

168. See *Jennings v. Hous. Auth.*, No. WDQ-13-2164, 2014 WL 346641 (D. Md. Jan. 29, 2014) (demonstrating a lack of judicial understanding of the patterns of domestic violence, allowing the judge to exercise complete discretion against the victim); see also *Gorsuch Homes, Inc. v. LeMasters*, No. 10-15-18, slip op. at 6–10 (Ohio Ct. App. May 31, 2016) (exemplifying judicial interpretation that did not allow the judge to rule in favor of the victim).

169. See Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (representing the federal effort to protect domestic violence victims in rentals); see also § 38-12-402 (exemplifying one of several state statutes protecting domestic violence victims in rentals).

regarding housing concerns.¹⁷⁰ The federal government took the first step to resolve the issue legally when it ratified VAWA.¹⁷¹

III. Federal Law: The Violence Against Women Act

A. History of VAWA

Legislatures, both federal and state, have in recent years been more aggressive than courts about moving the balance between private property rights and victims' rights in favor of victims.¹⁷² VAWA was first enacted in 1994 as an effort to combat violent crime against women.¹⁷³ Creation of the act was prompted by a long history of violence against women, particularly intimate partner violence.¹⁷⁴ "The public and the criminal justice system . . . [began] to view family violence as a crime rather than a private family matter."¹⁷⁵ President Bill Clinton signed into law the first iteration of VAWA.¹⁷⁶ When remarking on VAWA, then-Senator Joe Biden clarified that "[t]he shortfalls of legal responses and the need for a change in attitudes toward violence against women were primary reasons cited for the passage of VAWA."¹⁷⁷ The Act has been revised several times, including in

170. See tit. IV, 108 Stat. 1902 (demonstrating the need for remedies for domestic violence victims in terms of housing).

171. See *id.* (serving as the first iteration of VAWA).

172. See *id.* (identifying congressional attempts to pass legislation that will provide remedies for domestic violence victims); see also 2004 Wash. Sess. Laws 1 (identifying Washington State's attempt to pass legislation to protect victim of domestic violence in regard to housing).

173. See THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION 1 (Cong. Research Serv., 2d ed. 2018) [hereinafter HISTORICAL OVERVIEW] ("The Violence Against Women Act (VAWA) was originally enacted in 1994 (P.L. 103-322). It addressed congressional concerns about violent crime, and violence against women in particular, in several ways.").

174. See *id.* (noting that in the 1960s the violent crime rate steadily rose, in the 1970s organizations began to demand attention be paid to violence against women, and in the 1980s research studies began to focus on violence against women).

175. *Id.*

176. See *id.* at 2 ("In 1994, Congress passed and President Clinton signed into law, the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), which included VAWA as Title IV.").

177. *Id.*

2000, 2005, and, most recently, in 2013 under President Barack Obama.¹⁷⁸ The first version of the Act was primarily an effort to utilize the criminal justice system to address community responses to violence against women.¹⁷⁹ The 2000 revision also addressed crimes of dating violence and stalking.¹⁸⁰ The first effort to address domestic violence victims' housing concerns was added to VAWA in 2005.¹⁸¹ President Obama's 2013 reauthorization added additional housing rights for domestic violence victims, and additional protections for Native Americans and members of the LGBTQ community.¹⁸²

The 2013 iteration is the current version of VAWA.¹⁸³ The included housing provisions are the federal measures that are in effect today to protect domestic violence victims.¹⁸⁴ "VAWA 2013 added housing rights for victims of domestic violence, dating violence, sexual assault, and stalking, including a provision stating that applicants may not be denied public housing assistance based on their status as victims of domestic violence, dating violence, sexual assault, or stalking."¹⁸⁵ The Act also includes provisions allowing landlords to transfer victims to other publicly funded housing if similar units are available so the abuser will not know the victim's new address and includes protections against eviction based on a person's status as a victim.¹⁸⁶ "Additionally, [VAWA]

178. *See id.* (noting how the Act has been revised).

179. *See What Is the Violence Against Women Act?*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/vawa/> (last visited Nov. 28, 2019) ("VAWA 1994 fostered: Community-coordinated responses that brought together, for the first time, the criminal justice system, the social services system, and private nonprofit organizations responding to domestic violence and sexual assault.") [<https://perma.cc/CUB8-KNK9>].

180. *See id.* (noting what was added to the Act in 2000).

181. *See id.* ("VAWA 2005 created notable new focus areas such as . . . protecting individuals from unfair eviction due to their status as victims of domestic violence or stalking.")

182. *See id.* (clarifying what was added to the 2013 version of VAWA).

183. *See* HISTORICAL OVERVIEW, *supra* note 173, at 21 (identifying what the current law is).

184. *See* HISTORICAL OVERVIEW, *supra* note 173, at 21 (articulating how the 2013 version of the act addressed housing concerns).

185. HISTORICAL OVERVIEW, *supra* note 173, at 21.

186. *See* HISTORICAL OVERVIEW, *supra* note 173, at 21 ("[VAWA] required each executive department carrying out a covered housing program to adopt a plan whereby tenants who are victims of domestic violence, dating violence, sexual

require[s] the Secretary of Housing and Urban Development (HUD) to establish policies and procedures under which a victim requesting such a transfer may receive Section 8 assistance under the U.S. Housing Act of 1937.”¹⁸⁷ Prior to VAWA, “Section 8 tenants could only move and continue to receive housing assistance if they notified the [public housing agency] ahead of time, terminated their existing lease within the lease provisions, and located acceptable housing. Now, Section 8 tenants can circumvent these requirements”¹⁸⁸ VAWA allows victims to sidestep burdensome 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.”¹⁸⁹

While these provisions were a crucial step to protect domestic violence victims, VAWA only protects those who reside in federally subsidized housing and not those who rent from private landlords.¹⁹⁰ The Act serves to prevent landlords from evicting victims of domestic violence, but it fails to allow victims to terminate their leases early for the purposes of avoiding abuse.¹⁹¹ VAWA also unintentionally includes various loopholes that landlords have used.¹⁹² Several court cases addressing housing provisions of VAWA identify ways landlords have been able to legally avoid abiding by the Act.¹⁹³ Case law demonstrates how

assault, or stalking can be transferred to another available and safe unit of assisted housing.”).

187. HISTORICAL OVERVIEW, *supra* note 173, at 21–22 (defining Section 8 assistance as the government’s payment of rental housing to private landlords on behalf of low-income individuals).

188. Johnson, *supra* note 70, at 1870.

189. Johnson, *supra* note 70, at 1870 (quoting 42 U.S.C. § 1437f(r)(5) (2012)).

190. See Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013) (articulating the elements of the current VAWA).

191. See *id.* (outlining current protections for domestic violence victims under VAWA).

192. See Johnson v. Palumbo, 60 N.Y.S.3d 472, 474 (App. Div. 2017) (sharing how one landlord used a paperwork loophole to evict a victim).

193. See *id.* (emphasizing how landlords have used loopholes in VAWA to circumvent the Act); see also Gorsuch Homes, Inc. v. LeMasters, No. 10-15-18, slip op. at 6–10 (Ohio Ct. App. May 31, 2016) (noting how a landlord was able to evict a victim and skirt VAWA by claiming the victim participated in the violence).

landlords sometimes successfully exploit loopholes in statutory provisions that are unfavorable to tenants but other times fail to garner a verdict in their favor despite efforts to use loopholes.¹⁹⁴

B. *The Case of Pamela LeMasters*

In a 2016 case, a landlord availed himself of a VAWA loophole to evict a victim by claiming that the victim did not follow proper procedure of adding a resident to her lease.¹⁹⁵ The landlord, Gorsuch Homes, Inc., claimed the tenant, Pamela LeMasters, had violated a provision of her lease by allowing a “non-trespassed individual onto the property continually” and permitting “criminal activity” by that visitor.¹⁹⁶ During a hearing, the landlord testified that LeMasters’s husband had trespassed onto the property even after he was served with a no-trespass order resulting from instances of domestic violence.¹⁹⁷ Several staff members of Gorsuch Homes, Inc. testified to witnessing events of domestic violence.¹⁹⁸ The landlord testified that when he served the husband with the order, LeMasters appeared thankful.¹⁹⁹ Ultimately, the husband trespassed again.²⁰⁰ “According to [the landlord], LeMasters did not deny that [the husband] has been on the property, but tried to explain that she could not get him to leave because she was financially reliant on [him].”²⁰¹ LeMasters testified that, though her husband was abusive toward her, she did not call the police

194. See *Gorsuch Homes, Inc.*, slip op. at 6–10 (exemplifying a landlord successfully exploiting a loophole in court); see also *Johnson*, 60 N.Y.S.3d at 472 (exemplifying a landlord attempting to utilize a loophole).

195. See *Gorsuch Homes, Inc.*, slip op. at 6–10 (detailing the elements of the case).

196. *Id.* at 2.

197. See *id.* (“Bailey testified that the specific activities that gave rise to the eviction notice were separate occasions when James LeMasters . . . LeMasters’s husband, trespassed on Gorsuch Homes’s property after being served with a no trespass order.”).

198. See *id.* at 3–4 (explaining how several staff members of the landlord had witnessed incidences of abuse, including one incident when a staff member offered to call the police for LeMasters).

199. See *id.* at 2 (“Bailey added that LeMasters appeared grateful and promised that James would no longer step foot on the property.”).

200. See *id.* (noting the husband returned to the property uninvited).

201. *Id.* at 6.

because she was “scared.”²⁰² “Further, she explained that her only source of income was the child support paid by [her husband] and that she was afraid that if he were to go to prison, then the child support payments would stop.”²⁰³

Even though LeMasters’s situation is a common experience of victims and the law has provided recourse for such in the past, this court still ruled in the landlord’s favor.²⁰⁴ LeMasters asserted that the landlord had evicted her due to her husband’s “criminal activity” of domestic violence, “which was outside the limited allegation of ‘trespass’ contained in the written notice of termination.”²⁰⁵ The court disagreed and claimed that LeMasters “was evicted due to her *willing* participation in [her husband’s] multiple and unlawful violations of the landlord’s no trespass order.”²⁰⁶ Those who understand the patterns of domestic violence recognize that a victim remaining in a violent situation out of fear cannot be construed as willingly participating in the partner’s actions because the victim is under insuperable pressure to tolerate and abet it.²⁰⁷

Further, the judge asserted that staff members’ testimony regarding witnessing incidents of domestic violence was “merely . . . an explanation of the circumstances which led to the reason for the no trespass order and not as an independent ground for the termination”²⁰⁸ This interpretation ignores the

202. *Id.* at 10.

203. *Id.*

204. See Wendy L. Patrick, *Why Domestic Violence Victims Don’t “Just Leave”*, PSYCHOL. TODAY (Apr. 7, 2018), <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201804/why-domestic-violence-victims-dont-just-leave> (last visited Nov. 28, 2019) (“Some of the reasons they discovered included financial need, lack of another place to go, as well as reported lack of help from law enforcement.”) [<https://perma.cc/W3J6-XHBC>]; see also *Gorsuch Homes, Inc. v. LeMasters*, No. 10-15-18, slip op. at 6–10 (Ohio Ct. App. May 31, 2016) (noting that the judge held in favor of Gorsuch Homes, Inc.).

205. *Gorsuch Homes, Inc.*, slip op. at 16.

206. *Id.* at 16.

207. See *Why Do Abuse Victims Stay?*, DOMESTIC VIOLENCE ROUNDTABLE, <https://www.domesticviolenceroundtable.org/abuse-victims-stay.html> (last visited Nov. 28, 2019) (sharing how victims of domestic violence often feel trapped . . . because they cannot reasonably leave their abuser for lack of financial support, a place to go, or fear that the abuser will find and kill them) [<https://perma.cc/ZP8C-KG8K>].

208. *Gorsuch Homes, Inc.*, slip op. at 7.

landlord's assertion that part of LeMasters's violation was her husband's "criminal activity."²⁰⁹ Here, the judge misinterprets the facts to determine that the husband's "criminal activity" was not a violation that led to eviction, thereby discounting the landlord's explanation for eviction, which violated VAWA, and asserting his own reasoning so as to sidestep finding a VAWA violation.²¹⁰

This case demonstrates how landlords have been able to take advantage of statute wording gaps and how judges' lack of understanding about the common behavior of victims allows misinterpretation of victims' actions.²¹¹ If VAWA protections had been applied to the case, the landlord would not have been able to evict LeMasters if the eviction was due to her status as a victim of domestic violence.²¹² However, the landlord asserted that LeMasters's actions in allegedly permitting her husband to violate the trespass provision of the lease was the reason she was evicted, not because she was a victim of domestic violence.²¹³ The landlord presented the facts of the case to indicate that LeMasters *allowed* her husband to enter the home, which disregards the husband's power over LeMasters.²¹⁴ By presenting the case in this way, the judge did not have to apply VAWA, even though the case truly revealed a VAWA violation.²¹⁵

209. *See id.* at 2 ("Bailey testified that LeMasters was being evicted for material noncompliance with the lease. Next, counsel asked, 'Specifically in what manner?', and Bailey replied, 'Specifically criminal activity by a visitor.'").

210. *See id.* at 5 ("[I]t is clear from the record that all of the witnesses who testified as to alleged criminal activity . . . introduced that testimony merely as an explanation of the circumstances which led to the reason for the no trespass order and not as an independent ground for the termination as alleged by LeMasters.").

211. *See id.* (demonstrating how reliance on the fact that a lease provision was violated, not acknowledging that it was violated because of domestic violence, is a method for landlords to skirt VAWA protections and how judges allow this process to continue).

212. *See* Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013) (reflecting a provision of VAWA).

213. *See* Gorsuch Homes, Inc. v. LeMasters, No. 10-15-18, slip op. at 7 (Ohio Ct. App. May 31, 2016) (sharing the landlord's decision to ignore the occurrence of domestic violence, claiming an alternate reason so he could evict the victim).

214. *See id.* (demonstrating how the landlord alleged that LeMasters was a willing participant, which the judge accepted on its face without considering the underlying issue of abuse).

215. *See id.* (revealing how LeMasters was evicted because she was a domestic-violence victim).

The dissent was better reasoned, stating, “Landlords, such as Gorsuch Homes, cannot be allowed to continue to evict tenants, such as LeMasters, using vague and overly broad statements contained as the grounds for eviction.”²¹⁶ The dissent recognized the truth that LeMasters was evicted in part because she was in a relationship with someone who abused her at the home, which directly violates VAWA.²¹⁷ The dissenting opinion rightfully requested that courts no longer allow landlords to skirt VAWA requirements by improperly claiming a victim violated provisions of her lease for a reason that was not driven by her status as a victim of domestic violence.²¹⁸

C. *The Case of Amanda Chambers Johnson*

In contrast to the ruling in *Gorsuch Homes*, a judge applied VAWA protections in a 2017 case to a victim during her eviction proceeding.²¹⁹ Amanda Chambers Johnson and her five children were living in a federally subsidized apartment when she received a notice that her lease would be terminated because she violated Section 8 housing program rules.²²⁰ “The determination to terminate her benefits was confirmed based upon the finding that she was obligated, but failed, to request permission to add Antwone Jordan-McGill (McGill) as an occupant to her subsidized

216. *See id.* at 10 (referencing statements about “criminal activity” being the reason why LeMasters was evicted).

217. *See id.* (sharing a view on why LeMasters was evicted).

218. *See id.* (reflecting that landlords and courts need to acknowledge the presence of domestic violence in an eviction proceeding, instead of relying on generalized claims like trespass that do not reflect the relationship between the trespasser and the victim, and that courts should not allow eviction in spite of domestically violent acts).

219. *See Johnson v. Palumbo*, 154 A.D.3d 231, 234 (N.Y. App. Div. 2017) (“[W]e conclude that [Johnson] was entitled to the housing protections of VAWA, which prohibited her termination from the [Section 8] program on this ground.”).

220. *See id.* at 233

The petitioner, Amanda Chambers Johnson, lived in an apartment in Poughkeepsie with her five children with the assistance of rent subsidy benefits under the Section 8 Housing Choice Voucher Program. On February 11, 2014, she was notified that her benefits under the program were being terminated due to alleged violations of the program rules.

(citations omitted).

apartment.”²²¹ The landlord failed to acknowledge that Johnson did not add McGill’s name because she did not consider him a co-tenant. She did not want him there, but McGill forced himself into Johnson’s home on multiple occasions.²²² Johnson “was subjected to an escalating pattern of stalking and abusive behavior and domestic violence by McGill, a former intimate partner, whose course of abusive and violent conduct against her included his unwanted presence in her apartment.”²²³ Johnson testified that

McGill “became terrifying.” He started asking the petitioner for keys to her apartment. She told him ‘no,’ but, against her wishes, McGill took a spare set of keys He began entering the petitioner’s home at will, “whenever he felt like it,” and told her that he would never give her back her keys.”²²⁴

When asked why she did not seek out an order of protection, Johnson explained to the court what LeMasters’s judge was unable to understand:

I know it’s hard to understand. You never think that someone will control you But when you are in that situation, it’s a totally different world When you are scared of somebody and you have five kids to take care of, to get ready for school, to go to work, to put on a smile every single day, it changes the dynamic of things that become important.²²⁵

Johnson testified that “McGill was ‘just a very wicked individual and [I] truly could not have done anything different than what [I] did to survive.”²²⁶

During a hearing to reinstate her lease, the apartment complex housing committee ruled in favor of the landlord on the grounds that Johnson violated a provision of her lease by not adding McGill’s name, which was required because he was there

221. *Id.* at 233–34.

222. *See id.* at 239–40 (“[T]he hearing officer nonetheless concluded that there was no evidence of violence or fear in June of 2012, and even were there evidence of violence that early, he ‘fail[ed] to see how that fear would excuse the [petitioner from] requesting to add another family member.’”).

223. *Id.* at 234.

224. *Id.* at 236.

225. *Id.* at 237–38.

226. *Id.* at 237.

so often, notwithstanding her defense of the violation.²²⁷ The landlord testified, “[I] fail to see how that fear would excuse the [petitioner from] requesting to add another family member [to her lease].”²²⁸ The housing committee sided with the landlord and held in his favor. Johnson appealed this ruling to the Supreme Court of New York Appellate Division.²²⁹

The Supreme Court of New York Appellate Division ruled in favor of Johnson.²³⁰ The court determined that “[t]here was no evidence presented at the hearing from which the hearing officer could conclude that the petitioner voluntarily gave McGill permission to reside at the contract unit . . . or that his ultimate residency there for some period of time was unrelated to the domestic violence he perpetrated upon her.”²³¹ The court also shared that it would be completely unreasonable for the landlord to require Johnson to add McGill as a resident of her home because he showed up uninvited so often.²³² “[R]equiring the petitioner to do so would effectively require her to legitimize his access to the contract unit by making him an established part of her household, thus giving him greater power and control over her.”²³³

VAWA is intended to protect victims from situations like Johnson’s, where victims have to choose between remaining in an abusive household or keeping stable housing for themselves and

227. *See id.* at 239 (noting how even if Johnson was a victim of domestic violence, she still could have added her husband, the abuser, to her lease, and by not doing so, she was properly evicted for failing to comply with that lease provision).

228. *Id.* at 239–40.

229. *See id.* at 240 (“The petitioner thereafter commenced this CPLR article 78 proceeding in the Supreme Court seeking review of the determination, arguing, among other things, that the hearing officer erred as a matter of law in concluding that VAWA did not prevent her tenancy from being terminated.”).

230. *See id.* at 246 (“In sum, we find that the hearing officer’s determination was affected by an error of law and rendered in violation of VAWA.”).

231. *Id.* at 243.

232. *See id.*

[E]vidence that McGill’s presence in and access to the contract unit was the result of conduct that constitutes domestic violence and stalking as defined by the VAWA, it would be unreasonable and inconsistent with the purpose of the statute to require the petitioner to seek permission to add McGill as an occupant of the unit.

233. *Id.*

their children.²³⁴ The judge concluded that “[t]his is a choice that a domestic violence victim should not have to make and we decline to read VAWA in such a way, which is plainly inconsistent with its salutary purposes.”²³⁵ In Johnson’s case, VAWA worked exactly as it was intended.²³⁶ Thankfully for Johnson, the judge adjudicating her case understood the underpinnings of VAWA and ruled in her favor.²³⁷ Johnson’s case confirms how LeMasters’s case demonstrates that unfortunately VAWA is not always applied to abuse cases when it could and should be.²³⁸

D. Harms of Inadequate Legal Representation

Domestic violence victims who receive poor legal representation face additional challenges when entitled to VAWA protection.²³⁹ A 2014 case reveals how a lawyer’s improper decision to not assert a VAWA violation claim, coupled with a judge’s apparent bias, allowed a victim of domestic violence to be denied housing protection.²⁴⁰ Jennings, the victim, lived in Section 8 housing with several of her children.²⁴¹ One of her children, Barrett, had “been imprisoned since 2011, and [was] accordingly

234. *See id.* (“The hearing officer[] fail[ed] to recognize that McGill’s presence in and access to the contract unit was the result of domestic violence [and] did not take into account the dynamics of domestic violence . . .”).

235. *Id.* at 243–44.

236. *See id.* (serving to properly protect a domestic violence victim from intimate partner abuse and abuse from her landlord because of her status as a victim).

237. *See id.* at 243 (“To [conclude] that [Johnson] violated . . . Section 8 . . . by failing to . . . add McGill as an occupant would place her in the untenable position of . . . choos[ing] between . . . an abusive situation . . . or facing the loss of the housing assistance . . . [A] choice that a domestic violence victim should not have to make . . .”).

238. *See Gorsuch Homes, Inc. v. LeMasters*, No. 10-15-18, slip op. at 6–10 (Ohio Ct. App. May 31, 2016) (representing one case of many where VAWA was unable to protect domestic violence victims from a landlord’s abuse of power).

239. *See, e.g., Jennings v. Hous. Auth.*, No. WDQ-13-2164, 2014 WL 346641 (D. Md. Jan. 29, 2014) (including both of these issues in this case).

240. *See id.* (demonstrating how Jennings’s lawyer did not even introduce a VAWA claim when the Act would have protected her housing rights, while also revealing how judges can interpret a case in a way that is severely biased against the victim of domestic violence).

241. *See id.* at 1 (noting Jennings’s children’s living situation).

‘ineligible to participate in the HCV Program.’”²⁴² Barrett never visited or stayed at Jennings’s home.²⁴³ “In April 2012, Housing Authority employees allegedly contacted Jennings’s landlord, Dominion Properties, LLC (Dominion), and ‘compelled’ Dominion to ‘fraudulently modif[y] the lease agreement for’ the . . . home, by adding Barrett ‘to the list of tenants residing at’ the . . . home without Jennings’s ‘written permission.’”²⁴⁴ Jennings then received a notice informing her that her Section 8 housing would be terminated.²⁴⁵ “The notice advised Jennings that the reasons for termination included ‘a 2010 incident of domestic violence of which Ms. Jennings was the victim[,] and two 2010 incidents of criminal activity by Barrett.’”²⁴⁶

The primary issue here regarding the challenges of applying VAWA to protect domestic violence victims is that Jennings’s lawyer failed to assert a claim that the landlord violated VAWA.²⁴⁷ The landlord blatantly stated that one of his reasons for evicting Jennings was because she was a victim of domestic violence, which is exactly what VAWA is intended to protect against.²⁴⁸ Jennings would have had a far better chance of her case succeeding had the lawyer asserted a VAWA violation claim.²⁴⁹

242. *Id.*; see also *Housing and Community Development*, FAIRFAX COUNTY VA., <https://www.fairfaxcounty.gov/housing/rentalhousing/housingchoicevoucher> (last visited Nov. 28, 2019) (defining the “Housing Choice Voucher (HVC) Program as a federally funded program designed to assist low-income families with their housing needs. Participants in the HCV program receive assistance to rent private market apartments.”) [<https://perma.cc/2FMD-8PCF>].

243. See *Jennings*, 2014 WL 346641, at *3 (explaining whether Barrett resided at the residence).

244. *Id.*

245. See *id.* (“In early May 2012, the Housing Authority notified Jennings that her participation in the HCV program would be terminated effective June 5, 2012.”).

246. *Id.*

247. See *id.* (representing a failure to assert a claim, here, regarding VAWA, that the lawyers’ client could succeed on).

248. See *id.* at *1 (“The notice advised Jennings that the reasons for the termination included ‘a 2010 incident of domestic violence of which Ms. Jennings was the victim’”).

249. See *generally id.* (noting why Jennings lost her case, but including facts that would apply to the protections of VAWA).

The second issue is the judge's decision not to give credence to any of Jennings's six claims.²⁵⁰ The judge interpreted the law in a way that disregarded the blatant wrongs committed against Jennings.²⁵¹ The judge could have recognized a VAWA violation or given credibility to Jennings's claims, accepting her arguments in recognition of her lawyer's poor representation so as to allow her claim to succeed under VAWA, but instead harshly adjudicated Jennings's claims.²⁵² The judge acknowledged he understood that the Housing Commissioner "told Jennings 'in front of [the landlord], members of the general public[,] and [his] secretary,' that she was a 'disgrace to society, a disruption to the community, the worst things that ever lived in section 8, and you should teach your kids how to stop ruining your life; and, if I could help you, which I can, I wouldn't help you.'"²⁵³ The judge also acknowledged that the Commissioner blatantly lied to Jennings about her ability to appeal her eviction by telling her there was nothing she could do.²⁵⁴

When addressing Jennings's claims, the judge analyzed her strongest arguments last in his final opinion, focusing on the procedural flaws in Jennings's claim as reason why Jennings should lose, and disregarded applicable law or public policy that would protect Jennings.²⁵⁵ The combination of less-than-astute representation and a judge ill-inclined to sympathize with the victim left little room for success in a claim regarding eviction due to one's status as a victim.²⁵⁶

250. *See generally id.* (concluding that the judge rejected all of Jennings's claims).

251. *See id.* (explaining how the judge was dismissing all of Jennings's claims based on perceived procedural errors, while disregarding direct violations of VAWA).

252. *See id.* at *11 (revealing how the judge decided to dismiss all claims based on failures to allege enough facts, refusing to interpret the facts that were alleged).

253. *Id.* at *1.

254. *See id.* ("He also 'intentionally lied' to Jennings 'about her procedural rights' to appeal the result of the informal hearing by 'Judicial Review or Administrative Mandamus in the Circuit Court' by telling her 'there is nothing more to do.'").

255. *See id.* at *3–9 (sharing the pleading mistakes Jennings made, refusing to recognize the domestic abuse she had experienced and failing to give adequate weight to the mistreatment she experienced regarding housing).

256. *See generally id.* (emphasizing elements of the case that disfavored

E. The Need for Legal Protection in Addition to VAWA

The bulk of cases that demonstrate issues with VAWA's ability to protect domestic violence victims indicate that the Act is insufficient because it does not apply to private leases and loopholes are easily found.²⁵⁷ Several states' recent promulgation of statutes filling the gaps in coverage is a positive step to increase protections.²⁵⁸ Aside from extending lease termination ability to private lease holders, the state statutes also tend to address early termination of leases and eviction concerns.²⁵⁹ Still, inconsistencies among state statutes and the limited number of states that have promulgated statutes pose continued challenges for domestic violence victims.²⁶⁰

IV. State Statutes

A. State Police Powers

The Tenth Amendment to the U.S. Constitution grants states police powers.²⁶¹ These powers provide states with broad rights that allow their legislatures to interfere with private leases for the purpose of protecting domestic violence victims.²⁶² "The police

Jennings having success in her claim).

257. *See, e.g.*, *Gorsuch Homes, Inc. v. LeMasters*, No. 10-15-18, slip op. at 6–10 (Ohio Ct. App. May 31, 2016) (demonstrating how landlords can find ways around VAWA protections via loopholes); *see also* *Jennings v. Hous. Auth.*, No. WDQ-13-2164, 2014 WL 346641 (D. Md. Jan. 29, 2014) (showing how judges' interpretations and lawyer mistakes allow VAWA protections to be ineffective).

258. *See, e.g.*, COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (serving as an example of a state statute that provides housing protection for domestic violence victims with private leases).

259. *See, e.g., id.* (protecting domestic violence victims when trying to terminate a private lease early to escape an abuser).

260. *See, e.g.*, *Johnson*, *supra* note 70, at 1864 (noting that "[e]arly-termination statutes provide victims with the assurance that negotiations lack, in addition to offering a palatable alternative to enduring more abuse," but still not all states have statutes and the states that do have statutes are not all alike).

261. *See* U.S. CONST. amend. X (articulating the police powers).

262. *See, e.g.*, § 38-12-402 (demonstrating a state legislature's exercise of its police power to draft legislation protecting domestic violence victims with housing concerns).

power is the authority of government to adopt and enforce measures to protect the public health, safety, morals, and general welfare” of state citizens.²⁶³ “[T]o the extent that the exercise of the police power is reasonable and has a real relationship to a legitimate governmental purpose, it has been held not to infringe constitutional rights despite some incidental interference with individual rights.”²⁶⁴ Some state courts have properly recognized a state’s ability to enact statutes that specifically protect domestic violence victims in private leases.²⁶⁵ In particular, these courts have recognized that “authorizing exclusion of perpetrators of domestic violence from the residences of their victims is reasonable, and it has a real relationship to the purpose of protecting victims of domestic violence from further harm.”²⁶⁶ “The protection of victims of domestic violence from further harm has as its purpose the protection of the public welfare, which is a proper exercise of the police power”²⁶⁷

With this police power, over the past ten years many states have begun to enact statutes that protect domestic violence victims who hold private leases.²⁶⁸ When ratifying its own protective statute in 2004, the Washington state legislature publicly acknowledged the policy reasons for “facilitat[ing] escape options for domestic violence victims . . . [to] allow[] victims to terminate residential leases without penalty.”²⁶⁹ The state legislature recognized the public safety aspect at risk by explaining that it “[found] that victims of these crimes who do not have access to safe housing are more likely to remain in or return to abusive or dangerous situations The legislature further [found] that evidence that a prospective tenant has been a victim of domestic

263. *Calicoat v. Calicoat*, No. o8CA32, 2009 WL 3683665, at *12 (Ohio Ct. App. Nov. 6, 2009) (quoting *State v. Martin*, 151 N.E.2d 7 (Ohio 1958)).

264. *Id.*

265. *See id.* (explaining that state legislatures are granted the power to protect their citizens general welfare).

266. *Id.*

267. *Id.*

268. *See Johnson*, *supra* note 70, at 1876 (noting then that “Oregon, Washington, Colorado, North Carolina, and Texas have laws that allow domestic violence victims to terminate a rental agreement without financial penalty,” but now many more states do).

269. *Danny v. Laidlaw Transit Serv., Inc.*, 193 P.3d 128, 133 (Wash. 2008).

violence . . . is not relevant to the decision whether to rent to that prospective tenant.”²⁷⁰ While this acknowledgment is a step in the right direction compared to when the only protective statute was VAWA and when only a few states had protective statutes, still not all states have statutes.²⁷¹ The statutes that do exist are inconsistent when juxtaposed, therefore they confuse judges and victims who reside in multiple states.²⁷²

B. Existing State Statutes

Thirty-one states have enacted statutes that allow domestic violence victims to terminate their private leases early in order to escape abusive situations.²⁷³ While most statutes have similar provisions, the failure of other states to include certain provisions limits the protections available to the victims in those states.²⁷⁴ For example, some state statutes, such as Nevada’s, include a specific definition of “domestic violence” in their lease termination provision, putting the term into context.²⁷⁵ Not all states—Arizona is one example—include definitions that relate specifically to lease terminations, thereby creating ambiguity and confusion.²⁷⁶ Some states, including Texas, have promulgated highly detailed provisions that cover protections for victims, landlords, and members of the public who might be involved, such as other tenants in the building or complex.²⁷⁷ This last group of statutes

270. 2004 Wash. Sess. Laws 45.

271. See *State Laws*, *supra* note 25.

272. See, e.g., COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (exemplifying one state statute with protective provisions that are not reflected in all state statutes, but also fails to include protective measures that other statutes have).

273. See *State Laws*, *supra* note 25 (listing which states have protective statutes).

274. See *State Laws*, *supra* note 25 (detailing the similarities and differences of state statutes).

275. See NEV. REV. STAT. ANN. § 118A.345 (West 2017) (providing definitions of certain terms that appear in the statute as they relate to the statute).

276. See ARIZ. REV. STAT. ANN. § 33-1318 (2018) (failing to include definitions of terms as they relate specifically to the statute).

277. See TEX. PROP. CODE ANN. § 92.016 (West 2010) (including provisions that allow landlord to evict or collect from tenants if necessary and unrelated to the tenant’s status as a victim, while also protecting victims and others who live in the same apartment complex).

provides the most clarity for judges and allows a decision that is more acceptable to all of the involved parties.²⁷⁸ For instance, several provisions address the question of whether the tenant or the landlord retains the security deposit when the lease is terminated.²⁷⁹ Courts have been inconsistent in their determination of who gets the deposit, but some statutes, such as North Dakota's, provide clarification of who should receive it in certain circumstances.²⁸⁰

The Washington state statute includes an actual template of a letter that a tenant can send to the landlord explaining that the tenant is a victim of domestic violence and would like to terminate the lease early.²⁸¹ In this uncommon approach, a victim can simply fill out the form with his or her name and information.²⁸² Because it is included in the state statute, a court would have to accept such a letter as valid.²⁸³ The form letter helps victims because it is a quick and easy way to inform their landlords of their desire to terminate their lease.²⁸⁴ Many tenants would have difficulty preparing an acceptable letter themselves.²⁸⁵

278. See Johnson, *supra* note 70 (providing how state statutes help judges understand how to properly adjudicate cases).

279. See COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (addressing how different situations can lead to either the landlord or the tenant receiving the security deposit after the lease is terminated early); see also N.D. CENT. CODE ANN. § 47-16-17.1 (West 2017) (addressing different landlord and tenant contractual situations).

280. See § 47-16-17.1 (clarifying when a tenant versus a landlord gets to keep the security deposit); see also § 38-12-402 (stating when a tenant, not the landlord, keeps the security deposit); Turner v. 1212 S. Mich. P'ship, 355 Ill. App. 3d 885, 887 (2005) (addressing the question directly of who should get the security deposit in certain situations, as different ordinances confuse the question in court).

281. See WASH. REV. CODE ANN. § 59.18.575 (West 2009) (providing a template of a form a tenant can share with his or her landlord to terminate a lease early).

282. See *id.* (detailing what information should be included in the letter).

283. See *id.* (including areas where the drafter can fill in the blank as well as describing what the drafter should write so that a landlord must accept it and terminate a lease).

284. See *id.* (describing the rationale behind providing a template of a form letter).

285. See *id.* (explaining what information is necessary, such as what the incident was, who the parties were, and when the incident occurred).

In contrast, some statutes are far too narrow and fail to include protections that most other statutes provide.²⁸⁶ For example, the New Jersey statute is unique in its brevity at one page long.²⁸⁷ It also fails to include protections for victims who have temporary, thirty-day protective orders.²⁸⁸ Other statutes protect victims with temporary protective orders, which is important because many more women seek temporary orders than permanent ones, especially if they have children with the abuser.²⁸⁹

C. What If a State Lacks a Protective Statute?

Thirteen states lack protective statutes all together, including Montana, Idaho, Kansas, and Mississippi.²⁹⁰ Without any statutory directive or guidance, courts can rule as they see fit, sometimes leaving a victim in a dangerous situation.²⁹¹ For example, in 2008 a domestic violence victim in Ohio brought suit against her landlord for refusing to simply move her to another unit in the same apartment complex so that her abuser would not know where she lived.²⁹² Ohio does not have a protective statute at all so the decision was left up to the judge.²⁹³

286. See N.J. STAT. ANN. § 46:8-9.6 (West 2008) (failing to include a template, discussion about security deposits, or protections for tenants with ex parte orders).

287. See *id.* (exemplifying a statute that is only a page long).

288. See *id.* (providing only a minimally protective provision).

289. See Interview with Joel Correa, *supra* note 52 (explaining how many women who are granted temporary protective orders do not follow through with training to be granted a permanent protective order because of time, effort, and fear).

290. See *State Laws*, *supra* note 25 (detailing which states do not have protective statutes).

291. See *Robinson v. Cincinnati Metro. Hous. Auth.*, No. 1:08-CV-238, 2008 WL 1924255, at *5 (S.D. Ohio Apr. 29, 2008) (reflecting on the effects of a state lacking a protective statute).

292. See *id.* at *1 (“As a result of the abuse and the threat to her life, Plaintiff has requested that the CMHA transfer her to another unit or scattered site dwelling so that Mr. Davis will not be able to find her and will not be able to continue to be a threat to her well being.”).

293. See *id.* at *7 (reflecting an adjudicated case not reliant on an available statute).

In that case, Yolanda Robinson lived in an apartment with her two children, but chose to leave when her then-boyfriend began abusing her.²⁹⁴ Robinson's ex-boyfriend began to abuse her a few months after they started dating.²⁹⁵ Ultimately, Robinson's ex-boyfriend forced his way into her apartment and beat her, causing significant physical damage to her body and the home.²⁹⁶ He fled the scene after threatening to come back and kill her, which is why she and her children were afraid to stay there.²⁹⁷ After the incident, Robinson filed a police report and was granted an emergency ex parte temporary protective order.²⁹⁸ She also asked her landlord to transfer her and her children to another available unit so that they could escape the abuse and hide from the perpetrator.²⁹⁹ The landlord refused and claimed that transfers for this reason were not in their policy.³⁰⁰ The court ruled in favor of the landlord for several reasons that violate VAWA, other state statutes, and public policy.³⁰¹ The court determined that the landlord had not wronged Robinson because she was not evicted.³⁰² "Although the Plaintiff has good reason to seek shelter, the fact is that the Plaintiff is choosing not to return to her home for reasons

294. *See id.* at *1 ("Until recently, she lived at the same location with her two children. She still pays rent and utilities for this unit. However, she has not lived there since January 14, 2008, because at that time she was subjected to significant and traumatic abuse by her former boyfriend.").

295. *See id.* (articulating Mr. Davis' abuse).

296. *See id.* ("Mr. Davis came to Plaintiff's home, forced his way in and severely beat her. This attack caused significant injuries to Plaintiff and also caused property damage to the home.").

297. *See id.* ("Since that time, Plaintiff and her children have been living with friends and family. Plaintiff and her children are afraid to return to the residence because Mr. Davis has threatened to come back and kill Plaintiff.").

298. *See id.* ("Ms. Robinson, the Plaintiff, has filed a police report and was granted an ex parte Civil Stalking and Sexually Oriented Offense Protection Order.").

299. *See id.* ("As a result of the abuse and the threat to her life, Plaintiff has requested that the CMHA transfer her to another unit or scattered site dwelling so that Mr. Davis will not be able to find her and will not be able to continue to be a threat . . .").

300. *See id.* ("CMHA has declined to transfer Plaintiff because its policy does not provide for transfers on the basis that a tenant has been a victim of domestic violence.").

301. *Id.*

302. *See id.* ("CMHA has not taken any steps to evict Plaintiff from her home or otherwise affect her federal housing subsidy. Her unit is still her unit.").

unrelated to the services provided to her by the [Metro Housing Authority].”³⁰³ The court also noted that the landlord did not cause the domestic violence and therefore should not have to move her.³⁰⁴ Robinson and her two children had to rely on friends and family to stay with while still paying rent at an apartment they could not live in because their lives were in danger.³⁰⁵

The court’s holding ultimately disregards human dignity by determining that if a landlord does not have a specific policy that allows a tenant to be moved if she is a domestic violence victim, then the victim has no hope of transfer and safety.³⁰⁶ It is equitable, though, that a landlord can transfer a victim to another unit if one is available in the absence of a specific policy encouraging transfer.³⁰⁷ Robinson was left paying rent for an apartment she could not safely reside in while, alternatively, the landlord could likely have moved Robinson to another similar unit and still receive a rent check, all while supporting the tenant’s needs.³⁰⁸ “Plaintiff claims that the harm she has or may suffer far outweighs any harm that may be suffered by the CMHA or any other party. She claims that she is homeless and will remain homeless unless she is granted a transfer.”³⁰⁹ The judge felt as though affording Robinson this protection was a job for law enforcement and not one with which the landlord had to concern himself.³¹⁰ The court ruled that “[i]t is not the responsibility of the housing authority to protect its tenants from all potential crime, including domestic

303. *Id.* at *5.

304. *See id.* at *4 (“When compared with domestic violence, the initial placement of the tenant is not a causative factor of the domestic violence.”).

305. *See id.* at *6 (“The Court is not insensitive to the Plaintiff’s situation and the turmoil she has faced due to the violent acts of Mr. Davis. . . . [H]owever, the status of the law does not require the CMHA to grant her a transfer on the basis of a threat of future domestic violence.”).

306. *See id.* (emphasizing the lack of policy, statute, or law requiring a victim to be transferred if she requires proper protocol).

307. *See id.* (concluding that the lack of a clear indication that the victim must be moved translates to her inability to be moved, failing to consider that the judge could ask the landlord to move the tenant for policy reasons, even though no statute requires the landlord move her).

308. *Id.*

309. *Id.* at *5.

310. *See id.* (“To do so would essentially place CMHA in the role of law enforcement and make them a guarantor of their tenants’ safety.”).

violence.”³¹¹ The court determined that protecting Robinson would “be discouraging to private landlords who make their properties available” and therefore landlords should be able to deny a suffering tenant a safe place to live.³¹²

This case justifies the need for state protective statutes because some judges hold that, absent directly applicable statutory or regulatory language, they lack the authority to grant a victim protection regarding housing.³¹³ In this case the court determined that “[u]nfortunately . . . the status of the law does not require the [landlord] to grant [Robinson] a transfer on the basis of a threat of future domestic violence.”³¹⁴ All states must enact legislation to protect victims because without declarative law, victims are too easily ignored and their lives are often at risk if they are not granted the help they request.³¹⁵ An easily adaptable model statute for states without such laws would generally simplify and speed up passage of legislation to ameliorate living circumstances for many domestic violence victims.³¹⁶

V. Proposed Model Universal Statute

A universal statute for all states to adopt could resolve the ambiguities and gaps in protection that currently exist. VAWA is insufficient to protect all domestic violence victims’ housing concerns because it only applies to federally subsidized housing.³¹⁷ Victims with private leases are also still not adequately protected in many states.³¹⁸ For example, Illinois courts have struggled to

311. *Id.*

312. *Id.* at *6.

313. *See id.* (determining to not provide the victim with protection because the landlord had no policy to move domestic violence victims and Ohio does not have an applicable statute).

314. *Id.*

315. *See Johnson, supra* note 70, at 1860 (explaining 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.”).

316. *See generally infra* Appendix (outlining a model statute).

317. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (explaining what the act protects).

318. *See* Sara Olkon, *Tenant Reported Abuse—Then Suffered Eviction*, CHI. TRIB., Oct. 13, 2009, at A1 (“The federal [VAWA] of 2005 protects victims who live in public or subsidized housing from eviction because of . . . violence, experts say,

award security deposits to domestic violence victims because the state lacks a provision clarifying whether the security deposit accrues to the tenant or landlord.³¹⁹ Regarding the case of a Michigan woman who attempted to terminate her lease early for the purpose of escaping an abusive situation and wished to retain her security deposit, the court determined that “[a]lthough the Lease specifically provided for a ‘Termination Fee’ in the amount of \$1,892.00 [], due to Mrs. Turner’s circumstances, I agreed to allowing Plaintiffs to prematurely terminate the Lease, in exchange for Plaintiffs’ agreement to forfeit their \$1,046.00 security deposit [], and any interest accrued thereon [].”³²⁰ There is inconsistency in court holdings because some states include security deposit provisions in their statutes and others do not.³²¹ This creates uncertainty regarding case law for victims and lawyers who are attempting to seek return of a security deposit.³²²

Courts have complained about the lack of clarifying law.³²³ For example, in a case regarding a victim denied housing, the court felt as though it did not have enough guidance to adjudicate the case fairly.³²⁴ “Under these circumstances, pending further development of the legal and factual record, the court believes it is appropriate to decline to rule whether plaintiff has a right of action, enforceable under § 1983, pursuant to the provisions of VAWA as incorporated in the Housing Act of 1937.”³²⁵ The model

but the law is hazier when it comes to private landlords. Advocates say a lack of clear protection creates a disincentive for . . . women to seek help.”).

319. *See* Turner v. 1212 S. Mich. P’ship, 355 Ill. App. 3d 885, 888 (2005) (“1212 argued that it had agreed to permit Adriane Turner to terminate her lease early, but only on the condition that she forfeit her security deposit.”).

320. *Id.*

321. *See* COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (addressing how different situations can lead to either the landlord or the tenant receiving the security deposit after the lease is terminated early); *see also* N.D. CENT. CODE ANN. § 47-16-17.1 (West 2017) (same).

322. *See* § 38-12-402 (addressing how different situations can lead to either the landlord or the tenant receiving the security deposit after the lease is terminated early); *see also* N.D. CENT. CODE ANN. § 47-16-17.1 (West 2017) (same).

323. *See* Meister v. Kansas City, No. 09-2544-EFM, 2011 WL 765887, at *5 (D. Kan. 2011) (addressing the lack of law in this area).

324. *See id.* (complaining of the lack of applicable law).

325. *Id.*

universal statute in the Appendix is designed to fill existing gaps in the law and render greater guidance to the courts.³²⁶

A. *Elements of Model Universal Statute*

The model statute provides five key elements to help judges, victims, and landlords understand the law.³²⁷ The model statute incorporates different effective aspects of various state laws, such as Nevada’s definition section and Washington’s lease termination letter template, as well as originally developed provisions.³²⁸

First, the model statute includes an extensive definition section.³²⁹ It articulates what certain terms mean when addressed within the context of the statute.³³⁰ Borrowing from Nevada’s early lease termination statute, terms such as “domestic violence” and “harassment” would have a specific meaning in the context of the statute and those lengthy definitions can be found in other sections of the model statute.³³¹ The definition section adds clarity for the reader and resolves any ambiguity or potential for misunderstanding terminology.³³²

Second, the statute clearly outlines how a domestic violence victim can terminate a lease.³³³ It explains what paperwork must be delivered to the landlord for him or her to grant an early lease termination, the proper method of delivery, and how the paperwork should be presented.³³⁴ Of note, adopted from the

326. See generally *infra* Appendix (outlining a model universal statute).

327. See generally *infra* Appendix (outlining a model universal statute).

328. See NEV. REV. STAT. ANN. § 118A.345 (West 2017) (incorporating term definitions); see also WASH. REV. CODE ANN. § 59.18.575 (West 2009) (offering a template for letters tenants can send to their landlords).

329. See *infra* Appendix, ¶ 2 (providing definitions for terms used in the statute).

330. See *infra* Appendix, ¶ 2 (providing definitions for terms used in the statute).

331. See § 118A.345 (citing to different portions of the law to shorten the early lease termination statute).

332. See *infra* Appendix, ¶ 2 (defining eight terms used within the model universal statute).

333. See *infra* Appendix, ¶¶ 1, 3, 4 (describing the procedure for terminating one’s lease).

334. See *infra* Appendix, ¶¶ 3–4 (outlining the proper paperwork and procedure for delivering the paperwork).

Washington statute, the model statute includes a template of a letter a victim can fill out to give to his or her landlord that clearly articulates the abuse with a sufficient amount of information for a judge to accept it.³³⁵ This information further reduces ambiguity and allows landlords to understand what information they need in order to grant the early termination of a lease.³³⁶

Third, the model statute addresses the landlord's role in the victim's future ability to find housing. It details what the landlord can and cannot disclose to future landlords. It also forbids landlords from providing negative letters of reference for victims who needed to terminate their leases early for safety reasons. Landlords frequently discriminate against domestic violence victims because of their status as victims. Provisions of VAWA and this model statute would help to curtail that discrimination. Elements of these provisions were adopted from existing statutes, such as Colorado's.³³⁷

Fourth, the model statute addresses concerns about damages to the home and which party retains the security deposit after a lease is terminated early.³³⁸ Oftentimes judges are uncertain about which party should be awarded the security deposit.³³⁹ In many cases, the victim is left paying for damages he or she did not inflict.³⁴⁰ This statute clarifies under what circumstances the landlord receives the security deposit and when the tenant does. It also provides that the perpetrator of the abuse is liable for damages

335. See WASH. REV. CODE ANN. § 59.18.575 (West 2009) (including a letter template).

336. See *infra* Appendix, ¶ 3 (outlining a template letter).

337. See COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (including provisions protecting domestic violence victims from future landlord discrimination).

338. See *infra* Appendix, ¶ 6 (“If the tenant or cotenant has paid a security deposit, the deposit must not be withheld for the early termination of the rental agreement if the rental agreement is terminated pursuant to this section.”).

339. See N.D. CENT. CODE ANN. § 47-16-17.1 (West 2017) (stating that the security deposit must be paid to the lessee subject to some conditions); see also COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (stating that the landlord is not obligated to refund the security deposit to the tenant unless certain conditions are met).

340. See, e.g., *Robinson v. Cincinnati Metro. Hous. Auth.*, No. 1:08-CV-238, 2008 WL 1924255, at *1, *2, *6 (S.D. Ohio Apr. 29, 2008) (denying Ms. Robinson's motion to transfer and concluding Ms. Robinson was still liable for the apartment and any subsequent damage).

to the home when that person inflicted such damage.³⁴¹ As noted in cases cited above, which party retains the security deposit is a common cause for concern.³⁴² This model statute should provide clarity for judges, landlords, and tenants in the future when contemplating that question.³⁴³ Elements of the provision were adopted from the Kentucky statute.³⁴⁴

Fifth, the model statute addresses privacy concerns.³⁴⁵ Under the statute, a landlord cannot disclose information about the victim to the perpetrator.³⁴⁶ It also allows the landlord or victim to change the locks on the home or to have the landlord transfer the tenant to a similar available unit.³⁴⁷ The victim's safety is the primary concern.³⁴⁸ This statute includes various provisions adopted from state statutes, such as Washington's, as well as original concepts like transferring tenant leases to other similar apartment units for the purpose of providing the victim with a different address, protecting the victim as fully as possible.³⁴⁹

The model statute offers clarity and resolves ambiguities in existing laws.³⁵⁰ If adopted universally, all judges, tenants, and landlords would more easily understand their abilities and rights.

341. See *infra* Appendix, ¶ 7 (“A person who is named as the adverse party may be civilly liable for all economic losses incurred by the landlord . . . including, . . . costs for repair for any damages . . .”).

342. See *Turner v. 1212 S. Mich. P'ship*, 355 Ill. App. 3d 885, 887 (2005) (addressing the question directly of who should get the security deposit in certain situations).

343. See *infra* Appendix, ¶¶ 6–7 (clarifying who receives the security deposit and who is liable for damages).

344. See KY. REV. STAT. ANN. § 383.300 (West 2017) (addressing who gets the security deposit in different situations).

345. See *infra* Appendix, ¶¶ 8–10 (codifying the landlord's obligation to keep certain information confidential).

346. See *infra* Appendix, ¶ 8 (“A landlord shall not provide to an adverse party any information concerning the whereabouts of a tenant, cotenant or household member if the tenant or cotenant provided notice pursuant to subsection 1.”).

347. See *infra* Appendix, ¶¶ 12–14 (delineating a landlord's obligation to install new locks or transfer the tenant to another available unit).

348. See *infra* Appendix, ¶¶ 12–14 (addressing that each of these remedies is to allow the victim to escape the domestic violence, harassment, sexual assault, or stalking).

349. See WASH. REV. CODE ANN. § 59.18.575 (West 2009) (including a lock-change provision).

350. See *generally infra* Appendix (addressing ambiguities related to security deposits, damages, and how victims terminate their leases).

The statute includes protections for victims, landlords, and the public.³⁵¹ Therefore, while landlords will likely claim that they will endure an undue burden of voiding contracts with tenants, that the statute is a slippery slope toward allowing non-victims to claim domestic violence as a means of excusing themselves from contractual obligation under a lease, and that they may bear undue expense as a result of an early lease termination, this statute resolves those concerns by including landlord protections.³⁵² For example, the statute only requires landlords to transfer tenants within a building or complex if another comparable unit is available.³⁵³ It ensures the landlord does not have to make extra efforts to transfer a victim or lose a higher rent for a more expensive unit.³⁵⁴ The statute also requires that tenants provide supportive evidence of abuse, including protective orders and police reports.³⁵⁵ Therefore, not just anyone can claim abuse to terminate a lease early.³⁵⁶ Finally, the statute includes provisions explaining when tenants have to pay landlords, when an adverse party has to pay, and when the landlord is not liable, providing confirmation that the landlord will not be harmed.

VI. Conclusion

Public policy supports protecting women and men from domestic violence.³⁵⁷ Our society and government have taken steps

351. See generally *infra* Appendix (delineating a statute that considers the interests of the victims, the landlords, and the public).

352. See H.R. Rep. No. 2EHB-1645, at 4 (Wash. 2004) (articulating landlord qualms with early termination statutes).

353. See *infra* Appendix, ¶ 14 (“A landlord must agree to transfer a tenant to another available unit in the complex if an apartment of the same rental price is available . . .”).

354. See *infra* Appendix, ¶ 14 (requiring a landlord to transfer a tenant only if there is another available unit of the same rental price in the apartment complex).

355. See *infra* Appendix, ¶ 3 (mandating that the tenant provide the landlord with a copy of an order for protection, a written report from a law enforcement agency, or a written affidavit).

356. See *infra* Appendix, ¶ 3 (outlining the additional documents required for a tenant to terminate their lease).

357. See *infra* Appendix, ¶¶ 6, 7, 12, 17, 19 (explaining who is monetarily responsible in certain situations).

to protect victims and stop future violence by highlighting the prominence and lasting dangers of domestic violence.³⁵⁸ VAWA and protective state statutes are representations of the policy to protect victims via housing law efforts.³⁵⁹ “Domestic violence embodies an affront to victims’ human dignity 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.”³⁶⁰ VAWA and the statutes that exist now are not enough to support this public-policy effort and adequately protect domestic violence victims’ housing concerns.³⁶¹ A universal statute would likely be able to provide general coverage to victims and resolve ambiguity regarding what protections exist.³⁶²

Had a universal state statute existed, Caren Burnett would have been able to more easily escape her husband’s abuse, not be discriminated against when looking for future housing, and not be financially burdened by losing a security deposit.³⁶³ Mrs. Burnett’s experience is far too common, as thousands of women attempt to escape situations of domestic violence daily.³⁶⁴ Thankfully, as the years progress, more states are enacting protective statutes and even some cities are enacting ordinances that allow domestic

358. See HISTORICAL OVERVIEW, *supra* note 173 (articulating efforts to combat domestic violence).

359. See Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013) (serving as the primary federal law protecting female victims of domestic violence); see also, e.g., COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (explaining the housing protection for domestic violence victims in Colorado).

360. Johnson, *supra* note 70, at 1875.

361. See Johnson, *supra* note 70 (addressing how more statutes are needed to protect victims).

362. See *infra* Appendix (addressing many of the inconsistencies and gaps in existing statutes).

363. See *Burnett v. Burnett*, No. S-10-050, slip op. at 1 (Ohio Ct. App. June 15, 2012) (detailing the difficulties Mrs. Burnett faced when trying to leave her husband).

364. See Interview with Joel Correa, *supra* note 52 (explaining how on average approximately ten men and women, many with their children, come into the office daily to seek a protective order and escape from their abuser); see also Joel L. Young, *5 Facts Everyone Must Know About Domestic Violence*, PSYCHOL. TODAY (Oct. 29, 2015), <https://www.psychologytoday.com/us/blog/when-your-adult-child-breaks-your-heart/201510/5-facts-everyone-must-know-about-domestic> (last visited Nov. 28, 2019) (“More than 200,000 phone calls are placed to domestic violence hotlines every year.”) [<https://perma.cc/4NZF-29PB>].

violence victims to terminate their leases early.³⁶⁵ While steps are being taken to protect victims regarding their leases, the proposed model statute could provide protection for virtually all victims while resolving the challenge to courts, tenants, and landlords of understanding the law.³⁶⁶ Ultimately, Mrs. Burnett and all victims like her are in desperate need of a protective change—their lives depend on it.³⁶⁷

365. See Bill Turque, *New KC Ordinance Lets Domestic Violence, Sexual Assault Victims Break Leases*, KAN. CITY STAR (Aug. 2, 2018, 4:36 PM) <https://www.kansascity.com/news/politics-government/article215974365.html> (last visited Nov. 28, 2019) (“Victims of domestic violence, sexual assault or stalking will be able to terminate a lease without penalties from a landlord, under an ordinance passed Thursday by the Kansas City Council.”) [<https://perma.cc/3CE8-L2H5>].

366. See *infra* Appendix (providing actions for victims and landlords to take to remedy particular scenarios and addressing inconsistencies within the law).

367. See *Burnett v. Burnett*, No. S-10-050, slip op. at 1 (Ohio Ct. App. June 15, 2012) (explaining the harmful emotional abuse Mrs. Burnett suffered).

Appendix

1. If a tenant, cotenant, or household member is the victim of domestic violence, harassment, sexual assault, or stalking, the tenant or any cotenant may terminate the rental agreement by giving the landlord written notice of termination effective at the end of the current rental period or 30 days after the notice is provided to the landlord, whichever occurs sooner.³⁶⁸
2. As used in this section:
 - (a) “Adverse party” means a person who is named in an order for protection against domestic violence, harassment, sexual assault, or stalking, a written report from a law enforcement agency, or a written statement from a qualified third party and who is alleged to be the cause of the early termination of a rental agreement pursuant to this section.
 - (b) “Cotenant” means a tenant who, pursuant to a rental agreement, is entitled to occupy a dwelling that another tenant is also entitled to occupy pursuant to the same rental agreement.
 - (c) “Domestic violence” means the commission of any act described in _____ portion of the statute.³⁶⁹
 - (d) “Harassment” means a violation of _____.³⁷⁰
 - (e) “Household member” means any person who is related by blood or marriage and is actually residing with a tenant or cotenant.
 - (f) “Qualified third party” means:
 - (1) A physician licensed to practice in this State;
 - (2) A psychiatrist licensed to practice medicine in this State and certified by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry of the American Osteopathic Association;
 - (3) A psychologist licensed to practice in this State;
 - (4) A social worker licensed to practice in this State;

368. See NEV. REV. STAT. ANN. § 118A.345 (West 2017) (providing sample text to be used for a statute).

369. See NEV. REV. STAT. ANN. § 200.485 (West 2018) (providing a sample definition of “domestic violence”).

370. See *id.* § 200.571 (providing a sample definition of “harassment”).

- (5) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this State;
- (6) A marriage and family therapist or clinical professional counselor licensed to practice in this State;
- (7) Any person who:
- (I) Is employed by an agency or service which advises persons regarding domestic violence or refers them to persons or agencies where their request and needs can be met and who is licensed to provide health care, or is a member of the board of directors or serves as the executive director of an agency or service which advises persons regarding domestic violence or refers them to persons or agencies where their request and needs can be met;
 - (II) Has received training relating to domestic violence; and
 - (III) Is a resident of this State; or
- (8) Any member of the clergy of a church or religious society or denomination that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501 (c)(3), who has been chosen, elected or appointed in conformity with the constitution, canons, rites, regulations or discipline of the church or religious society or denomination and who is a resident of this State.
- (g) "Sexual assault" means a violation of _____.³⁷¹
- (h) "Stalking" means a violation of _____.³⁷²
3. In the case of a termination of a rental agreement pursuant to this section on the grounds that a tenant, cotenant, or household member is a victim of domestic violence, the written notice provided to a landlord pursuant to subsection 1 must be delivered by mail, email, or in person and must describe the reason for the termination of the rental agreement and be accompanied by:
- (a) A copy of an order for protection, either temporary or permanent, against domestic violence issued to the tenant,

371. See *id.* § 200.366 (providing a sample definition of "sexual assault").

372. See *id.* § 200.575 (providing a sample definition of "stalking").

cotenant, or household member who is the victim of domestic violence;

(b) A copy of a written report from a law enforcement agency indicating that the tenant, cotenant, or household member notified the law enforcement agency of the domestic violence; or

(c) A copy of a written affidavit in the form prescribed below and signed by a qualified third party acting in his or her official capacity stating that the tenant, cotenant, or household member is a victim of domestic violence and identifying the adverse party.

(I) The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

Name of organization, agency, clinic, professional service provider

I and/or my [household member] am/is a victim of

domestic violence as defined above.

sexual assault as defined above.

stalking as defined above.

unlawful harassment as defined above.

Briefly describe the incident of domestic violence, sexual assault, unlawful harassment, or stalking:

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s) and at the following location(s):

The incident(s) that I rely on in support of this declaration were committed by the following person(s):

I state under penalty of perjury under the laws of the state of [state name] that the foregoing is true and correct. Dated at [city], this ___ day of _____, 20__.

Signature of Tenant or Household Member

I verify that I have provided to the person whose signature appears above the statutes and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act. Dated this ___ day of _____, 20__.

Signature of authorized officer/employee of (organization, agency, clinic, professional service provider).³⁷³

4. In the case of a termination of a rental agreement pursuant to this section on the grounds that a tenant, cotenant, or household member is a victim of harassment, sexual assault, or stalking, the written notice provided to a landlord pursuant to subsection 1 must describe the reason for the termination of the rental agreement and be accompanied by:
 - (a) A copy of a written report from a law enforcement agency indicating that the tenant, cotenant, or household member notified the law enforcement agency of the harassment, sexual assault, or stalking, as applicable; or
 - (b) A copy of a temporary or extended protective order, as applicable.³⁷⁴
5. A tenant or cotenant may terminate a rental agreement pursuant to this section only if the actions, events, or circumstances that resulted in the tenant, cotenant, or household member becoming a victim of domestic violence, harassment, sexual assault, or stalking occurred within the 90

^{373.} See WASH. REV. CODE ANN. § 59.18.575 (West 2009) (providing a sample form).

^{374.} See NEV. REV. STAT. ANN. § 118A.345 (West 2017) (providing sample text).

days immediately preceding the written notice of termination to the landlord.³⁷⁵

6. A tenant or cotenant who terminates a rental agreement pursuant to this section is only liable, if solely or jointly liable for purposes of the rental agreement, for any rent owed or required to be paid through the date of termination and any other outstanding obligations. If the tenant or cotenant has prepaid rent that would apply for the rental period in which the rental agreement is terminated, the landlord may retain the prepaid rent and no refund is due to the tenant or cotenant unless the amount of the prepaid rent exceeds what is owed for that rental period. If the tenant or cotenant has paid a security deposit, the deposit must not be withheld for the early termination of the rental agreement if the rental agreement is terminated pursuant to this section.³⁷⁶
7. (a) A person who is named as the adverse party may be civilly liable for all economic losses incurred by a landlord for the early termination of a rental agreement pursuant to this section, including, without limitation, unpaid rent, fees relating to early termination, costs for the repair of any damages to the dwelling, and any reductions in or waivers of rent previously extended to the tenant or cotenant who terminates the rental agreement pursuant to this section.
 (b) The tenant must not be liable for the adverse party's crimes or property damage.³⁷⁷
8. A landlord shall not provide to an adverse party any information concerning the whereabouts of a tenant, cotenant, or household member if the tenant or cotenant provided notice pursuant to subsection 1.³⁷⁸
9. If a tenant to a residential rental agreement or lease agreement notifies the landlord that the tenant is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, the landlord shall not disclose such fact to any person except with the consent of the victim or as the landlord may be required to do so by law.³⁷⁹

375. See *id.* (providing sample text).

376. See KY. REV. STAT. ANN. § 383.300 (West 2017) (providing sample text).

377. See NEV. REV. STAT. ANN. § 118A.345 (West 2017) (providing sample text).

378. See *id.* (providing sample text).

379. See COLO. REV. STAT. ANN. § 38-12-402 (West 2017) (providing sample text).

10. If a tenant to a residential rental agreement or lease agreement terminates his or her lease pursuant to this section because he or she is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, and the tenant provides the landlord with a new address, the landlord shall not disclose such address to any person except with the consent of the victim or as the landlord may be required to do so by law.³⁸⁰
11. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate or discriminate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.³⁸¹
12. If a tenant or cotenant provided notice pursuant to subsection 1, the tenant, the cotenant, or a household member may require the landlord to install a new lock onto the dwelling if the tenant, cotenant, or household member pays the cost of installing the new lock. A landlord complies with the requirements of this subsection by:
 - (a) Rekeying the lock if the lock is in good working condition; or
 - (b) Replacing the entire locking mechanism with a new locking mechanism of equal or superior quality.³⁸²
13. A landlord who installs a new lock pursuant to subsection 8 may retain a copy of the new key. Notwithstanding any provision in a rental agreement to the contrary, the landlord shall:
 - (a) Refuse to provide a key which unlocks the new lock to an adverse party.
 - (b) Refuse to provide to an adverse party, whether or not that party is a tenant, cotenant, or household member, access to the dwelling to reclaim property unless a law enforcement officer is present.³⁸³
14. A landlord must agree to transfer a tenant to another available unit in the complex if a unit of the same rental price is available, merely transferring the existing lease to another

380. *Id.*

381. *See* GA. CODE ANN. § 44-7-23 (2018) (providing sample text).

382. *See* NEV. REV. STAT. ANN. § 118A.345 (West 2017) (providing sample text).

383. *See id.* (providing sample text).

similar unit for the purpose of escaping domestic violence, harassment, sexual assault, or stalking.

15. This section shall not be construed to limit a landlord's right to terminate a rental agreement for reasons unrelated to domestic violence, harassment, sexual assault, or stalking.³⁸⁴
16. Notwithstanding any other provision of law, the termination of a rental agreement pursuant to this section:
 - (a) Must not be disclosed, described, or characterized as an early termination by a current landlord to a prospective landlord; and
 - (b) Is not required to be disclosed as an early termination by a tenant or cotenant to a prospective landlord.³⁸⁵
17. If a tenant does not vacate the leased premises within 30 days of providing to the landlord the written notice required, the landlord is entitled to rent from the tenant and can terminate the lease after 60 days.³⁸⁶
18. A landlord is immune from civil liability if the landlord in good faith acts in accordance with this section.³⁸⁷
19. A landlord who violates this section not in good fail is liable to the tenant for actual damages, civil penalty equal in amount to the amount of one month's rent plus \$500, and attorney's fees.³⁸⁸
20. A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section may not be waived by a tenant.³⁸⁹

384. *Id.*

385. *Id.*

386. See TEX. PROP. CODE ANN. § 92.016 (West 2010) (providing sample text).

387. See KY. REV. STAT. ANN. § 383.300 (West 2017) (providing sample text).

388. PROP. § 92.016.

389. *Id.*