



Housing and Homelessness working group

National Trends in Tenant Rights and Eviction Resources

February 23rd, 2017

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Outline

- ▶ Background on tenant rights statutes
- ▶ Federal rehousing programs administered by DHS
- ▶ Best practices of other states and municipalities
- ▶ Next steps for Denver (recommendations)

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Tenant Rights on Habitability

- ▶ Section 38-12-507 allows for tenant remedies
 - ▶ At least 10, not more than 30 days written notice
 - ▶ Landlord has 5 days to remedy breach
 - ▶ If not remedied, tenant may terminate lease by leaving the dwelling unit
 - ▶ Non-payment of rent as a result of an inhabitable dwelling must be held in escrow and prior to court determination



So now what?

- ▶ Eviction or termination of lease as a result of uninhabitability both result in the same outcome – homelessness
- ▶ Federal rapid rehousing programs exist – no court mandated or facilitated outreach to assist
- ▶ Colorado, and Denver specifically have no court-appointed advocates
- ▶ Rely heavily on discounted legal services



Emergency Solutions Grants (ESG) Program

- ▶ Interim Rule issued in 2010
- ▶ Changed definition of homeless to meet the needs of 'at-risk' of being homeless; requirements:
- ▶ Individual or family must meet two threshold criteria and must exhibit one or more specified risk factors.



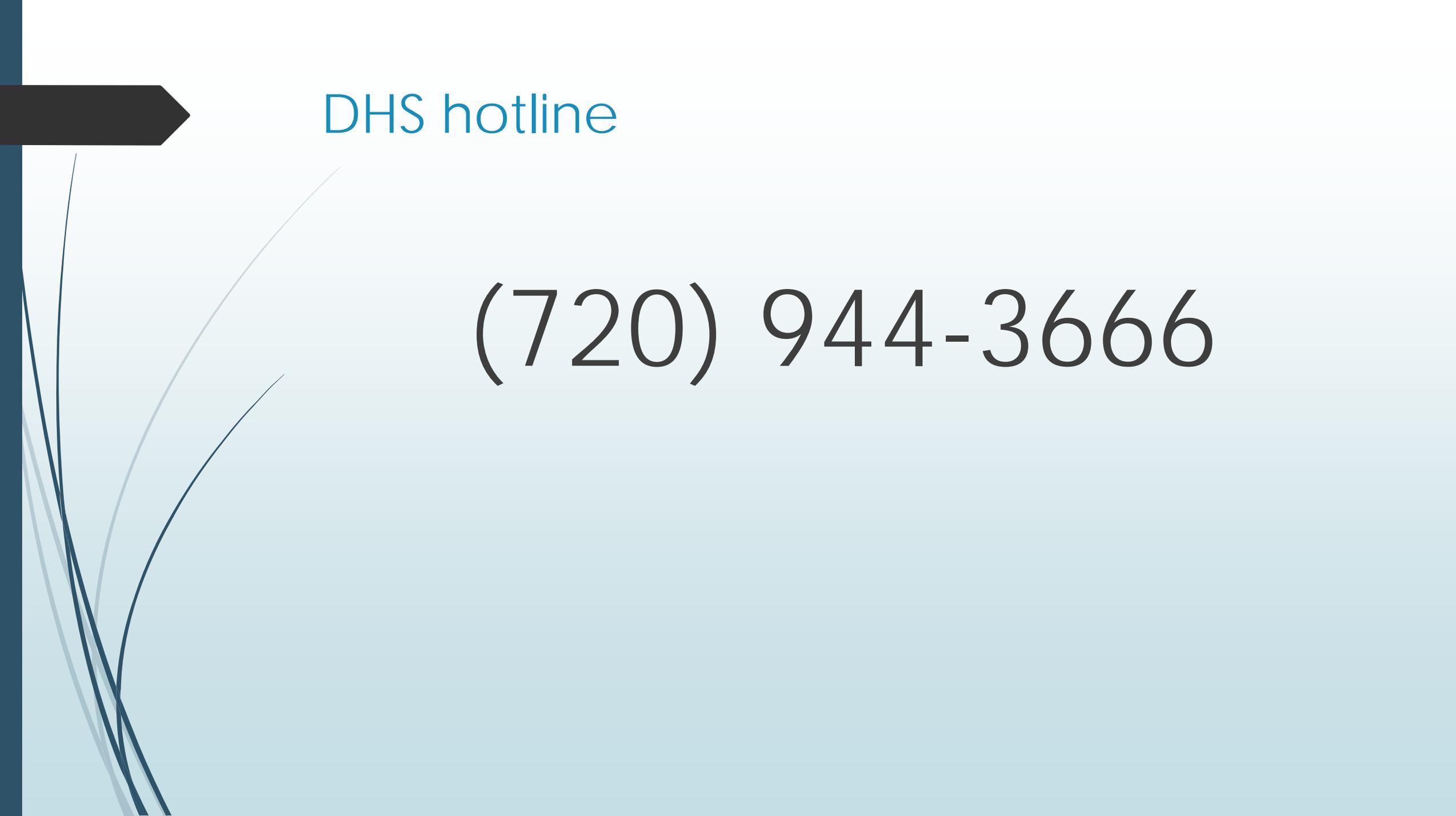
ESG - § 576.106 Short-term and medium-term rental assistance

- ▶ Recipient (Denver Human Services) may provide a program participant with up to 24 months of rental assistance during any 3-year period.
- ▶ Provided in three types of assistance:
 - ▶ **(1) Short-term rental assistance is assistance for up to 3 months of rent;**
 - ▶ **(2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent; or**
 - ▶ **(3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.**



ESG Programs (Threshold criteria)

- ▶ Must also meet one or more of the following:
- ▶ (1) Has moved frequently because of economic reasons;
- ▶ (2) is living in the home of another because of economic hardship;
- ▶ (3) has been notified that their right to occupy their current housing or living situation will be terminated;
- ▶ (4) lives in a hotel or motel;
- ▶ (5) lives in severely overcrowded housing;
- ▶ (6) is exiting an institution; or
- ▶ (7) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.



DHS hotline

(720) 944-3666



Colorado/Denver

- ▶ One of the 'friendliest' landlord states – not the worst
- ▶ State-controlled rental laws govern municipalities' ability to restrict landlord rights
- ▶ However, statute is silent on rental assistance/outreach

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General Renter-friendly statutes

- ▶ Long cure periods for lease violations and 30-day notice to vacate (Maryland)
- ▶ Cure without ramification (e.g. once rent is paid, eviction process stops) (Massachusetts)
- ▶ Mandatory 30-day notice to vacate before eviction proceedings start (Tennessee)
- ▶ Gross violations of lease, including criminal activity 14 days to vacate (Vermont)



Eviction Outreach best practices

- ▶ **Guaranteed lawyer –**
- ▶ Tenants without legal representation are 77% more likely to face eviction¹
- ▶ New York City Council held a hearing in September 2016 on a bill that would make New York City the first jurisdiction in the country to guarantee lawyers for any low-income residents facing eviction.
- ▶ Under the measure, tenants who make below 200 percent of the federal poverty line would qualify. (For a single person, the cutoff would be \$23,540; for a family of four, it would be \$48,500.)

1. The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A. STOUT RISIUS ROSS, INC. March 16, 2016



Eviction Outreach best practices

- ▶ **Proactive outreach –**
- ▶ The Salvation Army in La Crosse, WI provides case management-based outreach
- ▶ In order to qualify as a client for the program an individual must:
 - ▶ have a source of income;
 - ▶ agree to be in the program for at least 90 days; and
 - ▶ be on a lease, and present evidence to prove a short-term crisis.
- ▶ Based more on case-management vs financial assistance – helping the cause vs symptom, but emergency rental assistance is also provided.



Eviction Outreach best practices

- ▶ **Diversion programs –**
- ▶ Collaboration between Kent County human services, Salvation Army, Michigan Law School, Community Legal Services, and a District Judge (based on pilot program from Kalamazoo)
- ▶ Provides opportunities for tenants at the court hearing to meet with representatives from The Salvation Army Housing Assessment Program and the Department of Human Services to gain information about housing and/or to access funds to resolve the present housing crisis with their landlords.
- ▶ Lawyers and students from Thomas M. Cooley and Community Legal Services will be present during the court process to provide guidance to tenants regarding their rights and their responsibilities.

RENT ASSISTANCE

Getting Help in Hard Times



Providing low and moderate income families and individuals with eviction prevention assistance

8th DISTRICT COURT
EVICTION DIVERSION PROGRAM



TO BE COMPLETED BY THE LANDLORD

Tenant Name: _____
 Owner's Name: _____
 Owner's Mailing Address: _____
 City: _____ State: _____ Zip Code: _____
 City of Kalamazoo Oshtemo Township
 Home Phone: () () Work Phone: () ()
 Fax: () ()
 Email Address: _____

IF THE UNIT WAS CONSTRUCTED PRIOR TO 1978, CHECK ONE OF THE FOLLOWING:

A contractor statement, certified disclosure of home, hazardous or lead-based paint and/or radon test results in the unit, common areas or exterior information pertaining to the property, including a statement that the owner has provided the best hazard information practicable to the family, will be required prior to lease execution.

The unit, common areas including the walk, and outdoor attached surface area, including a statement that the owner has provided the best hazard information practicable to the family, will be required prior to lease execution.

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Utilities—Check the items that apply and who pays for them:

Utilities	Paid by		Check Type of Fuel Used							
	Owner	Tenant	Natural Gas	Electric	Fuel Oil	Propane	Wood	Coal	Solar	Other
Heating										
Cooking										
Water Heating										
Electricity										
Air Conditioning										
Water/Wall										
Sewer/Septic										
Trash Collection										

Unit Information

Address of Unit: _____

Number of bedrooms in unit: _____

Approximate year built: _____

Approximate square footage: _____

Most recent monthly rent \$: _____

Proposed monthly rent \$: _____

The reason for any difference between the most recent monthly rent and the proposed monthly rent: _____

Is this a subsidized unit or complex? No Yes. If Yes, enter the Complex Name: _____

Market Rent \$: _____

Is this a HOME rental REWAS unit? No Yes

Type of Subsidy: _____

Yes, Housing Is City Certified No

NUMBER OF MONTHS BEHIND: _____

TOTAL AMOUNT OWED: _____

Yes No No I agree to be considered for the Eviction Diversion Project and agree to work with the Eviction Diversion Team in an attempt to resolve this back rent situation

Print Landlord Name: _____ Landlord Signature: _____ Date: _____

Please keep a copy of this form and return one to your tenant for further Eviction/Diversion eligibility consideration.

**Completion of this form DOES NOT guarantee assistance.

TENANTS

Have you received a summons to appear in court?
Are you interested in preventing an eviction and possibly avoiding a judgment?
Do you have income to pay next month's rent?
Do you have cash to contribute to resolve this eviction?

If you answered the questions above with a yes and are in need of temporary assistance, please call 2-1-1 within 3 days of receiving the court summons for an appointment with an Eviction Diversion Specialist.

Bring the following information to your appointment:

- 30 Day Verification of Income
- Asset Verification
- Driver's License or ID
- Social Security Card
- 6 Month Rental Payment History from your landlord
- Landlord Statement on reverse side

LANDLORDS

Have you filed a summons with the 8th District Court?
Are you interested in preventing an eviction?
If your property is within the City of Kalamazoo is it certified?
Is unpaid back rent your primary issue with the tenant? Is that balance not more than 3 months old?

If you answered yes to all the questions above, please complete the form on the reverse side and give the completed form to your tenant.

AGREEMENT BETWEEN LANDLORD AND TENANT

Both parties must agree upon the following:

Amount of rent owed

**Agree to the terms of Eviction Diversion
Process**

**To meet with an Eviction Diversion
Specialist**

**Sign agreement to prevent entry of judgment and time to
resolve issue**

EVICTON DIVERSION COMMUNITY PARTNERS

FUNDING PROVIDED BY:

Kalamazoo Community Foundation
Irving S. Gilmore Foundation
Dorothy U. Dalton Foundation
Harold & Grace Upjohn Foundation
Michigan Department of Human Services



Get Connected. Get Answers.



2-1-1 is a HELP LINE providing referrals to health and human service agencies and crisis intervention in Kalamazoo County.

Available 24 hours a day 365 days a year
Calls are confidential.



Eviction Outreach best practices

- ▶ **First court date appointed lawyer –**
- ▶ Massachusetts Court -
- ▶ All cases are default *pro se*
- ▶ A few courts offer free assistance from attorneys through the “Attorney for the Day” program on certain days when summary process cases are heard



Eviction Outreach best practices

- **Mediation –**
- Massachusetts Court -
- In Housing Court, you will be offered an opportunity to mediate your case with a Housing Court Specialist, who is impartial.
- If an agreement is not reached through mediation or negotiation, tenant maintains the right to have the case heard before a judge (bench trial)



Eviction Outreach best practices

- ▶ **Brochures –**
- ▶ Many counties provide literature on tenant rights and eviction resources
- ▶ Available in courts or free legal resource centers
- ▶ In the example of Maryland, the state issues information packets for both landlords and tenants

Eviction Action

- An eviction action is a court action in which a landlord asks to recover possession of the premises from a tenant.
- A landlord may not use self-help to take possession of the premises. For example, a landlord may not forcibly remove the tenant, exclude the tenant from entry into the building or rental unit, change the locks, or cause the interruption of utilities.
- The three most common reasons for filing an eviction action:
 - Nonpayment of rent
 - Violation of lease
 - Holding over after notice to vacate

Reasons for Filing an Eviction Action

Nonpayment of rent

- An eviction action may be filed against a tenant for failing to pay rent when due. The tenant may redeem the tenancy at any time before possession of the premises has been delivered to the landlord by paying past due rent, costs of the eviction action, including the court filing fee, and other requirements under the lease.

Violation of lease

Lease violations

- The lease must contain a “right of re-entry” or eviction clause for the landlord to evict a tenant for a material breach of a lease, except for nonpayment of rent and statutory violations. This clause gives the landlord a right to evict the tenant for violating lease provisions like disturbing other residents, causing damage to property, unauthorized persons living on the property, or unauthorized pets.

Illegal activities prohibited by Minnesota Statute

- A landlord may evict a tenant, or assign the right to the county or city attorney, if the

tenant engages in or permits activities named in statute, such as:

- unlawful controlled substances in the premises or common area
- unlawful use or possession of a firearm
- stolen property in the premises or common area
- prostitution
- criminal gang activity

Holdover tenant

- A holdover tenant is one whose lease has expired or where proper notice to vacate has been given, but the tenant remains in the rental unit without the landlord’s consent.

Eviction Action Procedure

Who May Sign the Complaint?

- Property owner
 - An attorney may be required if the property owner is a corporation
- Attorney for property owner
- Person entitled to possession of the property
- Agent designated by property owner
 - Agent must file a *Power of Authority in Eviction Action* with the court at the time of filing the Complaint



Complaint

- A Complaint must be filed with the court stating:
 - full name and date of birth of the tenant(s), unless not known
 - Evict all residents by naming each adult resident whether or not named in the lease (use “John Doe” or “Jane Doe” if necessary)
 - full address (or other description if no address) of the premises of which possession is claimed
 - facts which authorize recovery of possession, and
 - request for recovery
- The landlord must show compliance with Minn. Stat. § 504B.181.
 - Landlord must (1) disclose in writing to the tenant and (2) post in a conspicuous place on the premises the name and address of:
 - The person authorized to manage the premises, and
 - Landlord or agent authorized to accept service of process and receive and give receipt for notices and demands, OR
 - Tenant must have been aware of this information at least 30 days prior to filing the action.
- The landlord must bring a copy of the Complaint for each tenant and pay the court filing fee.

Summons

- The Summons is a written notice issued by the court informing the defendant that a legal action has been filed and will be heard on a specific day.
- The Summons must be served at least 7 days before the court date, as required by Minnesota Statute, and proof of service must be filed with the court in accordance with local court rules.

Serving the Summons and Complaint

Proper service upon the tenant is critical. Without proper service, the court will lack jurisdiction and the landlord may have to start over or ask the court to reissue the Summons.

Personal Service

- Must be served by a person NOT NAMED a party in the action.
- Must NOT be served on a Sunday or legal holiday.

Substitute Service

- If the tenant cannot be found in the county, service may be made upon a person of suitable age and discretion who lives with the tenant.

If personal or substitute service was successful, the process server files a notarized *Affidavit of Service* with the court.

Mail and Post

- If personal or substitute service was unsuccessful (service on the tenant was attempted twice, on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.), the Summons and Complaint are mailed to the tenant’s last known address and posted at the premises.
- This procedure requires the preparation of affidavits, court filings of the affidavits, mailing, and posting in proper order. Failure to do steps and filings in the correct order can result in a case being dismissed.

- The Summons and Complaint are mailed to the tenant’s last known address.
- The process server signs a notarized *Affidavit of Not Found*.
- The landlord or landlord’s attorney or agent completes notarized copies of the *Affidavit of Plaintiff* and *Affidavit of Service by Mail*.
- The *Affidavit of Not Found*, *Affidavit of Plaintiff*, and *Affidavit of Service by Mail* are filed with the court.
- The Summons and Complaint are posted on the premises at least 7 days before the court date.
- The *Affidavit of Service by Posting* is completed and filed with the court.

FREQUENTLY ASKED QUESTIONS

DO I NEED A LAWYER?

In some instances, corporations and certain other business entities must be represented by an attorney. Otherwise, you are not required to have a lawyer, although one could be helpful to you.

WHAT HAPPENS IN COURT?

When both sides appear: the Court will hear both sides of a case and make a decision. If the landlord wins, the Court will enter a judgment of possession, and if there was personal service on the tenant, the Court may also issue a money judgment in the amount of rent and costs due.

When the landlord fails to appear: the Court will most likely dismiss the case.

When the tenant fails to appear: the Court will most likely enter a judgment in favor of the landlord.

WHAT SHOULD I BRING WITH ME TO COURT?

You should bring all of your evidence, that is, whatever you have that you believe would support your claim or defense.

HOW DO I REQUEST A POSTPONEMENT?

You should make your request in writing prior to the court date, send a copy of your request to the opposing party, and certify that you have done so. However, you may also request a postponement in court on the trial date.

HOW DOES THE EVICTION PROCESS WORK?

To begin the process of eviction, the landlord requests a **Warrant of Restitution, which must be filed within 60 days of judgment or the expiration of any stay of execution.**

In a Failure to Pay Rent Case, if the tenant does not pay all rent and costs determined by the Court to be due, the tenant will be evicted. Generally, the tenant may prevent eviction by paying all rent and costs due at any time before the eviction. This is known as the **tenant's right of redemption.**

Exception: Foreclosure of the right of redemption: If there have been 3 prior judgments for possession (4 in Baltimore City) in the preceding 12 months, the Court may foreclose (deny) the right of redemption.

WHAT ARE MY RIGHTS TO A JURY TRIAL?

Jury trials are held in the Circuit Court, not the District Court. If the amount of the claim exceeds \$15,000, or if the value of the tenant's interest in the leasehold is greater than \$15,000, either party may request a jury trial. Jury trial requests must be in writing. In a residential tenancy, a request for a jury trial may be filed no later than the first appearance of the parties in District Court.

HOW DO I COLLECT MONEY DAMAGES?

The Court cannot collect money for you. It is your responsibility to collect damages awarded by the Court. For more information, see District Court brochure titled Post-Judgment Collection (DC-CV-060BR).

HOW DO I FILE AN APPEAL?

Each party has the right to appeal by filing an appeal on form DC-CV-037. In failure to pay rent cases, the appeal must be filed no later than 4 business days after the date of judgment. In all other actions for possession, the appeal must be filed no later than 10 calendar days after the date of judgment. Whether the appeal is *de novo* (a new trial) or on the record depends on the amount in controversy. The filing of an appeal does not automatically stay the eviction. Posting the bond ordered by the Court will stay the eviction until the Circuit Court decides the appeal.

MEDIATION: AN ALTERNATIVE

The District Court's Alternative Dispute Resolution Program (ADR) offers mediation free of charge. It is less formal, less time-consuming and less costly than going to court. A trained mediator will work with both sides to try to arrive at a mutually agreeable solution. If mediation is not successful, you may still seek a decision by the Court.

For more information on Maryland courts and procedures, please contact a clerk in any state or county courthouse or visit the Maryland Judiciary website:

www.mdcourts.gov

It is the mission of the District Court of Maryland to provide equal and exact justice for all who are involved in litigation before the court.

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DC-CV-082BR (Rev. 06/21/2016)



How Landlords
Can Resolve
Disputes with
Tenants

Information
for Landlords

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HOW DO I FILE A CLAIM FOR HOUSING DISCRIMINATION?

Housing discrimination complaints are handled by the United States Department of Housing and Urban Development (HUD).

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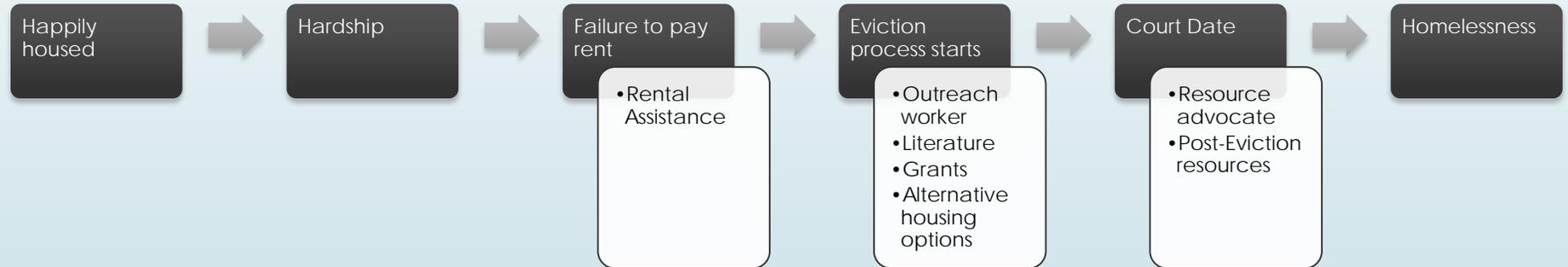
DC-CV-082TBR (Rev. 1/2014)



How Tenants
Can Resolve
Disputes with
Landlords

Information
for Tenants

Opportunities





Opportunities – DHS - General

- Resources
- DHS does not have eviction-specific or tenant-rights resources. Currently looped in with other emergency services
- Literature and web-based resources are a good starting point to educate tenants on rights and resources
- The Community Outreach Division at DHS does not have any specific ESG funding – provides the \$8,500 eviction assistance through EFSP
 - DHS should pursue ESG grants and grant funding – analyze why DHS has not qualified in the past



Opportunities - Eviction Mitigation

- ▶ **1 FTE** to focus on outreach and connecting tenants with DHS programs to avoid eviction (e.g. everything from rental assistance to workforce development)
- ▶ Proactively avoiding eviction benefits all parties and reduces the burden on Denver's emergency services (e.g. hotel vouchers, sheltering, DRH rapid housing programs, etc.)
- ▶ Specific web page and resources for eviction assistance – onerous to go to Federal and wait in a queue with all other services or to call general hotline



Opportunities – DHS – Eviction Assistance

- ▶ **1 FTE** - Courtroom advocate
- ▶ Organize program to coordinate legal assistance through partnering with DU/CU law
- ▶ Partner with cooperating non-profits on available assistance (e.g. Salvation Army funds for first month rent, DRH rapid rehousing, etc)
- ▶ Provide post-eviction resources to avoid direct transition in to homelessness



Opportunities – Next Steps

- DHS provides cost estimate for materials (print) and resources (web/phone) for eviction-specific resources
- DHS provides cost estimates for 2 FTE to address eviction avoidance and eviction assistance
- City Council discusses proposal in Safety, Housing, Education, & Homelessness Committee
- City Council provides funding source (e.g. supplemental, affordable housing revolving fund, etc.)