



Housing Rights ADVOCATE

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The Austin Tenants' Council

www.housing-rights.org

HUD Funds Housing Counseling Program

The Austin Tenants' Council (ATC) is proud to announce that it has received funding from the U.S. Department of Housing and Urban Development for a housing counseling program. The grant has funded the expansion of ATC's services to accommodate increased demand for tenant-landlord counseling in areas outside of Travis County.

The HUD Housing Counseling Program (HHC) allows telephone counseling services to be provided to all callers, whereas the City of Austin and Travis County previously funded the program, limiting service to only those areas.

For those that may not know, telephone counseling provides counseling information to callers in five to seven minute telephone conversations to advise them of tenant-landlord rights and responsibilities. This service is the primary contact point for ATC's clients and supplies most of the referrals for its other programs. Anyone interested in telephone counseling can call ATC at 512-474-1961. These services are also available via email by visiting ATC's website at www.housing-rights.org.

Similar to telephone counseling, ATC's in-House counseling service was previously limited to Travis County residents, and now is provided at no cost to residents in surrounding communities such as Round Rock, Georgetown and Cedar Park. In-house counseling also provides counseling about tenant-landlord rights and responsibilities, but in a more in-depth session that lasts approximately 30 minutes. ATC provides homeownership counseling to clients that are interested, including providing a copy of ATC's First Time Homebuyers Guide. Call 474-7007 to schedule an appointment, but call the telephone counseling line to get a questions answered immediately.

In addition, the HHC funds allow ATC to conduct Emergency Mediations and Repair Mediations in areas outside Travis County.

ATC helps tenants who are locked out or face other threats to their housing such as structural problems that their landlord will not repair. The previous lack of these services in outlying areas of the Austin MSA has been a real source of frustration for both clients and ATC staff.

Another important and new service funded by the HHC program is Homebuyer Workshops designed to explain the process of selecting, financing, purchasing and insuring a home. These workshops will be held in conjunction with ATC's Fair Housing Program. Thus, participants will learn not only the process of purchasing a home, but also how to recognize and report what are often subtle discriminatory practices such as steering members of the protected

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Lynn Whitten Leaves ATC Board

Lynn Whitten, a member of the Austin Tenants' Council Board of Directors for over 20 years, announced her retirement from the Board effective 12/31/05. Ms. Whitten has been an invaluable asset to ATC, providing technical and programmatic assistance during her tenure as a Board Member. Much has changed during that time, but Lynn has always been supportive and encouraging about providing better services to the Austin Community. ATC is sorry to see her leave, but wishes her the best in all her new endeavors.

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Hurricane Katrina Evacuee Finally Gets Some Relief

November 7, 2005, Eldrick McCoy contacted the Austin Tenants' Council with a housing discrimination complaint involving the Lodge at Warner Ranch Apartments in Round Rock, Texas. Mr. McCoy is an African-American hurricane

Katrina evacuee that is receiving financial assistance from the City of Austin to pay for housing.

Like many other hurricane evacuees, he was given a list of apartment complexes in the central Texas area that had agreed to provide housing for evacuees and accept these

financial assistance payments from the City of Austin.

After Mr. McCoy signed his lease contract, management at the Lodge at Warner Ranch Apartments told him that they would not accept the City of Austin's financial assistance and that he would have to pay over \$1500 in order to be released from the contract. Mr. McCoy didn't feel that he was being treated fairly and wanted to terminate the lease contract, but he was concerned that his credit would be ruined and he would have a difficult time finding another place to live.

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L to R: Lynn Whitten; Sylvia Hardeman, former Boardmember; Paul Hilgers, Director of the COA Dept. of Neighborhood Housing and Com. Dev.; and Kathy Stark, ATC ED; as Lynn receives an award.

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Legislature Changes Process of Appealing Evictions

In the 2005 session, the Texas Legislature passed House Bill 62 (codified at § 24.0052, § 24.0053, and § 24.0054 of the Texas Property Code) into law, changing the process of appealing an eviction from the Justice of the Peace Court (JP Court) into County Court. Specifically, the Legislature clarified issues surrounding the use of a Pauper's Affidavit when a tenant is unable to pay an appeal bond. This law took effect on 9/1/05 and has already helped ATC's clients.

After an eviction at the JP Court level, either the tenant or the landlord can appeal the Justice of the Peace's (JP's) decision and have a new trial at the county court level. Unlike appeals from district and county court to the courts of appeal, the appealing party does not have to prove that anything improper happened in the first trial. The reason is that the JP Court is not a court of record, i.e. there are no court transcripts documenting the evidence introduced and the testimony given.

However, the Texas Rules of Civil Procedure require the appealing party in an eviction to pay an appeal bond set by the JP. If the tenant is the party appealing, the bond amount is set at the probable amount of any judgment the landlord may win against the tenant at the county court level. Appeal bonds are typically \$2000-\$3000. The tenant has five days from the day the JP signs the judgment to file the appeal bond with the court.

If the tenant cannot afford to pay the bond, both pre-existing and the new laws allow tenants to appeal the decision by filing a Pauper's Affidavit in lieu of the appeal bond. In the affidavit, the tenant gives information about income and assets along with a sworn statement that he or she cannot afford to pay the bond.

If the eviction is for nonpayment of the rent and the tenant wishes to remain in possession of the premises during the appeal, the tenant is required to pay one rental period's rent (this will almost always be one month's rent) into the justice court registry within five days of filing the Pauper's Affidavit. The tenant must then pay future rent into the county court registry as it comes due until the case is heard by the county court. This ensures that the landlord will not lose any more rent owed while the case is being appealed.

But there have been several problems that §24.0052-§24.0054 of the Texas Property Code now address. For instance, some JP's are unaware that a tenant or landlord has the right to file a Pauper's Affidavit in lieu of paying the appeal bond. In Travis County, the JP's have long had a form available for filing the Pauper's Affidavit, but this practice was far from standard in Texas. Now it is required.

Under §24.0052, all JP's must create and provide a form for filing the Pauper's Affidavit. The statute also sets forth the information that must be included in the affidavit to allow the court to accurately determine the tenant's financial capacity to pay the appeal bond. This section of the Property Code also gives the landlord the right to a hearing to contest the Pauper's Affidavit. The tenant will then have to prove that he or she is unable to pay the bond by providing documents and/or credible testimony that they do not have the resources to pay. If the JP approves the pauper's affidavit, the tenant does not have to pay the appeal bond or other costs of the appeal such as the filing fee at the county court, for which the tenant often had to file another Pauper's Affidavit.

Another common problem is disputes over the amount of rent to be paid, especially in Section 8 Voucher, public housing, and federally subsidized housing evictions, as the government is paying or subsidizing part of the rent. It is unclear, then, how much rent should be paid. Is it the amount the landlord claims is owed, or the amount the tenant claims? Some courts have required payment of the amount claimed by the landlord and there was no process to challenge the amount set by the JP. Fortunately, the Texas law now addresses this problem as well.

Under §24.0053 at the time the judgment for eviction is made in a nonpayment of rent case, the Justice of the Peace must determine the amount of the rent to be paid by the tenant during the appeal. If the tenant's rent is paid in part by a governmental agency (e.g. Section 8), the JP is required to determine and note the amount to be paid by the governmental agency and the amount to be paid by the tenant. During the appeal the tenant must pay only their portion of the rent into the court registry. Furthermore, §24.0054

allows the tenant to dispute the amount the JP has set for the rent, and to pay the amount the tenant believes is owed until the case is heard by the county court.

If the landlord claims the tenant has failed to pay the rent into the court registry in accordance with the statute, the landlord can file a motion with the county court and a hearing will be set to determine if the tenant has failed to do so. The landlord must notify the tenant that the motion has been filed and the date of the hearing. If the tenant pays all the rent that is owed on or before the day of the hearing along with any attorney's fees that the landlord has incurred in filing the motion, the tenant will be considered to have paid timely. If the court finds the tenant has failed to pay rent, the court will issue a writ of possession.

A writ of possession is a court order directing the constable to have the tenant remove, or allow the landlord to remove, all of the tenant's personal property from the rental unit. The constable serves the tenant a notice 24 hours in advance of serving the writ, giving the tenant a final warning that the tenant and all personal property will be removed from the dwelling the following day. The constable returns and supervises the landlord removing the tenant's property.

Obviously, the process of filing an appeal can be fairly complicated and the new laws add some wrinkles that tenants and landlords need to understand. However, HB 62 has provided some much needed clarification and should make the process smoother and more uniform across Texas. The information in this article is not exhaustive so anyone involved in such an appeal should refer to the Texas Property Code itself or seek legal assistance.



HHC Program

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classes to particular neighborhoods, predatory lending, etc.

ATC's HHC program began on October 1, 2006 and has already helped over 1000 clients. With this assistance from the U.S. Department of Housing and Urban Development, ATC hopes to continue these services for many years, and to help the many clients in need that ATC previously was unable to serve.



ATC Files Fair Housing Complaint Against Popular Online Company

Craigslist has been described as a giant Internet bulletin board where people buy and sell goods, trade humor and political wisdom, look for dates, seek home repair advice, share their poetry and often just rant. Craigslist is also where people offer and seek housing, so ATC fair housing staff including Nekesha Phoenix, Jim Currier, and Cindi Garcia conducted audits of Craigslist as part of their annual fair housing advertising project.

The fair housing team monitored the Austin, Texas classified section on Craigslist for a few weeks this summer. Throughout the audit, ATC documented numerous classified ads, the contents of which violate the Federal Fair Housing Act section 3604(c) which states: "It is unlawful to make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." These advertisements included discriminatory advertisements targeting Katrina Hurricane Evacuees. Therefore, ATC filed a fair housing complaint with the City of Austin, Equal Employment/Fair Housing Office on August 18, 2005.

On August 19, 2005, John A. Benavides, Lead Investigator, City of Austin Equal Employment/Fair Housing Office submitted the complaint to Craigslist. On August 31, 2005 a response was received in writing from the legal representative of Craigslist. The response stated that Craigslist, "takes ATC's concerns seriously and strives to discourage discrimination and other harmful acts on its website, and that they will take action to remove or otherwise address those advertisements brought to their attention which appear to violate fair housing laws." However, the response further contended that, "ATC has no legal basis" for holding Craigslist liable for any violations of the Federal Fair Housing Act by Craigslist's users and asked the investigator to dismiss the complaint.

Craigslist claims that federal

law immunizes them from liability for statements made by others on its website. Craigslist references Section 230 of the Communications Decency Act of 1996 which states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Craigslist contends that this language "forecloses treatment" of websites like Craigslist as the "publisher" of advertisements placed on its site by its users. Thus, Craigslist argues it cannot be held liable for the postings that are the subject of the ATC complaint. In addition, Craigslist claims that as an online provider of community classifieds and forums it is not responsible or liable for all advertisements on the Craigslist website including those raised by ATC since they are posted by the users of the service and not by Craigslist itself. Finally, Craigslist explains that due to its limited resources, "it is impossible for it to screen each posting on its website for compliance with fair housing laws, and then make a decision about removal or non-removal of such postings, and Craigslist is not legally obligated to do so."

Although Craigslist has voluntarily opted to create a "flagging system" whereby the users of Craigslist may report advertisements that violate applicable law, so that the offending advertisements can be removed from the site, ATC believes that Craigslist is missing the primary point of ATC's complaint: that Craigslist is directly responsible and liable for the content on its website, and Craigslist has the burden to screen, report, and remove discriminatory advertising on its website not the users of their site. Furthermore, ATC contends that the Federal Fair Housing laws trump the Communications Decency Act used by Craigslist as a defense to avoid responsibility and liability for discrimination on its website.

The U.S. Department of Housing and Urban Development has agreed to investigate ATC's complaint against Craigslist, and the debate about competing federal laws will likely have serious fair housing policy and practice implications

nationwide. ATC will provide updates on the progress of this potentially groundbreaking case in future issues of the Housing Rights Advocate. In the meantime, ATC hopes Craigslist will accept responsibility for all content including discriminatory content on its website, and to do more to prevent it. Proper monitoring of ad content is important because discrimination hurts all communities, even online ones.



Katrina Evacuee Gets Relief

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Mr. McCoy, with the assistance of the Fair Housing Program and the City of Austin Equal Employment/Fair Housing Office, filed a housing discrimination complaint with the U.S. Department of Housing and Urban Development (HUD) on November 10, 2005. On January 9, 2006, Investigator Patrick Banis with the HUD Fort Worth office was able to successfully conciliate the complaint. The Lodge at Warner Ranch Apartments agreed to release Mr. McCoy from his lease contract without penalty and they also agreed not to file any adverse credit claims against him. ATC and Mr. McCoy would like to thank the City of Austin, Equal Employment/Fair Housing Office for assisting with the intake process and the HUD Fort Worth office for resolving this complaint so quickly. The Lodge at Warner Ranch no longer accepts financial assistance payments from the City of Austin which was verified by ATC fair housing testing.



Whitten Leaves ATC Board

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ATC is pleased to announce that Kristin Carlisle joined the Austin Tenants' Council's Board of Directors in December 2005. Ms. Carlisle works with the Texas Low-Income Housing Information Service as a Development Director and Policy Analyst. She also has experience working for two U.S. Congressmen, as a staff member and legislative assistant. The staff and Board of the Austin Tenants' Council welcome Ms. Carlisle, and we hope her tenure will be as long and favorable as Ms. Whitten's.





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

Programs and Services/Programas y Servicios

**FAIR HOUSING
 VIVIENDA JUSTA**

THE FAIR HOUSING PROGRAM / EL PROGRAMA DE VIVIENDA JUSTA - This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under State and Federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

**TENANT-LANDLORD
 INQUILINO-PROPIETARIO**

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

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

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

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

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

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