



VOLUME 5, ISSUE 2
Fall 2011

**Serving Bucks, Chester,
Delaware and Montgomery
Counties Since 2001**

Mission

Our mission at LASP is to provide quality legal representation to low-income people, to empower them to solve problems without legal representation through legal education and increased access to the courts, and to change community practices and systems that cause or aggravate poverty.

David Bennethum, Esq.
Editor

Funding for this newsletter is provided through a contract with the Bucks Co. Dept. of Community and Business Development.

GET LEGAL HELP!

Call us toll-free: **1-877-429-5994**
M-F, 9am-1pm

For free help with predatory lending and mortgage foreclosure, call the toll-free Don't Borrow Trouble Helpline:
1-877-275-8843
M-Th, 9am-1pm

Visit us online: **www.lasp.org**

FHA Forbearance Extended

The unemployed now have more time to pay.



Unemployed holders of mortgages insured by the Federal Housing Administration (FHA) will soon be allowed a period of 12 months of suspended or reduced payments (forbearance) before lenders can begin foreclosure proceedings. Previously, homeowners were allowed to go for only 4 months without making monthly mortgage payments. The debt will not be forgiven, but unemployed homeowners will now have more time to find new jobs and work out repayment plans with their lenders. Servicers of FHA-insured mortgages will have to implement the new policy within 60 days of August 1, 2011 and the changes will remain in effect for 2 years.

Additionally, the administration announced that servicers of non-government-owned or guaranteed loans who are participating in the Making Home Affordable Program (MHA) will also be required to provide the same 12 month relief period to delinquent and unemployed homeowners in cases where regulator and investor guidelines allow for it.

At the end of each homeowners' forbearance period the servicer must evaluate the homeowner for all available foreclosure assistance programs, including extended forbearance. If for any reason a borrower does not qualify, the servicer must provide a written reason for the denial and give the homeowner at least 7 days to provide additional information that could alter the decision. The new program does not apply to Fannie Mae or Freddie Mac loans, which already offer forbearance plans. Details of the revised forbearance program are still being drafted by HUD and should be published within 60 days.



A Guide to the Implied Warranty of Habitability

The **Implied Warranty of Habitability** is a Court-fashioned doctrine of law which protects tenants from eviction and judgments for unpaid rent when they withhold rent because of a landlord's failure to maintain residential rental housing in habitable condition. It took Courts many years to move away from the doctrine of "buyer beware," which favored landlords. Finally, in 1979, Pennsylvania's Supreme Court did so in the case of *Pugh v. Holmes*, ruling that a warranty of habitability by the landlord would be implied in all residential leases. Going forward, the tenant's obligation to pay rent would be mutually dependent on the landlord's obligation to provide habitable premises.

So, how does this work in the real world?

Keep reading >

ALSO, KEEP THE FOLLOWING IN MIND:

- All of these factors can only be decided on a case-by-case basis
- Tenants and landlords should document all problems as they occur
- Most Courts prefer to see that any withheld rent is deposited by the tenant in a separate escrow account, though the law does not require it



FIRST: The Court or District Justice must decide, before rent was withheld,

- Did the tenant give the landlord notice of the problem?

and

- **Did the tenant give the landlord a sufficient amount of time to correct it?**
What a sufficient amount of time is depends on how serious the problem is. No heat in the winter is usually a more serious problem than an upstairs neighbor's leaking sink.

SECOND: The Court or District Justice must decide,

- **Was the condition bad enough to justify withholding rent?**
For example, if a tenant withholds all of their rent for three (3) months because of a dripping faucet, the Court is going to want to know the "real" reason the tenant hasn't paid the rent in 3 months, and the tenant is likely to lose and be evicted.

FINALLY: If the Court or District Justice finds that the problem was bad enough to justify withholding rent, it must decide,

- **How much rent was the tenant justified in withholding?**
It does this usually on a percentage basis by determining how much loss of use of the premises resulted because of the problem.

If the Court finds that the condition of the premises was so bad that the tenant was justified in withholding *all* of the rent, no money judgment will be rendered against the tenant and the landlord's claim for eviction will fail. Under this scenario, the tenant also has the option of continuing to reside in the premises without paying rent until the problem is fixed or of vacating the premises without any further obligation to pay rent.

If the Court finds that the tenant was justified in withholding *some* of the rent, the landlord's claim for eviction will again fail as long as the tenant agrees to pay the amount of rent withheld that the Court found unjustified.

If the Court finds no problem existed that justified the withholding of rent, the landlord will prevail in his/her claims for both eviction and unpaid rent, plus court costs, and possibly attorneys' fees.



Bucks County Offices

1290 Veterans Highway, Box 809
Bristol, PA 19007
215-781-1111

108 N. Main Street
Doylestown, PA 18901
215-340-1818
Walk-ins:
M-F 8:30am-4:30pm

Legal Aid Helpline:
1-877-429-5994
M-F 9am-1pm

Don't Borrow Trouble:
1-888-275-8843
M-Th 9am-1pm

www.lasp.org
www.dontborrowtroublesepa.org

***A Successful Landlord Workshop
Held July 27, 2011***

A group of more than 25 landlords, realtors and representatives from housing programs attended a "Landlord Workshop" on July 27, 2011 at the Bensalem Municipal Building.

Speakers included David Bennethum, Esquire from Legal Aid of Southeastern Pennsylvania speaking on basic tenancy law, James Berry from the Fair Housing Council of Suburban Philadelphia, talking about Fair Housing and Justice Joseph P. Falcone from District Court 12 in Bensalem giving his "View from the Bench."

Legal Aid and the Bucks County Department of Community and Business Development organize these free workshops twice a year to educate landlords and others about their legal rights and responsibilities under Fair Housing and landlord tenant law.

**DON'T
BORROW TROUBLE®**

SUBURBAN PHILADELPHIA

1-888-275-8843

Don't Borrow Trouble® is a national anti-predatory lending and foreclosure avoidance campaign. In Southeastern Pennsylvania, the Don't Borrow Trouble Suburban Philadelphia Campaign is coordinated by Legal Aid of Southeastern Pennsylvania to help homeowners avoid mortgage pitfalls that can lead to foreclosure. The toll-free helpline is available to residents of Bucks, Chester, Delaware and Montgomery counties, M-Th from 9am to 1pm.