



Representing Survivors in Unlawful Detainers

Audience: Practicing Law Institute

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Presenter: Taylor Champion, Senior Managing Attorney



Training Overview:

1. FVAP Introduction
2. Dynamics of Domestic Violence
3. Domestic Violence and Housing
4. Representing Survivors in Unlawful Detainers
 - a. Case Study – Morgan and Jordan
 - b. Case Study – Rory and Jules
5. Laying Your Record

Background



- Non-profit agency dedicated to serving survivors of domestic violence in California and Washington.
- Founded in 2012 by law students, California office is based in Oakland. Our Washington office opened in 2021 in Seattle.
- A State-Bar-recognized Support Center for legal aid providers.

Appeals Work

In CA and WA FVAP:

- Represents survivors in appeals for free;
- Files amicus (friend-of-the-court) briefs in cases of statewide importance; and
- Requests publication of unpublished CA & WA cases to create binding legal precedent that benefits survivors across each state.



FVAP partners with pro bono attorney teams to provide free, high-quality legal representation to low- and moderate-income survivors, giving them the best chance at appeal.

Legal Support



FVAP Provides **free training, legal support and technical assistance** to shelters, advocates, and attorneys representing survivors in trial court, including self-help legal tools and online training videos.

Requesting Technical Assistance

Email: info@fvaplav.org

Phone: (510) 858-7358



What do you do?

- I am a housing attorney that represents tenants.
- I am a housing attorney that represents landlords.
- I am a housing advocate.
- I am a domestic violence advocate.
- I am another type of attorney.
- I do something else.

Part 2 – Dynamics of Domestic Violence



What is Domestic Violence?

Domestic violence is a pattern of behavior, used to exert and maintain power and control over another person, within an intimate relationship.

Domestic Violence...

Does not require physical abuse or threats of physical abuse.

Can and does happen to anyone.

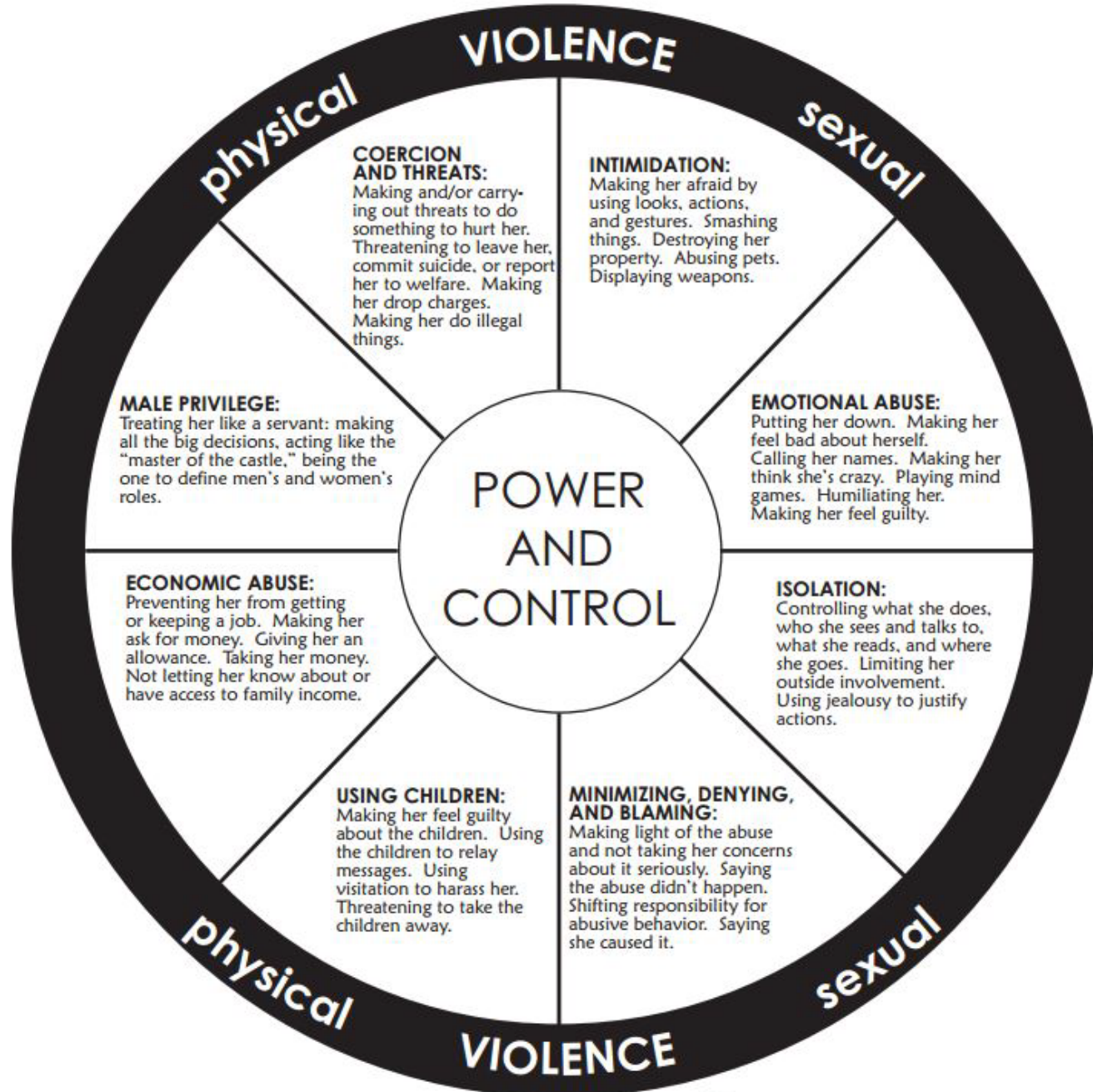
Uses intersections of identity and experience as a tool.

Can have roots in family and social upbringing and experiences.

Is not simply an anger management problem that can be cured.

Is not caused by alcohol or substance abuse.

Is not something a survivor provokes or controls.



DOMESTIC ABUSE INTERVENTION PROGRAMS
 202 East Superior Street
 Duluth, Minnesota 55802
 218-722-2781
www.theduluthmodel.org

Why Some People Stay



Why is Domestic Violence Relevant?

Domestic Violence is common.

- Almost **1 in 2 women** & more than **2 in 5 men** in the US experience sexual violence, physical violence, and/or stalking by an intimate partner.
- While all groups of people experience domestic violence, many marginalized communities are disproportionately affected. For example:
 - People with lower socio-economic status
 - People who are BIPOC
 - People who are LGBTQ+
 - People with disabilities

Why is Domestic Violence Relevant?

Domestic Violence frequently intersects other areas of law.

- Domestic violence is a primary cause of homelessness.
 - Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness.
- Domestic violence leads to employment loss.
- Domestic violence causes financial insecurity and coerced debts.

Why is Domestic Violence Relevant?

Domestic Violence may impact legal advice and case strategy.

- There may be special protections available for survivors.
- Client's safety concerns may impact case strategies and require safety planning.

Why is Domestic Violence Relevant?

Domestic violence related trauma may have an impact on attorney-client relationship.

- It can affect client interviewing.
- It can create barriers to establishing trust.
- It can require different considerations in case development and communication.

Working with Domestic Violence Survivors

- Survivors may not self-identify abuse.
- Meet your clients where they are.
 - Information gathering vs. readiness to act
- Recognize non-legal, emotional and economic needs of your clients and provide appropriate referrals.
- It may be important to acknowledge limitations of the legal system.
- Remember that reconciliation happens and that's ok.
- **Be aware of safety and confidentiality concerns.**

Getting Support for Clients



National Domestic Violence Hotline

- 1-800-799-7233

Domesticshelters.org

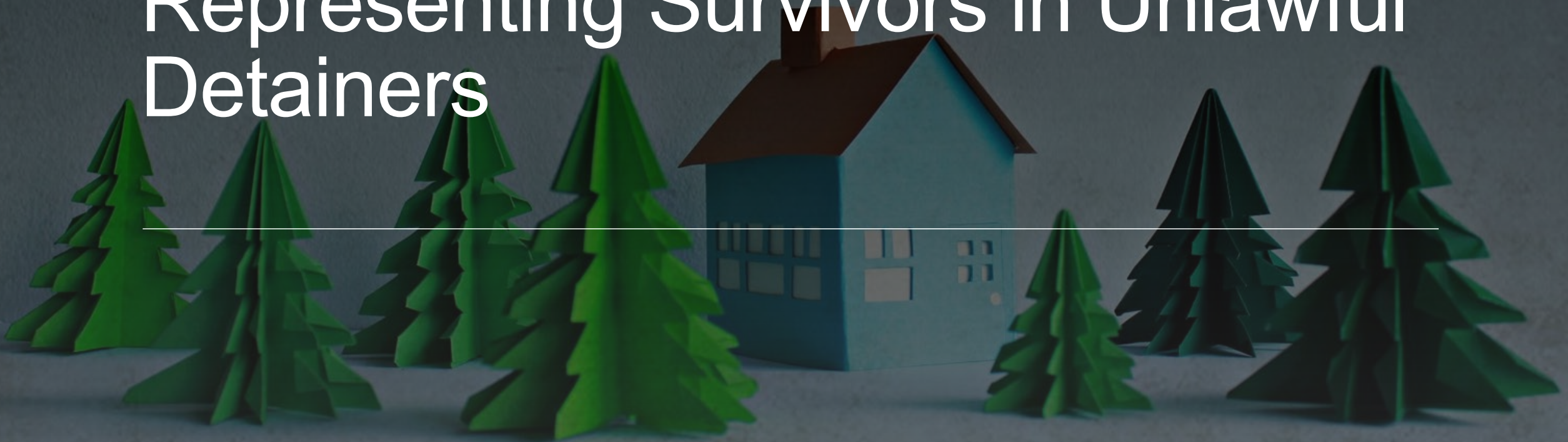
- Searchable shelter and hotline directory

California Partnership to End Domestic Violence

- <http://www.cpedv.org/domestic-violence-organizations-california>

Refer to a Local Domestic Violence Agency

Part 1 – Representing Survivors in Unlawful Detainers



California Code of Civil Procedure sections 1161.3 and 1174.27

Prohibits landlords from terminating a tenant's tenancy because they, their household member or immediate family member experienced abuse or violence.

California Civil Code section 1946.8

Prohibits landlords from terminating a tenant's tenancy because they or their household needed help from law enforcement or emergency assistance because they were experiencing abuse or an emergency.

Eviction Defenses for Survivors

Violence Against Women Act (VAWA) 34 U.S.C.á 1249

Prohibits covered housing programs from evicting or ending assistance to survivors of domestic violence, sexual assault, dating violence and stalking because they are survivors.

Federal Eviction Defenses for Survivors



Using the Law to Protect Your Client Morgan

This is Morgan

- Morgan's ex Jordan abuses Morgan.
- Morgan is a tenant in an unsubsidized apartment they share with their puppy Sam.
- Morgan and Jordan are Sam's pawrents.
- Morgan needs your help because they received an Unlawful Detainer (UD) summons and complaint based on a 60-Day Notice.



60-Day Notice Terminating Tenancy

- The 60-Day Notice states Morgan created a nuisance by allowing Jordan on the property and disturbing other tenants on 5 different occasions. The notice lists the 5 dates that span 7 months.
- Morgan tells you:
 - Jordan hit them on at least 1 of the listed dates.
 - They fought with Jordan on some of the other listed days.
 - The cops came to their apartment when Jordan hit them and during at least 1 of the fights.

Morgan's Affirmative Defenses

Based on Morgan's information you can assert two affirmative defenses in the Answer.

1. The right not to be evicted for needing help from law enforcement or emergency assistance. (Civ. Code, § 1946.8.)
2. The right not to be evicted because of acts of abuse or violence against them. (Code of Civ. Proc., § § 1161.3 and 1174.27.)



Defense 1: Eviction Defense for Needing Help



A landlord is not allowed to evict, punish or threaten to evict or punish a tenant because emergency assistance or law enforcement was called when:

- the tenant was experiencing domestic violence, sexual assault, stalking, human trafficking, elder or dependent adult abuse
- the tenant was victim of a crime
- the tenant was experiencing an emergency. For example, having a heart attack
- the tenant called for emergency assistance because they believed someone else was being abused, victimized or experiencing an emergency. (Civ. Code § 1946.8.)

Resources on the Right to Call for Help

- Information on Tenant's Right to Call for Help:
 - Provides detailed information about the defense and tips on how to fill out an Answer form when you are asserting the defense.
 - <https://fvapl原因.org/wp-content/uploads/2022/12/Tenant-Right-To-Call-For-Help.pdf>
- Template Letter Asserting Tenant's Right to Call for Help:
 - A template tenants can use to ask their landlord to rescind a tenancy termination notice based on calls for law enforcement or emergency assistance.
 - <https://fvapl原因.org/wp-content/uploads/2022/12/Template-Letter-Cancel-Notice-Received-Because-911-Calls.docx>



Defense 2: Survivors' Eviction Defense



(Code of Civil Procedure sections 1161.3 and 1174.27.)

Generally, a landlord is not allowed to evict a tenant because of abuse or violence against them, someone they live with or **their immediate family member**,* if the landlord receives documentation that shows the survivor experienced abuse or violence.

Abuse or violence is:

- Domestic Violence
- Sexual Assault
- Stalking
- Human Trafficking
- Elder or Dependent Adult Abuse
- **Survivors of Crimes that Caused Injury***
- **Survivors of Crimes that Involved a Deadly Weapon***
- **Survivors of Crimes that Involved Force or Threat of Force***

Asserting the Survivors' Eviction Defense



- You explain eviction defenses to Morgan.
- You ask Morgan if they have communicated with their landlord about the 60 Day Notice or the abuse.
- Morgan has not talked to their landlord about the notice or the abuse.
- Morgan thinks their neighbors know they are a survivor and would not be surprised if the neighbors told their landlord about the abuse.

True or False

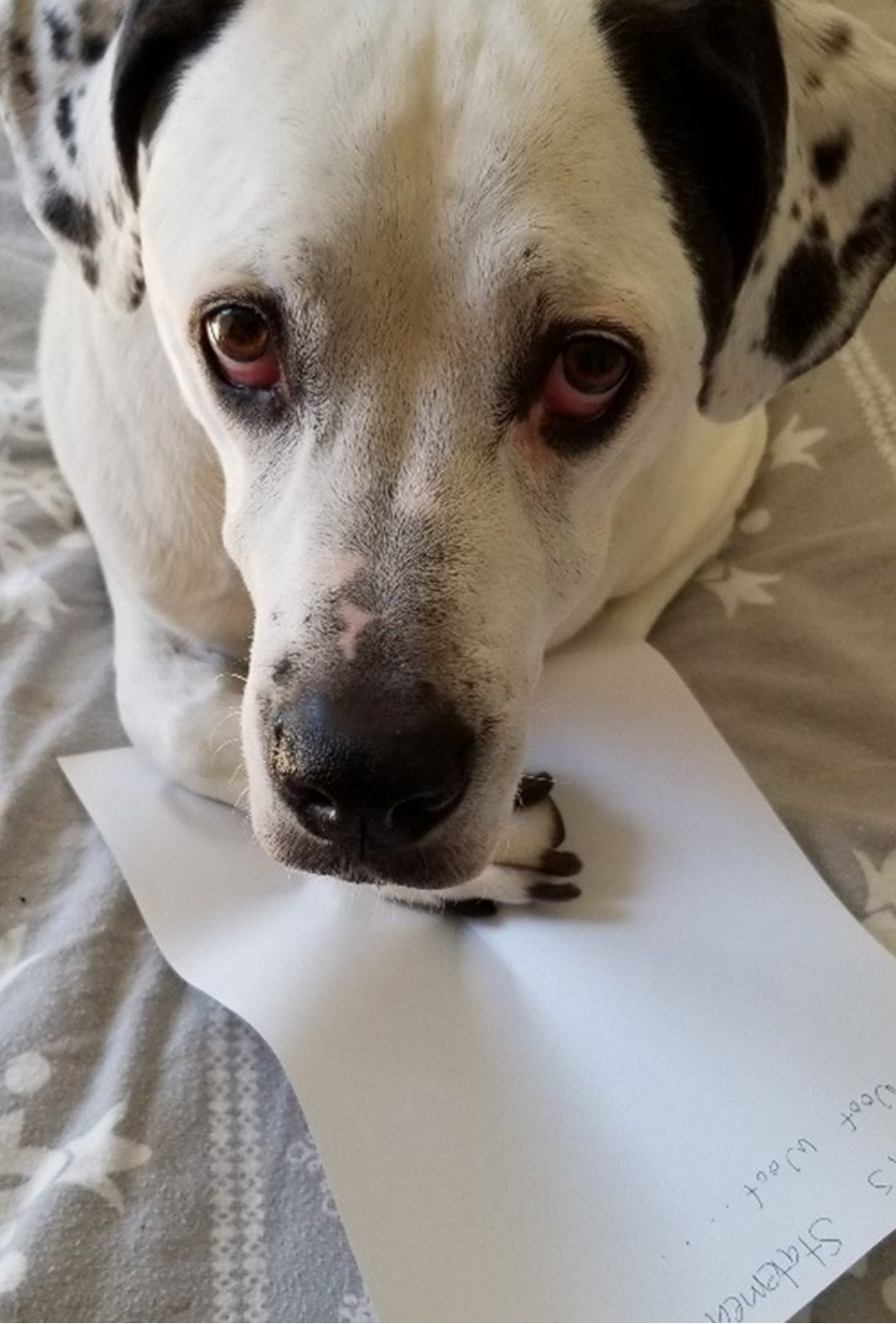
Morgan cannot use the survivors' eviction defense if they did not give their landlord documentation that they experienced abuse before the landlord filed the UD.

False

Legislative intent and history make clear that tenants are supposed to have access to the defense if they provide documentation of abuse after the unlawful detainer is filed.

That being said, the text of the law may be interpreted as ambiguous.

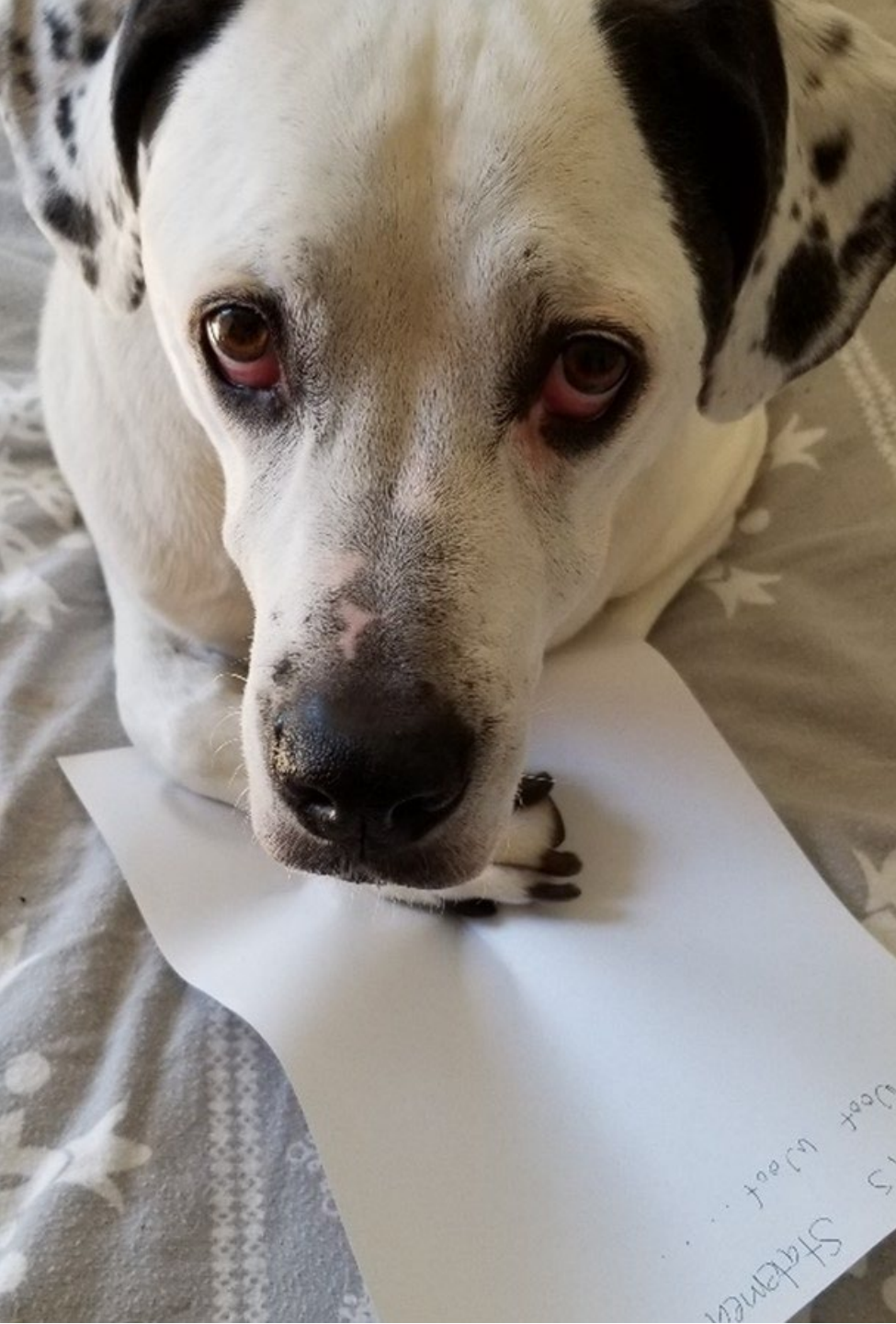
[FVAP's pocket brief](#) explains to the court that tenants are supposed to have access to the defense if they provide documentation of abuse after the unlawful detainer is filed.



Morgan's Documentation of Abuse

Morgan gives you copies of recent emails from Jordan that contain threats of physical harm.

If you attach these emails to the answer, have you provided documentation to show Morgan experienced abuse and qualifies for the survivors' eviction defense?



Morgan's Documentation of Abuse

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YES

Documentation Showing Abuse or Violence

The tenant gets to choose which of the following types of documents they use to show they experienced abuse or violence:

- *Restraining order* issued in the last 180 days and protects the survivor.
- *Police report* issued in the last 180 days and states the survivor filed a report alleging they are a survivor/victim of abuse or violence.
- *Qualified third-Party Letter* verifying that the survivor is a survivor. Healthcare professionals, Domestic Violence Counselors and Victim of Violent Crime Advocate are examples of qualified third-party letters.
- *Other form of documentation or evidence* that reasonably verifies that the abuse or violence occurred. ***(New from SB 1017)***

What “Other Documentation” Reasonably Verifies the Abuse or Violence?

The law does not give examples of what other documentation can verify the survivor experienced abuse or violence.

However, copies of emails or voice messages containing threats from the person who committed the abuse or violence could verify the survivor experience. “Documentation only needs to be a reasonable verification of what took place[.]”

(Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1017 (2021-2022 Reg. Sess.) Feb. 14, 2022, p. 9.)



Discovery

- In discovery you learn Morgan previously received a 3-Day Notice banning Jordan from the property.
- You receive videos of Morgan allowing Jordan on to the property after the 3-Day Notice was served.
- Morgan confirms they received the 3-Day Notice and later allowed Jordan on the property to pick up their puppy Sam.
- Morgan thinks, but is not certain, that Jordan never threatened other people on the property.
- **Can Morgan still use the survivors' eviction defense?**

Maybe

Because of SB 1017, the survivor no longer loses the eviction protection if they allow the person who perpetrated the abuse or violence on the property and the person ***has not*** threatened others physical safety.



Limits to the Survivors' Eviction Defense

(Code of Civil Procedure sections 1161.3 and 1174.27.)

A tenant **loses** the defense if the *harm doer threatens other tenants, guests, invitees, or licensees' physical safety* and:

- Their landlord gives them a 3-Day Notice banning the person who perpetrated the abuse or violence from the property; **and**
- The tenant voluntarily allows the harm doer back on the property.

Alternative Discovery Hypothetical

- In discovery you learn that before Morgan received the 60-Day Notice, they received a 3-Day Notice banning Jordan from the property because Jordan threatened another tenant after they called 911.
- You receive videos showing Morgan allowing Jordan on to the property after the 3-Day notice was served.
- Morgan tells you they asked Jordan not to come to the property, but Jordan came anyways and threatened to hurt Morgan if Morgan did not let them on the property.
- **Can Morgan still use the Survivors' Eviction Defense?**

Yes, because...

- Morgan did NOT “***voluntarily***” allow Jordan on the property. (CCP § 1161.3 (b)(2)(B)(ii).)
 - Morgan did not have a choice in allowing Jordan into the unit – denying Jordan entry could have resulted in harm to Morgan.
- Jordan’s act of showing up at the unit was domestic violence.
 - **Sabato v. Brooks (2015) 242 Cal.App.4th 715** (Unilateral, unwanted and harassing contacts are sufficient to support the issuance of a Domestic violence restraining order)
 - **Burquet v. Brumbaugh (2014) 223 Cal.App.4th 1140** (Contact by phone, email and text, arriving at residence unannounced and refusing to leave/making a scene sufficient to find abuse under the Domestic Violence Prevention Act)



True or False:

Morgan could not use the Survivors' Eviction defense if Morgan and Jordan were co-tenants and received a 60-Day Notice because Jordan abused Morgan.

FALSE

- Thanks to SB 1017, Morgan could use the defense if they lived with Jordan. If the Court agrees that Morgan has the Survivors' Eviction Defense, the Court should order a partial eviction.
- A partial eviction would evict Jordan and allow Morgan and Sam to stay in the unit with the same the lease!

Using the Survivors' Eviction Defense When the Person Who Harmed is a Co-Tenant

- A landlord cannot issue a partial eviction and a court can only order a partial eviction if the survivor tenant asserts the survivors' eviction defense.

Meaning:

- The survivor tenant asserts the survivors' eviction defense, ideally in their answer.
- The survivor tenant gives their landlord and the court 1 of the 4 required types of documents to show they experienced abuse or violence.
- The survivor tenant proves to the court that they are being evicted for abuse or violence against them by their co-tenant.

The Partial Eviction Order

- To order a partial eviction the court must decide:
 - The landlord can evict the person who perpetrated the abuse or violence because of the abuse or violence; and
 - The landlord gave no allowed reason to evict the survivor.
 - ❖ This means the survivor can still be evicted if they violated the lease in another way. For example, if they did not pay their rent or engaged in criminal activity that was not abuse or violence against them.
- Because partial evictions are new courts may be reluctant to order them. Contact FVAP if you need advice about using the partial eviction.

Executing the Partial Eviction Order

- If a tenant(s) uses the survivors' eviction defense and the court orders a partial eviction the tenant who committed the abuse or violence will be removed from the property and lease.
 - This means the tenant(s) remaining at the property keep their lease and are responsible for the full rent.
- Your sheriff's office may not yet have policies on executing partial evictions. If your client gets a partial eviction, reach out to your local sheriff's office.

Partial Evictions & Survivor Safety

The person who perpetrated abuse may retaliate or increase their abuse against the survivor if the survivor requests a partial eviction.

- Help your client safety plan.
- Your client may benefit from a restraining order to keep them safe during a potentially dangerous transition.

Resources on the Survivors' Eviction Defense

Survivors' Eviction Defense Packet– Included in the Packet:

- KNOW YOUR RIGHTS: Eviction Protection of Survivors of Abuse & Violence
- TEMPLATE LETTER: Demand Landlord Cancel Notice Based on Abuse
- TEMPLATE LETTER: Qualified Third-Party Letter to Document Abuse or Violence

<https://fvapl原因.org/wp-content/uploads/2023/02/Eviction-Because-of-Abuse-Packet-1.docx>

Pocket Brief on Documentation of Abuse for Survivors' Eviction Defense:

- Tenant Can Use the Defense Even if Landlord Gets Documentation Evidencing Abuse or Violence After They Filed an Unlawful Detainer (Eviction) <https://fvapl原因.org/wp-content/uploads/2023/02/Documentation-of-Abuse-Pocket-Brief-1.docx>

Rory Comes to You for Help



You interview Rory and learn:

- Rory lives alone in a LIHTC property and received a 90-Day Notice stating they had an unauthorized occupant.
- The 90-Day Notice did not have an attachment that explains tenants' rights under the Violence Against Women Act.
- Jules, Rory's abusive partner, has a key to Rory's unit and spends most nights. Rory did not give Jules a key and does not invite Jules over. Jules just shows up.
- Rory is too scared to kick Jules out.

Violence Against Women Act (VAWA):

- Because Rory lives in LIHTC housing they are protected by VAWA.
- Tenants with VAWA covered subsidized housing also generally have the legal protections given to tenants in private housing.
- In other words, Rory is protected from eviction by the same laws that protected Morgan.

Housing Programs Covered by VAWA

- Public housing
- Section 8 Housing Choice Voucher program
- Project-based Section 8 housing
- Section 202 supportive housing for the elderly
- Section 202 Direct Loan program
- Section 811 supportive housing for persons with disabilities
- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate housing (BMIR)
- HOME
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney-Vento Act programs
- Transitional Housing Assistance for Homeless Veterans
- Grant programs for homeless veterans with special needs
- Supportive Services for Veteran Families (SSVF)
- Veterans Affairs Supportive Housing (VASH)
- National Housing Trust Fund
- Transitional Housing Assistance Grants for victims of domestic violence, dating violence, sexual assault, and stalking
- Rural Development (RD) multifamily housing programs, including the Rural Development Voucher program
- Low-Income Housing Tax Credit program (LIHTC)

VAWA's "catch-all" provision states "any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means" could be subject to VAWA.

Violence Against Women Act (VAWA):

- VAWA prohibits covered housing programs from evicting a tenant “on the basis or as a direct result of the fact that the . . . tenant is or has been a victim of domestic violence, [.]” (24 C.F.R. 5.2005 (b))
- VAWA requires tenants receive notice of VAWA protections ([HUD Form-5380](#)) with any notification of eviction or tenancy termination. (34 U.S.C. § 12491(d)(2) ; 24 CFR § 5.2005 (a))



Send the Landlord a Demand Letter

Demanding they rescind the notice because it violates California law and VAWA for:

- terminating the tenancy because Rory experienced abuse (CCP § 1161.3);
- terminating the tenancy because Rory is a domestic violence survivor (34 U.S.C. § 12491(b)(1).
- Jules's presence on the property was a direct result domestic violence. (*See Johnson v. Palumbo* (2017) 60 N.Y.S.3d 472)

VAWA Documentation Options

Under VAWA, Rory can give their landlord one of the following to show they are a survivor:

1. Self-Certification Form- [HUD form 5382](#)
2. Qualified Third-Party Statement
3. Police Report
4. Court Order (example restraining order)

Rory gets to choose which of the 4 documents to use. However, if there is conflicting evidence, the housing provider can require additional proof.



Consider Filing:

- HUD complaint:
 - If a “probable cause” discrimination charge or other violation of either VAWA or the Fair Housing Act is determined by HUD, DOJ, the Dept of Fair Employment and Housing [i.e. CRD], [or equivalent agency]. . . CTCAC will file Form 8823 to the IRS[.] (See Property Owners and Management Agents of LIHTC Properties, Low Income Housing Tax Credit (“LIHTC”) Violence Against Women Act (“VAWA”) and Manager’s Unit Guidance (Dec. 22, 2017))

Consider Filing:

- Affirmative litigation.
 - Although VAWA does not have an explicit right to file an affirmative lawsuit, HUD recognizes a relationship between VAWA and the Fair Housing Act. (See Memo from Sara K. Pratt, HUD Deputy Assistant Secretary for Enforcement and Programs, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9, 2011))

A photograph of a classical building facade featuring a prominent statue of Lady Justice. The statue is a female figure standing, holding a scale of justice in her left hand and a sword in her right. She is positioned on a high ledge. Below her, there are other intricate carvings, including a lion's head and a figure holding a scroll. The sky is blue with some light clouds.

If the Landlord Files an Unlawful Detainer:

- Assert all defenses outlined in the demand letter.
- Assert procedural defenses that the landlord failed to provide VAWA notice. (*DHI Cherry Glen Assocs. v. Gutierrez* (2019) 46 Cal.App.5th Supp. 1)
 - A defense available to tenants in covered housing programs, not just people being evicted because they are a survivor.

A close-up photograph of a person's hands placing a black vinyl record onto a turntable. The record's label is visible, featuring a red and white design with some text. The background is a light-colored wooden surface. The image is overlaid with a semi-transparent dark grey filter.

Laying Your Record & Assessing Post Trial Options

Poll: What is your experience representing clients in Unlawful Detainer trials?



- I have never represented a client in a UD trial.
- I have done 1-5 UD trials.
- I have done 6-10 UD trials.
- I have done more than 10 UD trials.

Poll: What is you or your organization's Unlawful Detainer practice?



- I/We only do bench trials.
- I/We only do jury trials.
- I/We do both jury and bench trials.

What is a record and where is it used?

- Generally, all the documents in the court file and any hearings where a court reporter was present, and a transcript can be made.
- Where is it used?
 - Duration of the case or a new case
 - Post hearing motions
 - Writ
 - Appeal

What is in an “Ideal” record?

- The court’s findings of fact and what they are based on.
- The court stating the law it is using and its conclusions of law and the basis for those conclusions.
- The court’s rulings on all the issues before it.

How do you make an ideal record?

- Submit briefing on all the relevant statutes and case law (and where appropriate social science) that support your defense.
- Put a summary of any discussions in chambers or off the record on the record.
- Ask the court to rule on each issue in your request and preserve the issue if the court does not make a ruling.
- Admit all relevant evidence.

How do you make an ideal record?

- Raise specific objections for every piece of your evidence excluded and ensure the court makes a ruling on each objection.
- Raise specific objections for every piece of your opponent's evidence that should have been excluded and ensure the court makes a ruling on your objection.
- Request a statement of decision or ask the court to make specific findings of fact and conclusions of law and object to any refusal by the court to do so.

Challenges to Getting An Ideal Record

- Timing: Short deadlines in unlawful detainers and full dockets create pressure to resolve cases quickly.
- Deference: Adapting to a judge's preferences.
- Capacity: Large case loads and short deadlines stress resources.
- Court Reporter or Electronic Recordings: Not getting the hearings properly recorded.
 - Litigants with fee waivers are entitled to a free court reporter. Request with this form FW- 020 <https://www.courts.ca.gov/documents/fw020.pdf>



Requirements by Statute

Unlawful Detainer Procedural Requirements

- Pay close attention to procedural requirements.
 - In unlawful detainers “the statutory procedures must be strictly adhered to, including the stringent requirements for service, notice, and filing deadlines.” (Stancil v. Superior Court (2021) 11 Cal. 5th 318, 394-395)

Plaintiff's Burden

- The landlord in an unlawful detainer has the burden of proving, by a preponderance of evidence, at a minimum,
 - (1) the existence of the landlord-tenant relationship,
 - (2) the legal termination of that relationship,
 - (3) the tenant's continued possession of the premises.

Affirmative Defense Requirements

- Follow the statute's language to make sure you get the findings and language you need to support your defense.
- If needed, ask the court clarifying questions to ensure their findings and conclusions are clear for the record.
- When the court does not rule in your favor, the court's findings and language are important for challenging the decision.
- Even when the order is in your favor, the underlying findings and language are important for defending any appeals. (landlord appeals rare)



Evidence: Admissions & Objections

Move Exhibits into Evidence

- **Move all exhibits into evidence** and preferably have that reflected in the transcript.
 - By moving an exhibit into evidence, you are identifying it as information the trial court relied on.
- If you are appealing an order and arguing that an exhibit was improperly excluded, that exhibit should be considered part of the record on review.

Make an Offer of Proof

- When asking to admit evidence make an **offer proof as to what the evidence would show**. Doing so helps make an ideal record. (Evid. Code § 354)
- Include the **prejudice** to your client if the evidence is excluded.
 - This makes it clear on review that the trial court had a chance to make an informed decision.

Make Evidentiary Objections

- Make evidentiary objections **at or before** trial.
- Failure to object to your opponent's evidence may waive your right to challenge its admissibility on appeal. (Evid. Code § 353 (a))
 - Anything not objected to, and accepted by the trial court, is considered evidence.
- State your specific **grounds** for objecting (e.g., hearsay, lack of foundation, not relevant).
 - Failure to do so makes challenging the ruling on appeal less likely to be successful.

Make Evidentiary Objections

- Court's failure to rule on objections does not waive the issue on appeal, but best practice is to **obtain rulings on objections on the record.**
 - If you objected on multiple grounds, try to get the specific reason or reasons for trial court's ruling on the record.



Other Considerations

Raise & Preserve All Issues on the Record

Generally, issues and objections not raised in the trial court will not be considered on appeal.



Establish Prejudice

- Even if the trial court was wrong, the appeals court will generally reverse only if it was **prejudicial error**. The burden of proof is on the Appellant. Need to establish it for each error claimed.
- Error is “prejudicial” only where it appears reasonably probable a result more favorable to appellant would have been reached **but for** the error. (Cal. Const., art. VI, § 13; C.C.P., § 475; *F.P. v. Monier* (2017) 3 Cal.5th 1099.)



Statement of Decisions

Statement of Decisions

- After trial, written findings of fact and conclusions of law are generally **not** required.
- Generally, the only way to learn the factual and legal basis for the decision is to **request a statement of decision (SOD)**.
 - C.C.P., §§ 632 & 634.

Requesting a Statement of Decision

- If the trial was 1 day, or fewer than 8 hours over several days, the request must be made **before the matter is submitted for decision**.
 - SOD may be made orally on the record in the presence of the parties.
- If the trial was longer, the request must be made ***within 10 days after*** the court announces a tentative decision.
 - SOD must be in writing.

Requesting a Statement of Decision (cont.)

- The request must specify the controverted issues as to which the party is requesting a SOD.
- After a party has requested the SOD, **any party** may make proposals as to the content of the SOD.
 - C.C.P., § 632; Cal. R. Ct., rule 3.1590(d).

Request a Statement of Decision (cont.)

Benefits of requesting an SOD:

- In a UD, a court may not, for example, specify which acts it thought substantially violated the lease, why the landlord had “just cause” or how it came to its conclusions.
 - You can draft the SOD or objections to the SOD as a guide to attempt to lead the court to the right outcome.
 - Court may change its mind or modify its tentative decision.

Request a Statement of Decision (cont.)

Benefits of a SOD

- **Doctrine of implied findings:** Without a SOD specifying the factual and legal bases for the court's decision, it is **presumed on appeal** that the court decided in favor of the prevailing party on **all** facts and issues.
- The order may not be reversible for abuse of discretion if the record does not explain the trial court's reasoning.



Verdict Forms

Types of Verdicts

- General Verdict
 - No special findings. Jury must find in favor of Plaintiff or Defendant.
- Special Verdict
 - Requires the jury to decide the questions of fact that are required for the Plaintiff's cause of action and Defendant's affirmative defenses. The court uses the jury's findings to issue its ruling.
- General Verdict with Special Findings
 - Jury must make specific findings of fact and find in favor of Plaintiff or Defendant.

C.C.P., §§ 634 & 635.

Requesting Type of Verdict

- Generally, to request special findings you must do so in writing, before arguments and specifying the issues or questions of fact that you are requesting.
 - C.R.C. 3.1580
- The court has discretion in choosing the form of the verdict.



Assessing Post Trial Options

Post Trial Motions

- Motion to Set Aside (CCP § 473(b))
 - Discretionary relief based on mistake, inadvertence, surprise or excusable neglect.
- Motion for Reconsideration (CCP § 1008(a))
 - New or different facts, circumstances, or law.

Post Trial Motions

- Motion to Vacate (CCP § 663)
 - Incorrect or erroneous legal basis not consistent with or not supported by the facts.
 - A judgment or decree not consistent with or not supported by the special verdict.

Post Trial Motions

- Motion for a New Trial (CCP § 657)
 - Irregularity in the proceedings / no fair trial;
 - Misconduct of the jury;
 - Accident or surprise;
 - Newly discovered evidence;
 - Excessive or inadequate damages;
 - Not sufficient evidence to justify the trial court's decision, or the decision is against the law;
 - Error in the law.

Unlawful Detainer Appeals

- Benefits –
 - If clients receive a stay pending appeal, they may be able to stay in the unit.
 - Chance to reverse a trial court decision.
 - Potential to obtain restitution for your client.
 - Create case law.

Unlawful Detainer Appeals

- Cons –
 - Long process.
 - May not help your client stay in their unit.
 - If the lease has an attorney's fee provision, your client may owe appellate attorney fees.

Assessing Potential Appealability

- Review the record
- Determine standard of review
 - Standard of review depends on the order you are reviewing.
 - Examples: substantial evidence, de novo or abuse of discretion.
- Determine if trial court errors were prejudicial

Timing

- Notice of Appeal – Strict filing deadline of 30 or 90 days.
 - [FVAP's tipsheet](#) can help you calculate your deadline.
- You need to get a stay of execution and stay pending appeal or extraordinary writ of supersedeas for your client to stay in their unit during the appeal.
- Learn about the unlawful detainer appeal process in FVAP's info sheet [Overview of the Eviction Appeal Process](#).

Questions?

Requesting Technical Assistance- California

- **Email your request to info@fvapl.org**
 - Please do not send client names or identifying info unless requested.
 - Please let us know if there is a **time frame** for your request such as a filing deadline, court hearing or other specific deadline, and we'll work with you to get you the information as soon as possible.
 - We try to respond to urgent requests either same day or ASAP for non-urgent requests or those that require review or research the time frame may be longer.
- **Call our office at (510) 858-7358**
 - We do not take live calls. We take voicemails and return calls.

Referring a Case to FVAP- California

- **Contact FVAP at info@fvapl原因.org**
 - Include your client's full name, former names and opposing party
 - FVAP will then send you an intake form
 - ❖ You can help your client complete this form, and return it to us with any documentation
- **Complete the request for assistance form on FVAP's website**
 - You can help your client complete a request for assistance at www.fvapl原因.org
 - We will then send your client an intake form
 - Your client can call or email our office at (510) 380-6243 or info@fvapl原因.org

FVAP Website

<https://fvaplaw.org/legal-resource-library/>
Password: FVAPtrainings6

Free Access to Resources for Domestic Violence Survivors and Advocates:

- Housing Toolkit: Helping Survivors Obtain Housing
 - Available in English, Spanish, Hmong, Russian, Thai, Nepali, Korean and Arabic
- Housing Toolkit: Helping Survivors Leave Safely
 - Available in English and Spanish
- Housing Toolkit: Repairs and Immigrant Rights in Housing
 - Available in English & Spanish
- Housing Toolkit: Survivors' Eviction Protection
- Move-Out Order Tipsheet
- Family Code § 3044 Toolkits
- Trainings On How To Lay A Record For Appeal



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