

Housing Case Acceptance Priorities

Civil Rights

1) Discrimination

Policy: Legal Aid will place a high priority on protecting the civil rights and liberties of low-income Arkansans.

Case Acceptance Priorities:

- 1) Fighting housing discrimination based on an individual's disability, color, national origin, religion, sex, or familial status through vigorous enforcement of violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- 2) Ensuring language access in housing through enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
- 3) Protecting survivors of domestic abuse through enforcement of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), 42 U.S.C. § 14043e-11(d) and Ark. Code Ann. § 18-16-112.
- 4) Violations of other federal, state, or local laws, regulations, or ordinances that protect civil rights and ensure equal treatment in housing.

2) Constitutional Rights

Policy: Legal Aid will protect and defend our Constitution. We will make sure low income tenants and homeowners are afforded the protections to which we are all entitled.

Case Acceptance Priorities:

- 1) Ensuring that tenants and homeowners receive all constitutionally required protections through enforcement of constitutional tort claims under 42 U.S.C. § 1983 and the Arkansas Civil Rights Act.
- 2) Assure that courts operate fairly and lawfully to protect the rights of participants in the justice system, including but not limited to assuring they follow legal standards regarding fines and fees, and address situations where civil disputes are criminalized.
- 3) Affirmative or defensive litigation challenging any discriminatory, illegal, or arbitrary law, ordinance, regulation, or policy.

Eviction Defense

1) Criminal Eviction

Policy: Legal Aid believes that eviction is a civil matter. Arkansas's criminal eviction procedure uses the threat of criminal prosecution. It denies tenants due process and chills their right to a trial. It also imposes criminal sanctions, including imprisonment, for the breach of a private

contract. Criminal eviction is incompatible with the United States Constitution and the Arkansas Constitution.

Case Acceptance Priorities:

- 1) Affirmative or defensive litigation as necessary to undermine the use of A.C.A. § 18-16-101.

2) Civil Eviction Defense

Policy: Forced moves creates housing instability and causes disruption in the lives of families. Housing instability leads to food insecurity, poor health, job loss, children being pulled from school, and a general loss of hope. Legal Aid recognizes that eviction is proper in certain circumstances and when done through adequate legal process. However, meritless or illegal evictions will be vigorously defended.

Case Acceptance Priorities:

- 1) Meritorious civil eviction defense.
- 2) Enforcement of the statutory right to cure under A.C.A. § 18-17-701.
- 3) Attacking illegal and abusive eviction practices through affirmative litigation and counterclaims. Legal Aid will help tenants seek judgments that will adequately compensate them for their loss and adequately deter future transgressors.

2) Federally Subsidized Housing

Policy: Legal Aid recognizes the vast shortage of assisted housing units in Arkansas. Housing subsidies allow low-income families to thrive by reducing rent burdens. Legal Aid will defend meritless evictions and subsidy terminations. We will also seek to protect and expand the stock of affordable housing.

Case Acceptance Priorities:

- 1) Meritorious federally subsidized housing cases, including eviction defense and subsidy terminations. Representation at administrative grievance hearings is permitted.
- 2) Affirmative or defensive cases challenging illegal or arbitrary policies of housing authorities or other government funded housing providers.

Tenant's Rights

1) Safe and Habitable Homes

Policy: All tenants are entitled to a home that is fit for living. Legal Aid will pursue all available avenues to ensure tenants can seek redress when the conditions of their homes are intolerable.

Case Acceptance Priorities:

- 1) Unsanitary/unhealthy housing conditions: cases where housing conditions are causing poor tenant health. Affirmative or defensive cases challenging any laws or policies leading to a tenant's inability to seek redress for poor housing conditions.
- 2) Assistance in enforcing lease provisions; federally subsidized housing quality standards; and, local housing codes.
- 3) Pursuing landlords that have demonstrated a pattern and practice of providing substandard housing.
- 4) Using Fair Housing protections to improve housing quality for disabled individuals.

2) Fair Lease Terms

Policy: Leases should be freely negotiated and only contain fair and legal terms. Legal Aid will challenge landlords and management companies that use unconscionable terms or illegal fees.

Case Acceptance Priorities:

- 1) Cases involving unconscionable or illegal lease terms.
- 2) Cases involving excessive or illegal fees or charges.

Foreclosure Defense

Policy: Home ownership is important to the stability and advancement of low-income families and communities. Legal Aid will assist with foreclosure defense consistent with priorities set out herein.

Case Acceptance Priorities:

- 1) Foreclosure defense cases may be accepted for extended representation if:
 - a. The property in issue is the homeowner's primary residence; and
 - b. Homeowner has equity in property; or
 - c. Homeowner has a means to pay indebtedness.
 - d. In all cases, a legal defense must exist, i.e., predatory loans and lending practices, inability to show standing, substantial failure to comply with relevant statutes, failure to comply with federal regulations, etc.
- 2) Any applicant who may benefit from housing or debt counseling will be referred to a HUD approved housing counseling agency.
- 3) Bankruptcy: Legal Aid may initiate a bankruptcy to stop a foreclosure in the following circumstances:

The property at risk is the applicant's principal residence; AND

 - 1) The applicant can afford the indebtedness or will be able to afford the indebtedness through and after the successful completion of a Chapter 13 plan or a Chapter 7 liquidation, OR

- 2) The intervention of the automatic stay will enable the applicant to successfully complete a mortgage modification, after which the applicant will be able to afford the indebtedness, or will be able to afford the indebtedness through and after the successful completion of a Chapter 13 plan or a Chapter 7 liquidation.
- 3) The intervention of the right to cure under 11 U.S.C. 1322(b)(2) would enable an applicant, who has otherwise waived or extinguished their equitable and statutory rights of redemption, to reinstate a mortgage that the applicant will be able to afford, or will be able to afford after and through the successful completion of a Chapter 13 plan or a Chapter 7 liquidation.
- 4) Meritorious defenses to foreclosure chain of title/promissory note, where the federal court might be a more favorable forum or the additional debts the applicant has makes a resolution through bankruptcy more favorable.

Land Loss and Asset Protection

Policy: When resources permit, Legal Aid will seek to help low income Arkansans protect and preserve assets through prevention of land loss and estate planning.

Case Acceptance Priorities:

LAND LOSS

All land loss cases will be evaluated on a case-by-case basis and will be accepted for extended services after consideration of the resources necessary and available, the value of the benefit to the client, and the impact value of the case.

- 1) Deed preparation to assure property ownership and preservation.
- 2) Assisting homeowners with pursuing disaster relief or other emergency housing or assistance.
- 3) Land/sale contracts: Enforcing the buyer's rights if the buyer has a substantial interest in the property, the buyer has a meritorious legal claim, and the property is the buyer's primary residence.
- 4) Bankruptcy: Lien stripping of secondary loans if the equity in the home is too low to protect the lien and the relief from the second payment would enable them to afford the indebtedness on the home.
- 5) Bankruptcy: Creditor Representation
 - a) Protection of an applicant's property interest in their principal residence when a co-owner has filed bankruptcy.
 - b) Protection and enforcement of property divisions pursuant to divorce decrees that pertain to an applicant's principal residence.

WILLS, ESTATES, AND POWER OF ATTORNEY

All non-emergency wills, estates, and power of attorney cases will be priority only to the extent that pro bono resources are available, absent special funding and/or special project priorities.

Emergency wills or power of attorney cases may be considered for limited and/or extended services if resources permit.

- 1) Wills and end of life planning if the client is 60 years of age or older or has a terminal illness.
- 2) Preparation of simple wills for clients under the age of 60 if there is a family homestead distribution at issue.
- 3) Powers of Attorney for the elderly, disabled or chronically ill, or to secure healthcare, education or other necessities for children.