

Michelle Day: [00:00:00] Good afternoon everyone, and welcome to the Fletcher Group Rural Center of Excellence's Webinar series. Today's session is scheduled to run from 2 p. m. to 3 p. m. Eastern Standard Time. My name is Michelle Day, and I am your moderator for the session, along with Janice Fulkerson and Erica Walker. A couple of brief housekeeping items, and then we'll begin.

You entered today's session on mute and your video was off and will remain so for the entirety of the webinar. Your chat feature is located at the bottom right of your screen. Use the drop down feature to communicate with either the panelists only or panelists and attendees. Please direct all questions regarding the webinar content to the Q&A section.

Be advised that this meeting is being recorded and will be available to you on our website once it has been transcribed. You can access our website at www.fletchergroup.org. Also, at the conclusion of today's session, [00:01:00] there will be a short survey regarding the webinar content. Your participation in that survey is greatly appreciated and will only take a few moments to complete.

Joining us today is Brandon Pauley. Brandon is a partner in Brennan Manna Diamond's Columbus, Ohio office. Brandon counsels businesses, professional associations, and health care providers in areas involving financing arrangements, ethics licensure, cyber security, and real estate transactions. Brandon has a national practice providing guidance to recovery housing operators focusing on zoning land use and landlord tenant issues. Brandon's depth of experience on a wide range of matters impacting recovery housing operators provides the knowledge and skill necessary to help his clients navigate complex legal issues in a highly complex industry. Prior to becoming a lawyer, Brandon worked in corporate real estate finance for a Fortune 500 corporation. [00:02:00] Brandon strives to counsel his clients with practical and sensible advice. Brandon, the floor is yours.

Brandon Pauley: Thank you, and good afternoon everybody. Again, my name is Brandon Pauley. I am a partner with the law firm Brennan Manna Diamond, and I am in Columbus, Ohio, where it is sunny and beautiful today. I hope wherever you are, it's equally beautiful out, and you're ready to, hopefully, um, gain some, uh, valuable information to help with your operations as it relates to recovery and recovery housing. And the title of today's presentation is A Practical Guide to Landlord Tenant Issues in Recovery Housing. And the use of the word practical is very intentional. Um, where I try and come from is to provide practical tips to not only help and guide [00:03:00] operators to protect their, their organizations themselves, um, legally, but also to look at the other side of the equation and to provide housing and, and services that are conducive to recovery.

Um, you know, we will get into some, uh, legally complex and nuanced issues in our discussion today. Um, but at the end of the day, I really want to have our, our guiding North Star in this discussion be recovery and what's best for those individuals that are obviously struggling, that are looking for a support system, are looking for services to get better, are taking a proactive approach to getting better, and how we can service that population in a more efficient, compassionate way.

So thank you to Fletcher Group for having me. I've met a number of their team [00:04:00] members and the work they do is vitally important across the country. So the, the disclaimer, um, and not to being annoying lawyer in, in, you know, CYA type, uh, uh, advice and, and disclaimers, but the presentation today is really for general information purposes.

As we get into some of these topics, I'm going to emphasize and probably emphasize a few times that landlord tenant and, and housing issues are oftentimes state level and local level. So depending on the jurisdiction that you're in, I am going to advise you to seek, uh, uh, counsel with any local or state specific questions. I cannot be, uh, uh, an expert in all 50 states and, and jurisdictions in the United States. What we're hopefully going to provide today is general [00:05:00] overviews that are pretty widely applicable to recovery housing operators, no matter where they are in the country. So the agenda for today, um, we're hopefully going to, uh, touch on what is recovery housing, um, whether or not landlord tenant law applies to you.

Just as a spoiler, my, uh, presentation today, it basically makes the assumption that the, uh, recipient, the, the participant today, um, will be subject to landlord tenant law wherever they're situated. We'll talk about leasing and lease arrangements in recovery housing. We'll talk about eviction law. And then we'll also talk about some considerations that are federal. Um, they may have state components to it, but things like Fair Housing, um, eliminating kickbacks, uh, anti kickback, uh, especially if you are an [00:06:00] operator that has some sort of affiliated clinical, uh, service that you provide. We'll hopefully touch on that as well. And then the last two bullet points, best practices and questions. I'm really hopeful to use some Q&A sessions to hear from the participants today in the webinar to either ask questions about their own operations or to share tips on maybe concepts such as entering into written lease agreements, what works best for their organization.

Again, even though your camera and, and, uh, microphone is, uh, not operating. I would encourage you to use the, uh, the chat and the, the Q&A section to, um, write any questions that you may have at any point in time in the presentation, and the Fletcher Group staff will, uh, hopefully be able to curate those, um, identify questions that [00:07:00] are of general, uh, interest and importance to the topic and, and the listeners today. And we'll, uh, be able to address those efficiently. And if I can't address them today, my contact information is going to be available. Please feel free to reach out and I'll do the best that I can to point you in the right direction. So, the objectives, uh, went over this a little bit, but what we're going to try and do is provide tips for providers and organizations, um, to follow when they are providing recovery housing and substance use disorder services.

The crux and the focus of this presentation is really on the provision of recovery housing and laws and regulations that may apply. I understand that uh, a number of you may also have affiliated substance use, uh, disorder services, whether that's counseling or, uh, MAT type clinics, um, maybe even [00:08:00] inpatient, uh, uh, type situations. Um, my colleague Daphne Kackloudis is actually going to be presenting next month, um, with the Fletcher Group, and will dig deep in, uh, maybe that bridge and intersection between compliance issues and more in depth information on the provision of recovery services. We're going to talk about basic obligations in landlord tenant relationships.

We're going to discuss the eviction process. It's a topic that comes up often. It's, uh, not, I'd say for any operator that I represent, um, when it gets to the point where they need to recover uh, the, the house, the premises that they are renting to an individual who, um, just isn't being a, uh, a good tenant and is, uh, causing disruptions and gets to the point where, um, the provider can no longer assist, um, and it's impacting [00:09:00] maybe other participants in recovery. I'll hopefully walk through, um, some key concepts there to do it efficiently, effectively, and with as little cost and headache to you as possible. And then we'll highlight key compliance issues. Even though you're, this is landlord tenant, based on the population, Potentially the sources of payment that you are getting for, uh, providing housing services and maybe affiliated recovery services.

There are compliance concepts that you need to watch out for above and beyond just having your landlord hat on. So, as far as some recovery housing basics, um, you know, I understand many of you are probably already in the space and this is, uh, sort of, you know, normal for you and you totally understand what recovery housing is. But I put up this [00:10:00] definition and touch on it because municipalities, you may be dealing with, they don't know what recovery housing is. And so it's always good, especially when you're entering maybe a new city or township or village, that you have a really great grasp on what you're actually doing and how to define recovery housing.

Because oftentimes, when I am advising clients across the country, there's a misconception on what recovery housing is, and there's a lack of understanding on how to classify it. And that classification can breed implications in how you are treated by, say, zoning enforcement or municipal entities that you may be under. So, recovery housing, aside from just the general meaning that it's housing for individuals, [00:11:00] uh, recovering, I also look at it as, you know, it's almost more of a family unit, as far as how the recovery house operates, rather than a business providing shelter. Um, a lot of my clients, they operate single family homes across the country.

And in understanding the implications of operating single family homes in neighborhoods that may have that NIMBY, Not In My Backyard attitude, I do think it's important to always, you know, step back and make sure whenever you are communicating with, um, uh, either other neighbors and residents or zoning inspectors and officials that you understand what you're actually providing and are able to articulate that in a compelling, persuasive [00:12:00] way so that you are classified the way you should be classified.

So, some principles that I think guide, uh, recovery housing and, and an operator should take heed. Um, you know, three pillars, uh, Administrative Oversight, Quality Standards, and Policies and Procedures, including house rules for its residents. uh, Administrative Oversight, again, this is providing some service to a population in need. And I feel as an operator, you have a duty not only to the resident that you are entering into a lease agreement with, but then also maybe cohabitants in the recovery house, um, so that one individual, one resident's path to recovery doesn't impede or obstruct or negatively impact maybe other cohabitants.

And the way [00:13:00] to do that is to have Administrative Oversight and understand that even though, you know, we're hoping that these homes operate sort of as, you know, almost like a single family unit, um, within the home, uh, there still has to be some, some barriers and, and, uh, guides on the operation and habitation of the house. And, and through that, with the Administrative Oversight, you have to identify and understand what Quality Standards you are, uh, going to abide by. Um, this is not only from a provision of, of, uh, recovery-related services, the quality of those, but then also as a landlord, um, quality standards. So the homes that you operate are habitable and do not get you into hot water with potential local, state, or even federal, um, uh, hot water because, you know, you just didn't pay [00:14:00] attention to the level of quality, not only from service, but also structural uh, quality that, that you may have to provide.

And then Policies and Procedures, um, these really, I, I see it as imminently beneficial for both sides of the equation. Having Policies and, Procedures as an operator, it protects you to, again, enforce the quality standards and wield the administrative oversight that you may have in place. Um, when it comes to these, uh, landlord tenant relationships, oftentimes it, it is a contractual relationship, and that could be oral, uh, contract or written contract.

And having Policies and Procedures in place, it protects from misunderstandings. And he said, she said about what can or cannot be done. Um, here, We are addressing a population in need, a [00:15:00] population that is seeking proactively, uh, some sort of recovery to better themselves. And as operators, you're going to hopefully provide services that, that move those individuals closer to recovery. And in doing so, you oftentimes have to have rules, um, to guide them along. It's, for their benefit, um, but those rules are, I would say, really only enforceable when they're reduced to writing and they're understood and acknowledged by the residents. So, uh, you'll, you'll hear that throughout the presentation today, the importance of reducing items to writing and having agreements and, uh, uh, the, the guidelines of the relationship reduced to writing.

Now, uh, landlord tenant laws, they don't apply in all scenarios involving housing. Um, [00:16:00] the focus of this presentation sort of assumes that a landlord tenant relationship exists. So, again, if you're providing what is deemed maybe like a boarding house or a lodging house, um, or an inpatient treatment clinic that has a residential component to it, you may not be subject to, uh, state specific landlord tenant laws. Um, that's a determination you need to make based on what sort of, uh, uh, structure the, um, number of, uh, those inhabiting, um, and then also the type of services that are, that are provided. Many of my clients, uh, providing recovery housing, they do not provide clinical services

inside the house. That is at some, you know, third party location outside the house. Now, that doesn't mean there are not common areas, perhaps, [00:17:00] that, um, there can be some sort of counseling, but oftentimes the, the recovery house is housing, and it's separate and distinct, and, uh, uh, does not provide clinical services under that roof. So, in those scenarios, um, my general position is that, uh, landlord tenant law would apply. And landlord tenant law is state specific. So, you, there are, uh, 50 different, um, codes that may have 50 different, uh, sets of laws as it relates to being a landlord. And again, I'm not an expert in, in, uh, all of those, but there are some concepts that I see whether you're in Ohio, which the majority of, of my practice is with Ohio providers.

Um, I've, uh, uh, advised recovery housing clients in Minnesota, Indiana, Kentucky, Pennsylvania, [00:18:00] Florida, California, Missouri, and, and all those states have, even though they're not exactly the same, they have concepts that you see from state to state. So what I'm going to try and do is go over some of those concepts. You know, generally, the, the three bullets on here, it can be reduced down to one concept. Provide livable quarters. Okay, so if you are holding yourself out to be a landlord, and you're providing, you know, either a single family residences or multifamily residences for recovery housing. One of the concepts that you, you should be keen on is providing things like, um, running water, uh, heating in the winter, uh, electrical, plumbing, appliances, if you so choose to provide it that are, uh, in good working condition.[00:19:00]

Um, one other concept that I, I do want to address and is a hot topic and we'll get into it, uh, in more detail. Um, a landlord does not have the right to enter uh, the premise of a rental property at any time without notice. Um, that's a concept that is, uh, I, I think pretty, uh, standard and uniform across the country no matter what state you go, uh, into. Um, and so that's one unique factor that we have as landlords of recovery housing. How do you deal with individuals that may relapse. How do you deal with potential usage, um, in a recovery home? Uh, and, and address that when most state laws say you have to give reasonable notice before you enter, um, uh, a, a residence, which usually is 24 hours.

In our situation, we don't have 24 [00:20:00] hours, so hopefully I'll be able to provide some, uh, tips and, and, uh, tools on how to address that issue, um, that I often hear from my clients. So, as touched upon in the opening with the Policies and Procedures and reducing items to writing, rental agreements, they are permitted in recovery housing settings, and I urge, if not demand, that my clients reduce lease agreements, rental agreements, to writing with their residents. Again, without a written lease, um, oftentimes it becomes "he said, she said," and when we are dealing with a population that is, um, already, uh, having, you know, perhaps having [00:21:00] troubles, um, they are, uh, dealing with a, a classified disability, um, having a lease it protects you, the operator, first and foremost.

There are certain basics that we'll go over, but the the most, uh, basic of basics is to put it in writing. There can be oral leases, but I just think that that breeds trouble for you down the road. Um, the, the, a core concept of a lease is that it's a mutually agreed upon document. So, you know, broadly, what a lease does are two main things. Um, a tenant agrees to pay rent when it's due, and two, to live by house rules. Now, in our setting, those house rules may include an obligation with a commitment to remaining sober and receiving some sort of clinical treatment parallel with [00:22:00] their stay. In exchange for those concepts, paying rent and abiding by the house rules, you, the landlord, will agree to provide them a safe, clean, habitable space as a tenant.

Um, in, in talking about, you know, some of these issues and, and especially with, uh, somebody who's in addiction recovery being a protected class under some federal laws. You, the operator, cannot have residents waive their housing rights under federal and state law. So, for example, a lease. or a rental agreement, which again are used interchangeably, same thing. It cannot have a clause in there where the tenant is waiving any and all rights that they have as a tenant under state or federal law. Can't happen. So lease basics, um, again, I'm going to sort [00:23:00] of glide through some of the lease basics, but the key terms that I really want you to understand to have in there, names of parties, you want to identify the property.

Now, if there are levels of treatment and potential transfers through those levels of treatment and your operation has multiple residences, I would provide for, uh, you know, say, 123 Main Street or any, uh, future additional property operated by operator, you know, make sure that you take that into consideration. One of the items I've dealt with practically is when you have levels of care. And you have somebody that maybe entered a lease agreement when they were in a, uh, you know, level two, and they transfer to a level one, uh, location. And then an issue arises, and the lease says a specific address that they no longer reside in, that can be a problem. So I do want to identify that as a point of, [00:24:00] uh, clarification. Uh, the duration of the lease.

Janice Fulkerson: We had a question that is related to one of the things that you just mentioned that I thought would be good to clarify at this point. One of our listeners said, I believe I just heard that the lease cannot require a tenant to participate in clinical care or maintain their sobriety. However, the house rules can. Is that correct?

Brandon Pauley: Yeah, so here's a couple, uh, items on that. So a lease will often incorporate the house rules into it. And so, you know, on the lease, how I generally set it up is I have it basically as a landlord tenant relationship, um, you know, basic lease, here's your, uh, uh, you're going to live here. And then I incorporate by reference Rules and Regulations and House Rules that are on a separate document. Now, Every lease that I do has some sort of [00:25:00] obligation that there be

participation in recovery. Again, this is recovery housing. Now, there is a prohibition, an outright prohibition, that will get you in hot water if you say, um, you have to, uh, participate in a certain, um, recovery program. Because then that becomes ripe for, uh, uh, kickback, uh, review and, and other issues that may arise from that. So, generally speaking, I do keep, uh, uh, you know, sort of that, that sober requirement, I keep that in the House Rules and Regulations that are incorporated by reference in the lease, but I certainly also stop short of requiring any specific type of treatment or program to avoid any of the regulatory pitfalls that, uh, may come with that. So hopefully Janice, that answers that question.

Janice Fulkerson: It did. Thank you very [00:26:00] much. And I'll just encourage all the listeners to continue to put your questions in the chat, um, or in the Q&A box and we'll try to get to all of them at the end. Um, but as they're relevant, I'll ask Brandon.

Brandon Pauley: Alright, so after identifying the property, you want to identify the duration. Uh, this could be week to week, month to month, annually, you want to identify rent. And then as I said, Rules and Responsibilities, which oftentimes, um, uh, are incorporated by reference. So, uh, the duration of the, the lease, um, there's no set requirement. You can do week to week, month to month. You can have an annual lease. Uh, a practical tip that I generally encourage in, in this scenario. is to do week to week leases, especially in sort of the early process of recovery. And there's a few practical reasons for that. [00:27:00] One, when we get to a discussion about evictions, and again, I don't want to gloss over it, but it can be difficult to evict somebody depending on the state that you're in.

If there is an eviction, an issue, you know, with a breach of one of those house rules. Most states have a grace period of 30 days to cure any breaches of the lease before you can actually file a lawsuit to a evict. The easiest, most efficient ways to get to a court to recover your your property is non payment of rent and a termination of the tenancy. And with a week to week, even if somebody is being really disruptive and if, if you choose not to renew that weekly lease and we have a termination of lease, we can then go to court to recover the residence. As opposed to if we have month [00:28:00] to month or annual leases and there is a disruptive tenant that's impacting

other people's sobriety. By law, we wouldn't be able to just go in with a three day notice to vacate where you can if there's non payment or termination of tenancy or some sort of, you know, crime, drug offense that's being committed. You would have to wait and give them the ability to cure that, that breach. With week to week, I find it more efficient and easier, um, to recover the, the premises. So, from just my practice standpoint, I encourage shorter durations that are renewable. And as far as renewals, you need to outline what the procedure and the conditions for a lease renewal. You can have automatic renewals that renew every single week so it doesn't become a huge administrative burden.

Um, so, you know, just think about, uh, what's best for [00:29:00] not only you as an operator, but, uh, for your population as well. Um, the concept of rent, uh, you know, one of the, the things that I say is strictly from a landlord perspective is when you charge it, collect it. Um, if you expect to be paid rent, and you, uh, you forego collecting rent over a period of time. If you want to recover your property, um, and the basis of recovery is because the, the tenant hasn't paid rent, but you've effectively waived rent for a number of months through, through not trying to collect it. Sometimes the court can view that as you modifying the terms of lease. Um, and you wouldn't be able to

enforce your rights as a landlord because of those waivers. The other thing with rent is be cognizant of regulatory issues. Um, if you provide discounts and I [00:30:00] got almost all of my clients in this space, they provide some sort of discount, whether that's need based discounts, scholarships, it's phrased many different things.

What I would encourage is to develop, to develop a written process that's documented, um, that, you know, has some sort of reasonable, uh, relation to a need based. Especially if you have a clinical, uh, uh, affiliate or, uh, you know, some sort of, of, uh, clinical service that you're also providing to the population. You don't want to, uh, be accused of or have a spotlight, uh, targeting you on either, uh, eliminating kickbacks and recovery, ECRA, or, uh, Anti Kickback Statute, the AKS. Um, you know, generally, the AKS, uh, it only applies, um, uh, [00:31:00] to federal payors. But even third party, uh, insurers, they have their own language that sort of emulates, um, ECRA and AKS, uh, conceptually.

So, uh, again, policies and procedures, if you're going to provide discounts, um, make sure those, that process is, is in place. written somewhere. You follow it, you can defend it. Again, a compliance perspective. My baseline advice is to charge fair market value, and then you develop a financial need based policy to assess housing clients. And you assess the, the client individually for each housing client. Don't just do wave a magic wand and say anybody that is applying for tenancy here needs to have free rent because not all residents are going to be exactly similarly situated. So, uh, [00:32:00] this does, um, uh, touch on that, that question Janice that came in, uh, requirements for sobriety. Um, again, I. Every client that I deal with in recovery housing has some, you know, I'll say codified in writing, uh, requirement for, uh, involvement in recovery. Now, it, it doesn't have a requirement for participation in any specific services, but it does have a requirement that they take, um, uh, their sobriety seriously.

And again, I usually put that in, um, like a Resident Handbook, House Rules, whatever you want to call it, that is referenced within the lease. And I make sure every resident gets it. And in those Resident Handbooks, I make sure that there's a receipt of, or an acknowledgment of receipt, [00:33:00] where as part you know, day one of that individual staying at your residence, I have them sign an acknowledgement that they've received the Resident Handbook or the House Rules. Again, it removes any of the "he said, she said" about what was expected of the resident. So, uh, duties of the landlord, and I'm going to go quickly through this again, because each state has their, um, has their own laws that govern. Uh, generally speaking, most states have some sort of requirement of a habitable condition. I believe there were only two states, it might have actually been Kentucky and Arkansas if I recall, that, um, had an express, uh, uh, I guess statute that said, you know, a landlord can rent, and it's the tenant's obligation to make sure it's habitable, [00:34:00] um, but most states if you're holding yourself out as the landlord, there is at least a minimum baseline of keeping the home, in a fit and habitable condition.

And sometimes that requires repairs along the way. Um, so just be wary of that. Um, and if you're providing appliances, where most states you, you don't have a duty to supply appliances, but if you are supplying a refrigerator, um, you know, something like that, uh, it, it's on you to make sure what's supplied is in working condition. The one note that I have on here is beware of entry in an unreasonable manner or making repeated demands for entry that would otherwise be viewed as unlawful and harassing the tenant. You need to have this reduced to writing [00:35:00] in your Resident Handbook or somewhere as it relates to what gives cause, um, and what gives you, the landlord, a right to enter the premise.

Uh, most states, again, have a 24 hour baseline as what's reasonable. And, in operating recovery housing, you know, what's reasonable in the event that somebody is drinking or using in the house, jeopardizing their own, uh, uh, sobriety, but then also maybe co-residents what's jeopardizing their sobriety. So in the Resident Handbook, what I do is I put in very specific language about relapse and what a relapse policy looks like and what, uh, the, the landlord's rights look like on suspected relapse. And I try and balance that with, um, the rights to privacy that that tenants have. So, again, [00:36:00] I do that on sort of a operator by operator basis, but I don't want to sit here and say, you know, don't ever enter the premise without giving 24 hours notice because I know just from my own practice that that's not practical in all scenarios and there can be dire consequences if you're not able to enter and search the premise.

Upon a reasonable suspicion that there may be a relapse or use of substance. So, Duties of Tenant, again, state specific, but, um, you know, I try and outline some of these in the actual lease agreement. So, keep the premise, uh, safe and sanitary, dispose of trash. Uh, many of my operators have Good Neighbor Policies that are within the Resident Handbook or the House Rules. So I do try and incorporate some of these, you know, widely [00:37:00] held duties of tenants, not only in the lease as obligations and a condition of habitation, but then also taking these concepts into a good neighbor policy, which can then be used to demonstrate to neighbors, to municipalities, zoning inspectors, that you not only are looking out for the residents of your property, but also trying to be a good neighbor to those other residences around you.

So, uh, again, tenant obligations, these should be reduced to writing in the lease, especially as it relates to paying rent, um, and keeping the premise clean and sanitary. Um, and, and just to, to piggyback off of, uh, the request to enter the premise, um, tenants are not permitted to deny reasonable requests uh, by the landlord to enter the premise where you get into a gray area and you need [00:38:00] to, uh, you know, either use your own sound judgment or, or consult with your own legal counsel, is what is reasonable in light of some of the extenuating circumstances and special circumstances recovery Housing Operators often deal with. So, uh, Fair Housing and Reasonable Accommodations. You know, one thing, the Fair Housing laws, they're are overarching federal fair housing laws, which everybody is subject to. And then, um, many states, if not all states, uh, reduce some sort of, uh, codification of these concepts in their own state statutes.

So, uh, from, you know, our perspective, I kind of use fair housing to cover federal and state. Um, the important concepts that we need to know as landlords is [00:39:00] that an individual in recovery and, and, uh, uh, dealing with alcohol or, or drug related addiction, that is, uh, a protected class, and it's viewed as a disability under Fair Housing laws. Um, and with that with that protection, um, as a landlord, you generally have, uh, an obligation to consider reasonable and consider and provide reasonable accommodations or modifications, um, to allow your tenant to have equal access and opportunity. The most common one that, that we see in the Rules and Regulations or Resident Handbook, there's, you know, almost every operator I deal with has an outright prohibition on alcohol or drugs, prescription or otherwise.

A reasonable accommodation in this context [00:40:00] may be somebody that is dealing with some sort of medication assisted treatment that um, they be permitted to have their medication that is duly prescribed. You can ask them for that proof that it's prescribed and necessary. Um, but that is a reasonable accommodation in this context. Um, again, this is just to highlight, uh, uh, disability. Um, uh, Recovery and Addiction, uh, is, uh, has consistently been recognized as a disability under federal law in, you know, at least every state that I have looked at. Um, this, again, the, the PowerPoint will

be available to you, um, if you want to get into the weeds of, of Fair Housing laws and actually read, uh, the, the Fair Housing Act, um, the citation is within this slide here.

Um, Reasonable Accommodations. [00:41:00] Again, tenants can ask for reasonable accommodations. Just because a tenant asks doesn't mean you have to provide it. Um, so again, Medication Assisted Treatment is probably the most common. But another one, um, is, uh, uh, you know, support animals. That's been one that, that I've seen pop up, uh, uh, recently and, and quite often, um, as to do you have to allow an Emotional Support Animal, um, into a, uh, residence. And, uh, even if there's an outright pet ban. Again, I look at. You can ask for proof, you can ask for, um, underlying, uh, uh, prescriptions, or, or a recommendation by some sort of healthcare provider that an animal is necessary, um, and you can ask questions and, and make a consideration as to whether or not that animal is going to be [00:42:00] disruptive to the other tenants, um, but you can't just have an outright prohibition regardless of whether or It's an Emotional Support or, uh, some sort of, uh, service animal.

Um, uh, Some items that aren't necessarily required, but I, I do think it's best practices and, and something that ultimately helps protect you and, uh, uh, provide a more conducive environment for recovery to your, uh, uh, Uh, uh, tenants, um, in your housing handbook, maybe have some sort of administrative process for, um, facilitating reasonable accommodations, um, put that down. What does the review process look like? How do you request a reasonable accommodation? Um, some common ones that I see is, um, uh, most often dealing with situations that may involve relapse. Um, you know, how do we get a referral to a [00:43:00] treatment provider, a crisis center? Um, maybe if the, the relationship is, uh, uh, ending, uh, maybe referrals to other recovery housing providers.

Um, those are some examples that I'd like to see by providers that ultimately, um, may insulate you. against, uh, uh, claims that, that may come from opportunistic, uh, plaintiff's counsel. Uh, Retaliation and Discrimination. You know, what is retaliation? The, the sort of most common retaliatory actions that can open you up to, um, uh, potential liability is, You know, saying, hey, you've been a bad tenant, and because you're a bad tenant, your rent, instead of being \$500 a month, it's now \$1,000 a month. You decrease services. So that would be like, uh, uh, you provided appliances, a refrigerator, a microwave, and a [00:44:00] stove. You go in and say, hey, you've been a bad tenant, I'm going to remove the, um, refrigerator, microwave, and stove until you shape up. Those are retaliatory and can get you in hot water, or, um, you retaliate by bringing an eviction because the tenant complained to a government agency about code violations, or, uh, you know, say threaten their own legal action because they're, uh, uh, asserting that the landlord violated their legal duties.

Um, you have to be very cautious of the emotion of retaliation because most states have statutes that provide not only for, uh, certain rights of the tenant to terminate the lease relationship, but to also go after, uh, damages and [00:45:00] recovery of legal fees. So, um, you know, even if the, the, uh, lease is, uh, relatively low dollar value, you can be met with opportunistic plaintiff's counsel who view their defense, or I should say prosecution of a retaliation claim as an open checkbook for them to accrue legal fees.

Compliant Recovery Housing. Again, I, we'll, in the next seminar that my colleague is going to um, uh, have in a month, Daphne, uh, she will really get into more of the nuanced compliance. Especially as it relates to receiving payment and providing, uh, uh, services parallel to housing services. I should say clinical services parallel to housing services. So you do want to be [00:46:00] cognizant,

especially if you're in that situation. Um, of ensuring that you're not providing housing as an inducement for, um, some other form of, of, uh, payment, especially if that payment is coming from a federal or state, uh, uh, you know, let's say Medicaid type, uh, uh, payment. Um, recovery home operators should never provide remuneration, remuneration being payment, um, to induce residents, uh, to use associated clinical services. That's probably the fastest way, um, uh, to get a lawsuit coming against you or, or claims coming against you. Um, Right of Entry, we, we've touched on this. Uh, so, you know, again, 24 hours is, is sort of the general standard. Uh, tips that I always knock before entering. Um, announce your presence, uh, before opening the door or crossing the threshold. [00:47:00] And by threshold, I mean like common area threshold. So when you're in the entryway, a lot of the houses that I deal with as single family homes, it'll look like a single family home, but then the bedrooms or build out rooms will be specific to the resident.

So, um, before you, uh, enter a specific room that is private and personal to a resident, um, make sure that you announce that. Uh, as far as the timing negotiation, um, again, I, I try and outline scenarios that are specifically emergencies, um, so suspected drug and alcohol use. I always put that in the Resident Handbook is as being a scenario that, uh, requires emergency just like a busted water pipe, maybe an emergency that requires immediate entry, um, in our, uh, context, I, I believe, uh, suspected drug and alcohol use, [00:48:00] uh, is that. Have I been litigated on that? No, um, but it's something that I, I know the operators that I represent, uh, they find that, uh, near, dear and essential, um, for them to be effective, uh, recovery housing providers. Now, uh, evictions, um, generally speaking, when you try and evict somebody, you have to give three day notice, uh, depending on the state municipality, uh, and county that you're in.

That may be three business days, it may be three calendar days, um, but three day notice generally is when tenant failed to pay rent, they stayed in the unit after the termination or expiration of the rental agreement. Um, those give you the right to, to have a 3 day. Generally, if there's a breach of lease or a breach of a Resident Handbook, you have to give 30 Day notice to Cure. And, [00:49:00] uh, Notice to Cure, um, generally outlines you know, what the, the, uh, what the breach is and then it, you know, the tenant can always come back and say, Hey, you know, I, I was disruptive because I got into verbal altercations, um, and threatened somebody verbally.

I don't do that anymore. Arguably they have resolved it and even though they're problematic and, uh, putting into jeopardy other people's recovery, um, you know, in the eyes of the court they have cured that suspected, uh, uh, breach of lease. So, if they cure, there's no grounds to pursue. So, going back to the duration of lease, that's why I look at the shorter durations, so you don't run into this frustration where somebody may be paying rent, they have a lease, their disruptive activity doesn't rise to the [00:50:00] level of, of being, uh, grounds for an immediate eviction.

I would rather be able to go to court with an expired lease than have to go to court standing behind 30 Days Notice and a Failure to Cure before I can move forward with that eviction. So, the way that an eviction usually works, again, you file the notice. After that notice has expired, you file an action with the court. Usually, there's two causes of action. One, is to recover the residence. The second one is to recover damages. In some scenarios, I don't even mess with the second cause of action to recover damages for unpaid rent or maybe, you know, damages to the premise, because a lot of the population is not going to be recoverable anyways. So I just, I'm very focused on that first cause of action, which gets you an expedited hearing to recover the [00:51:00] premise.

Defenses to Eviction. Failure to Give Three Day Notice is the most common one. The notice didn't include language required by law. Make sure whatever jurisdiction you're in. In Ohio, for example, you have to have conspicuous, which often means bolded, capitalized terms, a little blurb that's required to be put on the notice. And, um, another one is that, uh, Landlord Accepted Current Rent After Giving a Three Day Notice. Um, if you're trying to evict somebody, during that process, don't accept late rent because that restarts the clock on you. Um, and there are always defenses like retaliation, discrimination. or you're trying to oust them based on an unconscionable lease provision. The one thing that I do want to note here, [00:52:00] um, attorney didn't file on behalf of a corporate entity. Uh, most states, you cannot have a corporate practice of law. So, if you have an entity, um, that you operate from, which for shielding and limiting your liability is, is, very advisable and essential. You as the owner of that entity, unless you're a licensed lawyer, cannot file the eviction on behalf of that corporate entity.

You have to engage counsel to separately file on behalf. So keep that in mind when you're going to assert your rights. Self Help Eviction, again, all this does is open you up to liability. You can't shut off utilities. You can't change the locks. You can't seize, you know, take all the tenants possessions out. Self Help Evictions are probably the quickest way to get you sued in this context. And again, [00:53:00] oftentimes, attorney's fees on the other side will be recoverable against you. So with that, um, Janice, I tried to move through that. Hopefully I didn't go too quickly and some of it stuck. But if you have questions in the last 8, 10 minutes, we can address those.

Janice Fulkerson: Oh, Brandon, we have two dozen questions ready for you. And so a couple of them, I'll try to pull together and see if we can work them in at the same time. So uh, one of the questions, um, is related to the rent. So, sort of both ends of the spectrum. How, uh, do the lease and the issues that you brought today, um, apply to organizations where there isn't rent that's charged, so the programming is free to the residents or the [00:54:00] ability to stay in the house is there is free? Kind of along the same lines, sometimes related to the activities that you outlined in the duties of tenants. Beyond the keeping the place clean and tidy and taking out the trash. Some programs require, I'm going to say work. You know, like in a social enterprise arena. So you have both ends of the spectrum there. How would you advise someone in their policies and procedures related to both of those?

Brandon Pauley: So, the first part of the question is it relates to rent. I guess the guidance that I provided in the presentation, I would stand by. If you're providing free, have some sort of criteria that qualifies somebody for free rent. Don't just you know, kind of, um, be [00:55:00] silent on that. Maybe have a policy stating, we have identified, you know, the, the needs of this population, um, in order for them to get, uh, back on their feet, we have decided to provide free rent, um, and have a, some sort of written guidelines for that, even if you broadly apply that as a standard policy across the organization.

Um, I, I do, where it gets stickier, again, if you have an affiliate that is providing clinical services that are then reimbursed, um, through a federal or state payor, or some other third party, uh, insurance payor that may have those concepts of anti kickback and eliminating kickback ECRA, um, uh, in their, uh, contracts, you, you do need to be cognizant and, and cautious, uh, of those scenarios. For example, you operate a recovery home that is [00:56:00] right next door to the clinical services, and you're providing free rent with the expectation that the individual is going to walk next door to get their clinical services. I'm not saying you can't do it. What I'm saying is, have policies written that are

defensible, if you're ever scrutinized, you can at least point to a good faith justification and business justification, um, for providing those benefits.

Now, as, as it relates to the working, um, again, have it reduce the policy and make sure that the residents understand what they're, they're signing up for. Um, I have clients who have a work requirement. It's, it's not a um, it's not like a community service type requirement that I usually run into that you have to, you know, go, uh, uh, you know, clean a park for three hours a week or whatever it [00:57:00] is. But they do have a requirement that you provide proof of gainful employment. Again, make sure it's clear. Uh, and make sure the, the, uh, tenant has received some sort of, um, handbook, house rule, policy that specifically outlines that requirement.

Janice Fulkerson: So, clarification on the work requirement, um, the recovery house also owns and operates a, uh, social enterprise, um, but the guidelines of the house say gainful employment. May not say where they have to have gainful employment, correct? So that if a recovery house is requiring a resident to work specifically at the social enterprise, then it sounds like that gets a little sticky.

Brandon Pauley: It can, but again, I, I want to get into the specific facts and the relationship between that social enterprise and the recovery home operator. Um, what, [00:58:00] here's what I would say. Again, don't just stay silent on it and not have it, you know, written out that, that, um, there's a freedom of the resident to go get gainful employment somewhere. Uh, other than that, I, I wouldn't necessarily tether one to the other without a full review and summary that you're not going to have some sort of, um, uh, that you're not going to have a compliance issue with it. So, you know, sitting here, I don't know, maybe, maybe there is no compliance issue to worry about, but if you're tethering specific free rent with specific employment at some other enterprise, I would at least have somebody from a compliance perspective look at that relationship.

Janice Fulkerson: That's a great answer. Thank you, Brandon. Um, a question, several questions came in related to entry. So some recovery houses, as you know, have live in resident, um, house managers, someone [00:59:00] who is there on site, um, and lives in the resident, uh, in the residence. Um, do the 24 hour notice, uh, apply in those cases as well?

Brandon Pauley: Well, so when you have a resident or a house manager. And again, I'll just speak to what my experience has been. When, when you're in these homes, you do have, you know, there's the house, but then the individual is usually renting a room within that house, which then may have, and probably should have, um, a specific lock on that bedroom door, which, which is their personal space. Uh, I don't think I'd ever advise a client that just because they have a house manager in there means that that house manager at all hours of the day at any time can rummage through a tenant's belongings. A. It's not conducive to having a, [01:00:00] uh, harmonious, um, cooperative, uh, house relationship and can lead to fights and I've, I've seen, you know, all sorts of, uh, situations that degrade into something you, you don't want to have to deal with.

Um, but from a legal standpoint, uh, I would, again, put that in the house rules and policies and look at it from the specific perspective of, okay, the, the house manager, uh, if there's suspected drug use, suspected alcohol, um, that they can announce a search or something like that. So again, I would, I would try and be, uh, I don't know if cautious is the right word, but be intentional with, um, scenarios and situations to where you're trying to build that right in.

Janice Fulkerson: Right. Thank you, Brandon. Um, I think we might have time for maybe one more question and then, um, we literally do [01:01:00] have about 14 other questions that we will try to get to you and see if we can't answer them offline, um, with the folks who have asked the questions. Um, and then also we'll save them for next month at our next webinar. And some of them, I believe your colleague may be able to answer as well at next month's webinar. So, this final question is, do you see a difference between something being called a program fee that includes. The ability to stay in a recovery house, um, versus a lease.

Brandon Pauley: So I personally don't, um, and I have clients that use both sort of interchangeably when, when I look at it from a legal perspective, that old saying, you could put lipstick on a pig and it's still a pig, like, you know, you can, you can dress things up and, and, uh, call it whatever [01:02:00] you want, but at the end of the day, especially if you're trying to enforce it or somebody is trying to enforce against you and prosecute claims against you, there are certain principles that are going to be indicative of landlord tenant relationship and whether you call it a rent or a program fee or whatever it may be, at the end of the day, they're paying, um, you know, potentially paying in exchange for, uh, their ability to be a tenant at the property owned by you, the landlord.

So some lawyers may differ, uh, from me, and I often encounter lawyers who say I'm wrong on things, and that's just the way it is. But, um, I, I look more at the substance of the relationships than I do Um, any, uh, uh, you know, nomenclature or facade that's being attempted to, to cover the [01:03:00] true nature of the relationship.

Janice Fulkerson: Thank you, Brandon. This has been fabulous. We, um, have come to the end of our webinar. We have captured all of the questions in the Q&A, and in the chat. And we will try to get back with everyone to try to answer their questions in the next week. Also, I want to remind everybody that this webinar and the related materials will be posted on the Fletcher Group website next week. So anyone will be able to go out there and review the information, um, and we will post Brandon's contact information as well. Thank you, Brandon. Thank you. This was fabulous. Lots of appreciation in the chat and in the Q&A for everything that you've shared with us today. And I would encourage everyone who wants to deep dive to come back next month when Brandon's colleague will be with us. Thank you.

Brandon Pauley: Janice and everybody at Fletcher Group and all the participants. Thank you.