



Domestic Violence and Housing

*A Manual and Toolkit
for California Advocates*



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A Manual for California Advocates



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- ACLU Women's Rights Project, www.aclu.org/fairhousingforwomen
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- Bay Area Legal Aid, www.baylegal.org
- California Partnership to End Domestic Violence, www.cpedv.org
- Central Jersey Legal Services, Inc., www.lsnj.org
- Greater Boston Legal Services, www.gbls.org
- Legal Aid Foundation of Los Angeles, www.lafla.org
- Legal Aid Society Harlem Community Law Offices, www.legal-aid.org
- Legal Assistance Foundation of Metropolitan Chicago, www.lafchicago.org
- Legal Momentum, www.legalmomentum.org
- Legal Services of Northern California, www.lsncl.org
- Mid-Minnesota Legal Assistance, www.midmnlegal.org
- National Law Center on Homelessness and Poverty, www.nlchp.org
- Sargent Shriver National Center on Poverty Law, www.povertylaw.org
- Utah Legal Services, www.utahlegalservices.org
- Victim Rights Law Center, www.victimrights.org
- YWCA of San Diego County, www.ywcasandiego.org

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TABLE OF CONTENTS

CHAPTER 1

Introduction

1.1	The Relationship Between Domestic Violence and Housing	1
1.2	The Material Covered in This Manual.....	2
1.3	Terminology.....	3

CHAPTER 2

Finding Housing and Resources for Survivors

2.1	Introduction.....	5
2.2	Overview of Federally Subsidized Housing Programs.....	5
2.2.1	Public Housing.....	6
2.2.2	Section 8 Housing Choice Vouchers	7
2.2.3	Section 8 Project-Based Vouchers.....	7
2.2.4	HUD Project-Based Section 8 Developments	8
2.2.5	Other HUD-Subsidized Programs.....	8
2.2.6	Programs for the Homeless.....	8
2.2.7	Rural Housing Programs.....	9
2.2.8	Low Income Housing Tax Credit Program.....	9
2.3	Housing Resources.....	9
2.3.1	Domestic Violence Shelters.....	9
2.3.2	Victim Compensation Program Relocation Assistance	10
2.3.3	CalWORKS Homeless Assistance Program.....	10
2.3.4	211 Hotline.....	11

CHAPTER 3

Survivors' Rights in Applying for Housing

3.1	Introduction.....	12
3.2	Addressing Negative Credit and Tenancy History	13
3.2.1	Poor or No Credit History.....	13
3.2.2	Poor Tenancy History	14

3.3	Determining Survivors’ Eligibility for Federally Subsidized Housing	15
3.3.1	Income Limits	15
3.3.2	Immigration Restrictions	16
3.4	Waiting Lists and Preferences	17
3.5	Screening by PHAs and Owners.....	18
3.5.1	Criminal History	18
3.5.2	Previous Debts, Evictions, and Terminations Involving Federally Subsidized Housing.....	20
3.6	Mitigating Circumstances	21
3.7	Challenging a Denial of Admission to Federally Subsidized Housing.....	22
3.7.1	Notice of the Denial	22
3.7.2	Preparation for Challenging the Denial	23
3.7.3	The Informal Hearing/Review	23
3.8	Conclusion	24

CHAPTER 4

Safety Planning in Rental Housing

4.1	Introduction.....	25
4.2	Safety Planning for Survivors Remaining in Their Existing Homes.....	25
4.3	Safety Planning for Survivors Relocating to New Homes.....	26
4.4	Safety Planning for Survivors in Public Housing.....	27
4.5	Safety Planning for Survivors with Section 8 Vouchers	28
4.6	Conclusion	29

CHAPTER 5

Common Landlord-Tenant Issues Survivors Encounter

5.1	Introduction.....	30
5.2	The Landlord’s Duty to Provide Safe Housing.....	30
5.3	The Landlord’s Duty to Protect Tenants from Criminal Acts by Other Tenants.....	32
5.4	Removing the Batterer from the Unit	33
5.5	Lock Changes.....	34
5.6	Breaking the Lease to Escape Violence.....	34

5.6.1	Overview of Civil Code § 1946.7	35
5.6.2	Security Deposits	36
5.6.3	Survivors Who Lack Required Documentation to Break the Lease	36
5.6.4	Eviction of the Abuser After the Survivor Leaves the Unit.....	37
5.7	Conclusion	37

CHAPTER 6

Survivors’ Rights Under Fair Housing Laws

6.1	Introduction.....	38
6.2	Fair Housing Laws.....	39
6.2.1	Housing Covered	39
6.2.2	Groups Protected by the Laws	40
6.2.3	Prohibited Conduct	41
6.3	Discrimination Based on a Tenant’s Status as a Domestic Violence Survivor	41
6.3.1	Disparate Treatment Theory	42
6.3.2	Disparate Impact Theory.....	44
6.4	Protections Against Sexual Harassment in Housing.....	46
6.4.1	Overview.....	46
6.4.2	Quid Pro Quo Harassment	47
6.4.3	Hostile Environment Harassment	48
6.4.4	Fair Housing Interference	48
6.4.5	Other Claims for Tenants Experiencing Sexual Harassment.....	49
6.4.6	Practice Tips.....	49
6.5	Enforcing Rights of Survivors Who Have Faced Discrimination	50
6.5.1	Informal Advocacy	50
6.5.2	Eviction Defenses	50
6.5.3	Administrative Complaint.....	51
6.5.3.1	Department of Housing and Urban Development Complaint.....	51
6.5.3.2	California Department of Fair Employment and Housing Complaint	51
6.5.4	Civil Lawsuits	52

CHAPTER 7

Housing Rights of Survivors with Disabilities

7.1	Introduction.....	53
7.2	The Right to Reasonable Accommodation	54
7.2.1	The Fair Housing Act (FHA).....	55
7.2.2	Section 504 of the Rehabilitation Act of 1973.....	55
7.2.3	The Americans with Disabilities Act (ADA).....	55
7.2.4	California Laws.....	56
7.3	Defining “Reasonable Accommodation”.....	56
7.3.1	Federal Definition of Disability for the Purpose of Reasonable Accommodation	56
7.3.2	California Definition of Disability for Housing Discrimination Purposes	57
7.3.3	Exceptions to the Definition of Disability	58
7.4	Requesting an Accommodation	59
7.5	Common Issues for Survivors.....	61
7.6	Enforcement.....	63
7.7	Conclusion	63

CHAPTER 8

The Violence Against Women Act and Rights of Survivors in Federally Subsidized Housing

8.1	Introduction.....	65
8.2	Types of Housing that VAWA Covers	65
8.3	Individuals Whom VAWA Protects	66
8.4	Proving Domestic Violence, Dating Violence, or Stalking Under VAWA.....	67
8.5	Survivors’ Rights to Confidentiality Under VAWA	68
8.6	VAWA’s Protections for Survivors Applying for Housing.....	69
8.7	Survivors’ Rights in Moving with Section 8 Voucher Assistance	70
8.8	Survivors’ Rights in Moving to Another Public Housing Unit	71
8.9	VAWA’s Protections Against Evictions and Subsidy Terminations.....	72
8.9.1	Overview of the Protections Against Evictions and Terminations.....	73

8.9.2	Limitations on VAWA’s Protections.....	74
8.9.3	Examples of How VAWA’s Protections Have Been Used	75
8.10	Survivors’ Rights in Seeking to Remove the Abuser from the Household	77
8.10.1	Removing the Abuser from the Lease	78
8.10.2	Removing the Abuser from the Section 8 Voucher	79
8.11	Housing Authorities’ Duties to Provide Notice of VAWA Rights.....	79
8.12	Housing Authorities’ Duties to Plan for Survivors’ Needs	80
8.13	HUD Guidance on VAWA	80
8.14	Practice Tips.....	81
8.14.1	The Need to Educate Housing Providers	81
8.14.2	The Need to Educate Clients.....	81
8.14.3	Timing.....	81
8.14.4	Engaging the Media	82
8.14.5	Collaboration with Housing Providers.....	82

CHAPTER 9

Evictions and Subsidy Terminations in Federally Subsidized Housing

9.1	Introduction.....	83
9.2	Common Lease and Program Violations that Survivors Encounter	85
9.2.1	The Good Cause Requirement.....	84
9.2.2	Criminal Activity	84
9.2.3	Disturbance at the Unit	86
9.2.4	Damage to the Unit	88
9.2.5	Nonpayment of Rent	88
9.2.6	Unauthorized Household Member.....	90
9.3	Procedural Protections for Survivors in Federally Subsidized Housing.....	90
9.3.1	Overview of Procedural Protections	90
9.3.2	Public Housing.....	91
9.3.3	Section 8 Vouchers	92
9.3.4	HUD-Subsidized and Project-Based Section 8 Developments.....	92
9.3.5	Section 515 Rural Housing	92
9.4	Preparation for Challenging an Eviction or Subsidy Termination.....	92

9.5 Settlement of an Eviction or Termination Proceeding.....	94
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CHAPTER 10

Increasing Survivors’ Access to Housing

10.1 Introduction.....	97
10.2 Public Housing Agency (PHA) Plans.....	97
10.2.1 Annual and 5-Year Plans	97
10.2.1.1 Violence Against Women Act	98
10.2.1.2 Timeline for PHA Plans.....	98
10.2.1.3 Other Policy Documents.....	99
10.2.2 Section 8 Administrative Plan	99
10.2.2.1 Admissions Preferences	100
10.2.2.2 Admissions Criteria	100
10.2.2.3 Information Provided to Prospective Section 8 Landlords	101
10.2.2.4 Restrictions on Moving.....	101
10.2.2.5 Family Absence from the Dwelling Unit.....	102
10.2.2.6 Family Breakup.....	102
10.2.2.7 Termination of Assistance	103
10.2.2.8 Certification of Domestic Violence and Confidentiality	103
10.2.2.9 Notice to Tenants	104
10.2.2.10 Definitions of Domestic Violence, Dating Violence, and Stalking.....	104
10.2.2.11 Linkages to Community Resources	105
10.2.3 Public Housing Admissions and Continued Occupancy Policy	105
10.2.3.1 Screening of Applicants	105
10.2.3.2 Emergency Transfers	106
10.2.3.3 Splitting the Lease.....	106
10.2.3.4 Damages to the Unit.....	106
10.2.3.5 Public Housing Leases	107
10.2.4 Practice Tips: Advocating with PHAs	107
10.3 Other Planning Documents	108

10.3.1 Consolidated Plan	108
10.3.2 Housing Element.....	108
10.3.3 Continuum of Care Plan.....	109
10.3.4 Qualified Allocation Plan	110

Chapter 1: Introduction

Table of Contents

1.1 The Relationship Between Domestic Violence and Housing.....1

1.2 The Material Covered in This Manual.....2

1.3 Terminology.....3

This Manual is designed for California advocates and attorneys working with survivors of domestic violence who are seeking to obtain or maintain housing. Efforts to help survivors apply for or maintain housing are crucial, as housing instability is a major obstacle for survivors who are seeking to end abusive relationships or to avoid returning to their abusers.¹ The purpose of this Manual is to provide background information and sample documents that can be used to advocate on behalf of survivors who have been denied housing or are at risk of losing their housing. The goal of this Manual is to make housing issues more accessible and easily understandable to advocates, regardless of their prior knowledge of housing law.

This Manual is designed for use by attorneys and non-attorneys. However, the legal information provided in this Manual is intended to provide a general understanding of housing laws and should not be construed as legal advice. Advocates are encouraged to seek assistance from housing law attorneys to determine how these laws would apply to a particular client’s circumstances.

This Manual is accompanied by a Toolkit that contains a number of appendices, including sample letters, court documents, and policies.

¹ See California Department of Health Services, Office of Women’s Health, *Data Points: Results from the California Women’s Health Survey* Issue 4, No. 4 (Summer 2006).

For ease of reference, each appendix has been assigned a number that can be used to locate the relevant document in the Toolkit. The Toolkit also contains a table of contents that lists all of the appendices referred to in this Manual.

1.1 The Relationship Between Domestic Violence and Housing

Survivors of domestic violence and their children face a number of serious housing problems related to the acts of violence committed against them. In enacting the Violence Against Women Act of 2005, Congress recognized that families are being discriminated against, denied access to, and even evicted from housing because of their status as survivors of domestic violence.² Legal services providers have reported hundreds of cases where tenants were evicted or denied housing because of acts of domestic violence committed against them.³ In a test conducted by the Equal Rights Center, 65% of applicants seeking housing on behalf of domestic violence survivors were either denied housing or offered less advantageous terms than applicants not

² See 42 U.S.C. § 14043e.

³ National Law Center on Homelessness & Poverty & National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* 3 (Feb. 2007), http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20February_20072.pdf.

associated with domestic violence.⁴ Defending survivors' rights to obtain and maintain rental housing is particularly crucial because women living in rental housing experience domestic violence at three times the rate of women who own their homes.⁵

Due to economic limitations, survivors may be particularly vulnerable to sexual harassment and assault by landlords, property managers, and their employees. A survey of rape crisis centers and legal services providers found that 58% had received at least one report from a tenant who was sexually assaulted or raped by a landlord, property manager, or property owner.⁶

Housing advocacy on behalf of survivors is especially critical given the link between domestic violence and homelessness. In a recent study, 39% of U.S. cities surveyed reported that domestic violence was "a primary cause of homelessness" in their cities.⁷ In a number of studies, homeless women have reported that domestic violence was a cause of their homelessness.⁸

⁴ Equal Rights Center, *No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia* (Apr. 2008), <http://www.equalrightscenter.org/publications/novacancy.php>.

⁵ Bureau of Justice Statistics, *Intimate Partner Violence in the United States* (Dec. 19, 2007).

⁶ Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 CLEARINGHOUSE REV. 441 (2006).

⁷ U.S. Conference of Mayors & Sodexo, Inc., *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities* 64 (2007).

⁸ See, e.g., Rebekah Levin et al., Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* 3 (2004); Wilder Research Center, *Overview of Homelessness in Minnesota 2006* 16 (2007); Downtown Women's Action Coalition, *Many Struggles, Few Options: Findings & Recommendations from the 2004 Downtown Women's Needs Assessment* 3, 26 (2005); Wilder Research Center, *Homeless Adults and their Children in Fargo, North Dakota and Moorhead, Minnesota: Regional Survey of Persons without Permanent Shelter* 4 (2007); The Institute for Children and Poverty, *The Hidden Migration: Why New York City Shelters Are Overflowing With Families* (2002).

Fortunately, a growing number of legislators and housing providers are recognizing the connections between domestic violence, denials of housing, evictions, and homelessness. In response, they have enacted policies specifically designed to protect survivors from being denied housing, evicted, or otherwise penalized for acts of violence committed against them. Even in instances where there are no specific housing laws or policies that protect survivors of domestic violence, advocates are using a variety of creative strategies to help their clients obtain and maintain housing. This Manual covers both the specific housing protections available to survivors, and some of the other arguments and resources that may be used to preserve survivors' housing rights.

1.2 The Material Covered in This Manual

Based on our experiences as a technical assistance provider for domestic violence agencies and legal services offices throughout the state, the Manual is organized around the areas in which we most frequently receive questions. These areas have been organized into chapters as described below.

Chapter 2: Finding Housing for Survivors.

One of the first steps to helping survivors find safe and stable housing is to become familiar with the resources that are available in the community. Chapter 2 begins by describing the federally subsidized housing programs, which are often the only option for survivors with little or no income. The Chapter provides a brief description of each housing program and explains how advocates can find this housing in their communities.

Chapter 3: Survivors' Rights in Applying for Housing.

Chapter 3 seeks to provide advocates with tools for assisting their clients in obtaining housing. Chapter 3 begins by discussing negative credit and tenancy history, as these obstacles to admission are often encountered by survivors regardless of whether they are applying to private or federally

subsidized housing. The Chapter then turns its focus to the admissions process for federally subsidized housing, with discussions of eligibility requirements, ways to mitigate negative information on a survivor's application, and procedures for challenging a denial of housing.

Chapter 4: Safety Planning in Rental Housing. Chapter 4 discusses the actions that survivors can take to improve the safety of their homes and to ensure that they remain safe when they relocate. Survivors living in public or Section 8 housing need to consider additional factors when planning for their safety, which are also discussed in Chapter 4.

Chapter 5: Common Landlord-Tenant Issues Survivors Encounter. Chapter 5 discusses some of the most common landlord-tenant issues that survivors encounter, such as survivors' rights regarding safe housing conditions, eviction of the abuser, lock changes, and lease terminations.

Chapter 6: Survivors' Rights Under Fair Housing Laws. Chapter 6 discusses how the federal Fair Housing Act (FHA) and California's Fair Employment and Housing Act (FEHA) may be used to protect survivors who have been denied housing or who are facing eviction. Chapter 6 also discusses the laws that protect survivors against sexual harassment by landlords, property managers, and their employees.

Chapter 7: Housing Rights of Survivors With Disabilities. Survivors with disabilities may be barred or impeded from residing in housing that is not designed to accommodate their needs. Chapter 7 discusses how advocates can assist survivors with disabilities in obtaining and maintaining accessible housing.

Chapter 8: The Violence Against Women Act (VAWA) and Rights of Survivors in Federally Subsidized Housing. VAWA protects the rights of applicants and tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating

violence, or stalking. Chapter 8 discusses the scope of VAWA's housing protections and provides examples of how these rights have been used in practice. Chapter 8 also discusses survivors' rights to relocate with continued rental assistance and to remove the abuser from a lease or Section 8 voucher.

Chapter 9: Evictions and Subsidy Terminations in Federally Subsidized Housing. Chapter 9 discusses some of the most common reasons that survivors face evictions and terminations in subsidized housing, and it sets forth arguments that advocates can use to prevent survivors from losing their housing. Chapter 9 then discusses the steps that advocates should take to prepare a survivor for challenging an eviction or subsidy termination in federally assisted housing.

Chapter 10: Increasing Survivors' Access to Housing. To increase the likelihood that survivors of domestic violence will be able to obtain affordable housing, advocates should participate in local planning processes. Chapter 10 addresses several different types of housing plans and how advocates can shape those plans. A major focus of Chapter 10 is how advocates can work with public housing agencies (PHAs) to develop policies that serve the needs of survivors living in Section 8 and public housing.

1.3 Terminology

Advocates may have questions regarding some of the terminology we use in this Manual. In anticipation of these questions, we offer the following explanations.

Advocates: This Manual is intended for use by both attorneys and non-attorneys. As a result, we use "advocates" to encompass actions that can be taken by both attorneys and non-attorneys. When referring to actions that involve practice of the law, we use the term "attorneys."

Housing providers: Throughout this manual, we discuss the laws governing public housing agencies (PHAs) and private landlords.

For ease of reference, we collectively refer to PHAs and private landlords as “housing providers.”

She/He: We fully recognize that males, females, and transgendered persons are survivors of domestic violence, and that both females and males can be perpetrators. We also recognize that statistical data continue to demonstrate that the vast majority of domestic violence survivors are women.⁹ Accordingly, we have chosen to use the female pronoun when describing the survivor and the male pronoun when describing the perpetrator. This is not intended to discount or minimize the harms experienced by any survivor of domestic violence, regardless of gender.

Survivor/Victim: As a general practice, we use the term “survivor” throughout this Manual, as many individuals who have experienced incidents of domestic violence prefer this term. We use the term “victim” where we cite to or paraphrase statutes or where we excerpt material from other sources.

We hope that advocates will find this Manual helpful in assisting survivors who are facing obstacles to obtaining and maintaining housing. Because the housing laws discussed in this Manual can be quite technical, advocates should review the language of the statute or regulations at issue, or consult with a housing law practitioner. Additionally, domestic violence and housing is a rapidly changing area of the law. While we have made every effort to ensure that the information in this Manual is accurate, it is critical to check for changes in statutes, regulations, and case law. Finally, cases involving domestic violence and housing are often highly fact-specific, and the strategies or legal theories that should be applied in a particular case will depend heavily upon each client’s individual circumstances. While this

Manual seeks to provide advocates with a starting point for developing action plans for protecting clients’ housing rights, advocates should examine whether the client may have additional legal claims that are not discussed in this Manual.

⁹ See, e.g., U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

Chapter 2: Finding Housing and Resources for Survivors

Table of Contents

2.1	Introduction.....	5
2.2	Overview of Federally Subsidized Housing Programs.....	5
2.2.1	Public Housing.....	6
2.2.2	Section 8 Housing Choice Vouchers	7
2.2.3	Section 8 Project-Based Vouchers.....	7
2.2.4	HUD Project-Based Section 8 Developments	8
2.2.5	Other HUD-Subsidized Programs.....	8
2.2.6	Programs for the Homeless.....	8
2.2.7	Rural Housing Programs.....	9
2.2.8	Low Income Housing Tax Credit Program.....	9
2.3	Housing Resources.....	9
2.3.1	Domestic Violence Shelters.....	9
2.3.2	Victim Compensation Program Relocation Assistance	10
2.3.3	CalWorks Homeless Assistance Program.....	10
2.3.4	211 Hotline.....	11

2.1 Introduction

One of the first steps to helping survivors find safe and stable housing is to become familiar with the resources that are available in your community. This Chapter begins by describing the federally subsidized housing programs, which are often the only option for survivors with little or no income. The Chapter provides a brief description of each housing program and explains how you can find this housing in your community. The Chapter also provides an overview of four programs that provide housing-related services and referrals to survivors: domestic violence shelters, the Victim Compensation Program, the CalWORKS

homeless assistance program, and the 211 hotline.

2.2 Overview of the Federally Subsidized Housing Programs

This section seeks to familiarize advocates with the various types of federally subsidized housing programs for which their low-income clients may be eligible.¹⁰ Three of the largest U.S. Department of Housing and Urban Development (HUD) programs are the public housing program, the Section 8 Housing Choice

¹⁰ For an extensive discussion of the federally subsidized housing programs, see NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS’ RIGHTS (3d ed. 2004 and Supp.).

Voucher program, and the project-based Section 8 program. HUD also funds several smaller affordable housing programs. Additionally, the U.S. Department of Agriculture funds Rural Development housing for low-income families in rural and suburban areas. Finally, the Low Income Housing Tax Credit (LIHTC) program provides tax benefits to private owners who rent units to income-eligible tenants. The Toolkit accompanying this Manual includes a table that lists the statutory and regulatory authorities that govern the federally subsidized programs.¹¹

Occupancy in the federal housing programs is usually limited to tenants in particular income ranges, which are typically defined as a percentage of Area Median Income (AMI). As described below, the various housing programs may have different income limitations.¹²

Advocates can direct survivors who are searching for affordable housing to the Rental Help: California page on HUD's website.¹³ This page provides contact information for federally subsidized developments and public housing agencies (PHAs). It also has information regarding waiting lists for PHAs throughout the state. After a survivor has completed an application to determine her eligibility for subsidized housing, the PHA will typically place her name on a waiting list for a public housing unit or Section 8 voucher.¹⁴ However, if the waiting list becomes too long, the PHA will close the waiting list and decline to take new applications for housing assistance. HUD's Rental Help page has information regarding which PHAs have open waiting lists. The page also provides links to housing counseling agencies, legal services agencies, and fair housing councils.

¹¹ See Toolkit, Appendix 1.

¹² For information on the current income limits and median income for a particular area, see <http://www.huduser.org/datasets/il.html>.

¹³ See HUD, Rental Help: California, <http://www.hud.gov/local/index.cfm?state=ca&topic=renting>.

¹⁴ For more information regarding waiting lists, see Chapter 3.

Survivors can also search for affordable housing by county at the California Department of Housing and Community Development's webpage¹⁵ and the California Housing Finance Agency's webpage.¹⁶ Because waitlists for federally subsidized housing are usually long, survivors should apply for several different housing programs and, if possible, should apply in several cities and counties.

2.2.1 Public Housing

Public housing units are owned and operated by a local PHA, commonly referred to as the housing authority. The PHA is responsible for collecting rents and maintaining the public housing units. Each PHA must administer its public housing program in accordance with rules set out by HUD. Although many people commonly associate public housing with inner-city high-rises, it can also consist of single-level apartments, duplexes, and single-family homes in rural, suburban, and urban areas.

To be eligible for public housing, applicants must have incomes at or below 80% of AMI. The PHA maintains a waitlist for applicants seeking to live in public housing, selects applicants from the waitlist, and screens applicants' tenancy and criminal histories.¹⁷ A public housing tenant's rent is typically set at 30% of adjusted income, although the PHA may elect to set a minimum rent of up to \$50.¹⁸

¹⁵ California Department of Housing and Community Development, List of Affordable Rental Housing Developments, <http://www.hcd.ca.gov/fa/affrdble-housng.html>.

¹⁶ California Housing Finance Agency, Apartment Rental Information, <http://www.calhfa.ca.gov/multifamily/rental/index.htm>.

¹⁷ Chapter 10 discusses ways in which advocates can shape their PHA's public housing policies.

¹⁸ If a tenant is paying the minimum rent and becomes unable to pay that amount because of a financial hardship, the tenant can ask to return to an income-based rent. See 42 U.S.C. § 1437a(a)(2)(C); 24 C.F.R. § 960.253(f). Housing authorities must adopt policies for determining what constitutes a financial hardship. The policies must provide that a decrease in income due to changed

Advocates should contact their PHA to determine whether the public housing waitlist is open. A list of all of the PHAs in California, including links to each PHA's website, is available on HUD's website.¹⁹ Survivors may apply to as many PHAs as they choose.

2.2.2 Section 8 Housing Choice Vouchers

Section 8 Housing Choice Vouchers are issued by PHAs to low-income families. Families are then responsible for finding their own housing and can choose any dwelling that meets the requirements of the program. The PHA and the landlord enter into a contract under which the PHA agrees to pay a portion of the family's monthly rent directly to the landlord. The family pays the remainder of the rent amount that the PHA does not pay. A family's contribution toward the rent is generally set at 30% of their adjusted income, with some exceptions.

One feature of the Housing Choice Voucher Program that may be particularly important to domestic violence survivors is the family's ability to move with continued rental assistance, which is commonly called "portability." Families can take their vouchers and move to another unit in any jurisdiction in the United States where another PHA operates a voucher program. For this reason, Housing Choice Vouchers are often referred to as "tenant-based assistance."

Advocates should contact the PHA to determine whether the voucher waitlist is open. If a PHA administers both public housing units and Housing Choice Vouchers, applicants can

circumstances, including loss or reduction of employment or earnings, constitutes a financial hardship. Advocates can argue that domestic violence constitutes changed circumstances due to the survivor's inability to work or loss of the batterer's income as a result of incarceration.

¹⁹ HUD, PHA Contact Information, <http://www.hud.gov/offices/pih/pha/contacts/states/ca.cfm>

be placed on both waitlists. A list of all the PHAs operating a voucher program, which includes each PHA's contact information, is available on HUD's website.²⁰ Survivors may apply to as many PHAs as they choose.

Eligibility for the Housing Choice Voucher Program is generally restricted to families whose income does not exceed 50% of AMI. The PHA determines which applicants receive voucher assistance in accordance with standards and procedures established by federal law and locally developed policies.²¹ Private landlords participating in the Housing Choice Voucher Program may have their own criteria for selecting tenants, such as credit and landlord reference checks.

2.2.3 Section 8 Project-Based Vouchers

The Section 8 project-based voucher program is a small subset of the Housing Choice Voucher program. PHAs can choose to use some of their Housing Choice Voucher funds for assistance to owners who commit a certain number of units in their buildings to voucher tenants. Some domestic violence programs have worked with PHAs to use project-based vouchers to fund affordable housing units for survivors.²²

A tenant who wants to move out of the project-based voucher unit can obtain a new voucher from the PHA that allows the tenant to relocate and continue to receive rental assistance. The owner can then re-rent the unit to another voucher tenant using the project-

²⁰ See HUD, PHA Contact Information, <http://www.hud.gov/offices/pih/pha/contacts/states/ca.cfm>

²¹ Chapter 10 discusses ways in which advocates can influence their PHA's Section 8 voucher policies.

²² See Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2005, 70 Fed. Reg. 67,540, 67,558 (Nov. 7, 2005); WHIDBEY NEWS-TIMES, *Marjie's House Breaks Ground* (May 15, 2004), <http://www.pnwlocalnews.com/whidbey/wnt/news/22117319.html>.

based voucher assistance. The PHA determines family eligibility and selects participants in accordance with the standards and procedures described above for the Housing Choice Voucher program.

2.2.4 HUD Project-Based Section 8 Developments

HUD project-based Section 8 developments are separate and distinct from project-based Section 8 voucher units, and different rules apply to project-based Section 8 developments. In a project-based Section 8 development, HUD rental subsidies are attached to the building. As a result, a tenant living in a project-based Section 8 development will lose her rental assistance if she moves out of the subsidized unit. Owners of project-based Section 8 buildings are usually private individuals or corporations that have received HUD subsidies to provide affordable housing. The owner is responsible for collecting rent and maintaining the building. A family's contribution toward rent is generally set at 30% of the family's adjusted income, with some exceptions.

Families are eligible for project-based Section 8 if their income is less than 50% of AMI. Admissions decisions are made by the building's owner or manager, pursuant to a written tenant selection policy and procedures developed by the owner under HUD guidelines. Families typically apply for project-based Section 8 developments by contacting the building's owner or manager. HUD maintains lists of project-based Section 8 developments that can be searched by city or county.²³

2.2.5 Other HUD-Subsidized Programs

There are several other programs in which private owners receive HUD subsidies to provide affordable housing. Examples include

²³ See HUD, Low-Rent Apartment Search, <http://www.hud.gov/apps/section8/index.cfm>.

the Section 202 Supportive Housing for the Elderly Program, the Section 811 Supportive Housing for Persons with Disabilities Program, the Section 221(d)(3) Below Market Interest Rate Program, and the Section 236 Rental Program. In these programs, admission decisions are made by the owner or manager pursuant to a written tenant selection policy and procedures developed by the owner under HUD regulations and guidelines. Applicants must meet income eligibility requirements. Families apply for these programs by contacting the building's owner or manager. HUD maintains a list of these developments that can be searched by city or county.²⁴

2.2.6 Programs for the Homeless

The federal government supports a variety of housing programs designed for homeless individuals and families, including the Supportive Housing program, Shelter Plus Care, and Section 8 Moderate Rehabilitation SRO housing. These programs are authorized under the McKinney/Vento Homeless Assistance Act and are often referred to as the McKinney/Vento programs. To be eligible for these programs, an applicant must meet the federal definition of homeless, and advocates should carefully read the definition to determine whether their clients qualify.²⁵ The definition of homeless includes, but is not limited to, the following:

“[A]ny individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing

²⁴ See HUD, Low-Rent Apartment Search, <http://www.hud.gov/apps/section8/index.cfm>.

²⁵ The complete definition of “homeless” for purposes of these housing programs was amended in May 2009. See Helping Families Save Their Homes Act of 2009, Div. B, Sec. 1003, Pub. L. No. 111-22 (S.896) (2009), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s896enr.txt.pdf.

situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.²⁶

HUD maintains a county-by-county list of Continuum of Care Coordinators, who coordinate homeless assistance providers that receive HUD funds.²⁷ These coordinators can help advocates locate federally subsidized housing for homeless survivors.

2.2.7 Rural Housing Programs

Rural Development (RD), an agency within the U.S. Department of Agriculture, supports several programs that provide affordable rental housing for low-income rural residents. Under the Section 515 Rural Rental Housing Program, RD makes loans to developers of affordable multifamily rental housing. Families are generally eligible for these properties if their income is less than 80% of AMI. The Section 514/516 Farm Labor Housing Program provides housing for tenants who receive a substantial portion of their income from farm labor. Under both programs, admission decisions are made by the owner or manager, pursuant to a written tenant selection policy and procedures developed by the owner under RD regulations and guidelines. RD maintains a list of rental properties on its website that is searchable by town and zip code.²⁸

²⁶ Helping Families Save Their Homes Act of 2009, Div. B, Sec. 1003.

²⁷ HUD, Homeless Service Organizations, <http://www.hud.gov/local/ca/homeless/services.cfm>.

²⁸ USDA, Multi-Family Housing Rentals, http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=YES.

2.2.8 Low Income Housing Tax Credit Program

Low Income Housing Tax Credit (LIHTC) properties are owned by private landlords who receive tax benefits in return for renting to income-eligible tenants. The LIHTC program is administered by the Internal Revenue Service and the California Tax Credit Allocation Committee. Admissions decisions are made by the building's owner or manager, and the owner cannot discriminate against an applicant with a Section 8 voucher. LIHTC units have flat rents that are governed by federal law. HUD maintains a list of LIHTC properties on its website that is searchable by city or county.²⁹ Advocates should note that without additional subsidies, such as project-based Section 8 or a Section 8 voucher, LIHTC rents may not be affordable to the lowest income families.

2.3 Housing Resources

The rest of this Chapter highlights four programs that provide housing-related services to survivors of domestic violence, including shelter, assistance with housing costs, and referrals. Specifically, this section discusses domestic violence shelters, Victim Compensation Program relocation assistance, CalWORKS homeless assistance, and 211.

2.3.1 Domestic Violence Shelters

There are more than 100 shelter-based domestic violence agencies throughout the state.³⁰ Many of these programs operate both emergency shelter programs and transitional housing programs. Survivors and their children may typically remain in an emergency shelter

²⁹ LIHTC Database Access, <http://lihtc.huduser.org/>.

³⁰ See California Department of Public Health, Domestic Violence Program Fact Sheet, <http://ww2.cdph.ca.gov/HealthInfo/injvivosaf/violence/Pages/default.aspx>.

for 30 to 60 days, while most transitional housing programs have a maximum stay of six to 18 months. In addition to shelter, these programs provide services such as 24-hour hotlines, legal assistance with restraining orders and custody disputes, court accompaniment, counseling for survivors and their children, and referrals to social services. Many of these programs provide specific services for non-English speakers and battered immigrants. The California Department of Public Health maintains a list of domestic violence service providers that is searchable by county and by services offered.³¹ Survivors can also obtain referrals to domestic violence programs by contacting the National Domestic Violence Hotline at 1-800-799-SAFE.

2.3.2 Victim Compensation Program Relocation Assistance

The California Victim Compensation Program (VCP) can provide victims of violent crime up to \$2,000 per household for relocation expenses.³² Examples of expenses include first and last month's rent, security deposits, deposits for utilities, temporary lodging, moving vans, transportation costs, emergency food, clothing, and personal hygiene items. Additionally, the VCP can reimburse a survivor for expenses related to a deposit for renting a unit with a Section 8 voucher.

The expenses must be determined by law enforcement to be necessary for the victim's personal safety, or by a licensed mental health provider to be necessary for the victim's emotional wellbeing. If the victim is moving for personal safety, the victim must provide a completed VCP law enforcement verification form, or a letter from a law enforcement agency.

³¹ California Department of Public Health, Domestic Violence Program, Resource Directory Agency Listing, <http://www.safenetwork.net/AgencyList.aspx>.

³² California Victim Compensation & Government Claims Board, Desk Manual for Victim Advocates 20 (2007), <http://www.boc.ca.gov/docs/references/DeskManualForVictimAdvocates.pdf>.

Entities that can provide documentation include highway patrol offices, police departments, sheriff's departments, district attorney's offices, attorney general's offices, and parole offices. If the victim is moving for emotional wellbeing, the victim must provide a completed VCP mental health therapist verification form, or a letter from a mental health provider. Individuals who can provide documentation regarding emotional wellbeing include psychiatrists, psychologists, licensed clinical social workers, marriage and family therapists, psychiatric mental health nurses, and clinical nurse specialists.

If the relocation is for a survivor of sexual assault or domestic violence, and the identity of the offender is known to the survivor, the survivor must agree not to inform the offender of the location of the survivor's residence and not allow the offender on the premises, or the survivor must agree to seek a restraining order against the offender. Survivors or their advocates should contact their local Victim-Witness Assistance Center³³ or VCP at (800) 777-9229. Survivors will receive a relocation packet that includes an expense worksheet, verification forms, and a rental agreement.

2.3.3 CalWORKS Homeless Assistance Program

Families who are eligible for CalWORKS³⁴ and who are homeless can apply for the Homeless Assistance Program (HAP).³⁵ HAP is administered at the local level through county

³³ There are 59 Victim-Witness Assistance Centers in California, one in each county and one in the city of Los Angeles. For a list of these centers, see <http://www.vcgcb.ca.gov/victims/localhelp.aspx>.

³⁴ Bay Area Legal Aid has prepared a guide for advocates regarding the rights of survivors who are receiving CalWORKS benefits. *See* Bay Area Legal Aid, *A Guide for Advocates on CalWORKS and Domestic Violence* (2009), http://lsnc.net/welfare_tools/guide_for_advocates_on_dv_and_calworks_01-05-09.pdf.

³⁵ CAL. WELF. & INST. CODE § 11450(f)(2).

social services agencies. Families can receive temporary shelter in a hotel or motel for up to 16 consecutive days. Families can also receive help with costs for moving into permanent housing, such as last month's rent, security deposits, utility deposits, and cleaning fees. Further, families can receive help with two months of back rent to prevent eviction.

With limited exceptions, this assistance is only available once in a lifetime.³⁶ However, families who are homeless as a result of domestic violence can apply for this assistance once every twelve months.³⁷ Additionally, counties have been directed to provide these families with referrals to domestic violence counseling programs.³⁸ Survivors seeking homeless assistance do not need third-party documentation of domestic violence unless they have already sought homeless assistance twice.³⁹ If a survivor applies for homeless assistance twice in a 24-month period due to domestic violence, the county can require the survivor to participate in a homeless avoidance case plan as a condition of receiving assistance.

To apply for homeless assistance, families should contact their CalWORKS representative or visit their nearest county social services agency.

2.3.4 211 Hotline

Survivors in most California counties can obtain referrals to affordable housing providers, rental assistance, and emergency shelters by dialing 211. The information and referral service is free and confidential and is available 24 hours a day, seven days a week. Most 211 hotlines have multilingual capabilities.

³⁶ § 11450(f)(2)(E)(i).

³⁷ § 11450(f)(2)(E)(iii).

³⁸ § 11450(f)(2)(E)(iii).

³⁹ § 11450(f)(2)(E)(iii).

Chapter 3: Survivors' Rights in Applying for Housing

Table of Contents

3.1	Introduction.....	12
3.2	Addressing Negative Credit and Tenancy History	13
3.2.1	Poor or No Credit History.....	13
3.2.2	Poor Tenancy History	14
3.3	Determining Survivors' Eligibility for Federally Subsidized Housing	15
3.3.1	Income Limits	15
3.3.2	Immigration Restrictions	16
3.4	Waiting Lists and Preferences	17
3.5	Screening by PHAs and Owners.....	18
3.5.1	Criminal History	18
3.5.2	Previous Debts, Evictions, and Terminations Involving Federally Subsidized Housing.....	20
3.6	Mitigating Circumstances	21
3.7	Challenging a Denial of Admission to Federally Subsidized Housing.....	22
3.7.1	Notice of the Denial.....	22
3.7.2	Preparation for Challenging the Denial	23
3.7.3	The Informal Hearing/Review	23
3.8	Conclusion	24

3.1 Introduction

Due to the acts of violence committed against them, survivors encounter a number of obstacles to obtaining housing. As recognized in the Violence Against Women Act, “[b]ecause abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent

housing.”⁴⁰ Additionally, many survivors have difficulties securing housing as a result of prior evictions stemming from damages or disturbances caused by the batterer. Further, some survivors have criminal history, often due to duress, coercion, or self-defense, which may result in denials of housing.

This Chapter seeks to provide advocates with tools for assisting their clients in obtaining housing. The Chapter begins by discussing

⁴⁰ 42 U.S.C. § 14043e(10).

negative credit and tenancy history, as these obstacles to admission are often encountered by survivors regardless of whether they are applying to private or federally subsidized housing. The Chapter then turns its focus to the admissions process for federally subsidized housing.⁴¹ The Chapter provides an overview of eligibility requirements as well as waiting lists and preferences. The Chapter then discusses several screening criteria that often result in denials of housing for survivors: criminal history and past debts, prior evictions, and terminations from federally subsidized housing. Finally, the Chapter discusses some of the factors that can be used to mitigate a survivor's negative application information, as well as the process for challenging denials of federally subsidized housing. This Chapter focuses solely on the rights of survivors during the housing application process. For information on assisting survivors during the eviction or subsidy termination process, see Chapters 6, 8, and 9.

3.2 Addressing Negative Credit and Tenancy History

This section addresses two issues that survivors often encounter whether they are applying for private or federally subsidized housing: negative credit and tenancy history. It examines survivors' rights in the event that they are denied housing due to information contained in a credit or tenancy history report. It also discusses some of the steps that survivors can take to address negative credit and tenancy history.

⁴¹ For more information regarding the admissions process for federally subsidized housing, see NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS Ch. 2 (3d ed. 2004); MASSACHUSETTS LAW REFORM INSTITUTE, LEGAL TACTICS, FINDING PUBLIC AND SUBSIDIZED HOUSING (2d ed. 2006), <http://www.masslegalhelp.org/housing/finding-housing-booklets>.

3.2.1 Poor or No Credit History⁴²

A major obstacle that survivors face in securing rental housing is poor or no credit history. A survivor may lack credit history because credit accounts were in the abuser's name only, because she changed her identity, or because she is a recent immigrant. A survivor may have negative credit history because the abuser ran up credit cards that were in the survivor's name, because the abuser defaulted on loans on which the survivor was a co-signer, or because the survivor could not keep up with bills once she left the abuser. This section explains survivors' rights regarding credit reports during the housing application process.

Many landlords consider credit reports in determining whether to rent to a particular applicant. Credit bureaus compile these reports. They contain information on what credit the survivor owes and the amount that is due. They also contain a summary of how many times any account has been delinquent by 30, 60, and 90 days and the dates of the most recent and severe delinquencies. Additionally, they list any accounts that have been turned over to collections agencies or for which there are court judgments against the survivor. Information about the survivor's accounts can be reported for only seven years from the date that she failed to pay a debt, although bankruptcies can remain on the survivor's credit report for ten years.⁴³ As discussed in greater detail in the next section, credit reports may include information on any unlawful detainer lawsuits (also known as evictions) that have been filed against the survivor.

Before a survivor begins looking for housing, she should order copies of her credit report from the three main credit bureaus, closely review the

⁴² For more information regarding credit issues that affect domestic violence survivors, see NATIONAL CONSUMER LAW CENTER, GUIDE TO CONSUMER RIGHTS FOR DOMESTIC VIOLENCE SURVIVORS 93 (2006).

⁴³ 15 U.S.C. § 1681c(a).

reports, and determine whether there are any mistakes.⁴⁴ The three credit bureaus, known as Equifax, Experian, and Trans Union, must provide a free credit report every 12 months.⁴⁵ However, these free reports typically do not include the numerical credit score, and the survivor may have to pay a fee to obtain her score. Under federal law, the survivor has a right to correct any erroneous information in the reports.⁴⁶ The survivor can do so by sending a written dispute letter to each credit bureau reporting incorrect information.⁴⁷ Credit bureaus must investigate the complaint and correct erroneous information. Survivors should be wary of credit repair agencies that offer to “fix” the survivor’s credit report for a fee, as these agencies rarely provide services beyond what the survivor or an advocate can do free of cost.

If a landlord refuses to rent to a survivor based partly or entirely on negative information from a credit bureau, the landlord must give the survivor a written notice containing the following:

- A statement that the decision was based partly or entirely on information in a credit report; and
- The name, address, and telephone number of the credit reporting agency; and
- A statement that the applicant has the right to obtain a free copy of the credit report from the credit reporting agency that prepared it and to dispute the

⁴⁴ An added benefit of having the survivor request her credit report is that some landlords may accept a copy of the report from the survivor instead of running their own report, saving the survivor fees that the landlords would otherwise charge.

⁴⁵ To obtain free credit reports, visit www.annualcreditreport.com or call 877-322-8228.

⁴⁶ § 1681b.

⁴⁷ See NATIONAL CONSUMER LAW CENTER, *supra* note 42, at 101; Federal Trade Commission, Credit Repair: How to Help Yourself, <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.shtm>.

accuracy or completeness of information in the credit report.⁴⁸

If the survivor knows that she has negative credit history, there are some steps she can take to improve her chances of getting housing. If the survivor paid her rent on time at her prior residence, she can provide prospective landlords with a copy of the rent ledger, a letter from her former landlord, cancelled checks, money orders, or rent receipts demonstrating on-time payment. The survivor may also consider writing a letter explaining the circumstances surrounding the negative credit, such as divorce, financial abuse by the abuser, or inability to work due to injury or illness, and stating that those circumstances are unlikely to recur. The letter should document any increases or stabilization in the survivor’s income resulting from a new job, public benefits, or other income streams. Finally, the survivor should contact a variety of properties to determine their requirements regarding credit history, as some properties (particularly smaller property owners) have more flexible policies than others. If all else fails, the survivor should consider offering to have a co-signer on the lease, such as a parent or sibling, or offering to pay a higher security deposit.

3.2.2 Poor Tenancy History

Many survivors may have difficulty finding housing due to past unlawful detainer actions (also known as evictions) stemming from domestic violence. This section explains some of the rights that survivors have regarding their tenancy history during the housing application process.

Landlords frequently obtain reports on prior unlawful detainer actions before renting to prospective tenants. These reports are compiled by the three major credit bureaus and by tenant-

⁴⁸ CAL. CIV. CODE § 1785.20(a). To receive a free credit report, the survivor must request it within 60 days after receiving the notice of denial.

screening agencies. The reports are based on publicly available court records and often contain incomplete or inaccurate information. In California, courts are required to block public access to court records regarding unlawful detainer actions for the first 60 days after the action is filed.⁴⁹ If the tenant wins or settles the case within the 60-day time period, the records regarding the case will be sealed, and tenant-screening agencies cannot access them.⁵⁰ However, if the court enters an unlawful detainer judgment against the tenant, or if the case is not dismissed within 60 days, the court records remain accessible to the public, and the information in these records will be included in tenancy history reports. An unlawful detainer judgment will be reported on the tenant's credit and tenancy history reports for seven years.⁵¹

As with credit reports, a landlord who denies an applicant housing based on information in a tenancy history report must provide a statement that the denial was based on the report and must furnish the contact information for the agency that generated the report.⁵² If a survivor believes that the information in the report regarding her involvement in an unlawful detainer action is incorrect, she has a right to dispute the accuracy of the report.⁵³ Tenant-screening and credit reporting agencies are required to investigate the matter free of charge and to make appropriate corrections "within a reasonable time."⁵⁴

Because it is likely that prospective landlords will find out about unlawful detainer actions, survivors should be prepared to explain the circumstances of the action and demonstrate that those circumstances are unlikely to recur. If the eviction suit was filed in error or was eventually

dismissed, survivors should obtain a letter from the prior landlord to this effect. Survivors should also provide prospective landlords with copies of any documents, such as court records or settlement agreements that show that the information contained in the tenancy history report is incomplete or inaccurate. Letters of recommendation from former landlords, neighbors, and service providers could also prove helpful. If the abuser was responsible for causing the disturbances or criminal activity that resulted in the eviction, the survivor should emphasize that she no longer lives with the abuser. Finally, the survivor should contact a variety of properties to determine their requirements regarding tenancy history, as some properties (particularly smaller property owners) have more flexible policies than others. As a last resort, the survivor may consider offering to pay a higher security deposit.

3.3 Determining Survivors' Eligibility for Federally Subsidized Housing

The rest of this Chapter focuses on survivor's rights in applying for federally subsidized housing. One of the first issues advocates must consider is whether their clients satisfy the basic eligibility requirements for federally subsidized housing. This section discusses two of those requirements: income limits and eligible immigration status.

3.3.1 Income Limits

All of the major HUD housing programs have income limits that applicants cannot exceed, or else they are ineligible. The maximum income limits for public housing, Section 8 vouchers, and HUD-assisted housing are defined by federal law. The terms "low-income", "very low-income", and "extremely low-income" are respectively defined as 80%, 50%, and 30% of area median income (AMI), as defined by HUD. Families who are "low-

⁴⁹ CAL. CIV. PROC. CODE § 1161.2(a).

⁵⁰ § 1161.2(a).

⁵¹ CAL. CIV. CODE § 1785.13(a)(7).

⁵² § 1785.20(a).

⁵³ See §§ 1785.16, 1785.30, 1786.24(a); Schoendorf v. U.D. Registry, Inc., 118 Cal. Rptr. 2d 313, 320-322 (Cal. Ct. App. 2002).

⁵⁴ 15 U.S.C. § 1681i; CAL. CIV. CODE §§ 1785.16, 1785.30, 1786.24(a).

income” are eligible for public housing, the Section 8 voucher program, and HUD-assisted housing, such as project-based Section 8 developments and the Section 236 Rental Program.⁵⁵ Eligibility is based on annual gross income. Beyond observing income eligibility limits, public housing agencies (PHAs) and owners must target a certain percentage of new housing to extremely low-income families. There is no minimum income required for program eligibility.

To be eligible for the income-limited units of a Low-Income Housing Tax Credit (LIHTC) development, a tenant’s income must be no higher than 50% to 60% of AMI. To be eligible for Section 515 Rural Rental Housing, a tenant’s income must be less than 80% of AMI, although in some cases families with slightly higher incomes may be eligible.

For each metropolitan statistical area or county, HUD annually publishes median income and the income limits for low, very low, and extremely low-income families.⁵⁶ For fiscal year 2009, the estimated median income for California is approximately \$70,400.⁵⁷ Because the income limits vary from area to area and from program to program, advocates should ask PHAs or subsidized landlords for the income guidelines for their programs.

3.3.2 Immigration Restrictions

Under Section 214 of the Housing and Community Development Act, only United States citizens and certain categories of non-citizens are eligible for the majority of HUD programs, including public housing, Section 8

vouchers, and project-based Section 8.⁵⁸ The categories of eligible non-citizens include: (1) lawful permanent residents; (2) lawful temporary residents under the amnesty program created by the Immigration Reform and Control Act of 1986; (3) refugees, asylees, and persons granted withholding of deportation or removal; (4) trafficking victims; (5) parolees; and (6) citizens of Micronesia, the Marshall Islands, and Palau.⁵⁹ There are some federally subsidized programs that do not have immigration restrictions.⁶⁰

Even if a survivor does not fit into any of the categories of eligible non-citizens described above, she may still be eligible for federally subsidized housing if at least one person in her household has eligible immigration status.⁶¹ The eligible household member may be anyone in the household, including a minor child.⁶² When a household applies for housing, it has to declare which of its members has eligible immigration status.⁶³ If not all members are eligible, the housing assistance that the household would otherwise qualify for is prorated to reflect the presence of ineligible household members.⁶⁴ If family members choose not to declare that they are eligible, they are treated as ineligible.⁶⁵ Mixed households may be required to identify the members who decline to declare their status,⁶⁶ but no further documentation is required or authorized for the non-declarants.

⁵⁵ 42 U.S.C. § 1437f(a) (public housing and Section 8 voucher); 24 C.F.R. § 5.653(b)(2) (project-based Section 8); 12 U.S.C. § 1715z-1(i)(2) (Section 236).

⁵⁶ This information is available at <http://www.huduser.org/DATASETS/il.html>.

⁵⁷ HUD, Estimated Median Family Incomes for Fiscal Year 2009, PDR 2009-01 (Mar. 19, 2009).

⁵⁸ 42 U.S.C. § 1436a(a); 24 C.F.R. § 5.506; *see also* NATIONAL HOUSING LAW PROJECT, *supra* note 41, at 2/18-2/22.

⁵⁹ *Id.*

⁶⁰ These programs include Low-Income Housing Tax Credit, Section 515 rural rental housing, Shelter Plus Care, and the Supportive Housing program for the homeless.

⁶¹ 24 C.F.R. §§ 5.506(b)(2), 5.512(a) & (e), 5.516(b), 5.520(a), 5.504(b).

⁶² *Id.*

⁶³ § 5.508(f)(i).

⁶⁴ 42 U.S.C. § 1436a(b)(2); 24 C.F.R. § 5.520.

⁶⁵ 24 C.F.R. § 5.508(e).

⁶⁶ § 5.508(e).

A common question that arises is whether VAWA self-petitioners⁶⁷ are eligible for federally subsidized housing.⁶⁸ Battered immigrant qualified aliens, which include VAWA self-petitioners, were made statutorily eligible to receive federal benefits as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁶⁹ In 2003, Congress directed HUD and the Justice Department to interpret housing statutes consistently with immigration and public benefits statutes so that qualified alien battered immigrants would be eligible for federally subsidized housing.⁷⁰ Unfortunately, HUD has not yet taken action to clarify battered immigrants' eligibility for subsidized housing, and it remains HUD's position that VAWA self-petitioners are not among the categories of immigrants eligible for most HUD programs. As a result, most PHAs will deny VAWA self-petitioners access to public and Section 8 housing unless a member of their household has qualifying immigration status.

3.4 Waiting Lists and Preferences

After the survivor has completed a preliminary application to determine her eligibility for subsidized housing, she will be placed on a waiting list. PHAs and subsidized landlords typically organize waiting lists by either the date and time the application was

received or by a random lottery. Once on the list, a survivor may be asked to respond to requests from the PHA or owner to determine whether she is still interested in the housing. Failure to respond may result in the survivor being dropped from the waiting list. Therefore, it is important for survivors to notify the PHA or landlord in writing (saving a copy) of any change in address.

Applicants may reach the top of the waiting list more quickly if they qualify for an admissions preference.⁷¹ Given the shortage of affordable housing, some PHAs have established preferences to determine who should be first in line to receive assistance. For the most part, PHAs have discretion to set their preferences, and the preferences must be set forth in the PHA's policy documents. Accordingly, preferences differ from jurisdiction to jurisdiction, and advocates will need to contact their local PHAs to determine what their preferences are. In California, PHAs must provide a preference for veterans and "persons displaced by public or private action."⁷² In addition to the required preferences, some common preferences that PHAs have adopted include a preference for residents of the community, homeless applicants, and families with members who are working. Survivors who are applying for subsidized housing should carefully review the preferences and seek to qualify for all the applicable preferences.

Some California PHAs have adopted preferences specifically for survivors of domestic violence, although the majority of PHAs do not have such policies. Of the PHAs that have domestic violence preferences, most require that applicants provide some form of documentation, such as a letter from law enforcement or a restraining order, to qualify for

⁶⁷ VAWA's immigration provisions allow survivors of domestic violence who are married to their abusers to legalize their immigration status in the family immigration system independent of their spouses. This process is referred to as a "self-petition," because the survivor files the petition on her own, and the abuser plays no role in the process.

⁶⁸ For more information, see NHLP, *Housing Benefits for Qualified Aliens Who Are Battered Still in Question*, 33 HOUS. L. BULLETIN 297 (Apr./May 2003), which is included in the Toolkit accompanying this Manual at Appendix 2.

⁶⁹ 8 U.S.C. § 1641(c).

⁷⁰ H.R. Rep. No. 108-10, 108th Cong., 1st Sess. 476, 1495 (Feb. 12, 2003).

⁷¹ Preferences may be called by a different name locally. For example, they may be referred to as admissions priorities or emergency status.

⁷² CAL. HEALTH & SAFETY CODE § 34322.2.

the preference. If a PHA does not have a domestic violence preference, advocates should consider meeting with the PHA to discuss the possibility of adopting such a preference.⁷³

3.5 Screening by PHAs and Owners

When a survivor reaches the top of the waiting list, the PHA or landlord may screen her credit, tenancy, and criminal history to determine whether she is likely to abide by the lease, pay rent on time, keep the unit in good condition, and not disturb other tenants. Advocates assisting survivors in applying for subsidized housing should verify the screening criteria a housing provider uses, and discuss with the survivor how to address any negative history related to those criteria. This section focuses on two types of screening criteria that often cause difficulties for survivors: (1) criminal history; and (2) prior debts, evictions, and subsidy terminations involving federally subsidized housing.

3.5.1 Criminal History

Survivors of domestic violence often have criminal history related to coercion, duress, or self-defense. It is therefore important for advocates to understand the rules regarding criminal history and eligibility for federally subsidized housing.⁷⁴ As a preliminary matter, survivors should review their criminal records to ensure that they do not contain erroneous information, and should contact their local public defender or legal services office regarding possible expungement of their criminal records.⁷⁵

⁷³ See Chapter 10 for more information regarding working with PHAs on their domestic violence policies.

⁷⁴ For more information on assisting individuals with criminal history in applying for subsidized housing, see NATIONAL HOUSING LAW PROJECT, AN AFFORDABLE HOME ON RE-ENTRY: FEDERALLY ASSISTED HOUSING AND PREVIOUSLY INCARCERATED INDIVIDUALS (2008).

⁷⁵ Details regarding California criminal records and expungement are beyond the scope of this manual. For

Pursuant to federal statutes and regulations, PHAs and owners of some federally assisted housing must reject applicants with certain very specific criminal backgrounds. Specifically, PHAs must permanently deny admission to public housing and the Section 8 voucher program if an applicant has ever been convicted of manufacture or production of methamphetamine on the premises of any federally assisted housing.⁷⁶ Further, PHAs and owners of most federally assisted housing must deny admission if any member of the household is subject to a lifetime sex offender registration requirement.⁷⁷ Owners of Rural Development (RD) housing or Low-Income Housing Tax Credit (LIHTC) properties are not required to bar any applicant due to criminal history, but have discretion to do so.⁷⁸

For certain programs, there is a mandatory three-year ban on admission if any member of the household has been evicted from federally assisted housing for drug-related criminal activity.⁷⁹ The three-year ban applies to applicants for public housing, Section 8 vouchers, project-based Section 8, and other federally assisted housing except for LIHTC and RD housing. Importantly, the mandatory three-year ban applies only where a household member has been *evicted* from federally subsidized housing. It does not apply in cases where a household member has engaged in drug-related activity but has not been evicted for it. (However, as discussed below, the housing provider may still exercise its discretion to reject the applicant.) Further, the ban does not apply to applicants with evictions for drug-related activity from non-federally assisted housing. Finally, PHAs or owners may waive the three-year ban if the individual who engaged

more information on this topic, see California Courts Self-Help Center, Clean Up Your Criminal Record, <http://www.courtinfo.ca.gov/selfhelp/other/crimlawclean.htm>.

⁷⁶ 42 U.S.C. § 1437n(f)(1).

⁷⁷ § 13663(a).

⁷⁸ See 7 C.F.R. § 3560.154(j).

⁷⁹ 42 U.S.C. § 13661(a).

in the drug-related activity resulting in eviction successfully completed a drug rehabilitation program.⁸⁰ The ban may also be waived if circumstances have changed, such as cases where the individual responsible for the drug-related activity has died or is incarcerated.⁸¹ Although Congress set the ban at three years, HUD regulations authorize PHAs and owners to extend the ban for a longer period of time.⁸²

Additionally, PHAs and owners have broad discretion to deny or accept applicants who have engaged in any other types of criminal activity. Any policies regarding admission and screening must be in writing and available to applicants.⁸³ PHAs or owners may reject an applicant for drug-related criminal activity, violent criminal activity, and criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.⁸⁴ Importantly, the PHA or owner must determine that the criminal activity occurred within a “reasonable period” of time prior to the admission decision.⁸⁵ The term “reasonable period” is not defined in the statute. HUD guidance suggests that “five years may be reasonable for serious offenses” and notes that reasonableness may depend on the type of criminal activity at issue.⁸⁶ Implicit in the statute and HUD’s guidance is the concept that at some point, most applicants with an aging criminal record should be eligible for housing and should not be barred by screening criteria. In cases where survivors are denied housing based on aging criminal records, advocates should argue that the housing provider exceeded its discretion

because the criminal activity did not occur within a “reasonable period” of time prior to the denial. The Toolkit accompanying this Manual contains sample letters raising these arguments.⁸⁷

It is also important to note that not all criminal activity should be the basis for a denial. Only criminal activity that is drug-related, violent, or would threaten the health, safety, or right to peaceful enjoyment of the premises should be the basis for a denial.⁸⁸ Thus, survivors with a record involving crimes such as shoplifting, writing bad checks, or prostitution should not be rejected unless it can be shown that the activity would pose a threat to the health and safety of other residents.

As discussed later in this Chapter, survivors may improve their chances of securing federally subsidized housing if they present evidence of the mitigating circumstances surrounding negative application information. Mitigating circumstances are facts that can be used to argue that an applicant would be a good candidate for subsidized housing even though her application contains negative information. Thus, in assisting a survivor who has a criminal history, advocates should investigate whether the history is related to acts of domestic violence against the survivor. For example, to avoid prolonged jail time, a survivor may have pleaded guilty to assault charges after injuring her batterer while acting in self-defense. If the survivor can demonstrate that the criminal history was in fact related to acts of violence committed against her, she should explain this to the housing provider and provide supporting documentation. The survivor should explain why it is unlikely that she will be involved in any future criminal activity, such as by demonstrating that she has ended her relationship with the abuser and that she has sought supportive services.

⁸⁰ § 13661(a).

⁸¹ § 13661(a).

⁸² 24 C.F.R. §§ 5.5852, 960.203(c)(3)(ii), 966.4(1)(5)(vii)(E).

⁸³ §§ 5.655(b)(2) (project-based Section 8) 960.202(a) (public housing), 982.54(d) (Section 8 vouchers).

⁸⁴ § 5.100.

⁸⁵ 42 U.S.C. § 13661(c).

⁸⁶ Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).

⁸⁷ See Toolkit, Appendices 3 and 4.

⁸⁸ See HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 96 (June 2003).

If the survivor is denied admission on the basis of a criminal record, and there is a close link between the criminal history and acts of violence against the survivor, she may be able to argue that the denial is based on her status as a survivor of domestic violence in violation of the Violence Against Women Act (VAWA).⁸⁹ She may also be able to argue that the denial of housing constitutes discrimination on the basis of sex in violation of fair housing laws.⁹⁰

Survivors sometimes face denials of housing based on the abuser's criminal history if the abuser was originally listed on the household's application for housing, but has subsequently left the household. For example, the abuser may have been living with the survivor when the application was submitted, but moved out by the time the housing provider screened the household's application for criminal history. In these cases, the survivor should provide documentation to the housing provider that demonstrates that the abuser is no longer part of the household, such as a restraining order, divorce decree, or proof of the abuser's new address, such as a statement from the abuser's landlord.

3.5.2 Previous Debts, Evictions, and Terminations Involving Federally Subsidized Housing

A PHA will often reject an applicant because of a prior debt owing to it or any other PHA,

such as for back rent or repair charges.⁹¹ Additionally, many PHAs have policies denying admission to applicants who have been previously evicted from public housing or terminated from the Section 8 voucher program.⁹²

As discussed in the next section, survivors should present housing providers with evidence of the circumstances surrounding negative application information. Thus, advocates should investigate whether a debt, eviction, or termination from federally subsidized housing was related to acts of domestic violence against the survivor. For example, a survivor may have owed money to a PHA or been evicted because her abuser damaged her public housing unit. If the survivor can demonstrate that the prior debt or eviction was in fact related to acts of violence committed against her, she should explain this to the housing provider and provide supporting documentation. The survivor should be prepared to demonstrate that she has ended her relationship with the abuser, such as by providing a restraining order or other court document or a letter of support from a service provider. If the housing provider denies her admission anyway, and there is a close link between the prior debt or eviction and acts of violence against the survivor, she may be able to argue that the denial is based on her status as a survivor of domestic violence in violation of VAWA.⁹³ She may also be able to argue that the denial of housing constitutes discrimination on

⁸⁹ See 42 U.S.C. §§ 1437d(c)(3) (public housing), 1437f(c)(9)(A) (project-based Section 8), § 1437f(o)(6)(B) (vouchers); 24 C.F.R. §§ 5.2005(a) (prohibiting a housing provider from denying an applicant admission to housing or rental assistance on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking), 960.203(c)(4) (stating that PHA tenant selection criteria are subject to protections for victims of domestic violence, dating violence, and stalking). See Chapter 8 for more information regarding VAWA's housing protections.

⁹⁰ See Chapter 6 for more information regarding fair housing laws.

⁹¹ See 24 C.F.R. §§ 982.552(c)(1)(v) & (vi) (providing that a PHA may deny admission to its Section 8 voucher program for a debt owed to it or any other PHA). For information on challenging denials of admission based on debts to PHAs, see NATIONAL HOUSING LAW PROJECT, *supra* note 41, at 2/58-2/59.

⁹² See 24 C.F.R. § 982.552(c)(1)(ii) (authorizing a PHA to deny a Section 8 voucher applicant because the family was terminated from a tenant-based program). For information on challenging denials of admission based on prior evictions from or subsidy terminations in federally subsidized housing, see NATIONAL HOUSING LAW PROJECT, *supra* note 41, at 2/60.

⁹³ See *supra* note 89.

the basis of sex in violation of fair housing laws.⁹⁴

3.6 Mitigating Circumstances

Survivors with negative credit, tenancy, or criminal history who are seeking admission to federally subsidized housing may improve their odds of success if they present housing providers with evidence of mitigating circumstances surrounding the negative history. Mitigating circumstances are facts that demonstrate that the survivor would be a good candidate for a housing program even though her application contains negative information. Mitigating circumstances may be presented at any time during the application process. Incidents of domestic violence against a survivor may constitute a mitigating circumstance if there is a link between the negative credit, tenancy, or criminal history and the acts of violence. Advocates should remind housing providers that they must carefully consider these mitigating circumstances given VAWA's prohibition against denying housing to an applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.⁹⁵ In fact, some PHAs have adopted policies explicitly stating that acts of domestic violence, dating violence, and stalking committed against an applicant will be considered as a mitigating circumstance in weighing the application.⁹⁶

⁹⁴ See Chapter 6 for more information regarding fair housing laws.

⁹⁵ See *supra* note 89.

⁹⁶ See, e.g., Oakland Housing Authority, Administrative Plan (June 1, 2009), <http://www.oakha.org/MTW/AdminPlan.pdf> (acknowledging that victims of domestic violence may have unfavorable history that would warrant a denial of housing and providing these victims an opportunity to demonstrate that the domestic violence played a role in causing the basis for denial). See Chapter 10 for information on working with PHAs to adopt admissions policies that consider an applicant's status as a survivor of domestic violence as a mitigating factor.

The rules regarding the consideration of mitigating circumstances vary among the federally subsidized housing programs. In the public housing program, PHAs are required by regulation to consider mitigating factors. If a PHA obtains adverse information about a survivor who is applying for public housing, it must consider the time, nature, and extent of the survivor's conduct, including the seriousness of the offense.⁹⁷

When reviewing an application for Section 8 voucher assistance, PHAs are urged, but not required, to consider mitigating circumstances. The same rule applies to HUD-assisted owners. HUD regulations set forth the factors that should be considered, which are listed below, along with examples of facts that could be considered as mitigating circumstances.⁹⁸

- The seriousness of the offense. This factor may be applicable where a survivor has criminal history that would not affect the health or safety of others, such as shoplifting.
- The effect the denial of admission would have on the rest of the family. This factor would be applicable where the survivor is the sole caretaker of minor children and risks losing custody if she cannot secure housing.
- The effect the denial of admission would have on the community. This factor may support an argument that denying housing to domestic violence survivors and their children will likely increase the rate of homelessness within this vulnerable population and perpetuate the cycle of violence.

⁹⁷ 24 C.F.R. § 960.203(d); PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 88, at 56-57.

⁹⁸ This list is derived from the following sources: 24 C.F.R. §§ 5.852, 982.552(c)(2); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Handbook 4350.3, REV-1, CHG-2, ¶ 4-7C4 (June 2007).

- The extent to which the applicant has taken responsibility and taken steps to prevent or mitigate. This factor may be applicable where the survivor can demonstrate that she has ended the abusive relationship that led to the negative conduct at issue.
- Evidence of rehabilitation. This factor may be applicable in cases where a survivor who has drug-related criminal history is participating in or has completed a rehabilitation program.
- Mitigating circumstances relating to the disability of a family member. This factor may be applicable in cases where negative criminal or tenancy history is related to the disability of the survivor or her children.⁹⁹
- Evidence of the family's participation or willingness to participate in social service or counseling programs. This factor may be applicable where the survivor has developed a safety plan, sought assistance with a restraining order, or received emotional support from a domestic violence or other service provider.

In assisting survivors who are applying for subsidized housing, advocates should consider whether any of the factors listed above apply to the survivor's circumstances. If so, the survivor should explain these circumstances and provide supporting documentation as part of her application. The Toolkit accompanying this Manual contains sample letters that request housing providers to consider mitigating circumstances in making their admissions decisions.¹⁰⁰

⁹⁹ Additionally, if a survivor has poor rental, tenancy, or credit history that is directly related to a disability, a housing provider may be required, as a reasonable accommodation, to alter tenancy screening criteria that would otherwise bar the survivor from admission. See Chapter 7 for more information regarding reasonable accommodations.

¹⁰⁰ See Toolkit, Appendices 3 and 4.

3.7 Challenging a Denial of Admission to Federally Subsidized Housing

If a survivor is denied federally subsidized housing, it is important to understand her rights to challenge the denial. Contesting the denial enables the survivor to correct any erroneous information, present evidence of mitigating circumstances, and assert her protections under VAWA and fair housing laws. This section discusses the notice that a survivor must receive if she has been denied federally subsidized housing, the steps she should take to prepare to challenge the denial, and her rights during the informal hearing process.

3.7.1 Notice of the Denial

Survivors denied admission to public housing, the Section 8 voucher program, other HUD-assisted housing, or Rural Development housing must be given written notice of the denial.¹⁰¹ The notice must state the reasons for the denial.¹⁰² It should also state the procedure and timeframe for challenging the denial.¹⁰³ Typically, if the survivor wants to exercise her right to challenge the denial, she must submit a written request for an informal hearing or review.

The denial notice must also state that an applicant with a disability has the right to request a reasonable accommodation to participate in the informal hearing.¹⁰⁴

¹⁰¹ 42 U.S.C. § 1437d(c)(4) (public housing); 7 C.F.R. §§ 3560.160(e), 3560.154(h) (Rural Development housing); 24 C.F.R. §§ 982.201(f)(1), 982.554(a) (Section 8 voucher); OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 98, at ¶ 4-9C.

¹⁰² See *supra* note 101.

¹⁰³ 24 C.F.R. §§ 960.208(a) (public housing), 982.201(f)(1), 982.552(d) & (e), 982.554(a) (Section 8 voucher); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 98, at ¶ 4-9(C)(2)(b).

¹⁰⁴ See Accessibility Notice: Section 504 of the Rehabilitation Act of 1973, the Americans with

Additionally, depending upon the number of non-English speakers served by the PHA or owner, the notice may have to be provided in the survivor's primary language.¹⁰⁵

3.7.2 Preparation for Challenging the Denial

There are several steps that advocates should take to prepare a survivor for challenging a denial of federally subsidized housing. The survivor should obtain all documents and information from the PHA or owner regarding the denial. After reviewing this information, the advocate should consider contacting the housing provider to request an informal meeting to discuss the denial. While most housing providers are not required to provide such a meeting,¹⁰⁶ some may welcome the opportunity resolve the survivor's challenge to the denial without having to go through the hearing process. This meeting may be especially beneficial where the survivor believes that the housing provider relied upon inaccurate information, where the survivor can demonstrate mitigating circumstances, or where it appears that the survivor was denied housing for reasons related to domestic violence in violation of VAWA or fair housing laws.

If the advocate is unable to secure a meeting with the housing provider, or the meeting does not yield a resolution, the advocate and survivor

should begin to prepare for the hearing. Letters of support are a critical part of this preparation. Examples of individuals whose letters of support may be helpful include employers, teachers, social workers, neighbors, landlords, community leaders, law enforcement officers, district attorneys, victim advocates, and domestic violence service providers. Some of the topics the letters could discuss include how the survivor's circumstances have changed, why the negative tenancy or criminal history is unlikely to recur, the steps the survivor has taken to improve her life, and why the survivor would be a good tenant. The survivor should also ask these individuals whether they would be willing to testify in her support at her hearing. If there is information demonstrating that the survivor has participated in counseling and social service programs, it should also be submitted. If the denial is related to the survivor's disability, she should submit documentation of that disability, such as a letter from a health care provider.¹⁰⁷ A survivor with criminal history should consider submitting a certification that she has not engaged in criminal activity during a specified period of time.¹⁰⁸ Depending on local practice, the letters and information provided should be notarized.

3.7.3 The Informal Hearing/Review¹⁰⁹

Survivors applying for public housing, the Section 8 voucher program, HUD-assisted housing, and Rural Development housing are entitled to a review of the admission decision if

Disabilities Act of 1990, the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988, PIH 2002-01, ¶ II.C.1 (Jan. 22, 2002); HUD, Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability/Accessibility Provisions of the Fair Housing Act of 1988, H 2001-02, ¶ II.B.5 (Feb. 6, 2001).

¹⁰⁵ 42 U.S.C. § 2000d (Title VI, § 601 of the Civil Rights Act of 1964); 7 C.F.R. § 3560.160(e) (Rural Development housing); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2732 (Jan. 22, 2007).

¹⁰⁶ An exception to this is the Rural Development program, which requires the owner to meet informally with the applicant. *See* 7 C.F.R. § 3560.160(f)(2).

¹⁰⁷ See Chapter 7 for more information regarding documentation of disabilities.

¹⁰⁸ *See* 24 C.F.R. § 5.855(c) (stating that certification by an applicant that she has not engaged in criminal activity during a specified period of time is sufficient evidence that the applicant is not currently engaged in criminal activity).

¹⁰⁹ This Chapter discusses the informal hearing/review process as it applies to denials of admission. For information regarding evictions and subsidy terminations, see Chapter 9.

they are rejected.¹¹⁰ Depending on the program, the review is called a grievance, an informal hearing, an informal review, or a meeting.¹¹¹ The hearing/review is the survivor's opportunity to demonstrate to an impartial decision-maker that the housing provider relied on erroneous information, failed to consider mitigating circumstances, or denied the survivor housing in violation of VAWA or fair housing laws. The process is generally very informal. The survivor, her attorney, or her advocate will have an opportunity to present witnesses and evidence¹¹² before an impartial hearing officer.¹¹³ For most federally subsidized housing programs, the survivor must be given a written decision after the hearing/review that states the reasons for the decision and indicates the evidence relied upon.¹¹⁴ If the survivor does not prevail at the hearing/review, she typically has no more appeals at the housing authority level. In most instances, to challenge the hearing officer's decision, she must file a court action.¹¹⁵

¹¹⁰ See, e.g., 42 U.S.C. § 1437d(c)(4) (public housing); 7 C.F.R. § 3560.160(f)-(g) (2007) (Rural Development program); 24 C.F.R. §§ 982.554 (voucher); *Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982) (holding that applicants for project-based Section 8 had a sufficient property interest to give rise to due process procedural safeguards).

¹¹¹ For Rural Development housing, the review process is called the grievance procedure. For public housing, it is called an informal hearing. For the voucher program, it is called an informal review. For HUD-assisted housing, it is called a meeting. For convenience here, the process is generally referred to as the hearing/review.

¹¹² See, e.g., 7 C.F.R. § 3560.160(h) (2007) (Rural Development housing); 24 C.F.R. § 982.554(b)(2) (2007) (voucher); HUD, VOUCHER PROGRAM GUIDEBOOK, HOUSING CHOICE, 7420.10G ¶ 16.5 (Apr. 2001).

¹¹³ See *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980).

¹¹⁴ 24 C.F.R. §§ 982.552(b)(3) (Section 8 voucher program); HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 88, at 58; OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 98, at ¶ 4-9D.

¹¹⁵ Some PHAs provide a process where an applicant can appeal a hearing officer's decision. Advocates should consult their PHA's Administrative Plan to determine whether such an appeal process is available.

3.8 Conclusion

Survivors face a number of obstacles to securing housing. Fortunately, there are some steps that advocates can take to increase their clients' chances of obtaining housing, such as gathering letters of support, offering to meet with housing providers who have denied housing to clients, and helping clients exercise their rights to challenge denials of federally subsidized housing. Advocates should think creatively in determining ways that they can demonstrate to housing providers that their clients have taken steps to improve their lives, and that they have the support they need to be model tenants.

Chapter 4: Safety Planning in Rental Housing

Table of Contents

4.1 Introduction.....	25
4.2 Safety Planning for Survivors Remaining in Their Existing Homes.....	25
4.3 Safety Planning for Survivors Relocating to New Homes.....	26
4.4 Safety Planning for Survivors in Public Housing.....	27
4.5 Safety Planning for Survivors with Section 8 Vouchers	28
4.6 Conclusion	29

4.1 Introduction

The danger of violence, including the risk of death, increases when domestic violence survivors leave their abusers.¹¹⁶ Accordingly, survivors who have experienced domestic violence in their rental housing and are attempting to end the abusive relationship should take steps to protect their safety. In planning for their safety, survivors usually must make a choice between two options:

- Remain in the existing housing and take additional precautions to maintain their safety; or
- Relocate to a confidential location and take precautions to prevent the batterer from discovering their new home.

This Chapter discusses the actions that survivors can take to improve the security of their homes and to ensure that they remain safe when they relocate. Survivors living in public or Section 8 housing need to consider additional factors when planning for their safety, which are discussed at the end of this Chapter. This

¹¹⁶ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 66 (1991).

Chapter is not intended to provide a comprehensive review of safety planning strategies and is limited to issues relating to rental housing.¹¹⁷ The Toolkit accompanying this Manual includes a safety planning brochure that advocates can share with their clients, as well as a sample letter requesting relocation in subsidized housing to protect a client's safety.¹¹⁸

4.2 Safety Planning for Survivors Remaining in Their Existing Homes

Survivors who have experienced domestic violence in or near their homes may decide to stay in their homes because they lack financial resources to move,¹¹⁹ they want to remain near

¹¹⁷ For comprehensive information regarding safety planning, see AMERICAN BAR ASSOCIATION, *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* (2d ed. 2004); American Bar Association, Domestic Violence Safety Plan, <http://www.abanet.org/tips/dvsafety.html>; Massachusetts Coalition Against Sexual Assault and Domestic Violence, Domestic Violence Safety Planning, http://www.janedoe.org/safety/safety_dv_planning.htm; PEACE AT HOME, *DOMESTIC VIOLENCE: THE FACTS*, <http://www.betterman.org/dv-the-facts.pdf>.

¹¹⁸ See Toolkit, Appendices 5 and 6.

¹¹⁹ Some survivors may be able to obtain relocation funds through the California Victim Compensation Program, which is discussed in Chapter 2.

family, schools, or jobs, or they feel that additional measures will preserve their safety. Advocates should consider discussing the preventive measures below with clients who want to remain in their existing housing.

- Work with your landlord to improve the security of your home.¹²⁰ Make sure that all lights, smoke detectors, and fire extinguishers are in working order. Install a porch light if you do not have one already. Trim shrubbery, especially away from doors and windows. Change the locks on your doors.¹²¹ Add deadbolts, window locks or bars, and a home security system. Install a peephole if you do not have one already. In some cases, the California Victim Compensation Program (VCP) can provide funds for security improvements. Contact your local Victim Witness Assistance Center¹²² or VCP at (800) 777-9229.
- Work with an advocate to obtain a restraining order requiring the abuser to move out immediately and/or to stay away from the home.
- If the abuser has been ordered out of the home, ask the police to come to your home while the abuser picks up personal belongings.
- Provide trustworthy neighbors, your landlord, property managers, and security officers with copies of restraining orders and a picture of the abuser and the abuser's vehicle so they can call the police if they see the abuser near your home.
- Keep a phone in a room that locks from the inside, or keep a cell phone in an

accessible hiding place. Program all phones with emergency contact numbers.

- Pack a bag with all essential items, including money, passport, driver's license, social security card, immigration documents, birth certificates, bank account records, checkbook, credit cards, school and medical records, copy of restraining order and other court records, favorite toy for children, keys, medications, insurance policies, and any other items needed in the event that you must flee immediately. Store the items in a safe location that is not accessible to the abuser, such as at a friend's house or at work.
- Together with your children, plan and practice escape routes.
- Arrange a signal (such as turning the porch light on during the day) or a code word or phrase with trustworthy neighbors to let them know you need help.

4.3 Safety Planning for Survivors Relocating to New Homes

In some instances, a survivor may need to relocate to a new home to protect her safety. Preserving the survivor's safety while she is moving out and ensuring that the abuser does not discover her new location should be of particular concern. In addition to the measures discussed above, consider reviewing the following preventive steps with clients who are moving to a confidential location.

- Before, during, and after the move, develop secure methods of communicating with the landlord, such as establishing a new email account on a safe computer (such as at the library or a friend's place) and using a cell phone to which the abuser does not have access.

¹²⁰ For information about the landlord's duty to provide safe housing, see Chapter 5.

¹²¹ For information regarding lock changes, see Chapter 5.

¹²² There are 59 Victim Witness Assistance Centers in California, one in each county and one in the city of Los Angeles. For a list of these centers, see <http://www.vcgcb.ca.gov/victims/localhelp.aspx>.

- Before moving out, develop a plan for leaving the premises quickly. If you are worried about your safety when moving out, you may request a police escort.
- If you cannot take everything you need when you leave, ask the police or sheriff's deputies to escort you to your home to pick up items. They will only allow you to take possessions that clearly belong to you or your children, such as clothing or toys.
- Consider enrolling in California's Safe at Home program.¹²³ The program provides survivors of domestic violence, stalking, or sexual assault with an official, substitute address to use in place of their real address. Mail is forwarded from the substitute address to the real address within 48 hours. Among other things, the substitute address can be used to receive first-class mail, open a bank account, complete a confidential name change, fill out government documents, register to vote, get a driver's license, or enroll a child in school. Survivors work with an enrolling agency to complete the application and to gather the information needed to establish proof of abuse, sexual assault, or stalking.¹²⁴
- Where possible, do not give out your new address and phone number. Use a post office box or the address of a friend or family member, or enroll in the Safe at Home program.
- Once you move out of the unit, the landlord has 21 days to return your security deposit.¹²⁵ Instead of providing the landlord with your new address,

consider using a post office box or a domestic violence agency address, having a friend or family member pick up the deposit, or having the deposit wired to a bank account that is not accessible to the abuser.

4.4 Safety Planning for Survivors in Public Housing

If the survivor lives in public housing, she should consider additional factors in developing a safety plan. As in any case involving domestic violence in rental housing, the survivor will need to consider whether she wants to remain in the unit and take steps to protect her safety, or whether she wants to move to a confidential location. Once the survivor has made this decision, she should contact the public housing agency (PHA) as soon as possible to explain the actions that are needed to protect her safety. Options include having the abuser removed from the lease, working with the development's security officers to protect the survivor's safety, requesting a transfer to another unit or development, and requesting a Section 8 voucher. Keep in mind that in areas with few public housing complexes, requesting a Section 8 voucher may be a safer option than transferring to another public housing unit. In addition to the measures discussed throughout this Chapter, consider reviewing the following preventive steps with survivors who are public housing tenants. Advocates should note that many of the steps discussed below will also be applicable to survivors living project-based Section 8 developments.¹²⁶

- Apply for a restraining order. If the abuser is on the lease or a member of the household, request exclusive possession of the public housing unit in your restraining order application.

¹²³ For more information, see California Secretary of State, Safe at Home Confidential Address Program, <http://www.casafeathome.org/>.

¹²⁴ See California Secretary of State, Safe at Home Enrolling Agencies, http://www.casafeathome.org/Safe_at_Home_agencies.htm.

¹²⁵ CAL. CIV. CODE § 1950.5(g)(1).

¹²⁶ See Chapter 2 for more information regarding project-based Section 8 developments.

- Contact the PHA to explain the situation. Provide PHA employees with copies of restraining orders, other court documents, and police reports. Explain what actions can make you and your family safer. Remind PHA employees that under the Violence Against Women Act (VAWA), they have a duty to keep information regarding domestic violence confidential.¹²⁷
- If you live with the abuser, the PHA can use VAWA to remove the abuser from the lease while allowing you to continue living in the unit.¹²⁸ The PHA must follow the standard eviction procedure in removing the abuser, which may take several weeks. Consider temporarily moving to a safe, confidential location while the PHA completes this process. Once the process is complete, ask the PHA to change the locks.
- Provide security officers or property managers at the development with copies of restraining orders and photos of the abuser and the abuser's vehicle. Some developments have a "no-trespass" list, which permits the housing authority to prohibit non-residents from being on housing authority property if they have committed certain violent or criminal acts. Request that the abuser be added to this list.
- If the abuser is evicted from the unit, voluntarily leaves, is ordered to move out as part of a restraining order, or is incarcerated, report this to the PHA and request a recertification of your household income. Reduced income as a result of the abuser's absence may mean reduced rent.
- If it is no longer safe for you to live in the unit, contact the PHA to request a transfer to another public housing unit or a Section 8 voucher. Ask for your

request to be expedited because you are a victim of domestic violence. Identify to the PHA the housing developments where the abuser would be least likely to find you. Because it may take a significant period of time for the PHA to act, consider temporary housing options while the PHA processes your request for a transfer or Section 8 voucher.

- Ask the PHA to keep all details regarding your transfer request confidential, particularly the location of the unit to which you are moving. Once you have been granted the transfer, ask the PHA not to include your name on mailboxes or public directories.
- If you must move out of the PHA's jurisdiction (such as to another city, county, or state), notify the PHA. Ask the PHA to assist you in contacting PHAs in the region to which you are moving.

4.5 Safety Planning for Survivors with Section 8 Vouchers

Much like survivors in public housing, survivors with Section 8 vouchers will need to communicate with PHA staff regarding their safety needs. Many of the actions that can be taken to protect voucher tenants' safety are similar to those that can be used by public housing tenants. For example, a voucher tenant can request that the abuser be removed from the lease, or she can move to a confidential unit while continuing to receive rental assistance. In addition to the measures discussed throughout this Chapter, consider reviewing the following preventive steps with survivors who are Section 8 voucher tenants.

- Apply for a restraining order. If the abuser is a member of the household, ask the court to assign the Section 8 voucher exclusively to you and to order the abuser to move out.

¹²⁷ 42 U.S.C. § 1437d(u)(2)(A).

¹²⁸ § 1437d(l)(6)(B).

- Contact the PHA to explain the situation. Provide PHA employees with copies of restraining orders, other court documents, and police reports. Explain what actions can make you and your family safer. Remind PHA employees that under VAWA, they have a duty to keep information regarding domestic violence confidential.¹²⁹
- If the abuser is a member of the household, ask the PHA to remove the abuser from the Section 8 voucher. The PHA can do this without terminating your Section 8 assistance.¹³⁰
- If you live with the abuser, the Section 8 landlord can use VAWA to remove the abuser from the lease while allowing you to continue living in the unit.¹³¹ The landlord must follow the standard eviction procedure in removing the abuser, which may take several weeks. Consider temporarily moving to a safe, confidential location while the landlord completes this process. Once the process is complete, ask the landlord to change the locks.
- If the abuser is evicted from the unit, voluntarily leaves, is ordered to move out as part of a restraining order, or is incarcerated, report this to the PHA and request a recertification of your household income. Reduced income as a result of the abuser's absence may mean reduced rent.
- If it is no longer safe for you to live in the unit, contact the PHA to discuss using your Section 8 voucher at another unit. You can use your Section 8 voucher in any jurisdiction that has a PHA.¹³² The PHA must help you in

contacting the housing authority in the city where you want to move. Ask both PHAs to keep all details regarding your request to move confidential, particularly the location of the unit to which you are moving.

- If you are seeking to move with your Section 8 voucher, ask the PHA not to disclose your prior address or prior landlord's contact information to the prospective landlord at the new location.

4.6 Conclusion

Safety planning is an essential component in helping survivors maintain their existing housing or in assisting survivors to relocate to a confidential location. Housing advocates should consult with victim service providers to help their clients to develop a comprehensive safety plan. As discussed, the safety plan should be tailored to the client's specific housing needs, should consider what additional security measures are needed, and should identify steps to institute those measures. Advocates assisting clients living in federally subsidized housing will need to communicate the survivor's safety needs to the PHA and/or the subsidized landlord, especially where the survivor lives with the abuser or needs to relocate.

¹²⁹ § 1437f(ee)(2)(A).

¹³⁰ 24 C.F.R. § 982.552(c)(2)(ii).

¹³¹ 42 U.S.C. § 1437f(o)(20)(D)(i).

¹³² § 1437f(r); 24 C.F.R. § 982.353(b); HUD, HOUSING CHOICE VOUCHER GUIDEBOOK (7420.10G), Ch. 13,

<http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/index.cfm>.

Chapter 5: Common Landlord-Tenant Issues Survivors Encounter

Table of Contents

5.1 Introduction.....	30
5.2 The Landlord’s Duty to Provide Safe Housing.....	30
5.3 The Landlord’s Duty to Protect Tenants from Criminal Acts by Other Tenants.....	32
5.4 Removing the Batterer from the Unit	33
5.5 Lock Changes.....	34
5.6 Breaking The Lease to Escape Violence	34
5.6.1 Overview of Civil Code § 1946.7.....	35
5.6.2 Security Deposits	36
5.6.3 Survivors Who Lack Required Documentation to Break the Lease	36
5.6.4 Eviction of the Abuser After the Survivor Leaves the Unit.....	37
5.7 Conclusion	37

5.1 Introduction

Survivors in rental housing frequently need to take steps to protect their safety, such as improving security measures at the property, seeking help in dealing with other tenants who are abusive or violent, or moving elsewhere to escape violence. In taking these actions, survivors often need the assistance of their landlords. This Chapter discusses some of the most common landlord-tenant issues that survivors encounter, including (1) the landlord’s duty to provide safe housing; (2) the landlord’s duty to protect survivors from dangerous tenants; (3) survivors’ rights regarding eviction of the batterer in cases where the two live together; (4) survivors’ rights regarding lock changes; and (5) survivors’ rights in breaking the lease to escape domestic violence, stalking, or sexual assault. In general, the rights discussed in this Chapter will apply to survivors living in either subsidized or private housing. In addition to the rights discussed in this Chapter, survivors

living in federally subsidized housing may have further protections under the Violence Against Women Act, which is discussed in Chapter 8. Further, advocates should consider whether local ordinances regarding rent control or code enforcement may provide additional rights for survivors.

5.2 The Landlord’s Duty to Provide Safe Housing

A survivor may be at a heightened risk of harm from her abuser if the rental property lacks adequate security measures. Without adequate lighting, functioning locks, and secure windows, the survivor’s ability to prevent the abuser from accessing the property is limited. This section discusses landlords’ obligations regarding security measures for rental housing. If a landlord refuses to make reasonable security improvements, advocates can cite to the obligations discussed in this section to remind

the landlord that he can be found liable for criminal assaults against tenants.

In California, statutes specifically address the landlord's obligation to provide locks on windows and doors. Each entry door of a rental unit must be equipped with a deadbolt lock.¹³³ Doors that open to common areas must be equipped with locking mechanisms.¹³⁴ Additionally, windows that are designed to be opened must be equipped with operable locking devices.¹³⁵ If the landlord refuses to install locks as required by these statutes, the survivor has the right to install locks herself and deduct the cost from her rent.¹³⁶ Before doing so, the survivor must give the landlord notice of the faulty or missing locks and must allow him a reasonable time to install or replace the locks.¹³⁷ Under California law, 30 days is generally presumed to be a reasonable time, but a survivor may change the locks on shorter notice if "all the circumstances" require it.¹³⁸ Thus, a survivor should not have to wait 30 days if her home is not secure due to the faulty or missing locks.

In addition to the statutory requirements regarding locks, courts have found that landlords must take reasonable precautions to protect tenants from foreseeable criminal assaults. In general, if a landlord is aware of criminal activity on the premises, is able to do something to reduce the risk of future criminal activity, and does not act to reasonably reduce the risk, he can be held responsible for the criminal acts of others.¹³⁹ Thus, a landlord may be liable for an assault against a survivor if he was aware that prior assaults had occurred on the premises, and he failed to make reasonable

safety improvements that could have prevented the assault.

A major factor in determining a landlord's duty to provide safe conditions is the foreseeability of criminal activity.¹⁴⁰ Foreseeability generally revolves around whether the landlord knew that prior similar criminal incidents had occurred on the premises.¹⁴¹ Courts have rarely imposed liability where there was no history of criminal activity or where past acts were dissimilar, although the past acts need not be identical.¹⁴²

Additionally, courts have been more likely to find landlord liability where the burden to improve safety would be minimal.¹⁴³ For example, a court may find liability where inexpensive measures such as installing new locks, replacing burned-out light bulbs, or trimming shrubbery could have reduced the risk of criminal activity. On the other hand, a court will be less likely to find liability where expensive measures are needed to improve safety, such as hiring full-time security officers or installing fencing.

An example of how courts have applied these principles is *Kwaitkowski v. Superior Trading Co.* The case was filed by a tenant who was raped and robbed in a poorly lit lobby.¹⁴⁴ There had been prior assaults in common areas of the building, and the landlord received numerous complaints about a malfunctioning lock on the lobby door, which allowed strangers access to the building.¹⁴⁵ The court found that the landlord had a duty to repair the lock based on

¹³³ CAL. CIV. CODE § 1941.3.

¹³⁴ § 1941.3.

¹³⁵ § 1941.3.

¹³⁶ § 1941.3.

¹³⁷ § 1942.

¹³⁸ See § 1942.

¹³⁹ See *Kwaitkowski v. Super. Trading Co.*, 176 Cal. Rptr. 494, 496-97 (Cal. Ct. App. 1981); Cal. Civil Jury Instructions § 8.22.

¹⁴⁰ *Ann M. v. Pac. Plaza Shopping Ctr.*, 863 P.2d 207, 215 (Cal. 1993); see also *Delgado v. Trax Bar & Grill*, 113 P.3d 1159 (Cal. 2005); *Sharon P. v. Arman Ltd.*, 989 P.2d 121 (Cal. 1999).

¹⁴¹ See, e.g., *Kwaitkowski*, 176 Cal. Rptr. at 496-97.

¹⁴² See, e.g., *Castaneda v. Olsher*, 162 P.3d 610, 620-21 (Cal. 2007); *Barber v. Chang*, 60 Cal. Rptr. 3d 760, 768-69 (Cal. Ct. App. 2007).

¹⁴³ See *Ambriz v. Kelegian*, 53 Cal. Rptr. 3d 700, 711-12 (Cal. Ct. App. 2007).

¹⁴⁴ 176 Cal. Rptr. at 495.

¹⁴⁵ *Id.*

the landlord's knowledge of the previous incidents and the minimal cost of repairing the lock.¹⁴⁶

If a survivor's rental property lacks adequate security measures, advocates should submit a written request to the landlord specifying the safety improvements that need to be made. If other tenants have been victims of criminal acts due to the lack of security, this should be noted in the request, and the survivor should ask these tenants to submit requests of their own. Advocates should remind the landlord that the letter serves as notice that conditions at the property are unsafe, that it is foreseeable that tenants at the property will be victims of criminal acts, and that the landlord may be found liable if he fails to take steps to prevent these criminal acts.

5.3 The Landlord's Duty to Protect Tenants from Criminal Acts by Other Tenants

In cases where the survivor and the perpetrator of abuse live in the same apartment complex, questions often arise as to whether the landlord has a duty to protect the survivor from the perpetrator, such as by installing security cameras, warning the perpetrator that he will be evicted if his misconduct does not cease, or evicting the perpetrator. This section discusses the landlord's duty to protect a survivor from criminal acts committed by another tenant.¹⁴⁷ To establish landlord liability, survivors must make similar arguments to those discussed above regarding the landlord's duty to provide security measures. Typically, a survivor must show that the landlord knew about the other tenant's

tendency toward violence and failed to take reasonable precautions to protect her.¹⁴⁸ In general, a landlord has a duty to evict only "where the tenant's behavior made violence towards neighbors or others on the premises highly foreseeable."¹⁴⁹

Although there are no cases specifically related to domestic violence, *Madhani v. Cooper*¹⁵⁰ is an example of a case where a court found that the landlord had a duty to protect a tenant who had been assaulted by another tenant on numerous occasions. The plaintiff, Ms. Madhani, had complained to property managers at least six times that another tenant, Ms. Moore, had assaulted her and shouted threatening remarks at her.¹⁵¹ The managers promised to "take care of the situation," but they did not warn Ms. Moore that she would be evicted if she continued her assaults, did not take steps to evict her, nor did they install security cameras where the attacks were taking place.¹⁵² When Ms. Moore threw Ms. Madhani down a flight of stairs, causing serious injury, the court found that this final attack was foreseeable and that the landlord had a duty to take steps to protect Ms. Madhani, such as by evicting Ms. Moore.¹⁵³ The court stated that the repeated acts of violence made it "difficult to imagine a case in which foreseeability of harm could be more clear."¹⁵⁴

A survivor who is being threatened, assaulted, or stalked by another tenant should inform her landlord of this in writing and keep a copy for herself. The survivor should continue to submit complaints to the landlord every time there is an incident involving the other tenant. Where appropriate, the survivor should also call law enforcement. With copies of her complaints

¹⁴⁶ *Id.* at 500.

¹⁴⁷ Examples of cases finding that the landlord had a duty to protect tenants include *Barber*, 60 Cal. Rptr. 3d at 771-72; *Hawkins v. Wilton*, 51 Cal. Rptr. 3d 1 (Cal. Ct. App. 2006). Examples of cases finding that the landlord did not have a duty to protect tenants include *Andrews v. Mobile Aire Estates*, 22 Cal. Rptr. 2d 832 (Cal. Ct. App. 2005); *Sturgeon v. Curnutt*, 34 Cal. Rptr. 2d 498 (Cal. Ct. App. 1994); *Davis v. Gomez*, 255 Cal. Rptr. 743 (Cal. Ct. App. 1989).

¹⁴⁸ *Madhani v. Cooper*, 130 Cal. Rptr. 2d 778, 779 (Cal. Ct. App. 2003).

¹⁴⁹ *Castaneda v. Olsher*, 162 P.3d 610, 615 (Cal. 2007) (emphasis added).

¹⁵⁰ 130 Cal. Rptr. 2d 778.

¹⁵¹ *Id.* at 779-80.

¹⁵² *Id.*

¹⁵³ *Id.* at 780-82.

¹⁵⁴ *Id.* at 780.

to the landlord and law enforcement in hand, the survivor should request a meeting with the landlord to discuss security measures, such as installing security cameras, increasing security patrols around her unit, transferring her to a different unit or development, issuing the perpetrator a warning, or evicting the perpetrator. Before this meeting, advocates should discuss with the survivor which options are most likely to preserve her safety. If the survivor fears that she will face retaliation if the perpetrator is evicted, a better option may be to seek a restraining order or a transfer to a different property owned by the landlord. If the survivor does not want to move, it is critical to consider that the eviction of the perpetrator is at the option of the landlord and may take several weeks or months. If the landlord decides to pursue eviction proceedings, the survivor should consider whether she needs to obtain a restraining order and move to a safe, confidential location until the proceedings are complete.¹⁵⁵

5.4 Removing the Batterer from the Unit

Advocates often have questions regarding the rights of a survivor who lives in a private rental unit with her abuser and wants the abuser to be evicted from the unit. If both the survivor and abuser have signed the lease with the landlord, the survivor typically has no right to insist on the eviction of the abuser, and only the landlord can evict the abuser.¹⁵⁶ It is therefore critical for advocates to examine the lease to determine whether both the survivor and abuser are named in it. For example, if only the survivor is named in the lease, and the abuser is living in the unit and paying rent to the survivor, the survivor is essentially the abuser's landlord, and the abuser

is her subtenant.¹⁵⁷ In this situation, the survivor may be able to take steps to evict the abuser using the standard eviction process.¹⁵⁸

In cases where both the survivor and abuser are on the lease, California law generally requires that all tenants residing in a unit be named in an eviction action involving the unit.¹⁵⁹ As a result, in most cases where the survivor and abuser live together, the landlord would be forced to file an eviction action against both parties in order to end the abuser's tenancy rights. There are exceptions for survivors living in Section 8 or public housing, as landlords participating in these programs have authority to split the lease to remove a perpetrator of domestic violence, dating violence, or stalking while allowing the victim of such violence to remain.¹⁶⁰

As an alternative to eviction of the batterer, attorneys should discuss with the survivor the possibility of seeking a restraining order with a provision excluding the abuser from the dwelling, commonly referred to as a kick-out order.¹⁶¹ It is important to note that once a survivor obtains such an order and the abuser moves out of the unit, the abuser will likely stop paying his portion of the rent. Because co-tenants on a lease are generally jointly liable for the entire rent payment,¹⁶² the survivor can be evicted if she does not make the full payment, including the abuser's share. As part of the restraining order proceedings, attorneys may request that the abuser be ordered to continue

¹⁵⁷ *Id.* §§ 1.7B, 5.30.

¹⁵⁸ *See id.*; CAL. CIV. CODE § 1940.

¹⁵⁹ *See generally* CAL. CIV. PROC. CODE §§ 1164, 1166a.

¹⁶⁰ For more information regarding this provision, see Chapter 8.

¹⁶¹ *See* CAL. FAM. CODE § 6321. The procedures and requirements for seeking restraining orders are beyond the scope of this Manual. For general information regarding this topic, see California Courts: Self-Help Center, Restraining Orders, <http://www.courtinfo.ca.gov/selfhelp/protection/dv/restraining.htm>.

¹⁶² *See* CAL. CIV. CODE §§ 1659-1660.

¹⁵⁵ See Chapter 4 for more information regarding safety planning.

¹⁵⁶ CALIFORNIA LANDLORD-TENANT PRACTICE §§ 1.7A, 5.30 (Continuing Education of the Bar ed. 2002).

paying his share of the rent.¹⁶³ If the survivor is concerned that the abuser will disregard the order to pay rent, she may want to consider finding a roommate to share the rent. The survivor should always seek the landlord's written permission before adding a new roommate.

If the landlord owns multiple units, advocates can negotiate with the landlord to end the survivor's tenancy at the current unit and enter into a new rental agreement for a unit that is more affordable. For example, if the survivor is unable to afford the two-bedroom unit she was sharing with the abuser, she should explore whether a one-bedroom unit at the complex is within her means. Any agreement with the landlord to end the current tenancy and enter into a new one should be in writing. If all else fails, the survivor should consider terminating the tenancy and moving, which is discussed in detail at the end of this Chapter.

5.5 Lock Changes

California does not currently have a law expressly requiring landlords to change the locks in cases where domestic violence has occurred at a rental unit, and the survivor and abuser live together.¹⁶⁴ Landlords may be reluctant to change the locks, for fear of violating state laws prohibiting landlords from changing the locks to evict a tenant from the apartment.¹⁶⁵ In most instances, landlords will not lock out a tenant unless there is a restraining

order or other court order saying that the tenant must stay out of the unit. In obtaining the order, advocates should specifically request that the locks on the current unit be changed, so as to provide further reassurance and incentive to landlords.¹⁶⁶ California law states that once a tenant has been barred from a unit through a legal process, landlords cannot be liable for the fines normally associated with "self-help" evictions.¹⁶⁷ If a landlord remains reluctant to change the locks even after a restraining order or other court order has been issued, advocates should emphasize that failure to change the locks could expose the landlord to liability if the abuser returns and commits another act of violence.

To pay for the lock change, an advocate should seek a court order demanding reimbursement of the cost from the abuser.¹⁶⁸ In the event that the abuser cannot pay, the survivor may be able to seek reimbursement through the California Victim Compensation Fund. Advocates should be aware that if a survivor changes the locks without consulting the landlord, this may violate a common lease prohibition on alteration of the premises without the landlord's permission.

5.6 Breaking the Lease to Escape Violence

In many instances, a survivor may need to relocate to safe, confidential housing to escape her abuser. If the survivor has a lease, it is important to determine if she can be released from her responsibilities under the lease. This section discusses survivors' rights to break a lease.

¹⁶³ See CAL. FAM. CODE § 6324.

¹⁶⁴ The following are examples of statutes from other states that provide domestic violence survivors with the right to change their locks: ARIZ. REV. STAT. ANN. § 33-1318; ARK. CODE ANN. § 18-16-112; D.C. CODE § 42-3505.08; 765 ILL. COMP. STAT. ANN. 750/20; IND. CODE ANN. §§ 32-31-9-9, 32-31-9-10, 32-31-9-11; N.C. GEN. STAT. § 42-42.3; OR. REV. STAT. ANN. § 90.459; UTAH CODE ANN. § 57-22-5.1; VA. CODE ANN. §§ 55-225.5, 55-248.18:1; WASH. REV. CODE ANN. § 59.18.585.

¹⁶⁵ See CAL. CIV. CODE § 789.3(b)(1). Violations of this statute can subject a landlord to liability for actual damages plus civil fines of \$100 per day, with a \$250 minimum.

¹⁶⁶ The California Judicial Council forms for restraining orders do not contain specific check boxes for lock changes, but do contain space for "Other Orders." For a list of Domestic Violence Prevention court order forms, see <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>.

¹⁶⁷ *Hale v. Morgan*, 584 P.2d 512, 524 (Cal. 1978) (en banc).

¹⁶⁸ Such an order can be obtained after notice and hearing. Restitution is available for out-of-pocket costs incurred because of the abuse. See CAL. FAM. CODE § 6342(a)(1).

5.6.1 Overview of Civil Code § 1946.7

In many cases, if a tenant moves from her apartment before the lease ends, she can be held responsible for all the rent that would be owed until her lease expires, or until the landlord re-rents the unit.¹⁶⁹ However, California Civil Code § 1946.7 permits survivors of domestic violence, sexual assault, or stalking, who have restraining orders or police reports, to end their leases early without owing additional rent.¹⁷⁰ The law applies to both private and subsidized housing. The law does not apply in cases where survivors are month-to-month tenants, as these survivors can end their obligations to pay rent by giving the landlord written notice that they intend to leave the unit in 30 days.¹⁷¹

To use the law, the survivor must notify her landlord in writing that she was a survivor of domestic violence, sexual assault, or stalking, and that she wants to end her rental agreement.¹⁷² The survivor should be sure to date the notice. Because the law is relatively new, survivors should attach a copy of Civil Code § 1946.7. The Toolkit accompanying this Manual contains a sample notice and the text of Civil Code § 1946.7.¹⁷³

Under the law, the survivor must give the landlord at least 30 days' notice before the rental agreement can end.¹⁷⁴ The notice should state that the survivor will end the rental agreement on a date that is at least 30 days from the date of the notice. For example, if the notice is dated September 27, 2009, the earliest the rental agreement can end is October 27, 2009.

The survivor is free to leave her apartment anytime after giving the landlord the written notice. However, she will still be responsible for

rent up to 30 days after giving the landlord notice. The exception to this is if the landlord re-rents the unit during the 30-day notice period. In those cases, the landlord must refund the survivor's rent for those days on which the new tenant occupied the unit.¹⁷⁵

Advocates should discuss the timing of the notice with the survivor to ensure that she will be ready to move out of the unit on or before the date stated in the notice. If the survivor stays beyond the date stated in the notice, the landlord can file eviction proceedings against her.¹⁷⁶

If the survivor moved out of the unit before giving the landlord notice, she cannot backdate the notice. Therefore, the survivor should give the landlord a 30-day notice immediately. Alternatively, the survivor should contact the landlord and negotiate a date on which the parties can mutually agree that her rent obligations will end. Any such agreement should be in writing.

The survivor must attach to the 30-day notice either: (1) a restraining order; or (2) a copy of a police report showing that she was the victim of domestic violence, sexual assault, or stalking.¹⁷⁷ The restraining order or police report must have been issued no more than 60 days before the survivor's request to end the rental agreement.¹⁷⁸ The restraining order can be a domestic violence restraining order, a criminal protective order, a civil harassment order, or a juvenile court restraining order.¹⁷⁹ The survivor should be sure to keep a copy of the 30-day notice and the supporting documents.

If the survivor has roommates, they will still be covered by the lease and can remain in the unit after the survivor moves out.¹⁸⁰ They must continue to pay the full amount of rent due

¹⁶⁹ See CAL. CIV. CODE § 1951.2.

¹⁷⁰ § 1946.7(d).

¹⁷¹ § 1946.1

¹⁷² § 1946.7(b)(1)-(2).

¹⁷³ See Toolkit, Appendices 7 and 8.

¹⁷⁴ § 1946.7(d).

¹⁷⁵ § 1946.7(e).

¹⁷⁶ See CAL. CIV. PROC. CODE § 1161(5).

¹⁷⁷ CAL. CIV. CODE § 1946.7(b)(1)-(2).

¹⁷⁸ § 1946.7(c).

¹⁷⁹ § 1946.7(b)(1).

¹⁸⁰ § 1946.7(f).

under the lease, including any share of the rent that the survivor was paying.¹⁸¹

5.6.2 Security Deposits

If the survivor breaks the lease using Civil Code § 1946.7, her security deposit will be treated the same way as if she had moved out after the lease ended. The deposit must be returned to the survivor within 21 days after she vacates the unit. The landlord may deduct money from the deposit for back rent, damages beyond ordinary wear and tear, and reasonable cleaning charges. Advocates should note that it may not be safe for the survivor to provide her landlord with her forwarding address, especially if she believes that the abuser will contact the landlord to find out where she has moved. The survivor should consider using a post office box as her forwarding address. Or, advocates should recommend that the survivor use their agency's address. Another option is for the survivor to sign and date a letter giving a friend, family member, or advocate permission to pick up the deposit from the landlord. The survivor should notify the landlord of this arrangement ahead of time.

The survivor may have difficulty recovering her share of the deposit in instances where she was living with her abuser or a roommate, and the abuser or roommate continues to live in the unit. Under California law, landlords generally are not required to return the security deposit until the unit has been vacated by all the tenants. As a result, a landlord in this situation will not be required to return the survivor's share of the deposit until the abuser or roommate moves out. Survivors should ask the landlord to mail their share of the deposit to a safe address once the abuser or roommate moves out or can negotiate with the landlord to get at least part of their share before the abuser or roommate vacates the unit.

¹⁸¹ § 1946.7(f).

5.6.3 Survivors Who Lack Required Documentation to Break the Lease

A survivor may be unable to use Civil Code § 1946.7 because she lacks the police report or restraining order required to break the lease. In this situation, the survivor should not simply abandon the unit, as the landlord may file a lawsuit against her for the unpaid rent due under the remaining lease term. Instead, advocates should negotiate with the landlord for a date on which the parties can mutually agree to end the lease. The Toolkit accompanying this Manual contains a sample letter requesting the termination of a survivor's lease.¹⁸²

Advocates should inform the landlord that the survivor has previously experienced acts of violence on the premises, and that her safety will be jeopardized if she is forced to continue renting the unit. These negotiations may be more successful if advocates submit documentation demonstrating the risk of harm the survivor faces if she does not move, such as letters from service providers, statements from neighbors, or medical records. As discussed above, landlords can be held liable for assaults against tenants where the landlord knew that a tenant was at risk of harm but did not take reasonable steps to protect the tenant's safety. Advocates should remind the landlord that he could be held liable for future attacks on the survivor if he does not take the reasonable step of negotiating with the survivor to end her obligations under the lease.

The landlord may be more amenable to negotiations if the survivor has a friend or family member who is willing to assist in finding a new tenant, such as by advertising and showing the unit. Additionally, advocates should discuss with the survivor whether the apartment contains any habitability problems, such mold, broken windows, inadequate heating, or rodent or insect infestations. Tenants may cite uninhabitable conditions as grounds for

¹⁸² See Toolkit, Appendix 9.

terminating the tenancy,¹⁸³ and the landlord may be more willing to end the lease if the advocate reminds the landlord of this fact.

If the parties reach an agreed-upon date for ending the survivor's lease obligations, the agreement should be put into writing and signed by both parties.

5.6.4 Eviction of the Abuser After the Survivor Leaves the Unit

In cases where the survivor lived with her abuser and left the rental unit due to domestic violence, the landlord may opt to evict the abuser. Under California law, if a person commits an act of domestic violence, stalking, or sexual assault against another tenant on the rental property, there is a rebuttable presumption that the perpetrator of the abuse has committed a nuisance.¹⁸⁴ This enables landlords to serve a three-day notice to vacate the unit on perpetrators of domestic violence, stalking, or sexual assault.¹⁸⁵ The landlord must still prove in court that the incidents of violence occurred. Due to concerns that survivors living with their abusers may face retaliation if the abuser is served with eviction papers based on acts of domestic violence, the presumption applies only if the survivor has vacated the premises (such as by using Civil Code § 1946.7).¹⁸⁶ Unless reauthorized, this provision will expire on January 1, 2012.¹⁸⁷

5.7 Conclusion

Survivors who are concerned about the safety of their rental housing have a variety of options, including asking the landlord to improve security measures, requesting that the landlord take steps to address abusive or violent

tenants, seeking a restraining order, or moving to a safer location. Advocates should review all of these options with survivors and discuss which one is most appropriate in light of the responsiveness of the landlord, the survivor's willingness or ability to relocate, and the likelihood that these options will prevent future acts of violence against the survivor.

¹⁸³ § 1942.

¹⁸⁴ CAL. CIV. PROC. CODE § 1161(4).

¹⁸⁵ § 1161(4).

¹⁸⁶ § 1161(4).

¹⁸⁷ § 1161(4).

Chapter 6: Survivors' Rights Under Fair Housing Laws

Table of Contents

6.1	Introduction.....	38
6.2	Fair Housing Laws.....	39
6.2.1	Housing Covered	39
6.2.2	Groups Protected by the Laws	40
6.2.3	Prohibited Conduct	41
6.3	Discrimination Based on a Tenant's Status as a Domestic Violence Survivor	41
6.3.1	Disparate Treatment Theory	42
6.3.2	Disparate Impact Theory.....	44
6.4	Protections Against Sexual Harassment in Housing.....	46
6.4.1	Overview.....	46
6.4.2	Quid Pro Quo Harassment	47
6.4.3	Hostile Environment Harassment	48
6.4.4	Fair Housing Interference	48
6.4.5	Other Claims for Tenants Experiencing Sexual Harassment.....	49
6.4.6	Practice Tips.....	49
6.5	Enforcing Rights of Survivors Who Have Faced Discrimination	50
6.5.1	Informal Advocacy	50
6.5.2	Eviction Defenses	50
6.5.3	Administrative Complaint.....	51
6.5.3.1	Department of Housing and Urban Development Complaint.....	51
6.5.3.2	California Department of Fair Employment and Housing Complaint.....	51
6.5.4	Civil Lawsuits	52

6.1 Introduction

Survivors of domestic violence often face evictions or denials of housing that are related to acts of violence committed against them. For

example, advocates have reported that survivors have been served with eviction notices due to police presence at the unit, damage caused during incidents of violence, and noisy disturbances caused by the batterer. As we

discuss in Chapter 8, survivors of domestic violence living in certain types of federally subsidized housing have protections against being denied housing or evicted due to activity relating to domestic violence. These protections are available under the federal Violence Against Women Act of 2005 (VAWA).¹⁸⁸

Unfortunately, survivors of domestic violence living in unsubsidized rental housing are not covered by VAWA, and they remain at risk of being evicted or denied housing due to criminal acts by their batterers. Nevertheless, as discussed throughout this Chapter, these survivors may be protected by federal and state fair housing laws. As part of a national effort to promote survivors' housing rights, several advocates have argued that housing discrimination against survivors constitutes sex discrimination, because the majority of domestic violence survivors are women. Although this theory is relatively new, it has been used successfully in several cases to restore housing or provide compensation to survivors who faced eviction or were denied housing. This Chapter discusses several examples of instances where fair housing laws have been used to protect survivors' housing rights.

This Chapter also recognizes that due to economic limitations, survivors may be particularly vulnerable to sexual harassment by landlords, property managers, and their employees. Sexual harassment is a form of sex discrimination under fair housing laws, and this Chapter explains the laws that protect survivors from such harassment. Finally, the Chapter concludes by describing the options available to enforce the rights of survivors who have experienced discrimination, including informal advocacy, eviction defenses, administrative complaints, and civil lawsuits.¹⁸⁹

¹⁸⁸ See 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5) (public housing), 1437f(c)(9)(A)-(B) (project-based Section 8), 1437f(o)(6)(B), 1437(o)(7)(C) (Section 8 voucher).

¹⁸⁹ Several helpful resources are available for advocates seeking to learn more about fair housing litigation on

6.2 Fair Housing Laws

Two major categories of fair housing laws protect survivors: federal laws and state laws. First, federal law protections are available under Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988—together, these are called the Fair Housing Act (FHA).¹⁹⁰ Second, state law protections are available under California's Fair Employment and Housing Act (FEHA)¹⁹¹ and the Unruh Civil Rights Act.¹⁹² In many respects, the FHA and FEHA offer similar rights and protections, but in some areas the FEHA's protections are more expansive than the FHA's. These areas are discussed below. Because the statutes offer similar protections, advocates often raise both laws on behalf of clients who have experienced housing discrimination. This section discusses the housing that is covered by fair housing laws, the groups who are protected, and the type of conduct that is prohibited.

6.2.1 Housing Covered

California's FEHA covers more housing than the FHA. Specifically, the FEHA applies to all housing, except for a home that is occupied by the owner and is being rented to one boarder.¹⁹³ In contrast, the FHA generally does not cover (1) a dwelling with four or fewer units, as long as the owner is one of the occupants; (2) a single family home, provided the owner does not own more than three such houses at one time; and (3)

behalf of survivors. See, e.g., Sandra Park, *Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company*, 43 CLEARINGHOUSE REV. 80 (May/June 2009); ACLU Women's Rights Project, *Violence Against Women: Housing*, <http://www.aclu.org/fairhousingforwomen>; Legal Momentum, Legal Knowledge Center, <http://www.legalmomentum.org/legal-knowledge/>.

¹⁹⁰ 42 U.S.C. §§ 3601 *et seq.*

¹⁹¹ CAL. GOV'T CODE §§ 12900 *et seq.*

¹⁹² CAL. CIV. CODE §§ 51 *et seq.*

¹⁹³ CAL. GOV'T CODE § 12927(c)(2)(A).

certain housing run by private clubs for their members.¹⁹⁴ Both the FEHA and FHA provide certain exceptions for housing owned by religious organizations.¹⁹⁵ There are also certain exceptions for senior housing.¹⁹⁶

Fair housing laws cover more than just apartments. Fair housing laws are aimed at “dwellings,” which are broadly defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence.”¹⁹⁷ Thus, public housing, homeless shelters, hotels, and nursing homes are all considered dwellings for purposes of fair housing laws.¹⁹⁸

6.2.2 Groups Protected by the Laws

The federal FHA makes it illegal to discriminate on the basis of race, color, religion, sex, national origin, familial status (families with children), and disability.¹⁹⁹ California’s FEHA is more expansive than the FHA in that it covers groups in addition to those protected by the FHA. Specifically, the FEHA also prohibits discrimination on the basis of ancestry, marital status, sexual orientation, and source of income.²⁰⁰ The groups protected by the FHA and FEHA are referred to as “protected classes.” California’s Unruh Civil Rights Act, like the FHA and FEHA, prohibits discrimination against persons who are members of a protected class. In addition to the protections offered by the FHA and FEHA, the Unruh Civil Rights Act has been found by the courts to prohibit

arbitrary discrimination on the basis of personal characteristics or traits, such as age or physical appearance.²⁰¹

Survivors of domestic violence are not a protected class under either the federal FHA or California’s FEHA. As a result, housing discrimination on the basis of a tenant’s status as a survivor of domestic violence is not explicitly barred by the FHA or FEHA. However, as we explain later, advocates have successfully used sex discrimination theories to protect survivors against housing discrimination.

Advocates should consider whether the survivor was discriminated against on the basis of one of the protected classes listed in either the FHA or FEHA. For example, a landlord who refuses to rent to a survivor on the basis that she has received Victim of Crime (VOC) relocation funds has violated the FEHA by discriminating on the basis of source of income.²⁰² As another example, a landlord who refuses to allow a survivor who is suffering from post-traumatic stress disorder to mail her rent check instead of paying it in person may have violated the disability discrimination provisions of the FHA and FEHA. As we discuss at length in Chapter 7, survivors with physical or mental disabilities may have claims for discrimination if the landlord fails to make exceptions to certain policies in order to accommodate their disabilities.

*Bouley v. Young-Sabourin*²⁰³ is one example of a case where advocates used multiple bases of discrimination to protect a survivor’s housing rights. Plaintiff Quinn Bouley was assaulted in her apartment by her husband and called the police. Shortly after the incident, her landlord attempted to discuss Christianity with her, and when these efforts were unsuccessful her landlord stated, “I guess I can’t do anything

¹⁹⁴ 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

¹⁹⁵ § 3607; CAL. GOV’T CODE § 12955.4.

¹⁹⁶ 42 U.S.C. § 3607; CAL. GOV’T CODE § 12955.9.

¹⁹⁷ 42 U.S.C. § 3602(b).

¹⁹⁸ This Manual does not address domestic violence shelters’ obligations to comply with fair housing laws. For more information regarding this topic, see National Law Center on Homelessness and Poverty, *Questions & Answers: Domestic Violence Shelters and Civil Rights Statutes*,

http://www.nlchp.org/content/pubs/Q&A_DV_CivilRightsJuly%2020091.pdf.

¹⁹⁹ § 3604.

²⁰⁰ See CAL. GOV’T CODE § 12955.

²⁰¹ See *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115 (Cal. 1982); *In re Cox*, 474 P.2d 992 (Cal. 1970).

²⁰² See § 12955.

²⁰³ 394 F. Supp. 2d 675 (D. Vt. 2005).

here.”²⁰⁴ Later that day, her landlord gave her a 30-day eviction notice. Ms. Bouley filed an action under the FHA alleging that her landlord unlawfully terminated her lease on the basis of sex and religion.²⁰⁵ Specifically, Ms. Bouley alleged that the eviction was initiated because she refused to listen to her landlord’s attempt to discuss religion with her after the incident.²⁰⁶ The court found that Ms. Bouley properly stated a claim for discrimination on the basis of religion, and the case settled shortly thereafter. Later in this Chapter we discuss Ms. Bouley’s sex discrimination claim.

6.2.3 Prohibited Conduct

The FHA prohibits housing providers from taking certain actions based on an applicant’s or tenant’s race, color, religion, sex, national origin, familial status, or disability. California’s FEHA prohibits housing providers from taking certain actions based on an applicant’s or tenant’s race, color, national origin, religion, sex, disability, familial status, ancestry, marital status, sexual orientation, or source of income. Some of the actions that landlords are prohibited from taking based on a person’s membership in a protected class include:

- Refusing to rent or sell a dwelling.
- Setting different terms, conditions, or privileges for sale or rental of a dwelling.
- Providing different housing services or facilities.
- Falsely representing that a dwelling is not available for rent or sale.²⁰⁷

It is also against the law to:

²⁰⁴ *Id.* at 677.

²⁰⁵ *Id.* at 678.

²⁰⁶ *Id.*

²⁰⁷ 42 U.S.C. § 3604; CAL. GOV’T CODE § 12927; *see also* Fair Housing Council of San Fernando Valley v. Roommates.com, 521 F.3d 1157, 1167 (9th Cir. 2008).

- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, disability, familial status, or any other characteristic protected under the FHA or FEHA.²⁰⁸
- Refuse to make a “reasonable accommodation” to rules, policies, practices, or services for an individual with a disability.²⁰⁹
- Coerce, intimidate, threaten, or interfere with any person exercising their rights under fair housing laws.²¹⁰

The end of this Chapter explains some of the steps advocates and survivors can take if they believe that any of the conduct described above has occurred.

6.3 Discrimination Based on a Tenant’s Status as a Domestic Violence Survivor

As discussed, the federal FHA and California’s FEHA do not explicitly prohibit housing providers from denying housing to applicants or evicting tenants based on their status as survivors of domestic violence. However, survivors may still be able to use fair housing laws to challenge denials of housing or evictions that are related to acts of domestic violence committed against them. In recent years, several advocates have challenged these discriminatory actions by using sex discrimination theories.²¹¹ These theories may

²⁰⁸ 42 U.S.C. § 3604; CAL. GOV’T CODE § 12927.

²⁰⁹ *Id.* This topic is addressed in Chapter 7.

²¹⁰ 42 U.S.C. § 3617; CAL. GOV’T CODE §§ 12955(f), 12955.7.

²¹¹ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995); *HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* 1985 Op. N.Y. Att’y Gen. 45 (1985) (finding discrimination against domestic

be used defensively, such as to defend a survivor against a pending eviction, or affirmatively, such as to file an administrative complaint or lawsuit seeking reinstatement of housing, monetary damages, or a policy change by the housing provider.

The use of sex discrimination theories to challenge domestic violence discrimination is relatively new, and this practice is not yet widely accepted or known by the courts. There is no published case law from the California courts on this issue, and there is only one published federal case.²¹² Still, these arguments have been successful in informal advocacy with housing providers. Such informal advocacy may include making a phone call to the provider, sending a letter asking the housing provider to cease its discriminatory conduct,²¹³ or asking law enforcement, the local district attorney's office, a fair housing agency, or a local government official to contact the provider on the survivor's behalf.

Domestic violence discrimination arguments may be more successful where the survivor can raise multiple theories of discrimination, where the housing provider made stereotypical remarks based on sex, or where the survivor can show that she was discriminated against on the basis of her source of income or membership in a protected class other than sex, such as race, religion, or disability. The rest of this section explains the two major sex discrimination theories that may be used to challenge housing discrimination against domestic violence survivors: (1) disparate treatment theory; and (2) disparate impact theory. In cases challenging housing discrimination against survivors, advocates often raise both theories in tandem.

violence survivors had a discriminatory effect on women in violation of state fair housing law).

²¹² See *Bouley*, 394 F. Supp. 2d at 675.

²¹³ Sample letters are included in the Toolkit accompanying this Manual at Appendices 11 and 12.

6.3.1 Disparate Treatment Theory

Disparate treatment claims (also called intentional sex discrimination) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. An example would be a situation in which a landlord evicts a female tenant after she is involved in a loud argument with a cotenant, but does not evict a male tenant who has been involved in similar noisy disturbances. To succeed on a disparate treatment claim, a plaintiff must provide proof that the housing provider had a discriminatory intent or motive. However, this intent can be inferred from the fact that the housing provider treated male tenants differently from similarly situated female tenants.²¹⁴ Disparate treatment theory is available under both the federal FHA and California's FEHA.

Examples of cases that have raised disparate treatment theory on behalf of domestic violence survivors include *Blackwell v. H.A. Housing LP*,²¹⁵ and *Alvera v. C.B.M. Group, Inc.*²¹⁶ In *Blackwell*, tenant Wyneneicka Blackwell was denied a transfer to a different complex after her former partner sexually assaulted and beat her in her apartment. The property management company had a policy of transferring tenants under "special circumstances," and at least two other tenants had been transferred to other complexes under this policy.²¹⁷ However, the

²¹⁴ See *United States v. Reece*, 457 F. Supp. 43 (D. Mont. 1978) (finding that landlord's policy of refusing to rent to single women without cars while renting to single men without cars violated the Fair Housing Act).

²¹⁵ Compl., *Blackwell v. H.A. Hous. LP*, No. 05cv1225 (D. Colo. July 1, 2005). The complaint is included in the Toolkit accompanying this Manual at Appendix 14.

²¹⁶ Compl., *Alvera v. C.B.M. Group, Inc.*, No. 01cv857 (D. Or. July 10, 2001), available at http://www.aclu.org/images/asset_upload_file457_33995.pdf.

²¹⁷ Compl., *Blackwell*, *supra* note 215, at 7. The complaint did not specify whether the other tenants who had been transferred were male or female. Ideally, a disparate treatment claim alleges that male tenants were

company denied Ms. Blackwell's transfer on the basis that she did not have a "good history" with the property due to a history of domestic violence and a poor payment record.²¹⁸ Ms. Blackwell asserted that her request for a transfer was due to special circumstances, that the management company refused to transfer her because of her sex, and that this denial constituted intentional discrimination on the basis of her sex in violation of the FHA.²¹⁹ The case settled, with the management company agreeing to implement a domestic violence policy in at least 12 of its properties.²²⁰

In *Alvera*, tenant Tiffanie Alvera received an eviction notice shortly after her husband assaulted her in their apartment.²²¹ The eviction notice stated that Ms. Alvera's tenancy was being terminated because her husband had attacked her in the apartment.²²² Ms. Alvera asserted that the property management company intentionally discriminated against her on the basis of her sex because other tenants in the complex had been the victims of violence, yet had not received eviction notices.²²³ The case settled, with the management company agreeing not to evict or otherwise discriminate against tenants because they have been victims of domestic violence.²²⁴

Disparate treatment claims have also been raised where housing providers made sex-based stereotypical remarks regarding battered

women.²²⁵ Courts have found that reliance on gender stereotypes about battered women can be evidence of intentional sex discrimination.²²⁶ Examples of potentially discriminatory stereotypes include: the battered woman must have deserved the abuse; the battered woman should not have disrupted the integrity of the family by calling the police; and the batterer had a right to exercise dominion and control over the battered woman in his home.

The theory that stereotypical remarks regarding domestic violence can constitute sex discrimination was used in *Bouley v. Young-Sabourin*.²²⁷ As discussed above, tenant Quinn Bouley received an eviction notice shortly after her husband assaulted her in their apartment, and she filed a federal lawsuit challenging the eviction on sex discrimination grounds. In deposition testimony, the landlord stated that she did not believe that Ms. Bouley was a victim of domestic violence because she "wasn't in shock, she wasn't concerned about her husband."²²⁸ She also stated that she considered Ms. Bouley to be equally responsible for the domestic violence.²²⁹ Ms. Bouley argued that the landlord's decision to evict her was based on impermissible stereotypical beliefs regarding the characteristics of an innocent female victim of

granted privileges, benefits, or protections that were denied to a similarly situated female tenant.

²¹⁸ *Id.* at 6.

²¹⁹ *Id.*

²²⁰ A copy of the policy is available at Legal Momentum's Legal Cases Database, <https://www.quickbase.com/db/bdy472as8?a=dr&r=iz&rl=dmm2>.

²²¹ Compl., *Alvera*, *supra* note 216, at 6.

²²² *Id.*

²²³ *Id.* at 9. As discussed below, Ms. Alvera also alleged a claim for disparate impact discrimination.

²²⁴ Consent Decree at 5, *Alvera v. C.B.M. Group, Inc.*, No. 01cv857 (D. Or. Oct. 18, 2001), available at http://www.aclu.org/images/asset_upload_file99_33996.pdf.

²²⁵ There are no published housing discrimination cases involving housing providers who made stereotypical remarks regarding male survivors of domestic violence or LGBT survivors of domestic violence. However, if stereotypical remarks made by the housing provider indicate that the housing provider denied housing benefits to or evicted a male survivor because of his sex, the survivor could likely raise a disparate treatment claim. Similarly, if a housing provider denied housing to or evicted an LGBT survivor because of his or her sex or sexual orientation, the survivor could likely raise a disparate treatment claim.

²²⁶ See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1990) (sex discrimination by police department); *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994) (same).

²²⁷ 394 F. Supp. 2d 675 (D. Vt. 2005).

²²⁸ Mot. Summ. J. at 3-5, *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005) (No. 03cv320).

²²⁹ *Id.* at 10.

domestic violence.²³⁰ The court found that Ms. Bouley stated a claim for sex discrimination under the FHA, and the case settled shortly thereafter.

6.3.2 Disparate Impact Theory

In addition to disparate treatment theory, survivors have used disparate impact theory to challenge housing policies that have the effect of excluding or evicting survivors from housing. Under disparate impact theory, a gender-neutral policy that can be statistically proven to have a greater negative impact on women than on men constitutes discrimination on the basis of sex. It is not necessary to demonstrate that the landlord intended to discriminate on the basis of sex in adopting the policy. Disparate impact theory is available under both the federal FHA and California's FEHA.

It has been argued that housing policies that have a negative impact on domestic violence survivors in turn have a disparate impact on women, because women constitute the majority of domestic violence survivors.²³¹ To prove this argument, advocates must establish the link between domestic violence and sex. Statistical data showing that the vast majority of domestic violence survivors are women is crucial in establishing this link. The following national statistics help demonstrate the relationship between domestic violence and a person's sex, for the purpose of fair housing claims:

- The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women.²³²
- Although women are less likely than men to be victims of violent crimes overall, women are five to eight times

more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women.²³³

- Among people who rent their homes, women are 7.4 times as likely as men to be the victims of domestic violence.²³⁴

To the extent that California and local statistics regarding domestic violence and sex are available, advocates should also cite them to bolster the survivor's case. Examples of relevant California statistics include:

- In 2004, there were 46,353 domestic violence arrests comprised of 37,235 males and 9,118 females.²³⁵
- In 2007, a greater percentage of female homicide victims were spouses of offenders (23%) than were male victims (1.3%).²³⁶
- In 2007, 110 women were killed by their husbands, ex-husbands or boyfriends, and 18 men were killed by their wives, ex-wives or girlfriends.²³⁷

Disparate impact theory has most commonly been used to challenge policies or practices that result in the eviction of an entire household when a violent act is committed at the unit, regardless of who perpetrated the violence. These policies are often referred to as "zero tolerance" or "crime-free" policies. As a result of these policies, survivors have faced evictions

²³⁰ *Id.*

²³¹ See, e.g., U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

²³² *Id.*

²³³ L.A. Greenfield et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dep't of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).

²³⁴ Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, *Intimate Partner Violence* (2000).

²³⁵ Cal. Dep't of Justice, Criminal Justice Statistics Center, <http://ag.ca.gov/crime.php>

²³⁶ Cal. Dep't of Justice, Criminal Justice Statistics Center, *Homicide in California 2007* at 11, <http://www.ag.ca.gov/cjsc/publications/homicide/hm07/pr eface.pdf>.

²³⁷ Cal. Att'y Gen., *Safe State*, <http://safestate.org/index.cfm?navId=9>.

due to acts of domestic violence committed against them in their rental units.²³⁸ Survivors have used fair housing laws to challenge zero tolerance policies by arguing that because such policies negatively affect domestic violence victims, they have a disparate impact on women, because women constitute the majority of domestic violence victims. Other policies that have been challenged include a policy that held a tenant responsible for damages caused when her batterer broke into her apartment in violation of a restraining order,²³⁹ and a policy that did not provide an emergency transfer for a public housing tenant whose abuser attacked her in her unit.²⁴⁰

*Alvera v. C.B.M. Group Inc.*²⁴¹ is an example of a case that used disparate impact theory to successfully challenge a zero tolerance for violence policy.²⁴² As noted above, Ms. Alvera received an eviction notice after her husband assaulted her in their apartment. She filed a complaint with the Department of Housing and Urban Development (HUD) alleging that her landlord had discriminated against her on the

²³⁸ See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Alvera v. C.B.M. Group Inc.*, No. HUDALJ 10-99-0538-8 (HUD Apr. 1, 2001), available at http://www.aclu.org/images/asset_upload_file37_33994.pdf.

²³⁹ *Compl., Lewis v. N. End Vill.*, No. 07cv10757 (E.D. Mich. Feb. 21, 2007). The complaint is included in the Toolkit accompanying this Manual at Appendix 13. The *Lewis* case settled, with the landlord agreeing not to evict or discriminate against tenants because they have been victims of domestic violence, dating violence, sexual assault, or stalking. The landlord also agreed to pay monetary damages to the tenant.

²⁴⁰ *Robinson v. Cincinnati Hous. Auth.*, No. 08cv238, 2008 WL 1924255 (S.D. Ohio Apr. 29, 2008). The court denied the tenant's motion for a temporary order that would have required the housing authority to transfer her to another public housing unit.

²⁴¹ *Alvera v. C.B.M. Group Inc.*, No. HUDALJ 10-99-0538-8 (HUD Apr. 1, 2001). The charge of discrimination that HUD filed against the housing provider is included in the Toolkit accompanying this Manual at Appendix 10.

²⁴² As discussed above, Ms. Alvera also asserted a claim alleging disparate treatment (intentional discrimination).

basis of sex.²⁴³ After investigating Ms. Alvera's complaint, HUD found that state and national statistics demonstrate that women are more likely than men to be victims of domestic violence.²⁴⁴ HUD also found that the landlord's policy of evicting the victim as well as the perpetrator of an incident of violence between household members had a disparate impact based on sex, due to the disproportionate number of female victims of domestic violence.²⁴⁵ The case later settled, with the landlord adopting domestic violence policies and agreeing to pay damages to Ms. Alvera.²⁴⁶

In sum, fair housing laws may provide options for individuals who have been denied housing, evicted, or otherwise discriminated against because of their status as survivors of domestic violence. Survivors should write down any remarks that the landlord made regarding incidents of domestic violence, the dates on which the remarks were made, and whether anyone else heard the statements. Survivors should keep copies of their leases, house rules, and correspondence from the landlord.

As discussed, there are two major housing discrimination theories available to survivors. First, if the survivor can demonstrate that she was treated differently than similarly situated male tenants, or that the housing provider's action stemmed from gender-based stereotypes about battered women, she may have a claim for disparate treatment discrimination. Second, if the survivor can demonstrate that the housing provider had a policy or practice that negatively affected domestic violence survivors, she may have a claim for disparate impact discrimination. The next section of this Chapter describes the protections that survivors have against being sexually harassed in their housing.

²⁴³ The HUD complaint process is discussed later in this chapter.

²⁴⁴ *Alvera*, *supra* note 241, at 6.

²⁴⁵ *Id.*

²⁴⁶ Consent Decree at 5, *Alvera v. C.B.M. Group, Inc.*, *supra* note 224.

The end of this Chapter explains ways in which survivors may enforce their rights under fair housing laws.

6.4 Protections Against Sexual Harassment in Housing

With affordable housing becoming more and more difficult to find, landlords hold a significant amount of power over to whom they rent and under what circumstances. Due to this power imbalance, many tenants are subjected to sexual harassment by landlords and their agents, such as property management staff, maintenance workers, and janitors. Sexual harassment takes various forms. Examples of such harassment include requesting sexual favors in exchange for rent, making sexually derogatory comments, touching the tenant without her consent, and constantly leering and staring at the tenant.

Survivors of domestic violence are particularly vulnerable to sexual harassment because they often have no place else to go due to income limitations, lack of credit history, or poor rental history. Many sexual harassment cases involve tenants living in subsidized or affordable housing who cannot pay market rates for housing and must choose between being harassed or being homeless. In several cases, landlords and their agents have targeted single, low-income women for sexual harassment, since these tenants are less likely to report incidents of harassment.²⁴⁷

Fortunately, tenants have protections against sexual harassment in housing. This section explains the laws that prohibit sexual

²⁴⁷ See, e.g., Press Release, U.S. Dep't of Justice, Justice Department Obtains Record \$1.1 Million Verdict in Sexual Harassment Case Against Landlord in Kansas City, Missouri (May 13, 2004) (noting that most of the victims in a sexual harassment case were lower-income, single women who had limited opportunities to seek other housing); Press Release, Fair Hous. Advocates Ass'n, Jury Awards \$31,452 in Sexual Harassment Case (May 14, 2002) (noting that a single mother delayed reporting incidents of sexual harassment because she did not want to risk homelessness).

harassment, the basic legal theories that are used in these cases, and examples of successful sexual harassment cases.²⁴⁸

6.4.1 Overview

Courts have held that the federal FHA²⁴⁹ and California's FEHA²⁵⁰ prohibit sexual harassment in housing. Persons who may bring a claim for sexual harassment in housing include the harassed tenant, persons who lived with the tenant and were injured by the tenant's eviction or threatened eviction, and fair housing organizations. Fair housing laws protect both men and women against sexual harassment, including same-sex sexual harassment.²⁵¹

Persons who may be held liable for sexual harassment include the perpetrator of the harassment and, in certain circumstances, the perpetrator's employer. If a building's owner or property manager knew or should have known about the harassment and failed to remedy the situation promptly, the owner or manager can be held liable for the acts of an employee, such as a maintenance worker, janitor, or leasing agent.²⁵² An emerging issue is whether a property owner or manager can be held liable where one tenant

²⁴⁸ For more information regarding sexual harassment in housing, see HUD, Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008), <http://www.hud.gov/content/releases/q-and-a-111708.pdf>; Legal Momentum, *Sexual Harassment in Housing: A Primer* (2003),

<http://www.legalmomentum.org/assets/pdfs/sexharassinhousinglrk0120-1.pdf>.

²⁴⁹ 42 U.S.C. § 3604(b); *Shellhammer v. Lewallen*, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985). The FHA does not explicitly prohibit sexual harassment in housing, but it does prohibit discrimination on the basis of sex in the rental of housing.

²⁵⁰ CAL. GOV'T CODE § 12955; *Brown v. Smith*, 64 Cal. Rptr. 2d 301 (Cal. Ct. App. 1997). Like the FHA, FEHA does not explicitly bar sexual harassment in housing, but it does prohibit discrimination on the basis of sex in the rental of housing.

²⁵¹ HUD, Questions and Answers on Sexual Harassment under the Fair Housing Act, *supra* note 248, at 3.

²⁵² See CAL. CIV. CODE § 51.9.

sexually harasses another tenant. Although there is no published case law on the issue, it is possible that a property owner or manager could be liable if he or she knew of the tenant-on-tenant harassment and did nothing to stop it.²⁵³

As we will discuss below, there are three major theories that tenants have used to challenge sexual harassment and housing: (1) quid pro quo harassment; (2) hostile environment harassment; and (3) fair housing interference. Tenants may also have claims under their leases and state laws governing the landlord-tenant relationship. Advocates often raise a combination of these theories on behalf of tenants who have experienced sexual harassment.

The quid pro quo and hostile environment theories are often used in employment sexual harassment cases. As a result, many courts look to the employment cases for guidance in deciding claims involving sexual harassment in housing. Accordingly, advocates who are assisting survivors who have experienced sexual harassment in housing will benefit from consulting with employment attorneys regarding potential strategies.

6.4.2 Quid Pro Quo Harassment

Quid pro quo sexual harassment occurs where housing providers or their agents demand sexual favors from a tenant in exchange for housing or housing benefits, such as continued tenancy, repairs, and stable rent levels. HUD regulations specifically address quid pro quo harassment, stating that prohibited actions by housing providers include “denying or limiting services or facilities in connection with the sale

²⁵³ See *Reeves v. Carrollsburg Condo. Unit Owners Ass’n*, No. 96-2495, 1997 WL 1877201 (D.D.C. Dec. 18, 1997) (finding that a tenant stated a sexual harassment claim against a condominium owners association where the association was aware that another tenant had repeatedly shouted sexist epithets at her and threatened to rape and kill her).

or rental of a dwelling, because a person failed or refused to provide sexual favors.”²⁵⁴ A tenant may establish a quid pro quo claim for sexual harassment by proving that:

- She was subjected to an unwelcome sexual advance; and
- Housing or housing benefits were explicitly or implicitly conditioned upon submission to the unwelcome sexual advance.²⁵⁵

One incident alone is sufficient to prove a claim of quid pro quo sexual harassment.

The first federal case to recognize a quid pro quo claim of sexual harassment in housing is *Shellhammer v. Lewallen*.²⁵⁶ The owner of the tenant’s building asked her to pose for nude photos. When she refused, she and her husband were evicted. The court found that the eviction was in retaliation for the tenant’s rejection, and the owner’s conduct constituted quid pro quo sexual harassment.

Similarly, in *Quigley v. Winter*,²⁵⁷ the court upheld a tenant’s claim for quid pro quo harassment where she alleged that her landlord intimated that he would only return her security deposit if she engaged in a sexual act with him. After the tenant refused to respond to his advances, the landlord withheld the security deposit. The court awarded the plaintiff damages and attorney’s fees.

²⁵⁴ 24 C.F.R. § 100.65(b)(5).

²⁵⁵ See *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1172 (9th Cir. 2001) (quid pro quo sexual harassment in employment); *Beyda v. City of Los Angeles*, 76 Cal. Rptr. 2d 547, 550 (Cal. Ct. App. 1998) (same).

²⁵⁶ *Shellhammer v. Lewallen*, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff’d*, 770 F.2d 167 (6th Cir. 1985).

²⁵⁷ 584 F. Supp. 2d 1153 (D. Iowa 2008).

6.4.3 Hostile Environment Harassment

Another type of theory that is commonly used to challenge sexual harassment in housing is hostile environment theory. Hostile environment claims arise where the sexual harassment is so severe or pervasive that it alters the use and enjoyment of the survivor's home and creates an abusive living environment. Severe conduct may include unwanted touching, such as pinching, grabbing, rubbing, or kissing. Pervasive conduct may include constant and repeated requests for dates, sexually explicit jokes, or questions about a tenant's sex life. A tenant may establish a hostile environment claim for sexual harassment by proving that:

- The tenant was subjected to verbal or physical conduct of a sexual nature;
- The tenant was subjected to this conduct because of her sex;
- The tenant was unwelcome; and
- The conduct was sufficiently severe or pervasive to alter the use and enjoyment of the home and to create an abusive living environment.²⁵⁸

In contrast to quid pro quo harassment, a tenant may need to demonstrate more than one incident of harassment in order to establish a hostile housing environment claim. Some of the factors courts consider include the frequency of the harassing conduct; whether the harassment was part of a pattern or practice of conduct; whether the conduct extended beyond offensive remarks; and the severity of the conduct.²⁵⁹ Some courts have found that isolated or sporadic sexually inappropriate acts are not

²⁵⁸ See *Hall v. Meadowood Ltd*, 7 Fed. Appx. 687, 689 (9th Cir. 2001); *Beliveau v. Caras*, 873 F. Supp. 1393, 1398 (C.D. Cal. 1995); *Brown v. Smith*, 64 Cal. Rptr. 2d 301 (Cal. Ct. App. 1997).

²⁵⁹ *Id.*

sufficiently pervasive and severe to constitute sexual harassment under fair housing laws.²⁶⁰

*Beliveau v. Caras*²⁶¹ is one example of a successful hostile environment case. After making a repair in the tenant's apartment, the building's resident manager grabbed the tenant's breasts and buttocks. The court found that any such touching would support a sexual harassment claim under the FHA, particularly where the battery was committed in the tenant's own home by a person whose role was to provide a safe environment. The court denied the owner's contention that a single incident of harassment cannot be so severe or pervasive as to alter the conditions of the tenant's housing environment.

In *Glover v. Jones*,²⁶² a court found that a tenant had stated a claim for hostile environment harassment where a property manager repeatedly stated his desire to have sex with the tenant, put his tongue in her mouth, hugged her, put his arm around her, and touched her breast. The court rejected the property owner's argument that she could not be liable for the manager's conduct because he was acting outside of the scope of his employment. Rather, the court found that the manager's position aided in his harassment of the tenant because it gave him the opportunity to visit her unit whenever he wanted.

6.4.4 Fair Housing Interference

A tenant may also have a claim under fair housing laws where the owner or property manager intimidated, threatened or interfered with the exercise of her rights under fair housing laws.²⁶³ For example, fair housing laws forbid landlords from retaliating against tenants who file sexual harassment complaints or who refuse to engage in sexual conduct. A tenant may

²⁶⁰ *Hall*, 7 Fed. Appx. at 689.

²⁶¹ 873 F. Supp. at 1398.

²⁶² 522 F. Supp. 2d 496 (W.D.N.Y. 2007).

²⁶³ See 42 U.S.C. § 3617; CAL. GOV'T CODE §§ 12955(f), 12955.7.

establish a fair housing interference claim by proving that:

- She engaged in activity protected under the FHA or FEHA;
- The property manager or owner subjected her to coercion, intimidation, threats, or interference; and
- There was a causal connection between the adverse action and the protected activity.

An example of a successful fair housing interference case is *Grieger v. Sheets*.²⁶⁴ The court found that the tenant stated a fair housing interference claim where the landlord repeatedly demanded sexual favors from the tenant, the tenant refused the landlord's demands, and the landlord consequently refused to repair the tenant's home, damaged the property, threatened not to renew the lease, and forced the tenant to give up her dog.

6.4.5 Other Claims for Tenants Experiencing Sexual Harassment

In addition to the protections available under fair housing laws, tenants experiencing sexual harassment may have state law claims based on torts and breach of contract. State tort law claims may include intentional infliction of emotional distress, assault, battery, or retaliatory eviction. If the harassing conduct violated a provision of the tenant's lease, the tenant may raise a breach of contract claim. Harassment involving a violation of the tenant's privacy rights may be illegal under state law, which provides that a landlord may only enter a tenant's unit in case of an emergency, to make necessary or agreed repairs, to show the unit to prospective tenants, or pursuant to a court order.²⁶⁵ Tenants may also have a claim for breach of the implied covenant of quiet

enjoyment. Every rental lease in California contains an implied covenant that protects the tenant from acts by the landlord that disturb the tenant's peaceful possession of the premises,²⁶⁶ such as harassment by the landlord that interferes with the tenant's use of her dwelling. Attorneys should note that some courts may require that the tenant has actually vacated the unit as a result of the harassment in order to state a claim for breach of the implied covenant of quiet enjoyment.²⁶⁷

6.4.6 Practice Tips

One of the factors courts consider in determining whether sexual harassment has occurred is whether the demand or request for sexual favors was unwelcome or unsolicited. Additionally, landlords and managers may only be held liable for sexual harassment by their employees if they were aware of the harassment. As a result, documentation is often essential in sexual harassment cases. Tenants who have experienced sexual harassment should write down what the property owner or manager said or did, the dates and places of the incidents, and the names and contact information of any witnesses. Tenants should also keep copies of any harassing, threatening, or sexually explicit materials or letters they received from the owner or manager. If possible, tenants should address the harassment when it occurs, such as by rejecting requests for dates or asking the perpetrator to stop making unwanted comments or physical contact.

The tenant should also consider writing a letter to the perpetrator describing the harassing conduct and requesting that the conduct stop. She should also send a copy to the owner, property management firm, or the perpetrator's supervisor. If other tenants have been victims, the tenant should ask them to sign on to the

²⁶⁴ 689 F. Supp. 835 (N.D. Ill. 1988).

²⁶⁵ CAL. CIV. CODE § 1954.

²⁶⁶ § 1927.

²⁶⁷ See *Beliveau v. Caras*, 873 F. Supp. 1393 (C.D. Cal. 1995).

letter. The tenant should keep copies of all correspondence.

A tenant who has been assaulted by or who fears harm from her landlord, property manager, or an employee at the property should contact law enforcement.

6.5 Enforcing Rights of Survivors Who Have Faced Discrimination

Survivors who have faced housing discrimination based on acts of violence committed against them or who have been subjected to sexual harassment in housing have several options for enforcing their rights. This section outlines those options, including conducting informal advocacy, raising defenses to eviction, filing an administrative complaint, and filing a civil lawsuit.

Survivors have only a short period of time to act if they have experienced housing discrimination. An administrative complaint must be filed within one year of the discriminatory action, and a civil lawsuit must be filed within two years. Therefore, advocates should act quickly if a survivor indicates that she has experienced discrimination. Advocates who usually do not work on housing issues should consider referring survivors to their local fair housing agency or legal services program.

6.5.1 Informal Advocacy

Housing discrimination disputes may often be handled informally by offering to meet with the housing provider or by writing a letter. Sample letters are included in the Toolkit accompanying this Manual.²⁶⁸ Many landlords are unaware that sexual harassment is against the law, or that HUD has found that discrimination against domestic violence survivors violates the FHA. It is therefore helpful to bring copies of the law and relevant cases to your meeting with the housing provider, or to attach these materials to your letter. Make

²⁶⁸ See Toolkit, Appendices 11 and 12.

notes of your conversations with the housing provider, and send a letter to the housing provider afterward that memorializes the content of your conversations. Letters should be sent by certified mail, and advocates should keep copies of all correspondence. If appropriate, it may also be helpful to have law enforcement, the district attorney's office, or a local government official contact the housing provider on the survivor's behalf.

6.5.2 Eviction Defenses

A violation of fair housing laws may be raised as a defense to an eviction.²⁶⁹ Thus, a survivor who has received an eviction notice that is related to acts of domestic violence or sexual harassment committed against her may raise this as a defense during the eviction action. Attorneys should note that it is unclear whether raising the discrimination issue in the eviction case will bar the tenant from later raising a discrimination claim in a separate civil action. Under the doctrine of *res judicata*, a final judgment on the merits of an action precludes the parties from relitigating issues that were raised in that action.²⁷⁰ As a result, a survivor who defends and loses an eviction case on the grounds that the landlord discriminated against her may be barred from raising the discrimination issue again in a separate civil suit.²⁷¹ Attorneys should assess and discuss with the survivor the likelihood of a civil lawsuit's success before raising discrimination as a defense in an eviction case.

In any case, a survivor who has received an eviction notice that is related to acts of domestic violence or sexual harassment committed against her should immediately contact the local legal services program for assistance.

²⁶⁹ See *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115 (Cal. 1982).

²⁷⁰ *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

²⁷¹ See *Lovely v. Laliberte*, 498 F.2d 1261 (1st Cir. 1974).

6.5.3 Administrative Complaint

A tenant who has experienced housing discrimination may file an administrative complaint with either the federal Department of Housing and Urban Development (HUD) or California's Department of Fair Employment and Housing (DFEH). The administrative claim process seeks to reach an agreement between the parties, which may include damages and other relief for the tenant. As will be discussed at the end of this Chapter, tenants can elect to forgo the administrative complaint process and instead file a civil lawsuit in state or federal court.

This section outlines the administrative complaint procedures used by HUD and DFEH. A tenant may file her complaint with either agency. Under an agreement between the two agencies, the majority of discrimination complaints that HUD receives in California are referred to DFEH. However, HUD generally handles cases involving federally subsidized housing.

6.5.3.1 Department of Housing and Urban Development Complaint

HUD is responsible for enforcement of the federal FHA.²⁷² A tenant must file a complaint with HUD within one year after the alleged discrimination. After the complaint is filed, HUD will conduct a telephone interview to determine whether it or DFEH has jurisdiction over the complaint. If HUD has jurisdiction, it will conduct an investigation and attempt to settle the matter. If the parties cannot reach a settlement and there is reasonable cause to believe that discrimination has occurred, HUD will issue a charge of discrimination to the housing provider. The parties must then decide whether to have the case heard by a HUD

²⁷² For more information about HUD's Fair Housing and Equal Opportunity Office, visit <http://www.hud.gov/complaints/housediscrim.cfm>.

administrative law judge or to have the case heard in federal court. Remedies available from a HUD administrative law judge include damages for the tenant, injunctive or other equitable relief, and civil penalties. However, punitive damages are not available.

In cases involving a larger public impact, such as cases where a housing provider has sexually harassed multiple tenants, HUD and the Department of Justice may also file a lawsuit in court, either on behalf of their agencies or on behalf of injured tenants.

To file a housing discrimination complaint with HUD, call 1 (800) 669-9777 or visit <http://www.hud.gov/offices/fheo/online-complaint.cfm>.

6.5.3.2 California Department of Fair Employment and Housing (DFEH) Complaint

DFEH is responsible for enforcement of California's FEHA and the Unruh Civil Rights Act.²⁷³ The process that DFEH uses to resolve housing discrimination claims is similar to the process used by HUD. A tenant must file a complaint with DFEH within one year after the alleged discrimination. After the tenant files the complaint, DFEH will conduct an investigation and attempt to settle the matter. If the parties cannot reach a settlement, and there is reasonable cause to believe that discrimination has occurred, DFEH will issue an accusation to the housing provider. The parties must then decide either to have the case heard by the Fair Employment and Housing Commission in an administrative hearing or to remove the matter to superior court.

Remedies available in an administrative hearing before the Commission may include orders requiring the rental of the housing if it is still available, damages, and civil penalties of up to \$50,000. The Commission can also ask the

²⁷³ For more information about DFEH, visit www.dfeh.ca.gov.

superior court for preliminary injunctive relief to stop the discriminating party from evicting the tenant.

To file a housing discrimination complaint with DFEH, call 1-800-233-3212.

6.5.4 Civil Lawsuits

Instead of relying on the administrative complaint process, a tenant who has been discriminated against may file a civil suit in state or federal court within two years of the discriminatory act. The Toolkit accompanying this Manual includes sample complaints filed in federal courts by survivors alleging housing discrimination.²⁷⁴ While tenants are not required to file an administrative complaint before filing a civil lawsuit, information gathered by HUD and DFEH during their investigations may be helpful in a civil action. However, the tenant should avoid a determination by either HUD or DFEH that no discrimination occurred and should withdraw her complaint if this outcome seems likely. Also, if a tenant files her civil lawsuit before filing an administrative complaint with HUD or DFEH, the agencies cannot investigate or otherwise act on the administrative complaint.

Remedies available in civil actions claiming violations of fair housing laws can include:

- Damages for emotional distress, loss of civil rights, or economic injuries, such as

²⁷⁴ See Toolkit, Appendices 13 and 14.

relocation or other expenses the tenant incurred due to the discrimination.

- Punitive damages if the housing provider intentionally or flagrantly violated the law.
- Injunctive or other equitable relief, such as ordering the housing provider to stop discriminating against the tenant, to cease any eviction proceedings against the tenant, or to allow the tenant to return to the unit if she has already been evicted.
- Attorney's fees and costs.

In addition to the fair housing claims discussed in this Chapter, attorneys representing survivors in civil actions should also consider whether additional state law claims are available. Tenants who have experienced housing discrimination may have state law claims for retaliatory eviction,²⁷⁵ retaliation for exercising fair housing rights,²⁷⁶ and unfair business practices.²⁷⁷ Fair housing agencies and eviction defense practitioners can assist attorneys in assessing the viability of these claims.²⁷⁸

²⁷⁵ CAL. CIVIL CODE § 1942.5.

²⁷⁶ CAL. GOV'T CODE §§ 12955(f), 12955.7.

²⁷⁷ CAL. BUS. & PROF. CODE § 17200.

²⁷⁸ For more information regarding these claims, see CALIFORNIA LANDLORD-TENANT PRACTICE §§ 8.122, 10.65, 12.38 (Continuing Education of the Bar ed. 2002); CALIFORNIA EVICTION DEFENSE MANUAL § 16.8 (Continuing Education of the Bar ed. 2003).

Chapter 7: Housing Rights of Survivors with Disabilities

Table of Contents

7.1	Introduction.....	53
7.2	The Right to Reasonable Accommodation	54
7.2.1	The Fair Housing Act (FHA).....	55
7.2.2	Section 504 of the Rehabilitation Act of 1973.....	55
7.2.3	The Americans with Disabilities Act (ADA).....	55
7.2.4	California Laws.....	56
7.3	Defining “Reasonable Accommodation”.....	56
7.3.1	Federal Definition of Disability for the Purpose of Reasonable Accommodation	56
7.3.2	California Definition of Disability for Housing Discrimination Purposes	57
7.3.3	Exceptions to the Definition of Disability	58
7.4	Requesting an Accommodation	59
7.5	Common Issues for Survivors.....	61
7.6	Enforcement.....	63
7.7	Conclusion	63

7.1 Introduction

Safe, secure and accessible housing is critically important to all survivors, but it may be especially difficult to secure for victims with physical and/or cognitive disabilities.²⁷⁹ This is

²⁷⁹ Portions of the chapter, “Housing Issues and Remedies for Survivors with Disabilities,” are excerpted, with permission, from the Victim Rights Law Center’s national manual, *BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates*. The full text of the manual is available online at www.victimrights.org. All rights are reserved by the Victim Rights Law Center (VRLC). The material may not be altered or modified without the express permission of the VRLC. Preparation of the manual was supported by

because appropriate, affordable housing stock is often limited and admission may be difficult to gain. Victims with physical disabilities may be barred or impeded from residing in housing that is not designed to accommodate their needs. For example, a victim with a physical disability or mobility challenges may need housing that is wheelchair accessible. A deaf or hard of hearing victim may need a residence where the telephones, smoke alarms, security alarms, and

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other safety devices are visual instead of auditory. These services and devices may be especially important to a victim who was assaulted in her home, or in situations where the victim believes the perpetrator knows where she resides. Victims with mental or cognitive disabilities are sometimes evicted from or denied entry to certain housing because their mental illness is perceived to or does in fact result in anti-social, physically aggressive, or self-destructive behavior. (For example, some residential facilities will not accept or retain a resident who engages in serious acts of self-harm.) Addressing housing needs may be the first step to providing effective advocacy for victims with disabilities. The following examples illustrate how a disabled victim's circumstances may result in an acute housing need:

- Client was sexually assaulted in her apartment and the landlord denies her request to have a service animal to alert her to visitors;
- Client is not permitted to bring her service animal into emergency or transitional housing;
- Landlord refuses to allow client to make reasonable modifications to apartment to establish or enhance accessibility (e.g., a designated disabled parking space or a parking space closest to an accessible entrance);
- Client faces eviction for failure to pay rent on time due to a traumatic brain injury she sustained during a sexual assault;
- The survivor resides in a group home, family home, or other residential care facility where the perpetrator is employed; or
- Client's safety is at risk and she wishes to relocate but is told there are no accessible units available that can accommodate her disability.

7.2 The Right to Reasonable Accommodation

As the examples above illustrate, it is critical that advocates familiarize themselves with the housing issues that survivors with disabilities face. In California, 11.9% of women with disabilities experienced one or more forms of intimate partner violence in 2003, compared with 7.8% of women without disabilities.²⁸⁰ In helping survivors access, utilize, and maintain safe housing, advocates should look not only to laws that specifically protect the housing rights of survivors, but also to laws that protect the housing rights of persons with disabilities. Both federal and state fair housing laws prohibit discrimination based on a person's disability.²⁸¹ One form of discrimination under these laws includes a refusal to make reasonable accommodations in rules or policies when needed to provide persons with disabilities an equal opportunity to use and enjoy a dwelling.²⁸² While other forms of housing discrimination based on disability may occur, this Chapter focuses on the right to reasonable accommodation. This Chapter discusses the reasonable accommodation process and describes how that process can be used to advocate for the housing rights of survivors with disabilities.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Most fair housing laws require that housing providers' policies treat and impact groups equally. In contrast, fair housing laws related to reasonable accommodation require that housing providers make exceptions to policies that may be

²⁸⁰ California Department of Health Services, Office of Women's Health, RESULTS FROM THE CALIFORNIA WOMEN'S HEALTH SURVEY, DATA POINTS 2004.

²⁸¹ See Chapter 6 for general information on fair housing as well as sex discrimination.

²⁸² 42 U.S.C. § 3604(f).

otherwise nondiscriminatory in order to guarantee equal housing opportunities for persons with disabilities.

Reasonable accommodation laws arise from a number of sources. The Fair Housing Act (FHA),²⁸³ the Americans with Disabilities Act (ADA),²⁸⁴ and the Rehabilitation Act of 1973²⁸⁵ are federal laws that require reasonable accommodation for individuals with disabilities. California also has enacted laws requiring reasonable accommodation, such as the Fair Employment and Housing Act (FEHA),²⁸⁶ the Unruh Civil Rights Act,²⁸⁷ and the California Persons with Disabilities Act (CPDA).²⁸⁸ The California laws and the FHA apply to virtually all housing. The Rehabilitation Act applies only to federally assisted housing, and the ADA applies only to state-funded housing. As discussed below, the California laws provide more expansive protections than federal laws. This section provides a brief overview of the federal and state reasonable accommodation laws.

7.2.1 The Fair Housing Act (FHA)

In 1988, the Fair Housing Amendments Act amended the FHA to prohibit discrimination against people with “handicaps,” defining handicap in the same way that disability is defined in other federal legislation.²⁸⁹ Discrimination under the FHA includes a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to give persons with disabilities equal opportunity to use and enjoy a dwelling.²⁹⁰ The FHA applies to

most housing providers, regardless of whether they are government subsidized. The FHA is of primary importance in helping survivors with disabilities obtain safe and accessible housing. The FHA regulations can be found at 24 C.F.R. § 100.204.

7.2.2 Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 provides additional protections for survivors living in federally subsidized housing. The statute provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”²⁹¹ Section 504 applies only to housing providers receiving federal assistance. Such housing providers include public housing agencies (PHAs) and owners of project-based Section 8 properties, Section 202 properties (housing for seniors), Section 811 properties (housing for persons with disabilities), or properties subsidized by funds from the Community Development Block Grant, HOME, or Housing Opportunities for Persons with AIDS programs. Housing subsidized by the U.S. Departments of Veterans Affairs and Agriculture are also subject to Section 504. Section 504 regulations are found at 24 C.F.R. Part 8.

7.2.3 The Americans with Disabilities Act (ADA)

The ADA prohibits discrimination by state and local governments on the basis of disability.²⁹² Its protections are essentially

²⁸³ 42 U.S.C. §§ 3601 *et seq.*

²⁸⁴ 42 U.S.C. §§ 12101 *et seq.*

²⁸⁵ 29 U.S.C. § 794.

²⁸⁶ CAL. GOV'T CODE §§ 12900 *et seq.*

²⁸⁷ CAL. CIV. CODE §§ 51 *et seq.*

²⁸⁸ CAL. CIV. CODE §§ 54 *et seq.*

²⁸⁹ See Chapter 6 for general information on the Fair Housing Act.

²⁹⁰ 42 U.S.C. § 3604(f).

²⁹¹ See 29 U.S.C. § 794(a).

²⁹² 42 U.S.C. § 12132.

equivalent to those of Section 504.²⁹³ California law requires any agency funded, operated, or administered by the state, including PHAs, to adhere to the ADA's anti-discrimination provisions.²⁹⁴ In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA).²⁹⁵ The Act clarifies certain definitions under the ADA in response to Supreme Court decisions that had narrowed their scope. The ADAAA emphasizes that the definition of disability should be construed in favor of broad coverage. ADA regulations are found at 28 C.F.R. § 35.130(b)(7).

7.2.4 California Laws

A number of California laws also provide expanded fair housing protections. California's FEHA prohibits discrimination on the basis of disability and stresses that the law is intended to "afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws."²⁹⁶ The Unruh Civil Rights Act prohibits discrimination on the basis of disability and specifically provides that a violation of the ADA also constitutes a violation of the Unruh Act.²⁹⁷ The California Disabled Persons Act (CDPA) requires reasonable accommodation and modification in "all housing accommodations offered for rent, lease, or compensation."²⁹⁸

7.3 Defining "Reasonable Accommodation"

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

²⁹³ *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating that the ADA extends Section 504 coverage to state and local programs).

²⁹⁴ CAL. GOV'T CODE § 11135.

²⁹⁵ Pub. L. No. 110-325, 122 Stat. 3553 (effective Jan. 1, 2009).

²⁹⁶ § 12955.6.

²⁹⁷ CAL. CIV. CODE § 51(f).

²⁹⁸ § 54.1.

A housing provider must grant a requested reasonable accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. Failure to provide a reasonable accommodation may be construed as discrimination.²⁹⁹ Practically, a reasonable accommodation helps individuals with disabilities fully use and enjoy their housing. As discussed below, one of the first considerations in determining whether a survivor has a right to a reasonable accommodation is whether the survivor has a disability as defined under state or federal law.

7.3.1 Federal Definition of Disability for the Purpose of Reasonable Accommodation

All three federal laws define disability in the same manner,³⁰⁰ based on the initial definition created in Section 504 of the Rehabilitation Act.³⁰¹ A person with disabilities is any person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.³⁰² Each prong of this definition is discussed in detail below. A survivor need only satisfy one of these prongs to be considered a person with a disability.

7.3.1.1 Has a Physical or Mental Impairment that *Substantially Limits One or More Major Life Activities*

To determine whether a person is "substantially limited," courts will often

²⁹⁹ 42 U.S.C. § 3604(f)(3).

³⁰⁰ 29 U.S.C. § 705(20); 42 U.S.C. §§ 3602(h), 12102; 24 C.F.R. §§ 8.3, 100.201; 28 C.F.R. § 35.104.

³⁰¹ While a number of Supreme Court decisions had interpreted the ADA definition of disability differently than Section 504, Congress clarified the meaning of various terms in the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102 (effective Jan. 1, 2009).

³⁰² 29 U.S.C. § 705(20)(B) (1973); 42 U.S.C. § 12102.

consider whether the individual is unable to perform a major life activity at all, or whether he or she is “significantly restricted in the duration, manner, or condition” under which he or she can perform that activity, as compared to the average person.³⁰³ “Major life activities” can include either: (a) certain activities, such as caring for oneself, performing manual tasks, reading, bending, speaking, breathing, or working; or (b) major bodily functions, such as digestive, neurological, bowel, bladder, or reproductive functions.³⁰⁴

7.3.1.2 *Has a Record of Such Impairment*

“Having a record” of an impairment requires that a person has a history of, or has been misclassified as having, a disability as defined above.³⁰⁵ This would include, for example, a survivor who has recovered from cancer or mental illness.³⁰⁶

7.3.1.3 *Is Regarded as Having Such an Impairment*

This final prong of the definition covers persons who: (a) have an impairment that does not substantially limit a major life activity but are treated as having such a limitation; (b) have an impairment that substantially limits a major life activity only as a result of others’ attitudes toward the impairment; or (c) have no impairment but are treated as having such an

impairment.³⁰⁷ For example, this would cover a survivor with a facial disfigurement who is denied housing because a landlord feared negative reactions from other tenants.³⁰⁸

7.3.2 California Definition of Disability for Housing Discrimination Purposes

The California definition of disability differs from the federal definition. Instead of requiring that the disability “substantially limits” a major life activity, California law requires that the tenant demonstrate only that the disability “limits” a major life activity.³⁰⁹ For example, individuals with decreased peripheral vision have been found to be disabled under California law—because the disability limited them in the major life activity of working—but courts might not find the limitation to meet the “substantial” federal definition.³¹⁰ Similarly, persons with diabetes are sometimes found not to be substantially limited in a major life activity under federal law,³¹¹ but under California law persons with diabetes are categorically considered disabled.³¹² Under California law, disability determinations are made without regard to whether an individual uses mitigating measures, such as medications or assistive devices.³¹³ The definition of “major life activity” is also broadly construed.³¹⁴ These differences between federal law and California law mean that California law protects a broader

³⁰³ *Peters v. City of Mauston*, 311 F.3d 835, 843 (7th Cir. 2002).

³⁰⁴ 29 U.S.C. § 705(20)(B) (Rehabilitation Act); 42 U.S.C. § 12102(2)(A)-(B) (Americans with Disabilities Act).

³⁰⁵ 29 C.F.R. § 1630.2(k).

³⁰⁶ See U.S. Equal Employment Opportunity Commission, U.S. Department of Justice Civil Rights Division, Americans with Disabilities Act: Questions and Answers, <http://www.ada.gov/qandaeng.htm> [hereinafter Americans with Disabilities Act: Questions and Answers].

³⁰⁷ 45 C.F.R. § 84.3(j)(2)(iv).

³⁰⁸ See Americans with Disabilities Act: Questions and Answers, *supra* note 306.

³⁰⁹ CAL. GOV’T CODE § 12926.

³¹⁰ *EEOC v. UPS*, 424 F.3d 1060 (9th Cir. 2005) (applying California law).

³¹¹ See, e.g., *Nordwall v. Sears Roebuck & Co.*, 46 Fed. Appx. 364 (7th Cir. 2002).

³¹² § 12926.1(c). Other disabilities specifically recognized by California law include HIV/AIDS, hepatitis, epilepsy, seizure disorder, clinical depression, bipolar disorder, multiple sclerosis, and heart disease.

³¹³ § 12926.1(c).

³¹⁴ § 12926(i)(1)(C), (k)(1)(B)(iii).

group of people. As a result, even if a survivor does not meet the definition of a person with a disability under federal law, it is still possible that she can satisfy the California definition.

7.3.3 Exceptions to the Definition of Disability

Although fair housing laws cover persons with a range of physical and mental impairments, they do not protect every individual who has an impairment. This section explains the major exceptions to the definition of disability.

Drug Use

A current illegal user of a controlled substance is not disabled for purposes of reasonable accommodation. However, an individual with a disability can include a survivor who has successfully completed drug rehabilitation, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.³¹⁵

Direct Threat

Nothing in the FHA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”³¹⁶ Examples of a direct threat may include acts that affect tenants’ health, such as excessive noise or physical violence. A direct threat must be based on objective evidence. It cannot be subjective; other tenants’ perceived fears are not sufficient to create a direct threat, even if those fears are reasonable.³¹⁷ Furthermore, the housing

provider has an obligation to provide a reasonable accommodation that may help mitigate the threat.³¹⁸ Therefore, if a survivor presents a direct threat to the health and safety of others for a reason related to disability, advocates should request an accommodation that would mitigate such a threat. For example, a survivor suffering from post-traumatic stress disorder who struck another tenant during a verbal altercation could request that the landlord refrain from evicting her while she enrolls in a specialized treatment program. If an accommodation that eliminates or mitigates the threat cannot be made, then the individual’s tenancy may not be protected. Solutions to direct threat allegations will often need to be creative and individualized.³¹⁹

California Exceptions

State law provides that an individual is not considered disabled based upon the following disorders: sexual behavior disorders; compulsive gambling; kleptomania; pyromania;

prevent the siting of nearby group homes for persons with mental illness where the fear of the risk the home posed was based on generalized, subjective fear); *Wirtz Realty Corp. v. Freund*, 721 N.E.2d 589 (Ill. App. 1999) (finding that objective evidence is required for a direct threat, and that residents’ belief that they were in danger, even if that belief proved to be “reasonable,” did not satisfy this requirement).

³¹⁸ *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636 (D.N.H. 1993); JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 4 (2004)[hereinafter Joint Statement].

³¹⁹ For more information regarding the direct threat exception, see Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #8, Reasonable Accommodations for Tenant Posing a “Direct Threat” to Others*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet8.html>.

³¹⁵ 42 U.S.C. § 12210(b).

³¹⁶ § 3604(f)(9).

³¹⁷ *See, e.g., Twp. of West Orange v. Whitman*, 8 F. Supp. 2d 408 (D.N.J. 1998) (finding that a municipality and homeowners could not use a direct threat argument to

and psychoactive substance use disorders resulting from current illegal use of drugs.³²⁰

7.4 Requesting an Accommodation

There are several components to requesting a reasonable accommodation, including initial requests, verification, reasonableness, and the interactive process. Each of these components is discussed in detail below. For more information, advocates should consult the Department of Housing and Urban Development's (HUD) guidance regarding the process of requesting a reasonable accommodation.³²¹

Initial Requests

If a tenant tells a housing provider that she is disabled and needs a rule, policy, practice, or service changed to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.³²² A request may be oral or written. In some cases, the provider may ask the tenant to make the request by filling out a form. While a housing provider may provide such a form, it must also accept a letter or oral request from the tenant. As a best practice, tenants or their advocates should request accommodations in writing, so that there is a clear record in case of a dispute. The Toolkit accompanying this Manual contains a sample letter requesting a reasonable accommodation.³²³ All requests should include a statement that the tenant has a disability, a description of the requested accommodation, an explanation of how the accommodation is related to the tenant's disability, and an explanation of how the accommodation will

help the tenant access or remain in the housing.³²⁴ Note that a housing provider cannot ask about the diagnosis, treatment, nature, or extent of the disability.³²⁵

Verification

The housing provider may seek to verify the tenant's accommodation request. There are three possible verification scenarios. If a person's disability is obvious or is known to the housing provider, and the need for the requested accommodation is known, then the housing provider may not ask for any more information.³²⁶ If the disability is known or obvious, but the need for the accommodation is not, then the housing provider should ask only for information necessary to verify the need.³²⁷ If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.³²⁸

In some cases, housing providers should allow individuals to self-certify their disabilities. For example, an applicant/participant may provide proof of Supplemental Security Income (if younger than 65) or Social Security Disability Insurance benefits in order to certify.³²⁹ A doctor or other medical

³²⁰ CAL. GOV'T. CODE § 12926(i)(5).

³²¹ See Non-discrimination and Accessibility for Persons with Disabilities, HUD Letter 2007-05 (Sept. 21, 2007) (making permanent Notice on Non-discrimination and Accessibility for Persons with Disabilities, PIH 2006-13 (March 8, 2006)); Joint Statement, *supra* note 318.

³²² Joint Statement, *supra* note 318, at 10.

³²³ See Toolkit, Appendix 15.

³²⁴ See, e.g., *Andover Hous. Auth. v. Shkolnik*, 820 N.E.2d 815 (Mass. 2005) (holding that tenant's requested reasonable accommodation, delay or withdrawal of eviction action, would not permit the tenant to comply with lease provisions regarding excessive noise); *Landmark Props. v. Olivo*, 783 N.Y.S.2d 745 (N.Y. App. Term 2004) (affirming order of eviction where tenant had not submitted clear evidence establishing that his dog was necessary to his enjoyment of his rental unit); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 20 (2003).

³²⁵ PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 324, at 19.

³²⁶ Joint Statement, *supra* note 318, at 12.

³²⁷ *Id.*

³²⁸ *Id.* at 13.

³²⁹ *Id.*

professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may also provide verification of the disability and the need for the accommodation.³³⁰

Reasonableness

If a housing provider has verified the need for the accommodation, and the requested accommodation is reasonable, then he or she must provide it. The term "reasonable" means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.

An undue burden may be financial or administrative.³³¹ To determine if an undue financial burden exists, four factors should be considered: the housing provider's financial resources, the costs of the requested accommodation, the benefit to the tenant, and the availability of a less expensive alternative accommodation.³³² Courts have recognized that reasonable accommodation will often cause housing providers some financial or other burden.³³³

An accommodation may also be unreasonable if it fundamentally alters the nature of the program. A housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider does. For example, a tenant's request that a landlord provide daily

transportation services would likely be considered unreasonable if the building currently has no such service.

Interactive Process

If a housing provider rejects a tenant's reasonable accommodation request, it still must engage in an interactive process with the tenant.³³⁴ This means that it must offer to discuss alternative accommodations that would satisfy the tenant's need while not imposing an undue burden or fundamental alteration to the housing provider's program. During this process, keep in mind that the person with disabilities knows best what accommodation will satisfy her needs. If the two parties cannot agree on an alternative accommodation, it is treated as a denial of the reasonable accommodation request.

Federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities.³³⁵ Therefore, a survivor living in federally assisted housing may use the grievance procedure to challenge an initial refusal to accommodate. In practice, this grievance procedure is often used as the vehicle for the interactive process.

Timing of the Request

A reasonable accommodation may be requested at any time, including prior to application and admission, during occupancy, after termination or eviction, and even during litigation.³³⁶ Advocates should raise a request

³³⁰ *Id.* at 13-14.

³³¹ 24 C.F.R. § 8.11.

³³² Joint Statement, *supra* note 318, at 8; *see, e.g.*, Solberg v. Majerle Mgmt., 879 A.2d 1015 (Md. 2005) (finding an undue burden where request would have required landlord to make significant changes to his personal life and daily activities and would have prevented him from inspecting tenant's unit).

³³³ United States v. Cal. Mobile Home Park Mgmt. Co., 29 F.3d 1413 (9th Cir. 1994) (holding that mobile home park owner, under duty to provide reasonable accommodation, may have to incur reasonable financial costs).

³³⁴ Joint Statement, *supra* note 318, at 7.

³³⁵ 24 C.F.R. § 8.53.

³³⁶ Joint Statement, *supra* note 318, at 12; *see also* Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997) (finding that landlord may be required to halt eviction even if the accommodation request was not made until the eviction proceedings); Douglas v. Kregsfeld Corp., 884 A.2d 1109 (D.C. 2005) (explaining the "general rule under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute");

for a reasonable accommodation as soon as it is apparent that such accommodation is needed.

7.5 Common Issues for Survivors

This section describes some of the reasonable accommodation issues that may be encountered by survivors with disabilities, including obstacles to being admitted to housing, difficulties in locating accessible housing, requests to transfer or move to units that better serve the survivor's needs, and evictions and subsidy terminations related to the survivor's disability.

Admissions to Housing

Persons with disabilities may have poor rental, tenancy, or credit history that is directly related to the disability. In these cases, a housing provider may be required, as a reasonable accommodation, to alter its admissions policies or tenancy screening criteria that would otherwise bar the survivor from admission. For example, a survivor may have repeatedly failed to pay her rent on time due to severe depression, and may have an eviction on her credit record as a result. If the survivor has since received treatment that allows her to fulfill the responsibilities of her new lease, a prospective housing provider may overlook the poor rental history as a reasonable accommodation.

If an applicant for housing assistance cannot attend an in-person interview due to her disability, the housing provider must conduct the interview at an accessible location, such as the applicant's home, or make other arrangements, such as a phone interview. This may be vital for survivors who cannot attend an

in-person interview because of depression, post-traumatic stress disorder, mobility impairments, or other disabilities.

Locating a Unit

An obstacle that survivors with disabilities often encounter is the inability to find an accessible unit at an affordable price. This issue is especially problematic for Section 8 voucher holders. PHAs are required to establish a "payment standard," which is the highest amount the PHA can pay to help a family with rent. The payment standard is based on the fair market rents in the area. Unfortunately, many voucher holders with disabilities have difficulty finding units that are both accessible and that do not have rents higher than the payment standard. Recognizing this difficulty, HUD regulations require that a PHA increase the payment standard for a voucher holder if necessary as a reasonable accommodation.³³⁷ Additionally, while Section 8 tenants typically cannot rent units from relatives,³³⁸ tenants with disabilities may be permitted to do so as a reasonable accommodation.³³⁹

A reasonable accommodation may also provide greater housing choice to individuals with disabilities. Usually, a PHA may prohibit Section 8 tenants from using their vouchers to rent certain types of housing, such as single-room occupancy housing (units to be occupied

Hous. Auth. of Bangor v. Maheux, 748 A.2d 474 (Me. 2000) (finding that until writ is issued, landlord remains under obligation to provide reasonable accommodation); Schuett Inv. Co. v. Anderson, 386 N.W.2d 249 (Minn. Ct. App. 1986) (ordering landlord not to evict tenant).

³³⁷ 24 C.F.R. §§ 982.505(d), 8.28(a)(5). In the past several years, HUD has annually granted 10 to 15 payment standard waivers. See Anthony Ha, *HUD Regulatory Waivers: Summary of Recent Waivers Regarding Voucher and Other Programs*, 35 HOUS. L. BULL. 238, 239 (2005); Antonia Konkoly, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 38 HOUS. L. BULL. 139, 140-41 (2008); Jason Lee, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 37 HOUS. L. BULL. 115, 116-17 (2007).

³³⁸ § 982.306(d).

³³⁹ § 982.306(d); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 8-15, 19 (2001).

by one person), congregate housing (housing with services for seniors or people with disabilities), shared housing, group homes, cooperative housing, and space rentals for mobile homes. However, a PHA must allow a voucher holder to rent any of these housing types if necessary to accommodate a disability.³⁴⁰ This may be especially vital for a survivor who needs an accessible unit quickly.

Receiving Assistance from an Aide or Animal

A survivor who has a disability may need a live-in aide to help her perform activities of daily living. A PHA or owner must approve a live-in aide as a reasonable accommodation.³⁴¹ In some cases, a housing provider may be reluctant to allow a survivor to have a live-in aide where the prior aide had committed acts of domestic violence against the survivor. However, all reasonable accommodations must be judged on a case-by-case basis, and a housing provider should not restrict a survivor's right to a caregiver because of prior abuse.

A survivor with a disability may need an assistive animal to perform tasks, provide emotional support, or alert the survivor to intruders. State and federal laws protect the right of people with disabilities to keep assistive animals, even when a housing provider's policy prohibits pets.³⁴² A housing provider may be required to provide an exception to a no-pets policy as a reasonable accommodation to a

survivor who needs an assistive animal. For example, a court found that a survivor could request an exception to a landlord's pet policy as a reasonable accommodation where she kept a dog in her apartment to alleviate her post-traumatic stress disorder.³⁴³ The tenant stated that she was a survivor of domestic violence and that the dog lessened her constant state of fear because he preceded her into rooms, switched on lights in darkened rooms, and had been trained to bring her cell phone to her.³⁴⁴

Transferring or Moving

Many PHAs and owners have policies restricting transfers to other units or moves with a Section 8 voucher. For example, housing providers often have policies that prohibit tenants from moving during their first year in the unit, or from moving more than once during a 12-month period. Tenants with disabilities can request exceptions to these policies as a reasonable accommodation. Accordingly, a survivor who lives on the third floor of a walk-up apartment complex and who has become disabled as a result of acts of violence committed against her may request relocation to a ground-floor apartment.³⁴⁵ Similarly, a survivor who is suffering from post-traumatic stress disorder as a result of an assault in the parking lot of her apartment complex may request a transfer to another apartment complex.

A Section 8 voucher tenant who needs to move due to her disability can do so and continue to receive rental assistance. If a survivor with a disability needs to make such a move with her Section 8 voucher, she should request a reasonable accommodation and

³⁴⁰ HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, *supra* note 339, at 3-5, 17-1.

³⁴¹ § 982.316(a).

³⁴² *See, e.g.,* Green v. Hous. Auth. of Clackamas County, 994 F. Supp. 1253 (D. Or. 1998); Auburn Woods I Homeowners Ass'n v. Fair Employment & Hous. Comm'n, 18 Cal. Rptr. 3d 669 (Cal. Ct. App. 2004); *see also* U.S. Department of Justice, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.ada.gov/qasrvc.htm>; Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #6, Right to Emotional Support Animals in "No Pet" Housing*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>.

³⁴³ Henderson v. Des Moines Mun. Hous. Agency, 2007 WL 4553350 at *6 (Iowa Ct. App. 2007).

³⁴⁴ *Id.*

³⁴⁵ *See, e.g.,* PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 324, at 148; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 3-65, 3-67 (2008).

explain that the relocation is related to her disability.

Eviction/Termination

Individuals with disabilities sometimes face evictions or housing assistance terminations that are directly related to the disability. If a PHA seeks to terminate assistance or evict a tenant, it may consider disability as a mitigating circumstance and determine if a reasonable accommodation would allow the tenant to remain in the program.³⁴⁶ All housing providers must consider a request for reasonable accommodation at any time, including after the housing provider has served an eviction or termination notice. For example, a survivor who has been hospitalized for an extended period of time as a result of a physical or psychological condition may request, as a reasonable accommodation, that an eviction notice for nonpayment of rent be withdrawn and that she be given additional time to pay the rent. As another example, a survivor who failed to attend a meeting with the PHA to certify her income because she was suffering from severe depression may request that the PHA cease any efforts to terminate her subsidy for failure to attend the meeting. As a third example, a survivor who threatened a PHA staff member as a result of aggressive behavior caused by a change in her medication may request that the PHA cease any efforts to terminate her subsidy for threatening conduct.³⁴⁷

7.6 Enforcement

Individuals with disabilities who have been denied their right to a reasonable accommodation have several options for enforcement, including administrative complaints and civil lawsuits. For information on these options, see Chapter Six.

7.7 Conclusion

Survivors with disabilities face unique challenges to accessing safe and stable housing. Advocates must be aware of all the tools available to help survivors with disabilities, including the right to a reasonable accommodation. In many cases, a reasonable accommodation may lead to a swift and responsive solution to the survivor's housing needs.

³⁴⁶ 24 C.F.R. § 982.552(c)(2)(i); HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, *supra* note 339, at 15-10.

³⁴⁷ See *Wojcik v. Lynn Hous. Auth.*, 845 N.E.2d 1160, 1164 (Mass. Ct. App. 2006) (upholding hearing officer's decision not to terminate a disabled Section 8 voucher tenant who had recently been the victim of a domestic assault and whose children were also disabled).

Chapter 8: The Violence Against Women Act and Rights of Survivors in Federally Subsidized Housing

Table of Contents

8.1 Introduction.....	65
8.2 Types of Housing that VAWA Covers	65
8.3 Individuals Whom VAWA Protects	66
8.4 Proving Domestic Violence, Dating Violence, or Stalking Under VAWA.....	67
8.5 Survivors’ Rights to Confidentiality Under VAWA	68
8.6 VAWA’s Protections for Survivors Applying for Housing.....	69
8.7 Survivors’ Rights in Moving with Section 8 Voucher Assistance	70
8.8 Survivors’ Rights in Moving to Another Public Housing Unit	71
8.9 VAWA’s Protections Against Evictions and Subsidy Terminations.....	72
8.9.1 Overview of the Protections Against Evictions and Terminations	73
8.9.2 Limitations on VAWA’s Protections.....	74
8.9.3 Examples of How VAWA’s Protections Have Been Used	75
8.10 Survivors’ Rights in Seeking to Remove the Abuser from the Household	77
8.10.1 Removing the Abuser from the Lease	78
8.10.2 Removing the Abuser from the Section 8 Voucher	79
8.11 Housing Authorities’ Duties to Provide Notice of VAWA Rights.....	79
8.12 Housing Authorities’ Duties to Plan for Survivors’ Needs	80
8.13 HUD Guidance on VAWA	80
8.14 Practice Tips.....	81
8.14.1 The Need to Educate Housing Providers	81
8.14.2 The Need to Educate Clients.....	81
8.14.3 Timing.....	81
8.14.4 Engaging the Media	82
8.14.5 Collaboration with Housing Providers.....	82

8.1 Introduction

The Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA)³⁴⁸ protects the rights of applicants and tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating violence, or stalking. The 2005 reauthorization marked the first time that VAWA included housing protections for survivors living in federally subsidized housing. The housing provisions, which became effective January 2006, prohibit survivors from being evicted or denied housing assistance based on acts of violence committed against them. The provisions amended the statutes governing certain federally subsidized housing programs, primarily 42 U.S.C. Sections 1437d and 1437f. To help advocates locate the relevant statutory provisions, the Toolkit accompanying this Manual includes a statutory compendium that contains the text of VAWA's housing provisions and the relevant citations.³⁴⁹ Congress enacted the housing provisions in response to findings that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”³⁵⁰

This Chapter first discusses the scope of VAWA's housing protections, including the types of housing and individuals to whom VAWA applies and the proof that is required to assert the protections. The Chapter then discusses the housing rights available to survivors, including protections against denials

of housing, evictions, and subsidy terminations, and provides examples of how these rights have been used in practice. The Chapter also discusses survivors' rights to relocate with continued rental assistance and to remove the abuser from a lease or Section 8 voucher. Finally, the Chapter concludes with practice tips for using VAWA's housing protections to their maximum potential.

8.2 Types of Housing that VAWA Covers

In determining whether a survivor can use VAWA's housing protections, advocates first must examine whether the survivor is applying for or living in a federally subsidized housing program that is covered by VAWA. The covered housing programs are public housing, the Section 8 voucher program, project-based Section 8 developments, and the Section 202 and Section 811 supportive housing programs.³⁵¹ If a client is unsure whether she is a participant in one of these programs, review the client's lease, contact the public housing agency (PHA) or the client's landlord, or request assistance from a local legal services program or the National Housing Law Project.

VAWA does not cover any other Department of Housing and Urban Development (HUD) programs, such as Shelter Plus Care. It also does not apply to the Department of Agriculture's Rural Housing Service programs. Survivors in the Low-Income Housing Tax Credit (LIHTC) program are not covered by VAWA unless their rent is subsidized by a Section 8 voucher or the project-based Section 8 program. Finally, VAWA does not cover tenants living in private housing without any type of rental subsidy. If a survivor is not participating in a housing program covered by VAWA, advocates should

³⁴⁸ Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006). For more information on VAWA's housing provisions, see NHLP, *HUD Continues VAWA Implementation*, 36 HOUS. L. BULL. 7 (Jan. 2007); Naomi Stern, *HUD Begins VAWA Implementation*, 36 HOUS. L. BULL. 181 (Sept. 2006); Anthony Ha, *Reauthorized Violence Against Women Act Protects Housing Rights of Domestic Violence Survivors*, 36 HOUS. L. BULL. 53 (Mar. 2006).

³⁴⁹ See Toolkit, Appendix 16.

³⁵⁰ 42 U.S.C. § 14043e.

³⁵¹ See HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008). For an overview of the federally subsidized housing programs, see Chapter 2.

still consider whether the survivor may be protected by fair housing laws.³⁵²

8.3 Individuals Whom VAWA Protects

VAWA protects any individual who is or has been a victim of actual or threatened domestic violence, dating violence, or stalking.³⁵³ Advocates therefore must determine whether a survivor qualifies as a victim of domestic violence, dating violence, or stalking as defined in VAWA. The statute's definitions of these terms are gender neutral. Thus, male survivors and survivors in same-sex relationships can assert VAWA's protections.

Under VAWA, "domestic violence" includes violence committed by a current or former spouse of the survivor; a person with whom the survivor shares a child; a person who is cohabitating with or has cohabitated with the survivor as a spouse; or a person similarly situated to a spouse of the survivor under state law.³⁵⁴ VAWA also covers any person who is protected by a state's family violence laws.³⁵⁵ Accordingly, advocates may also look to California's definition of domestic violence in determining whether a survivor qualifies for VAWA's protections. This may be critical, because in some respects California's definition of domestic violence is more expansive than VAWA's definition. For example, California's definition includes violence against a person to whom the perpetrator is related within the second degree, such as violence against a parent by a child or violence between siblings.³⁵⁶

Under VAWA, "dating violence" is violence committed by a person who is or has been in a social relationship of a romantic or intimate

nature with the survivor.³⁵⁷ The existence of such a relationship is based on factors such as its length and frequency of interaction.³⁵⁸ "Stalking" is defined as following, pursuing, placing under surveillance, or repeatedly committing acts with intent to kill injure, harass, or intimidate another person.³⁵⁹ To meet VAWA's definition of stalking, these acts must place the survivor in reasonable fear of death or serious bodily injury or cause substantial emotional harm to the survivor or an immediate family member of the survivor.³⁶⁰ In contrast to VAWA's definitions of domestic violence and dating violence, the definition of stalking does not require that the survivor have had a romantic or intimate relationship with the perpetrator.

Immediate family members of the survivor of domestic violence, dating violence, or stalking are also protected by VAWA. An immediate family member is defined as a spouse, parent, sibling, child, or any other person living in the survivor's household who is related by blood or marriage.³⁶¹

Survivors of sexual assault are not explicitly listed among the categories of victims who are entitled to VAWA's housing protections. Advocates representing sexual assault survivors should carefully read VAWA's definitions of domestic violence, dating violence, and stalking, as well as California's definition of domestic violence. In some instances, advocates may be

³⁵⁷ 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.

³⁵⁸ *Id.*

³⁵⁹ 42 U.S.C. §§ 1437d(u)(3)(C) (public housing), 1437f(f)(10) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

³⁶⁰ *Id.* The statutes and regulations do not describe the type of evidence a survivor must produce to show that she had a reasonable fear of death or serious injury, or that she suffered substantial emotional harm. Any documentation of the threats or acts of intimidation that the survivor experienced, as well as records regarding the survivor's physical or mental state, would likely be helpful in supporting her assertion that she experienced fear or emotional harm.

³⁶¹ §§ 1437d(u)(3)(D) (public housing), 1437f(f)(11) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

³⁵² See Chapter 6 for more information regarding fair housing laws.

³⁵³ See, e.g., 42 U.S.C. §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

³⁵⁴ 42 U.S.C. § 13925(a)(6); 24 C.F.R. § 5.2003.

³⁵⁵ *Id.*

³⁵⁶ See CAL. FAM. CODE § 6211.

able to argue that the circumstances surrounding the sexual assault meet one of these definitions. Additionally, one of VAWA's stated purposes is to protect the safety of victims of sexual assault who reside in public or assisted housing.³⁶² Advocates can therefore argue that extending the housing protections to sexual assault survivors is consistent with VAWA's intent. Further, advocates should consider whether fair housing laws may protect the survivor.³⁶³

8.4 Proving Domestic Violence, Dating Violence, or Stalking Under VAWA

This section focuses on one of the first steps in asserting a survivor's VAWA rights: assessing whether and how the survivor can provide proof of domestic violence, dating violence, or stalking. Under VAWA, this process is referred to as "certification." Advocates should note that a survivor need only provide the documentation discussed in this section if the survivor seeks to assert a specific right provided in VAWA, and the housing provider requests such documentation.

If a survivor seeks to assert her VAWA rights, a public housing agency (PHA) or landlord can ask for proof of domestic violence, dating violence, or stalking.³⁶⁴ A housing provider may request certification in several contexts, such as where the survivor raises her VAWA rights to challenge a denial of housing, an eviction, a subsidy termination, or a denial of a request to move. In deciding whether to apply VAWA's protections, the housing provider can choose to rely solely on the survivor's statement, or can submit a written request for certification to the survivor.³⁶⁵ After a housing

provider has requested certification, a survivor must be given at least 14 business days to respond.³⁶⁶ If the survivor does not provide the documentation within 14 business days, the housing provider may bring proceedings to terminate the survivor's tenancy or assistance.³⁶⁷ However, housing providers can extend the 14-day deadline at their discretion, and advocates should encourage them to do so where the survivor can show good cause for an extension.³⁶⁸

There are three basic types of certification the survivor can provide in response to the housing provider's request: (1) self-certification; (2) statement from a qualified third party; or (3) police or court record.³⁶⁹ First, the survivor can self-certify by completing a HUD-approved form.³⁷⁰ Survivors participating in the public housing or Section 8 voucher program should complete form HUD-50066, while form HUD-91066 is for survivors living in project-based Section 8 developments. If the housing provider does not give the survivor a copy of the form, it can be downloaded from HUD's website.³⁷¹ Advocates should download and print several copies of the forms so that they are readily available in the event that a survivor needs to assert her VAWA rights immediately. These forms are also contained in the Toolkit accompanying this Manual.³⁷² Both forms request the name of the survivor, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The survivor must sign the form and certify that

³⁶² 42 U.S.C. § 14043e-1.

³⁶³ See Chapter 6 for more information regarding fair housing laws.

³⁶⁴ §§ 1437d(u)(1)(A)(public housing), 1437f (ee)(1)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

³⁶⁵ §§ 1437d(u)(1)(D) (public housing), 1437f(ee)(1)(D) (project-based Section 8 and vouchers).

³⁶⁶ §§ 1437d(u)(1)(B) (public housing), 1437f(ee)(1)(B) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(2).

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ See 42 U.S.C. § 1437d(u)(1)(A), (C) (public housing); 42 U.S.C. § 1437f(ee)(1)(A), (C) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

³⁷⁰ *Id.*

³⁷¹ The forms are available at

<http://www.hud.gov/offices/adm/hudclips/forms/>.

³⁷² See Toolkit, Appendices 17 and 18.

the information is true and correct. Advocates should note that submitting false information on the form is grounds for termination of assistance or eviction.

If the survivor does not feel comfortable providing the information requested in the HUD-approved form, she can instead provide either a statement from a qualified third party, or a police or court record.³⁷³ Documentation from a qualified third party must be signed by the victim and a victim service provider, an attorney, or a medical professional.³⁷⁴ The third party must attest under penalty of perjury to his or her belief that the survivor has experienced bona fide incidents of abuse.³⁷⁵ Unfortunately, VAWA does not contain language protecting any privileged relationship existing between the survivor and the third party. To avoid waiving attorney-client privilege, an attorney representing a survivor generally should not certify that the survivor has experienced bona fide incidents of abuse. Instead, the attorney should explore with the survivor whether there is another individual who can provide the documentation, such as a shelter employee or victim-witness advocate.

As an alternative to submitting the third-party documentation or HUD-approved form, the survivor can provide a federal, state, tribal, territorial, or local police or court record.³⁷⁶ VAWA's housing provisions do not define what constitutes a police or court record. Examples of documents that should satisfy the certification requirement include a restraining order, a police report, or a criminal complaint or conviction.

A common area of confusion under VAWA is whether a housing provider may request that a survivor provide multiple forms of documentation, or that a survivor provide a particular type of documentation. For example,

in some instances housing providers have requested that survivors provide both the HUD-approved certification form and third-party documentation, or that survivors provide restraining orders. However, HUD has made clear that VAWA “allows for the victim to self-certify,” and that its form satisfies VAWA's certification requirements.³⁷⁷ HUD has also stated that third-party documentation or a police or court record may be provided “[i]n lieu of a certification form,” indicating that survivors have the authority to decide what type of documentation they will provide.³⁷⁸ It is therefore contrary to HUD's guidance to require the survivor to provide two forms of documentation, or to limit the types of documentation a survivor can provide. It is also unduly burdensome for the survivor, who in some cases will be fleeing from the perpetrator or temporarily staying in a confidential location. If a housing provider has an overly restrictive documentation policy, advocates should remind the provider of HUD's guidance and explain why many survivors cannot provide multiple forms of documentation. At the same time, however, advocates should attempt to secure several forms of documentation from the survivor in order to strengthen the case and to avoid a protracted dispute with the housing provider regarding documentation, particularly where the survivor risks eviction or needs alternative housing immediately.

8.5 Survivors' Rights to Confidentiality Under VAWA

Under VAWA, housing providers must keep confidential any information a survivor provides to certify incidents of domestic violence, dating

³⁷³ See *supra* note 369.

³⁷⁴ See *supra* note 369.

³⁷⁵ See *supra* note 369.

³⁷⁶ See 42 U.S.C. §§ 1437d(u)(1)(D) (public housing), 1437f(ee)(1)(D) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1)(ii).

³⁷⁷ The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696 (Mar. 16, 2007).

³⁷⁸ See Notice PIH 2006-42 (Dec. 27, 2006); Form HUD-50066; Form HUD-91066.

violence, or stalking.³⁷⁹ They may not enter the information into any shared database or provide it to another entity.³⁸⁰ However, advocates should note that a housing provider is permitted to disclose the information if it chooses to evict the batterer based on the acts of domestic violence, dating violence, or stalking.³⁸¹ Accordingly, advocates should request that the housing provider contact the survivor first before taking steps to evict the batterer, so that the survivor can plan for her safety.³⁸²

Certification information may also be disclosed if the survivor requests disclosure in writing, or if disclosure is otherwise required by law.³⁸³ Advocates should remind housing providers of the importance of warning the survivor and giving her adequate time to plan for her safety before the information is disclosed. Advocates should also emphasize the importance of confidentiality in instances where the survivor is relocating or seeking to have the abuser removed from the lease or the Section 8 voucher.

8.6 VAWA's Protections for Survivors Applying for Housing

VAWA prohibits a housing provider from denying an applicant admission to housing or rental assistance “on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.”³⁸⁴ Therefore, survivors cannot be denied admission to public housing or project-based Section 8 housing, or denied eligibility for the Section 8 Voucher

program based on incidents of domestic violence, dating violence, or stalking committed against them. Landlords renting to Section 8 tenants also cannot deny housing to survivors on the basis of acts of abuse committed against them.

It is important for advocates to note that few housing providers will explicitly deny a survivor housing on the basis that she is or has been a survivor of domestic violence, dating violence, or stalking. Rather, survivors are most often denied housing on the basis of negative tenancy, credit, or criminal history that is related to the acts of abuse. For example, many housing authorities have policies of denying admission to applicants who have previously been evicted from federally subsidized housing. Therefore, a survivor who was previously evicted from public housing due to damages caused by the batterer may be denied admission to federally subsidized housing if she reapplies at the same PHA or applies at another PHA.

Unfortunately, VAWA does not explicitly address denials of housing based on negative tenancy, credit, or criminal history that can be traced back to acts of abuse committed against the applicant. However, advocates working with survivors who have been denied housing because of such history should still challenge the denial.³⁸⁵ Advocates can argue that denying a survivor housing based on such negative history is equivalent to denying her housing on the basis that she has been a survivor of abuse, and that the denial therefore violates VAWA. In making this argument, it is helpful to document the link between the negative history and the abuse. In the example above, an advocate should gather any documentation showing that the eviction was related to domestic violence, such as police reports, statements from neighbors, or letters from service providers. Advocates should also note that housing authorities are obliged to consider the nature

³⁷⁹ See 42 U.S.C. §§ 1437d(u)(2)(A) (public housing), 1437f(ee)(2)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1)(v).

³⁸⁰ See *id.*

³⁸¹ See *id.*

³⁸² See Chapter 4 for more information regarding safety planning.

³⁸³ See *supra* note 379.

³⁸⁴ 42 U.S.C. §§ 1437d(c)(3) (public housing), 1437f(c)(9)(A) (project-based Section 8), § 1437f(o)(6)(B) (vouchers); 24 C.F.R. § 5.2005(a).

³⁸⁵ See Chapter 3 for more information on challenging denials of admission.

and extent of an applicant's negative history,³⁸⁶ and that HUD has explicitly advised housing authorities to inquire into whether domestic violence was a factor in poor rental history.³⁸⁷ Advocates should also explain to housing providers the link between domestic violence and poor credit, tenancy, or criminal history, and why many survivors have such poor history. For instance, VAWA's findings section notes that "[b]ecause abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing."³⁸⁸

Although a housing provider cannot deny an applicant admission to housing on the basis of her status as a survivor of domestic violence, dating violence, or stalking, an individual's status as a survivor does not guarantee that she will be accepted into federally subsidized housing. VAWA does not require that housing authorities institute a preference for survivors of abuse when making admissions decisions. However, housing authorities have discretion to institute such a preference, and advocates can encourage them to do so during the annual planning process.³⁸⁹

8.7 Survivors' Rights in Moving with Section 8 Voucher Assistance

In some cases, a survivor who has a Section 8 voucher may need to move from the city or county that she is living in to protect her safety. Moving with voucher assistance is called "portability." Ordinarily, a voucher tenant is not allowed to exercise her right to portability if she moved out of the assisted unit without notifying

the PHA first.³⁹⁰ This is obviously problematic for a survivor who has fled her unit to escape her abuser and cannot pay rent at a new location without voucher assistance. However, VAWA provides that even if the voucher tenant has moved out of the assisted unit, she may still receive voucher assistance if she is a survivor of domestic violence, dating violence, or stalking; she moved to protect her health or safety; and she reasonably believed that she was imminently threatened by harm.³⁹¹ Advocates should inform PHAs of this provision if PHAs refuse to allow portability moves for survivors who fled their units.

Housing authorities often impose a number of restrictions on portability and may not be aware of the exception created by VAWA. For example, housing authorities often prohibit tenants from moving if they are in the first year of the lease, if they have already moved once during the past 12 months, if they owe money for repairs or back rent, or they have not obtained the landlord's permission to end the lease. These policies can endanger a survivor's safety by unnecessarily preventing her from moving. Survivors often need to relocate on multiple occasions and during a relatively short timeframe to keep their whereabouts hidden from the batterer. If a PHA has denied a survivor's portability request, the survivor should exercise her right to an informal hearing to challenge the denial. Advocates should urge housing authorities to consider the safety needs of domestic violence survivors when they assess portability requests. Advocates can also cite VAWA's provisions stating that the fact that an applicant has been a survivor of domestic violence is not an appropriate basis for denial of assistance, which are discussed later in this Chapter. To avoid future problems, advocates should urge housing authorities to adopt explicit exceptions to their written portability policies

³⁸⁶ 24 C.F.R. § 960.203.

³⁸⁷ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218 (2003).

³⁸⁸ 42 U.S.C. § 14043e(10).

³⁸⁹ See Chapter 10 for more information on the PHA planning process.

³⁹⁰ See 42 U.S.C. § 1437f(r)(5).

³⁹¹ § 1437f(r)(5); 24 C.F.R. § 982.353(b); HUD, Housing Choice Voucher Portability Procedures and Corrective Actions, PIH 2008-43, at 3 (Dec. 3, 2008).

where needed to accommodate a domestic violence survivor's safety.³⁹²

To prevent disputes with the PHA, survivors who must temporarily relocate for safety reasons while the portability request is being processed should inform the PHA of this in writing. Many PHAs have policies limiting the number of days a tenant may be absent from a Section 8 unit before her assistance will be terminated. Further, Section 8 regulations provide that in no case may a tenant be absent from the unit for more than 180 consecutive days.³⁹³ To remain in good standing with the PHA and ensure that the survivor's portability request is processed, the survivor should notify the PHA that she has temporarily moved for safety reasons and that she intends to remain in the Section 8 program.

In working with a survivor who must move, advocates may also need to contact the survivor's existing Section 8 landlord. Section 8 regulations provide that the initial term of the lease must be for at least one year.³⁹⁴ If the survivor has been in the unit for less than a year, advocates will need to negotiate with the Section 8 landlord to waive or reduce any fees associated with breaking the lease, as VAWA does not protect a victim from being held liable for these fees. In some instances, the survivor may be able to use state law to break the lease without financial penalty.³⁹⁵

After the survivor has terminated the lease, the PHA will give her a new voucher so that she can relocate. The PHA must provide the survivor at least 60 days to search for housing, which is called the initial voucher term.³⁹⁶ To assist voucher holders in locating suitable housing, many PHAs have elected to increase

the initial voucher term beyond 60 days. To determine your PHA's initial voucher term, consult the PHA's Administrative Plan or look at the client's voucher. Additionally, PHAs often grant extensions to the initial voucher term if the voucher holder shows that she was unable to locate housing after an extensive search. Accordingly, advocates should advise survivors to keep a log of all the housing providers they contacted during their housing search. Further, if the survivor was unable to search for housing during a certain time period (due to a disability or injury, for example) she may request that the PHA stop the clock on the voucher search term during that period.

8.8 Survivors' Rights in Moving to Another Public Housing Unit

VAWA does not address a PHA's obligation to transfer a public housing tenant to a safer unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. PHAs have a great deal of discretion in deciding the circumstances in which they will allow a public housing tenant to transfer to another unit, and advocates will need to check with their local PHAs to determine what their transfer policies are. Policies regarding transfers should be set forth in the PHA's Admissions and Continued Occupancy Policy (ACOP). The Toolkit accompanying this Manual contains a sample letter requesting a public housing transfer on behalf of a domestic violence survivor.³⁹⁷

Advocates working with survivors who need transfers should carefully examine the ACOP and determine the grounds under which a survivor may be entitled to a transfer.³⁹⁸ Unfortunately, many PHAs do not have transfer policies for domestic violence or victims of crime, or have policies with unduly burdensome

³⁹² See Chapter 10 for more information on PHA policies regarding portability.

³⁹³ 24 C.F.R. § 982.312(a).

³⁹⁴ § 982.309(a)(1).

³⁹⁵ See Chapter 5 for more information on California's early lease termination law for survivors of domestic violence, sexual assault, and stalking.

³⁹⁶ § 982.303.

³⁹⁷ See Toolkit, Appendix 19.

³⁹⁸ PHAs are required to comply with the policies established in the ACOP. See § 903.25.

documentation requirements.³⁹⁹ Further, at least one court has found that a PHA was not obligated to provide a transfer to a domestic violence survivor where the PHA's ACOP did not provide for such transfers.⁴⁰⁰ Under that PHA's ACOP, the only crime victims who were eligible for transfers were victims of federal hate crimes. To avoid a similar result, advocates in jurisdictions without domestic violence transfer policies or with overly restrictive policies should encourage PHAs to amend these policies.⁴⁰¹ In fact, HUD has encouraged PHAs to adopt transfer policies for survivors of domestic violence.⁴⁰²

To increase the likelihood that the survivor's transfer request will be granted, advocates should cite as many reasons as possible why the PHA should grant the survivor a transfer. For example, many PHAs have transfer policies for tenants living in units that are too small or too large based on the family's size, that are in need of repair due to habitability issues, that are inaccessible to a tenant with disabilities,⁴⁰³ or that are a significant distance from the tenant's job or school. Advocates should explore with survivors any possible grounds under which they might be entitled to a transfer, particularly where the jurisdiction has no transfer policy for victims of domestic violence.

Before submitting the transfer request, discuss with the survivor whether there are certain developments where the abuser would be less likely to find her, and whether there are certain developments where the survivor would

be at great risk of harm. These developments should be discussed in the transfer application to help expedite the survivor's request and to prevent the PHA from placing the survivor in a development that is no safer than her current home. If there are no public housing developments where the survivor would be safe, advocates should contact the PHA and request that the survivor be issued a Section 8 voucher. In jurisdictions where there are limited numbers of public housing units and vouchers, the survivor should consider getting on waitlists for federally subsidized housing in neighboring jurisdictions.

If the survivor must temporarily relocate for her safety while her transfer request is being processed, it is crucial to inform the PHA in writing that the survivor has temporarily moved but intends to remain in the public housing program. The PHA's ACOP will likely state the maximum number of days a family can be absent from a public housing unit. If the survivor relocates without notifying the PHA, and she is absent from the unit for more than the maximum number of days, the PHA may assume that the unit has been abandoned and may attempt to evict the survivor. To remain in good standing with the PHA and ensure that the survivor's transfer request is processed, the survivor should contact the PHA before or shortly after she relocates to let the PHA know that she has not abandoned the unit.

8.9 VAWA's Protections Against Evictions and Subsidy Terminations⁴⁰⁴

VAWA prohibits survivors of domestic violence, dating violence, or stalking from being evicted or having their rental subsidies terminated based on acts of violence committed against them. These protections were enacted to create an exception for survivors from the

³⁹⁹ PHAs often require a tenant to provide documentation from law enforcement in order to obtain a domestic violence transfer, which may be unrealistic for survivors who cannot call the police due to fear of retaliation.

⁴⁰⁰ *Robinson v. Cincinnati Hous. Auth.*, 2008 WL 1924255 (S.D. Ohio 2008).

⁴⁰¹ See Chapter 10 for more information on working locally to shape a PHA's Admissions and Continued Occupancy Policy.

⁴⁰² PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 387, at 218-19.

⁴⁰³ See Chapter 7 for more information regarding reasonable accommodations in housing for persons with disabilities.

⁴⁰⁴ This section is limited to discussing the protections available to survivors under VAWA. See Chapters 6 and 9 for more strategies for defending against evictions and subsidy terminations.

federal “one-strike and you’re out” criminal activity rule. The rule gives PHAs the authority to evict or terminate a tenant’s assistance based on only one instance of criminal activity committed by any household member, guest, or other person under the tenant’s control that threatens the health, safety, or peaceful enjoyment of other tenants.⁴⁰⁵ Unfortunately, some housing authorities have applied the rule to justify the evictions and subsidy terminations of all members of a particular household, even those who did not commit the criminal acts or were even victims of those acts. As a result, many survivors have faced evictions and subsidy terminations based on criminal acts committed against them by their batterers.⁴⁰⁶ To address this problem, VAWA explicitly provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for eviction or subsidy termination for the survivor of the domestic violence, dating violence, or stalking.⁴⁰⁷ This section provides an overview of VAWA’s protections against evictions and subsidy terminations, explains some of the protections’ limitations, and discusses how the protections have been used in practice. Advocates should note that in addition to VAWA’s protections, clients may also be able to assert similar protections under fair housing laws, which are discussed in Chapter 6.

8.9.1 Overview of the Protections Against Evictions and Terminations

VAWA provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of

the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the victim’s tenancy or rental assistance.⁴⁰⁸ In other words, an act of domestic violence, dating violence, or stalking committed against a tenant cannot be grounds for evicting the tenant or terminating her subsidy. Notably, this provision of VAWA refers to “an incident or incidents” of violence, indicating that only one incident is needed to trigger VAWA’s protections and that repeated incidents are not required. Further, this provision refers to “actual or threatened” violence, indicating that threats of violence are sufficient to trigger VAWA’s protections.

VAWA also provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for eviction or subsidy termination if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that violence.⁴⁰⁹ This provision is similar to the one discussed above, except that it specifically refers to “criminal activity” directly relating to domestic violence, dating violence, or stalking. VAWA does not define what constitutes “criminal activity” directly relating to abuse. A common question that arises is whether a survivor can be evicted for the abuser’s drug-related activity where the survivor could not control this activity due to threats of retaliation by the abuser. Because VAWA does not squarely address this issue, advocates will need to demonstrate that the abuser’s drug-related activity was directly related to the domestic violence, dating violence, or stalking. For example, an advocate could provide a statement from a domestic violence expert explaining the risk of harm the survivor would have faced if

⁴⁰⁵ See 42 U.S.C. § 1437d(l)(6).

⁴⁰⁶ See § 14043e.

⁴⁰⁷ §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

⁴⁰⁸ §§ 1437d(l)(5) (public housing); 1437f(c)(9)(B) (project-based Section 8); 1437f(o)(20)(B) (Section 8 voucher); 24 C.F.R. § 5.2005(a).

⁴⁰⁹ §§ 1437d(l)(6)(A) (public housing); 1437f(c)(9)(C)(i) (project-based Section 8); 1437f(o)(20)(C) (Section 8 voucher); 24 C.F.R. § 5.2005(b).

she had reported the abuser's drug-related activity, or a statement from the survivor documenting the threats or retaliation she experienced when she tried to stop the drug-related activity.

Attorneys should assert VAWA's protections as soon as they become aware that a client is facing an eviction or a subsidy termination that is related to domestic violence, dating violence, or stalking. There are several venues in which a client's VAWA rights can be asserted, such as during informal advocacy with the housing provider, in an administrative proceeding, or in a judicial eviction action. First, attorneys can informally assert VAWA's protections by calling the housing provider to explain why VAWA applies, and sending a letter requesting that the housing provider cease the eviction or subsidy termination proceedings and explaining why VAWA prohibits the adverse action. The Toolkit accompanying this Manual contains a sample letter.⁴¹⁰ Attorneys should also direct the client to request an administrative proceeding, such as the grievance procedure for public housing tenants or the informal hearing procedure for Section 8 tenants, so that the client's VAWA rights can be asserted during this proceeding.⁴¹¹ If the housing provider has already filed an eviction action in court against the client, the client can assert VAWA as a defense to the eviction or seek summary judgment on the basis of her rights under VAWA. The Toolkit accompanying this Manual contains examples of documents that have been used in eviction proceedings.⁴¹²

8.9.2 Limitations on VAWA's Protections

There are important limitations on VAWA's protections against evictions and subsidy terminations. First, VAWA does not restrict a

housing provider's authority to evict or terminate assistance to a tenant if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees at the property if the tenant is not evicted or her assistance is not terminated.⁴¹³ In other words, evictions may still proceed in rare situations where the housing provider demonstrates that an individual's tenancy, despite her status as a covered victim, presents an actual or imminent threat to other tenants or employees. VAWA does not define the phrase "actual and imminent threat," nor does it explain what evidence a PHA or owner must provide to establish such a threat. HUD regulations state that "words, gestures, actions, or other indicators will be considered an 'imminent threat' if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result."⁴¹⁴ Advocates should argue that the actual and imminent threat provision should apply only in cases where the housing provider can show that the threat is toward a tenant or employee other than the survivor of domestic violence, dating violence, or stalking; the threat is a physical danger beyond a speculative threat; and the threat is likely to happen within a short period of time.

Second, VAWA does not limit a housing provider's authority to evict or terminate assistance to a survivor for any lease or program violation not premised on acts of violence against the survivor.⁴¹⁵ In other words, VAWA does not protect survivors if the acts for which they are being evicted are unrelated to domestic violence, dating violence, or stalking. An area that may be disputed is whether the conduct for which the survivor is being evicted is in fact

⁴¹⁰ See Toolkit, Appendix 22.

⁴¹¹ See Chapter 9 for more information on challenging evictions and subsidy terminations.

⁴¹² See Toolkit, Appendices 23 and 24.

⁴¹³ §§ 1437d(l)(6)(A) (public housing); 1437f(c)(9)(C)(i) (project-based Section 8); 1437f(o)(20)(D)(iv) (Section 8 voucher); 24 C.F.R. § 5.2005(e).

⁴¹⁴ 24 C.F.R. § 5.2005(e).

⁴¹⁵ 42 U.S.C. §§ 1437d(l)(6)(D) (public housing); 1437f(c)(9)(C)(iv) (project-based Section 8); 1437f(o)(20)(D)(iii) (Section 8 voucher); 24 C.F.R. § 5.2005(b).

related to acts of violence committed against her. For example, a survivor of domestic violence may know that her abusive spouse has failed to report all of his income as required by the PHA, but may fear retaliation if she confronts him and asks him to report the income. This may be especially true in cases where the abuser exerts excessive control over the family's finances and becomes hostile when the survivor seeks access to information regarding income. If the family later faces eviction for the failure to report the income, the survivor will need to demonstrate the link between the abuse and her failure to report in order to avoid any argument by the PHA that the program violation was not premised on acts of violence. Additionally, in determining whether to evict, a housing provider may not hold a survivor of domestic violence, dating violence, or stalking to a more demanding standard than other tenants.⁴¹⁶ Thus, if a survivor can demonstrate that other tenants were not evicted or terminated from assistance based on lease violations similar to the ones for which she is being penalized, the survivor may be able to argue she is being held to a more demanding standard in violation of VAWA.

8.9.3 Examples of How VAWA's Protections Have Been Used

To help advocates gain a better understanding of how VAWA's protections have worked in practice, this section describes several cases where survivors successfully asserted those protections to prevent evictions and subsidy terminations. *Metro North Owners, LLC v. Thorpe*⁴¹⁷ and *Brooklyn Landlord v. RF*⁴¹⁸ both involved subsidized tenants whose landlords filed eviction proceedings after the tenants' batterers caused violent disturbances at

the subsidized properties. *[Redacted] v. Housing Authority of the County of Salt Lake*⁴¹⁹ involved a Section 8 voucher tenant whose assistance was terminated after she fled her assisted unit to escape domestic violence.

8.9.3.1 *Metro North Owners, LLC v. Thorpe*

In a case involving a survivor of domestic violence who faced eviction after being accused of assaulting her former partner, a New York court found that the subsidized tenant was entitled to VAWA's protections. In *Metro North Owners, LLC v. Thorpe*,⁴²⁰ police officers responded to a violent incident at the tenant's apartment. Shortly thereafter, the landlord commenced eviction proceedings against the tenant, alleging that she violated her lease by creating a nuisance.⁴²¹ The tenant raised VAWA as a defense in her answer to the eviction complaint.⁴²² She also filed a motion for summary judgment, arguing that VAWA required dismissal of the eviction action before it went to trial.

According to an affidavit from a property manager, the tenant stabbed her former partner during the incident.⁴²³ The property manager also alleged that the tenant allowed her former partner into the building and that they regularly argued loudly.⁴²⁴ The landlord submitted a security guard's incident report containing similar information.⁴²⁵

⁴¹⁹ Compl., *[Redacted] v. Housing Authority of the County of Salt Lake* (D. Utah Sept. 27, 2007).

⁴²⁰ 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008). The tenant was represented by the Legal Aid Society, Harlem Community Law Offices.

⁴²¹ *Id.*

⁴²² The tenant's answer to the eviction complaint is included in the Toolkit accompanying this Manual at Appendix 23.

⁴²³ *Id.* at 772.

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴¹⁶ *See id.*

⁴¹⁷ 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008).

⁴¹⁸ Mot. Summ. J., *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007).

The tenant denied that she had stabbed her former partner and submitted evidence that the district attorney's office declined to prosecute her for the incident.⁴²⁶ In an affidavit, the tenant stated that her former partner forcibly entered the apartment and injured himself on broken glass when he threw her into a cabinet.⁴²⁷ The tenant asked the court to consider the entire history of domestic violence perpetrated by her former partner and submitted several police reports and a criminal protection order.⁴²⁸ She argued that because the landlord's nuisance allegations were based solely on acts of domestic violence committed against her, VAWA prohibited her eviction.

The court found that the tenant submitted sufficient evidence to establish that she was a survivor of domestic violence, and that the landlord's evidence that the tenant was the assailant was unsubstantiated.⁴²⁹ As a result, VAWA prohibited the landlord from terminating the tenancy, and the court dismissed the eviction proceeding.⁴³⁰ The court also stated that the allegations that the tenant allowed her former partner into the building did not refute the evidence that she was a survivor of domestic violence.⁴³¹ According to the court, the tenant's conduct in allowing her former partner into the building was characteristic of battered-woman syndrome, which "explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior."⁴³² The court also noted that domestic violence is cyclical in nature, enticing the survivor to remain with the abuser after the violence ends.⁴³³ This language should prove helpful to advocates who are representing survivors who acted in self-defense

or whose batterers have repeatedly returned to the subsidized unit.

8.9.3.2 *Brooklyn Landlord v. RF*

In a case involving a survivor living in a project-based Section 8 development, attorneys successfully used VAWA to reach a settlement to prevent the survivor's eviction. In *Brooklyn Landlord v. R.F.*,⁴³⁴ the landlord sought to evict a domestic violence survivor after her ex-boyfriend shot at the project's security guard. The survivor's ex-boyfriend was not a member of the household, nor was he a guest of the survivor at the time of the incident.⁴³⁵ At the time of the eviction proceedings, he was incarcerated as a result of the incident and therefore was no longer a threat to tenants or employees at the building. In her answer to the eviction complaint, the survivor asserted VAWA as a defense.⁴³⁶ She also filed a pretrial motion asserting that VAWA forbids owners of federally subsidized housing from evicting tenants for acts of domestic violence or stalking against them, or for criminal activity by third parties which is directly related to such violence.⁴³⁷ The motion also alleged that the owner's attempt to evict the survivor constituted sex discrimination in violation of the Fair Housing Act, the New York State Human Rights Law, and the New York City Human Rights Law.⁴³⁸ After extensive negotiations, the landlord agreed to dismiss the eviction proceedings, and the survivor agreed that she

⁴²⁶ *Id.* at 771.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.* (citing *People v. Torres*, 488 N.Y.S.2d 358 (N.Y. Super. Ct. 1985)).

⁴³³ *Id.*

⁴³⁴ Mot. Summ. J., *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007) [hereinafter Motion for Summary Judgment]. The tenant was represented by Legal Momentum and South Brooklyn Legal Services.

⁴³⁵ *Id.*

⁴³⁶ Answer, *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007),

<http://www.legalmomentum.org/assets/pdfs/answer.pdf>.

⁴³⁷ Motion for Summary Judgment, *supra* note 434. The tenant's motion for summary judgment is included in the Toolkit accompanying this Manual at Appendix 24.

⁴³⁸ *Id.*

would not knowingly or willingly allow the abuser access into the building.⁴³⁹

The settlement is particularly notable given that the abuser threatened other tenants and employees at the property. In cases where the abuser has threatened or harmed other tenants or employees, the landlord or PHA may argue that VAWA's protections do not apply because allowing the survivor to remain would constitute an actual or imminent threat to other tenants or employees. It is crucial to demonstrate that the abuser is no longer a threat, such as by showing that the abuser is incarcerated or has moved out of the jurisdiction, or that the survivor has obtained a restraining order and has taken steps to enforce it.

8.9.3.3 [Redacted] v. Housing Authority of the County of Salt Lake

Attorneys have used VAWA to successfully settle a case involving a Section 8 voucher tenant whose assistance was terminated by the PHA after she fled her unit to escape domestic violence. In *[Redacted] v. Housing Authority of the County of Salt Lake*,⁴⁴⁰ the tenant filed suit in federal district court to seek reinstatement of her voucher on the grounds that the PHA's termination of her assistance violated VAWA. According to the complaint, the tenant obtained permission from the PHA to allow her ex-husband to move into the home, but he became increasingly violent once he moved in.⁴⁴¹ The tenant alleged that when she moved out of the home because she feared for her safety and that of her children, the PHA terminated her housing

⁴³⁹ Stipulation of Settlement at 2, *Brooklyn Landlord v. R.F.* (N.Y. Civ. Ct. May 30, 2007). The settlement is included in the Toolkit accompanying this Manual at Appendix 30.

⁴⁴⁰ Compl., *[Redacted] v. Housing Authority of the County of Salt Lake* (D. Utah Sept. 27, 2007). The tenant was represented by Utah Legal Services. Her complaint is included in the Toolkit accompanying this Manual at Appendix 25.

⁴⁴¹ *Id.* at 6.

assistance.⁴⁴² The tenant asserted that the PHA violated VAWA and the Fair Housing Act by terminating her voucher because of her need to escape domestic violence.⁴⁴³

The PHA later settled the suit by agreeing to reinstate the voucher of the tenant, who had ended her relationship with the abuser. The settlement is significant because it marks one of the first cases where a survivor has used VAWA to affirmatively file a lawsuit against a PHA. Typically, VAWA is used defensively by a survivor in an administrative action or eviction proceeding to prevent the loss of a survivor's housing. Here, the survivor had already lost her voucher and sought to regain it by filing an action in federal court against the PHA. While this approach proved successful, it has not yet been widely used by advocates.

8.10. Survivors' Rights in Seeking to Remove the Abuser from the Household

In cases where the survivor and the abuser live together in federally subsidized housing, the survivor may want to remain in the unit while seeking the housing provider's assistance to remove the abuser from the lease or voucher. Or, if the entire household is facing eviction or subsidy termination due to the abuser's criminal activity, the survivor may request that the housing provider pursue the eviction or subsidy termination against the abuser only. For survivors who live with their abusers in public or Section 8 housing, there are two separate processes at issue. First, survivors living in public or Section 8 housing may need to request that the housing provider remove the abuser from the lease. Second, survivors receiving Section 8 voucher assistance will need to take the additional step of asking the PHA to remove the abuser from the voucher.

⁴⁴² *Id.* at 7.

⁴⁴³ *Id.* at 10-12.

8.10.1 Removing the Abuser from the Lease

Under VAWA, a PHA or Section 8 landlord may bifurcate (split) a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against household members.⁴⁴⁴ This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the survivor of such violence.⁴⁴⁵ The authority to bifurcate a lease or otherwise remove the abuser is applicable to all leases for families participating in the public housing or Section 8 programs.⁴⁴⁶ Housing providers can bifurcate the lease regardless of whether the lease itself has specific language authorizing the bifurcation.⁴⁴⁷ Notably, even before VAWA's enactment, HUD encouraged PHAs "to carefully review circumstances where victims of domestic violence may be evicted due to circumstances beyond their control" and to exercise their authority to evict the perpetrator while allowing the victim to remain.⁴⁴⁸ The Toolkit accompanying this Manual contains a sample letter requesting removal of the abuser from the lease and the housing subsidy.⁴⁴⁹

In removing the abuser from the lease, the housing provider must follow federal, state, and local eviction laws.⁴⁵⁰ It may take several weeks or even months to complete the eviction process, and the survivor may need to relocate to a safe, confidential location until the eviction proceedings are over. Because survivors who

separate from their abusers often risk retaliation, advocates should work with survivors to consider additional security measures that should be implemented during this period.⁴⁵¹ Additionally, advocates should recommend that housing providers consult with the survivor well before taking any action to evict the abuser, so that the survivor has adequate time to plan for her safety.

In any case where the abuser is no longer living in the unit, whether due to eviction, incarceration, or court order, the survivor should immediately request that the PHA recertify the household's income. Federal regulations provide for an adjustment in rent upon a change in family circumstances.⁴⁵² In many cases, the survivor's income will likely decrease once the abuser vacates the unit. Because rents in the public housing and Section 8 programs are income-based, a survivor may be entitled to a lower rent if the household's income decreases as a result of the abuser's absence.

At least one court has addressed PHAs' obligations to remove perpetrators of domestic violence from leases and to subsequently adjust the rent. In *St. Louis Housing Authority v. Boone*,⁴⁵³ a public housing tenant requested that the PHA remove her husband from the lease after he fired a gun in the apartment. Shortly thereafter, the tenant informed the PHA that she had separated from her husband.⁴⁵⁴ She requested a hearing and asked for a rent adjustment based on the change in her family composition and income.⁴⁵⁵ At the hearing the tenant submitted a restraining order she had obtained against her husband, but the housing authority refused to act on the tenant's request to remove him from the lease.⁴⁵⁶ A court later ordered the PHA to reduce the tenant's rent to reflect the change in her family composition, to

⁴⁴⁴ 42 U.S.C. §§ 1437d(l)(6)(B) (public housing), 1437f(c)(9)(C)(ii) (project-based Section 8), 1437f(o)(20)(D)(i) (Section 8 voucher); 24 C.F.R. § 5.2005(c).

⁴⁴⁵ *See id.*

⁴⁴⁶ HUD, The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696, 12,697 (Mar. 16, 2007).

⁴⁴⁷ *Id.*

⁴⁴⁸ PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 387, at 219.

⁴⁴⁹ Toolkit, Appendix 26.

⁴⁵⁰ *See supra* note 444.

⁴⁵¹ *See* Chapter 4 for more information regarding safety planning.

⁴⁵² 24 C.F.R. § 960.209(b).

⁴⁵³ 747 S.W.2d 311 (Mo. Ct. App. 1988).

⁴⁵⁴ *Id.* at 316.

⁴⁵⁵ *Id.* at 312-13.

⁴⁵⁶ *Id.* at 313.

terminate the husband's tenancy, and to renew the tenant's lease for one year.⁴⁵⁷ The court found that the PHA had authority to terminate the husband's tenancy because he posed a threat to the safety of other tenants and that the tenant was entitled to a rent adjustment to reflect her change in family income once he left the unit.⁴⁵⁸

8.10.2 Removing the Abuser from the Section 8 Voucher

In addition to removing the abuser from the lease, survivors in the Section 8 voucher program will also need to ask the PHA to remove the abuser from the voucher. In the Section 8 program, PHAs have authority to terminate voucher assistance for perpetrators of criminal activity while permitting innocent family members to continue receiving voucher assistance.⁴⁵⁹ The PHA does not have to wait for the Section 8 landlord to bifurcate the lease or to evict the batterer before exercising its discretion to remove the abuser from the voucher.⁴⁶⁰

Additionally, PHAs have discretion to determine which members of a family will continue to receive assistance if the family breaks up. PHAs are required to set forth in their Section 8 Administrative Plans the factors they will consider in assigning the voucher in the event that a family breaks up.⁴⁶¹ Factors that HUD urges PHAs to consider when developing a family break-up policy include the interest of family members who are minor children, ill, elderly, disabled, or victims of domestic violence.⁴⁶² Advocates should consult the Administrative Plan and determine whether any of the factors cited in the family break-up policy

⁴⁵⁷ *Id.* at 317.

⁴⁵⁸ *Id.*

⁴⁵⁹ 24 C.F.R. §§ 982.552(c)(2)(i)-(ii).

⁴⁶⁰ HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336, 72,338 (Nov. 28, 2008).

⁴⁶¹ 24 C.F.R. § 982.315(a). For more information regarding PHA plans, see Chapter 10.

⁴⁶² § 982.315(b).

support awarding the voucher to the survivor. The Toolkit accompanying this Manual contains sample letters requesting assignment of the Section 8 voucher to the survivor in cases where the family has separated due to domestic violence.⁴⁶³

If a court awards the voucher to the survivor as part of divorce or separation proceedings, the PHA is bound by the court's determination of which family members continue to receive assistance.⁴⁶⁴ Accordingly, family law practitioners should request that the voucher be awarded to the survivor as part of any divorce or separation proceedings.

8.11 Housing Authorities' Duties to Provide Notice of VAWA Rights

PHAs must inform landlords and tenants in the Section 8 and public housing programs of their rights and obligations under VAWA.⁴⁶⁵ For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other "good cause" for termination of the assistance, tenancy, or occupancy rights of a survivor of abuse;
- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the survivor's assistance, tenancy, or occupancy rights;
- Information provided for purposes of certifying that an individual is a survivor of domestic violence, dating violence, or stalking must be kept confidential.⁴⁶⁶

⁴⁶³ See Toolkit, Appendices 20 and 21.

⁴⁶⁴ § 982.315(c).

⁴⁶⁵ 42 U.S.C. §§ 1437d(u)(2)(B) (public housing), 1437f(ee)(2)(B) (project-based Section 8 and vouchers).

⁴⁶⁶ See *id.*

VAWA does not specify what methods a PHA must use to provide notice. Many PHAs have provided notice by mailing letters to all Section 8 and public housing tenants. However, this method may be ineffective where the abuser monitors the mail, or the notices have not been translated into other languages for limited English proficient households. Accordingly, advocates should urge housing authorities to notify tenants in a variety of ways, including providing verbal notice during orientations for new participants; discussing the provisions during a tenant's annual recertification meetings; inserting a paragraph regarding VAWA rights into denial of assistance letters and termination or eviction notices; posting notice of VAWA in the PHA's office; and posting notice of VAWA on the PHA's website.

PHAs can inform Section 8 owners of their VAWA obligations by providing verbal notice during orientations for new landlords; including a notice with the PHA's monthly checks to landlords; including an article regarding VAWA in owner newsletters; and posting notice of VAWA on the PHA's website. The Toolkit accompanying this Manual contains sample VAWA notices for tenants and landlords.⁴⁶⁷

8.12 Housing Authorities' Duties to Plan for Survivors' Needs

Under VAWA, PHAs must address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault in their annual planning documents. These obligations are discussed in Chapter 10.

8.13 HUD Guidance on VAWA

HUD has issued regulations and notices to implement VAWA's housing provisions, all of which are available at its website.⁴⁶⁸ The bulk of HUD's VAWA regulations are found at 24

C.F.R. Part 5. HUD has also summarized the content of these regulations in a Federal Register notice.⁴⁶⁹ The regulations essentially replicate VAWA's statutory language regarding protections against denials of housing, evictions, and terminations of assistance. In addition to the regulations, HUD has issued a notice regarding certification of incidents of domestic violence, dating violence, and stalking,⁴⁷⁰ a notice providing guidance to PHAs and owners on implementation of VAWA in the Section 8 voucher program;⁴⁷¹ a notice providing guidance specifically for landlords in the project-based Section 8 program;⁴⁷² and a notice summarizing all of VAWA's provisions.⁴⁷³ These notices closely track VAWA's statutory language and may provide additional support when conducting informal or administrative advocacy on behalf of survivors. Further, because these notices are tailored specifically for PHAs and Section 8 landlords, these housing providers may have an easier time understanding the language of the notices than the statutory language.

Another resource that advocates should consult is Chapter 19 of HUD's Public Housing Occupancy Guidebook.⁴⁷⁴ Although the Guidebook predates VAWA, it contains useful

⁴⁶⁹ HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008).

⁴⁷⁰ HUD, Violence Against Women and Justice Department Reauthorization Act 2005 Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking, PIH 2006-42 (Dec. 27, 2006).

⁴⁷¹ HUD, Housing Choice Voucher Program Administration and the Violence Against Women and Justice Department Reauthorization Act of 2005, PIH 2007-5 (Feb. 16, 2007).

⁴⁷² HUD, Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program, H 08-07 (Sept. 30, 2008).

⁴⁷³ HUD, The Violence Against Women and Department of Justice Reauthorization Act of 2005, Applicability to HUD Programs, 72 Fed. Reg. 12,696 (Mar. 16, 2007).

⁴⁷⁴ HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 387, at 216-21.

⁴⁶⁷ See Toolkit, Appendices 34, 35, and 36.

⁴⁶⁸ To download any of the documents discussed in this section, see www.hud.gov/hudclips.

language regarding proof of domestic violence, transfer policies, and evictions.

8.14 Practice Tips

There are several ways in which advocates can ensure that VAWA's housing protections are used to their maximum potential, such as by educating housing providers and clients, timely asserting a client's VAWA housing rights, engaging the media, and collaborating with housing providers.

8.14.1 The Need to Educate Housing Providers

From the outset, advocates should recognize that most PHA staff members, hearing officers, judges, and Section 8 landlords have not received training on VAWA's housing provisions. In some cases, these individuals may be unaware that the provisions even exist. Further, many of these individuals may lack a basic understanding of the dynamics of domestic violence. Accordingly, in demand letters, hearing documents, and pleadings, advocates will need to provide these parties with basic information regarding VAWA's purpose and protections. Advocates should also attach copies of VAWA's statutory and regulatory provisions to demand letters and bring copies to administrative proceedings.

Advocates will also need to provide fundamental information regarding domestic violence, such as why survivors stay, the nature and impact of economic abuse, and the psychological impact that battering has upon survivors. To help housing providers understand that domestic violence often consists of a pattern of conduct, advocates should describe and provide documentation of the entire history of the abusive relationship, rather than just the incident for which the survivor is currently facing eviction or termination. This is especially critical in cases where both the survivor and the

abuser seek to assert VAWA's protections, with the abuser claiming that the survivor is the perpetrator of the domestic violence.

8.14.2 The Need to Educate Clients

Most survivors lack information regarding their housing rights under VAWA. As a result, survivors often fail to assert VAWA as a defense to an eviction or subsidy termination and needlessly lose their housing. Advocates should develop strategies for educating clients regarding their VAWA rights, such as by posting notices at their offices, on their websites, and at social services agencies. The Toolkit accompanying this Manual contains a sample fact sheet regarding tenants' VAWA rights.⁴⁷⁵ As described earlier in this chapter, advocates should also urge PHAs to use a variety of methods to provide tenants with notice of their VAWA rights. Further, advocates may need to revise their intake procedures to identify whether a survivor may be entitled to VAWA's housing protections. As a standard procedure, advocates should consider asking clients whether a lease or program violation for which they are currently facing an eviction or a subsidy termination was in any way related to acts of violence committed against them.

8.14.3 Timing

Time is often of the essence in cases involving eviction or termination of a survivor's housing benefits. Survivors may have only a few weeks or even days to respond to the housing provider's request for documentation, to exercise their right to request an administrative proceeding, or to respond to an eviction complaint. Further, it can be difficult to use VAWA to seek reinstatement of a survivor's voucher or public housing unit once the survivor has been evicted or her assistance has been

⁴⁷⁵ See Toolkit, Appendix 27.

terminated. This is because VAWA does not explicitly address a survivor's right to file an affirmative lawsuit to seek reinstatement of housing assistance, and this approach is relatively untested. Accordingly, it is crucial to assist survivors in asserting their VAWA rights before the eviction or termination is complete, such as by raising VAWA in an administrative proceeding or in an eviction answer. To ensure that the survivor has adequate time to gather documentation of domestic violence, advocates may need to contact the housing provider and request a delay of any scheduled proceedings.

8.14.4 Engaging the Media

Advocates have successfully used the media to obtain sympathetic coverage of survivors who have lost their housing or are at risk of becoming homeless due to acts of violence committed against them.⁴⁷⁶ This coverage can help pressure the housing provider to resolve the matter quickly, such as by reinstating the survivor's housing or ceasing actions to evict. Advocates should consider issuing press releases where a demand letter or complaint has been filed against the housing provider. In most cases, the media will want to interview the survivor, so it is critical to discuss the survivor's willingness to speak about her experiences before going public. Advocates should also consider using the media to increase the public's awareness of VAWA housing rights, such as through newspaper editorials or public service announcements on the radio or local cable access channels.

8.14.5 Collaboration with Housing Providers

To prevent housing providers from needlessly pursuing evictions or subsidy

terminations against survivors, advocates should request meetings with their local housing providers to discuss ways to work together to implement VAWA's protections. Advocates should offer to provide training on VAWA's housing provisions as well as on the fundamentals of domestic violence, dating violence, sexual assault, and stalking. Where possible, advocates should also offer to take referrals in cases where the housing provider becomes aware that a tenant is experiencing domestic violence. Advocates should also volunteer to work with housing providers to develop policies that serve survivors' needs.⁴⁷⁷

⁴⁷⁶ For more information regarding this approach, see Sandra Park, *Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company*, 43 CLEARINGHOUSE REV. 80, 83 (May/June 2009).

⁴⁷⁷ See Chapter 10 for more information on working with PHAs on their policies.

Chapter 9: Evictions and Subsidy Terminations In Federally Subsidized Housing

Table of Contents

9.1 Introduction.....	83
9.2 Common Lease and Program Violations that Survivors Encounter	85
9.2.1 The Good Cause Requirement	84
9.2.2 Criminal Activity	84
9.2.3 Disturbance at the Unit	86
9.2.4 Damage to the Unit	88
9.2.5 Nonpayment of Rent	88
9.2.6 Unauthorized Household Member	90
9.3 Procedural Protections for Survivors in Federally Subsidized Housing.....	90
9.3.1 Overview of Procedural Protections	90
9.3.2 Public Housing.....	91
9.3.3 Section 8 Vouchers	92
9.3.4 HUD-Subsidized and Project-Based Section 8 Developments.....	92
9.3.5 Section 515 Rural Housing	92
9.4 Preparation for Challenging an Eviction or Subsidy Termination.....	92
9.5 Settlement of an Eviction or Termination Proceeding.....	94

9.1 Introduction

Survivors living in federally subsidized housing often face evictions and subsidy terminations related to acts of domestic violence committed against them. For example, many survivors risk losing their housing because the abuser caused disturbances and damages at the assisted unit, the abuser committed a criminal act at the assisted unit, the abuser refused to make rent payments, or the housing provider mistakenly assumed that the abuser was living in the assisted unit without its permission.

This Chapter discusses some of the common reasons why survivors face evictions and terminations in subsidized housing, and describes arguments that advocates can use to prevent survivors from losing their housing. The Chapter also reviews the procedural rules that a housing provider must follow before it can evict a survivor or terminate her subsidy. The Chapter then discusses the steps that attorneys should take to prepare a survivor for challenging an eviction or subsidy termination in federally assisted housing. The Chapter concludes by discussing factors attorneys should consider in

assisting a survivor to settle an eviction or termination. Although this Chapter addresses federally subsidized housing only, some of the strategies discussed may also be applicable to evictions in private, unsubsidized housing.

Advocates assisting survivors who are facing evictions and terminations from federally subsidized housing should also consult Chapters 6, 7, and 8, which address protections for survivors under fair housing laws and the Violence Against Women Act. Additionally, there are a number of resources available to advocates that provide a comprehensive review of protections available to tenants in federally subsidized housing.⁴⁷⁸

9.2 Common Lease and Program Violations that Survivors Encounter

This section discusses some of the common lease and program violations that advocates encounter when representing survivors who are being evicted or terminated from federally subsidized housing. As discussed below, housing providers must have good cause—in other words, a good reason—for evicting a survivor or terminating her subsidy. Some of the reasons that housing providers cite in evicting survivors or terminating their assistance include (1) criminal activity at the unit; (2) disturbances at the subsidized unit; (3) damage to the unit; (4) nonpayment of rent; and (5) unauthorized occupancy by a non-household member.

9.2.1 The Good Cause Requirement

In the federally subsidized housing programs, tenants generally cannot be evicted

without good cause.⁴⁷⁹ For the most part, good cause reasons for eviction are limited to tenant misconduct, lease violations, or program violations. Given the harsh consequences of eviction from federally subsidized housing, courts often require housing providers to demonstrate serious wrongdoing by tenants before they will grant evictions.⁴⁸⁰ One factor courts use in evaluating the seriousness of the conduct in question is whether it has adversely affected other tenants, project employees, or the project itself.⁴⁸¹ Further, courts often require a showing that the tenant, and not persons who were beyond the tenant's control, was responsible for the lease or program violation.⁴⁸² Another factor some courts consider is whether the tenant is willing to make an effort to prevent

⁴⁷⁹ See 42 U.S.C. §§ 1715z-1b (project-based Section 8), 1437f(o)(7) (Section 8 voucher); 7 C.F.R. pt. 1930, subpt C, Ex. B ¶ XIV A (Section 515 Rural Housing); 24 C.F.R. § 966.4(l) (public housing). In the Section 8 voucher program, the good cause protections apply only during the tenant's initial lease term. A voucher tenant may be evicted without cause at the end of the lease term. See 42 U.S.C. § 1437f(o)(7).

⁴⁸⁰ See, e.g., 24 C.F.R. §§ 5.852(a)(1) (in determining whether to evict, housing providers can consider the seriousness of the offending action), 966.4(l)(5)(vii)(B) (same), 982.310(h)(1) (same), 982.552(c)(2) (in determining whether to terminate assistance, PHAs can consider the seriousness of the offending action); Thomas v. Hous. Auth. of Little Rock, 282 F. Supp. 575 (E.D. Ark. 1967); Robinson v. Martinez, 764 N.Y.S.2d 94 (N.Y. App. Div. 2003); Messiah Baptist Hous. Dev. Fund Co. v. Rosser, 400 N.Y.S.2d 306, 308 (N.Y. Civ. Ct. 1977); see also 24 C.F.R. §§ 5.852, 966.4(l)(5)(vii) (giving housing providers discretion to consider all the circumstances in deciding whether to evict); Letter from HUD Secretary Mel Martinez to Public Housing Directors re One-Strike Evictions (Apr. 16, 2002) (encouraging landlords to take into account the seriousness of the offending action when making a determination to terminate a tenancy).

⁴⁸¹ See *id.*

⁴⁸² See 24 C.F.R. §§ 5.852(a)(3) (in determining whether to evict, housing providers can consider the extent of participation by the tenant in the offending action), 966.4(l)(5)(vii)(B) (same), 982.310(h)(1) (same), 982.552(c)(2) (in determining whether to terminate assistance, PHAs can consider the extent of participation by the tenant in the offending action); Maxton Hous. Auth. v. McLean, 328 S.E.2d 290 (N.C. 1985).

⁴⁷⁸ See, e.g., NHLP, HUD HOUSING PROGRAMS: TENANTS' RIGHTS Ch. 14 (3d ed. 2004 and Supp.); Fred Fuchs, *Defending Against Eviction from Public and Federally Subsidized Housing*, 39 CLEARINGHOUSE REV. 302 (Sept./Oct. 2005); Lawrence R. McDonough & Mac McCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REV. 55 (May/June 2007).

future violations, such as taking steps to remove a household member who was responsible for criminal activity or to bar an individual who has caused disturbances at the property.⁴⁸³ Advocates should keep these principles in mind in developing arguments in support of survivors who are facing eviction from federally subsidized housing.

The rest of this section focuses on lease and program violations that are commonly cited as good causes for terminating or evicting survivors, including criminal activity, disturbances, damages, nonpayment of rent, and unauthorized occupancy by a non-household member.

9.2.2 Criminal Activity

Survivors frequently face eviction or termination from federally subsidized housing due to criminal activity at the assisted unit that was related to domestic violence, dating violence, or stalking. This section discusses some the strategies and arguments available to advocates assisting survivors who are facing evictions or terminations that are related to criminal activity. The Toolkit accompanying this Chapter includes a sample answer to an eviction complaint filed against a survivor due to the abuser's criminal activity.⁴⁸⁴ Additionally, there are a number of resources available to advocates seeking a comprehensive review of all the defenses available to subsidized tenants in criminal activity cases.⁴⁸⁵

Owners of federally subsidized and public housing must use leases that authorize eviction for criminal activity of tenants, household members, guests, and other persons under the tenant's control.⁴⁸⁶ Lease provisions regarding criminal activity vary slightly from program to program, so advocates should read them carefully to determine whether the survivor has in fact violated a criminal activity provision. HUD regulations give housing providers discretion to decide whether to proceed with eviction of households that violate criminal activity lease provisions.⁴⁸⁷ Thus, housing providers are not required to pursue evictions in cases where it can be demonstrated that a tenant was unaware of or could not have prevented the criminal activity at issue. Unfortunately, some housing providers have applied these lease provisions to justify the evictions and subsidy terminations of all members of a particular household, even those who did not participate in the criminal acts or who were even victims of those acts. Consequently, survivors have faced evictions and subsidy terminations based on crimes committed against them by their abusers.⁴⁸⁸ Fortunately, there are some strategies that can be used to protect these survivors. As discussed below, advocates should examine whether the Violence Against Women Act (VAWA) applies, whether the person responsible for the criminal activity was a guest, and whether the survivor could have anticipated or controlled the criminal activity. Survivors may also have protections under fair housing laws, which are discussed in Chapter 6.

⁴⁸³ See 24 C.F.R. §§ 5.852(a)(3) (housing providers may require a tenant to exclude a household member in order to continue to reside in the unit, where that household member committed an act that warrants termination), 966.4(l)(5)(vii)(C) (same), 982.310(h)(2) (same), 982.552(c)(2)(ii) (PHAs may impose, as a condition of continued assistance, a requirement that family members who participated in the offending conduct will not reside in the unit).

⁴⁸⁴ See Toolkit, Appendix 28.

⁴⁸⁵ See *supra* note 478.

⁴⁸⁶ See 42 U.S.C. §§ 1437d(l) (public housing), 1437f(d) (project-based Section 8), 1437f(o)(7) (Section 8 voucher); 24 C.F.R. §§ 966.4(f)(11)-(12), (l) (public housing), 5.850-861 (project-based Section 8), 982.310 (Section 8 voucher).

⁴⁸⁷ § 5.852 (project-based Section 8), 966.4(l)(5)(vii) (public housing), 982.310(h) (Section 8 voucher); see also *Oakwood Plaza Apartments v. Smith*, 800 A.2d 265, 267-71 (N.J. Super. Ct. App. Div. 2002).

⁴⁸⁸ See 42 U.S.C. § 14043e.

If the criminal activity for which the survivor is being evicted was related to acts of domestic violence, dating violence, or stalking committed against her, she can argue that the Violence Against Women Act (VAWA) prohibits her eviction.⁴⁸⁹ VAWA provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered good cause for eviction or subsidy termination for the victim of the domestic violence, dating violence, or stalking.⁴⁹⁰ For example, if a survivor is facing a criminal activity eviction because the police arrested her husband at the family's public housing unit after he assaulted her, the survivor can assert VAWA as a defense to the eviction.

In addition to VAWA, it is critical for advocates to examine whether the person responsible for the criminal activity was in fact a "guest" or "other person under the [survivor's] control." As discussed above, federal laws authorize evictions for criminal activity by guests and other persons under a subsidized tenant's control. In cases where the batterer arrived at the unit uninvited and committed a criminal act, the batterer does not fall within the definition of "guest" or "other person under the tenant's control." HUD defines "guest" as a person temporarily staying in the unit with the tenant's consent.⁴⁹¹ HUD defines "other person under the tenant's control" as a person who, although not staying as a guest in the unit is, or was at the time of the criminal activity, on the premises because of an invitation from the tenant.⁴⁹² Survivors have a defense to eviction

or termination when the person who commits the criminal activity is not a household member, guest, or other person under the survivor's control.⁴⁹³ For example, if the abuser forces his way into the survivor's apartment, is arrested, and is found to have drugs in his possession during a post-arrest search, the survivor could raise as a defense to eviction the fact that the abuser was not a guest or person under her control. In these cases, the issue will often be whether the survivor invited the abuser into the unit or gave the abuser consent to enter the unit. The survivor can bolster her case by presenting evidence demonstrating that she had excluded the abuser from the unit on prior occasions, such as by calling security, summoning the help of neighbors, or obtaining a restraining order.

Even if the survivor gave the abuser permission to enter the unit, she may still have a defense to eviction if she can demonstrate that she could not anticipate or control the abuser's criminal activity.⁴⁹⁴ Advocates should muster all favorable facts showing lack of participation by the survivor and utilize them to convince the housing provider not to proceed with eviction or termination. Further, if there are any steps the survivor can take to exclude the abuser from the unit in the future, the survivor's willingness to take these steps may bolster her case.

9.2.3 Disturbance at the Unit

Evictions and terminations against survivors living in federally subsidized housing are often based on the abuser disturbing neighbors. In general, federally subsidized tenants must not

⁴⁸⁹ See Chapter 8 for more information regarding VAWA. The statute applies only to tenants in public housing, project-based Section 8, Section 8 voucher, Section 811, and the Section 202 and Section 811 supportive housing programs. HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008).

⁴⁹⁰ §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

⁴⁹¹ 24 C.F.R. § 5.100.

⁴⁹² § 5.100.

⁴⁹³ See *Boston Hous. Auth. v. Bruno*, 790 N.E.2d 1121 (Mass. App. Ct. 2003) (finding that PHA could not evict tenant for son's drug activity because the son was not a household member at the time of the activity); *Assoc. Estates Corp. v. Bartell*, 492 N.E.2d 841 (Ohio Ct. App. 1985) (finding that tenant could not be evicted for disturbance and damages caused by non-guests).

⁴⁹⁴ See, e.g., *Cuyahoga Metro. Hous. Auth. v. Harris*, 139 Ohio Misc. 2d 96 (2006) (declining to uphold eviction of public housing tenant where she was unaware that her guest had drugs in his possession).

disturb other residents' peaceful enjoyment of the premises.⁴⁹⁵ There are several arguments that advocates can raise in defense of a survivor who is facing eviction for disturbing other tenants. First, if the disturbance was related to acts of domestic violence, dating violence, or stalking committed against the survivor, the survivor can argue that VAWA prohibits her eviction.⁴⁹⁶ As discussed above, VAWA provides that an incident of actual or threatened domestic violence, dating violence, or stalking is not good cause for terminating the tenancy of the victim of such violence.⁴⁹⁷ Thus, if an abuser disturbs the survivor's neighbors by screaming threats at her and pounding on her door, the survivor can argue that the abuser's conduct constitutes an incident of domestic violence, and such an incident is not good cause for terminating her tenancy. Survivors may also have protections under fair housing laws, which are discussed in Chapter 6.

Additionally, advocates should examine whether the disturbance was so serious as to justify the termination of the survivor's federally subsidized housing. If the disturbance occurred only once, or if the housing provider cannot show that the disturbance had an adverse effect on other tenants, then it is not serious enough to constitute good cause for terminating the survivor's assistance.⁴⁹⁸ This argument was successful in *Moundsville Housing Authority v. Porter*.⁴⁹⁹ The survivor was awakened from sleep and beaten by her "live-in companion," who was subsequently arrested.⁵⁰⁰ The housing

authority received one written complaint and several phone calls from residents in the building concerning the altercation.⁵⁰¹ However, the survivor testified that her neighbors told her they were not disturbed by the altercation. Two days after the incident, the survivor received an eviction notice for violating a provision of her lease that required her to ensure that her guests did not disturb other tenants' peaceful enjoyment of the property.⁵⁰² The court reversed the survivor's eviction, finding that she had not committed an act amounting to a serious violation of the lease.⁵⁰³ The court noted that the incident was isolated, there was no evidence that the survivor was otherwise a troublesome tenant, and the companion no longer lived on the premises.⁵⁰⁴

As discussed in the above section regarding criminal activity, advocates should examine whether the abuser was a guest of the survivor at the time the disturbance occurred. HUD defines "guest" as a person temporarily staying in the unit with the tenant's consent.⁵⁰⁵ Courts will be less willing to find that the survivor has committed a lease violation where the survivor could not anticipate or prevent the disturbance. This approach was successful in *Associated Estates Corporation v. Bartell*.⁵⁰⁶ The tenant had invited guests to her subsidized unit, but asked them to leave when they became noisy.⁵⁰⁷ At 2:30 a.m. the "guests" returned to her apartment, banged on her door, damaged the door, and broke the windows in another tenant's car.⁵⁰⁸ The court found that the tenant could not be evicted for causing a disturbance, because the persons who caused the disturbance were uninvited, the tenant had filed criminal charges

⁴⁹⁵ See, e.g., 24 C.F.R. § 966.4(f)(11); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Handbook 4350.3, REV-1, CHG-2, at App. 4-a, ¶ 13(e) (June 2007).

⁴⁹⁶ See Chapter 8 for more information regarding VAWA.

⁴⁹⁷ See 42 U.S.C. §§ 1437d(l)(5) (public housing), 1437f(c)(9)(B) (project-based Section 8), 1437f(o)(20)(B) (Section 8 voucher).

⁴⁹⁸ See *Moundsville Hous. Auth. v. Porter*, 370 S.E.2d 341, 343 (W. Va. 1988).

⁴⁹⁹ *Id.* at 342.

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.* at 343.

⁵⁰⁴ *Id.*

⁵⁰⁵ 24 C.F.R. § 5.100.

⁵⁰⁶ 492 N.E.2d 841 (Ohio Ct. App. 1985).

⁵⁰⁷ *Id.* at 843.

⁵⁰⁸ *Id.*

against them, and the tenant was not responsible for their actions.⁵⁰⁹

Even if the abuser was a member of the household when the disturbance occurred, the housing provider should not evict the survivor if the abuser moved out. In that situation the survivor has cured the adverse impact that the disturbance had on other tenants, making it unlikely that such disturbances will recur. Courts may be more sympathetic to these arguments if the survivor can demonstrate that she has done all she can to avoid future incidents, such as obtaining a restraining order or providing security officers with photos of the abuser and instructing them to exclude the abuser from the premises.

9.2.4 Damage to the Unit

Survivors often face evictions from federally subsidized housing due to damages to their assisted units caused by their abusers. Much like evictions involving criminal activity and disturbances, evictions involving damages may be defended if the abuser was not a guest at the time the damage occurred. Leases in the federally subsidized housing programs contemplate that tenants will be responsible for damages caused by household members or guests.⁵¹⁰ The leases do not contemplate that tenants will be responsible for damages caused by vandals or intruders. Accordingly, a survivor should not be liable for damages caused when the abuser came to the subsidized unit without the survivor's consent. Rather, the landlord's remedy in these cases is to pursue an action against the abuser for the cost of repairs. If possible, advocates should bolster these arguments by providing evidence that the survivor has done everything within her ability to prevent the abuser from returning to the

⁵⁰⁹ *Id.* at 847.

⁵¹⁰ See 24 C.F.R. § 966.4(h) (public housing); OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 495, at App. 4-A, ¶ 11; Form HUD-52641-A (Jan. 2007) (Section 8 voucher).

premises. Additionally, if the damage was related to acts of domestic violence, dating violence, or stalking committed against the survivor, the survivor can argue that VAWA⁵¹¹ and the Fair Housing Act⁵¹² prohibit her eviction.

Tenants have had some success in arguing that they should not be held liable for damages caused by non-guests. In *Associated Estates Corporation v. Bartell*,⁵¹³ the court found that the tenant could not be evicted for damages to her door caused by persons she had previously asked to leave her apartment. In *Branish v. NHP Property Management, Inc.*,⁵¹⁴ the court found that a tenant could not be evicted for damage that her boyfriend caused to the premises because he entered her unit without her consent. The court noted that while invited guests are the responsibility of the tenant, the tenant in this case did not neglect her obligations to prevent damages to the unit because her boyfriend was an uninvited guest when he caused the damages.⁵¹⁵

9.2.5 Nonpayment of Rent

Many survivors face evictions and terminations from federally subsidized housing due to nonpayment of rent stemming from acts of domestic violence. Failure to make rent payments due under the lease constitutes sufficient grounds to terminate a tenancy.⁵¹⁶ However, even if a survivor has failed to pay the rent, there are some situations where that fact alone will not constitute good cause to evict. Specifically, the survivor may have a defense to eviction where the housing provider failed to properly adjust the rent, or forces beyond the survivor's control caused the nonpayment.

⁵¹¹ See Chapter 8 for more information regarding VAWA.

⁵¹² For sample documents that use this approach, see the Toolkit accompanying this Manual at Appendices 13 and 14.

⁵¹³ 492 N.E.2d 841 (Ohio Ct. App. 1985).

⁵¹⁴ 694 A.2d 1106 (Pa. Super. Ct. 1997).

⁵¹⁵ *Id.* at 1107.

⁵¹⁶ 24 C.F.R. §§ 247.3(c)(4), 966.4(l)(2)(i).

In many cases, the nonpayment of rent occurs because the survivor has recently suffered a loss of income. For example, the survivor may be unable to pay the rent if the abuser was the primary source of income and has left the household due to a restraining order or incarceration. Or, the survivor may have been forced to reduce her work hours or quit working entirely due to an injury stemming from domestic violence.⁵¹⁷ Statutes and regulations for the federally subsidized housing programs with income-based rents require the landlord to recertify the tenant's income and reduce the rent when the tenant's income drops.⁵¹⁸ These provisions can be used as a defense to eviction when a survivor's income has been reduced and the landlord has not reduced her rent accordingly.⁵¹⁹

Survivors may also have a defense to eviction where forces beyond the survivor's control caused the nonpayment.⁵²⁰ For example, this defense may apply if the abuser stole the survivor's public assistance check or refused to make child support payments that were included in the survivor's rent calculation.

Additionally, if the survivor can demonstrate a link between her inability to pay the rent and incidents of domestic violence, dating violence, or stalking, she can argue that evicting her for nonpayment of rent would essentially constitute an eviction on the basis of acts of violence committed against her in violation of VAWA.⁵²¹

⁵¹⁷ If the survivor's injury rises to the level of a disability, she may also be entitled to a reasonable accommodation under fair housing laws. See Chapter 7 for more information regarding these laws.

⁵¹⁸ See, e.g., 42 U.S.C. § 1437a(a) (public housing); 24 C.F.R. §§ 5.657(c) (project-based Section 8), 884.218(b) (Section 515 Rural Housing), 966.4(c) (public housing); 982.516 (Section 8 voucher).

⁵¹⁹ See, e.g., *Hous. Auth. of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. App. Ct. 1988).

⁵²⁰ See, e.g., *Maxton Hous. Auth. v. McLean*, 328 S.E.2d 290 (N.C. 1985).

⁵²¹ See 42 U.S.C. §§ 1437d(l)(5) (public housing), 1437f(c)(9)(B) (project-based Section 8), 1437f(o)(20)(B)

At least one court has found that a survivor could not be evicted where the PHA failed to adjust her rent after being informed that the abuser had left the household. In *Housing Authority of St. Louis County v. Boone*, the survivor informed the PHA that she had separated from her husband after he fired a gun in the apartment.⁵²² She requested a hearing and asked for a rent adjustment based on the change in her family composition and income.⁵²³ At the hearing she submitted a restraining order she had obtained against her husband, but the PHA still did not act on her request for a rent adjustment.⁵²⁴ The PHA subsequently filed an eviction action against the survivor for nonpayment of rent.⁵²⁵ The court found that federal regulations and the survivor's lease required the PHA to adjust the survivor's rent, and ordered the PHA to renew the tenant's lease for one year.⁵²⁶

Another court found that a survivor could not be evicted for nonpayment of rent where her husband refused to pay the rent and assaulted her when she attempted to talk to him about their unpaid bills. In *Maxton Housing Authority v. McLean*,⁵²⁷ the survivor's husband moved out of the family's subsidized housing unit after failing to make rent payments, which were based on his income. After moving out of the household, the husband refused to pay child support, and the survivor had no income until she was able to secure public benefits.⁵²⁸ The court found that the PHA did not have good cause to evict the survivor because she had committed no wrongful acts that resulted in her nonpayment of rent, and the husband was at

(Section 8 voucher). For more information regarding VAWA, see Chapter 8.

⁵²² 747 S.W.2d at 312.

⁵²³ *Id.* at 312-13.

⁵²⁴ *Id.* at 313.

⁵²⁵ *Id.*

⁵²⁶ *Id.* at 315-16.

⁵²⁷ 328 S.E.2d 290 (N.C. 1985).

⁵²⁸ *Id.* at 291.

fault for the failure to pay rent.⁵²⁹ The court noted that “To eject [the tenant] and her two children from their humble abode upon this evidence would indeed shock one’s sense of fairness.”⁵³⁰

9.2.6 Unauthorized Household Member

Survivors frequently face evictions or subsidy terminations on the grounds that they added an additional household member without the housing provider’s permission. A tenant’s failure to seek permission from the housing provider before allowing additional persons to move into the assisted unit can constitute a lease violation. In cases where the abuser repeatedly returns to the survivor’s subsidized unit, housing providers often wrongfully assume that the abuser is living in the unit without their permission. This is more likely to occur in cases where the abuser previously lived with the survivor, but the survivor requested that he be removed from the household.

To prove that the abuser is not living in the unit, advocates should find out where the abuser is living, whether he pays rent there, whether the abuser uses the survivor’s unit as an address, and whether the survivor’s neighbors can vouch for the fact that the abuser does not live with her. Ultimately, the matter will depend upon a determination by the trier of fact as to whether the abuser lives in the survivor’s home or elsewhere.

A domestic violence survivor successfully overturned the termination of her Section 8 voucher where the hearing officer disregarded evidence that the abuser lived at a different address. In *Pittman v. Dakota County Community Development Agency*,⁵³¹ the PHA terminated the survivor’s voucher for having an

unauthorized adult living in the unit. At the informal hearing, the survivor had testified that this person had been physically violent toward her on several occasions.⁵³² She introduced mail and a child support order placing the person at another address, and a social worker also testified on her behalf.⁵³³ A court overturned the termination, finding that the hearing officer failed to consider the survivor’s evidence and disregarded mitigating circumstances, such as the fact that the survivor was the victim of domestic violence perpetrated by the alleged unauthorized occupant.⁵³⁴

9.3 Procedural Protections for Survivors in Federally Subsidized Housing

This section discusses the procedures attorneys can use to challenge an eviction or termination in federally subsidized housing. In federally subsidized housing, the statutes, regulations, HUD guidance, PHA policies, and leases pertaining to each program provide procedural protections for tenants facing eviction or termination of assistance. The procedures differ among the federally subsidized housing programs. As a result, the procedures that will apply in an individual case will depend on which housing program the survivor is in. For example, survivors in public housing are usually entitled to a more elaborate set of procedures than those in the other subsidized housing programs. This section describes the procedural protections available to survivors in the major federally subsidized housing programs.

9.3.1 Overview of Procedural Protections

Survivors in federally subsidized housing are entitled to notice and an opportunity to be heard before they can be evicted or terminated from

⁵²⁹ *Id.* at 293.

⁵³⁰ *Id.* at 294.

⁵³¹ 2009 WL 112948 (Minn. Ct. App. Jan. 20, 2009) (unreported). The court’s decision is included in the Toolkit accompanying this Manual at Appendix 29.

⁵³² *Id.* at *1.

⁵³³ *Id.* at *2.

⁵³⁴ *Id.* at *4.

the program. The survivor must be notified of the adverse action in writing, and the notice must inform her of the grounds for termination or eviction.⁵³⁵ The time period in which the survivor must respond to the notice will depend on the housing program she is in and the nature of the alleged violation. For example, a survivor in public housing must receive 14 days' notice for an eviction due to nonpayment of rent.⁵³⁶

In many instances, federally subsidized tenants are entitled to an informal meeting or hearing before they may be evicted or their subsidies may be terminated. Depending on the program, the proceeding is called a grievance, an informal hearing, or a meeting.⁵³⁷ The meeting/hearing provides the survivor an opportunity to raise the arguments discussed above regarding criminal activity, disturbances, damages, nonpayment of rent, and unauthorized residents. The survivor can also use the meeting/hearing to demonstrate that the housing provider relied on erroneous information, failed to consider mitigating circumstances related to domestic violence, or violated VAWA or fair housing laws. Whether a survivor is entitled to a pre-eviction administrative proceeding will depend upon which housing program she is in. The procedures for the major federal housing programs are discussed below.

9.3.2 Public Housing

In the public housing program, tenants are usually entitled to a pre-eviction grievance

hearing.⁵³⁸ This hearing is preceded by an informal meeting where the parties attempt to settle the matter.⁵³⁹ If the informal meeting does not yield a settlement, the tenant can request a grievance hearing.⁵⁴⁰ During the hearing, the tenant has the right to be represented by counsel or a representative of her choice, to present evidence and arguments, to rebut contrary evidence, and to cross-examine witnesses.⁵⁴¹ After the proceeding, the hearing officer must prepare a written decision that includes the reasons for the decision.⁵⁴²

Attorneys should note that if the eviction is based on criminal activity that threatens health or safety or involves drug-related activity, the PHA can decline to offer the grievance procedure and directly proceed with eviction.⁵⁴³ Thus, a PHA may decline to offer a survivor the grievance procedure in cases where she is facing eviction due to criminal acts committed by the batterer that threaten health or safety. If the survivor was the victim of these criminal acts, attorneys should ask the PHA to reconsider its decision not to offer the grievance procedure. Because the survivor likely has a defense against eviction under VAWA⁵⁴⁴ or fair housing laws,⁵⁴⁵ pursuing the eviction may be a waste of the PHA's time and resources, and may harm the survivor's credit history. It is therefore preferable to resolve these cases using the grievance procedure.

⁵³⁵ 42 U.S.C. § 1437f(d)(1)(B)(iv) (Section 8 voucher); 24 C.F.R. §§ 966.4(k) & (l)(3)(ii) (public housing), 982.310(e), 982.552(d) (Section 8 voucher); OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 495, at App. 4-A ¶ 23 (June 2007) (project-based Section 8).

⁵³⁶ 24 C.F.R. § 966.4(l)(3)(A).

⁵³⁷ For public housing, the proceeding is called a grievance hearing. For the voucher program, it is called an informal hearing. For HUD-assisted housing and Section 515 Rural Housing, it is called a meeting.

⁵³⁸ 42 U.S.C. § 1437d(k); 24 C.F.R. §§ 966.50-57.

Advocates should also examine their PHA's Admissions and Continued Occupancy Policy for further information regarding the grievance procedure.

⁵³⁹ 24 C.F.R. § 966.54.

⁵⁴⁰ § 966.55(a).

⁵⁴¹ § 966.56(b).

⁵⁴² § 966.57(a).

⁵⁴³ § 966.51(a)(2).

⁵⁴⁴ See Chapter 8 for more information regarding VAWA.

⁵⁴⁵ See Chapter 6 for more information regarding fair housing laws.

9.3.3 Section 8 Vouchers

As a preliminary matter, eviction of a Section 8 tenant must be distinguished from the termination of the tenant's voucher. While an eviction is handled by the Section 8 landlord and is commenced by filing an action in court, termination of the voucher is handled by the PHA and is commenced using an administrative proceeding called an informal hearing. In some circumstances, eviction for breach of the lease can be grounds for termination of the Section 8 voucher, but the PHA still must use the informal hearing procedure to terminate the voucher.⁵⁴⁶

In the Section 8 voucher program, tenants have no right to an administrative proceeding before a Section 8 landlord files an eviction action in court. However, advocates should contact the Section 8 landlord anyway to determine whether the matter can be resolved informally, particularly where the survivor has a defense under VAWA or fair housing laws.⁵⁴⁷

In contrast to the judicial eviction process, PHAs must provide an informal hearing to a tenant before her Section 8 voucher assistance can be terminated.⁵⁴⁸ During the informal hearing, the tenant may be represented by counsel or other representative, may present evidence, and may question witnesses.⁵⁴⁹ After the proceeding, the hearing officer must promptly furnish the tenant with a written decision that includes the reasons for the decision.⁵⁵⁰

9.3.4 HUD-Subsidized and Project-Based Section 8 Developments

If a tenant is facing eviction from a HUD-subsidized or project-based Section 8 development, she must be given 10 days in

⁵⁴⁶ See § 982.552.

⁵⁴⁷ See Chapters 6 and 8 for more information regarding VAWA and fair housing laws.

⁵⁴⁸ See § 982.555(a).

⁵⁴⁹ See §§ 982.555(e)(3)-(5).

⁵⁵⁰ See § 982.555(e)(6).

which she can discuss the proposed eviction with the landlord.⁵⁵¹ Although this does not entitle the tenant to the procedural protections of the public housing grievance hearing or the Section 8 informal hearing, it does give the tenant a chance to explain the circumstances surrounding the alleged lease violation. Advocates should use this meeting as an opportunity to informally resolve the eviction.

9.3.5 Section 515 Rural Housing

Much like tenants in HUD-subsidized and project-based Section 8 developments, tenants facing eviction from Section 515 Rural Housing must be given an opportunity to meet with the owner to discuss the lease violation.⁵⁵² This gives the tenant a chance to informally resolve the dispute before the owner files an eviction proceeding.

9.4 Preparation for Challenging an Eviction or Subsidy Termination

This section provides a general overview of some of the steps that attorneys can take to help survivors who are facing evictions or terminations.⁵⁵³ These steps include requesting a meeting with the housing provider, gathering and reviewing documents, requesting a hearing, and preparing evidence.

Requesting a Meeting

After interviewing the survivor and reviewing the eviction or termination notice, the attorney should contact the housing provider to

⁵⁵¹ See OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 495, at ¶ 8-13-B-2(c)(4).

⁵⁵² See 7 C.F.R. Part 1930, Subpart C, Ex. B, ¶ XIV.

⁵⁵³ A comprehensive review of all the strategies available for challenging evictions and subsidy terminations is beyond the scope of this Manual. Advocates that lack housing law expertise should refer survivors to an agency that has experience in representing clients in eviction and termination proceedings.

request an informal meeting to discuss the eviction or termination.⁵⁵⁴ Requests for meetings should be put in writing to document that the survivor attempted to resolve the matter informally. A meeting may be especially beneficial where the survivor believes that the housing provider is relying on inaccurate information, there are mitigating circumstances, or the eviction or termination violates VAWA or fair housing laws. The purpose of this meeting is to discuss the steps that can be taken to address any lease or program violations without putting the survivor through the stress and uncertainty of an administrative hearing or an eviction proceeding. The end of this Chapter discusses some of the factors that advocates should consider in negotiating an agreement with a housing provider to drop eviction or termination proceedings against a survivor.

Gathering Documents

Before the meeting, the survivor or her advocate should contact the housing provider and ask to inspect the survivor's tenant file. Copies should be made of all documents related to the termination or proposed eviction, which may include the lease, written complaints, agreements to pay back rent or repairs, witness statements, notes of conversations, damage claims, and police reports. The survivor or her advocate should ask the housing provider to identify all documents it intends to rely on in any pre-termination hearing.

⁵⁵⁴ In public housing, project-based Section 8 housing, and Section 515 Rural Housing, housing providers are required to provide an opportunity for an informal meeting before proceeding with eviction. While there is no similar requirement for landlords participating in the Section 8 voucher program, they may welcome the opportunity to informally resolve the proposed eviction.

Requesting a Hearing

If the meeting with the housing provider does not yield a resolution, the advocate and survivor must decide whether to request a hearing. The decision should usually be to request a hearing, because a survivor has more to gain than lose from going through the hearing process. As explained, pre-termination administrative hearings are generally available where a PHA seeks to terminate a tenant's Section 8 voucher assistance or seeks to evict a public housing tenant. Tenants are not entitled to an administrative hearing before they may be evicted from project-based Section 8 developments, Section 515 Rural Housing, or housing paid for with a Section 8 voucher. However, many of the steps that must be taken to prepare for an administrative hearing will be the same as the steps needed to prepare for an eviction proceeding.

Preparing Evidence

Advocates should determine what documents are needed to prove the facts that the survivor will rely on in defending against an eviction or termination of assistance. This can include police reports, court records, letters, medical records, pictures, or notes from phone calls. Advocates should also consider whether witnesses may be helpful in proving the survivor's case, such as neighbors who can testify as to the survivor's efforts to exclude the abuser from the unit or service providers who can testify to the survivor's efforts to end the abusive relationship. It may also be helpful to have expert witnesses explain the effects of domestic violence, such as an expert who can explain why a survivor may have been afraid to ask security officers to remove the abuser from the unit or why a survivor's erratic behavior may have been the result of post-traumatic stress disorder. Advocates should anticipate that the survivor may have difficulty clearly

explaining her side of the story to a hearing officer, particularly where the survivor is still suffering trauma from incidents of violence. Where possible, advocates should seek to bolster the survivor's testimony with documentary evidence and testimony by other witnesses.

9.5 Settlement of an Eviction or Termination Proceeding

The remainder of this Chapter discusses issues attorneys should consider when a housing provider offers to settle an eviction or termination proceeding. Generally, the best outcome where a survivor is facing eviction or termination of her subsidy is a settlement agreement (also known as a stipulation). A settlement will save the survivor time and avoid the emotional stress and uncertainty of an eviction or termination proceeding.

Settlements typically contain provisions allowing for the continuation of the tenancy or assistance if the survivor agrees to certain conditions, such as a probation period, permanent exclusion of the individual who caused the lease or program violation, repayment of back rent or repair costs, or periodic inspections by the housing provider. If the survivor violates the settlement agreement, the violation may be cause for evicting the survivor or terminating her subsidy. Therefore, it is crucial for attorneys to carefully review the terms of any proposed settlement and candidly discuss with the survivor whether she can feasibly comply with those terms. The survivor should not enter into a settlement agreement if it is unlikely that she will be able to comply with it. The Toolkit accompanying this Manual contains a sample settlement agreement.⁵⁵⁵

In cases involving criminal activity, disturbances, damages, or unauthorized occupancy by the abuser, one of the most problematic settlement terms that housing providers propose is that the survivor

permanently exclude the abuser from the premises.⁵⁵⁶ Advocates should discuss with the survivor whether it is feasible for her to deny the abuser access to the property, particularly where the parties have children together and visitation has previously taken place at the property. If the survivor feels that she can abide by this condition, advocates should also discuss whether the survivor needs additional security measures to exclude the abuser from the property, such as reinforced doors, security bars on windows, improved locks, and additional security patrols.⁵⁵⁷ Advocates should ask that the housing provider agree to provide these additional security measures as part of the settlement, and that the housing provider agree to take all steps necessary to respond to the survivor's requests for assistance regarding the abuser. Advocates should also closely review the language of the settlement agreement regarding exclusion of the batterer. The language should state that the survivor will not *willingly or knowingly* allow the batterer on the premises. This protects the survivor from violating the settlement agreement in instances where the batterer arrives at the premises uninvited or breaks into the unit.

In some cases, housing providers will ask the survivor to seek a restraining order as a condition of remaining in the unit. However, it may be unrealistic for the survivor to seek a restraining order, particularly where she will face retaliation from the abuser if she seeks the order, she is suffering from severe trauma and cannot discuss the incidents of violence publicly, she lacks the evidentiary support

⁵⁵⁶ See 24 C.F.R. §§ 5.852(a)(3) (housing providers may require a tenant to exclude a household member in order to continue to reside in the unit, where that household member committed an act that warrants termination), 966.4(l)(5)(vii)(C) (same), 982.310(h)(2) (same), 982.552(c)(2)(ii) (PHAs may impose, as a condition of continued assistance, a requirement that family members who participated in the offending conduct will not reside in the unit).

⁵⁵⁷ For more information regarding safety planning, see Chapter 4.

⁵⁵⁵ See Toolkit, Appendix 30.

needed for the order, or she is unable to take time off from work to obtain the order. Further, there is no guarantee that a court will grant the restraining order. Attorneys should approach this type of settlement provision with caution and be prepared to discuss other steps the survivor can take to end contact with the abuser.

In cases involving repair costs or back rent, the housing provider will likely ask the survivor to enter into an agreement to pay back some of these costs over time. If the abuser is clearly responsible for the damages or back rent, advocates can suggest that the housing provider

seek these costs from the abuser instead. This approach may be more effective if the survivor agrees to take reasonable actions to assist the housing provider in these efforts, such as agreeing to draft a declaration regarding the circumstances surrounding the costs. If the housing provider is insistent that the survivor pay part of the costs, advocates should work with the survivor to review her monthly expenses to make sure that the repayment agreement is feasible.

Chapter 10: Increasing Survivors' Access to Housing

Table of Contents

10.1 Introduction.....	97
10.2 Public Housing Agency (PHA) Plans.....	97
10.2.1 Annual and 5-Year Plans	97
10.2.1.1 Violence Against Women Act	98
10.2.1.2 Timeline for PHA Plans.....	98
10.2.1.3 Other Policy Documents	99
10.2.2 Section 8 Administrative Plan	99
10.2.2.1 Admissions Preferences	100
10.2.2.2 Admissions Criteria	100
10.2.2.3 Information Provided to Prospective Section 8 Landlords	101
10.2.2.4 Restrictions on Moving.....	101
10.2.2.5 Family Absence from the Dwelling Unit.....	102
10.2.2.6 Family Breakup.....	102
10.2.2.7 Termination of Assistance	103
10.2.2.8 Certification of Domestic Violence and Confidentiality	103
10.2.2.9 Notice to Tenants	104
10.2.2.10 Definitions of Domestic Violence, Dating Violence, and Stalking.....	104
10.2.2.11 Linkages to Community Resources	105
10.2.3 Public Housing Admissions and Continued Occupancy Policy	105
10.2.3.1 Screening of Applicants.....	105
10.2.3.2 Emergency Transfers	106
10.2.3.3 Splitting the Lease.....	106
10.2.3.4 Damages to the Unit.....	106
10.2.3.5 Public Housing Leases	107
10.2.4 Practice Tips: Advocating with PHAs	107
10.3 Other Planning Documents	108
10.3.1 Consolidated Plan	108

10.3.2 Housing Element.....108
 10.3.3 Continuum of Care Plan.....109
 10.3.4 Qualified Allocation Plan110

10.1 Introduction

To increase the likelihood that survivors of domestic violence will be able to obtain affordable housing, advocates should participate in local planning processes. This Chapter addresses four different types of housing plans and how advocates can shape those plans. First, public housing agencies (PHAs) are required to develop plans that set forth the policies governing their Section 8 voucher and public housing programs. Second, state and local governments must submit a Consolidated Plan (ConPlan) to HUD to receive money from certain HUD programs. ConPlans must identify certain housing needs, including the housing needs of domestic violence survivors, and develop strategies for addressing those needs. Third, the Continuum of Care (Continuum) is a process where local government and community members develop a plan for providing housing and services to homeless individuals. Fourth, the Qualified Allocation Plan sets forth the state’s criteria for allocating Low Income Housing Tax Credits to housing projects.

10.2 Public Housing Agency (PHA) Plans

Advocates can improve access to housing for survivors by participating in the PHA annual planning process. This process is crucial for advocates who want to increase survivors’ chances of securing public housing or Section 8 vouchers, or who want to prevent survivors from being needlessly terminated from public housing or Section 8. It provides an opportunity for advocates to comment on their local PHA’s policies on domestic violence (or to ask the PHA to adopt such policies), and to work

toward implementing policies that better serve their clients. National Housing Law Project is available to assist advocates who want to participate in the annual planning process.

This section describes how advocates can shape three types of PHA plans: (1) Annual Plans; (2) Section 8 Administrative Plans; and (3) public housing Admission and Continued Occupancy Policies. The Annual Plan is a document that PHAs must submit yearly that summarizes some of the PHA’s policies regarding the public housing and Section 8 programs. The Administrative Plan details the policies that a PHA uses in the day-to-day operation of its Section 8 voucher program. The Admission and Continued Occupancy Policy serves a similar function for the PHA’s public housing program.

10.2.1 Annual and 5-Year Plans

Most PHAs, which administer public housing units and Section 8 vouchers, are required to submit Annual and 5-Year Plans to the Department of Housing and Urban Development (HUD).⁵⁵⁸ PHAs must submit an Annual Plan each year, with supporting documents, that states some of the PHA’s policies regarding the public housing and Section 8 programs. Every five years, all PHAs must update and submit 5-Year Plans stating their mission, goals, and objectives. Additionally, as discussed in the next section, the Annual and 5-Year Plans must contain a

⁵⁵⁸ There are exemptions from the Annual Plan requirements for PHAs with 550 or fewer public housing units and Section 8 vouchers. *See* HUD, Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs, PIH 2008-41 (Nov. 13, 2008).

statement regarding the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault.

10.2.1.1 Violence Against Women Act

Under the Violence Against Women Act of 2005 (VAWA), PHAs now have obligations to address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault. In the 5-Year Plan, PHAs are required to include a statement of the goals, objectives, policies, or programs that will enable the PHA to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking.⁵⁵⁹

In the Annual Plan, PHAs are required to include a description of:

“(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

“(B) any activities, services, or programs provided or offered by a public housing agency that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

“(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.”⁵⁶⁰

A PHA’s description of the activities, services, or programs offered to survivors of domestic violence must be readily available to the public.⁵⁶¹ However, because this requirement is relatively new, many PHAs have not yet developed this description. Others

include only a cursory description of activities that serve survivors’ needs, such as “The housing authority has amended its policies to comply with VAWA.” Advocates should urge PHAs to describe in detail the activities, services, or programs that they offer to help survivors to obtain or maintain housing. For example, if a PHA has trained its staff on domestic violence or VAWA’s provisions, designated staff members to handle VAWA cases, or made arrangements to refer tenants or applicants to a victim service provider, the PHA should describe these activities and indicate the steps it has taken to make survivors aware of the services. If a PHA has not yet implemented any programs to assist survivors, advocates should offer to meet and discuss ways in which the PHA and local service providers can work together to provide this assistance. Later in this Chapter, we provide tips regarding collaboration with PHAs. In setting meetings with PHAs, advocates should consider the timeline for the PHA planning process, which is discussed in the next section.

10.2.1.2 Timeline for PHA Plans

PHAs must follow a federally mandated timeline when developing and submitting their Annual Plans. The plans must be submitted to HUD 75 days prior to the end of the PHA’s fiscal year.⁵⁶² Additionally, the PHA must give the public 45 days’ notice of the public hearing on the plan, which is typically published in local newspapers.⁵⁶³ To obtain copies of the Annual Plan, advocates should contact their PHAs. In some jurisdictions, PHAs post their Annual Plans on their websites. Generally, written comments on the plans are due the day of or shortly before the public hearing. The public hearing is generally before the PHA’s board of

⁵⁵⁹ 42 U.S.C. § 1437c-1.

⁵⁶⁰ § 1437c-1.

⁵⁶¹ HUD, Instructions Form HUD-50075, at 1 (2005).

⁵⁶² 24 C.F.R. § 903.23(b)(2). To determine when your PHA’s fiscal year begins, visit

<http://www.hud.gov/offices/pih/pha/approved/>.

⁵⁶³ 24 C.F.R. § 903.17(b).

commissioners, which must approve the plan before it is submitted to HUD.

In California, most PHAs have a fiscal year that begins July 1. For these PHAs, the public comment deadlines and hearing dates are generally in February or March.

10.2.1.3 Other Policy Documents

In addition to commenting on the Annual Plan, advocates should also review their PHA's Section 8 Administrative Plan and public housing Admission and Continued Occupancy Policy (ACOP). These are the two documents that govern the PHA's day-to-day operation of its subsidized housing programs. The Administrative Plan sets forth the policies that the PHA uses in its Section 8 program,⁵⁶⁴ while the ACOP sets forth the policies that are used in the public housing program. Although some PHAs revise the Administrative Plan and ACOP on the same timeline as the Annual Plan, they are not required to do so, and some PHAs do not regularly revise these documents.

Regardless of when a PHA last revised its Administrative Plan and ACOP, advocates can review these documents to determine whether the PHA has adopted policies that serve the housing needs of domestic violence survivors. As we will discuss, PHAs should amend their admissions, terminations, and confidentiality policies in the Administrative Plan and ACOP to comply with VAWA. The rest of this section discusses in detail the VAWA protections that should be incorporated into the Administrative Plan and ACOP. Advocates should note that VAWA's statutory language providing protections against housing denials and terminations applies only to survivors of domestic violence, dating violence, and stalking. However, PHAs are free to extend these protections to survivors of sexual assault, and

the Administrative Plan and ACOP can be amended accordingly.

In addition to incorporating VAWA's language, PHAs should adopt a variety of other policies to improve survivors' chances of obtaining and maintaining housing. These policies are discussed throughout this Chapter, and a sample PHA domestic violence policy is included in the Toolkit accompanying this Manual.⁵⁶⁵ Advocates should consider providing proposed policy language when submitting comments on the Administrative Plan and ACOP.

Advocates should also review the policies in the Administrative Plan and ACOP regarding language access for limited English proficient (LEP) families and reasonable accommodations for persons with disabilities. This helps to ensure maximum access to subsidized housing for disabled and LEP survivors. It may be particularly effective to collaborate with disability and immigrants' rights organizations to review the policies and submit comments.

10.2.2 Section 8 Administrative Plan

The Administrative Plan contains the policies that the PHA uses in administering its Section 8 voucher program. Many of these policies may impact a survivor's ability to obtain and maintain housing. Below we discuss some of the Administrative Plan policies that advocates should review and submit comments upon, including admissions preferences, admissions criteria, portability, family absence from the unit, family breakup, termination of assistance, and certification of domestic violence. Many of these policies should also be included in the public housing ACOP, which is discussed in detail later in this Chapter. Sample comments on PHA Administrative Plans and sample Administrative Plan language are included in the Toolkit accompanying this Manual.⁵⁶⁶

⁵⁶⁴ This includes both the Housing Choice Voucher Program and the project-based voucher program.

⁵⁶⁵ See Toolkit, Appendix 33.

⁵⁶⁶ See Toolkit, Appendices 31, 32, and 33.

10.2.2.1 Admissions Preferences

The Administrative Plan must describe the PHA's policies for selecting applicants from the Section 8 waiting list, including any admissions preferences.⁵⁶⁷ An admissions preference is a policy that provides certain categories of applicants a priority on the waiting list as units become available. For example, some PHAs provide preferences for families who live in the PHA's jurisdiction, who are disabled, or who are homeless. A handful of California PHAs have chosen to adopt an admissions preference for domestic violence survivors.⁵⁶⁸ Advocates should consider whether a domestic violence preference is appropriate in their jurisdiction. In making this determination, it is helpful to consult with legal services programs, disability rights organizations, homelessness advocates, and others who are familiar with the PHA's admissions process.

One concern that PHAs often raise is that it may be difficult to verify whether an applicant is in fact a survivor of domestic violence. Advocates should therefore offer suggestions for how applicants can document that they qualify for the domestic violence preference, such as by providing a letter from a service provider, a police report, or a restraining order.

Implementing a domestic violence preference may take a significant amount of time. The public must have an opportunity to comment on the preference, and it must be approved by the housing authority's board. Additionally, a preference may not guarantee that a survivor will be immediately granted a

voucher once she places her name on the waiting list. In many jurisdictions, applicants must wait months or years before they receive a voucher, even if they qualify for a preference. Advocates should explore with PHAs whether there are ways to expedite the implementation of a domestic violence preference.

10.2.2.2 Admissions Criteria

The Administrative Plan must set forth the PHA's admissions criteria for the Section 8 program.⁵⁶⁹ Advocates should carefully review these criteria, as they often have the effect of excluding survivors from subsidized housing.⁵⁷⁰ For example, many PHAs have policies that prohibit admission of applicants who have previously been terminated from federally subsidized housing, or who owe money to a PHA for rent or damages. Survivors are often evicted or terminated from subsidized housing for reasons related to the batterer's conduct, such as noisy disturbances or property damage. If these survivors apply for subsidized housing after escaping the batterer, they risk being denied housing due to the prior eviction or subsidy termination. Additionally, many PHAs have policies that bar admission of applicants who have been arrested for or convicted of violent criminal activity within the past three to five years. As a result, survivors who have arrests or convictions stemming from self-defense, coercion, or mutual arrest risk being denied housing.

Under VAWA, the fact that an applicant "is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission."⁵⁷¹ Advocates can address admissions criteria by asking PHAs to include this language in the

⁵⁶⁷ 24 C.F.R. § 982.54(d)(1).

⁵⁶⁸ For example, the San Francisco Housing Authority has an admissions preference for "an applicant who has vacated due to actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other household member, who lives in housing with an individual who engages in such violence." San Francisco Housing Authority, Administrative Plan for the Section 8 Voucher Program 38 (July 2008).

⁵⁶⁹ 24 C.F.R. §§ 982.54(d)(1), (4).

⁵⁷⁰ See Chapter 3 for information on challenging denials of admission to subsidized housing.

⁵⁷¹ 42 U.S.C. § 1437f(o)(6)(B).

Administrative Plan. Advocates should also ask PHAs to adopt policies that allow for mitigation of negative history that is related to acts of violence committed against a survivor. PHAs should consider whether an applicant would be suitable for housing assistance but for a negative history caused by domestic violence. If inquiries reveal that the negative history was the consequence of domestic violence against the applicant, the PHA should not deny the household assistance on the basis of this information. Any inquiries regarding domestic violence should make clear that members of applicant households have a right to confidentiality.

It is important to note that in the Section 8 voucher program, the private landlord is responsible for screening an applicant's tenancy and credit history.⁵⁷² Therefore, advocates will need to deal with the private landlord, rather than the housing authority, if a survivor has been denied an apartment based on her credit or landlord references.

10.2.2.3 Information Provided to Prospective Section 8 Landlords

The Administrative Plan must include the PHA's policies for providing information about a family to prospective Section 8 landlords.⁵⁷³ When a Section 8 participant finds a landlord from whom she wants to rent, the PHA must provide that landlord with certain information. HUD regulations state that the PHA must give prospective Section 8 landlords the Section 8 participant's current and prior addresses, as well as the names and addresses of the landlords at the participant's current and prior addresses.⁵⁷⁴ In accordance with these regulations, many PHAs have adopted policies stating that they

will give a prospective Section 8 landlord the current and prior addresses of the Section 8 participant and her landlords.

A policy requiring Section 8 participants to disclose prior landlords' contact information or mandating that the information be shared with prospective Section 8 landlords may cause serious problems for survivors of domestic violence. If the prospective Section 8 landlord contacts a survivor's current or former landlord, the abuser may be able to track the survivor's location. Advocates should urge PHAs to adopt a policy stating that they will inform Section 8 participants which parties will be contacted so that safety risks can be identified. PHAs should also adopt a policy stating that they will work with survivors of domestic violence to identify alternative means of verification of landlord references if the survivor's safety would otherwise be compromised.

10.2.2.4 Restrictions on Moving

A PHA's Administrative Plan sets forth the policies that are used when a Section 8 voucher tenant seeks to move to another unit. Most PHAs have detailed procedures regarding "portability," which is when a Section 8 tenant seeks to move and use her voucher assistance outside of the housing authority's jurisdiction. Portability is particularly important to domestic violence survivors who must move to a confidential location to escape their batterers.

Ordinarily, a Section 8 voucher family cannot continue to receive assistance if they move out of their assisted apartment in violation of the lease.⁵⁷⁵ However, VAWA provides an exception to this restriction on portability. If a Section 8 voucher family has moved to protect the safety of a victim of domestic violence, dating violence, or stalking who reasonably believed she would be threatened by further violence if she remained, the family may

⁵⁷² Chapter 3 provides suggestions for helping survivors address negative tenancy and credit history.

⁵⁷³ 24 C.F.R. § 982.54(d)(7).

⁵⁷⁴ § 982.307(b)(i)-(ii).

⁵⁷⁵ 42 U.S.C. § 1437f(r)(5).

continue to receive assistance.⁵⁷⁶ Advocates should urge PHAs to amend their Administrative Plans to include VAWA's language regarding portability.

In addition to incorporating VAWA's language, advocates should also ask their PHAs to amend existing policies that restrict survivors' ability to move. Many PHAs have policies that require a family to lease a unit within the PHA's jurisdiction for the initial 12 months of assistance before they can move to another jurisdiction. Additionally, PHAs often have policies stating that a family can only move during the initial term of the lease (generally 12 months) if the landlord agrees to end the lease.⁵⁷⁷ Some PHAs also have policies stating that families may only move once during a 12-month period. Advocates should ask PHAs to amend these policies to provide exceptions for families who must move to protect the safety of survivors of domestic violence. Further, advocates should ask PHAs to adopt a policy stating that if it is necessary for a family member to break a lease to escape domestic violence, the PHA will not terminate the victim from the Section 8 program. Finally, advocates should ask PHAs to include a statement in the Administrative Plan that the address to which an individual fleeing domestic violence has relocated will be confidential and will not be shared with any person outside the PHA unless the individual waives confidentiality.

10.2.2.5 Family Absence from the Dwelling Unit

The Administrative Plan must include the PHA's policies regarding how long a family

⁵⁷⁶ § 1437(r)(5).

⁵⁷⁷ As discussed in Chapter 5, California landlords are now required to release survivors from their lease obligations if the survivor presents either a restraining order or police report. *See* CAL. CIV. CODE § 1946.7. Because many survivors do not have either document, advocates should still urge PHAs to provide exceptions to policies that permit a tenant to move only if the landlord has agreed to end the lease.

may be absent from the assisted dwelling unit before their assistance will be terminated.⁵⁷⁸ For example, many PHAs have policies stating that if the entire family is absent from the assisted unit for more than 30 consecutive days, the unit will be considered abandoned and the family's assistance will be terminated. Advocates should urge PHAs to adopt exceptions to these policies if the family's absence was due to domestic violence. A family experiencing domestic violence may be forced to relocate to a shelter or other confidential location while they develop a safety plan, obtain a restraining order, or wait for law enforcement to apprehend the perpetrator. Accordingly, PHAs should adopt a policy stating that prior to determining that a family has abandoned the unit, the PHA shall take into account the role domestic violence played in the absence.

10.2.2.6 Family Breakup

Family breakup policies in a PHA's Section 8 program can have a significant impact on survivors. For example, a survivor who lives with her batterer may need to flee the Section 8 unit due to domestic violence. Or, the batterer may be forced to leave the Section 8 unit as a result of a restraining order or incarceration. In these circumstances, PHAs have discretion to determine which members of the family will continue to receive Section 8 assistance.⁵⁷⁹ The Administrative Plan must state the PHA's policies on how it will decide who remains in the Section 8 program if the family breaks up.⁵⁸⁰ PHAs can consider a variety of factors in making this decision, including whether family members were forced to leave the unit as a result of violence committed by another family member.⁵⁸¹ However, if the Section 8 assistance has been allocated under a settlement or judicial decree as part of divorce or separation

⁵⁷⁸ 24 C.F.R. § 982.54(d)(10).

⁵⁷⁹ § 982.315(a).

⁵⁸⁰ §§ 982.54(d)(11), 982.315(a).

⁵⁸¹ § 982.315(b)(3).

proceedings, the PHA must follow the court's determination of which family members continue to receive assistance.⁵⁸²

Advocates should review their PHA's family breakup policy to ensure that it takes into consideration whether the family split up due to domestic violence. When a family separates, if there is a dispute as to which member or members of the family should continue receiving Section 8 assistance, the PHA should prioritize survivors of domestic violence where that violence is a contributing cause of the household's breakup. This priority should apply regardless of whether the survivor is currently living in the Section 8 unit. Advocates should also consider encouraging PHAs to adopt breakup policies that take into account the interests of minor children.

Breakup policies that assign the assistance based on a written agreement between family members may be problematic for survivors. The batterer may threaten a survivor with continued violence if she does not sign such an agreement. Advocates should also be wary of policies that assign the assistance to the family members who remained in the assisted unit after the breakup. Such policies have the effect of penalizing survivors who were forced to flee the unit due to domestic violence.

10.2.2.7 Termination of Assistance

Advocates should encourage PHAs to incorporate into the Administrative Plan VAWA's protections against subsidy terminations, as well as other policies that protect survivors from losing their housing due to violence committed against them. The Administrative Plan should include VAWA's language providing that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the

⁵⁸² § 982.315(c).

victim justifying termination of assistance.⁵⁸³ The Administrative Plan should also include VAWA's provision stating that the PHA may terminate voucher assistance to individuals who engage in violence against family members or others without penalizing the victims of such violence.⁵⁸⁴ Finally, the Administrative Plan should state that if a victim has committed a lease violation unrelated to domestic violence, dating violence, or stalking, the PHA may not hold the victim to a more demanding standard than other tenants in deciding whether to terminate.⁵⁸⁵

In addition to adopting VAWA's language, advocates should ask PHAs to amend their Administrative Plans to state that in making termination decisions, the PHA will consider the role that domestic violence played in lease violations or program violations. In many cases, it may not be readily apparent that a survivor's failure to comply with a lease provision or program requirement was related to acts of domestic violence. For example, a survivor may miss appointments with the PHA because she is afraid to leave the home due to threats of violence by the batterer, or because she has taken refuge at a shelter or has been hospitalized. If inquiries by the PHA reveal that a family's action or failure to act was the consequence of domestic violence against a member of the household, a PHA should not deny or terminate assistance.

10.2.2.8 Certification of Domestic Violence and Confidentiality

If a survivor asserts VAWA's protections, a PHA may request documentation of domestic

⁵⁸³ 42 U.S.C. § 1437f(o)(20)(B).

⁵⁸⁴ § 1437f(o)(20)(D)(i); *see also* 24 C.F.R. § 982.552(c)(2) (stating that a PHA may terminate voucher assistance to culpable family members while permitting the innocent family members to continue receiving assistance); HUD Notice PIH 2007-5 (Feb. 16, 2007) (same).

⁵⁸⁵ 42 U.S.C. § 1437f(o)(20)(D)(iii).

violence. The Administrative Plan should clearly set forth a PHA's requirements for documenting domestic violence. VAWA permits survivors to certify their status as victims of domestic violence in any of the following three ways: (1) completing a HUD-approved certification form; (2) providing documentation signed by a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, in which the professional attests under penalty of perjury to the professional's belief that the incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (3) providing a police or court record.⁵⁸⁶ Advocates should review the Administrative Plan to ensure that their PHA has a policy of accepting any one of these three types of documentation. Advocates should also consider whether there are other documents that should be added to the list, such as medical records, a statement from a clergy member or social worker, or a signed statement by the survivor.⁵⁸⁷ The Administrative Plan should also set forth the deadline for certification⁵⁸⁸ and what will be considered good cause for extending the deadline, such as hospitalization or continuance of a court date.

The Administrative Plan should also make clear that the PHA shall keep confidential any information regarding an individual's status as a survivor of domestic violence and that this information may not be entered into a shared database or provided to other entities.⁵⁸⁹ The Administrative Plan should also acknowledge

⁵⁸⁶ § 1437f(ee)(A), (C).

⁵⁸⁷ VAWA provides that PHAs are not required to demand official documentation and may rely solely on the survivor's statement. § 1437f(ee)(1)(D).

⁵⁸⁸ At a minimum, the survivor must be given 14 business days to respond to the PHA's written request for certification. § 1437f(ee)(1)(B). Advocates can ask the PHA to provide for a longer period of time in the Administrative Plan.

⁵⁸⁹ § 1437f(ee)(2)(A).

that VAWA provides exceptions to confidentiality where disclosure is requested by the survivor in writing, where the information is required for use in an eviction proceeding, or where otherwise required by the law.⁵⁹⁰ Finally, the Administrative Plan should state that the PHA will inform the survivor before disclosing information so that safety risks or alternatives to disclosure can be identified.

10.2.2.9 Notice to Tenants

PHAs are required to provide notice to Section 8 tenants of their rights under VAWA.⁵⁹¹ The Administrative Plan should set forth the notification procedures that the PHA will use. PHAs should notify tenants in a variety of ways, including providing verbal notice during orientations to the voucher program and annual recertification meetings; inserting a paragraph regarding VAWA rights into denial of assistance letters and termination notices; posting notice of VAWA in the PHA's office; and posting notice of VAWA on the PHA's website. The Toolkit accompanying this Manual includes sample VAWA notices for Section 8 and public housing tenants.⁵⁹² Advocates should urge PHAs to make information regarding VAWA accessible to LEP and disabled individuals.

10.2.2.10 Definitions of Domestic Violence, Dating Violence, and Stalking

PHA staff members often have questions as to whom can be considered a victim of dating violence, domestic violence, or stalking. PHAs should therefore include VAWA's definitions of these terms in the Administrative Plan.⁵⁹³ Additionally, VAWA's definition of "domestic

⁵⁹⁰ § 1437f(ee)(2)(A).

⁵⁹¹ § 1437f(ee)(2)(B).

⁵⁹² See Toolkit, Appendices 34, 35, and 36.

⁵⁹³ See 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10), 13925(a)(6), (8).

violence” incorporates state law definitions of the term. Therefore, PHAs should include California’s definition⁵⁹⁴ of domestic violence in the Administrative Plan and ACOP. The Toolkit accompanying this Manual includes sample PHA plan comments that discuss the definitions of these terms as they appear in VAWA and the California Family Code.⁵⁹⁵

10.2.2.11 Linkages to Community Resources

Advocates should urge PHAs to include a statement in the Administrative Plan on how they will inform survivors of domestic violence about community resources. For example, the Administrative Plan could state that the PHA will maintain updated domestic violence referral information and will place posters on domestic violence services at its offices. Advocates should volunteer to assist the PHA in developing these materials. The Administrative Plan could also state that the PHA will give resources on domestic violence to new residents in their orientation packets and to all current residents during their annual recertification interviews. Where possible, advocates should offer to provide PHAs with these resources and should urge PHAs to make them accessible to LEP and disabled individuals. Finally, the Administrative Plan could state that the PHA will collaborate with domestic violence advocacy groups on providing outreach to residents and on meeting the training needs of PHA staff. Advocates should encourage PHAs to develop relationships with organizations that serve LEP survivors as well as survivors from underserved ethnic and cultural groups.

⁵⁹⁴ See CAL. FAM. CODE § 6211.

⁵⁹⁵ See Toolkit, Appendices 31 and 32.

10.2.3 Public Housing Admissions and Continued Occupancy Policy

The Admissions and Continued Occupancy Policy (ACOP) contains the policies that the PHA uses in administering its public housing program.⁵⁹⁶ These policies are often similar to or even identical to the policies contained in the Administrative Plan. As a result, most of our suggestions regarding the Administrative Plan will apply equally to the ACOP. In reviewing the ACOP, advocates should look at the previous sections in this Chapter on the following topics: Admissions Preferences; Admissions Criteria; Family Absence from the Dwelling Unit; Family Breakup; Termination of Assistance; Certification of Domestic Violence and Confidentiality; Notice to Tenants; Definitions of Domestic Violence, Dating Violence, and Stalking; and Linkages to Community Resources.

In addition to the topics discussed in our overview of the Administrative Plan, there are several issues that are unique to the public housing ACOP that advocates should review. These issues, which are discussed below, include screening of applicants, emergency transfers, splitting the lease, and damages to the unit. Sample comments on PHA ACOPs and sample ACOP language are included in the Toolkit accompanying this Manual.⁵⁹⁷

10.2.3.1 Screening of Applicants

PHAs are responsible for screening the tenancy and credit history of applicants to the public housing program. Many PHAs consider factors such as whether the applicant has paid rent and utilities on time, whether the applicant has a pattern of disturbing neighbors or destroying property, and whether the applicant

⁵⁹⁶ In California, there are several PHAs that do not have a public housing program. As a result, these PHAs do not maintain an ACOP.

⁵⁹⁷ See Toolkit, Appendices 31, 32, and 33.

has a pattern of evictions. Such screening policies may have the effect of excluding survivors who have negative tenancy or credit history due to acts of violence or financial abuse committed against them. Advocates should urge PHAs to consider whether an applicant would be suitable for public housing but for a negative history caused by domestic violence. If the negative history was the consequence of domestic violence, the PHA should not deny the household assistance.

10.2.3.2 Emergency Transfers

A domestic violence survivor living in public housing may need to move or “transfer” to another public housing unit to protect her safety. PHAs set forth their policies regarding public housing transfers in the ACOP. In many jurisdictions, unless a tenant qualifies for an emergency or priority transfer, the tenant may have to wait several weeks or even months before the transfer is granted. Advocates should therefore ask PHAs to adopt policies that provide emergency transfers or Section 8 vouchers for public housing tenants who are at significant risk of harm as a result of incidents or threats of domestic violence. This approach has been encouraged by HUD in its Public Housing Occupancy Guidebook, which states that “PHAs may adopt a transfer policy that includes a preference for victims of domestic violence who wish to move to other neighborhoods or even other jurisdictions. One tool PHAs may choose to use is the issuance of a voucher to the victimized family.”⁵⁹⁸

To ensure that survivors are granted transfers in a timely fashion, advocates should recommend that PHAs act on domestic violence transfer requests within a certain timeframe, such as 10 business days. Finally, advocates should ask PHAs to adopt a policy that the address to which a domestic violence survivor

has relocated will be kept strictly confidential and will not be shared with any person outside the PHA unless the survivor voluntarily waives confidentiality.

It should be noted that at least one court has found that a PHA was not obligated to provide a transfer to a domestic violence survivor where the PHA’s ACOP did not provide for such transfers.⁵⁹⁹ Under the PHA’s ACOP, the only crime victims who were eligible for transfers were victims of federal hate crimes. Accordingly, advocates should press for policies that explicitly state that incidents of domestic violence are grounds for an emergency or priority transfer.

10.2.3.3 Splitting the Lease

VAWA provides that a PHA may split or “bifurcate” a public housing lease to evict a perpetrator of domestic violence without evicting the victim of such violence.⁶⁰⁰ Advocates should ask PHAs to incorporate this language into the ACOP.

10.2.3.4 Damages to the Unit

Survivors of domestic violence living in public housing often lack the funds needed to pay for damages their batterers cause to their units. As a result, these survivors may face eviction for failing to reimburse the PHA for repairs made to the unit. Advocates should urge PHAs to adopt a policy that where damages to a unit result from an incident of domestic violence, the victim of such violence will not be held liable for such damages. PHAs should instead seek repayment from the perpetrator of such violence.

⁵⁹⁸ See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218-19 (2003).

⁵⁹⁹ *Robinson v. Cincinnati Hous. Auth.*, 2008 WL 1924255 (S.D. Ohio 2008).

⁶⁰⁰ 42 U.S.C. § 1437d(l)(6)(B).

10.2.3.5 Public Housing Leases

In addition to the ACOP, advocates should also urge PHAs to amend their public housing leases to include protections for domestic violence survivors. Under VAWA, public housing leases must include eviction protections for survivors, including a statement that an incident of domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim of that violence.⁶⁰¹ Similarly, public housing leases must include a statement that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the tenancy if the tenant is a victim of that violence.⁶⁰² Further, the lease must contain a statement that the PHA may bifurcate the lease to evict an individual who engages in acts of violence without evicting the victim of such violence.⁶⁰³ Accordingly, advocates should remind PHAs that they must add this language to their public housing leases.

10.2.4 Practice Tips: Advocating with PHAs

As noted above, PHAs are required to submit Annual Plans to HUD each year. Several domestic violence advocates throughout the state have participated in this process by submitting written policy suggestions that would improve survivors' access to housing. Examples of these comments are included in the Toolkit accompanying this Manual to assist advocates who are interested in submitting comments of their own.⁶⁰⁴ Further, it is often helpful to provide PHAs with proposed domestic violence policies. The Toolkit

accompanying this Manual contains sample policies.⁶⁰⁵

Advocates should consider requesting a meeting with the PHA well in advance of the annual planning process to discuss policy changes that would assist survivors. This gives the PHA time to amend its existing policies before the policies are submitted to its board of commissioners for approval. However, even if advocates are too late to participate in the annual planning process during a particular year, they can still begin the process of meeting with the PHA and discussing proposed changes to the Administrative Plan and ACOP. Other issues that advocates should raise with the PHA include whether the PHA has trained its staff and Section 8 landlords on domestic violence and VAWA; whether the PHA has adequately notified tenants and Section 8 landlords of their rights and obligations under VAWA; and whether the PHA has a protocol for staff members who become aware that an applicant or participant is experiencing domestic violence.

The PHA may be more receptive to working on these issues if advocates begin by explaining the services they can provide to the PHA, such as training and materials on recognizing, understanding, and addressing domestic violence. The PHA may also be more receptive if advocates have secured the support of other organizations, elected representatives, or members of the PHA's board of commissioners. Where appropriate, advocates should volunteer to take referrals from PHA staff members who are assisting applicants or tenants who are experiencing domestic violence.

Advocates who submit written comments during the annual planning process should also attend the public hearing on the PHA's plan. This hearing is held before the PHA's board of commissioners, who likely will be interested in hearing what the PHA is doing to comply with VAWA. After the PHA planning process has

⁶⁰¹ § 1437d(l)(5).

⁶⁰² § 1437d(l)(6)(A).

⁶⁰³ § 1437d(l)(6)(B).

⁶⁰⁴ See Toolkit, Appendices 31 and 32.

⁶⁰⁵ See Toolkit, Appendix 33.

ended, advocates should contact the PHA regularly to determine what it is doing to implement the advocates' policy suggestions.

10.3 Other Planning Documents

In addition to PHA plans, advocates should consider participating in several other planning processes that may affect the availability of housing for domestic violence survivors. This section discusses four planning documents: Consolidated Plans, Housing Elements, Continuum of Care Plans, and Qualified Allocation Plans.

10.3.1 Consolidated Plan

Consolidated Plans (ConPlans) are five-year plans that state and local governments submit to HUD to receive money from four HUD programs: the Community Development Block Grant (CDBG) program, the HOME program, the Housing Opportunities for Persons with AIDS (HOPWA) program, and the Emergency Shelter Grants (ESG) program. ConPlans must identify certain housing needs and develop strategies for addressing those needs. Under VAWA, jurisdictions are required to describe in the ConPlan their estimated housing needs for victims of domestic violence, dating violence, sexual assault, and stalking.⁶⁰⁶ Additionally, HUD's ConPlan regulations require jurisdictions to conduct a study known as the Analysis of Impediments (AI) that describes the barriers residents face in choosing housing in an environment free from discrimination.⁶⁰⁷ The AI often contains helpful information and statistics regarding demographics, incidences of housing discrimination within a community, and availability of affordable housing.

Large cities and urban counties have their own ConPlans. Small cities and rural counties are part of a state or region's ConPlan. To obtain a copy of the ConPlan, advocates should

contact their local housing commission or community development agency. In many jurisdictions, agencies have posted their ConPlans on their websites.

During each year of the five-year ConPlan, jurisdictions must hold at least two public hearings, and there must be a 30-day review and comment period before the hearings.⁶⁰⁸ Advocates seeking to address the barriers domestic violence survivors face in obtaining housing can assist during the planning process by providing information on survivors' housing needs, and suggesting strategies for addressing those needs. Such strategies could include building or rehabilitating transitional housing, supporting emergency shelters, providing supportive services for survivors, or amending policies that have the effect of excluding survivors from housing. As an example, Orange County's 2005-2010 ConPlan stated that one of the community's goals was to address the housing needs of survivors of domestic violence by providing funding for 20 transitional housing units for survivors using HOME funds.⁶⁰⁹

10.3.2 Housing Element

California law requires every city and county to adopt a General Plan that governs land use and planning decisions.⁶¹⁰ As part of the General Plan, local governments must develop a Housing Element that addresses the housing needs of all economic segments of the

⁶⁰⁸ 42 U.S.C. §§ 12705(b)(1), 5304(a)(3)(D), 5304(a)(2)(C).

⁶⁰⁹ Orange County, Consolidated Plan for 2005-2010, at 79.

⁶¹⁰ CAL. GOV'T CODE §§ 65580 *et seq.* For detailed information regarding the Housing Element, see California Department of Housing and Community Development, Building Blocks for Effective Housing Elements, http://www.hcd.ca.gov/hpd/housing_element2/index.php; California Affordable Housing Law Project, California Housing Element Manual (2d ed. 2009), [http://www.pilpca.org/www/docs/CALIFORNIA%20HOUSING%20ELEMENT%20MANUAL%202nd%20Ed%20\(January%202009\)%20P.pdf](http://www.pilpca.org/www/docs/CALIFORNIA%20HOUSING%20ELEMENT%20MANUAL%202nd%20Ed%20(January%202009)%20P.pdf).

⁶⁰⁶ § 12705(b)(1).

⁶⁰⁷ 24 C.F.R. § 91.225(a)(1).

community. Many of the Housing Element's requirements are similar to the ConPlan in that they require an assessment of the community's housing needs and the adoption of a strategy for addressing those needs.⁶¹¹ Local governments must prepare a new housing element every five years and submit it to the California Department of Housing and Community Development (HCD).⁶¹² The Housing Element is typically developed by the jurisdiction's planning department/commission.

Local governments are required to obtain public participation from all economic segments of the community in developing their Housing Element.⁶¹³ Advocates can participate in the Housing Element planning process by attending public hearings and submitting written comments. Hearings are usually held before the jurisdiction's planning department/commission and the city council or board of supervisors.

Of particular importance to domestic violence advocates are Housing Element requirements regarding homelessness and emergency shelters. The Housing Element must identify and analyze the needs of homeless persons and families.⁶¹⁴ The analysis should include the percentage of the homeless population who are survivors of domestic violence, the number and type of existing shelter beds, the number of units of transitional housing, the degree of unmet homeless needs, and the extent of need for emergency shelters.⁶¹⁵ Domestic violence advocates can assist in the development of the Housing Element by providing their jurisdictions with this information.

The Housing Element must also identify at least one zone where emergency shelters are

permitted without a conditional use permit.⁶¹⁶ The Housing Element should consider what other uses are permitted in the zone and whether the zone is suitable for emergency shelters. This is another area in which domestic violence advocates' input will be helpful, particularly in explaining whether the location of a shelter built in the proposed zone can realistically remain confidential. The identified zone or zones must have sufficient capacity to meet the need for shelters identified in the Housing Element.⁶¹⁷

Advocates can determine whether their jurisdiction's Housing Element is currently under review by visiting HCD's website.⁶¹⁸ Advocates can obtain a copy of their jurisdiction's Housing Element by contacting HCD, the local government's housing division, planning department/commission, or community development department.

10.3.3 Continuum of Care Plan

The Continuum of Care (Continuum) is a process in which local government agencies, community-based organizations, service providers, and advocates meet to assess the needs of homeless individuals and develop a plan for providing housing and services to this population. Once the plan is developed, the Continuum applies for funding from HUD's McKinney-Vento homeless programs for housing and supportive services. The Continuum may cover whatever jurisdiction (such as a city, county, region, or state) that the local participants determine is reasonable.

Domestic violence advocates should participate in the Continuum planning process to ensure that survivors' interests are represented in the plan as well as the application for McKinney-Vento funds. Further, by taking part

⁶¹¹ See CAL. GOV'T CODE § 65583(b).

⁶¹² § 65583(c).

⁶¹³ § 65583(c)(6)(B).

⁶¹⁴ § 65583(a)(7).

⁶¹⁵ Memorandum from Cathy E. Creswell, Deputy Dir., Div. of Hous. Policy Dev. to Planning Directors and Interested Parties 7 (May 7, 2008), http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

⁶¹⁶ § 65583(a)(4).

⁶¹⁷ § 65583(a)(4).

⁶¹⁸ California Department of Housing and Community Development, Housing Elements, <http://housing.hcd.ca.gov/hpd/hrc/plan/he/>.

in the Continuum process, advocates can influence the community's priorities for serving homeless populations. Contact information for each Continuum in California is available on HUD's Continuum of Care website.⁶¹⁹ In participating in the Continuum process, advocates should be prepared to submit data establishing survivors' needs for housing and services, such as numbers of clients served (or turned away due to lack of resources).

the QAP planning and public hearing process to advocate for housing that serves the needs of domestic violence survivors. Alternatively, advocates can work with community-based organizations and developers to submit applications for tax credits for housing that serves domestic violence survivors.

10.3.4 Qualified Allocation Plan

The U.S. Department of Treasury distributes tax credits to California for the construction or rehabilitation of housing under the Low Income Housing Tax Credit Program (LIHTC). The California Tax Credit Allocation Committee then allocates these tax credits to housing projects in accordance with its Qualified Allocation Plan (QAP). The QAP sets forth the state's LIHTC allocation plan and project selection criteria.⁶²⁰ Although California's QAP does not contain provisions regarding domestic violence, states have discretion to provide preferences or set-asides for projects that serve special needs populations, including survivors of domestic violence.⁶²¹

The state must update its QAP annually, and it must hold a public hearing on the QAP. A copy of California's QAP is available on the state treasurer's website.⁶²² Advocates can use

⁶¹⁹ HUD, Community Planning & Development, Continuum of Care, Homeless Assistance Programs—California, <http://www.hudhre.info/index.cfm?do=viewCocContacts&st=CA&cSort=cocNum>.

⁶²⁰ 26 U.S.C. § 42(m)(1)(A)(I).

⁶²¹ See, e.g., Kentucky Housing Corporation, 2008 Qualified Allocation Plan 6 (providing a \$530,000 set-aside for the Kentucky Domestic Violence Association), available at http://www.kyhousing.org/uploadedFiles/Housing_Production/Rental_Production_Programs/QualifiedAllocationPlan.pdf.

⁶²² Low Income Housing Tax Credit Programs, Qualified Allocation Plan (Feb. 21, 2007), <http://www.treasurer.ca.gov/ctcac/qap.pdf>.



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