

VAWA Eviction Defense Practices

The Violence Against Women Reauthorization Act of 2022 (VAWA 2022) provides protections for survivors of domestic violence, dating violence, sexual assault, and stalking who seek to access or maintain federally-assisted housing.¹ VAWA 2022 continues the housing safeguards developed under prior reauthorizations, expands housing protections for survivors, and explicitly creates a process for filing complaints under VAWA. For information on the expanded housing protections, see [The Violence Against Women Reauthorization Act of 2022: What Survivor Advocates Need To Know](#) (September 2022).² This article focuses on VAWA eviction defense practices.

Housing Covered by VAWA

VAWA covers many federal housing programs (“covered housing programs”) under the United States Departments of Housing and Urban Development (HUD), Department of Agriculture Rural Development (RD) Program, Department of the Treasury Low-Income Housing Tax Credit housing (LIHTC), Department of Veterans Affairs (VA), along with “any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means.”³

Parties Whom VAWA Protects

VAWA protects any individual who is or has been a survivor of actual or threatened VAWA crimes, and is living in, or seeking admission to, any of the covered housing programs. VAWA also protects a VAWA crime victim’s “affiliated individual,” defined as a spouse, parent, sibling, or child of that victim; an individual to whom the victim stands in loco parentis; or an individual, tenant, or lawful occupant in the victim’s household. VAWA applies to survivors of all gender identities, including male survivors; VAWA also protects LGBT survivors.⁴

Notice of VAWA Rights

Each termination notice must include the VAWA Notice of Occupancy Rights under the Violence Against Women Act (Form HUD 5380 - <https://www.hud.gov/sites/documents/5380.docx>) and a VAWA certification form (Form HUD 5382 -

¹ *Consolidated Appropriations Act of 2022*, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), codified at 34 U.S.C.A. § 12491, et seq. (West 2024).

² See generally, National Housing Law Project, *HUD Housing Programs: Tenants’ Rights*, § 13.3 (“Green Book”).

³ 34 U.S.C.A. § 12491(a)(3) (West 2024) (listing covered housing programs). See Green Book at § 13.3.2 (list of covered programs).

⁴ See generally 34 U.S.C.A. § 12491 (West 2024); 24 C.F.R. § 5.2005(a)(3) (2024); HUD, Violence Against Women Reauthorization Act of 2013 Guidance, Notice PIH-2017-08 (HA) at §6 (May 19, 2017) (“PIH-2017-08”), <https://www.hud.gov/sites/documents/PIH-2017-08VAWRA2013.PDF>; Green Book at § 13.3.4.

<https://www.hud.gov/sites/documents/5382.docx>) to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault, or stalking.⁵ Congress mandated the above notice requirements.⁶ This requirement is not limited to evictions in which the owner suspects there may be possible gender-based violence. It is required in every case.⁷ In *DHI Cherry Glen Associates, L.P. v. Gutierrez*, which involved an eviction from project-based Section 8 housing, the court held that the landlord must include a notice of occupancy rights under VAWA with the notice to vacate.⁸ The appellate court reversed the trial court judgment of eviction because the landlord did not include the VAWA notice with the notice of lease termination.⁹

Protections Against Eviction or Subsidy Termination¹⁰

VAWA prohibits covered housing providers from evicting or terminating tenants “on the basis that the . . . tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the . . . tenant otherwise qualifies for admission, assistance, participation, or occupancy.”¹¹ The HUD VAWA 2013 Rule similarly prohibits eviction or subsidy termination “on the basis or as a direct result of the fact that the applicant or tenant is or has been a [VAWA] victim.”¹²

VAWA provides that actual or threatened VAWA violence or abuse will not be construed as a serious or repeated lease violation committed by the survivor and will not be considered good cause for terminating the survivor’s tenancy or rental assistance.¹³ VAWA prohibits the eviction of a tenant “solely on the basis of criminal activity directly relating to” a VAWA crime if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the crime.¹⁴ VAWA also prohibits retaliation, intimidation, and interference with a VAWA housing right in covered housing.¹⁵ This could include when a covered housing provider does not to allow a

⁵ See 24 C.F.R. § 5.2003 (defining covered housing program); § 5.2005 (a)(2)(iii) (2024).

⁶ See 34 U.S.C. § 12491(d) (2) (“Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program – ... (C) with any notification of eviction or notification of termination of assistance.”) (emphasis added).

⁷ See *id.*; 24 C.F.R. § 5.2005(a)(2)(iii) (2024) (“The notice ... and certification form ... must be provided to ... tenant no later than at each of the following times: ... With any notification of eviction or notification of termination of assistance.”).

⁸ 259 Cal. Rptr. 3d 410, 415-17 (Calif. App. Div. 2019),

⁹ *Id.* at 417. See *Housing Authority of City of Hartford v. Shahine*, 2022 WL 2663954 (Conn. Super. Ct. Apr. 26, 2022) (unpublished) (followed *DHI Cherry Glen Associates, L.P.*; dismissed public housing eviction action for failure to include notice of VAWA rights with notice to quit). For other notice requirements for evictions and subsidy terminations, see Green Book at § 11.3.

¹⁰ See generally Green Book at 13.3.5.

¹¹ 34 U.S.C.A. § 12491(b)(1) (West 2024).

¹² 24 C.F.R. § 5.2005(b)(b) (2024); PIH-2017-08 at § 7.

¹³ 34 U.S.C.A. § 12491(b)(2) (West 2024); 24 C.F.R. § 5.2005(c) (2024).

¹⁴ 34 U.S.C.A. § 12491(b)(3)(A) (West 2024); 24 C.F.R. § 5.2005(b)(2) (2024).

¹⁵ 34 U.S.C.A. § 12491 (West 2024).

survivor seeking VAWA assistance to exercise their housing rights, such as a request for a family break-up.

The courts have recognized that a tenant who has not previously informed their landlord of gender-based violence is not precluded from raising a VAWA defense in court.¹⁶

Finally, VAWA Section 603 of VAWA 2022, also discussed *infra* at §13.3, protects the right of tenants, owners, and others to report crime and seek emergency assistance on their own behalf or on behalf of another person in need of assistance.¹⁷ This protection is available regardless of a person's survivor status.

Sample Nonpayment of Rent Defenses

The landlord alleged that the tenant owes charges for damage that are the result of domestic violence, dating violence, sexual assault or stalking. First, it is important to recognize that economic abuse is very common among survivors, where perpetrators will steal or withhold funds, or even prevent a survivor from paying the rent, in order to threaten their housing stability. Here are several potential VAWA defenses:

1. The rent the landlord is trying to collect from the tenant incorrectly includes the income of the abuser/attacker/stalker who is excluded from the household. The rent must be recalculated by the landlord, based on the tenant's actual household composition and income, before the court can determine how much rent the landlord has a right to collect from the tenant.
2. The rent has not been paid as a result of domestic violence (including economic abuse), dating violence, sexual assault or stalking so cannot be the basis to evict the tenant. The landlord is obligated to consider and wrestle with the connection between the violence and the non-payment.
3. The landlord is retaliating against the tenant as a result of domestic violence, dating violence, sexual assault or stalking or reporting the same.¹⁸

Sample Breach of Lease Defenses

The landlord alleged breach of the lease by damage to the premises that are the result of domestic violence, dating violence, sexual assault and stalking. Potential VAWA defenses include that:

¹⁶ Boston Housing Authority v. Y.A., No. SJC 12623 (Sup. Jud. Ct. May 10, 2019), <https://www.nhlp.org/wp-content/uploads/ch.-13-fn-160-BPHA-v-YA-2019.pdf>. See Green Book at § 13.3.7.

¹⁷ 34 U.S.C. § 12495 (West 2024).

¹⁸ See 34 U.S.C. § 12491, *et seq.* (West 2024); 24 C.F.R. § 5.2005 (2024).

1. The breach(es) alleged by the landlord are the result of domestic violence, dating violence, sexual assault or stalking so they are not (1) serious or repeated violation(s) of the lease, (2) material violation(s) of the lease, or (3) other good cause.
2. The landlord is retaliating against the tenant as a result of domestic violence, dating violence, sexual assault or stalking or reporting the same.¹⁹
3. The landlord is blaming the victim for the acts of violence against them, which violates VAWA and potentially the Fair Housing Act.

Sample Remedies

There are a variety of remedies that a survivor can request with support of their legal advocate. What strategy or remedy is deployed may depend on the survivor's support network, safety concerns, and other factors. Survivors, not housing providers, should dictate what are the appropriate remedies.

Demand the landlord to accept the tenant's VAWA certification of domestic violence, dating violence, sexual assault or stalking, withdraw its termination notice and dismiss the action with prejudice.

Ask the landlord to evict the abuser/ attacker/stalker, but not evict the tenant or the rest of the tenant's household.

Request from the landlord an emergency transfer to another unit or property.

Ask the landlord to execute a new lease with the tenant that does not include the abuser/ attacker/stalker, in the household. If the landlord has not established the tenant's eligibility for the housing program, ask the landlord to allow the tenant time to establish eligibility. If the tenant cannot establish eligibility for this housing program, then the landlord must provide the tenant with a reasonable time to find new housing.

Ask the landlord to recertify/recalculate the tenant's rent without the income of the abuser/attacker/stalker if no longer a member of the tenant's household.

If permitted under state law, request to seal any information in the court file that contains information about any incidents of domestic violence, sexual assault or stalking, including the tenant's address, so it is not accessible to anyone but court employees, the tenant or the landlord for the purposes of the action.

¹⁹ *Id.* See L. McDonough, L. Wood, J. Hearne, & D. Brooks, Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth at 44-46 (2024) ("Wait A Minute"), <https://povertylaw.homestead.com/WaitAMinute.html>.

Ask the court to order any of the above remedies.²⁰

Help

For more information or guidance on the VAWA eviction defense practices, review the Green Book at §§ 11 and 13.3, Natalie Maxwell, nmaxwell@nhlp.org and Larry McDonough, lmcdonough@nhlp.org.

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²⁰ See 34 U.S.C. § 12491, *et seq.* (West 2024); 24 C.F.R. § 5.2005 (2024); PIH-2017-08; Wait A Minute at 48-52; Green Book at § 13.3.7.