

Fair Housing and Gender: Advancing the Rights of Survivors of Domestic & Sexual Violence

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FAIR HOUSING LAWS AND LITIGATION
CONFERENCE
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HOUSING JUSTICE

National Housing Law Project

Goals

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- Briefly discuss the intersection between the Fair Housing Act and domestic violence
- Explore additional protections for survivors
- Discuss how to advocate for survivor clients using fair housing and other laws

Fair Housing and Domestic Violence

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Domestic Violence and Fair Housing

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- Many do not initially think of domestic violence as a fair housing issue, but it is!
- Women are disproportionately impacted by domestic violence and other forms of abuse.
- For example, according to the U.S. Bureau of Justice Statistics, 82% of victims of intimate partner violence are women.
- Therefore, policies that impact survivors can have a disproportionate effect on women, or may be based upon gender stereotypes. These may violate fair housing laws.

Fair Housing Laws

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- Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- CA Fair Employment and Housing Act, Cal. Gov. Code §§ 12900-12996.
- Apply to all housing, with few exceptions
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class

Statistics: Domestic Violence and Sex

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- Survivors are not a protected class under the FHA or CA FEHA, but most survivors are female.
- Statistics:
 - HUD FHEO DV Memo: “[W]omen are five to eight times more likely than men to be victimized by an intimate partner...”
More than 70% of those murdered by their intimate partners are women.
 - U.S. Bureau of Justice Statistics (2014): A study spanning 2003-2012 found that 76% of domestic violent victimizations were perpetrated against women.

Common Discriminatory Policies

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- Evictions or subsidy terminations based on violence against a survivor can violate fair housing laws.
- Examples of **intentionally discriminatory policies**:
 - Policies based on gender stereotypes
 - ✦ **Ex:** An owner evicts women with a history of domestic violence because “they always go back to the men who abuse them.”
 - Treating women differently because of their status as survivors of DV
 - ✦ **Ex:** A landlord evicts a survivor because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police.
 - ✦ **Ex:** A landlord evicts a survivor because of damage caused to her unit by her abuser, but does not evict a male tenant due to damage caused by a break-in.

Common Discriminatory Policies (cont.)

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- Additionally, **neutral policies** that negatively affect survivors may violate the FHA because of their disparate impact on women.
 - ✦ **Ex:** A housing provider has a zero-tolerance policy, under which the entire household can be evicted for the criminal act of one household member. This policy disproportionately affects women because they are the majority of DV survivors.
 - ✦ As a result, the housing provider should make exceptions to the zero-tolerance policy for DV survivors in order to avoid a disparate impact on women.
- Policies, such as credit history and criminal background policies, may also disproportionately impact survivors because poor credit history or a prior criminal record may be a direct result of the abuse.
 - Note that establishing a link is key here, however.

Case Study

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- Imagine Anytown, CA has an ordinance that would penalize landlords of properties where the police was called three times in four months for “disorderly behavior.”
- Jenny, a resident of Anytown, has an abusive ex-boyfriend. She has called the police several times because her ex has hit her and continues to threaten her.
- Jenny has been told by her landlord that she will be evicted if she calls the police one more time, in accordance with the ordinance.
- Is such an ordinance lawful? Why or why not?

Case Study: *Briggs* Litigation

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- Norristown, PA had such an ordinance (called a “three strikes rule”).
- The Norristown ordinance had no exceptions for DV survivors calling the police.
- Lakisha Briggs, a DV survivor, faced eviction because she called the police too many times over a certain time period.
- Ms. Briggs sustained serious injuries from her abuser because she was afraid to call the police out of fear of losing her housing.

Case Study: *Briggs* (cont'd)

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- The ACLU brought a lawsuit against Norristown, alleging violations of the Fair Housing Act.
 - Alleged that ordinance disproportionately impacted women
 - Alleged that, in adopting the ordinance, Norristown intentionally discriminated against Ms. Briggs
 - Complaint alleged series of other violations, including VAWA
 - ✦ *Briggs v. Norristown*, 2:13-cv-02191-ER (E.D. Pa. 2013)
- HUD subsequently initiated its own administrative complaint on the grounds that the ordinance violated the FHA due to its impact on survivors.
- Norristown settled both actions, and repealed the ordinance.

Additional Protections for Survivors

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**VIOLENCE AGAINST WOMEN ACT (VAWA) &
CALIFORNIA PROTECTIONS**



What is the Violence Against Women Act?

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- VAWA protects individuals who are applying for or living in federally subsidized housing from discrimination due to acts of domestic violence, dating violence, sexual assault, and stalking committed against them.
- Applies to men and women
- Only applies to federally subsidized housing programs
 - E.g., Section 8 Vouchers, public housing, etc.
- VAWA 2013 expands protections to include survivors of sexual assault, LGBT survivors, and all members of a survivor's household (beyond relatives), among other important changes.

VAWA 2013 – Authority and Guidance

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- VAWA 2013 maintains VAWA 2005's housing safeguards and adds new protections. 42 U.S.C. § 14043e-11
- HUD's final regulations implementing VAWA 2005, 75 Fed. Reg. 66,246 (Oct. 27, 2010), continue to apply.
- HUD notice applying VAWA 2013 to HUD programs, 78 Fed. Reg. 47,717 (Aug. 6, 2013)
- RD notice to state directors and program directors of multifamily housing, RD AN No. 4747 (1944-N) (Feb. 10, 2014), updated by RD AN No. 4778 (1944-N) (Jan. 5, 2015)

VAWA: Key Provisions

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- Housing authorities, landlords, and owners cannot deny admission/assistance or terminate/evict a survivor of domestic violence, dating violence, sexual assault, or stalking because of the violence committed against him/her.
- A housing authority or landlord can bifurcate a survivor's lease to remove the abuser while the survivor remains in the unit.
 - If abuser was the only individual eligible for a housing subsidy, VAWA 2013 provides those who remain in the unit the opportunity to establish eligibility for the current unit or another unit covered by VAWA 2013 (or to find new housing).
- A housing authority can allow a survivor family to move to another jurisdiction with a Section 8 voucher, even before the lease term has expired, if the family has complied with other program requirements and the family is moving to safety.
- VAWA 2013 requires that federal agencies with covered programs adopt model emergency transfer plans.

VAWA: Key Protections (cont.)

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- Survivors can generally choose from three types of documentation to prove domestic violence
 - Exception if there are conflicting certifications
- VAWA 2013 requires that HUD develop a notice of VAWA rights to be distributed upon admission, denial, or eviction/subsidy termination. This notice must be translated into different languages.
- Housing providers must take steps to keep information about survivors confidential.
- VAWA does not preempt more protective federal, state, or local laws.

Several important provisions, including the creation of the model emergency transfer plan, require implementation by federal agencies administering covered housing programs, including HUD.

California Protections

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- **Under California law, survivors who rent their homes enjoy the following protections:**
 - Survivors generally cannot be evicted based on acts of domestic violence, stalking, sexual assault, human trafficking, or elder/dependent adult abuse committed against the tenant or a household member.
 - ✦ Cal. Code Civ. Proc. § 1161.3
 - Landlords must change exterior locks within 24 hours of the survivor providing a written request and additional documentation. Otherwise, the survivor can have them changed without the landlord's permission.
 - ✦ Cal. Civ. Code §§ 1941.5, 1941.6

California Protections (cont.)

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- **California survivor protections continued:**
 - Survivors seeking to relocate to safety can terminate their leases early by providing 30 day's written notice, along with additional documentation.
 - ✦ Cal. Civ. Code § 1946.7
 - ✦ Note the survivor will be liable for up to 30 days' rent.
 - "Local agencies," including cities and towns, cannot compel landlords to evict/fail to renew a tenancy because the tenant (or a household member) is a victim of DV. Additionally, these local agencies cannot require a landlord to evict/fail to renew a tenancy because of 911 calls related to DV.
 - ✦ Cal. Gov. Code § 53165 (effective Jan. 1, 2015)

Jenny

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- Jenny rents an apartment in Sacramento. She is divorced, and resides with her two minor children. Jenny has previously allowed her ex-husband to visit their children at the apartment. Recently, the ex-husband has become violent towards her. Despite telling her ex he is no longer welcome, he has begun showing up at the unit unannounced. Afraid for the safety of herself and her children, Jenny has called the police on several occasions.
- Scenario 1: Jenny's landlord is now seeking to evict her because of unit damage caused during one of her ex's violent episodes. What can Jenny do to defend the eviction? Does it matter if the unit is subsidized?

Scenario 1

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- Jenny has eviction defenses under state and federal law.
 - CA Code Civ. Proc. § 1161.3
 - Fair Housing Act
 - VAWA 2013 (only if her apartment is federally subsidized and under a program covered by VAWA 2013)
 - Refer to VAWA 2005 regulations, 24 C.F.R. § 5.2005
- What other steps can Jenny take to secure her home?
 - Jenny can request that the landlord change the locks, and the landlord must do so within 24 hours.

Scenario 2

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- **Scenario 2: What if Jenny wants to leave her unit because her ex-husband knows where she lives, and she doesn't feel safe?**

Scenario 2

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- **There are several ways for Jenny to get out of her unit and relocate to safety.**
 - Under CA Civ. Code § 1946.7, Jenny can give notice to her landlord plus supporting documentation. Note that Jenny will be responsible for an additional 30 days' rent.
 - If the unit is federally subsidized, VAWA offers Jenny protections.
 - ✦ If Jenny has a Section 8 voucher, she can use the voucher to relocate, and is not bound by certain voucher rules that restrict the timing of moves.
 - ✦ If Jenny has another type of subsidy, she can request an emergency transfer. Note that this provision is not yet fully implemented under VAWA 2013.

Advocating for the Housing Rights of Survivors

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Advancing the Housing Rights of Survivors

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- **Training, education, and outreach**
 - Informing housing providers of protections and providing information about legal protections, as well as the nature of domestic violence (cycle of abuse, etc.)
 - Building coalitions with transitional housing and DV service providers
- **Informal advocacy**
 - Meet with housing provider or write a letter explaining the link between the survivor's current situation and abuse.
 - ✦ Ex: If a survivor has poor credit history, write a letter outlining the link between the negative credit and the abuse. (NHLP has samples.)
 - Appeal to the landlord's common law obligation to provide safe housing/speak to their interests.
 - Work with the housing provider to better secure the premises, or to find a way by which the survivor can move to safety.
 - ✦ If the housing provider says there is a threat, reference VAWA 2005 regulations, 24 C.F.R. § 5.2005 (d), (e)

Advancing Housing Rights (cont.)

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- **Administrative advocacy**
 - Commenting on housing authority plans, Analyses of Impediments (Assessment of Fair Housing)
 - Advocate for changes to admissions policies to take DV into account.
 - VAWA 2005 requires that housing authority planning documents describe any PHA activities, programs, or policies that involve serving survivors.
- **Eviction defenses**
 - Raising a violation of VAWA or of fair housing laws as an eviction defense
 - CA Code Civ. Proc. § 1161.3
- **Fair housing administrative complaint**
 - One-year statute of limitations
- **Civil lawsuits**
 - Private right of action for VAWA?
 - FHA has a two-year statute of limitations.

Things to Look for in PHA Planning Documents

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- **Do these documents adequately acknowledge/address the needs of survivors in my community?**
 - Ex: Does the AI/AFH discuss the obstacles preventing survivors from obtaining safe, affordable housing? Do the planning documents discuss the link between DV and homelessness?
- **Have these planning documents been updated to include the basic protections of VAWA 2013?**
 - Ex: Including protections for survivors of sexual assault, extending protections to “affiliated individuals,” permissible documentation, etc.
 - Additional requirements will arise when HUD issues its VAWA 2013 regulations, so advocates must be on the lookout for these new obligations.

Final Takeaways

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- Think of domestic violence as a fair housing issue.
- When evaluating policies from a fair housing lens, think of the needs of survivors and their families.
- Working with housing providers (landlords, housing authorities) is crucial. Engage local housing authorities by commenting on planning documents.
- Stay up-to-date on developments regarding VAWA 2013 implementation.
- Read FHEO memo about domestic violence:
<http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>
- Access NHLP resources at <http://nhlp.org/OVWgrantees>

Thank You!

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