

# Rental Housing Rights of Domestic Violence Survivors

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BAY AREA LEGAL AID REGIONAL FAIR HOUSING  
TRAINING  
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HOUSING JUSTICE

National Housing Law Project

# Overview

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- Fair housing laws and domestic violence
- California protections for survivors
- VAWA 2013 overview

# Goals for Today

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- Attendees will be able to identify key federal and state protections for survivors of domestic violence and other crimes.
- Attendees will understand the contexts in which these protections do (and do not) apply.

# Fair Housing and Domestic Violence

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**THE FAIR HOUSING ACT CAN PROVIDE PROTECTIONS FOR SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM**



## The Relationship Between Fair Housing & Domestic Violence

Memo from Sara K. Pratt, HUD Deputy Assistant Secretary for Enforcement and Programs, to FHEO Office Directors and FHEO Regional Directors (Feb. 9, 2011), pgs. 1-2.

“Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers...Housing authorities and landlords evict victims under **zero-tolerance crime policies**, citing the violence of a household member, guest, or other person under the victim’s ‘control.’ Victims are often evicted after **repeated calls to the police** for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of **property damage** caused by their abusers. In many of these cases, adverse housing action **punishes victims for the violence inflicted upon them**. This ‘double victimization’ is unfair, and as explained in this guidance, may be illegal” (citations to footnotes omitted).

# 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
- Protected categories

# Statistics: Domestic Violence and Sex

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- Survivors are not a protected class under the Fair Housing Act, but most 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: 85% of victims of intimate partner violence are women.
  - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4 times as likely as men to be victims of domestic violence.

# Common Discriminatory Policies

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- Evictions or terminations based on violence against a survivor can violate fair housing laws.  
Examples:
  - Policies based on gender stereotypes may violate the Fair Housing Act (FHA)
    - ✦ 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 may violate the FHA
    - ✦ Ex: A landlord evicts a DV 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
  - Evictions for property damage caused by the abuser



# Common Discriminatory Policies (cont.)

- HUD's DV Memo (included in materials) also states:
  - A neutral policy that negatively affects DV survivors may violate the FHA because of its disparate impact on women. Example:
    - ✦ A housing provider has a zero-tolerance policy, under which the entire household can be evicted for the criminal act of one household member.
    - ✦ Women are disproportionately affected by the zero-tolerance policy because they are the majority of DV survivors and can be evicted as a result of the violence of their abusers.
    - ✦ 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.

# Nuisance and Crime-Free Ordinances

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- Local laws that penalize landlords and tenants when police are called too many times to the premises within a time period
  - Impose fines or criminal charges on owners
  - Nuisance activities range from violent crime to loitering and disorderly conduct
  - After citation, landlords pressured to evict tenant and abate “nuisance”
- These laws harm and punish domestic violence survivors who seek help from the police for the abuse committed against them.
- *See* ACLU’s “I Am Not a Nuisance” [Website](#)

# Cal. Gov't Code § 53165

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- Local agencies **cannot require a landlord to terminate a tenancy** based on an act against a tenant or a tenant's household member that constitutes domestic violence, stalking, human trafficking, or abuse of an elder or dependent adult, or based on the number of calls made by a tenant to a 9-1-1 system reporting such acts.

# Conciliations/HUD Charges Related to DV

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- Nuisance ordinances
  - Berlin, New Hampshire (2015)
    - ✦ [Conciliation Agreement](#)
  - Briggs v. Norristown, Pennsylvania (2014)
    - ✦ [Conciliation Agreement](#)
- Adverse action against survivor because of attack
  - HUD v. Southgate Apartments (Maryland) (2014)
    - ✦ [HUD Discrimination Charge](#)
  - Alvera v. Creekside Village Apartments (Oregon) (2001)
    - ✦ [HUD Discrimination Charge](#) and [Reasonable Cause Determination](#)

# Conciliations/HUD Charges (cont.)

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- Refusal to rent to renew lease/ rent to survivor due to police calls
  - New Hampshire landlords (refused to renew lease/rent to survivor due to 911 calls/police visits) (2014)
    - ✦ Conciliation Agreement: [New England Family Housing Mgt Org., et al.](#); Conciliation Agreement: [Michael Warren](#)
- Refusal to rent to survivor who refused to provide children's full Social Security Numbers for safety reasons
  - Hope v. Valencia Village (Florida) (2014)
    - ✦ [Conciliation Agreement](#)

## Additional Cases Regarding Fair Housing & DV

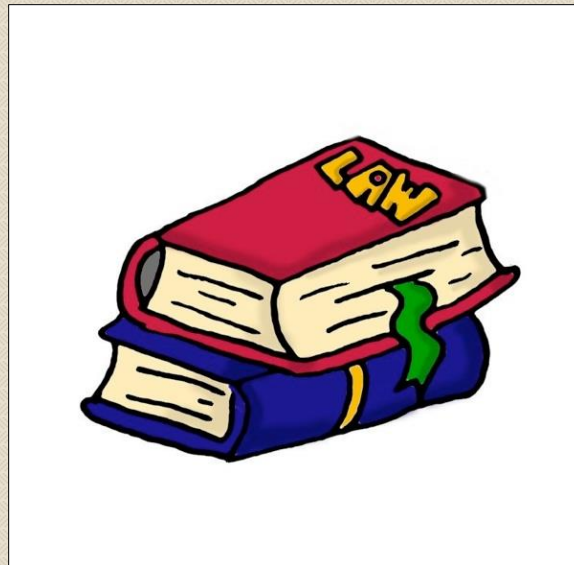
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- *Dickinson v. Zanesville*, 975 F. Supp.2d 863 (S.D. Ohio 2013)
- *Meister v. Kansas City, Kansas Hous. Auth.*, 2011 WL 765887 (D. Kan. Feb. 25, 2011)
- *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005)
- Summaries of these and additional cases on [NHLP website](#)

# California Laws

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**CALIFORNIA LAWS PROVIDE ADDITIONAL HOUSING PROTECTIONS FOR SURVIVORS**



# Beverly

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- Beverly's boyfriend, who does not live with her, kicked in her front door and damaged some of the common areas while assaulting her.
- Assume she does not feel safe living in the unit and wants to leave with her son.
- **Audience: Can Beverly terminate her lease?**
- **Can she ask the landlord to change the locks?**
- **What do you need to know?**



# Breaking the Lease: Cal. Civil Code § 1946.7

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- Must notify landlord in writing
- Must attach copy of protective order, copy of police report or documentation by qualified third party
  - The documentation must be based on information received while the third party was acting in his/her professional capacity
- Protective order or police report issued within last 180 days; no time limit on third-party documentation
- Must pay rent for **14 days** following notice
- If the survivor vacates before the **14-day** period expires, and the premises are re-rented, the survivor's rent must be prorated.
- In your materials – CA Early Lease Termination Toolkit

# Changing the Locks: Cal. Civil Code § 1941.5, 1941.6

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- A survivor who lives with the abuser can only use a restraining order to make this request.
- Must make request in writing and provide R.O. issued within prior 180 days
- R.O. must include a move-out order
- Landlord must change locks within 24 hours of receiving R.O.
- If the landlord refuses, tenant may change the locks without the landlord's permission.
- If the survivor and the perpetrator do not live in the same unit, the same rules apply, but the survivor may also use a police report to request the lock change.
- In your online materials – CA Lock Change Law Brochure

# Beverly

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- Assume the same facts as before (boyfriend assaulted Beverly and caused damage to the unit).
- However, assume that after getting the locks changed and obtaining a restraining order, Beverly would like to remain in the unit.
- What if the landlord initiates eviction proceedings against Beverly, based on the unpaid damages bill?
- **Audience: What can Beverly do?**

# Tenant's Right to Be Protected from Eviction: Cal. Code Civ. P. § 1161.3

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- A landlord cannot evict a tenant based upon an act of domestic violence, sexual assault, human trafficking or stalking, or abuse of an elder or dependent adult.
- Tenant must have
  - (1) a R.O. or police report issued in the last 180 days and
  - (2) the person on the R.O. may not be a tenant of the same dwelling unit.

# Exception to Eviction Protection

- If tenant has already used the eviction defense, landlord can still evict if either of the following apply:
  - Tenant allows the perpetrator to visit the property, OR
  - Landlord reasonably believes that the perpetrator poses a physical threat to other tenants or to the right to quiet possession
- Landlord must give at least 3 days' notice to the tenant to correct a violation of the above.
- In your online materials – CA Eviction Defense Brochure

# Violence Against Women Reauthorization Act of 2013

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**VAWA 2013 PROVIDES IMPORTANT SAFEGUARDS FOR  
SURVIVORS IN FEDERALLY ASSISTED HOUSING**



# What is VAWA?

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- VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse committed against them, without being afraid of being evicted.
- VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them.
- Applies to men and women
- Applies to lesbian, gay, bisexual, and transgender (LGBT) individuals
- **Only applies to federal housing programs**

# VAWA 2013: Housing Programs

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## HUD Programs

- |   |  |
|---|--|
| • Public Housing  | • § 236 Multifamily rental housing                   |
| • Section 8 vouchers  | • § 221d3 BMIR (Below Market Interest Rate)          |
| • Project-based Section 8                                     | • HOME   |
| • Section 202 Supportive Housing for the Elderly              | • HOPWA (Housing Opportunities for People With AIDS) |
| • Section 811 Supportive Housing for People with Disabilities | • McKinney-Vento (Homelessness Programs)             |

## Department of Agriculture

- Rural Development (RD) Multifamily

## Department of Treasury/IRS

- Low Income Housing Tax Credit (LIHTC)

[www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees)



# What Kind of Federal Subsidy is Involved?

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- VAWA only applies to federal housing programs.
- To help identify whether there is a VAWA-covered federal housing program involved:
  - Preservation Database
    - ✦ <http://preservationdatabase.org/>
    - ✦ Public Housing, HUD mortgages, project-based rental assistance, LIHTC, Rural Development
  - Look at the lease or housing assistance contract
  - Contact the National Housing Law Project
    - ✦ NHLP has outlines that provide more information on the various federal housing programs

# Who is Protected?

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## **VAWA covers people who are subject to:**

**Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim

**Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

**Sexual assault:** Any nonconsensual sexual act prohibited by law

**Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

**“Affiliated individual” of the victim:** Immediate family or any individual living in the household

# Admissions

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- Public housing authorities (PHAs), landlords, and owners cannot deny an applicant housing on the basis that an applicant is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking.



# Ada

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- Ada fled her public housing unit after being attacked repeatedly by her abuser.
- Ada notified the PHA that she had moved out, but the PHA continued to charge her for rent after she left.
- Two years later, Ada's name was at the top of the Section 8 voucher waiting list.
- The PHA refused to process her application unless she paid the back rent on her public housing unit.
- **Audience: Did the PHA's rejection of Ada's application violate VAWA? FHA?**

# Evictions

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- Housing authorities, landlords, and owners may not evict a tenant on the basis that s/he is or has been a survivor.
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating his/her rental subsidy.
- An incident of actual or threatened domestic or sexual violence does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating his/her rental subsidy.

# Sonya

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- Sonya is a Section 8 voucher tenant:
  - Sonya's ex-boyfriend, John, cut himself while breaking into her unit. A security guard responded to the incident and made a report to management.
  - Soon after, Sonya received an eviction notice for nuisance due to "several domestic disputes between you and John."
  - Sonya had several police reports and a restraining order documenting John's violence against her.
- A court found that the landlord was prohibited from evicting Sonya under VAWA. *Metro N. Owners LLC v. Thorpe*, 870 N.Y.S.2d 768 (N.Y.C. Civ. Ct. 2008).

# Evictions - Limitation

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- Housing authorities and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual and imminent threat” not defined in VAWA
- Current HUD regulations are important:
  - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
  - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
  - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005

# Lease Bifurcation

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- A housing authority or landlord may “bifurcate” a lease to evict a perpetrator and allow the survivor to stay
- Protection for tenants remaining in housing after lease bifurcation
  - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- The landlord must follow federal, state, and local law in evicting the abuser.



# Family Breakups and Section 8 Vouchers

- VAWA states that a housing authority can terminate Section 8 Housing Choice Voucher assistance to the abuser while preserving assistance to survivor
- In the Section 8 Housing Choice Voucher program - If a family breakup results from the violence or abuse, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315(a)(2).
- Many housing authorities are not aware of this VAWA obligation.

# Family Breakups and Vouchers (cont'd)

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- VAWA states - In deciding who gets the voucher, housing authority can consider:
  - Whether remaining family members should get the assistance;
  - Interest of minor children or of ill, elderly, or disabled family members;
  - Whether family members were forced to leave unit because of domestic violence, dating violence, sexual assault, or stalking;
  - Whether any family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking;
  - Other factors specified by PHA. 24 C.F.R. § 982.315(b).

# Section 8 Voucher Portability

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- Many housing authorities prohibit Section 8 voucher tenants from moving during the first year of their lease, or from moving more than once during a 12-month period.
- However, there is a VAWA exception for survivors. These policies do **NOT** apply when the move is needed for safety. *See* 24 C.F.R. § 982.314.

# Emergency Transfers

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- Survivors living in federally assisted housing often need to move or “transfer” to another subsidized unit to protect their safety.
  - Generally, only Section 8 vouchers are portable.
- VAWA mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners.
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
  - (1) tenant expressly requests the transfer and
  - (2) either tenant reasonably believes that s/he is threatened with imminent harm from further violence if s/he remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request
- Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser

# Rhonda

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- Rhonda lives in public housing and is in an abusive relationship with Mike, who does not live with her.
- Rhonda is afraid to leave Mike and lets him come to her apartment because she knows that Mike will cause a disturbance until she lets him in.
- One day, when Mike was visiting, he became upset over some of Rhonda's texts and threw her against a wall.
- A week later, Rhonda received an eviction notice from the housing authority because of "nuisance."
- Rhonda doesn't want to stay in the unit and doesn't see the point in fighting the eviction.
- She comes to you seeking advice about getting away from Mike.
- **Audience: What issues do you see?**

# Proving Violence or Abuse

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- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says the violation is related to DV.
- PHA or landlord is free to take tenant at his/her word, or can ask tenant to prove DV.
- Any request by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord's request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.

# Proving Violence or Abuse – Options for Documentation

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## 1. Self-Certification Form

- HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

## 2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

## 3. Statement from Third Party

- Can be from a victim service provider, medical professional, mental health professional or attorney.
- Must be signed by both the third party and the victim under penalty of perjury.

# HUD Form 50066

## Certification of Domestic Violence

### **CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

OMB Approval No. 2577-0249  
Exp. (07/31/2017)

**Purpose of Form:** The Violence Against Women Reauthorization Act of 2013 ("VAWA") protects qualified tenants, participants, and applicants, and affiliated individuals, who are victims of domestic violence, dating violence, sexual assault, or stalking from being denied housing assistance, evicted, or terminated from housing assistance based on acts of such violence against them.

**Use of Form:** This is an optional form. A PHA, owner or manager presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating violence, sexual assault, or stalking (herein referred to as "Victim") has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. The Victim has the option of either submitting this form or submitting third-party documentation, such as:

- (1) A record of a Federal, State, tribal, territorial, or local law enforcement agency (e.g. police), court, or administrative agency; or
- (2) Documentation signed by the Victim and signed by an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom the Victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) that he or she believes that the incident of domestic violence, dating violence, sexual assault, or stalking is grounds for protection under 24 Code of Federal Regulations (CFR) § 5.2005 or 24 CFR § 5.2009.

If this form is used by the Victim, the Victim must complete and submit it within 14 business days of receiving it from the PHA, owner or manager. This form must be returned to the person and address specified in the written request for the certification. If the Victim does not complete and return this form (or provide third-party verification) by the 14th business day or by an extension of the date provided by the PHA, manager or owner, the Victim cannot be assured s/he will receive VAWA protections.

If the Victim submits this form or third-party documentation as listed above, the PHA, owner or manager cannot require any additional evidence from the Victim.

**Confidentiality:** All information provided to a PHA, owner or manager concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking relating to the Victim (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking) shall be kept confidential by the PHA, owner or manager, and such information shall not be entered into any shared database. Employees of the PHA, owner, or manager are not to have access to these details unless to afford or reject VAWA protections to the Victim; and may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) requested or consented to by the Victim in writing; (ii) required for use in an eviction proceeding; or (iii) otherwise required by applicable law.



**TO BE COMPLETED BY VICTIM**  
**ASSAULT**

**Date Written:**

**Name of Victim:**

**Names of Offenders:**

**Name of the Offender(s) who caused the most harm:  
\*Note: The victim should provide, and**

**Perpetrator:**

**Date(s) the Incident Occurred:**

**Location of Incident:**

Description of Incident(s) (This description may be used by the PHA, owner or manager for purposes of evicting the perpetrator. Please be as descriptive as possible.):

[INSERT TEXT LINES HERE]

**SEXUAL ASSAULT**

**Is the victim safe to remain in the home?**

I hereby certify that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence, sexual assault or stalking. I acknowledge that submission of false information is a basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Executed on (Date) \_\_\_\_\_

# Proving Violence or Abuse

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- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.

# Notification and Language Access

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- HUD must develop a notice of VAWA housing rights (HUD notice) for applicants and tenants
- PHAs, owners and managers must provide HUD notice along with the agency-approved, self-certification form to applicants and tenants
  - (1) at the time an applicant is denied residency;
  - (2) at the time the individual is admitted; and
  - (3) with any notification of eviction or termination of assistance.
- HUD guidance prohibiting discrimination against limited-English proficient (LEP) persons is applicable, including specifically for the HUD notice.

# Confidentiality

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- Information a survivor uses to certify victim status must be confidential. The information cannot be entered into a shared database or disclosed to another entity or individual, unless the disclosure:
  - is requested or consented to by survivor in writing;
  - required for use in an eviction proceeding;
  - or otherwise required by law.

# Tips for Working with Housing Authorities

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- Do not assume that the PHA staff know VAWA's housing protections
- Do not assume that the PHA staff know more than you do
- Take or create opportunities to educate PHA staff about domestic/sexual violence and VAWA
- Review and provide comments for VAWA parts of the PHA's planning documents (e.g. Section 8 Administrative Plan, Admissions and Continued Occupancy Policy – public housing)
- Form local DV coalitions to work with PHAs on devising good DV policies, improving DV policies, and implementing good ones.

# Online Resources

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- Dropbox for this session (includes additional materials to supplement handouts):
  - <http://bit.ly/1lwmNSB>
- NHLP website:
  - <http://nhlp.org/OVWgrantees>

# Thank You!

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