



Newsletter Fall-Winter 2017/2018

NHLP Announces New Nuisance and Crime-Free Ordinance Initiative

Training and Technical Assistance Available

The National Housing Law Project (NHLP) is pleased to announce the launch of its **Nuisance and Crime-Free Ordinance Initiative**, funded in part by the Department of Justice, Office on Violence Against Women. This project will highlight the important intersection between local nuisance ordinances and the housing stability of survivors of domestic violence, dating violence, sexual assault, and stalking. Jurisdictions across the country have adopted ordinances that require landlords to abate nuisance conduct, which is often defined as when police officers are called to a particular property too many times in a specific timeframe. Such laws can result in survivors losing their housing simply for calling the police for help.

Through this project, NHLP will provide training, technical assistance, and other support to domestic violence advocates, state and local jurisdictions, law enforcement officials, tribal governments, and housing providers on the negative effects of enforcing nuisance laws against survivors.

For more information about this initiative including requests for training and technical assistance, please contact Renee Williams, rwilliams@nhlp.org. ▀



Court Concludes Survivor is Entitled to VAWA Protections

Survivors of domestic violence, dating violence, sexual assault, and stalking are often threatened with the loss of their housing due to the actions of their abuser. In one case, an abuser stole the keys to the survivor's unit, and used the survivor's address on various documents. As a result, the survivor was threatened with the loss of her housing subsidy.

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A New York state appeals court recently concluded the survivor was protected under the Violence Against Women Act (VAWA), and therefore entitled to keep her Section 8 Housing Choice Voucher. This article provides a summary of this case, *Johnson v. Palumbo*. Advocates may wish to read the opinion, as it interprets VAWA 2013 and also takes into consideration the dynamics of abusive relationships.

Background

This case involves a survivor who resided in Poughkeepsie, New York, with the assistance of a Section 8 Housing Choice Voucher. The survivor lived with her five children. In February 2014, the survivor was told that her housing subsidy was being terminated because she allegedly did not request approval to add another person to her household. That additional occupant had engaged in a “course of abusive and violent conduct against [the survivor] includ[ing] his unwanted presence in her apartment.”

The city agency that administers the Voucher program had concluded that the abuser was living in the survivor’s unit based on the abuser’s pay stubs, the abuser’s driver’s permit application, the abuser’s parole records, and a police report—all of which listed the survivor’s address.

Based on this information, the agency believed that the abuser was living at the survivor’s unit, and that the survivor had failed to report the abuser’s presence or report his income as required by the Voucher program rules.

In response, the survivor asserted that the abuser did not live with her, and that the documents that the agency used as evidence existed because of stalking and domestic violence. The survivor asserted that she allowed the abuser to use her address for parole registration; however, this use was supposed to be temporary.

Over time, the abuser began to engage in threatening, abusive, and harassing behavior toward the survivor. The abuser took a spare set of keys to the survivor’s unit without permission, and would come to the unit whenever he wanted. The abuser also continued to use the survivor’s address without permission. In instances where the survivor found out her address was being used by the abuser, she did not confront the abuser out of fear. In December 2013, when the survivor finally did attempt to get her keys back, the abuser attacked her and was arrested.

At a hearing regarding the termination of the survivor’s subsidy, the agency argued that the Voucher termination did not violate VAWA because the reason for the termination was the abuser living in the survivor’s unit without permission. The agency also asserted that the survivor did not inform the agency about her status as a domestic violence survivor before the hearing. While the agency was aware of the December 2013 attack, the agency argued that the survivor’s Voucher was being terminated because of the abuser’s unauthorized occupancy, which occurred before the attack.

The survivor argued that she was entitled to VAWA protections because, to the extent the abuser lived in her unit, the abuser was able to do so because of the survivor’s fear of the abuser’s actions.

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The hearing officer upheld the agency's termination of the survivor's housing subsidy, rejecting the argument that VAWA applied in this case.

Court Case and Decision

The survivor appealed the hearing officer's decision by filing a court case. The court concluded that the hearing officer was incorrect in determining that the survivor was not entitled to VAWA protections.

In coming to this conclusion, the court found that the survivor had established the threats, intimidation, harassment, and violence committed against her by the abuser. The court stated in its opinion that the abuser's access to the unit was a key part of the abuser's intimidation of the survivor, and that there was no evidence that the abuser received permission to reside in the unit.



Furthermore, the court noted that the agency did not show that the abuser's presence in the unit was unrelated to domestic violence. The court said that the agency misinterpreted VAWA, finding that VAWA aims to provide greater protections for survivors. Therefore, the court concluded it would be "unreasonable and inconsistent" with VAWA to require the survivor to ask permission for the abuser to live in the unit. Doing so, the court pointed out, would provide the abuser legitimate access to her unit — which, in turn, would give the abuser more power and control over the survivor.

Resource

Johnson v. Palumbo, 154 A.D.3d 231 (N.Y. App. Div. 2017).

The court also explained that the hearing officer failed to account for the dynamics of domestic violence.

The court rejected the agency's argument that the survivor was not entitled to VAWA protections because she did not say that she was a survivor of domestic violence prior to the hearing. The court noted that, under VAWA, the agency was required to provide the survivor a written request for documentation of domestic violence. The agency failed to do so, and therefore the court concluded that the agency could not deny VAWA protections without making this request.

The court also found that, in the absence of a request for documentation, the survivor's sworn testimony was sufficient to establish that she was entitled to VAWA protections. Finally, the court added that the agency had used its discretion in a way that was inconsistent with VAWA, as it would cause the survivor to lose her unit.

The court invalidated the hearing officer's decision, and ordered that the survivor's Housing Choice Voucher be reinstated. ■

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New Best Practices for VAWA Compliance in Tax Credit Units

The National Council of State Housing Agencies (NCSHA) issued its 2017 ***Recommended Practices in Housing Credit Administration*** that includes best practices for the state-level agencies that administer the Low-Income Housing Tax Credit (LIHTC) program. These recommendations include suggested practices for state agencies to further compliance with the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Advocates who work with survivors of domestic violence, dating violence, sexual assault, and stalking should familiarize themselves with these recommendations.

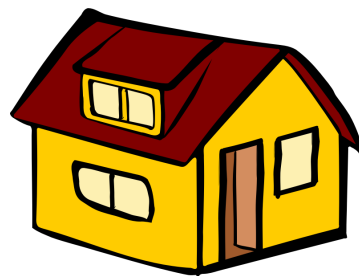
Background

The LIHTC program is a very important source of affordable housing across the country, and is one of the programs covered by VAWA 2013 housing protections. The Internal Revenue Service (IRS), which is the federal entity that oversees the LIHTC program, has not issued guidance regarding VAWA housing protections in the program. Therefore, even though VAWA 2013 applies to LIHTC units, implementation of VAWA's protections has not been consistent across the country. The latest *Recommended Practices* document recommends that state agencies adopt procedures and policies that further compliance with VAWA, including:

- Providing clarity that domestic violence is not "good cause" to evict a survivor who otherwise meets tenancy requirements.
- Notifying LIHTC owners and managers

about VAWA protections and requirements, such as providing tenants with a notice of VAWA rights, as well as emergency transfer policies.

- Amending documents called "extended use agreements" to reference VAWA obligations.
- Changing existing compliance procedures to find failures to comply with VAWA.
- When writing the plan that allocates tax credits, including survivors of domestic violence, dating violence, sexual assault, and stalking as part of "tenant populations with special housing needs."



NCSHA also recommends that state agencies require owners and managers to implement the following policies:

- Prohibiting the eviction or denial of housing assistance of survivors of domestic violence, dating violence, sexual assault, and stalking who otherwise meet tenancy requirements.
- Providing a notice of VAWA rights and a VAWA self-certification form to all existing tenants, "similar to" HUD forms already developed.
- Using a lease addendum that informs tenants that they live in a LIHTC unit and are protected by VAWA.

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- Allowing tenants to bifurcate their leases so that the abuser can be removed from the household, while the survivor can maintain housing assistance.
- Developing emergency transfer policies, while using HUD's model emergency transfer plan and request form as reference documents.
- Training property staff on VAWA requirements.

NCSHA notes that in the absence of IRS guidance regarding VAWA, state agencies, developers, and managers have looked to and used HUD's VAWA regulations and forms. Additionally, the report says that state agencies have supplemented their VAWA compliance efforts with the procedure and policy changes included in the NCSHA paper. ■



Resource

National Council of State Housing Agencies, *Recommended Practices in Housing Credit Administration* (2017), available at:

<https://www.ncsha.org/blog/ncsha-releases-new-recommended-practices-housing-credit-administration>

Ohio Study Details How Nuisance Ordinances Harm Domestic Violence Survivors

Across the United States, crime-free and nuisance ordinances and policies jeopardize the housing security of survivors of domestic violence, dating violence, sexual assault, and stalking. Such ordinances often penalize property owners for so-called “nuisance” conduct that occurs at a property. If that property is a rental property, oftentimes landlords will, in turn, evict tenants who have allegedly engaged in nuisance activity. Such nuisance activity may include calling the police a certain number of times within a specific timeframe. These nuisance activities have been enforced against survivors of domestic violence who are seeking police assistance due to the actions of their abusers. This has led to survivors having to choose between being evicted and ensuring their safety.

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A recent study, entitled ***Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio***, explores nuisance ordinances in Ohio and their effects. The authors, including Cleveland State University and the ACLU of Ohio, published the study in November 2017. At the time the report was published, almost 50 cities in Ohio had nuisance ordinances. The report focuses on the more than 20 ordinances in the northwest part of the state. Specifically, the report discusses the (1) adoption of these ordinances, and (2) how they are implemented.

Adoption of Nuisance Ordinances

The first part of the report largely focuses on why nuisance ordinances are adopted. The report notes that nuisance ordinances are often put in place in response to resident complaints. The report offers several reasons why cities adopt nuisance ordinances, such as: (1) giving local police more authority; (2) responding formally to resident complaints concerning neighborhood activities; (3) creating laws that regulate resident conduct in accordance with neighborhood “character”; and (4) making property owners assist with regulating resident activities and conduct. Additionally, the report details how nuisance ordinances can be passed to target certain populations such as communities of color and renters (including Section 8 Voucher households).



Resource

Cleveland State University and ACLU of Ohio, *Who Is A Nuisance? Criminal Activity Nuisance Ordinances in Ohio* (Nov. 2017), available at:

https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban_facpub

Implementation of Nuisance Ordinances

The second part of the report details how cities implement nuisance ordinances. For example, the authors note that nuisance ordinances are often a way of penalizing activity that would be either difficult to prove, or that is not in fact criminal behavior. Some of the cities examined in the study recommend that owners evict tenants in response to alleged nuisance activity at the property. The study also identifies instances where cities would cross-check nuisance violations with lists of residents served by the local housing authority so that residents with nuisance violations would be terminated from the Voucher program.

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The report describes the lack of procedural protections for tenants who are accused of nuisance conduct. Specifically, the report notes that some cities prevent tenants from being able to challenge or appeal the nuisance designation. The report cites several examples of cities that provide appeal rights to owners, but not tenants. Furthermore, in at least one city included in the study, city officials intentionally ensured that notifications concerning nuisance activity would go directly to the owner, not the tenant.

The study also describes how enforcement of nuisance ordinances can negatively impact survivors of domestic violence. At the time the study was published, about half of Ohio cities with nuisance laws considered “domestic violence as a nuisance offense.” According to the report, several Ohio cities have amended their nuisance laws to remove domestic violence being considered a nuisance. The study cites “an extreme example” of a city where “almost every nuisance letter [in a particular time frame] was sent to the scene of domestic violence.” The study outlines several examples in which cities notified landlords of nuisance activity occurring at their properties as a result of domestic violence incidents. In one example, the landlord evicted the tenant after receiving a nuisance letter from the city. That city has since changed its law such that domestic violence is not considered nuisance conduct.

The report also outlines examples of how Ohio nuisance ordinances have negative impacts upon persons with mental health challenges and persons struggling with drug addiction – including persons who need medical

assistance in an emergency (such as suicide attempts or drug overdoses).

Conclusion

The report’s authors find that nuisance ordinances “disproportionately target and impact residents of color, renters, and residents using housing vouchers.” Furthermore, the study also outlines how such ordinances have been enforced against domestic violence survivors, as well as persons experiencing mental health and substance abuse emergencies. Survivors are consistently harmed by the enforcement of these ordinances, and, as the study points out, can contribute to housing instability.

Advocates should review the Ohio study to gain a better understanding of how local nuisance ordinances may be impacting survivors in their communities. ▀

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Emergency Preparedness: Resources for Survivor Service Providers

Housing providers and organizations that serve survivors of domestic violence, dating violence, sexual assault, and stalking will likely encounter an emergency — whether in the form of a natural disaster or a threatening phone call. The following resources have been developed regarding emergency preparedness:

- The California Partnership to End Domestic Violence (CPEDV) has developed ***Emergency Preparedness Toolkit: A Guide for Domestic Violence Organizations*** to provide service providers with guidance on how to plan for and respond to emergencies such as armed intruders, bomb threats, earthquakes, floods, and wildfires. A webinar accompanies the Toolkit. The CPEDV Toolkit and webinar are available here:

<http://www.cpedv.org/resource-tool/emergency-preparedness-toolkit>

- The Louisiana Foundation Against Sexual Assault (LaFASA) and the National Sexual Violence Resource Center (NSVRC) have issued ***Sexual Violence in Disasters: A Planning Guide for Prevention and Response***. This guide was developed “to assist a variety of partners in the development of practices and policies for the prevention of, and optimal response to, sexual violence during and following disasters.” The guide is available at:

http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Guides_Sexual-Violence-in-Disasters_A-planning-guide-for-prevention-and-response.pdf

For technical assistance or requests for trainings or materials, please contact:



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This project was supported by Grant No. 2016-TA-AX-K028 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.