



Providing Refuge – A Legal Training
Housing Rights for Survivors of Domestic Violence
Honolulu, Hawaii
June 1, 2018

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Violence Against Women Act

What is VAWA?

- VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse committed against them, without fear of losing their housing.
- 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** (“VAWA crimes”) committed against them.
- Applies to survivors **regardless of age, sex, gender identity, marital status, or sexual orientation**
- Only applies to **federal housing programs**

What Programs are Covered?

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HUD Programs	
• Public Housing	• § 236 Multifamily rental housing
• Section 8 vouchers	• § 221d3/d5 Below Market Interest Rate (BMIR)
• Project-based Section 8	• HOME
• Section 202 Supportive Housing for the Elderly	• HOPWA (Housing Opportunities for People with AIDS/HIV)
• Section 811 Supportive Housing for People with Disabilities	• McKinney-Vento Homelessness Programs (includes Emergency Solutions Grant; Continuum of Care)
• Housing Trust Fund	
Department of Agriculture	
• Rural Development (RD) Multifamily	
Department of Treasury/IRS	
• Low Income Housing Tax Credit (LIHTC)	

What Programs are Covered?

- VAWA applies to programs involving rental assistance
- Only VAWA's "core protections" apply to emergency shelters, short-term supported housing, and safe haven program.
 - These programs cannot deny admission or terminate assistance on the basis or as a direct result of an individual's status as a survivor.
 - These programs are **not** subject to other VAWA obligations (e.g. provide notice of VAWA rights, lease bifurcations, or emergency transfer plans).

Who is Protected?

VAWA covers people who are subject to:

Domestic violence: Any felony or misdemeanor crimes of violence committed by: a current/former spouse or intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim; a person against a victim protected from acts under state/local domestic and family violence laws.

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

VAWA applies to applicants and tenants

Proving Violence

- Housing provider is free to take tenant at their word, or can ask tenant to prove VAWA crime.
- Any request by housing provider for proof must be made **in writing**.
 - HUD Notice PIH-2017-08 (HA): Just providing HUD self-certification form (HUD Form 5382) **is not** a written request.
- Tenant has **14 business days** from the request to provide proof.
- Housing provider is free to grant extension if tenant needs more time.
 - HUD Notice PIH-2017-08 (HA): HUD encourages housing authorities/owners to consider reasons why timely submission may not occur (e.g. disabilities, limited English proficiency, hospitalization, risk of more violence)

Proving Violence - Documentation

1. Self-certification form

- New HUD VAWA self-certification form for all HUD programs
- **HUD Form 5382 (all HUD programs)**

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 third party and survivor under penalty of perjury.

4. Statement or other evidence (housing provider's discretion)

HUD Form 5382

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

U.S. Department of Housing
and Urban Development

OMB Approval No. 2577-0286
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Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

(1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.

(2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____
2. Name of victim: _____
3. Your name (if different from victim's): _____
4. Name(s) of other family member(s) listed on the lease: _____
5. Residence of victim: _____
6. Name of the accused perpetrator (if known and can be safely disclosed): _____
7. Relationship of the accused perpetrator to the victim: _____
8. Date(s) and time(s) of incident(s) (if known): _____
10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

Proving Violence

- Survivor gets to choose documentation option
- Housing providers must accept whatever documentation the survivor provides
- Only exception – When there is conflicting evidence, housing providers can ask for third-party documentation
 - Housing providers can require 30 days to submit third-party doc and grant extensions.
 - Notice PIH-2017-08 (HA): Housing providers cannot engage in additional fact-finding (i.e. conducting interviews w/ neighbors, employers) with the purpose of determining if someone is “really” a survivor

Admissions and Evictions

- Housing authorities, landlords, and owners may not deny housing, terminate, or evict an applicant or tenant **on the basis or as a direct result of** having been a survivor of domestic violence, dating violence, sexual assault, or stalking.
- Adverse factors resulting from the abuse (e.g. poor credit history or criminal history)
 - Notice PIH-2017-08 (HA): Adverse factors may seem unrelated to DV, dating violence, sexual assault, or stalking – but adverse factor may exist b/c of underlying experience of VAWA crime; notice includes helpful examples of adverse factors that may be a “direct result”
 - The survivor must raise the adverse factor issue by providing “sufficient information”.

Admissions and Evictions

- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating their rental subsidy.
- An incident of actual or threatened abuse does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating their rental subsidy.

- Must comply with court orders re: property rights
- Housing providers can still evict or terminate assistance if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- Housing providers can evict or terminate assistance for violation not premised on VAWA crimes.

- Housing provider must provide HUD VAWA rights notice (Form 5380) and self-certification form (Form 5382) to applicants and tenants
 1. at the time an applicant is denied admission or assistance;
 2. at the time individual is admitted or given assistance; and
 3. with any notification of eviction or assistance termination.
- Existing tenants must have received notice and form.
- Forms available in 15 languages.

Lease Bifurcation

- A housing provider may bifurcate a lease to evict an abuser while allowing the survivor to stay.
- The landlord must follow federal, state, and local law in evicting the abuser.
- Lease bifurcations only apply to tenants AND residents.

Lease Bifurcation – Remaining Tenants

- If the abuser who is evicted was the family member who qualified the rest of family to live in unit or receive assistance, the housing provider must provide the remaining tenant(s) **at least 90 calendar days or until lease expiration (with possible 60-day extension)** to establish eligibility for the existing program, establish eligibility for another covered housing program, or find alternative housing.

Lease Bifurcation - Exceptions

- Continuum of Care (CoC)
 - Transitional housing
 - Household retains assistance for time remaining in original assistance period. Once assistance period ends, household can recertify or reapply.
 - Can extend assistance beyond 24 months to facilitate movement to permanent housing
 - Permanent supportive housing
 - If qualifying member evicted due to lease bifurcation, remaining household has right to rental assistance until lease expires.
- Programs with immigration restrictions
 - E.g. public housing, Section 8 vouchers, project-based Section 8
 - Allow “mixed families” and prorated assistance
 - **Within 30 days** - remaining family member must submit documentation of eligible immigration status or pending appeal of verification determination

Family Breakups and Vouchers

- Housing authority can terminate Section 8 Housing Choice Voucher assistance to the abuser while preserving assistance to survivor
- Section 8 Housing Choice Vouchers
 - If a family breakup results from occurrence of VAWA crime, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315(a)(2).
 - Survivors can request that vouchers be transferred to their names because of abuse.

Section 8 Voucher Portability

- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1st year of their lease, or from moving more than once during a 12-month period.
- There is a VAWA exception for survivors. These policies do **NOT** apply when the move is needed to protect health or safety OR when a family member was a victim of sexual assault that occurred on premises 90 days before request to move.

Emergency Transfers

- Covered housing providers must have emergency transfer plans in accordance with their specific program regulations as of June 14, 2017.
- Emergency transfer plans must provide that a tenant who is a survivor qualifies for an emergency transfer if:
 - The tenant “expressly requests” the transfer; and
 - The tenant:
 - “reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit” OR
 - in an instance where a tenant is a **survivor of sexual assault**, either “the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit ... or the sexual assault occurred on the premises during the 90-calendar-day period” before the transfer request.

- Any information submitted by survivor under VAWA must be maintained in “**strict confidence**” by housing providers.
- Housing providers cannot allow anyone administering assistance or employees to have access to confidential information unless explicitly authorized.
- Confidential information will not be entered into shared database or disclosed to others, except if disclosure is:
 - Requested or consented to in writing by survivor in **time-limited** release;
 - Required for use in eviction or termination hearing; or
 - Otherwise required by law.

Lease and Lease Addendums

- Housing providers must include VAWA protections in housing contracts and lease addendums.
 - Public housing, Section 8 vouchers, project-based Section 8
 - HUD-required lease, lease addendum, tenancy addendum, and HAP contract must include VAWA protections.
 - HOME, HOPWA, ESG, CoC
 - Require descriptions of VAWA protections in leases, lease addendums, and contracts

Domestic Violence and Fair Housing

Fair Housing Laws

- Federal Fair Housing Act, 42 U.S.C. § 3601, et seq.
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class
- State fair/local housing law

Domestic Violence and Sex

- Survivors are not a protected class under the Fair Housing Act or FEHA, but most are female.
- HUD 2016 Nuisance/Crime-Free Ordinance Guidance, at 4:
“From 1994 to 2010, approximately 80 percent of the victims of intimate partner violence in the nation are women.”

Examples of Discriminatory Policies

- Evictions or terminations based on violence against a survivor can violate fair housing laws.
- Examples of intentionally discriminatory policies:
 - Policies based on gender stereotypes may violate the Fair Housing Act (FHA)
 - Example from 2011 HUD memo: An owner does not rent to women with a history of domestic violence because he assumes they will reconcile with their abusers
 - 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
 - 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.

Examples of Discriminatory Policies

- HUD's 2011 DV memo:
 - A neutral policy that negatively affects DV survivors may violate the FHA because of its disparate impact on women.
- Example:
 - Women are disproportionately affected by a housing provider's zero-tolerance policy.
 - The housing provider could make exceptions to the zero-tolerance policy for DV survivors in order to avoid a disparate impact on women.

Nuisance and Crime-Free Ordinances and Policies

What are Nuisance/Crime-Free Ordinances?

- Local laws and policies that penalize landlords and tenants when **police are called too many times** to the premises within a time period, or for “criminal activity” at the property
 - Impose fines or criminal charges on owners
 - Nuisance activities range from violent crime to disorderly conduct
 - Landlords pressured to evict tenants, even those who are crime victims
- These laws can:
 - Harm and punish domestic violence survivors and persons with disabilities who seek help from the police (e.g., calling 911)
 - Negatively impact communities of color
- See ACLU’s “I Am Not a Nuisance” [Website](#); Shriver Center’s “Cost of Being ‘Crime-Free’” Report

Report on Nuisance Ordinances in Ohio

- Cleveland State University and ACLU of Ohio examined nuisance and criminal activity ordinances in northeast Ohio.
- Implications for:
 - Survivors of domestic violence
 - Renters, including Section 8 Voucher holders
 - Communities of color
 - Persons with disabilities, including mental health crises
- See “Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio” (Nov. 2017).

- Nuisance and crime-free ordinances can violate the Fair Housing Act by disproportionately impacting certain groups.
 - Example: Each year, women comprise nearly 80 percent of persons subjected to domestic violence.
 - Jurisdictions cannot rely on stereotypes about people engaging in nuisance or criminal activities to defend ordinances.
- Jurisdictions can violate the Fair Housing Act by intentionally using the adoption or enforcement to discriminate (e.g. selective enforcement).
- Suggests repealing ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.
- See HUD General Counsel Guidance re: Nuisance and Crime-Free Housing Ordinances (Sept. 2016)

Nuisance and Crime-Free Ordinances May Violate...

- Fair Housing Act
- Violence Against Women Act, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federally assisted housing
- U.S. Constitution
- State/local anti-discrimination laws

Case Study: *Briggs* Litigation

- 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* Litigation (cont.)

- 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.

Examples of Nuisance Ordinance Cases

- *Briggs v. Norristown, Pennsylvania* (2013)
<https://www.aclu.org/cases/briggs-v-borough-norristown-et-al?redirect=womens-rights/briggs-v-borough-norristown-et-al>
- Berlin, New Hampshire (2014)
<https://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf>
- *Markham v. City of Surprise, Arizona* (2015)
<https://www.aclu.org/cases/nancy-markham-v-city-surprise>
- *Watson v. Maplewood, Missouri* (filed 2017)
<https://www.aclu.org/news/aclu-sues-city-missouri-nuisance-law-targets-domestic-violence-victims>

- Sara K. Pratt, HUD, Assessing Claims of Housing Discrimination Against Victims of Domestic
- Cleveland State University and ACLU of Ohio, *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio* (Nov. 2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028
- HUD, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016), available at: <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>
- Emily Werth, Sargent Shriver National Center on Poverty Law, *The Cost of Being “Crime-Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (Aug. 2013), available at: <http://www.povertylaw.org/files/docs/cost-of-being-crime-free.pdf>

Thank you!

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