



Tenant Rights of Survivors During COVID-19

The current COVID-19 epidemic has created a public health crisis, including increased reports of the incidence of domestic violence in the midst of shelter-in-place orders. Thus, ensuring access to safe, decent, and affordable housing for survivors of domestic violence, dating violence, sexual assault, and stalking is critical. This article outlines housing protections that are in place for survivors within the context of the current COVID-19 pandemic.

Eviction Moratoriums

Many states, localities, and the federal government (for certain types of housing) have put in place a “pause” on evictions during the COVID-19 pandemic, as many Americans cannot pay their rent due to job loss or reduced income because of the virus. These pauses are also known as “eviction moratoriums.”

Importantly, these eviction moratoriums do not cancel rent that is due. These moratoriums generally mean that, for a certain period of time, a tenant cannot be evicted under the

circumstances outlined in the individual moratorium. At some point in the future, any back rent owed will need to be repaid. Note that these moratoriums protect renters generally, and do not just apply to survivors.

Federal Eviction Moratorium

The federal eviction moratorium is a result of the federal [CARES Act](#), signed into law on March 27, 2020. The CARES Act prohibits landlords covered by the moratorium from filing new eviction actions for non-payment of rent, or non-payment of fees or charges, during the federal moratorium. Eviction actions for non-payment filed before the moratorium can proceed, but there may be state or local moratoriums in place that could halt the eviction action.

The federal moratorium also prohibits landlords from charging “fees, penalties, or other charges” related to nonpayment of rent while the moratorium is in effect. The halting of evictions applies to all evictions for non-payment of rent (or charges or fees), regardless of whether the nonpayment was directly related to COVID-19.

The following types of housing are covered by the federal moratorium:

- Federal housing programs covered by VAWA 2013 (included in a chart later in this summary)
- Rural Housing Voucher Program
- Properties with federally backed mortgage loans (1-4 units)
- Properties with federally backed multifamily mortgage loans (5 or more units)

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Save The Date! Upcoming NHLP Webinars

"Housing Rights of Domestic Violence Survivors with Disabilities"

Tuesday, June 23rd
10:30 am PT / 1:30 pm ET

"Exploring City Nuisance Property Ordinances in the 40 Largest U.S. Cities"

Tuesday, June 30th
11 am PT / 2 pm ET

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An online [resource](#) developed by the National Low Income Housing Coalition can be a starting point to figure out if a client lives in a covered housing program, though this resource is not comprehensive. Advocates can speak with a housing attorney for more information about determining what type of housing their client lives in.

The federal moratorium took effect on March 27, and lasts for 120 days, after which there is an additional 30-day notice requirement to evict a tenant.

State and Local Moratoriums

A number of states and localities have placed moratoriums on evictions. However, because each state and local law is different, it is difficult to generalize how protective these moratoriums are. Advocates should speak with a [local housing attorney](#) to understand whether an eviction moratorium is in place, what the exceptions to the moratorium are (if any), and what tenants need to do (if anything) to be protected. Importantly, state and local moratoriums may offer more protections than the federal moratorium. As noted above, the federal moratorium only applies to housing associated with select federal housing programs. State and local moratoriums, for example, may cover all housing units in a state or locality, which would be broader in scope than the federal moratorium. At the same time, state or local laws may require that a tenant demonstrate economic hardship related to COVID-19, whereas the federal moratorium does not.

As an initial step, advocates can find out more information about state eviction moratoriums at this online [resource](#). Advocates should consult with local housing attorneys to better understand the practical impacts of a state or local moratorium for clients.

Eviction Moratorium Considerations for Survivor Advocates

A number of eviction moratoriums—including the federal moratorium—still allow evictions based on criminal activity and other lease violations to proceed. Unfortunately, survivors have historically been evicted for “criminal activity,” damage to the unit, creating a nuisance, or other issues directly related to the abuse.

It remains critical that survivors not be evicted for the violence committed against them, or for seeking help such as calling 911. Survivors receiving an eviction notice during the pandemic should be connected with a [housing attorney immediately](#), even if the survivor believes they are covered by an eviction moratorium. Media descriptions of an eviction moratorium may be incomplete, leaving the survivor without critical information regarding their rights.

Housing Protections For Survivors

Violence Against Women Act

The Violence Against Women Act (VAWA) offers [housing protections](#) for survivors of domestic violence, dating violence, sexual assault, and stalking in certain federal housing programs, listed in the chart on page 3. Despite the name of the law, VAWA protections apply to survivors regardless of gender. Even though VAWA has not been reauthorized since 2013, the law’s housing protections [remain in effect](#).

VAWA housing protections include (but are not limited to) the following:

- Survivors cannot be evicted from or denied participation in a covered federal housing program for being a survivor of domestic violence, dating violence, sexual assault, or stalking. While there is a narrow exception to this prohibition if a victim’s continued tenancy poses an “actual and imminent threat” to residents or staff at the property, HUD regulations clearly state that eviction or termination of assistance should occur “only when there are no other actions that could be taken to reduce or eliminate the threat.”
- The law requires that tenants and applicants receive a written notice of VAWA rights upon admission, denial of housing, or notice of eviction/subsidy termination—including notification in non-English languages.
- Housing providers are permitted to “bifurcate” (split) a tenancy so that the abuser is removed from the household, without evicting or penalizing the survivor.
- The law includes confidentiality requirements for housing providers, such as prohibiting the placement of information about a survivor’s domestic violence, dating violence, sexual assault, or stalking in a shared database.
- Survivors can request an emergency transfer to another safe and available federal housing program unit.

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Federal Housing Programs Covered by VAWA	
<ul style="list-style-type: none">• Public housing• Section 8 Housing Choice Vouchers• Section 8 project-based housing• Section 202 housing for the elderly• Section 811 housing for people w/ disabilities• Section 236 multifamily rental housing• Section 221(d)(3) Below Market Interest Rate• HOME• Housing Opportunities for Persons w/ AIDS (HOPWA)• McKinney-Vento Act homelessness programs (e.g., CoC, Emergency Solutions Grants)	<ul style="list-style-type: none">• Housing Trust Fund (by HUD regulation - <i>not</i> covered by CARES moratorium)• Section 515 Rural Rental Housing• Sections 514 and 516 Farm Labor Housing• Section 533 Housing Preservation Grants• Section 538 multifamily rental housing• Low-Income Housing Tax Credit

Fair Housing Act

The federal Fair Housing Act prohibits housing discrimination based on protected categories, including race, color, sex, national origin, religion, disability, and familial status (which includes having minor children, or being pregnant).

Evicting or denying housing to a female domestic violence survivor due to the violence committed against her can violate the Fair Housing Act's prohibition on sex discrimination in most types of housing -- including private, market-rate housing.

State and Local Protections for Survivors

States and localities may also have [protections](#) such as the ability to obtain lock changes and early lease terminations for survivors, including those who live in private, market-rate housing. Advocates should consult with a housing attorney to understand how these protections would apply in a particular situation.

Asserting VAWA Housing Rights During COVID-19

Documenting abuse. VAWA provides survivors who live in the federal housing programs covered by the law the option of completing a self-certification form to assert VAWA housing protections in most circumstances. This protection is critical during stay-at-home orders in place across the country, because it means that the survivor can assert VAWA protections without obtaining a police report, restraining order, or other third-party documentation.

The one exception to the self-certification option is where there is conflicting information. In that instance, a housing provider can request that third-party documentation (as opposed to a self-certification form) be provided. Note however that VAWA allows a survivor to provide a document, signed under penalty of perjury by a certain type of third party (e.g., victim service provider, medical or mental health professional) and the survivor as documentation of the need for VAWA housing protections. Therefore, a police report or restraining order would still not be required in such an instance.

It is also important to remember that VAWA does not *require* housing providers to obtain documentation for a survivor to receive VAWA protections. Housing providers can simply rely upon the survivor's account of the abuse as evidence of the need for VAWA protections. During the pandemic, advocates working with survivors may want to remind housing providers that documentation is not required to obtain VAWA protections by the law. However, housing providers are allowed to require such documentation if they choose.

Confidentiality. Advocates should also ensure that housing providers are taking steps to protect survivor confidentiality while working remotely, consistent with VAWA confidentiality requirements. For example, VAWA requires that information provided to a housing provider by a survivor about the abuse must be kept confidential, with limited exceptions. VAWA also requires that housing providers refrain from keeping this information in a shared database.



PRACTICE TIP: VAWA's Housing Protections Remain in Effect

The National Housing Law Project (NHLP) receives questions from the field about the continued applicability of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) housing protections.

VAWA protections—including housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking—remain in effect, even though VAWA has not been reauthorized since 2013.

The U.S. Department of Justice, Office on Violence Against Women (OVW), published an informative [blog post](#) on February 19, 2020 that addresses the ongoing applicability of VAWA protections, observing:

“VAWA contains no sunset provision and does not expire. Expiration of the appropriations authorizations in VAWA pertains to the grant programs alone and not to the other legal improvements that have accompanied these authorizations since 1994.”

You can find the OVW post in its entirety at this [link](#).

Additional COVID-19 Resources

The [National Alliance for Safe Housing](#) has a number of excellent resources on their website, including:

- [Survivors and Coronavirus FAQ](#)
- [Safe Housing Partnerships: Preventing and Managing the Spread of COVID-19 in Domestic Violence Programs](#)
- [DVHTAC COVID-19 Special Topic Series Recordings](#):
 - [Domestic Violence for Homeless/Housing Providers](#)
 - [Eviction Moratoriums](#)
 - [Hotel Vouchering Spotlight on Iowa Programs](#)
 - [Spending Bill & Safe Housing Options for Survivors](#)

Public Housing Authorities. The U.S. Department of Housing and Urban Development (HUD), which administers most VAWA-covered housing programs, has encouraged public housing authorities (PHAs) to notify residents (through the agency website or by phone messages) that PHAs can still process requests for protections under VAWA. Presumably, such requests for VAWA protections should include requests for emergency transfers and lease bifurcations. Note, however, that housing staff are likely working remotely and may be slow to respond to requests.

HUD has also stated that local shelter-in-place orders do not “require anyone to stay in a violent or unhealthy situation, and that police officers can still visit any facility that is restricting visitors to respond to 911 calls.” HUD has previously [issued guidance](#) about how evicting survivors for calls seeking emergency assistance can violate the Fair Housing Act.

Addressing Lost Income During the Pandemic

Tenants (including survivors) living in a federal housing program who have lost a job or income may be eligible to complete an “interim reexamination” or “interim recertification” to recalculate the rent to reflect lost income. Advocates should explore whether this is an option for their client and what needs to be done to get the recertification process started.

HUD’s Office of Public and Indian Housing has created a [flyer](#) for tenants that discusses the CARES Act federal eviction moratorium and what to do about lost income. This flyer would cover tenants in public housing and the Section 8 Voucher program. Advocates can access the flyer [here in non-English languages](#).

HUD’s Office of Housing, which oversees project-based Section 8 housing (and other multifamily programs), created a [brochure](#) that also addresses issues such as the federal eviction moratorium and how to address lost income.

Conclusion

The current pandemic has exacerbated housing insecurity for survivors. Advocates should familiarize themselves with the new and existing protections that are available to help survivors secure or maintain safe, decent, and affordable housing. ■

Note: A shortened version of this article is available as a [flyer on the NHLP website](#). The information provided in this article or flyer should not be considered legal advice.

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

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