



## Survivor Wins Appeal Against Housing Authority

In [New Bedford Housing Authority \(NBHA\) v. K.R.](#), a Massachusetts appeals court ruled that a housing authority could not evict a domestic violence (DV) survivor (identified as "S.R.") due to the offsite criminal activity of her abusive boyfriend (identified as "K.R."). In its decision, the court explained that the Violence Against Women Act (VAWA) strengthened the survivor's case. The court's VAWA analysis highlights an important fact — a survivor's decision to reconcile with their abuser is not relevant under VAWA.

S.R. and her family moved into an apartment managed by NBHA. After they moved in, S.R.'s boyfriend K.R. became abusive. In one incident, K.R. started punching S.R. after she had declined to have sex with him, and S.R. escaped by running to a neighbor's apartment. The cops arrested K.R. and gave NBHA the police report. After this, S.R. asked NBHA if it could remove K.R. from the lease. NBHA told S.R. that the police report was insufficient and that she needed to go to court to get a restraining order before the housing authority could remove K.R. from the lease.

S.R. never went to court, partially because she wanted to reconcile with K.R., and partly because it was hard for her to find reliable transportation. Eventually, K.R. voluntarily moved out of the apartment, but stayed on the lease, and was arrested for selling drugs offsite six months later.

Although K.R. did not sell the drugs at the apartment and S.R. was not involved, drug dealing was a lease violation, so NBHA evicted the family. S.R. challenged the eviction by arguing that NBHA violated VAWA by misinforming her on the documentation requirements to remove K.R. from the lease. If K.R. had been removed from the lease when S.R. had asked (as the police report was sufficient documentation), he would not have been a tenant at the time he was arrested.

Under VAWA, a survivor may request to "bifurcate" their lease so the landlord can choose to remove the abuser from the lease. The landlord can request a document that proves the abuse, although doing so is not required. However, under VAWA, the survivor generally gets to choose which form of VAWA documentation they use to prove abuse. For instance, if a landlord asks for a restraining order, but the survivor provides a police report, the restraining order is sufficient for the survivor to invoke VAWA. In this case, NBHA tried to require S.R. to obtain a restraining order even though the housing authority already had a copy of the police report.

NBHA argued that it did not split the lease because S.R. did not provide the necessary documentation to remove K.R. from the lease, and had signaled that she wanted to reconcile with K.R. The trial court sided with NBHA. It said that instead of pursuing the split, S.R. waited to reconcile with K.R., and thus had not tried to provide the documentation requested by NBHA.

The appeals court disagreed. The court observed that NBHA had violated VAWA in its request for additional documentation. In a footnote, the court noted that domestic violence is a cycle, and that it is normal for a survivor to want to live apart from an abuser even if their relationship continues. The court, in the same footnote, observed, "VAWA's protections do not disappear simply because a victim and abuser reconcile."

The appeals court ultimately reversed the trial court's decision, and rejected the housing authority's reasons for evicting S.R. and her daughter. This ruling also highlighted the importance of survivors choosing their preferred documentation in asserting their VAWA housing rights.

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# NHLP Conducts Survey on Evictions During COVID-19

In June 2020, the National Housing Law Project surveyed 100 legal aid and civil rights attorneys in 38 states to see how tenants were faring during the COVID-19 pandemic. Over 90% of survey participants reported illegal evictions in their jurisdictions. Several survey responses referenced the difficulties specifically faced by survivors of domestic violence during COVID-19.

One survey respondent reported that, “A client who was a DV victim [had] a neighbor call the police because they heard shouting. The police came and two shots were fired inside the apartment, and then both [the] client and her abuser were brought outside and arrested (as often happens in DV situations). [The] client was later released and the abuser remained in custody. However, the landlords sought and were granted a summons [to evict] because they alleged that the gunshots and [the] client’s arrest constituted a public safety threat.” Fortunately for the survivor, the advocate was able to void the eviction summons on a procedural technicality.

By way of background, many jurisdictions adopted eviction moratoriums for non-payment of rent during the pandemic. However, these moratoriums often included exemptions to allow evictions for “health and safety” reasons. These exemptions provided an opening for survivors to be evicted for the abuse committed against them.

The survey also noted two instances where domestic violence survivors faced eviction due to falling behind on rent during COVID-19.



[Click here to view a brief general survey summary.](#)

## COVID-19 Eviction Protections: CDC Eviction Moratorium

The impacts of COVID-19 have left tenants across the country unable to afford rental payments. In response, the Centers for Disease Control (CDC) issued an [order](#) enacting a national moratorium (except American Samoa) on evictions for tenants who cannot afford to pay rent, and who meet other specific criteria. That moratorium is effective between September 4, 2020 through December 31, 2020.

As housing stability is crucial for survivors, it is important for survivor advocates to be familiar with eviction protections and how to use these protections on behalf of their clients. Importantly, renters must take certain steps to receive the eviction protections for nonpayment of rent.

As developments are happening in real-time, survivor advocates who need assistance in understanding what the CDC moratorium and other eviction protections mean for their survivor clients should reach out to NHLP for technical assistance, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org).

If a client receives an eviction notice, that client should **immediately** speak with a local housing attorney to ensure their rights are protected -- **even if that client believes they are protected by the CDC order or another eviction protection.**



# Legal Protections for Survivors in Rental Housing Admissions

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One of the most difficult barriers that survivors of domestic and sexual violence face is obtaining safe, decent, and affordable housing. This article reviews the admissions protections provided to survivors under the Violence Against Women Act (VAWA) and fair housing laws. The article also summarizes two conciliation agreements from the Department of Housing and Urban Development (HUD) that address discrimination against survivors of domestic violence in the admissions process.

## VAWA Protections Against Denials of Admission or Assistance

VAWA prohibits covered housing providers (i.e., providers that participate in federal housing programs) from denying admission or assistance to individuals because of their status as a survivor of domestic violence, dating violence, sexual assault, or stalking. The impacts of domestic violence, dating violence, sexual assault, or stalking take many forms. For example, an abuser's financial abuse may result in a survivor having negative credit history, or an abuser's physical damage to a rental unit may negatively impact a survivor's rental history. These lasting impacts pose additional barriers for survivors who are applying for safe, decent, and affordable housing.

HUD's VAWA Rule and subsequent guidance provides helpful language about the difficulties survivors face in housing admissions because of the abuse committed against them. The preamble to HUD's VAWA regulations references "adverse factors" that may not be held against an applicant or tenant if they are "a direct result of" a VAWA crime, stating that if an "individual has a poor rental or credit history, or a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program." [HUD VAWA Rule, 81 Fed. Reg. 80,724, 80,728 \(Nov. 16, 2016\)](#).

HUD has provided additional guidance elaborating on what may constitute an "adverse factor," noting that a survivor applying for admission or assistance must tell the landlord or property manager about their status as a survivor, with "enough information for the PHA or owner to make a determination regarding the adverse factor." HUD notices that cover public housing/Housing Choice Vouchers ([PIH-2017-08 \(HA\)](#)), and HUD multifamily properties ([H 2017-05](#)) state that the owner may, upon receiving information about the adverse factor, request additional supporting documentation, so long as the request: (1) is consistent with the PHA or owner's policies; (2) does not require evidence of abuse other than what is outlined in the HUD VAWA Rule's documentation provisions, specifically at 24 C.F.R. § 5.2007; and (3) does not violate VAWA's confidentiality requirements or other laws.

Survivors must otherwise be eligible for the housing to obtain VAWA protections. This means that it is very important for advocates to help clients applying for housing illustrate clearly the connection between the abuse or violence a client has experienced and the resulting negative aspects of a survivor's rental or credit history.

## Fair Housing Protections for Survivors Regarding Admissions

VAWA housing protections are limited to covered housing programs and providers, meaning that private rental housing without a federal subsidy are not covered by VAWA protections. However, the Fair Housing Act has a broader reach, and thus may provide protections for women who are survivors of domestic violence in admissions for housing that is not covered by VAWA. *(Continued on page 4)*

The Fair Housing Act specifically prohibits housing discrimination on the basis of sex. HUD has recognized that housing policies and practices that negatively impact survivors can raise fair housing concerns because survivors are overwhelmingly women. For example, [2011 HUD fair housing guidance](#) noted, "if a landlord tells a female domestic violence victim that he does not accept women with a history of domestic violence as tenants because they always go back to the men who abuse them, his statement is direct evidence of discrimination based on sex." State or local fair housing laws may also prohibit discrimination against survivors of domestic violence, and other forms of abuse.

### **Case Studies: HUD Conciliation Agreements**

Included below are summaries of two HUD conciliation agreements regarding barriers survivors have faced in the rental admissions process.

#### ***Survivor v. New England Family Housing Management Organization; Survivor v. Michael Warren***

In a Massachusetts case, a Section 8 voucher holder who was also a domestic violence survivor alleged that property owners and landlords violated the Fair Housing Act and VAWA when they refused to rent to her because of calls she made to the police related to domestic violence.

The survivor entered into HUD Conciliation Agreements in 2014 with [the current owner and landlord](#) and a [prospective landlord](#). The agreements required in part that the owners and managers revise their standard leases to comply with VAWA, attend fair housing and VAWA trainings, and pay the survivor monetary damages.

#### ***Hope v. Valencia Village***

A survivor alleged that her landlord violated the Fair Housing Act on the basis of sex and familial status by refusing to rent her an apartment because she failed to provide full social security numbers of her minor children due to domestic violence-related safety concerns. The parties entered into a [HUD Conciliation Agreement in 2014](#) under which the landlord had to revise the housing policy to prohibit discrimination against domestic abuse survivors, pay monetary damages to the survivor, and permit the survivor to provide truncated social security numbers of her children when reapplying for housing.

### **Considerations for Survivor Advocates**

Based on the above, here are a few considerations for survivor advocates:

- Advocates should consider whether VAWA, the Fair Housing Act, and/or state and local laws provide legal protections for survivor clients. Advocates will likely need to help survivors applying to housing explain and document the links between the abuse and any negative history preventing the survivor from finding housing. For example, an advocate may draft a letter on the survivor's behalf identifying the link between a client's negative credit history and actions of their abuser, such as identify theft.
- Education of housing providers on the dynamics of intimate partner violence is also necessary so that housing providers can better understand the breadth of the impacts of violence, and how these impacts appear in survivors' lives.
- Local domestic violence organizations and housing advocates may seek to develop joint resources outlining the dynamics of abuse, including the cycle of power and control, and how that impacts a survivor's ability to obtain housing.
- Settlements such as the conciliation agreements noted above may be helpful in terms of educating housing providers about conduct or policies that may be discriminatory because such conduct or policies are harmful to survivors.
- Contact the National Housing Law Project if you need technical assistance regarding whether VAWA applies to a particular situation; sometimes determining the type of housing involved can be difficult. ■



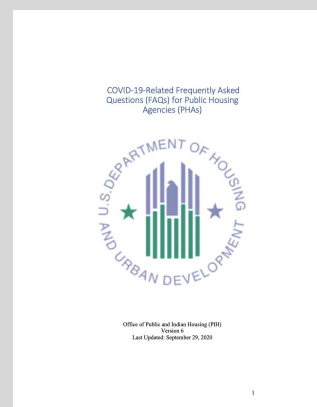
## HUD COVID-19 FAQ for Housing Authorities Includes Discussion of VAWA Housing Protections

On September 29, 2020, HUD issued an updated COVID-19 FAQ resource for public housing agencies (PHAs). PHAs play a key role in locally administering the public housing and Section 8 Housing Choice Voucher programs.

HUD includes a series of questions and answers about serving survivors of domestic violence during the pandemic. The FAQ discusses a number of topics, including:

- **Local Preferences.** HUD encourages PHAs to consider adopting local admissions preferences for households with survivors of domestic violence, dating violence, sexual assault, or stalking, as well as for people experiencing homelessness.
- **Emergency Transfers.** HUD requires PHAs to include policies for assisting tenants seeking VAWA external emergency transfers in their emergency transfer plans.
- **Documenting Abuse.** HUD reminds PHAs that they do not have to request documentation proving abuse from survivors who want to assert VAWA protections. PHAs can accept verbal statements from survivors. HUD also reminds PHAs that they are prohibited from asking for third-party documentation from survivors who are seeking VAWA protections unless the "submitted documentation contains information that conflicts with existing information."
- **Safe Communication.** HUD reminds PHAs of their obligations to ensure that communications with survivors are not disclosed, such as using a PHA mailbox to receive written materials from survivors, and not to leave messages with sensitive information on a survivor's voicemail.
- **Remote Hearing Options.** HUD notes that PHAs can use technology to provide remote hearing options for survivors, both during and after the pandemic.
- **Supporting Survivors During COVID-19.** HUD encourages PHAs to alert residents that PHAs are still processing requests under VAWA, and that stay-at-home orders do not mean that survivors must stay in a situation that is not safe.

The FAQ also notes that local domestic violence agencies, the National Coalition Against Domestic Violence, and the National Domestic Violence Hotline are all resources where PHAs and survivors can get more information.



Click [here](#) to read the full FAQ.

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

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