Housing Rights for Survivors of Domestic Violence, Sexual Assault, Dating Violence, and Stalking

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NHLP’s mission is to advance housing justice for underserved people and communities. For over ten years, NHLP has been funded by the Department of Justice’s Office on Violence Against Women to serve as a national technical assistance provider on the housing protections under the Violence Against Women Act (VAWA). NHLP has worked with thousands of advocates and housing providers on VAWA compliance and implementation issues.
NNEDV is a social change organization dedicated to creating a social, political and economic environment where violence against women no longer exists.

NNEDV’s Collaborative Approach to Safe Housing for Survivors Project provides training and technical assistance to improve coordination between domestic violence and homeless services.

NNEDV’s Safety Net Project addresses the intersection of technology and abuse, and provides training and technical assistance to advocates, law enforcement, legal services, social services providers, survivors and other stakeholders.
The Shriver Center on Poverty Law fights for economic and racial justice. Over our 50-year history, we have secured hundreds of victories with and for people living in poverty in Illinois and across the country. Today, we litigate, shape policy, and train and convene multi-state networks of lawyers, community leaders, and activists nationwide. Together, we are building a future where all people have equal dignity, respect, and power under the law. Join the fight at povertylaw.org.
NASH’s mission is to ensure that survivors of domestic and sexual violence have access to a full range of survivor-defined housing options, catalyzing a safe housing movement. Our vision is to create a world, centering racial equity, where safe housing is a right shared by everyone.

We advance our mission by changing systems and public policy, supporting and uplifting communities and partnerships, and creating a culture shift around programs and practices.
Goals

Today we will:

• Provide an update on the reauthorization of the Violence Against Women Act (VAWA)

• Provide an overview of federal housing protections, specifically VAWA, federal Fair Housing Act (FHA), American with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504);

• Provide an overview of state and local housing protections;

• Apply the federal housing protections to scenarios in the following areas: Discrimination, Documentation, and Notice/Rental Agreements/Leases;

• Provide resources
Violence Against Women Act Update
Discriminatory housing practices by landlords, local laws, and public housing agencies can contribute greatly to housing barriers and can often force a survivor to choose between homelessness and staying with an abusive partner.

HUD FINAL Rule October 2016:

“Domestic violence can often have negative economic and criminal consequences on a survivor. The perpetrator may take out credit cards in a survivor’s name, ruining their credit history, or causing damage to survivor’s property causing eviction and poor rental history.

The perpetrator may force a survivor to participate in criminal activity or a survivor may be arrested as part of policies that require arresting of both parties in a domestic disturbance.

The final rule ensures that covered housing providers do not deny tenancy or occupancy rights based solely on these adverse factors that are a direct result of being a survivor.”
HEALS Act: Helping End Abusive Relationships Act & VAWA Reauthorization

HUD CoC Set Aside for DV Survivors in current NOFA: $50 Million

End Family & Youth Homelessness
VAWA 2019 Proposed Expansions

Existing statutory protections and HUD rules from October 2016 are to provide basic protections for survivors of VAWA Crimes, VAWA 2019 expansions will assist with compliance and implementation

• (1) Strengthen protections for survivors of domestic violence from eviction due to any criminal actions of perpetrators.
  • Under current law, federal housing providers are prohibited from discriminating against prospective and current tenants based on their status as a survivor of VAWA Crimes.

• (2) Allow victims to independently establish eligibility for housing assistance when leaving the household of a perpetrator.
  • The current law does not require that survivors retain possession of the unit in the event of a family break-up..
VAWA 2019 Proposed Expansions (Cont’d)

- (3) Enhance the emergency transfer process.
  - Require housing providers to provide alternative transfer options for survivors of VAWA crimes.

- (4) Strengthen compliance and implementation across agencies and providers
  - Implement annual reviews established by each housing agency to assess compliance with the provisions of this Act.
  - Create a dedicated VAWA Director within HUD

- (5) Protect the right to report crime and support effective law enforcement
Federal Housing Protections
Federal Housing Protections: Overview

- Federal Fair Housing Act (FHA)
- Violence Against Women Act (VAWA)
- Americans with Disabilities Act (ADA)
- Section 504 of the Rehabilitation Act (Section 504)
The federal Fair Housing Act (FHA) protects domestic violence survivors from discrimination in housing situations, regardless of whether the housing is supported financially by the government.
Survivors Rights Under FHA

• Be free from discrimination when seeking housing to buy or rent;
• Be protected from eviction;
• Be treated the same as other tenants or occupants by a housing provider; and,
• Request a reasonable accommodation, to ensure that someone with a disability has equal opportunity to use and enjoy housing.
• VAWA provides housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking who are applying for or living in federally assisted housing.

• The law applies to a survivor (actual or perceived) regardless of sex, gender identity, sexual orientation, disability or age. Adopted in 2005 expanded in 2013.

• VAWA does not apply to market-rate rental housing (unless there is a voucher/federally subsidized – includes CoC’s).
Survivors Rights Under VAWA

• Cannot be denied admission, be evicted, or have their assistance terminated because of the violence committed against them;

• Must get a notice of housing rights under VAWA;

• Can request that an abuser be removed from the lease and housing, where applicable;

• Survivors with Housing Choice Voucher assistance can move with continued assistance;
Survivors Rights Under VAWA

- Seek an emergency transfer to another unit in the same program and/or to a unit under another federally subsidized housing program;
- Stay in the unit, even if there is (or has been) criminal activity that is directly related to the violence;
- Has a right to strict confidentiality of information;
  - If there is conflicting information, a provider may ask for additional documentation.
## What Programs are Covered?

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Survivors experiencing disabilities are entitled to protections under the ADA. It prohibits discrimination against individuals with disabilities in public accommodations and applies to all shelters operated by the government and to private shelters.
Section 504 prohibits discrimination against survivors with disabilities by housing providers that receive federal funding.
Under Section 504, survivors with a disability have the right to:
- Be protected from discrimination. For example, if a survivor of domestic violence is deaf or hard of hearing, the housing provider needs to find ways to make sure services and support are received as needed; if a survivor has a mental illness, the housing provider cannot deny housing/shelter;
- Confidentiality; and,
- Reasonable accommodations. For example, allowing a guide dog to stay with a program participant/tenant.
State and Local Housing Protections
State and Local Housing Protections

- State and local housing protections are critical for survivors because they can provide more protections than federal laws.

- While some state and local protections extend to sexual assault, stalking and dating violence survivors, not all of them do.

- Some state and local protections extend to human trafficking survivors as well.
State and Local Housing Protections

State/Local Housing Protections include:

- protection against discrimination (10 states)
- early lease termination (27 states)
- eviction defense (24 states and localities)
- lock changes (18 states)
- protections for survivors who seek emergency and police assistance (15 states and localities)

Discrimination Protections - Applying Federal Laws
• Federal: Violence Against Women Act and Fair Housing Act
• Protections for survivors against being denied admission/housing, being evicted, having assistance terminated because of the violence committed against them in federally subsidized housing.
**Scenario 1:** A match was made for a survivor of domestic violence (DV) to our program. We do not accept survivors because they should be referred to the DV system. If we were to accept the survivor, we would require the survivor to have a protection order or counseling, and to no longer be with the perpetrator.

**Poll Question:** Is this decision by a program to not accept DV survivors discriminatory?

*Please select one of the following:*

- Yes
- No
- Maybe
**Poll Question:** Is this decision by a program not to accept DV survivors discriminatory?

**Answer:** Yes

**Why?**
A program cannot deny housing to an individual or family due to actual or perceived status as a DV survivor.
Scenario 1: A match was made for a survivor of DV to our program. We do not accept survivors because they should be referred to the DV system. If we were to accept the survivor, we would require the survivor to have a protection order or counseling, and to no longer be with the perpetrator.

Poll Question 2: Is the decision by a program to ask the survivor to have a protection order or counseling prior to being accepted into the program discriminatory?

Please select one of the following:

- Yes
- No
- Maybe
**Poll Question 2:** Is the decision by a program to ask the survivor to have a protection order or counseling prior to being accepted into the program a discriminatory practice?

**Answer:** Yes

**Why?**

A program cannot ask a DV survivor to do something that they would not require of other potential participants, such as requiring documentation/proof that they are getting “help” or are no longer with the perpetrator.
Scenario 2: We placed a couple, Georgianne and Leslie, into a unit through our RRH program and were contacted by the landlord because he saw the police show up at their apartment on several occasions. A couple of tenants also told the landlord that they had seen Leslie with a black eye and heard the couple's loud arguments through the walls. Leslie is also not proficient in English and is fluent in Spanish. Both Leslie and Georgianne are on the lease with the landlord. The landlord told us that he is planning to evict them.

Poll Question: Can the landlord evict both Georgianne and Leslie from the unit?

Please select one of the following:
- Yes
- No
- Maybe
Poll Question: Can the landlord evict both Georgianne and Leslie from the unit?

Answer: No

Why?
Survivors have the right to contact the police or other emergency services without being threatened with an eviction.
**Scenario 2:** We placed a couple, Georgianne and Leslie, into a unit through our RRH program and were contacted by the landlord because he saw the police show up at their apartment on several occasions. A couple of tenants also told the landlord that they had seen Leslie with a black eye and heard the couple's loud arguments through the walls. Leslie is also not proficient in English and is fluent in Spanish. Both Georgianne and Leslie are on the lease with the landlord. The landlord told us that he is planning to evict them.

**Poll Question 2:** Can our housing program terminate assistance to both Georgianne and Leslie?

*Please select one of the following:*
- Yes
- No
- Not Sure
Poll Question 2: Can our housing program terminate assistance to both Georgianne and Leslie?

Answer: No

Why?
Like the landlord, the program also must follow the laws.
Scenario 3: A public housing agency (PHA) notifies a tenant that she must pay for a broken bathroom door caused by a fight that happened between the survivor and her boyfriend. The survivor explains that her boyfriend broke down the door when she fled to hide in the bathroom because he tried to hit her. The PHA insists that the survivor pay the $300 to replace the door but says that they are willing to work out a payment plan with her. The survivor does not have the money and fears that she will face eviction if she cannot pay.

Poll Question: Is the survivor responsible for the damages?

Please select one of the following:

- Yes
- No
- Not Sure
Poll Question: Is the survivor responsible for the damages?

Answer: No

Why? The PHA cannot force the survivor to pay for the property damage caused by the abuser or threaten eviction or subsidy termination because of the damage to the unit.
Documentation
Housing providers are free to take the tenant/participant at their word or can ask for documentation.

Any request for documentation by a housing provider must be in writing.
  - Solely providing a HUD VAWA self-certification form (HUD Form 5382) is not a written request.
  - Note: The self-certification form comes in 15 different languages.

The tenant/participant has 14 business days from the request to provide documentation, but the provider is encouraged to grant an extension if the tenant/participant needs more time.
Types of Documentation

1. VAWA self-certification form
   • HUD Form 5382 (for 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)*
   • Emails, text messages, voicemails, social media postings
Who Chooses the Type of Documentation?

- **Survivor gets to choose documentation type.**
- 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 documentation and grant extensions.
  - Housing providers cannot engage in additional fact-finding to determine if someone is “really” a survivor (e.g. conducting interviews w/ neighbors, employers, etc.).
*Remember: Some state/local laws provide additional (or more extensive) protections for survivors that could include early lease termination, lock changes and eviction protections. These state/local laws may have their own documentation requirements (see resources for more information)
Scenario 1: We placed a couple, Georgianne and Leslie, into a unit through our RRH program and were contacted by the landlord because he saw the police show up at their apartment on several occasions. A couple of tenants also told the landlord that they had seen Leslie with a black eye and had heard the couple's loud arguments through the walls. Leslie is also not proficient in English and is fluent in Spanish. Both Leslie and Georgianne are on the lease with the landlord. The landlord told us that he is planning to evict them, but …
Scenario 1 (continued): …we relayed to the landlord that the survivor has rights under federal laws. With education, the landlord did not pursue eviction. While we were educating the landlord, Leslie reached out to her case manager and shared that she was scared for her safety. Her case manager outlined some options to support Leslie, including staying in her current housing placement.
Poll Question: Leslie has the right to request which of the following?

*Please select one of the following:*

- Early lease termination
- Lock changes (but only with a protection order)
- Early lease termination, emergency transfer, lock changes, and lease bifurcation
- Not Sure
Poll Question: Leslie has the right to request which of the following?

Answer: Early lease termination, emergency transfer, lock changes, and lease bifurcation
**Scenario 1:** Leslie decides she is scared for her safety and requests an emergency transfer to another unit. The landlord requests in writing for Leslie to provide a protection order and letter from an advocate before moving forward with the emergency transfer.

**Poll Question 2:** Can the landlord request a protection order and letter from an advocate as the form of documentation?

- [ ] Yes
- [ ] No
- [ ] Not sure
Poll Question 1: Can the landlord request a protection order and letter from an advocate as the form of documentation?

**Answer:** No

**Why?**
Leslie decides which documentation to provide, including a self-certification form. Since she also has limited English proficiency, note that she should be provided with the form in Spanish.
**Scenario 2: Tom and Jerry rent from a private landlord. Tom is scared for his safety because Jerry has threatened him physically on more than one occasion and recently the threats escalated. Jerry slapped Tom across the face. Jerry controls their finances and Tom does not know what to do. He looks online and finds on womenslaw.org that his state has protections that apply to him. He wants to stay where he is and have Jerry removed from the unit.**

**Poll Question:** Can Tom provide a VAWA self-certification form to his landlord as documentation for the lease bifurcation request?

*Please select one of the following:*

- Yes
- No
- Maybe
Poll Question: Can Tom provide a VAWA self-certification form to his landlord as documentation for the lease bifurcation request?

Answer: No

Why?

State law will govern how a request for a lease bifurcation will be handled. If Tom is unsure of the requirements, he can contact his local legal aid/legal service organization or state domestic violence coalition.
Scenario 3: A PHA notifies a tenant that she must pay for a broken bathroom door caused by a fight that happened between the survivor and her boyfriend. The survivor explains that her boyfriend broke down the door when she fled to hide in the bathroom when he tried to hit her. The PHA insists that the survivor pay the $300 to replace the door but says that they are willing to work out a payment plan with her. The survivor does not have the money and fears that she will face eviction if she cannot pay.
**Scenario 3**

**Scenario 3:** BUT the survivor learned by reaching out to advocates that she is not responsible for the damages. She provided a demand letter to the landlord, relaying that she is not responsible for the damages. The landlord requests in writing documentation of the domestic violence.

**Poll Question:** What documentation should the survivor provide the landlord?

*Please select one of the following:*

- Self-certification form AND qualified third-party documentation
- Self-certification form OR qualified third-party documentation
- Not Sure
Poll Question: What documentation should the survivor provide the landlord?

Answer: Self-certification form OR qualified third-party documentation

Why? If requested by the PHA in writing, the survivor may have to provide documentation about the domestic violence and the most recent incident that led to the property damage. The survivor can then use HUD’s VAWA self-certification form or any other documentation that the survivor feels is safe to use, such as a police report, protection order, or verification provided by a domestic violence caseworker.
Notice of Occupancy Rights, Lease Addendums and Rental Agreements
HUD’s VAWA Final Rule & Implementation (Notices/Documentation)

- HUD implemented the VAWA Final Rule in November 2016. Housing programs administered by HUD are required to follow VAWA 2013.
- Regulations were effective in December 2016.
- Implementation, including notices and documentation, expected as of December 5, 2017.
VAWA Notice of Occupancy Rights & Self-Certification Form must be given:

- When a program participant applies and is admitted to CoC permanent/transitional housing, or begins receiving ESG assistance;
- When an individual or family applies and is denied CoC permanent/transitional housing, or applies for and is denied ESG assistance; and
- When a program participant receives notification of eviction/termination of CoC assistance, or is notified of termination of ESG rental assistance
VAWA Notice of Occupancy Rights & Self-Certification
Form must be given:

- When an individual or family applies and is admitted to other federally assisted housing, including a Housing Choice Voucher;
- When an individual or family applies and is denied federally assisted housing, including a Housing Choice Voucher; and
- When a tenant receives notification of eviction or termination of assistance.
Lease Addendums - CoC & ESG Programs

All agreements between the landlord/owner and tenant should be outlined in a VAWA lease addendum and must include the following elements of VAWA:

- Right for the lease to be broken without penalty,* if the tenant qualifies for an emergency transfer
- Protections for individuals from being denied access to housing and/or evicted from their housing on the basis of, or as a direct result of, being a survivor
- Construction of lease terms and terms of assistance
- Limitation of VAWA protections
- Confidentiality requirements

*CoC funds can be used to break lease
• Housing Choice Voucher Tenancy Addendum

• Owners in HUD multifamily programs can use the HUD VAWA Lease Addendum Form 91067.

• Owners in the Rural Development (RD) multifamily programs may use the VAWA Lease Addendum Form 91067.

• Owners in the LIHTC program should consult with the state housing finance agency on what VAWA lease addendum to utilize.
Recipients must outline VAWA protections in all rental agreements/housing assistance contracts with private housing owners and manager, including:

- Requirement to include VAWA lease addendum to all leases in units assisted by CoC or ESG funds
- Requirement to coordinate on emergency transfers
- Obligation for the owner to notify the recipient before a lease is bifurcated and/or a notice of eviction is provided
- If a notice of eviction is given to a tenant, obligation to provide both the notice of rights and self-certification forms with that notice
**Scenario 1:** A match was made for a survivor of DV to our program. We do not accept survivors because they should be referred to the DV system. Another organization took the survivor into their program.

**Poll Question:** Does the survivor need to receive a Notice of Occupancy Rights and Self-Certification Form?

*Please select one of the following:*

- Yes
- No
- Maybe
Poll Question: Does the survivor need to receive a Notice of Occupancy Rights and Self-Certification Form?

Answer: Yes

Why?
Since this is a CoC or ESG provider, the survivor should be provided both a Notice of Occupancy Rights & Self-Certification Form when applying to a program and if denied assistance/housing. In this case, the program denied assistance/housing because of her status as a survivor. The forms make sure the survivor knows what their rights are.
Scenario 2: We have a Rapid Re-Housing (RRH) program and work with landlords to place individuals and families experiencing homelessness into units. One of the hurdles we experience with some landlords is their reluctance to place a participant when they have little to no credit history. We currently have a sexual assault survivor who has no credit history and the landlord we are working with said that she cannot place the survivor into an otherwise available unit due to their lack of credit history.

Poll Question: Does the program need to provide a Notice of Occupancy Rights and Self-Certification Form to the survivor?

Please select one of the following:
- Yes
- No
- Maybe
Poll Question: Does the program need to provide a Notice of Occupancy Rights and Self-Certification Form to the survivor?

Answer: Yes

Why?
Since this is a CoC provider, the survivor should be provided both a Notice of Occupancy Rights & Self-Certification form when applying to a program and if denied assistance/housing. In this case, the landlord the program was working with denied assistance/housing because of their status as a survivor. The forms make sure the survivor knows what their rights.
Scenario: We have a Rapid Re-Housing (RRH) program and work with landlords to place individuals and families experiencing homelessness into units. One of the hurdles we experience with some landlords is their reluctance to place a participant when they have little to no credit history. We currently have a sexual assault survivor who has no credit history and the landlord we are working with said he cannot place the survivor into an otherwise available unit due to their lack of credit history.

Once we educated the landlord about the housing protections for the survivor, the landlord agreed to provide housing. The contract is between the survivor/tenant and the landlord.

Poll Question 2: What does the landlord need to provide the survivor with?

Please select one of the following:

- Notice of Occupancy Rights and Self-Certification Form
- Lease Addendum
- All of the above
Poll Question 2: What does the landlord need to provide the survivor with?

Answer: All of the above.

Why?
The landlord must provide the Notice of Occupancy Rights and Self-Certification Form and a lease addendum. The lease addendum must outline rights for the lease to be broken without penalty if the tenant qualifies for an emergency transfer; language that protects individuals from being denied housing/or evicted due to being a survivor; construction of lease terms/terms of assistance; limitations of VAWA protections and confidentiality requirements.
**Scenario:** We are a public housing agency and our admissions policies deny admission to applicants who have been evicted from rental housing in the last five years. Since this is our policy that we apply to everyone, we are not clear what else we have to do once we deny an applicant admission for having been evicted within the last five years.

**Poll Question:** What does the public housing agency need to provide the applicant being denied admission with?

*Please select one of the following:*
- Notice of Occupancy Rights and Self-Certification Form
- Lease Addendum
- All of the above
Poll Question 2: What does the public housing agency need to provide the applicant being denied admission with?

Answer: Notice of Occupancy Rights and Self-Certification Form

Why?
Even if the public housing agency has a policy to deny applicants’ admission if they have been evicted from rental housing in the last five years, the public housing agency must still provide the Notice of Occupancy Rights to the person denied admission. The eviction may be related to their status as a survivor of VAWA violence.
Materials and Resources
Overview of federal housing protections, common scenarios, and demand letters, see NASH & NHLP’s - Community Based Advocate Toolkit: How to make sure your clients have safe housing


- NHLP, VAWA Brochure (English and Spanish)
HUD Forms

National Resources

- American Civil Liberties Union Women’s Rights Project, Safe at Home: aclu.org/other/safe-home
- National Housing Law Project nhlp.org/OVWgrantees
- National Alliance for Safe Housing nashta.org
- National Domestic Violence Hotline: (1-800-799-7233, 1-800-787-3224 (TTY) thehotline.org
National Resources

- National Law Center on Homelessness and Poverty [nlchp.org](http://nlchp.org)
- National Network to End Domestic Violence [nnedv.org](http://nnedv.org)
- Rape, Abuse & Incest National Network [rainn.org](http://rainn.org)
- Safe Housing Partnerships (clearinghouse of information) [safehousingpartnerships.org](http://safehousingpartnerships.org)
- Shriver Center on Poverty Law [https://www.povertylaw.org/](https://www.povertylaw.org/)
State and Local Resources

- **State & Local housing protections for survivors in your area**, see NHLP’s *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium*

- **Womenslaw.org**: A project of the National Network to End Domestic Violence, provides state-specific legal information and resources for survivors of domestic violence. [womenslaw.org](http://www.womenslaw.org)

- For more information about state or local legal services, please visit: [https://www.ncsc.org/topics/legal-services/legal-aid-pro-bono/state-links.aspx](https://www.ncsc.org/topics/legal-services/legal-aid-pro-bono/state-links.aspx) or [https://www.lawhelp.org/find-help](https://www.lawhelp.org/find-help)

Thank you!

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Q & A
Please let us know how we did by taking a few minutes to fill out our feedback survey:

https://www.surveymonkey.com/r/L6VHMN7