VAWA 2013: Housing Protections for Survivors

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- Materials were emailed to registrants and will be emailed again after the webinar, along with the evaluations.
- Materials and recording will be posted at http://nhlp.org/OVWgrantees.
- MCLE certificates will be emailed to California attorneys.

Goals for Today

- Overview of:
  - VAWA 2013’s housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking.
  - VAWA implementation so far by the federal agencies.
  - Fair housing laws that provide safeguards for survivors.
Other Protections for Survivors

- In addition to VAWA, survivors may have housing protections under state and local laws, such as landlord-tenant laws.
- NHLP has an updated 50-state compendium of domestic violence housing laws at http://nhlp.org/node/1436

Violence Against Women Reauthorization Act of 2013

VAWA 2013 PROVIDES IMPORTANT SAFEGUARDS FOR SURVIVORS IN FEDERALLY ASSISTED HOUSING
What is VAWA?

- VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse against them, without being afraid of being evicted.
- VAWA 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 committed against them.
- Applies to men and women
- Only applies to federal housing programs

VAWA 2013 – Authority and Guidance

- RD notice to state directors and program directors of multifamily housing, RD AN No. 4747 (1944-N) (Feb.10, 2014).
## VAWA 2013: Housing Programs

<table>
<thead>
<tr>
<th>HUD Programs</th>
<th>Department of Agriculture</th>
<th>Department of Treasury/IRS</th>
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<tbody>
<tr>
<td>- Public Housing</td>
<td>• Rural Development (RD) Multifamily</td>
<td>• Low-Income Hous. Tax Credit (LIHTC)</td>
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<td>- § 236 Multifamily rental housing</td>
<td>- HOPWA (Hous. Opp. for Pple w/AIDS)</td>
<td><a href="http://www.nhlp.org/OVWgrantees">www.nhlp.org/OVWgrantees</a></td>
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<td>- § 221d3 BMIR (Below Market Interest Rate)</td>
<td>- HOME</td>
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<td>- Project-based Section 8</td>
<td>- Section 811 Supportive Housing for People with Disabilities</td>
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<td>- Section 8 vouchers</td>
<td>- McKinney-Vento (Homelessness Programs)</td>
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<td>- § 221d3 BMIR (Below Market Interest Rate)</td>
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## Who is Protected?

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<thead>
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<th>VAWA covers people who are subject to:</th>
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<tr>
<td><strong>Domestic violence:</strong> Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim.</td>
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<td><strong>Dating violence:</strong> Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors.</td>
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<td><strong>Sexual assault:</strong> Any nonconsensual sexual act prohibited by law.</td>
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<td><strong>Stalking:</strong> Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress.</td>
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<td><strong>“Affiliated individual” of the victim:</strong> Immediate family or any individual living in the household.</td>
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Admissions

- PHAs, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Ada

- Ada fled her public housing unit after being attacked repeatedly by her abuser.
- Ada notified the PHA that she had moved out, but the PHA continued to charge her for rent after she left.
- Two years later, Ada’s name was at the top of the Section 8 voucher waiting list. The PHA refused to process her application unless she paid the back rent on her public housing unit.
- Poll: Did the PHA’s rejection of Ada’s application violate VAWA?
Evictions

- PHAs, landlords and owners may not evict a tenant on the basis that she is or has been a survivor.
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
  - A New York court found that a Section 8 tenant could not be evicted for nuisance after her abuser forced his way into her home and assaulted her. *Metro N. Owners LLC v. Thorpe*

Limitation

- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual and imminent threat” not defined in VAWA
- Current HUD regulations are important:
  - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
  - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
  - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005
Lease Bifurcation

- A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay
  - Review lease: RD form lease “all perpetrators will be evicted, while the victim may remain” HB 2-3560, Att 6-E.
- Protection for tenants remaining in housing after lease bifurcation
  - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- The landlord must follow federal, state, and local law in evicting the abuser

Preserving Section 8 Voucher for Survivor

- PHA can terminate Sec 8 assistance to the abuser while preserving assistance to survivor
  - If a family breakup results from DV, “the PHA must ensure that the victim retains assistance.” 24 C.F.R. § 982.315.
### Voucher Portability

- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.
- 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. However, these policies do **NOT** apply when the move is needed for safety. See 24 C.F.R. § 982.314

### Emergency Transfers

- Survivors living in federally assisted housing often need to move or “transfer” to another subsidized unit to protect their safety.
  - Generally, only Section 8 vouchers are portable.
- VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners.
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
  - (1) tenant expressly requests the transfer and
  - (2) either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request
- Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser
Emergency Transfers (cont’d)

- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher
  - Annually, Congress may issue tenant protection vouchers for certain purposes.

Proving Domestic Violence

- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says the violation is related to DV.
- PHA or landlord is free to take tenant at her word, or can ask tenant to prove DV.
- Any request by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord’s request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.
Proving DV – Options for Documentation

1. Self-Certification Form
   - New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
   - Permits PHAs and owners to request certification via form approved by appropriate federal agency.
   - This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator’s name, if known and safe to provide.

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 the third party and the survivor under penalty of perjury.

Updated HUD Form 50066 Certification of Domestic Violence
Proving DV (cont’d)

- Poll: Can a housing provider require a tenant to provide third-party proof of domestic violence, dating violence, stalking or sexual assault to use VAWA’s housing protections?

- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.

- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.
Notification and Language Access

- HUD must develop a notice of VAWA housing rights (HUD notice) for applicants and tenants
- PHAs, owners and managers must provide HUD notice along with the agency-approved, self-certification form to applicants and tenants
  - (1) at the time an applicant is denied residency;
  - (2) at the time the individual is admitted; and
  - (3) with any notification of eviction or termination of assistance.
- HUD guidance prohibiting discrimination against LEP persons is applicable, including specifically for the HUD notice.

Other Requirements

- Confidentiality
- Survivors held to same standard as other tenants
- PHA plans
  - Annual plans: PHAs must include a statement of any PHA DV programs.
  - Five-year plans: PHAs must describe goals, objectives, policies or programs they use to serve survivors’ housing needs
- No preemption for laws that provide greater protections for survivors
- Impact on existing protections
VAWA Implementation by HUD

  - Provisions that are not self-executing
    - Ex: Emergency transfer; rights of remaining household members post-lease bifurcation
  - VAWA 2005 regulations continue to be in effect
  - Housing providers continue to implement transfer plans outlined in planning documents
- HUD CPD email blast/HOMEfires newsletter
  - Housing providers should not wait to provide basic VAWA protections
- Updated HUD VAWA certification Form 50066

VAWA Implementation by RD

- RD Administrative Notice 4747 (1944-N)
- Purpose of the Administrative Notice (AN)
- What does the AN require?
- Model emergency transfer plan
- Enforcing the AN?
THE FAIR HOUSING ACT CAN PROVIDE PROTECTIONS FOR SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM

Fair Housing and Domestic Violence

Fair Housing and
Domestic Violence

Fair Housing Laws

- Applies to all housing
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person’s membership in a protected class
- Protected categories
Statistics: Domestic Violence and Sex

- Survivors aren’t a protected class under the FHA, but most are female.
- Statistics:
  - HUD FHEO DV Memo: “[W]omen are five to eight times more likely than men to be victimized by an intimate partner…” More than 70% of those murdered by their intimate partners are women.
  - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.
  - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times as likely as men to be victims of domestic violence.

Common Discriminatory Policies

- Evictions or terminations based on violence against a survivor can violate fair housing laws. Examples:
  - Policies based on gender stereotypes may violate the FHA.
    - Ex: An owner evicts women with a history of domestic violence because “they always go back to the men who abuse them.”
  - Treating women differently because of their status as victims of DV may violate the FHA.
    - Ex: A landlord evicts a DV victim 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
  - Evictions for property damage caused by the abuser
Common Discriminatory Policies (cont’d)

- HUD’s Memo also states:
  - A neutral policy that negatively affects DV victims may violate the FHA because of its disparate impact on women. Example:
    - A housing provider has a zero-tolerance policy, under which the entire household can be evicted for the criminal act of one household member
    - Women are disproportionately affected by the zero-tolerance policy because they are the majority of DV victims and can be evicted as a result of the violence of their abusers
    - As a result, the housing provider should make exceptions to the zero-tolerance policy for DV victims in order to avoid a disparate impact on women.
  - Memo included in materials
  - See also FHA’s Discrim. Effects Stand., 78 Fed. Reg. 11,460 (2/15/13)

Enforcing VAWA/ Fair Housing Protections

- Informal advocacy
  - Meet with housing provider or write a letter
- Eviction defenses
  - Raise violation of VAWA or fair housing laws as eviction defense
- Administrative complaint with HUD
  - One-year statute of limitations
  - Memo from HUD’s Office of Fair Housing and Equal Opportunity sets forth the theories HUD will use to analyze discrimination against DV survivors. HUD Memo: Assessing Claims of Housing Discrimination against Victims of DV under FHA and VAWA (2/9/11)
- Civil lawsuits
  - Two-year statute of limitations under federal Fair Housing Act
  - Private right of action under VAWA 2013?
Thank You!

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