

# Protections for Survivors in Rental Housing

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JUNE 3, 2014

HOUSING JUSTICE

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## How Is Housing Related to Domestic Violence?

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- Women living in rental housing experience domestic violence at three times the rate of women who are homeowners.
- Many survivors remain in abusive relationships because they cannot maintain safe housing on their own.
- In a 1999 study conducted by Congress, 44% of homeless individuals identified domestic violence as the primary cause of their homelessness.

## Sources of Protection for Survivors

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- **The Violence Against Women Reauthorization Act of 2013**
- **California housing laws protecting survivors**
  - Eviction defense
  - Early lease termination
  - Lock changes
- **Fair housing laws**

## Case Study: Shira

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Shira lives with her girlfriend, Gilda, and their six-year-old daughter, Lyla, in an apartment in San Francisco that is subsidized by a Section 8 Housing Choice Voucher. Only Gilda's name is listed on the voucher as head of household. Shira and Lyla are listed as household members. They have lived in the unit for eight months. Three days ago, Shira got into a heated argument with Gilda and Gilda threatened to beat up Shira. A few months ago, Gilda choked Shira when she thought she had seen her with another woman. Shira called the police, who arrested Gilda and obtained an Emergency Protective Order for Shira. Gilda was released after 48 hours, and she was not criminally prosecuted. Gilda is currently living with family in the area.

Shira would like to break her one-year lease and use her voucher somewhere else. However, it is April and she would like to wait until Lyla's school year is over before moving with her daughter. In addition, Shira mentioned ending her lease to her landlord. In response, the landlord threatened to evict the entire household because the police came to the unit due to criminal activity.

# What is VAWA?

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- VAWA is intended to encourage DV victims 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: Housing Programs

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## HUD Programs

• Public Housing	• § 236 Multifamily rental housing
• Section 8 vouchers	• § 221d3 BMIR (Below Market Interest Rate)
• Project-based Section 8	• HOME
• Section 202 Supportive Housing for the Elderly	• HOPWA (Hous. Opp. for Pple w/AIDS)
• Section 811 Supportive Housing for People with Disabilities	• McKinney-Vento (Homelessness Programs)

## Department of Agriculture

- Rural Development (RD) Multifamily

## Department of Treasury/IRS

- Low-Income Hous. Tax Credit (LIHTC)

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## VAWA 2013: Coverage

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### VAWA covers people who are subject to:

**Domestic violence:** 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

**Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by consideration of 3 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

**“Affiliated individual” of the victim:** Immediate family or any individual living in the household

## VAWA: Proving Domestic Violence

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### 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.

## VAWA: Eviction

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- 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 domestic violence is not a “serious or repeated lease violation” by the victim or “good cause” (reason) for evicting the victim

## Protection from Eviction: CA Code of Civil Procedure § 1161.3

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- A landlord **cannot evict** a tenant based upon acts of domestic violence, stalking, sexual assault, human trafficking, or elder/dependent abuse (DV) committed against that tenant if:
  - Tenant has a restraining order or police report issued in last 180 days; and
  - Person named in the restraining order or police report does NOT reside in the same dwelling unit as the tenant.

## Breaking the Lease: CA Civil Code § 1946.7

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- CA law permits victims of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse to end their leases.
  - Victims must give 30 days' written notice to the landlord.
  - Victims must provide a police report or restraining order issued in the past 180 days or qualified third-party documentation
  - Tenants who are not family members of the victim are still obligated under the lease
  - Existing security deposit law applies
- Applies to all rental housing

## Changing the Locks: CA Civil Code §§ 1941.5, 1941.6

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- If victim lives with abuser, landlord must change locks within 24 hours of receiving a restraining order
  - R.O. must have been issued within last 180 days
  - R.O. must have kick-out order
  - Request must be in writing
  - If the landlord does not change the locks within 24 hours, tenant may change the locks without the landlord's permission
- If victim and perpetrator do not live in the same unit, the same rules apply, but the survivor may also use a police report to request the lock change.
- If landlord follows the law, landlord cannot be liable for locking out a perpetrator.
- Applies to all rental housing



## VAWA: Removing the Abuser

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- A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay
- The landlord must follow federal, state, and local law in evicting the abuser

## VAWA: Voucher Portability

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- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1<sup>st</sup> 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.
- 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.

## VAWA: Removing the Abuser and Preserving Section 8 Voucher for Survivor

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

## Thank You!

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