

Assisting Survivors in Applying for Federally Subsidized Housing



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OCTOBER 28, 2010**

HOUSING JUSTICE

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- **Materials were emailed yesterday and will be emailed again after the webinar, along with evaluations.**
- **Materials and recording will be posted at www.nhlp.org in the Attorney/Advocate Resource Center, Domestic Violence.**
- **MCLE certificates will be emailed to California attorneys.**

Today We'll Cover:

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- **Common problems domestic violence (DV) survivors face in applying for subsidized housing**
- **Laws that may protect survivors who are applying for housing**
- **Advocacy approaches that can be used in these cases**
- **Resources available to advocates as part of NHLP's manual, *Assisting Survivors of Domestic Violence in Applying for Housing***

Keep In Mind

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- **We'll focus on federally subsidized housing. Clients applying for these programs have more rights than those applying for private, unsubsidized housing.**
- **The screening process depends on the program:**
 - Public housing: Public housing agency (PHA) reviews applicants for income eligibility and suitability as tenants
 - Section 8 voucher: PHA reviews applicants' income eligibility; a private owner screens applicants' suitability as tenants
 - Project-based Section 8: Owner reviews applicants for income eligibility and suitability as tenants

Common Issues Survivors Face

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- **A domestic violence (DV) survivor may be denied subsidized housing for many reasons, including:**
 - She was previously evicted from subsidized housing or owes back rent to the public housing agency (PHA)
 - She has bad credit caused by the abuser
 - She originally applied for housing with the abuser, and now the PHA wants proof that she no longer lives with the abuser
 - She is currently a public housing tenant, and the PHA will not issue her a Section 8 voucher
 - She is having trouble finding a suitable unit to rent with her Section 8 voucher

Prior Evictions and Debts to PHAs

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**PHAS OFTEN REJECT APPLICANTS
BECAUSE OF PRIOR DEBTS THEY
OWE TO THE PHA, OR BECAUSE
THEY HAVE BEEN PREVIOUSLY
EVICTED FROM SUBSIDIZED
HOUSING**

Ada's Story

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- Ada's batterer repeatedly attacked her at her public housing unit. She fled the unit for her safety
- Ada notified the PHA that she had moved out, but the PHA kept billing her for rent 2 months after she left.
- Ada later applied for a Sec 8 voucher, but the PHA refused to process her application unless she paid the back rent on her public housing unit.

Ada: Available Protections

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- **VAWA:**
 - Prohibits PHA from denying housing to applicants on the basis that they have been victims of DV
- **Fair Housing Act:**
 - Prohibits PHA from using policies that have a disparate impact on women
- **PHA's Section 8 Administrative Plan:**
 - Must set forth screening criteria; PHA must follow these criteria
- **24 C.F.R. § 982.552 (applies to Sec 8 vouchers)**
 - States that PHA may consider “all relevant circumstances” in determining whether to deny assistance

Ada: Advocacy Approaches

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- **Issues that could be raised in a letter or at an informal meeting:**
 - **VAWA:** Establish a link between DV and the back rent
 - **Fair Housing Act:** Identify a PHA practice that has a negative impact on DV victims
 - **Sec 8 Administrative Plan:** Does it address prior debts or DV? Is the PHA complying with its stated policy?
 - Did the PHA consider DV as a mitigating circumstance before it denied the application?

Poor Credit History

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**MANY PHAS AND SECTION 8 LANDLORDS
SCREEN APPLICANTS' CREDIT HISTORY**



Ella's Story

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- Ella's ex-husband, Mike, controlled all aspects of the family's finances
- Ella's credit report shows that she is more than \$3,000 in debt because Mike forged her signature to obtain a loan
- Ella tried to apply for public housing, but the PHA denied her because of her poor credit history

Ella: Available Protections

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- **VAWA:**
 - Prohibits PHA from denying housing to applicants on the basis that they have been victims of DV
- **PHA's Public Housing Admissions & Continuing Occupancy Policy (ACOP):**
 - Must contain screening criteria; PHA must follow these criteria
- **24 C.F.R. § 960.203 (applies to public housing):**
 - States that PHA must consider the “time, nature, and extent of the applicant’s conduct.”
- **Fair Credit Reporting Act (FCRA):**
 - Consumers can dispute erroneous info on their credit reports

Ella: Advocacy Approaches

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- **Issues that could be raised in a letter or at an informal meeting:**
 - **VAWA:** Establish a link between DV and the credit history
 - **ACOP:** Does it list credit history as a screening factor? Is the PHA complying with its stated policy?
 - Present evidence of changed circumstances, and note that PHA has a duty to consider mitigating factors such as DV
 - Find out if client has a history of paying rent on time
- **Ella also may consider disputing the accuracy of her credit report under the FCRA**

Lansing, MI: Domestic Violence Policy

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- **The housing authority's admissions policy provides:**
 - When screening reveals negative information, such as poor credit, inquiries will be made regarding the circumstances contributing to the negative reporting.
 - Any inquiries will make clear that applicants have a right to keep any history of DV against them confidential.
 - When inquiries reveal that the negative reporting was the consequence of DV, the applicant will not be denied housing.

Proof of Family Breakup

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**PHAS OFTEN DEMAND PROOF
OF SEPARATION IN CASES
WHERE THE SURVIVOR
ORIGINALLY APPLIED FOR
HOUSING WITH HER ABUSER**



Kim's Story

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- Kim & her husband Chris applied for a public housing unit. Kim later separated from Chris after he was arrested for assaulting her.
- Kim's name came to the top of the waitlist. She told the PHA that she no longer lived with Chris.
- The PHA told Kim that unless she provided either a divorce decree or a restraining order, as well as proof of Chris' current address, it would not rent her a public housing unit due to Chris' criminal history.

Kim: Available Protections

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- **VAWA:**
 - Prohibits PHA from denying housing to applicants on the basis that they have been victims of DV
- **Fair Housing Act:**
 - Prohibits PHA from using policies that have a disparate impact on women
- **24 C.F.R. § 960.203: Beware!**
 - States that PHA may require an applicant to exclude a household member who has committed a violent crime
- **State fair housing laws:**
 - Some prohibit discrimination on the basis of marital status

Kim: Advocacy Approaches

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- **Issues that could be raised in a letter or at an informal meeting:**
 - Need to explain why it may be impossible for Kim to get a restraining order or proof of Chris' current address
 - VAWA: PHA is essentially denying Kim housing based on violence committed against her. Also, investigate whether Kim is being treated differently from other applicants
 - FHA: Identify a PHA policy that has a disparate impact on female victims of DV
 - May need to avoid entering into agreement where Kim agrees to exclude Chris from the unit
 - Does the PHA have an admissions policy on family breakup?

Oakland, CA: Family Breakup Policy

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- **If a family on the waitlist breaks up, PHA considers the following factors in deciding waitlist placement:**
 - interest of any minor children,
 - interest of any ill, elderly, or disabled family members
 - risks to family members as a result of domestic violence
 - recommendations of social service professionals

Moving to Escape Violence

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**SURVIVORS LIVING IN PUBLIC HOUSING MAY
NEED A SECTION 8 VOUCHER TO MOVE TO A
SAFE COMMUNITY**



Sara's Story

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- Sara lives in a public housing unit. Her ex-boyfriend has broken into her unit on numerous occasions. On the last occasion, he attacked her and threatened to kill her.
- Sara asks the PHA to allow her to move out of her public housing unit by issuing her a Section 8 voucher.

Sara: Applicable Protections

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- **Tools that can help survivors who need to move out of their public housing unit:**
 - **Local housing authority plans:** HUD regulations provide that PHAs may provide a selection preference in the voucher program “to families who live in public housing.” 24 C.F.R. § 982.202. Additionally, under 24 C.F.R. § 982.207, “The PHA may establish a preference for families residing in public housing who are victims of a crime of violence.”
 - **Waiting List:** If the PHA’s waiting list for vouchers is closed, the PHA can, if it has listed criteria in its PHA plans, re-open it for limited groups of people who meet the criteria enumerated in the plans. 24 C.F.R. § 982.206

Sara: Advocacy Approaches

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- Ensure that Sara gets on the priority transfer list for public housing residents & meet with housing authority.
- Advocate to housing authority to create priority preference for victims of domestic violence with regard to emergency transfers.
- Urge housing authority to reopen voucher waiting list for victims of domestic violence.
 - See New York City Housing Authority, Guide to Section 8 Housing Assistance Program,
<http://www.nyc.gov/html/nycha/downloads/pdf/070213N.pdf>.

Voucher Search Terms

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**MANY SURVIVORS, ESPECIALLY THOSE WITH
DISABILITIES, NEED AN EXTENDED PERIOD
OF TIME TO FIND A UNIT TO RENT WITH A
SECTION 8 VOUCHER**



Flora's Story

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- Flora has limited mobility and uses a wheelchair to get around. Flora's former caregiver abused her. She received a voucher and must find a unit close to her doctor and physical therapist.
- Many of the rental units around Flora's medical facilities are inaccessible or unaffordable.
- Flora has not been able to find accessible and affordable housing options within the 60-day search period allotted by the housing authority.

Flora: Applicable Protections

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- 42 U.S.C. §3604, *et. seq.* -- Fair Housing Amendments Act (and other federal, state, and local fair housing laws): Requires reasonable accommodation for people with disabilities.
- 24 CFR §§ 982.303(b)(2) and §8.28(a)(4); *VOUCHER GUIDEBOOK, supra note 44, at 5-44, 8-12.*: Regulations require extension of voucher search term as a reasonable accommodation.
- 24. C.F.R. § 982.505(d): Regulations require that HUD increase payment standard as a reasonable accommodation.

Flora: Advocacy Approaches

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- Request a **reasonable accommodation** for Flora's disability.
 - A change in a rule, policy, practice, or procedure that allows the individual with a disability to fully utilize the housing program.
- Make list of properties that Flora has seen, with a description of the costs and accessibility features & explain why it is vital that she live close to her medical care providers.
- Flora can request:
 - Extension of voucher search term
 - A higher payment standard that would allow the voucher to cover a higher rent.

Resources for Advocates

Manual is available online, <http://nhlp.org/resourcecenter?tid=96>

Appendices containing sample letters, pleadings and policies can be obtained from mschultzman@nhlp.org



Assisting Survivors of Domestic Violence in Applying for Housing



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Quick Overview

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- **Some of the topics discussed in the manual include:**
 - Overview of the federally subsidized housing programs
 - Understanding the subsidized housing application process
 - ✦ Income limits and immigration restrictions
 - ✦ Waiting lists and preferences
 - ✦ Challenging a denial of admission
 - Addressing negative credit and tenancy history
 - Assisting survivors with disabilities
 - VAWA
 - Using local planning to increase survivors' access to housing
- **Appendix contains a variety of sample documents**

Sample Advocacy Letter

An example of a letter that was used to challenge a landlord's decision to deny housing to a survivor who had been mistakenly arrested



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June 8, 2009

[REDACTED]

Re: B—G—: Rejection of Housing Application

Dear Ms. [REDACTED]:

Our office was recently contacted by Ms. B—G— about the rejection of her application for housing at the [REDACTED] development. According to Ms. G--, a [REDACTED] employee stated that Ms. G--'s application was denied because she was arrested on two occasions, even though, in both cases, all charges against her were dropped. As Ms. G-- attempted to explain, these arrests were related to incidents of domestic violence involving her then-husband, from who she is now divorced. Ms. G-- contends that her ex-husband was, in fact, the perpetrator in these incidents, but because his English was superior to hers, he was able to bring charges while she was not.

We understand that Ms. G-- freely disclosed her arrests on the form; that, at the request of [REDACTED] staff, she provided evidence that charges had been dismissed in both cases; that Ms. G-- was told that a supervisor from the management company would contact her to discuss the denial, but that this was never done; and that Ms. G--'s so-called "criminal background" was the only reason given for denial of her application.

It is our position that denying Ms. G--'s application for housing based on these arrests is illegal discrimination and, moreover, violates the intent of both Congress and the state legislature.

Past arrests have no probative value regarding past misconduct.

The Supreme Court has found that the mere fact that someone has been arrested has "very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever

Administrative Materials

An opinion from the New York Attorney General regarding denials of housing based on marital status and domestic violence

Office of the Attorney General
State of New York

Formal Opinion No. 85-F15

November 22, 1985

EXECUTIVE LAW, §§ 292.11, 296.2-a(a), (b) and (c), 296.5(a)(1), (2) and (3); 42 USC, § 3601, et seq.

A landlord may not (1) ask a prospective tenant to divulge his or her past, present or future marital status; (2) require a married applicant for housing, who has been subjected to domestic violence, to obtain a divorce as a condition to renting an apartment; (3) deny housing accommodations to all victims of domestic violence.

Ms. Karen Burstein and Ms. Marjory D. Fields
Co-Chairs, Governor's Commission on Domestic Violence

Dear Ms. Burstein and Ms. Fields:

The Governor's Commission on Domestic Violence has raised three questions about the legality of certain alleged practices by landlords regarding battered women who apply, apart from their abuser, for rental housing. The questions are:

- (1) May a landlord or managing agent require an applicant for private or publicly-assisted housing to provide information about past, present or future marital status, including information, documentation or evidence about marital breakup or discord?
- (2) May a landlord or managing agent require an applicant for private or publicly-assisted housing to obtain a divorce as a condition to renting a housing accommodation?
- (3) May a landlord or managing agent deny housing to a battered woman seeking housing apart from her abuser on the presumption that the abuser will visit the housing accommodation and endanger the safety of the premises?

Inquiries into Marital Status

Section 296.2-a(c) of the Executive Law (Human Rights Law) provides that:

"It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations * * * [t]o cause to be made any written or oral inquiry or record concerning the * * * marital status of a person seeking to rent or lease any publicly-assisted housing accommodation".

Under this section, an owner or manager of "publicly-assisted housing" (as that phrase is defined in section 292.11 of the Executive Law) is prohibited from inquiring into the marital status of housing applicants. A landlord of publicly-assisted housing thus may not ask a prospective tenant whether she is married, divorced, separated, widowed or single. The section contains no exceptions. Accordingly, a publicly-assisted landlord may not inquire into the marital status of a prospective tenant even if the landlord has reason to believe that the prospective tenant has been subjected to domestic violence.

Owners and managers of private housing are subject to the same prohibition. They are barred from making any "record or inquiry * * * which expresses, directly or indirectly, any limitation, specification or discrimination as to * * * marital status, or any intent to make such limitation, specification or discrimination" (Executive Law, § 296.5[a][3]; emphasis added).

Thus, like publicly-assisted landlords, private landlords may not ask questions seeking information about a prospective tenant's marital status (New York State Division of Human Rights, Rulings on Inquiries, 3 CCH

Sample PHA Admissions Policy

Can be used in asking your local PHA to improve its policies for screening DV survivors who are applying for public housing

Sample Domestic Violence Language for Housing Authorities to Include in Public Housing Admissions and Continued Occupancy Policies (ACOP)

Admission

- a. That an applicant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for admission. [42 U.S.C. §§ 1437d(c)(3).]
- b. The Housing Authority may consider domestic violence, dating violence, or stalking as a mitigating factor for otherwise disqualifying credit, rental or criminal histories or any other circumstances relevant during the application, termination or eviction process.
- c. Any inquiries regarding domestic violence shall make clear that members of applicant households have a right to keep any history of domestic violence against them confidential.
- d. The Housing Authority may ask for documentation establishing that negative credit, rental, criminal, or other history was the consequence of domestic violence, dating violence, or stalking. The applicant shall have fourteen business days (i.e. weekends and holidays will not count in determining the deadline) to provide such documentation. The Housing Authority may grant extensions to the fourteen-day-deadline if the applicant demonstrates good cause. The applicant can satisfy the documentation requirement in any of the following ways:
 - a. Completing a HUD-approved certification form verifying that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. Such certification shall include the name of the perpetrator. The Housing Authority will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety.; OR
 - b. Providing the requesting owner, manager, or Housing Authority with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, or stalking must also sign the documentation; OR
 - c. Producing a Federal, State, tribal, territorial, or local police or court record. [42 U.S.C. § 1437d(u)(1).]
- e. All denial of assistance letters will notify applicants of VAWA's protections and that they may seek an informal hearing if they believe that the denial of assistance was related to acts of domestic violence, dating violence, or stalking committed against the applicant.
- f. Nothing in this Plan shall be construed to require the public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.
- g. If because of concerns for his or her safety a victim of domestic violence is unwilling or unable to provide information or identification ordinarily required to confirm eligibility for public housing, efforts will be made to otherwise establish eligibility and alternative sources and methods of verification will be accepted.

Contact Information

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This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.