

# HOUSING RIGHTS AND NEEDS OF SEXUAL ASSAULT SURVIVORS

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## Overview of Today's Training

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- Discuss common housing issues that survivors encounter
- Discuss the protections that may apply:
  - ▣ State laws
  - ▣ Fair housing laws
  - ▣ Violence Against Women Act (VAWA)
- Discuss how these laws can address survivors' housing needs
- Discuss advocacy strategies

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## SA & Housing: What's the Connection?

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- 40% of sexual assaults occur in the survivor's home; nearly 20% occur at the home of the survivor's friend, relative or neighbor
- After an assault, many survivors are faced with the following choice:
  - ▣ Relocate to preserve health and safety; or
  - ▣ Remain in the housing, and take actions to preserve health and safety

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### Issue I: Survivors Who Relocate Face Many Obstacles

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- May need to break the lease
- May lack funds for moving into a new home
- May need to obtain confidential address
- May need assistance in applying for subsidized housing
- Tenants who already receive subsidies may be afraid of losing their assistance if they move

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### Issue II: Survivors Who Remain May Have Security Concerns

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- If perpetrator was a cohabitant, may need to exclude perpetrator from the unit
- Perpetrator may have been the landlord, an employee, or another tenant at the property
- May need additional security measures
- May need to change the locks
- Survivors with disabilities may need reasonable accommodations

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### Issue III: Survivors May Face Evictions/Terminations Related to SA

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- Assault occurred at the unit, violating a “zero tolerance for crime” policy
- Survivor called police or security
- Landlord retaliated against survivor for pursuing his or her rights
- Landlord or property manager retaliated against survivor for refusing to engage in sexual activity

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## State Laws May Protect SA Survivors

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- More and more jurisdictions are enacting laws designed to protect survivors' housing rights
- Protections may also be included in city or county antidiscrimination & rent ordinances (ex: Westchester County, NY)
- Some laws specifically refer to SA; others refer to domestic abuse or family violence. Look closely at definitions to determine whether client is covered.
- Contact NHLP for assistance in identifying these laws

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## Examples of State Laws

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- Laws that may protect survivors include:
  - Early lease termination (AZ, CA, CO, DE, DC, IL, IN, MN, NJ, NY, NC, OR, TX, WA, WI)
  - Laws that prohibit survivors from being evicted or denied housing because of violence committed against them (AR, DC, IN, NC, RI, WA)
  - Laws that provide a defense to eviction (CO, DC, IA, LA, NM, VA, WA)
  - Right to call police (AZ, CO, DC, MN, TX, WI)
  - Lock changes (AZ, AR, DC, IL, IN, NC, OR, UT, VA, WA)

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## What About Landlords' Duties?

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- Do landlords have a duty to ensure tenants' safety?
- Check your state's statutory and common law
- Most states recognize a warranty of habitability that is implied in all leases
  - Landlords may be liable if they fail to take reasonable measures to protect tenants against foreseeable criminal acts
- Under the covenant of quiet enjoyment, landlords may be liable if they interfere with the tenant's use and enjoyment of the apartment

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## Landlords' Duties: Case example

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- **Kwaitkowski, 123 Cal. App. 3d 324 (1981):**
  - ▣ Building was in high-crime area. Lock and lights in lobby area were broken; strangers easily entered lobby
  - ▣ Tenants had complained to owner about safety, and one tenant had been robbed in a common area
  - ▣ Plaintiff was robbed & raped in the lobby
  - ▣ Court denied motion to dismiss, finding that landlord had duty to protect because of the foreseeability of the criminal attack, and the warranty of habitability

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## SA and Fair Housing Laws

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- Fair housing laws apply to most landlords, regardless of whether they are subsidized:
  - ▣ Federal Fair Housing Act, known as the FHA (42 U.S.C. § 3601 et seq.)
  - ▣ Most states have antidiscrimination laws that mirror the FHA's protections
- These statutes prohibit landlords from discriminating against an applicant or tenant because of sex, disability, race/color, national origin, familial status, or religion

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## SA and Fair Housing: 3 Basic Theories

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- **Sexual harassment:** 2 subtheories:
  - ▣ Quid pro quo: Landlord or employee seeks sexual favors in return for housing rights
  - ▣ Hostile environment: Landlord or employee's sexual advances alter the terms or conditions of tenancy
- **Disparate impact:** Used to challenge neutral policies that have a harsh effect on a protected class
- **Disparate treatment:** Used to challenge actions that were taken against a tenant because of sex-based stereotypes

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## Sexual Harassment

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- Sexual harassment is a form of sex discrimination under fair housing laws
- Examples of sexual harassment
  - ▣ Threatening to evict unless tenant engages in sexual acts
  - ▣ Making unwanted sexual advances
- Once landlords know or should have known about sexual harassment, they must take action that is reasonably calculated to end the harassment
- Note: If assailant is landlord, tenant may have state law claim for breach of the covenant of quiet enjoyment

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## Sexual Harassment: Case Example

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- *United States v. Veal* (W.D. Mo. 2005)
  - ▣ Landlord demanded sexual favors from tenants & evicted some who denied his advances.
  - ▣ One resident testified that landlord forced her to have sex twice, once in the presence of her children
  - ▣ Most victims were low-income, single mothers who had limited housing opportunities
  - ▣ DOJ prosecuted case, and jury awarded damages totaling \$1.1 million to 11 residents

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## Disparate Impact: Case Example

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- *Lewis v. N. End Vill.* (E.D. Mich. 2008):
  - ▣ Tenant's abuser kicked in door at her apt. Although tenant had RO, she was evicted for violating lease, which stated that she was liable for damage resulting from "lack of proper supervision" of her "guests."
  - ▣ Tenant argued that the policy of interpreting the word "guest" to include those who enter a property in violation of a RO had a disparate impact on women.
  - ▣ Pleadings & settlement available at [www.aclu.org](http://www.aclu.org)

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## Disparate Treatment: Case Example

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- Blackwell v. H.A. Housing (D. Colo. 2005)
  - HUD-subsidized housing complex denied tenant's request to transfer to another unit after she was raped and beaten by her ex-partner
  - Tenant alleged that by denying her a transfer based on her status as a victim of domestic violence, landlord intentionally discriminated against her on the basis of sex
  - Case settled, with housing provider agreeing to adopt domestic violence policy and to train its employees

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## Violence Against Women Act (VAWA)

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VAWA covers these categories of housing ONLY:

- Public housing
- Section 8 Voucher housing
- Project-Based Section 8 Housing
- Supportive housing for elderly or disabled

VAWA covers these categories of victims:

- A survivor of domestic violence
- A survivor of dating violence
- A survivor of stalking

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## Does VAWA cover SA survivors?

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- "Domestic violence" under VAWA includes felony or misdemeanor crimes of violence committed by:
  - Current or former spouse
  - Person with whom the victim shares a child
  - Current or former cohabitant
  - Person similarly situated to a spouse of the victim under the jurisdiction's DV or family violence laws
  - Any person to whom the jurisdiction's DV or family violence laws apply

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## Does VAWA cover SA? (cont'd)

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- “Dating violence” is violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature w/the victim; and
  - Existence of relationship is determined based on:
    - Length of the relationship.
    - Type of relationship.
    - Frequency of interaction
- Ultimate question: Does the SA survivor fit into VAWA’s definitions of DV, dating violence, or stalking, or into your state’s definitions of these terms?

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## VAWA: Admissions & Assistance

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- An individual’s status as a survivor of domestic violence, dating violence, or stalking is not an appropriate basis for denying him or her housing.
- What about poor credit or tenancy history that is directly related to acts of violence?
- What about admissions preferences for survivors?

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## VAWA: Evictions/Terminations

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- Crimes “directly relating to” DV are not grounds for evicting the survivor or terminating the rental subsidy.
- Incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating the rental subsidy.
- There are limits to these protections.

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## VAWA: Removing the Abuser

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- Housing authority or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits acts of violence while preserving the survivor’s tenancy rights.
  - PHA or landlord must follow federal, state, and local law in evicting the perpetrator
  - Safety planning is essential in these cases
- PHA may terminate Sec 8 assistance to abuser while preserving assistance to survivor

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## VAWA: Safety Moves

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- Generally, a Section 8 voucher family must stay in place for one year before moving. VAWA provides an exception for DV survivors who must move for safety.
- PHA may ask for documentation of DV.
- Note: VAWA does not address emergency transfers in public housing or project-based Section 8.

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## VAWA: Proving Acts of Violence

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- If survivor asserts VAWA rights, PHA or landlord may ask for proof of violence. Survivor can provide:
  - HUD certification form; or
  - Police or court record; or
  - Statement signed by survivor and DV service provider, medical professional, or attorney
- Survivor has 14 business days to provide documentation.
- Documentation must be kept confidential

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### Advocacy I: Assisting Survivors Who Need To Relocate

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- Does state have early lease termination law?
  - ▣ If not, advocacy may be needed
- In some states, survivors may qualify for relocation funds
- Is confidential forwarding address needed?
- In applying for subsidized housing, discuss whether client qualifies for any preferences
- Clients in public housing can request transfers
- Clients who have Sec 8 vouchers may be able to “port”
- In any case, client should never abandon unit

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### Advocacy II: Assisting Survivors Who Want To Stay: Safety Considerations

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- If perpetrator and survivor live together, kick-out order may give survivor exclusive possession
- Consider giving landlord copies of restraining orders
- Examine your state’s law on lock changes
- Will victim compensation funds pay for security system?
- Landlords who know or should know of an unsafe condition may have a duty to fix it
- In subsidized housing, housing authority or landlord can evict perpetrator while leaving survivor in place

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### Advocacy II: Assisting Survivors Who Want To Stay: Fair Housing Considerations

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- Survivors with disabilities may be entitled to security measures as a reasonable accommodation
- If client has experienced sexual harassment or disability discrimination, client may:
  - ▣ File an administrative claim with HUD or state law counterpart
  - ▣ Sue in federal court for injunctive relief or damages
  - ▣ Note: It is illegal for landlords to retaliate against tenants who seek to enforce their fair housing rights

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### Advocacy III: SA-Related Evictions

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- Tenants who receive eviction notices should NOT simply leave—could result in harm to client’s tenancy record
- Federal and state fair housing laws may provide a defense to evictions that are related to SA
- Fair housing laws provide a defense for tenants who are being retaliated against for asserting their rights
- VAWA may provide a defense if the alleged violation is related to violence committed against survivor

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### Don’t Be Intimidated: Help is Available

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## Sexual Assault and Housing: A Hypothetical

Jill lives with her two children and rents an apartment from Andre, a private landlord, using a Section 8 voucher. Benjamin, the complex's maintenance person, frequently made sexually related remarks to Jill and other female tenants. He told them that he would not fix problems in their units unless "you're nice to me" or "you give me something in return." While making repairs in their units, he grabbed several of the women's breasts and buttocks. Andre had received several complaints from female tenants regarding Benjamin's offensive words and touching, but did nothing because he thought that Benjamin was otherwise a model employee.

One day, Benjamin came to Jill's unit to fix her toilet, and told her that he would not complete the repair unless she did a favor for him. He then attempted to put Jill's hand down his pants. When Jill told Andre that she would never have sex with him, he pinned her to the ground and raped her. Jill called the police, and Benjamin was arrested.

Questions 1, 2, and 3 should be read independently of each other.

1. Jill receives an eviction notice because "criminal activity occurred in the unit, and this complex has a zero tolerance for crime policy that is set forth in your lease."
  - a. Does Jill have any defenses to the eviction?
  - b. What potential counterclaims could Jill raise?
2. Assume that Jill no longer feels safe in the apartment and wants to move, even though she still has seven months left on her lease.
  - a. What research would you need to do to determine whether Jill can break the lease without penalty?
  - b. What are some advocacy strategies you could use to convince the landlord to let Jill out of the lease immediately?
3. Jill wants compensation for the pain and suffering she experienced from the assault.
  - a. What laws might apply?
  - b. Can Andre be held liable for Benjamin's conduct?
  - c. What are some of Jill's options for enforcing her rights?

## Resources on Sexual Assault Survivors' Housing Rights

### Statutes

- The Violence Against Women and Justice Department Reauthorization Act of 2005, Pub. L. 109-162, amended the following housing statutes:
  - 42 U.S.C. § 1437d (public housing)
  - 42 U.S.C. § 1437f(o) (Section 8 voucher program)
  - 42 U.S.C. §§ 1437f(c), (d) (project-based Section 8 program)
- Fair Housing Act, Title VIII of the Civil Rights Act of 1964; 42 U.S.C. §§ 3601 *et seq.*

### Department of Housing and Urban Development (HUD) Materials

Available at [www.hud.gov/hudclips](http://www.hud.gov/hudclips):

- **Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008)** (on conference CD)
- **HUD Notice PIH 2006-42:** Transmits Certification Form HUD-50066 and provides guidance to housing authorities and owners regarding certification of incidents of abuse.
- **Form HUD-50066:** The certification form that applicants and tenants in public housing and the Section 8 voucher program may use to certify abuse (on conference CD)
- **Form HUD-91066:** The HUD-approved certification form that applicants and tenants in the project-based Section 8 program may use to certify abuse.
- **HUD Notice PIH 2007-5:** Provides guidance to housing authorities and owners regarding bifurcation (splitting) of leases and portability of Section 8 vouchers.
- **72 Fed. Reg. 12,696 (Mar. 16, 2007):** Overview of VAWA's housing provisions.
- **HUD Notice H 08-07:** Provides guidance to owners of project-based Section 8 properties.

### Manuals

- Chapters 11 and 12 of the Victim Rights Law Center's manual, *Beyond the Criminal Justice System* (2008), [www.victimrights.org](http://www.victimrights.org)
- National Housing Law Project, *HUD Housing Programs: Tenants Rights* (3d ed. 2004). Contact Amy Siemens, [asiemens@nhlp.org](mailto:asiemens@nhlp.org)

### Websites

- National Housing Law Project, [www.nhlp.org](http://www.nhlp.org)
- ACLU Women's Rights Project, [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)
- Legal Momentum, [www.legalmomentum.org](http://www.legalmomentum.org)
- National Law Center on Homelessness and Poverty, [www.nlchp.org](http://www.nlchp.org)

### Other

- National Housing Law Project, *Housing Rights of Survivors of Domestic and Sexual Violence* (on conference CD)
- Legal Momentum, *Sexual Harassment in Housing: A Primer* (2003), [www.legalmomentum.org/site/PageServer?pagename=publications\\_4](http://www.legalmomentum.org/site/PageServer?pagename=publications_4)
- National Law Center on Homelessness and Poverty, *State Housing Laws and Legislation to Ensure Housing Rights for Survivors of Violence Against Women* (2008), [nlchp.org/program\\_reportspubs.cfm?prog=3](http://nlchp.org/program_reportspubs.cfm?prog=3)

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