

VAWA's Housing Protections



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HOUSING JUSTICE

National Housing Law Project

Housekeeping



- ☞ Materials were emailed to registrants 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/DOJ Grantees.
- ☞ MCLE certificates will be emailed to California attorneys.

Goals for Today:



- ☞ Quick overview of federally assisted housing programs
- ☞ Examples of how the Violence Against Women Act (VAWA) housing protections arise in practice
- ☞ VAWA's housing protections for survivors of domestic violence, dating violence, and stalking
- ☞ Advocacy strategies



Other Protections for Survivors



- ☞ In addition to VAWA, DV survivors may have protections under state landlord-tenant laws, state fair housing laws, and the federal Fair Housing Act
- ☞ We will cover fair housing protections for survivors on March 23, 2011
- ☞ NHLP has a 50-state compendium of domestic violence housing laws at <http://nhlp.org/node/1436>

Federally Assisted Housing



A quick overview of the subsidized housing programs that are affected by the Violence Against Women Act (VAWA).



VAWA's Scope



- œ The following federal housing programs are covered by VAWA:
 - œ Public housing
 - œ Section 8 Voucher Program
 - œ Project-Based Section 8 Program
 - œ Supportive Housing for the Elderly (Section 202) and Disabled (Section 811)
- œ For assistance in determining what program your client is in, contact NHLP

Public Housing



- œ Owned and operated by a Public Housing Agency (PHA)
- œ PHA develops its own leases locally, in accordance with rules set out by the Dept. of Housing and Urban Development (HUD)
- œ Tenant pays either 30% of income toward rent or a flat rent
- œ PHA develops a local plan for running public housing, usually called the Admissions and Continued Occupancy Policy (ACOP)

Section 8 Vouchers



- ☞ Tenant receives a voucher to rent a unit in the private market & enters into a lease with a landlord.
- ☞ PHA pays subsidy to the landlord.
- ☞ Tenant pays difference between the subsidy and the rent for the unit – usually 30% of the tenant's income
- ☞ Defining feature: **portability**. Tenant can use voucher anywhere in the country where there is a PHA
- ☞ PHA develops a local plan for running the voucher program, usually called the Administrative Plan

Project-Based Section 8



- œ Owners of project-based Sec 8 buildings are usually private individuals or corps. that have received HUD subsidies to provide affordable housing.
- œ Subsidy is attached to the rental unit. Unlike Section 8 vouchers, the subsidy doesn't travel with the tenant if she moves.
- œ Tenant pays 30% of income toward rent.

Section 202 & Section 811



- ❧ Section 202 Supportive Housing for the Elderly
 - ❧ HUD provides subsidies to nonprofit organizations that operate housing for seniors with very low income
 - ❧ Residents pay rent equal to 30% of their income.
- ❧ Section 811 Supportive Housing for Persons with Disabilities
 - ❧ HUD provides funding to nonprofit organizations that develop housing for people with disabilities
 - ❧ Rents are limited to 30% of a household's income.

VAWA's Housing Protections, In Practice



Examples of how VAWA housing issues may arise for your clients



Eva: Part 1



- ❧ Eva applied for public housing and was asked to complete an application.
 - ❧ Applicants were required to disclose arrests for violent criminal activity.
 - ❧ Eva was arrested twice for assault, both times because police officers believed her abuser, whose English was superior to hers.
 - ❧ Eva disclosed the arrests on her application, but made a note that the charges were dropped in both cases.
- ❧ The PHA denied Eva's application because of the arrests.

The public housing application Eva completed

HOUSING AND CRIMINAL HISTORY

Have you ever lived in public housing, section 8 or any subsidized housing complex? YES NO
If so, Where: _____ When: _____ Do you owe a balance? _____

Have you ever been evicted or terminated from public housing, section 8 or any subsidized housing complex? YES NO
If so, Where: _____ When: _____ Why: _____

Have you ever been arrested for any of the following criminal activities?

- | | |
|--|-------------|
| <input type="checkbox"/> Drug Related Activity | Date: _____ |
| <input type="checkbox"/> Violent Criminal Activity | Date: _____ |
| <input type="checkbox"/> Sexual Offenses | Date: _____ |
| <input type="checkbox"/> None of the Above | |

Sonya: Part 1



- ☞ Sonya had a Section 8 voucher.
- ☞ One night, Sonya's abuser forced his way into her apartment. He cut himself on broken glass after he destroyed a cabinet in her apartment.
- ☞ Sonya's abuser told a security guard that he was bleeding because Sonya stabbed him.
- ☞ Sonya's landlord filed an eviction action against her on grounds of nuisance based on the alleged "stabbing."

Amended

10 DAY NOTICE TO TERMINATE

TO: Sonya Thorpe - Tenant
John Capers - Sub-tenant
"JOHN DOE"/"JANE DOE" - Sub-tenant(s)
[REDACTED]
New York, NY 10029

PLEASE TAKE NOTICE, that your landlord elects to terminate your tenancy on the grounds that you are permitting and/or committing a nuisance in the subject premises, or are maliciously, or by reason of gross negligence, substantially damaging the accommodation, or your conduct is such as to interfere substantially with the comforts and safety of other tenants, thereby creating an objectionable tenancy, in that:

a) You have engaged in anti-social, disruptive, destructive, dangerous and/or illegal behavior in and around the building, in violation of Paragraphs 28 and 33 of your Lease Agreement and the Building Rules and Regulations. This conduct has annoyed and disturbed other tenants and severely interfered with other tenants' rights to comfort, safety and quiet enjoyment of the premises. This conduct has also interfered with management and security's ability to control and protect the premises. This conduct includes, but is not limited to, the following:

1. On or about April 1, 2008, there was a domestic dispute between you, Sonia Thorpe and John Capers. The landlord did receive information that you, Sonya Thorpe, did stab John Capers on the complex causing him serious harm. John Capers was removed from the premises by Emergency Medical Services to a local hospital. Upon information and belief, you, Sonia Thorpe were arrested by the New York City Police Department due to the attack on John Capers. Upon information and

The 10-day notice to vacate that Sonya received

The landlord has also received information that there has been several other domestic disputes between you, Sonia Thorpe and you, John Capers in and around the building. Upon information and belief, you, Sonia Thorpe had an Order of Protection against John Capers previously.

between you, Sonia Thorpe and you, John Capers. This has occurred on numerous occasions.

4. The above conduct has been chronic and persistent and constitutes a nuisance. Nuisance conduct is noncurable.

PLEASE TAKE FURTHER NOTICE, that unless you remove from the above premises on *7/14/08*, the date on which your tenancy terminates, the landlord will commence summary proceedings under the statute to remove you therefrom.

Maya: Part 1



- ☞ Maya lives in public housing.
- ☞ Maya missed two mandatory meetings with the PHA because she was afraid to leave her home due to constant harassment and threats by a stalker.
- ☞ The PHA sent Maya a notice saying she could be evicted for missing the meetings.
- ☞ Maya filled out a HUD form documenting the stalking and explaining why she was absent.
- ☞ The PHA told Maya she was required to provide documentation of the stalking from a third party, or she could be evicted.

Jen: Part 1



- ❧ Jen, her husband AJ, and their 3 kids had a Section 8 voucher. AJ was listed as the head of household on the voucher.
- ❧ Jen obtained a restraining order against AJ due to DV.
- ❧ AJ asked the housing authority to let him use the voucher to move into a unit by himself
- ❧ Jen asked the housing authority to let her keep the voucher in the interest of her children
- ❧ The housing authority let AJ move with the voucher and terminated Jen's assistance

Isabel: Part 1



- ☞ Two months ago, Isabel signed a yearlong lease to rent an apartment. Isabel used a Section 8 voucher to help pay for the rent.
- ☞ Isabel's former partner found the apartment and assaulted her.
- ☞ Isabel moved out of state to escape her abuser and asked the PHA if she could use her voucher at her new home.
- ☞ The PHA told Isabel her voucher could be terminated because she moved before her one-year lease was up, and she had moved without notifying the PHA first.

Discussion



- ☞ Have any of your clients been denied access to subsidized housing for reasons related to domestic violence? Why were they denied housing?
- ☞ Have any of your clients been evicted from subsidized housing or had their rental assistance terminated for reasons related to domestic violence? Why were they evicted, or why was their subsidy terminated?
- ☞ Enter your answers in the chat box.

VAWA



Housing protections under the Violence Against Women Act



VAWA's Housing Provisions



- ☞ VAWA's housing provisions became effective Jan. 2006. They address domestic violence, dating violence and stalking in the following ways:
 - ☞ Protections against discrimination in admissions to subsidized housing.
 - ☞ Protections against evictions and subsidy terminations.
 - ☞ Safety moves.
 - ☞ Removing the perpetrator from the subsidized unit.
 - ☞ Proving domestic violence, dating violence, or stalking.

VAWA Rules & Regs



- ❧ Amended housing statutes at:
 - ❧ 42 U.S.C. § 1437d *et seq.* (public housing)
 - ❧ 42 U.S.C. § 1437f *et seq.* (Section 8)
- ❧ HUD issued final regulations implementing VAWA on October 27, 2010. See 75 Fed. Reg. 66,246.
 - ❧ The regulations contain helpful language on several issues affecting DV survivors, which we'll discuss.
- ❧ HUD has issued VAWA notices to PHAs and owners, which are available online. These notices mostly reiterate VAWA's statutory protections.

Admissions



- ☞ PHAs and owners shall not deny admission to housing “on the basis that an applicant has been a victim of domestic violence.”
- ☞ Does this prohibit PHAs and owners from denying admission based on poor credit or tenancy history that is directly related to domestic violence, dating violence, or stalking?



Evictions & Terminations



- ☞ Crimes against a survivor “directly relating to” DV 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.

In HUD's Words



“[VAWA] recognizes the need to protect victims of domestic abuse from being evicted just because they were victimized.

“No one should be afraid of losing their home if they report abuse.”

--HUD Secretary Shaun Donovan

Limitations



- ☞ 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. HUD regulations are key:
 - ☞ “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

Removing the Abuser



- ☞ PHA or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV 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
- ☞ Additionally, PHA may terminate Sec 8 assistance to 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 (emphasis added).

Portability

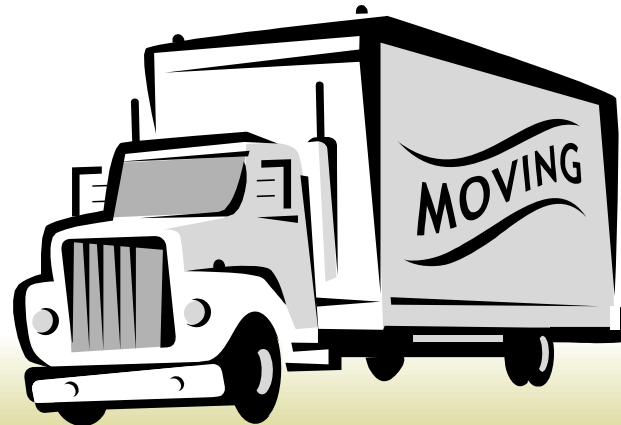


- ☞ If a Section 8 family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for DV survivors who must move for safety.
- ☞ Many PHAs have policies that prohibit Sec 8 tenants from moving during the 1st year of their lease. However, these policies do **NOT** apply when the move is needed for safety. See 24 C.F.R. § 982.314

Transfers



- ☞ Survivors living in public housing and project-based Section 8 often need to move to another unit to protect their safety.
- ☞ Unfortunately, VAWA does not address emergency transfers in public housing or project-based Sec. 8.
- ☞ Advocacy is crucial in these cases.



Proving DV



- ⌘ 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 for proof must be in writing
- ⌘ Tenant has 14 business days from PHA or landlord's request to provide proof

Proving DV (cont'd)



- ⌘ PHA or landlord is free to grant extension if tenant needs more time
- ⌘ Tenant can provide one of these three:
 - ⌘ HUD's certification form; OR
 - ⌘ Police or court record; OR
 - ⌘ Statement signed under penalty of perjury by survivor and DV service provider, medical professional, or attorney
- ⌘ Documentation must be kept confidential

Proving DV (cont'd)



- ⌘ Can a housing provider require a tenant to provide third-party proof of domestic violence, dating violence, or stalking in order to assert 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.

Other Requirements



- ☞ PHAs must provide notice of VAWA to public housing tenants, Sec. 8 tenants, & landlords
- ☞ In their annual plans, PHAs must state how they are helping survivors of DV to access housing

Landlord Notice - February 1, 2007

Violence Against Women Act of 2005 (VAWA) impacts admission and evictions of victims of domestic violence in federally funded properties.

If an applicant or resident claims to be a victim of domestic violence proceed with caution.

In January 2006 the Violence Against Women Act (VAWA) was amended to make it illegal for properties receiving federal funding to evict a resident or refuse to admit an applicant because that person was a victim of actual or threatened domestic violence, including dating violence or stalking. VAWA covers public housing authorities (PHA's) and most other HUD funded housing communities, including privately owned communities funded by Sections 8, 202, 236, 221(d)(3) and 811. The primary obligations of landlords covered by the VAWA are as follows:

VAWA Advocacy



Examples of how VAWA's protections have been used in practice



Eva: Part 2



- ❧ Eva's attorney contacted the PHA and noted:
 - ❧ VAWA prohibits PHAs from denying housing to a survivor because of the DV committed against her, and Eva's arrests were directly related to DV.
 - ❧ HUD has stated that "victims of domestic violence, dating violence, or stalking must not be denied assistance ... based solely on a criminal history related to domestic violence, dating violence, or stalking." 75 Fed. Reg. 66,255
 - ❧ Past arrests have no probative value, and denying an application on this basis is arbitrary and discriminatory.
- ❧ The PHA later offered a unit to Eva.

Sonya: Part 2



- ☞ Sonya's attorney raised VAWA and the Fair Housing Act as a defense to the eviction and also filed a motion for summary judgment.
- ☞ Sonya provided police reports, her restraining order, and evidence that the city declined to prosecute her for the "stabbing."
- ☞ The court found that VAWA prohibited Sonya's eviction. *Metro N. Owners v. Thorpe*, 870 N.Y.S.2d 768

Maya: Part 2



- ☞ Maya's attorney wrote the PHA a letter explaining:
 - ☞ VAWA does not require third-party documentation.
 - ☞ HUD has made clear that tenants cannot be required to provide third-party documentation
 - ☞ The nature of stalking made it impossible for Maya to leave her home
 - ☞ To terminate Maya for missing the meetings would be the same as terminating her for being a victim of stalking, in violation of VAWA
- ☞ The PHA accepted Maya's certification form and ceased its efforts to terminate her from the program.

Jen: Part 2



- ❧ Jen's attorney wrote a letter to the PHA arguing:
 - ❧ Termination of Jen's assistance violated VAWA
 - ❧ The PHA failed to follow HUD regulations and its own Administrative Plan when it assigned the voucher to AJ. New regs make clear that PHA must ensure assistance to the victim when family breaks up due to DV.
- ❧ Jen's attorney requested:
 - ❧ An administrative hearing
 - ❧ Homeless prevention funds to cover Jen's back rent
- ❧ The housing authority agreed to issue Jen a voucher and homeless assistance

Isabel: Part 2



- œ Isabel's attorney wrote a letter to the PHA explaining:
 - œ Restrictions on moving during the first year of a Sec 8 lease don't apply to moves for safety
 - œ Even if Isabel moved without notifying the PHA, it could not terminate her voucher, because she had moved for her safety
- œ When the PHA refused to allow Isabel to use her voucher at her new home, she filed a HUD fair housing complaint.
- œ The PHA subsequently agreed to allow Isabel to port her voucher out of state.

Next Steps



Assisting Survivors Applying for Subsidized Housing



- ⌘ During intake, advocates may need to ask questions to determine whether a denial of housing was related to DV
- ⌘ Raise VAWA if client was denied housing based on her status as a DV survivor. Housing providers often fail to see the link between DV and negative history.
- ⌘ Exercise right to an informal review if denied housing – present mitigating factors regarding DV
- ⌘ Work with PHAs to develop admissions policies that consider DV as a mitigating factor

Addressing Tenancy Issues in Subsidized Housing



- ☞ Survivor can move with Sec 8 voucher, and several of the usual restrictions do not apply.
- ☞ Under VAWA, lease or voucher can be bifurcated to remove abuser. Head of household status is not controlling.
- ☞ Housing providers cannot require third-party documentation of domestic violence, unless two members of a household both claim the other is the perpetrator.

DV-Related Evictions & Terminations



- ❧ VAWA may provide a defense to eviction or subsidy termination if the lease violation is related to DV
- ❧ Client should exercise her right to a hearing to challenge the termination/eviction
- ❧ Urge the housing authority to take steps short of termination/eviction, such as helping the client to relocate to a confidential location
- ❧ Train PHA staff on VAWA's provisions and the dynamics of domestic violence, dating violence, and stalking.

Help Is Available



- ☞ Meliah Schultzman, mschultzman@nhlp.org
415-546-7000 x. 3116
- ☞ Navneet Grewal, ngrewal@nhlp.org
415-546-7000 x. 3102
- ☞ <http://nhlp.org/resourcecenter?tid=96>
- ☞ We're happy to provide training, technical assistance, and advocacy materials

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