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FEDERAL AND STATE HOUSING PROTECTIONS FOR SURVIVORS

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What We'll Cover Today

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- Common housing issues survivors face
- Overview of federally assisted housing programs
- VAWA's housing provisions
- Fair housing protections for survivors
- State law protections
- Advocacy strategies

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Common Housing Issues

Survivors Face Many Obstacles to Accessing and Maintaining Housing

Barriers to Applying for Housing

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- Poor or no credit history due to financial abuse by batterer
- Poor rental history (i.e., evicted due to DV; batterer damaged prior residence)
- Criminal history resulting from self-defense, coercion, or mutual arrest

Barriers to Staying Safe in Housing

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- Batterer repeatedly stalks or threatens survivor at the rental unit
- May be afraid to call police for fear that property manager will respond negatively
- May need to keep whereabouts confidential
- May need to move for safety
- May fear inability to pay rent or losing subsidy if the family splits up

Reasons Survivors Face Eviction

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- Batterer committed a criminal act at the unit, violating a "zero tolerance" policy
- Survivor called police or security multiple times to protect her safety
- Noise resulting from violence disturbed other tenants
- Batterer damaged the unit
- Retaliation for pursuing their rights

7 Federally Assisted Housing

Overview of the Federal Housing Programs.

Federally Assisted Housing Programs

- Public Housing
- Housing Choice Voucher Program (Section 8 Voucher)
- Project-Based Section 8
- Other HUD Subsidized Properties
- Low Income Housing Tax Credit
- For assistance in determining what programs your clients are in, contact NHLP.

Public Housing

- Owned by a Public Housing Authority (PHA)
- Both a Federal and State entity
- Governed by statute and HUD regulations
 - Develops its own Admissions and Occupancy Plan (ACOP) locally.
 - Includes admissions criteria, transfer policies, and eviction procedures.
 - Develops its own leases locally, in accordance with HUD regulations
- Tenant pays either 30% of income or flat rent

Housing Choice Voucher Program

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- Participant receives a voucher for use in the private market, and PHA pays subsidy to owner.
 - Some states/localities prohibit landlords from refusing to rent to Section 8 Voucher holders
 - LIHTC owner must accept Section 8 voucher
- Standard HUD Lease Addendum (includes VAWA's protections)
- Governed by statute and HUD regulations
 - PHA develops Administrative Plan locally.
 - Includes admissions criteria, termination procedures, porting requirements, splitting a voucher, etc.
- Participant can "port" the voucher to any jurisdiction w/a PHA
- Participant pays difference between subsidy and rent – usually 30% of income.

Project Based Section 8

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- HUD enters into agreement to pay subsidy to the private owner
- Subsidy attached to the unit. Unlike Section 8 vouchers, the subsidy doesn't travel with the tenant if she moves
- Owned mainly by private groups; some nonprofit ownership
- Participant pays 30% of income toward rent.

HUD Subsidized Properties

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- Supportive Housing for the Elderly and Disabled (Sec 202 and Sec 811):
 - Provides housing and services to disabled and elderly persons.
 - Administered by government entities and nonprofits
- Section 236 and 221(d)(3) BMIR:
 - HUD mortgage insurance and interest rate subsidy
 - HUD sets "budget-based" rents & occupancy restrictions
 - May be combined with Section 8 or other subsidy
- Rural Development Section 515: Direct RD loan in exchange for "budget-based" rents; occupancy restrictions

Low Income Housing Tax Credit

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- The subsidy operates through the tax system (IRS) not annual Congressional appropriations.
- Owned by private entity, usually limited partnerships
- Compliance period of 15-30 years
- Often sold after compliance period to general partner or others
- Policies set by statute, Treasury regulations at 26 C.F.R. § 1.42, and state credit allocation agency regulatory agreement.
- Often unaffordable to extremely low-income families without Section 8 voucher.

14 VAWA

Housing Protections Available to Survivors under the Violence Against Women Act

VAWA

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- Initially passed in 1995
- Housing protections added in 2005, becoming effective January 2006.
 - Protections against discrimination in admissions to housing
 - Protections against evictions and subsidy terminations
 - Safety moves
 - Removing the abuser
 - Proving DV

VAWA: Rules & Regs

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- See the findings at 42 U.S.C. § 14043e
- Amended housing statutes at:
 - ▣ 42 U.S.C. § 1437d *et seq.* (public housing)
 - ▣ 42 U.S.C. § 1437f *et seq.* (Section 8)
- In Nov. 2008, HUD published an interim rule on VAWA, 73 Fed. Reg. 72,343
- The interim rule mostly repeats VAWA's language. It's unclear when HUD will issue a final rule.
- HUD has issued VAWA notices to PHAs and owners

VAWA: Who is Covered?

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VAWA covers these categories of housing ONLY:

1. Public housing
2. Section 8 Voucher housing
3. Project-Based Section 8 Housing
4. Supportive housing for elderly & disabled

VAWA covers these categories of victims:

1. A survivor of domestic violence
 2. A survivor of dating violence
 3. A survivor of stalking
- * Survivors of sexual assault may be covered in some cases

VAWA: Admissions

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- An individual's status as a victim 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 DV?
- What about admissions preferences for DV survivors?

VAWA: Evictions

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- Crimes against a survivor “directly relating to” DV are not grounds for evicting the survivor or terminating 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 rental subsidy.
- There are limits to these protections.

VAWA: Removing the Abuser

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- 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
- PHA may terminate Sec 8 assistance to abuser while preserving assistance to survivor

VAWA: Safety Moves

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- 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.
- PHA may ask for documentation of DV.
- Note: VAWA does not address emergency transfers in public housing or project-based Section 8. Advocacy is crucial in these cases.

VAWA: Proving DV

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- Assume that PHA or Sec. 8 landlord seeks to evict or terminate because of lease violation, & tenant says that 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

VAWA: Proving DV

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- 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
 - To preserve privilege, attys should avoid certifying
- Documentation must be kept confidential

VAWA: Other Requirements

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- 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, stalking, and sexual assault to access housing
 - ▣ CSAJ plans to host a future training on how to get involved in the PHA planning process.

Case Example

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- Metro N. Owners LLC v. Thorpe, 870 N.Y.S.2d 768
 - ▣ Landlord sought to evict Sec 8 tenant on grounds that she stabbed her partner during a domestic dispute
 - ▣ Tenant submitted police reports and a restraining order showing that she was the victim of DV, along with evidence that the DA declined to prosecute her
 - ▣ Court found that the tenant was the victim of DV, and that VAWA precluded the landlord from evicting her.

VAWA: Practice Notes

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- Admissions: PHAs and owners sometimes fail to see the link between negative history and DV
- Certification: PHAs and owners often ask for two or more forms of documentation
- Splitting the lease: Can take time
- Sec 8 Portability: PHAs sometimes require an agreement from the landlord to end the lease
- DV transfers: Are not mandatory within public housing or project-based Sec 8
- Lack of training on VAWA & DV for PHAs, owners

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Fair Housing

Sex Discrimination Under the Fair Housing Act

Fair Housing Act

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- 42 U.S.C. Section 3601, *et seq.*
- Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, **sex**, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability).

Fair Housing Act

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- Covers **ALL** housing except:
 - ▣ Owner-occupied house
 - ▣ Dwellings with four or fewer units, one of which is owner occupied
 - ▣ Single family homes if owner does not own more than 3 at one time.
 - ▣ Religion: can limit to own religion IF non-profit
 - ▣ Certain elderly/disabled exemptions.
 - ▣ Certain housing operated by private clubs limited to its members

Fair Housing Act

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- Applies at all stages
 - ▣ Advertising
 - ▣ Application
 - ▣ Screening
 - ▣ Occupancy
 - ▣ Eviction/Termination
- State fair housing laws may mirror or be more protective than federal FHA (i.e., including DV as a protected class)

Fair Housing Act: Forms of Discrimination

- Intentional
 - ▣ Statements, refusal to rent, discouraging access, different terms, harassment or eviction
- Disparate Impact
 - ▣ Policy is neutral on its face, but has a discriminatory impact on a protected class, such as sex.

Fair Housing Act: Disparate Impact

- Denying housing based on status as a domestic violence survivor = sex discrimination?
- Must demonstrate the relationship between sex and domestic violence. Statistical data is crucial
- Does a policy lead to different treatment of women and men?
 - ▣ i.e. Refusing to rent to someone with a history of police visits.

Disparate Impact: Case Example

- *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

Disparate Treatment: Case Example

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- Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):
 - Public housing tenant requested a transfer after she was attacked in her home. PHA denied her request, stating that its policy did not provide for DV transfers.
 - Tenant alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex.
 - The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.

Fair Housing: Practice Notes

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- Fair housing laws can be raised defensively (i.e. to challenge eviction or subsidy termination) or affirmatively
- To avoid abstention, may need to act quickly to bring federal suit where survivor faces eviction
- Instead of pursuing litigation, client can file administrative complaint with HUD or state agency
- Disparate impact & DV theory is fairly novel, so proceed with caution

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State and Local Laws

A Growing Number of Jurisdictions Are Enacting New Housing Protections for Survivors

State & Local Protections for Survivors

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- The landlord-tenant relationship is usually governed by state law
- As noted, most fair housing laws don't explicitly protect survivors, and VAWA only covers subsidized tenants
- As a result, many states have enacted housing laws specifically protecting survivors
- For assistance in determining what protections your state has, contact NHLP

Examples of Protections

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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)
 - Confidential change of address programs

Advocacy I: Assisting Survivors Applying for Subsidized Housing

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- Advocates may need to implement tools to screen whether a denial of housing was related to DV
- Raise VAWA if client was denied housing based on her status as a DV survivor
- Exercise right to an informal review if denied housing – present mitigating factors re: DV
- Work with PHAs to develop admissions policies that consider DV as a mitigating factor

Advocacy II: Addressing Tenancy Issues in Subsidized Housing

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- Survivor can move with Sec 8 voucher
- Under VAWA, lease can be bifurcated to remove abuser
- Seek an emergency transfer in public housing or project-based Sec 8
- Ask family court to assign public housing unit or Sec. 8 voucher to survivor in R.O. or dissolution action
- If batterer leaves unit, client should request a recertification from the housing authority.

Advocacy III: DV-Related Evictions & Terminations in Subsidized Housing

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- VAWA may provide a defense to eviction or subsidy termination if the lease violation is related to domestic violence
- Client should exercise her right to a hearing to challenge the subsidy termination
- Urge the housing authority to take steps short of termination/eviction, such as helping the client to relocate to a confidential location

Advocacy IV: DV-Related Evictions in Any Type of Housing

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- Advocates may need to implement tools to screen whether an eviction is related to DV
- Tenants who receive eviction notices should NOT simply leave—could result in harm to client's tenancy record
- Does your state provide special eviction protections?
- Federal and state fair housing laws may provide a defense to evictions that are related to DV
- Fair housing laws provide a defense for tenants who are being retaliated against for asserting their rights, such as filing a fair housing complaint

Help Is Available

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- Navneet Grewal, ngrewal@nhlp.org
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- We're happy to provide training, technical assistance, and advocacy materials

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