

Housing Protections for Survivors in Practice

Jill lives with her two children and is leasing a unit using a Section 8 voucher. Jill moved into the apartment after ending her relationship with Benjamin, who had physically and emotionally abused her for many months. One day, Benjamin came to the apartment and demanded that Jill let him in. When she refused, he shouted threats at her, carved an obscenity in her door, and tore out some of the landscaping around her apartment. Later that day, a neighbor told the property manager that he is concerned about Jill because he heard a man yelling threats at her.

1. Can Jill be evicted for the damage that Benjamin caused to the premises?

2. Assume that the property manager serves Jill with a 3-day notice to move out, and she asks him to rescind the notice, saying that she is a victim of domestic violence.
 - a. Is the property manager required to ask Jill for documentation of domestic violence?

 - b. What is the minimum amount of time the property manager must give Jill to respond to the request for documentation?

 - c. What documentation can Jill provide in response to the manager's request?

3. Assume that the property manager alerted the housing authority that he planned to evict Jill. The housing authority sent Jill a letter notifying her that it planned to terminate her Section 8 assistance because of the damages. Your agency has been providing a variety of services to Jill, including counseling and safety planning.
 - a. Can Jill's voucher be terminated because of the damage Benjamin caused to the premises?

Protecting the Housing Rights of Domestic Violence Survivors



This outline covers:

- The housing provisions of the **Violence Against Women Act of 2005**
- Protections available for domestic violence survivors under **fair housing laws**

1. What laws did the Violence Against Women Act of 2005 (VAWA) amend, and whom does VAWA protect?

A. Statutory provisions amended by VAWA

Title VI of VAWA 2005 (Pub. L. 109-162; 119 Stat. 2960; HR 3402) amended the Public Housing Program, the Housing Choice Voucher Program, and the Project-Based Section 8 statutes. Section 606 of VAWA amends 42 U.S.C. § 1437d (Public Housing) and Section 607 amends 42 U.S.C. § 1437f (Section 8 programs).

B. Types of housing that VAWA covers

VAWA's protections cover tenants in:

- Public Housing (42 U.S.C. § 1437d);
- The Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f(o));
- Section 8 Project-Based housing (42 U.S.C. §§ 1437f(c), (d));
- The Supportive Housing Program (72 Fed. Reg. 12,696).

VAWA does not cover HUD's other housing subsidy programs, programs administered by the Department of Agriculture's Rural Housing Service, or the Low-Income Housing Tax Credit program. VAWA also does not cover tenants living in private housing without any type of rental subsidy. However, as discussed below, such tenants may be protected by fair housing laws or by state laws granting certain housing protections to domestic violence survivors.

C. Parties whom VAWA protects

VAWA protects anyone who:

- (1) Is a victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage, or any person to whom the victim stands in loco parentis); AND
- (2) Is living in, or seeking admission to, Public Housing, the Section 8 Voucher program, Section 8 Project-Based Housing, or the Supportive Housing Program for the Homeless.

See 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11).

2. How does VAWA define domestic violence, dating violence, and stalking, and must the incidents be repeated?

A. **Domestic violence:** 42 U.S.C. § 13925(a)(6)

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

- Current or former spouse of the victim
- Person with whom the victim shares a child
- Person who is cohabitating with or has cohabitated with the victim as a spouse
- Person similarly situated to a spouse of the victim under the domestic violence or family violence laws of the jurisdiction
- VAWA’s definition of domestic violence also includes crimes of violence committed against a person who is protected under the domestic violence or family violence laws of the jurisdiction.

B. **Dating violence:** 42 U.S.C. § 13925(a)(8)

“Dating violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship is determined based on the following factors:
 - Length of the relationship.
 - Type of relationship.
 - Frequency of interaction between the persons involved in the relationship.

C. **Stalking:** 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10)

VAWA defines “stalking” as

- To follow, pursue, or repeatedly commit acts with intent to kill, injure, harass, or intimidate; or
- To place under surveillance with intent to kill, injure, harass, or intimidate; and
- To place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
 - That person;
 - A member of the immediate family of that person; or
 - The spouse or intimate partner of that person.

D. **Must the incidents be repeated?**

VAWA does not include a minimum number of incidents of violence that must occur before a tenant or applicant may claim its protections. Rather, VAWA explicitly protects victims of any actual or threatened acts of domestic violence, dating violence, or stalking. Only one incident is required to trigger VAWA’s protections, and the incident does not have to be one of actual violence.

3. Who is required to comply with VAWA, and when did the law become effective?

A. Parties who must comply with VAWA

Public housing agencies (PHAs) administering the Public Housing and Section 8 Voucher programs and all landlords, owners, and managers participating in the Section 8 Voucher and Project-Based programs must comply with VAWA.

B. Effective date

VAWA's housing provisions became effective January 5, 2006. HUD has issued notices instructing PHAs to implement the law without waiting for HUD to issue regulations.

4. How does VAWA affect admissions to federally subsidized housing?

A. Denials of admissions or housing assistance

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance. *See* 42 U.S.C. § 1437d(c)(3); 42 U.S.C. § 1437f(c)(9)(A); 42 U.S.C. § 1437f(o)(6)(B). Therefore, victims cannot be denied admission to Public Housing or Section 8 Project-Based housing, or denied eligibility for the Section 8 Voucher program due to incidents of domestic violence, dating violence, or stalking committed against them. Owners renting to Section 8 tenants also cannot deny housing to victims on the basis of acts of abuse committed against them.

B. Areas that VAWA does not address

An individual's status as a victim of domestic violence, dating violence, or stalking does not guarantee that he or she will be accepted into a federally assisted housing program. VAWA does not require that PHAs institute a preference for victims of abuse when making admissions decisions. However, PHAs have discretion to institute such a preference, and local advocates can encourage them to do so.

VAWA does not explicitly address whether a PHA or owner must waive an admissions requirement if the applicant cannot meet the requirement due to incidents of abuse. For example, VAWA does not provide guidance for screening applicants who have been the victims of abuse and, as a result, have poor tenancy, credit, or work histories. Note that HUD has encouraged PHAs to inquire into the circumstances and whether domestic violence was a factor in the poor rental history. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19 (2003). Further, 24 C.F.R. § 960.203 provides that if a PHA receives unfavorable information with respect to an applicant, "consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense)."

5. Does VAWA address safety moves?

A. Portability of Section 8 vouchers

A PHA may permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking. The PHA may permit the family to move even if the family's lease term has not yet expired. *See* 42 U.S.C. § 1437f(r)(5). A PHA may ask for documentation from the family regarding the family's desire to move to a new jurisdiction. *See* 42 U.S.C. § 1437f(ee).

VAWA does not address the liability that a tenant may incur from the Section 8 owner for breaking the lease. Advocates may need to work with their clients to negotiate an agreement with the landlord to terminate the lease. Additionally, several states have enacted laws permitting domestic violence survivors to terminate their leases early. For a list of these states, *see* www.nlchp.org/content/pubs/DV_Housing_State_Laws_Aug20081.pdf

B. Emergency transfers in public housing

VAWA does not explicitly address a PHA's obligation to transfer a public housing tenant to another unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. However, PHAs already have the discretion to adopt policies to ensure that a public housing tenant can move if he or she is experiencing domestic violence. HUD has urged housing authorities to implement such policies. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook §§ 19.2, 19.4 (2003).

6. How does VAWA affect evictions?

A. Evictions directly related to abuse

VAWA establishes an exception to the federal "one-strike" criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds (either as a "serious or repeated violation of lease", or as "good cause") for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim. *See* 42 U.S.C. § 1437d(l)(5); 42 U.S.C. § 1437f(c)(9)(B); 42 U.S.C. § 1437f(d)(1)(B); 42 U.S.C. § 1437f(o)(7)(C); 42 U.S.C. § 1437f(o)(20)(A).

B. The "actual or imminent threat" provision

Despite the eviction protections described above, a PHA or owner may still evict a tenant if the PHA or owner can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted. VAWA does not define the phrase "actual and imminent threat," nor does it explain what evidence a PHA or owner must provide to establish such a threat. *See* 42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C. §§ 1437f(c)(9)(C)(v) and (d)(1)(B)(iii)(V); 42 U.S.C. §§ 1437f(o)(7)(D)(v) and (o)(20)(D)(iv).

C. Criminal activity unrelated to abuse

VAWA protects tenants from being penalized for acts of violence committed against them. It does not protect them if the acts for which they are being evicted or denied admission are unrelated to domestic

violence, dating violence, or stalking. However, in determining whether to evict, a PHA or owner may not hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants. *See* 42 U.S.C. § 1437d(l)(6)(D); 42 U.S.C. §§ 1437f(c)(9)(C)(iv) and (d)(1)(B)(iii)(IV); 42 U.S.C. § 1437f(o)(7)(D)(iv) and (o)(20)(D)(iii).

D. Removing an abuser from a unit

A PHA or owner may bifurcate a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim who is also a tenant or lawful occupant. The authority to bifurcate a lease or otherwise remove an individual is applicable to all leases for families participating in the public housing or Section 8 programs. The eviction or termination of assistance must be effected in accordance with federal, state, and local law. *See* 42 U.S.C. § 1437d(l)(6)(B); 42 U.S.C. § 1437f(o)(7)(D)

7. Can a PHA or owner ask for proof of the abuse?

A. Discretion of PHA or owner to ask for certification

PHAs and owners may, but are not required to, ask an individual for certification that he or she is a victim of domestic violence, dating violence, or stalking if the individual seeks to assert VAWA's protections. At their discretion, owners or PHAs may apply VAWA to an individual based solely on the individual's statement or other corroborating evidence. Any requests for certification must be in writing. *See* 42 U.S.C. §§ 1437d(u)(1); 42 U.S.C. § 1437f(ee)(1).

B. Types of certification permitted

If an individual seeks to assert VAWA's protections, a PHA, owner, or manager may request in writing that the individual certify that he or she is a victim of domestic violence, dating violence or stalking. The individual can self-certify by completing form HUD-50066, available at www.hud.gov/hudclips. The form requests the name of the victim, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The victim must sign the form and certify that the information is true and correct. The form provides that submission of false information is grounds for termination of assistance or eviction.

In lieu of the certification form, the victim may provide:

- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional in which the professional attests under penalty of perjury to the professional's belief that the victim has experienced bona fide incidents of abuse; or
- A federal, state, tribal, territorial, or local police or court record.

See 42 U.S.C. § 1437d(u)(1)(D); 42 U.S.C. § 1437f(ee)(1)(D).

C. Certification time limit

After a PHA or owner has requested certification in writing, an individual has fourteen business days to respond to the request. If an individual does not provide the documentation within fourteen business days, a PHA or owner may bring eviction proceedings against the tenant or terminate assistance. However, a PHA or owner has discretion to extend this timeframe. 42 U.S.C. § 1437d(u)(1)(A), (B); 42 U.S.C. § 1437f(ee)(1)(A), (B).

D. Confidentiality

Any information provided to certify incidents of domestic violence, dating violence, or stalking must be kept confidential, including the individual's status as a victim. PHAs or owners may not enter the information into any shared database or provide it to any related entity. However, advocates should note that disclosure of the certification form may be required for use in an eviction proceeding if the housing authority or Section 8 landlord seeks to evict the batterer. The information may also be disclosed if the victim requests disclosure in writing, or if otherwise required by law. *See* 42 U.S.C. § 1437d(u)(2)(A); 42 U.S.C. § 1437f(ee)(2)(A).

8. What other obligations do PHAs and owners have under VAWA?

A. Obligation to honor court orders

PHAs and owners must honor court orders addressing rights of access to or control of property. Thus, PHAs and owners must observe civil protection orders issued to protect the victim, as well as court orders addressing the distribution or possession of property among household members when a family breaks up. *See* 42 U.S.C. § 1437d(1)(6)(C); 42 U.S.C. §§ 1437f(c)(9)(C)(iii) and (d)(1)(B)(iii)(III); 42 U.S.C. §§ 1437f(o)(7)(D)(iii) and (o)(20)(D)(ii).

B. Notification requirement

PHAs must inform tenants and owners of their rights and obligations under VAWA. For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim of abuse;
- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the victim's assistance, tenancy, or occupancy rights;
- Information provided for purposes of certifying that an individual is a victim of domestic violence, dating violence, or stalking must be kept confidential.

See 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B).

Public housing leases must include this information, as must the Housing Assistance Payments (HAP) contract between PHAs and owners in the Section 8 Voucher program and contracts in the Project-Based Section 8 program. *See* 42 U.S.C. § 1437d(1)(5), (6); 42 U.S.C. § 1437f(o)(20); 42 U.S.C. § 1437f(o)(7)(C), (D).

C. PHA planning process

A PHA must include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, stalking, or sexual assault. A PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims' housing needs. In addition, VAWA added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the consolidated planning process that local communities undertake every five years to receive HUD assistance. *See* 42 U.S.C. §§ 1437c-1(a)(2), 1437c-1(d)(13); 42 U.S.C. § 12705(b)(1).

The National Housing Law Project is available to assist local advocates in urging housing authorities to update their annual plans, Section 8 Administrative Plans and public housing Admissions and Continued Occupancy Policies to address VAWA.

9. What other resources should I look to in enforcing survivors' housing rights under VAWA?

A. VAWA's findings section

VAWA contains several important findings, including:

- That there is a strong link between domestic violence and homelessness
- That women and families are experiencing housing discrimination because of their status as victims of domestic violence
- That victims of domestic violence often return to abusers because they cannot find long-term housing
- That victims often lack steady income, credit history, landlord references, and a current address due to financial abuse by their batterers

See 42 U.S.C. § 14043e.

B. State or local laws

VAWA sets out the minimum protections for survivors. Many states and local jurisdictions are developing laws that include added protections, such as laws that make VAWA's protections applicable to private housing. Where these state or local laws exist, they are not preempted by VAWA. *See* 42 U.S.C. § 1437d(u)(1)(E); 42 U.S.C. § 1437f(ee)(1)(F).

C. HUD documents implementing VAWA

The following documents may be useful to advocates working with PHAs and owners to implement VAWA's protections. All of the documents are available at www.hud.gov/hudclips

- **73 Fed. Reg. 72,336 (Nov. 28, 2008):** Transmits an interim rule that would amend existing regulations governing the federally subsidized housing programs to conform with VAWA. HUD has not yet published final regulations implementing VAWA.
- **HUD Notice PIH 2006-23:** States that VAWA became effective January 5, 2006 and directs PHAs to notify tenants and owners of their rights and obligations under VAWA.
- **HUD Notice PIH 2006-42:** Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification of incidents of abuse. Notes that a signed statement from a third party or a police or court record may be provided "in lieu of" the certification form.
- **Form HUD-50066:** The HUD-approved certification form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **Form HUD-91066:** The HUD-approved certification form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **HUD Notice PIH 2007-5:** Transmits the revised Housing Assistance Payments (HAP) contract and the revised Tenancy Addendum for the Section 8 voucher program, and directs PHAs to use these documents when executing any HAP contracts or approving new leases. Provides guidance to PHAs and owners regarding bifurcation and portability.
- **72 Fed. Reg. 12,696 (Mar. 16, 2007):** Reminds PHAs that VAWA's provisions are effective even without regulations from HUD. States that PHAs must include a VAWA statement in their

annual plans “in their next regularly scheduled plan submission.” States that victims can satisfy the certification requirement by providing a certification form, or third party verification, or a police or court record.

- **HUD Notice H 08-07:** Provides guidance to owners and managers administering project-based Section 8 properties.

10. Has any litigation been brought under VAWA?

- **Metro N. Owners LLC v. Thorpe, 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008):** Landlord sought to evict Section 8 tenant on the grounds that she stabbed her partner during a domestic dispute. The tenant submitted police reports and a restraining order showing that she was the victim of domestic violence, along with evidence that the district attorney’s office declined to prosecute her for the alleged stabbing. The court found that the tenant was the victim of domestic violence, and that VAWA precluded the landlord from evicting her.
- **Brooklyn Landlord v. RF (N.Y. Civ. Ct. 2007):** The tenant lived in a project-based Section 8 unit with her children. The tenant’s abuser, who had stalked and physically abused her for many years, confronted and shot at the security guard at her building. The tenant raised VAWA as an affirmative defense to eviction. The landlord eventually dismissed the eviction proceeding. Pleadings are available at www.legalmomentum.org
- **Tenant v. Hous. Auth. of Salt Lake County (D. Utah 2006):** Plaintiff alleged that her Section 8 voucher was terminated by the PHA after she was forced to flee her apartment due to domestic violence. Plaintiff alleged that PHA violated VAWA and fair housing laws by terminating Plaintiff’s voucher because of her need to escape domestic violence. Case settled, with the client’s voucher reinstated by the PHA.

11. What steps can advocates take to implement VAWA?

- Request a meeting with the PHA and local domestic violence agencies to discuss implementation.
- Offer to train PHA staff, hearing officers, Section 8 owners, and resident groups on VAWA and the dynamics of domestic violence.
- Offer to assist the PHA in developing procedures for assisting program participants who are experiencing domestic violence.
- Remind PHAs to revise their public housing leases to include VAWA’s protections.
- Submit comments during the PHA’s annual planning process.
- Urge the PHA to provide notice of VAWA rights through several different channels, such as denial of assistance letters, briefing packets, tenant newsletters, recertification meetings, termination letters, posters in the PHA’s lobby, and the PHA’s website.
- Develop intake screening tools to determine whether a denial of housing, eviction, or termination of assistance is related to domestic violence. Many subsidized housing participants are unaware of their VAWA rights, particularly those who live with their batterers or who are limited English proficient.

12. What rights do survivors have under fair housing laws?

A. Disparate impact claims

- Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.
- Statistical data are crucial to these cases:
 - The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003).
 - Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
 - Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat’l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998).

B. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Impact Theory?

- **Lewis v. N. End Vill. et al., 07cv10757 (E.D. Mich. 2008):** Plaintiff’s ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from “lack of proper supervision” of her “guests.” Plaintiff argued that the policy of interpreting the word “guest” to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- **Warren v. Ypsilanti Housing Commission, 02cv40034 (E.D. Mich. 2002):** Plaintiff’s ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a “one-strike” rule in its lease permitting it to evict a tenant if there was any violence in the tenant’s apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, *see* www.aclu.org/fairhousingforwomen
- **Alvera v. Creekside Village Apartments, HUD ALJ No. 10-99-0538-8 (2001) (Oregon):** Management company sought to evict a tenant under a “zero tolerance for

violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at www.aclu.org/fairhousingforwomen

C. Disparate treatment claims

- Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

D. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Treatment Theory?

- **Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):** Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff 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.
- **Blackwell v. H.A. Housing LP, 05cv1255 (D. Colo. 2005):** Project-based Section 8 complex denied Plaintiff’s request to transfer to another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at www.legalmomentum.org.
- **Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005):** Plaintiff was evicted after her husband assaulted her. The landlord stated that plaintiff did not act like a “real” domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord’s motion for summary judgment was denied, and the case settled. Case documents are available at www.aclu.org/fairhousingforwomen.

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2008 NY Slip Op 28522
METRO NORTH OWNERS, LLC, Petitioner,
v.
SONYA THORPE, Respondent.
79149/08
Civil Court of the City of New York, New York County.
Decided December 25, 2008.

Gutman, Mintz, Baker & Sonnenfeldt, P.C., New York City (Gary Friedman and Neil Sonnenfeldt), for petitioner.

The Legal Aid Society, Harlem Community Law Offices, New York City (Gretchen Gonzalez of counsel), for respondent.

GERALD LEOVITS, J.

In this holdover proceeding, petitioner alleges that respondent, Sonya Thorpe, a Section 8 tenant, violated her lease by creating a nuisance. According to petitioner's notice of termination, respondent engaged in illegal and violent behavior during domestic disputes. Petitioner alleges that respondent stabbed John Capers on April 1, 2008, in one of numerous disturbances she allegedly created in and around the building.

Respondent denies these allegations and instead claims that Capers engaged in domestic violence against her. Invoking two subsections of the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), signed into law on January 5, 2006, to remedy abuses in which landlords tried to evict domestic-violence victims (*see* Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 Am U J Gender Soc Pol'y & L 377 [2003] [documenting abusive practices and citing strict-liability regulations that allowed domestic-violence victims to be evicted]; Tara M. Vrettos, Note, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 Cardozo Women's LJ 97, 102 [2002] [same]; Veronica L. Zoltowski, Note, *Zero Tolerance Policies: Fighting Drugs or Punishing Domestic Violence Victims?*, 37 New Eng L Rev 1231, 1266-1267 [2003] [same]), respondent argues in this motion for summary judgment under CPLR 3212 that VAWA 2005 forbids petitioner to terminate her federal-government-assisted Section 8 tenancy.

Respondent's motion is granted.

Both petitioner and respondent agree that a violent incident occurred at 420 East 102ⁿ Street, the subject premises, and that the New York Police Department and Emergency Medical Services responded to it. Both petitioner and respondent also agree that Capers told a security guard that he was stabbed. Respondent admits that Capers told the police that she stabbed him but denies that she stabbed anyone on the date in question and further claims that she was a victim of domestic violence, not the aggressor, as petitioner claims.

Respondent asserts that as a victim of domestic violence, she deserves VAWA's protection. According to VAWA 2005, 42 USC § 1437 f (c) (9) (B) and (C) (i), an incident of domestic violence or criminal activity relating to domestic violence will not be construed to violate a public-housing or government-assisted lease and shall not be good cause to terminate a public-housing or government-assisted tenancy (such as a Section 8 tenancy) if the tenant is the victim or threatened victim of that domestic violence. (*See American Civil Liberties Union, New Federal Law Forbids Domestic Violence Discrimination in Public Housing*, Jan. 25, 2006, at <http://www.aclu.org/womensrights/violence/23929res20060125.html> [accessed Dec. 25, 2008] [explaining contours of VAWA 2005 as they affect eviction proceedings].) VAWA's goal is to prevent a landlord from penalizing a tenant for being a victim of domestic violence. (*See generally* Kristen M. Ross, Note, *Eviction, Discrimination, and Domestic Violence: Unfair Housing Practices Against Domestic Violence Survivors*, 18 *Hastings Women's LJ* 249, 262-264 (2007); Elizabeth M. Whitehorn, Comment, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act*, 101 *Nw U L Rev* 1419, 1423 (2007). Respondent argues that because petitioner's allegations of nuisance are based solely on acts of domestic violence committed against her, VAWA 2005 prevents her tenancy from being terminated.

VAWA 2005, 42 USC § 1437 f (c) (9) (B), provides that

"An incident or incidents of actual or threatened domestic violence . . . will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence."

VAWA 2005, 42 USC § 1437f (c) (9) (C) (i), also provides that

"Criminal activity directly relating to domestic violence . . . engaged in by a . . . guest . . . shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant . . . is the victim or threatened victim of that domestic violence"

The movant on a motion for summary judgment bears the burden of presenting evidentiary proof in admissible form to establish a prima facie showing an entitlement to a judgment as a matter of law. (*E.g. GTF Mktg, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 967 [1987] ["A [party] moving for summary judgment has the initial burden of coming forward with admissible evidence, such as affidavits by persons having knowledge of the facts, reciting the material facts and showing that the cause of action has no merit"].) Summary judgment should be granted in the movant's favor only when a defense or cause of action is sufficiently established to warrant the court to direct judgment. (CPLR 3212 [b].)

To defeat a motion for summary judgment, the opposing party must "show facts sufficient to require a trial of an issue of fact." (*Zuckerman v City of NY*, 49 NY2d 557, 562; CPLR 3212 [b].) The rule allows flexibility for the party opposing the motion. The opposing party may present evidentiary proof that falls short of the strict requirement to tender evidence in admissible form. An opposing party that does not produce evidentiary proof in admissible form sufficient to require a trial on material questions of fact must offer an acceptable excuse for its

failure to meet the requirements of tender in admissible form; mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient. (*Zuckerman*, 49 NY2d at 562; *Johnson v Phillips*, 261 AD2d 269, 270 [1st Dept 1999]; *see also Shaw v Looking Glass Assocs., LP*, 8 AD3d 100, 103 [1st Dept 2004] ["Conclusory assertions tailored to meet statutory requirements . . . are insufficient to rebut defendants' prima facie showing."].)

As the movant for summary judgment, respondent asks this court to consider the entire history between her and Capers as proof that she is a domestic-violence victim. She submits evidence of complaint reports she filed with the New York Police Department in November 2006, January 2007, and February 2007, along with an order of protection she obtained against Capers in March 2007 from the New York City Criminal Court. Respondent also submits evidence that the New York District Attorney's Office declined to prosecute her for allegedly stabbing Capers in April 2008. Respondent submits her evidence to raise an inference that Capers was the aggressor in April 2008 and that, as the past would show, she, as in November 2006, January 2007, and February 2007, was once again the victim of domestic violence, and hence protected by VAWA, 42 USC § 1437f.

Respondent and Capers's history may not be used to show respondent's propensity to stab Capers. The acts of domestic violence committed against respondent resulting in police reports and the Criminal Court protection order against Capers are relevant, however, to offer in proving necessary background information in establishing a pattern of domestic violence in which respondent is a victim. (*See People v Demchenko*, 259 AD2d 304, 120 [1st Dept 1999] ["Defendant's prior acts of domestic violence against the complainant, resulting in the order of protection violated by defendant in this case, were properly admitted . . . to provide necessary background information."].)

Respondent's affidavit, specifically her recollection of the April 2008 stabbing, identifies herself as the victim. Respondent states that an intoxicated and disheveled Capers arrived at her apartment and, despite her telling him to leave, forced his way into her apartment and assaulted her. During the assault, Capers threw respondent into a bathroom cabinet, causing glass to shatter on both of them, and that Capers injured himself on the glass. Respondent's affidavit about the incident is admissible because she is a person with knowledge of the relevant facts. Respondent's affidavit, police incident reports, and a judge-decreed protection order from Criminal Court against Capers depict respondent as the victim of domestic violence and shifts the burden of proof to petitioner to allege otherwise. Petitioner must show that its causes of action have merit and that triable issues of fact warrant a trial.

Petitioner submits an affidavit by Miriam Velette, petitioner's property manager, and a security guard's incident report dated April 2, 2008, in opposition to respondent's motion for summary judgment. Velette alleges that she is involved in the daily management and oversight of petitioner's properties and that even after Criminal Court granted the order of protection in March 2007, respondent gave Capers ongoing access to the building several times. Velette further alleges that respondent used obscenities when building security denied Capers access onto the subject premises and that "there have been several instances where the respondent has engaged in loud fighting, yelling, and screaming with Mr. John Capers who is apparently the respondent's ex-husband/boyfriend." Velette also claims that respondent stabbed Capers on April

1, 2008, causing him serious harm, and that this violent conduct shows her to be threat to the safety of the other tenants in the building.

Velette fails to give the court a time frame for any of the alleged prior disputes between respondent and Capers. Moreover, besides indicating that she does not have first-hand knowledge of the couple's relationship by using words like "apparently" and besides basing her reasoning on hearsay, her statement is ambiguous. A party's acts of domestic violence can be admissible to establish a party's status, even if established solely by testimony, if relevant "to establish motive and intent and to provide appropriate background." (*People v Meseck*, 52 AD3d 948, 950 [3d Dept 2008].) Nowhere in Velette's affidavit or in petitioner's opposing papers as a whole is any evidence that the prior disputes were the fault of or initiated by respondent. Rather, the only evidence that respondent poses a threat to the tenants of the building or that her conduct is an ongoing nuisance is Velette's single, generalized, and neutral statement that these alleged "several instances" are a "threat to the tenants" of the building. Petitioner fails to offer any documentation to establish a triable issue of fact for any of the allegations, such as hospital records, injury-aided reports, police reports, affidavits from the security guard, Capers, or other tenants or employees, or affidavits from anyone describing the tumultuous relationship between respondent and Capers.

Velette's statement that respondent stabbed Capers is unsubstantiated and conclusory. Velette is a person not familiar with the relevant facts. She was absent during the stabbing and she does not say how she concluded that respondent stabbed Capers. She did not witness any of the alleged prior disputes and provides no reliable basis to explain how she obtained her information. Her affidavit is a conclusory statement based solely on hearsay that does not fall under any of the hearsay exceptions. Her unsubstantiated and conclusory affidavit is merely an attempt to find 42 USC § 1437 f inapplicable to this case.

Petitioner's security guard, Specialist R. Ward, identifies respondent and Capers in his incident report as a person involved in the stabbing. In his report, Ward claims that an anonymous tenant told him a man had fallen on the grounds and that when Ward spoke to Capers, Capers told him that "he had been stabbed." Ward's report, not even an affidavit, is also hearsay because Ward is not knowledgeable of the relevant facts. He arrived after Capers had already been injured. He did not see what happened. Respondent is not identified as the assailant by the anonymous tenant who reported the incident, by Capers, or by Ward himself. The only mention of respondent in the incident report concerns the March 2007 protection order respondent obtained from Criminal Court and the alleged ongoing disputes between the respondent and Capers.

Petitioner submits proof in inadmissible form and fails to demonstrate an acceptable excuse for its failure to meet the requirements of tender in admissible form. Petitioner does not suggest that it engaged in a good-faith attempt to obtain additional evidence or establish a reasonable nexus to prove that respondent stabbed Capers. All that petitioner offers into evidence to defeat respondent's motion is a property manager's affidavit containing conclusory statements and an unsworn incident report based on hearsay filled out by a security guard responding in the aftermath. Petitioner alleges that respondent lacks credibility but itself presents no evidence to discredit her or her affidavit and ultimately bases all its allegations that respondent is a nuisance

and a threat to the tenants of the subject premises on inadmissible hearsay and prior, ambiguous, unspecific, undated acts.

Even if petitioner's evidence were not based on hearsay and conclusory statements, the court would find that the supposed stabbing incident is a domestic dispute and that respondent is a victim or a threatened victim of domestic violence. Although petitioner alleges that respondent allowed Capers access to the subject premises shortly after obtaining a protection order, her behavior, even if true, does not determine that respondent was not a victim of domestic abuse. The battered-woman syndrome, a well-established concept in law and science, explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior. (*E.g. People v Torres*, 128 Misc 2d 129, 135 [Sup Ct, Bronx County 1985].) The battered-woman syndrome explains the behavioral pattern of abused women and how the abuse affects their conduct. (*People v Hryckewicz*, 221 AD2d 990, 991 [4th Dept 1995].) The syndrome is "a series of common characteristics found in women who are abused both physically and emotionally by the dominant male figures in their lives over a prolonged length of time." (*People v Ellis*, 170 Misc 2d 945, 950 [Sup Ct, NY County 1996], quoting Christine Emerson, *United States v. Willis: No Room for the Battered Woman Syndrome in the Fifth Circuit?*, 48 Baylor L Rev 317, 320 [1996].) One "characteristic is that [i]f charges are filed, the battered woman may change her mind about prosecuting the batterer and withdraw her complaint, refuse to testify as a witness, or recant." (*Id.*, quoting Joan M. Schroeder, *Using Battered Woman Syndrome Evidence in the Prosecution of a Batterer*, 76 Iowa L. Rev. 553, 560 [1991].)

Respondent might have changed her mind after she obtained the March 2007 protection order and allowed Capers access to the subject premises. Unrepresentative and inconsistent victim behavior toward an alleged aggressor fits into the cycle of domestic violence. Domestic violence is cyclical in nature. The battered woman's inconsistent behavior allows the victim to anticipate oncoming violence and entices her to remain with her abuser after the violence ends. (*Id.*, quoting Joann D'Emilio, *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use as Defenses to Criminal Liability*, 59 St John's L Rev 558, 563-564 [1985].) Respondent's seemingly inconsistent behavior toward Capers, even if true, characterizes a battered woman.

Respondent's motion for summary judgment is granted. Because the only admissible evidentiary proof submitted is respondent's affidavit, the court rests its decision on the factual scenario she presents. Petitioner failed properly to raise a triable issue of fact about whether respondent was a victim or aggressor. Accordingly, the court finds that respondent was a victim of domestic violence. As such, VAWA 2005 forbids petitioner to terminate respondent's Section 8 tenancy. Respondent is either a victim of incidents of domestic violence under 42 USC § 1437 f (c) (9) (B) or a victim of criminal activity relating to domestic violence under 42 USC § 1437 f (c) (9) (C) (i).

The petition is dismissed.

This opinion is the court's decision and order.

Jacqueline R. Waters
Management Systems Incorporated
163 Madison, Suite 120
Detroit, MI 48226

Dear Ms. Waters:

We are writing on behalf of your former tenant, Ms. Tanica Lewis. Ms. Lewis resided with her two children in Northend Village at 925 Hague Street, Apt. 37, in Detroit from July 30, 2005 until March 31, 2006. She moved out involuntarily, on the basis of a notice to quit received from Management Systems Incorporated.

This notice to quit was based upon an incident of domestic violence by Reuben Thomas (Ms. Lewis's former boyfriend), which occurred on March 1, 2006. On that date, Mr. Thomas appeared at Ms. Lewis's home while she was absent from her residence. When he could not gain entry to her apartment, he broke her windows and kicked in her door. Based on this incident, Management Systems Incorporated issued Ms. Lewis a 30-day notice to quit on March 13, 2006, stating that Ms. Lewis had violated that portion of her lease indicating that she would be liable for any damage resulting from her lack of proper supervision of her guests.

On February 24, 2006, however, Ms. Lewis had obtained a personal protection order against Mr. Thomas based on his threats against her. She informed Northend Village management of the order at the time she obtained it. This court order, enforceable by the police, prohibited Mr. Thomas from entering the 925 Hague Street property.

When Ms. Lewis learned that Mr. Thomas had come to her home and vandalized it in violation of the protection order on March 1, 2006, she immediately reported this violation to the police, as well as to the Residential Manager of Northend Village. Indeed, Mr. Thomas was ultimately convicted of breaking and entering and ordered to pay restitution for the damaged property. Accordingly, Ms. Lewis did everything within her power to prevent Mr. Thomas from visiting 925 Hague Street and to enforce available legal remedies against Mr. Thomas when he did so in violation of her personal protection order. As the management of Northend Village was aware at the time of the incident, far from being Ms. Lewis's guest, Mr. Thomas was in fact an individual whom she had gone so far as to legally bar from her home.

On the basis of the notice to quit issued by Management Systems Incorporated, Ms. Lewis left her apartment in Northend Village and thus shouldered moving costs. The apartment to which she was forced to relocate cost approximately \$200 more in rent a month than her previous home. In addition, it was inconveniently located far from her place of employment, in contrast to her home in Northend Village, which was less than ten minutes from her workplace. Because of the move, she was also forced to make new and less desirable childcare arrangements for her youngest daughter; the child's grandmother, who lived within a few blocks of Northend Village, had previously cared for Ms. Lewis's daughter. Most importantly, the notice to quit threatened Ms. Lewis with homelessness at the very moment that she was attempting to protect herself and her children from Mr. Thomas's threatening and dangerous behavior, resulting in significant emotional distress for Ms. Lewis.

As we assume you are aware, both the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Michigan Eliot-Larsen Act, M.C.L. §§ 37.2501 *et seq.*, prohibit discrimination in rental housing on the basis of sex. These statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. The eviction of Ms. Lewis was apparently based on gender stereotypes about battered women—namely, the stereotype that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. In addition, because most domestic violence victims are women, those policies and practices that discriminate against victims of domestic violence have an unlawful disparate impact on women. Management Systems Incorporated’s interpretation of the word “guest” to mean those individuals who enter a property uninvited and in violation of personal protection orders constitutes just such a practice.

For just these reasons, courts and agencies considering the question have repeatedly found that housing practices that discriminate against victims of domestic violence unlawfully discriminate on the basis of sex. For instance, in *Bouley v. Young- Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005), the district court denied defendant’s summary judgment motion in a sex discrimination Fair Housing Act claim, based on plaintiff’s showing that less than 72 hours after her husband assaulted her, her landlord issued her a notice to quit. Shortly after this ruling, the case settled with an award of damages and attorneys’ fees. *See also Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (finding discrimination against domestic violence victims had a discriminatory effect on women in violation of state fair housing law). Similarly, in a federal case in Oregon, the U.S. Department of Housing and Urban Development determined that when an apartment management agency takes action against an individual based upon her status as a victim of domestic violence, it discriminates on the basis of sex, because most victims of domestic violence are women. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* 1985 Op. N.Y. Att’y Gen. 45 (1985) (same). That case resulted in a consent decree, under which the federal government monitored the apartment management corporation for five years to ensure that its practices and policies in relation to victims of domestic violence complied with the Fair Housing Act. In addition, the apartment management corporation was required to pay compensatory damages and attorneys’ fees, to refrain from evicting or otherwise discriminating against tenants because they have been victims of violence, and to train its employees about discrimination and fair housing law.

Moreover, it seems unlikely that evicting an tenant for criminal behavior undertaken by an individual whom the tenant not only had not invited to the property, but whom she had legally excluded from her home, complies with the requirement that all Low-Income Housing Tax Credit properties terminate tenancy only for good cause. 26 U.S.C. § 42(h)(6)(E)(ii)(I); I.R.S. Rev. Rul. 2004-82, Q&A 5 (2004). Given that the behavior on which the notice to quit was premised cannot reasonably be construed as a violation of Ms. Lewis’s lease, the notice to quit amounts to a termination of tenancy without cause.

For these reasons, we believe that your eviction of Ms. Lewis violated federal and state law. Moreover, it forced her and her children from her home at a time of significant emotional trauma. We hope that we can resolve this matter amicably. Therefore, we ask that you reimburse Ms. Lewis and her children for the financial damages occasioned by the move as well as for the

significant emotional distress they experienced. We further request that you make available an apartment to Ms. Lewis's family comparable in cost, amenities, and location to the Northend Village unit from which they were terminated and suggest that rent abatement for a period of months may be a method of addressing Ms. Lewis's accrued damages. We understand from Ms. Lewis that New Center Commons Condominiums and Palmer Court Townhomes may offer such comparable properties. Finally, we request that Management Systems Incorporated amend the discriminatory policy outlined above, to ensure that tenants who are victims of domestic violence are not subject to the sort of preemptory eviction in the absence of good cause that Ms. Lewis experienced. We ask that you or your attorney contact us no later than January 31, 2007, so that we may pursue resolution of this matter.

Sincerely,
Emily J. Martin
Deputy Director
ACLU Women's Rights Project

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

YOLAUNDA ROBINSON
8651 DeSoto Drive
Cincinnati, Ohio 45231

Plaintiff,

-vs-

CINCINNATI METROPOLITAN
HOUSING AUTHORITY
16 West Central Parkway
Cincinnati, Ohio 45202

Defendant.

CASE NO. **1108 CV 238**

Judge **J. BARRETT**

COMPLAINT AND JURY DEMAND

Introduction

1. Plaintiff, Yolaunda Robinson brings this action against Defendant, the Cincinnati Metropolitan Housing Authority ("CMHA") for sex discrimination and unlawful denial of occupancy rights based on her sex and her status as a victim of domestic violence.

2. The civil wrongs for which Defendant is liable include violations of the Fair Housing Act ("FHA"), the Ohio Civil Rights Act and Ohio common law.

Parties, Jurisdiction and Venue

3. Plaintiff, Yolaunda Robinson, is a tenant of CMHA in a scattered site public housing unit, a single family home located at 8651 DeSoto Drive, Cincinnati, Ohio ("the premises"). Until recently, she lived there with her two children, 18 year old Diontae and 9 year old Alayejah. While she continues to pay rent and utilities for this address, she has been unable to live there since January 14, 2008, after being beaten by her ex-boyfriend, Charles E. Davis, Sr.

Ms. Davis threatened to kill Ms. Robinson if she returned to the premises. Since that time she has feared for her safety and the safety of her family, and so she has been staying at other undisclosed locations.

4. Defendant, CMHA owns and manages the public housing unit at issue. Defendant is a public housing authority within the meaning of the National Housing Act of 1937, 42 U.S.C. §1437 *et seq.*, which is financially assisted by the federal government and is governed by federal regulations. CMHA has about 5000 public housing units in Hamilton County and hundreds of households move out every year, so there are many units available. Ms. Robinson has requested a transfer and provided CMHA with evidence of the domestic violence. Despite the beating and death threat, and Ms. Robinson's timely request, CMHA has refused to transfer Ms. Robinson to another available public housing unit.

5. This Court has jurisdiction over Plaintiff's federal claims based on 28 U.S.C. §§ 1331 & 1343; and supplemental jurisdiction over the state claims based on 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391, because all causes of action alleged in this Complaint arose in the Southern District of Ohio.

Statement of Facts

7. Yolaunda Robinson moved to the premises in late December of 2006 with her two children. The premises is known as a "scattered site" public housing unit, in that it is a single family home owned and operated by CMHA. As a public housing resident, Ms. Robinson pays approximately 30% of household income in rent. CMHA receives subsidies from the U.S. Department of Housing and Urban Development ("HUD") to compensate it for the balance of the rent for the unit.

8. In March 2007, Ms. Robinson began dating Charles E. Davis, Sr. He lived down the street from her mother. Mr. Davis and his mother later moved just half a block down the street from the premises. From June through December of 2007, Mr. Davis physically abused Ms. Robinson on numerous occasions. He was extremely controlling and paranoid.

9. On December 25, 2007, Ms. Robinson told Mr. Davis that their relationship was over. He again beat her and tried to stab her with a knife. She returned to the premises, but since she feared for her safety, she left that night, and stayed at an undisclosed location for the following three weeks.

10. Ms. Robinson returned to the premises on January 14, 2008. Mr. Davis came to the premises claiming that he wanted to talk to her. When she refused to unlock the door, he broke in and assaulted her. Mr. Davis punched her in the head several times, then began beating her in the head with a vacuum cleaner. Mr. Davis threatened to kill her if she ever returned home. Ms. Robinson was able to call 911, at which point Mr. Davis ran away. Ms. Robinson filed a police report against him. Ms. Robinson went to the hospital and required five staples in her head to close the wound that he caused.

11. Since the incident, Ms. Robinson has not been living at the premises out of fear. On January 25, 2008, she petitioned for a Civil Stalking or Sexually Oriented Offense Protection Order against Mr. Davis. She was subsequently granted an *ex parte* protection order, Hamilton County Common Pleas Court Case No. SK080070. On information and belief, criminal charges are pending against Mr. Davis. On February 8, 2008, Ms. Robinson received an Order continuing the Protection Order through June 4, 2008.

12. Ms. Robinson has been staying at other locations since that time. She continues to pay her rent and utilities for the premises, but has not been living there. Her daughter has been so

traumatized by this situation that she will not return to the premises with her mother even for a few minutes to check the mail.

13. Within a few days of the January 14 incident, Ms. Robinson contacted Crystal Stollings, the Assistant Property Manager for CMHA's Scattered Sites West. Ms. Robinson requested to be transferred to another unit because of the domestic violence. At first, Ms. Robinson was given the impression that she would be eligible for a transfer. She submitted a transfer application and then waited to hear back from CMHA. She contacted Ms. Stollings several times after submitting the transfer. Ms. Stollings told her that it would take a couple of months before they heard anything because the transfer went to an outside office.

14. About a week later, a social worker from CMHA contacted Ms. Robinson. She told Ms. Robinson that she needed to fill out another form. Ms. Robinson immediately completed the form and turned in back in to CMHA. After having several more telephone calls go unanswered, Ms. Stollings told Ms. Robinson that her request for a transfer was denied. Ms. Stollings told her that her situation did not qualify for a transfer under CMHA policy. She received a letter denying the transfer on March 4, 2008.

15. CMHA's Admissions and Continued Occupancy Policy (ACOP) allows for transfers in many different situations. When a unit or building conditions poses an immediate threat to resident life, health or safety, as determined by CMHA, an emergency transfer is required. A "Category 1 Administrative Transfer" is required to provide housing options to residents who are victims of federal hate crimes or extreme harassment.

16. Ms. Robinson and her counsel contacted CMHA several times after the denial, but CMHA refused to change its decision to deny the transfer. CMHA's failure to follow its own

ACOP have made Ms. Robinson homeless for the past three months. Ms. Robinson has been, and continues to be irreparably harmed by CMHA.

FIRST CAUSE OF ACTION

**(Violation of Fair Housing Act, 42 U.S.C. § 3604(a) and (b)
Intentional Discrimination.)**

17. Plaintiff realleges and incorporates by reference the preceding paragraphs as though fully rewritten herein.

18. By refusing to grant Ms. Robinson occupancy rights granted to other tenants, specifically a transfer to a safe location, based on the criminal behavior of Ms. Robinson's domestic abuser, CMHA has intentionally discriminated against Ms. Robinson on the basis of sex, adversely effecting her opportunity to rent a dwelling and the terms, conditions, and privileges of the rental, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

19. Defendant engaged in such discriminatory conduct intentionally, willfully, and in disregard of the rights of Plaintiff.

20. Plaintiff has suffered injury and irreparable harm as a result of Defendant's illegal conduct.

SECOND CAUSE OF ACTION

**(Violation of Fair Housing Act, 42 U.S.C. § 3604(a) and (b)
Disparate Impact.)**

21. Plaintiff realleges and incorporates by reference the preceding paragraphs as though fully rewritten herein.

22. By adopting a policy or practice of denying the victims of domestic violence transfers, while allowing for transfers in other situations, CMHA has engaged in a practice that has a disparate impact on women, because the great majority of domestic violence victims are women, and that discriminates on the basis of sex, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

23. Defendant engaged in such discriminatory conduct intentionally, willfully, and in disregard of the rights of Plaintiff.

24. Plaintiff has suffered injury and irreparable harm as a result of Defendant's illegal conduct.

THIRD CAUSE OF ACTION

(Violation of the Ohio Civil Rights Act, O.R.C. 4112 *et seq.*)

25. Plaintiff realleges and incorporates by reference the preceding paragraphs as though fully rewritten herein.

26. By refusing to grant Ms. Robinson occupancy rights granted to other tenants, specifically a transfer to a safe location, based on the criminal behavior of Ms. Robinson's domestic abuser, CMHA has intentionally discriminated against Ms. Robinson on the basis of sex, in violation of the Ohio Civil Rights Act, O.R.C. § 4112.02(H).

27. Defendant engaged in such discriminatory conduct intentionally, willfully, and in disregard of the rights of Plaintiff.

28. Plaintiff has suffered injury and irreparable harm as a result of Defendant's illegal conduct.

FOURTH CAUSE OF ACTION

(Intentional Infliction of Emotional Harm)

29. Plaintiff realleges and incorporates by reference the preceding paragraphs as though fully rewritten herein.

30. Defendant intentionally, recklessly, and/or negligently failed to transfer Plaintiff with intentional and/or reckless disregard for Plaintiff's health and safety. Defendant's conduct should be regarded as atrocious and utterly intolerable in a civilized community. Defendant's conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.

31. As a direct and proximate result of Defendant's negligent, reckless and/or intentional infliction of emotional distress, by outrageous failure to meet the obligation to provide a decent, safe, and sanitary unit, Plaintiff has suffered insult, humiliation and emotional distress.

Demand for Relief

WHEREFORE, Plaintiff, demands judgment against Defendant as follows:

1. Declare that the discriminatory practices of the Defendant, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
2. Declare that the discriminatory practices of the Defendant, as set forth above, violate Ohio's Civil Rights Act, O.R.C. §4112.02(H);
3. Enjoin Defendant, its agents, employees, successors from refusing to grant Ms. Robinson and all other domestic violence victims the occupancy rights granted to other tenants, including but not limited to, a transfer to a safe location because they are victims of domestic violence;

4. Order Defendant to immediately transfer Plaintiff to a suitable scattered site unit;
5. Order Defendant to amend its ACOP pursuant to the direction of the Public Housing Guidebook regarding the development of a transfer policy for domestic violence victims;
6. Award Plaintiff actual and compensatory damages for the injuries caused by Defendant's discriminatory actions, pursuant to 42 U.S.C. § 3613 and O.R.C. §4112.051;
7. Award Plaintiff punitive damages pursuant to 42 U.S.C. § 3613 and O.R.C. §4112.02(H);
8. Award Plaintiff reasonable costs and attorney fees pursuant to 42 U.S.C. § 3613 and O.R.C. §4112.02(H).
9. An order for all other legal and equitable relief to which Plaintiff is entitled.

Respectfully submitted,



/s/ Nicholas J. DiNardo

Nicholas J. DiNardo (0069544)
Lucia Christopher (0081979)
Attorneys for Plaintiff
Legal Aid Society of Southwest Ohio
215 East 9th Street, Suite 500
Cincinnati, Ohio 45202
(513) 241-9400; (513) 241-1187 (fax)

JURY DEMAND

Plaintiff hereby demands that all issues of fact in the foregoing Complaint be tried to a jury.



/s/ Nicholas J. DiNardo

Nicholas J. DiNardo
Attorney at Law

A BILL 1

16-703 2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 3

_____ 4

To amend the Rental Housing Act of 1985 to provide protection from eviction to victims of 5
intrafamily offenses, and to provide a release from certain lease obligations should an 6
intrafamily offense victim’s safety be in jeopardy; and to amend the Human Rights Act of 7
1977 to prohibit housing discrimination against victims of intrafamily offenses. 8

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this 9
act may be cited as the "Protection from Discriminatory Eviction for Victims of Domestic 10
Violence Amendment Act of 2006". 11

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. 12
Official Code § 42-3501 *et seq.*), is amended as follows: 13

(a) The title of Title V is amended by striking the phrase “EVICTIONS; RETALIATORY 14
ACTION” and inserting the phrase “EVICTIONS; RETALIATORY ACTION; AND OTHER MATTERS” in 15
its place. 16

(b) Section 501 (D.C. Official Code § 42-3505.01) is amended by adding a new 17
subsection (c-1) to read as follows: 18

“(c-1)(1) It shall be a defense to an action for possession under subsections (b) or (c) of 19
this section that the tenant is a victim, or is the parent or guardian of a minor victim, of an 20

intrafamily offense or actions relating to an intrafamily offense, as defined in D.C. Official Code § 1
16-1001(5), if the Court determines that the intrafamily offense, or actions relating to the 2
intrafamily offense, are the basis for the notice to vacate. 3

“(2) If, as a result of the intrafamily offense or the actions relating to the 4
intrafamily offense that is the basis for the notice to vacate, the tenant has received a temporary or 5
civil protection order ordering the respondent to vacate the home, the court shall not enter a 6
judgment for possession. 7

“(3) If, as a result of the intrafamily offense or the actions relating to the 8
intrafamily offense that is the basis for the notice to vacate, the tenant provides to the court a copy 9
of a police report written within the preceding sixty days or has filed for but has not received a 10
temporary or civil protection order ordering the respondent to vacate the home, the court shall 11
have the discretion not to enter a judgment for possession under this title.”. 12

(c) New sections 507 and 508 are added to read as follows: 13

“Sec. 507. Notice of lease termination by tenant who is a victim of an intrafamily offense. 14

“(a) For purposes of this section, the term "qualified third party" means any of the 15
following persons acting in their official capacity: 16

“(1) A law enforcement officer, as defined in section 102(14) of the Prevention of 17
Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. 18
Official Code § § 4-1301.02(14)). 19

“(2) A sworn officer of the D.C. Housing Authority Office of Public Safety; or 20

ENGROSSED ORIGINAL

“(3) A health professional, as defined in section 101(8) of the District of Columbia 1
Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. 2
Official Code § 3-1201.01(8)); or 3

“(4) A Domestic Violence Counselor as defined D.C. Official Code § 14- 4
310(a)(2)). 5

“(b) If a tenant, who is a victim, or who is the parent or guardian of a minor victim, of an 6
intrafamily offense or actions relating to an intrafamily offense, as defined in D.C. Official Code § 7
16-1001(5), provides a housing provider with a copy of an order under D.C. Official Code § 8
16-1005 in response to a petition filed by or on behalf of the tenant, the tenant shall be released 9
from obligations under the rental agreement. 10

“(c) If a tenant, who is a victim, or who is the parent or guardian of a minor victim, of an 11
intrafamily offense or actions relating to an intrafamily offense, as defined in D.C. Official Code §12
16-1001(5), provides a housing provider with documentation signed by a qualified third party 13
showing that the tenant has reported the intrafamily offense to the third party acting in his or her 14
official capacity, the tenant shall be released from obligations under the rental agreement. 15

“(d) The release from a rental agreement shall be effective upon the earlier of: 16

“(1) Fourteen days after the housing provider receives: 17

“(A) Written notice of the lease termination under this section; and 18

“(B) Documentation pursuant to subsection (b) or (c) of this section; or 19

“(2) Upon the commencement of a new tenancy for the unit. 20

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“(e) Any request by the tenant for termination of the rental agreement under this section 1
shall be made within 90 days of the reported act, event, or circumstance that was cited in the 2
petition or reported to a qualified third party. 3

“(f) Notwithstanding any penalty provided under a rental agreement, a tenant who is 4
released from the rental agreement under this section shall be liable only for his or her rental 5
payment obligation, pro-rated to the earlier of: 6

“(1) The date the housing provider rents the unit to a new tenant or party who 7
succeeds to the tenant's rights under the original agreement; or 8

“(2) Fourteen days after the request for the release.”. 9

“(g) This section shall not affect the Security Deposit Act, effective February 20, 1976 10
(D.C. Law 1-48; 14 DCMR § 308 *et seq.*), or the tenant's liability for delinquent, unpaid rent or 11
other sums owed to the housing provider before the lease was terminated by the tenant under this 12
section. 13

“Sec. 508. Victims of an intrafamily offense protection – change locks and notice. 14

“(a) Upon the written request of a tenant who is the victim of an intrafamily offense, as 15
defined in D.C. Official Code § 16-1001(5), a housing provider shall change the locks to all 16
entrance doors to that tenant’s unit within 5 business days; provided, that if the perpetrator of the 17
intrafamily offense is a tenant in the same dwelling unit as the tenant who makes the request, the 18
tenant who makes the request shall provide the landlord with a copy of a protective order issued 19
pursuant to D.C. Official Code § 16-1005 ordering the perpetrator to stay away from, or avoid, the 20

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tenant who makes the request, any other household member, or the dwelling unit; provided 1
further, that if the perpetrator of the intrafamily offense is not, or is no longer, a tenant in the same 2
dwelling unit as the tenant who makes the request, no documentation of the intrafamily offense 3
shall be required. 4

“(b) The housing provider shall pay the cost of changing the locks. No later than 45 days 5
after the housing provider provides the tenant who makes the request with documentation of the 6
cost of changing the locks, the tenant shall reimburse the housing provider for such cost and any 7
associated fee; provided, that the fee shall not exceed the fee imposed on any other tenant for 8
changing the locks under any other circumstances. 9

“(c) Upon receipt of a copy of the court order pursuant to subsection (a) of this section, 10
unless the court orders that the perpetrator be allowed to return to the unit for some purpose, the 11
housing provider shall not provide the perpetrator with keys to the unit or otherwise permit the 12
perpetrator access to the unit or to property within the unit. 13

“(d) The housing provider shall not be liable to the perpetrator for any civil damages as a 14
result of actions the housing provider takes to comply with this section. 15

“(e) This section shall not be construed to relieve the perpetrator of any obligation under a 16
lease agreement or any other liability to the housing provider.”. 17

Sec. 3. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; 18
D.C. Official Code § 2-1401 *et seq.*), is amended as follows: 19

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(a) Section 101 (D.C. Official Code § 2-1401.01) is amended by striking the phrase “source of income,” and inserting the phrase “source of income, status as a victim of an intrafamily offense,” in its place.

(b) Section 102 (D.C. Official Code § 2-1401.02) is amended by adding a new paragraph (14A) to read as follows:

“(14A) “Intrafamily offense” means an offense as defined in D.C. Official Code § 16-1001(5).”.

(c) Section 221 (D.C. Official Code § 2-1402.21) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “source of income,” and inserting the phrase “source of income, status as a victim of an intrafamily offense,” in its place.

(2) Subsection (b) is amended by striking the phrase “source of income,” and inserting the phrase “source of income, status as victim of an intrafamily offense,” in its place.

(3) A new subsection (f) is added to read as follows:

"(f) *Victims of intrafamily offenses* –

“(1) For purposes of this subsection, the term “record” means documentation produced by a law enforcement officer, as defined in section 102(14) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02(14)), or a court order pursuant to D.C. Official Code § 16-1005.

“(2) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsections (a) and (b) of this section wholly or partially based on the fact that a person

residing, or intending to reside, in the dwelling is, has a record of being, a victim of an intrafamily offense, as defined in D.C. Official Code § 16-1001(5).

“(3) It shall be an unlawful discriminatory practice to do any of the following additional acts, for purposes of this subsection, wholly or partially based on the fact that a person residing, or intending to reside, in the dwelling is, or has a record of being, a victim of an intrafamily offense, as defined in D.C. Official Code § 16-1001(5):

“(A) Refusing to make a reasonable accommodation in restoring or improving security and safety measures beyond the housing provider’s duty of ordinary care and diligence, the costs of which the housing provide may charge to the tenant, when an accommodation is necessary to ensure the person’s security and safety;”

“(B) Refusing to permit a person to terminate the lease of the premises early, without penalty, upon notice to the landlord and upon a showing that the person is a victim of an intrafamily offense, pursuant to section 507 of the Rental Housing Act of 1985, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-703);

“(C)(i) Barring or limiting the right of a person to call for police or emergency assistance, which right, for purposes of this subsection, shall not be waivable; or

“(ii) Imposing any penalty for calling police or emergency assistance.”.

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Sec. 4. Fiscal impact statement. 1

The Council adopts the fiscal impact statement in the committee report as the fiscal impact 2
statement required by section 603(c)(3) of the District of Columbia Home Rule Act, approved 3
December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)). 4

Sec. 5. Effective date. 5

This act shall take effect following approval by the Mayor (or in the event of veto by the 6
Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 7
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 8
1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 9
Columbia Register. 10