

# HOUSING JUSTICE

National Housing Law Project

Newsletter January 2009

## About NHLP

The National Housing Law Project is a 40-year old national housing law and advocacy center based in Oakland, California. NHLP seeks to advance housing justice for the poor by providing legal assistance, advocacy advice and housing expertise to legal services and other attorneys, advocacy groups, and community-based organizations.

We provide free technical assistance and training on the housing protections included in the Violence Against Women Act of 2005 (VAWA) as well as protections that are available to domestic violence survivors under the Fair Housing Act (FHA) and state laws.

We offer the following services to **LAV grantees**:

### Technical assistance via phone or email regarding VAWA's housing provisions, including:

- Determining a client's eligibility for VAWA's housing protections and if their rights under VAWA, the FHA or state law have been violated
- Developing a strategy for asserting a client's housing rights under VAWA, FHA or state law.
- Feedback on demand letters and pleadings

### Online and telephonic trainings explaining how to assist clients:

- Denied federally-subsidized housing
- Whose federally-subsidized housing is at risk or has been terminated
- Who need emergency transfers to safer housing

### Provide information and materials such as:

- Brochures for clients
- Information Packets for advocates/attorneys that include sample pleadings, HUD notices, litigation information, etc.
- Powerpoint slides for training others
- Outline of law for advocates/attorneys ■

## Introduction to VAWA's Housing Protections

The federal Violence Against Women Act (VAWA) of 2005 was signed into law on January 5, 2006. In addition to reauthorizing VAWA, the law created protections for victims of domestic violence, dating violence and stalking who reside in three of the major federal housing programs: Public Housing, Housing Choice Voucher, and Project-Based Section 8 programs.

VAWA applies to individuals who have been victims of at least one incident of domestic violence, dating violence or stalking if the incident forms the basis of a public housing agency (PHA) or landlord's eviction, termination, or denial of admission to the unit or program.

Under VAWA, neither PHAs nor subsidized owners may use an individual's status as a victim of domestic violence, dating violence or stalking as a basis for denying admission to a property or denying voucher eligibility.

The protections also create an exception to the federal "one-strike" criminal activity eviction rule. Under VAWA, an incident of actual or threatened domestic violence, dating violence or stalking is not good cause for terminating the victim's tenancy or voucher. Nor does criminal activity directly relating to domestic violence, dating violence or stalking constitute adequate grounds for eviction or termination of the victim. Evictions may still proceed in those rare situations where the PHA or landlord demonstrates that an individual's tenancy, despite their status as a covered victim, presents an actual or imminent threat to other tenants or property employees.

While a PHA or subsidized housing provider may not evict a survivor for reasons related to the domestic

## *In this Issue*

About NHLP

Introduction to VAWA's Housing Protections

Statistic of the Month

HUD Interim Rule on VAWA Housing Provisions

*Introduction cont'd from page 1*

violence, dating violence, or stalking, VAWA allows a PHA or landlord to bifurcate (split) a lease or voucher in order to evict or terminate the offender while allowing the victim to remain in occupancy.

In addition to eviction protections, families who want to leave their existing unit to protect a victim threatened by further violence may receive a voucher from the PHA to move to another jurisdiction if the family has complied with all other Section 8 obligations. Families of victims can seek this relief during the term of any lease, not just at expiration, although it appears that making a safety move within a jurisdiction falls outside of the statutory directive.

---

---

*An incident of actual or threatened domestic violence, dating violence or stalking is not good cause for terminating the victim's tenancy or voucher*

---

---

In order for survivors to assert these protections, a PHA or owner may (but is not required to) request individuals to certify victim status via a HUD-approved certification form, which must be signed by the claimant and include the name of the perpetrator. Alternatively, this requirement may be satisfied by providing a document signed by a victim service provider, an attorney, or a medical professional assisting the victim, attesting to "bona fide incidents of abuse," or by producing a police or court record. Absent an extension, the victim must provide the certification within fourteen business days. The information must be kept confidential; it must not be entered into a shared database. The PHA or landlord may disclose the information if the victim requests or consents in writing, if the information is required for use in related eviction proceedings, or if required by applicable law.

Advocates can use the law, in conjunction with fair housing and state laws, to help protect the rights of survivors. ■

### Statistic of the Month

In 2005, 50% of U.S. cities surveyed reported that domestic violence was "a primary cause of homelessness" in their cities.

Source: U.S. Conference of Mayors & Sodexo, Inc., *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities* 64 (2005).

## Interim Rule Published on VAWA's Housing Provisions

The Department of Housing and Urban Development (HUD) has taken its first step toward adopting regulations to implement VAWA's housing provisions. HUD published an interim rule that would amend existing subsidized housing regulations to incorporate VAWA's protections for survivors of domestic violence, dating violence, and stalking. See HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336 (Nov. 28, 2008). HUD will consider comments on the interim rule until January 27, 2009. It has not indicated when it plans to publish a final rule.

Much of the interim rule's content replicates VAWA's statutory language regarding protections against denials of housing, evictions, and terminations of assistance. However, there are also several provisions that substantially alter the statute's language. Two of the most significant areas are the interim rule's provisions regarding "actual and imminent threat" and documentation of domestic violence, dating violence, and stalking.

VAWA does not limit a public housing agency (PHA) or owner's authority to evict or terminate assistance to a survivor if the PHA or owner can demonstrate an "actual *and* imminent threat" to other tenants or employees at the property. See 42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C.A. §§ 1437f(d)(l)(B)(iii)(V) (emphasis added). In contrast, the interim rule states that a PHA or owner need only demonstrate an "actual *or* imminent threat." See 73 Fed. Reg. 72,341. While this may seem to be a small difference, it is concerning because VAWA makes clear that the threat must be both genuine *and* impending. Also troubling is HUD's definition of the phrase "imminent threat." The interim rule states that "words, gestures, actions, or other indicators will be considered an 'imminent threat' if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result." See *id.* This definition is problematic because it contains no requirement of immediacy. For example, if an abuser made threats to other tenants or employees at the property in the past, but is now incarcerated, or has not engaged in threatening activity in several months, HUD's definition of "imminent threat" could still apply, putting a survivor of domestic violence at risk of eviction or termination of assistance.

## Areas in which HUD's Interim Rule Replicates VAWA's Statutory Language

There are several provisions of HUD's interim rule that are nearly identical to VAWA's housing provisions, including:

- An incident of violence will not be construed as a serious or repeated lease violation by the victim or as good cause to terminate the victim's tenancy or assistance.
- Admission to housing shall not be denied on the basis that an applicant is or has been a victim of domestic violence, dating violence, or stalking.
- Criminal activity related to domestic violence, dating violence, or stalking shall not be cause for termination of the victim's tenancy or assistance.
- A public housing agency (PHA) or owner may bifurcate a lease to evict or terminate assistance to a tenant who engages in violence without penalizing the victim of the violence.
- VAWA does not limit the authority of a PHA or owner to honor court orders addressing rights of access to or control of property issued to protect the victim and to address distribution of property in a case where a family breaks up.
- Certification of domestic violence, dating violence, or stalking shall be kept confidential by the PHA or owner.
- In its consolidated plan, each jurisdiction must estimate the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking.
- PHAs' 5-year plans must describe goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking.
- PHAs' annual plans must describe any activities, services, or programs that help victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing, to prevent violence, or to enhance victim safety.
- A PHA may allow portability for a Section 8 family that moves out of the assisted unit in violation of the lease in order to protect the health or safety of a victim of domestic violence, dating violence, or stalking.

**Trainings:** NHLP will present "Housing Rights and Needs of Sexual Assault Survivors" at the National Sexual Assault Law Institute in San Diego March 4-5, 2009.

For more information about the Institute, contact the Victims Rights Law Center at 503-274-5477 or 617-399-6720.

## Interim Rule Cont'd from page 2

The interim rule's language regarding certification of domestic violence, dating violence, or stalking also differs significantly from VAWA. Under VAWA, a PHA or owner may request that an individual certify via a HUD-approved certification form that the individual is a victim of domestic violence, dating violence, or stalking. In lieu of using the form, an individual may opt to satisfy the certification requirement by providing (1) documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional; or (2) a police or court record. In other words, an applicant or tenant may satisfy the certification requirement by supplying one of any of the following three documents: (1) HUD's certification form; (2) documentation signed by a qualified third party; or (3) a police or court record. In contrast, the interim rule indicates that an individual must always provide the HUD form in response to an owner or PHA's request for certification. The interim rule never specifies that the tenant can provide a police or court record or qualified third-party documentation instead of the certification form.

Housing and domestic violence advocates across the country are submitting comments on how the interim rule could better serve survivors' needs. NHLP will continue to provide OVW grantees with updates on the interim rule's status. ■

---

---

**For technical assistance, requests for trainings or materials, or further questions, please contact:**

Navneet Grewal, [ngrewal@nhlp.org](mailto:ngrewal@nhlp.org), ext. 3102,  
Meliah Schultzman, [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org), ext. 3116  
National Housing Law Project  
614 Grand Ave. Suite 320  
Oakland, CA 94610.  
Phone: (510)251-9400  
Fax (510)451-2300

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