

HOUSING JUSTICE

National Housing Law Project

Newsletter August 2009

Survivors' Rights to Relocate within Subsidized Housing

Survivors of domestic violence, sexual assault, and stalking often need to relocate to preserve their safety and emotional wellbeing. Survivors currently living in public housing or who have Section 8 vouchers likely cannot afford to move without continued rental assistance. This newsletter discusses how survivors with Section 8 vouchers can relocate and continue to receive voucher assistance. It also discusses strategies for requesting a transfer to another development for survivors living in public housing.

Safety Moves for Survivors with Section 8 Vouchers

In some cases, a survivor who has a Section 8 voucher may need to move from the city or county that she is living in to protect her safety. Moving with voucher assistance is called "portability." Ordinarily, a voucher tenant is not allowed to exercise her right to portability if she moved out of the assisted unit without notifying the public housing agency (PHA) first. This is obviously problematic for a survivor who has fled her unit to escape her abuser and cannot pay the rent without voucher assistance. However, the Violence Against Women Act (VAWA) provides that even if the voucher tenant has moved out of the assisted unit, she may still receive voucher assistance if

she is a survivor of domestic violence, dating violence, or stalking; she moved to protect her health or safety; and she reasonably believed that she was imminently threatened by harm. Advocates should inform PHAs of this provision if PHAs refuse to allow portability moves for survivors who fled their units.

While VAWA's portability provisions protect survivors who need to move, housing authorities often impose a number of general restrictions on portability. For example, housing authorities often prohibit moves during the first year of the lease, prohibit tenants from moving more than once during a 12-month period, or prohibit tenants from moving unless they have obtained permission from the landlord to end the lease. These policies can have the effect of endangering a survivor's safety by unnecessarily preventing her from moving. Survivors often need to relocate on multiple occasions and during a relatively short timeframe to keep their whereabouts hidden from the batterer. If a PHA has denied a survivor's portability request, the survivor should exercise her right to an informal hearing to challenge the denial. Advocates should urge housing authorities to consider the safety needs of domestic violence survivors when they assess portability requests. Advocates can also cite VAWA's provisions stating that the fact that an applicant has been a survivor of domestic violence is not an appropriate basis for denial of assistance. To avoid

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future problems, advocates should urge housing authorities to adopt exceptions to their portability rules where needed to accommodate a domestic violence survivor's safety.

To prevent disputes with the PHA, survivors who must temporarily relocate for safety reasons while the portability request is being processed should inform the PHA of this in writing. Many PHAs have policies limiting the number of days a tenant may be absent from a Section 8 unit before her assistance will be terminated. Further, Section 8 regulations provide that in no case may a tenant be absent from the unit for more than 180 consecutive days. To remain in good standing with the PHA and ensure that the survivor's portability request is processed, the survivor should contact the PHA to let the PHA know that she has temporarily moved for safety reasons and that she intends to remain in the Section 8 program.

In working with a survivor who must move, advocates may also need to contact the survivor's existing Section 8 landlord. Section 8 regulations provide that the initial term of the lease must be for at least one year. If the survivor has been in the unit for less than a year, advocates will need to negotiate with the Section 8 landlord to waive or reduce any fees associated with breaking the lease, as VAWA does not protect a victim from being held liable for these fees. In some instances, the survivor may

Statistic of the Month

At the federal minimum wage of \$6.55, a household would have to work 109 hours each week to afford the nation's average fair market rent for a two-bedroom home.

Source: National Low Income Housing Coalition, Out of Reach 2009: Persistent Problems, New Challenges for Renters (2009).

be able to use state law to break the lease without financial penalty. Advocates should consult their state landlord-tenant laws to determine whether there are any provisions permitting survivors to terminate their leases early.

After the survivor has terminated the lease, the PHA will give her a new voucher so that she can relocate. The PHA must provide the survivor at least 60 days to search for housing, which is called the initial voucher term. To assist voucher holders in locating suitable housing, many PHAs have elected to increase the initial voucher term to 120 days. To determine your PHA's initial voucher term, consult the PHA's Section 8 Administrative Plan or look at the client's voucher. PHAs often grant extensions to the initial voucher term if the voucher holder shows that she was unable to locate housing after an extensive search. Accordingly, advocates should advise survivors to keep a log of all the housing providers they contacted during their housing search. Additionally, if the survivor was unable to search for housing during a certain time period (due to a disability, for example) she may request that the PHA suspend the voucher search term for that period.

Safety Moves for Survivors in Public Housing

PHAs have a great deal of discretion in deciding the circumstances in which they will allow a public housing tenant to transfer to another unit, and advocates will need to check with their local PHAs to determine what their transfer policies are. Policies regarding transfers must be set forth in the PHA's Admissions and Continued Occupancy Policy (ACOP). Advocates working with survivors who need transfers should carefully examine the PHA's policies and determine the grounds under which a survivor may be entitled to a transfer. Unfortu-

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nately, many PHAs do not have transfer policies for domestic violence victims or victims of crime. Further, many PHAs require tenants to provide documentation from law enforcement in order to obtain a domestic violence transfer, which may be unrealistic for survivors who cannot call the police due to fear of retaliation. Advocates in jurisdictions without domestic violence transfer policies or with overly restrictive policies should encourage the PHA to amend these policies. In fact, the Department of Housing and Urban Development has encouraged PHAs to adopt transfer policies for survivors of domestic violence. A sample policy is included at the end of this newsletter.

To increase the likelihood that the survivor's transfer request will be granted, advocates should cite as many reasons as possible why the PHA should grant the survivor a transfer. For example, many PHAs have transfer policies for tenants living in units that are too small or too large, that are in need of repair due to habitability issues, that are inaccessible to a tenant with disabilities, or that are a significant distance from the tenant's job or school. Advocates should explore with survivors whether they might qualify for a transfer for reasons in addition to domestic violence. As an example, a survivor who has a child suffering from asthma whose symptoms are exacerbated by the abuser's repeated intrusions into the unit as well as mold in the unit may be able to request a transfer on the grounds of habitability and reasonable accommodation for the child's disability.

Before submitting the transfer request, discuss with the survivor whether there are certain developments where the abuser would be less likely to find her, and whether there are certain developments where the survivor would be at great risk of harm. These developments should be discussed in the transfer application to help expedite the survivor's request and to prevent the PHA from placing the survivor in a

development that is no safer than her current home. If there are no public housing developments where the survivor would be safe, advocates should contact the PHA and request that the survivor be issued a Section 8 voucher. In jurisdictions where there are limited numbers of public housing units and vouchers, the survivor should also consider getting on waitlists for federally subsidized housing in neighboring jurisdictions.

If the survivor must temporarily relocate for her safety while her transfer request is being processed, it is crucial to inform the PHA in writing that the survivor has temporarily moved but intends to remain in the public housing program. The PHA's ACOP will likely state the maximum number of days a family can be absent from a public housing unit. If the survivor relocates without notifying the PHA, and she is absent from the unit for more than the maximum number of days, the PHA may assume that the unit has been abandoned and may attempt to evict the survivor. To remain in good standing with the PHA and ensure that the survivor's transfer request is processed, the survivor should contact the PHA before or shortly after she relocates to let the PHA know that she has not abandoned the unit.

Conclusion

Regular communication with the PHA is essential in working with survivors living in Section 8 or public housing who need to relocate. Because PHA staff members may be unfamiliar with the dynamics of domestic violence, advocates should explain why relocation is critical to the survivor's safety and why portability and transfer requests must be processed in a timely fashion. Further, advocates should repeatedly remind PHA staff of the importance of keeping strictly confidential all information regarding the survivor's plans to relocate. ■

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Sample Public Housing Transfer Policy

As noted above, PHAs promulgate their local policies through the Admissions and Continuing Occupancy Plan (ACOP). Advocates can influence the PHA's policies through its yearly revision of the ACOP. The following is an example of a public housing transfer policy that enables survivors to relocate to another unit in order to escape further violence.

In situations that involve risk of harm to an individual as a result of incidents or threats of domestic violence, dating violence, or stalking, the Housing Authority will, if an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a public housing tenant to a different unit in order to reduce the level of risk to the individual. A tenant who requests a transfer must attest that the requested transfer is necessary to protect the health or safety of the tenant or another member of the household who is or was the victim of domestic violence, dating violence, or stalking and who reasonably believes that the tenant or other household member will be threatened by harm from further violence if the individual remains in the present dwelling unit.

The Housing Authority will act upon such a transfer request within 10 business days.

The address to which an individual fleeing domestic violence has relocated will be kept strictly confidential and will not be shared with any person outside the PHA.

Statutory and Administrative Guidance

Here are the statutes, regulations, and administrative materials that advocates should consult in cases where survivors receiving Section 8 voucher assistance need to relocate:

42 U.S.C. § 1437f(r)(5): Addresses portability in the Section 8 program, including safety moves for survivors of domestic violence, dating violence, and stalking.

24 C.F.R. § 982.312: Section 8 regulations regarding absences from the assisted unit.

24 C.F.R. § 982.314: Section 8 regulations regarding moves with continued tenant-based assistance.

24 C.F.R. § 982.355: Section 8 regulations regarding where a family can live and move with tenant-based assistance.

HUD, PIH Notice 2008-43 (Dec. 3, 2008): Provides guidance to PHAs on their obligations when a Section 8 voucher tenant requests portability.

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

Navneet Grewal, ngrewal@nhlp.org, ext. 3102,
Meliah Schultzman, 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

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