

Housing Protections for Survivors in Rental Housing

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GIDEON ANDERS & KARLO NG
NATIONAL HOUSING LAW PROJECT
WWW.NHLP.ORG
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HOUSING JUSTICE

National Housing Law Project

Housekeeping

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- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted on NHLP's website.
- CA attorneys seeking MCLE credits will be emailed MCLE certificates after the webinar.

Goals for Today

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- Overview of federal and state housing protections for survivors of domestic violence and other forms of abuse who are accessing and maintaining housing
- Special focus on RD multifamily housing and RD implementation of VAWA

Sources of Protection for Survivors in Rental Housing in CA

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- California domestic violence and housing laws
- VAWA 2013 and VAWA 2005's regulations
- Fair housing laws

California's Eviction Defense, Early Lease Termination, and Lock Changes Laws

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CALIFORNIA LAWS PROVIDE IMPORTANT PROTECTIONS
FOR SURVIVORS IN ALL RENTAL HOUSING



Eviction Defense: CA CCP § 1161.3

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- A landlord **cannot evict** a tenant based upon acts of domestic violence, stalking, sexual assault, **human trafficking** or elder/dependent abuse committed against that tenant if:
 - Tenant has a restraining order or police report; and
 - Person named in the restraining order or police report does NOT reside in the same dwelling unit as the tenant.
- Unless: If s/he has used this law before and allows the abuser to visit the property, or the abuser is a threat to other tenants or to right of quiet possession.
 - Landlord must give at least 3 days' notice to tenant to correct above violation.

Unlawful Detainer Answer Form

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3. AFFIRMATIVE DEFENSES

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- i. Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (*A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.*)

Early Lease Termination: CA CC § 1946.7

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- State law permits victims of domestic violence, sexual assault, stalking, **human trafficking**, or elder/dependent adult abuse to end their leases.
 - Victims must give 30 days' written notice to the landlord.
 - Victims must provide either a police report or restraining order issued in the past 180 days or **third-party documentation**
 - Tenants who are not family members of the victim are still obligated under the lease
 - Existing security deposit law applies

Early Lease Termination Toolkit

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- Materials include:

- A brochure for survivors in English
- A brochure for survivors in Spanish
- A Q & A for advocates
- A sample 30-day notice that survivors can use to end their leases.
- A template for a qualified third party statement
- Safety planning concerns that should be addressed when using the law.
- The text of Civil Code § 1946.7

Lock Changes: CA CC §§ 1941.5, 1941.6

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- If survivor lives with abuser, landlord must change locks within 24 hours of receiving a restraining order
 - R.O. must have been issued within last 180 days
 - R.O. must have kick-out order
 - Request must be in writing
 - If the landlord does not change the locks within 24 hours, tenant may change the locks without the landlord's permission
- If the survivor and the perpetrator do not live in the same unit, the same rules apply, but the survivor may also use a police report to request the lock change.
- A survivor who lives with the abuser can only use a restraining order to make this request.

Landlord's Duty to Provide Safe Housing

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- No black letter law
- Landlord owes general duty to maintain property in safe condition. Failure = Liability for negligence.
- Question is balance between foreseeability of the harm and the burden of the duty to the landlord. (See *Ambriz v. Kelegian*, 53 Cal. Rptr. 3d 700, 710 (2007).)
- Thus, the simpler (and less expensive) the safety measures requested, the lesser the degree of foreseeability the tenant must demonstrate, and the greater the likelihood that the landlord will be liable for negligence.

Violence Against Women Reauthorization Act of 2013

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**VAWA 2013 PROTECTS SURVIVORS ACCESSING
AND MAINTAINING FEDERAL HOUSING**



What is VAWA?

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- VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse against them, without being afraid of being evicted.
- VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them.
- Applies to men and women
- Only applies to federal housing programs

VAWA 2013 – Authority and Guidance

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- VAWA 2013 maintains VAWA 2005's housing safeguards and adds new protections. 42 U.S.C. § 14043e-11
- HUD's final regulations implementing VAWA 2005, 75 Fed. Reg. 66,246 (Oct. 27, 2010), continue to apply.
- HUD notice applying VAWA 2013 to HUD programs, 78 Fed. Reg. 47,717 (Aug. 6, 2013).
- RD notice to state directors and program directors of multifamily housing, RD AN No. 4747 (1944-N) (Feb.10, 2014).

VAWA 2005 & 2013: Housing Programs

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Programs that were covered by VAWA 2005:	Programs added by VAWA 2013:
Public Housing	Other HUD programs
Section 8 vouchers	<ul style="list-style-type: none"> • § 236 Multifamily rental housing
Project-based Section 8	<ul style="list-style-type: none"> • § 221d3 BMIR (Below Market Interest Rate)
Section 202 Supportive Housing for the Elderly*	<ul style="list-style-type: none"> • HOME • HOPWA (Hous. Opp. for Pple w/AIDS)
Section 811 Supportive Housing for People with Disabilities*	<ul style="list-style-type: none"> • McKinney-Vento (Homelessness Programs)
*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.	
Department of Agriculture	
<ul style="list-style-type: none"> • Rural Development (RD) Multifamily 	
Department of Treasury/IRS	
<ul style="list-style-type: none"> • Low-Income Hous. Tax Credit (LIHTC) 	

VAWA: RD/RHS Programs

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- VAWA 2013 has extended coverage to the following RD/RHS programs:
 - Section 515 rural rental housing (42 U.S.C. § 1485).
 - Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484 and 1486).
 - Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490m).
 - Section 538 multi-family rental housing (42 U.S.C. 1490p-2).
 - Coverage was NOT extended to the RD Voucher program, authorized by Section 542 (42 U.S.C. § 1490r).
- For webinar on basics of these programs:
<http://nhlp.org/node/1484/>

VAWA: RD/RHS Programs (cont'd)

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- No regulations yet.
- RD notice to state directors and program directors of multifamily housing, RD AN No. 4747 (1944-N) (Feb.10, 2014). (available at http://www.rurdev.usda.gov/rd-an_list.html). Existing leases should have some VAWA protections.
 - "All leases, including renewals, must include the following language:
 - ✖ . . . It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements." HB-2-3560, Attachment 6-E (02-24-2005) (at page 3 of 5).

VAWA: Who is Protected?

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VAWA covers people who are subject to:

Domestic violence: Any felony or misdemeanor crimes of violence committed by a current or former spouse, **intimate partner**, person with whom the victim shares a child, person who is or has cohabitated with the victim

Dating violence: Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

Sexual assault: Any nonconsensual sexual act prohibited by law

Stalking: Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

"Affiliated individual" of the victim: Immediate family or any individual living in the household

VAWA: Admissions

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- PHAs, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.



VAWA: Evictions

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- PHAs, landlords and owners may not evict a tenant on the basis that she is or has been a survivor.
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
 - A New York court found that a Section 8 tenant could not be evicted for nuisance after her abuser forced his way into her home and assaulted her. *Metro N. Owners LLC v. Thorpe*

VAWA: Limitation

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- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual and imminent threat” not defined in VAWA
- Current HUD regulations are important:
 - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
 - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
 - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005

VAWA: Lease Bifurcation

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- A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay
 - Review lease: RD form lease “all perpetrators will be evicted, while the victim may remain” HB 2-3560, Att 6-E.
- Protection for tenants remaining in housing after lease bifurcation
 - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- The landlord must follow federal, state, and local law in evicting the abuser

VAWA: Preserving Section 8 Voucher for Survivor

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- PHA may terminate Sec 8 assistance to the abuser while preserving assistance to survivor
 - If a family breakup results from DV, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315.

VAWA: Voucher Portability

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- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.
- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1st year of their lease, or from moving more than once during a 12-month period. However, these policies do **NOT** apply when the move is needed for safety. See 24 C.F.R. § 982.314

VAWA: Proving Domestic Violence

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- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says the violation is related to DV.
- PHA or landlord is free to take tenant at her word, or can ask tenant to prove DV.
- Any request by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord's request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.

VAWA: Proving DV – Options for Documentation

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1. Self-Certification Form

- New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
- Permits PHAs and owners to request certification via form approved by appropriate federal agency.
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

3. Statement from Third Party

- Can be from a victim service provider, medical professional, **mental health professional or attorney**.
- Must be signed by both the third party and the survivor under penalty of perjury.

HUD Form 50066, Certification of Domestic Violence

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB Approval No. 2577-0249 Exp. (11/06/2010)	Description of Incident: [INSERT TEXT LINES HERE]
<u>TO BE COMPLETED BY THE VICTIM OF DOMESTIC VIOLENCE:</u>			
<p>P Date Written Request Received By Family Member: _____</p> <p>N Name of the Victim of Domestic Violence: _____</p> <p>N Name(s) of other family members listed on the lease _____ _____</p> <p>I Name of the abuser: _____</p> <p>R Relationship to Victim: _____</p> <p>N Date the incident of domestic violence occurred: _____</p> <p>N Time: _____</p> <p>D Location of Incident: _____</p> <p>T Location of Incident: _____ Assistance, or (ii) otherwise required by applicable law.</p>			
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Proving DV (cont'd)

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- Poll: Can a housing provider *require* a tenant to provide *third-party* proof of domestic violence, dating violence, stalking or sexual assault to use VAWA's housing protections?

Proving DV (cont'd)

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- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.
 - Included in VAWA statute for the first time in 2013
 - Currently in HUD’s implementing regulations for VAWA 2005

VAWA: Additional Key Provisions

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- HUD must develop a notice that must be given to all tenants in covered developments advising them of their rights under VAWA, if they are denied housing, at the time of admission, or when notified of eviction or termination of assistance. This notice must be available in multiple languages.
- The federal agencies administering the programs must adopt model emergency transfer policies for use by PHAs and landlords of covered properties that allow tenants who are victims of DV to transfer to another available & safe dwelling unit assisted under a covered program.

Other Requirements

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- Confidentiality
- Survivors held to same standard as other tenants
- No preemption for laws that provide greater protections for survivors
- Impact on existing protections

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RD Administrative Notice 4747 (1944-N)

- Purpose:

- To inform RD State Directors, Program Directors, Borrowers , and Management Agents of the Protections afforded tenants in RD multi-family housing by VAWA.
- “be prepared to implement the Model Emergency Transfer Plan. . . At this time, no changes need be made to Tenant Leases, Occupancy Rules or the Management Plan.”

RD AN 4747 (Cont.)

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- HUD is primarily responsible for implementing VAWA Notice requirements. USDA will amend AN once HUD Notice is published.
- USDA must approve a certification form for survivors.
 - Not been completed; AN will be amended when it is.
- Under existing regulations borrower certify legal compliance with applicable laws. See 7 C.F.R. §§3560.102(a), 3560.352(c)(4) and 3565.105(b).
 - “These certifications necessarily relate to compliance with applicable provisions of VAWA”

RD AN 4747 (Cont.)

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- “Owners and Managers ... should update their Tenant Selection Policy and Occupancy Rules, if applicable, to incorporate the tenant’s rights and protections, to ensure uniformity in spreading awareness of VAWA ... and to avoid improper evictions.”
- HUD VAWA regulations apply to residents living in RHS housing with Section 8 Assistance. (27,764 units). HUD Lease Addendum Applies VAWA (Form HUD 91607).
- RD Housing Preservation Grant agreements need to be amended.

RD Model Emergency Transfer Plan

Attachment B to AN 4747

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- Survivors “shall be permitted by the owner or manager to transfer to another available and safe dwelling unit assisted under the MFH Program . . . when a transfer is requested by a tenant, and (1) the tenant reasonably believes that her or she is threatened with imminent harm from further violence if he or she remains within the same dwelling; **and** (2) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the request for transfer.”
 - ★ “and” is wrong; should, consistent with the statute, be “or.”

RD Emergency Transfer Plan (Cont.)

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- Under Emergency Transfer Plan, survivors are entitled to a Letter of Priority Entitlement, which grants the survivor priority admission to other RD multi-family housing. *See 7 C.F.R. § 3560.159(c).*
 - Must be issued by RD. (Not clear who issues.)
 - Reasonable confidentiality measures must be incorporated so that locations of new dwelling is not disclosed to perpetrator.

Enforcement of AN 4747

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- ANs do not have the force and effect of law.
 - Nonetheless, argue that landlords and RD must comply.
- Use tenant grievance and appeals process to force owners to comply. 7 C.F.R. § 3560.160.
 - Rely on AN; landlord's agreement to comply with all applicable laws.
- Call RD and ask them to enforce VAWA.
 - Appeal failure under 7 C.F.R. Part 11.
- Bring Fair Housing Complaint
 - See U.S. & Alvera v. C.B.M. Group, Inc. (No. 01-857-PA (D. Or. 2001) (RHS and LIHTC projects).
- AN 4747 expires Feb. 28, 2015. It must then be republished or superseded by regulations.

Fair Housing and Domestic Violence

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THE FAIR HOUSING ACT MAY PROVIDE DEFENSES FOR SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM



Fair Housing Laws

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- Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- CA Fair Employment and Housing Act, Cal. Gov. Code §§ 12900-12996.
- Apply to all housing
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class
- Protected categories

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Statistics: Domestic Violence and Sex

- Survivors aren't a protected class under the FHA or CA FEHA, but most are female.
- Statistics:
 - HUD FHEO DV Memo: "[W]omen are five to eight times more likely than men to be victimized by an intimate partner..." More than 70% of those murdered by their intimate partners are women.
 - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.
 - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times as likely as men to be victims of domestic violence.

Common Discriminatory Policies

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- Evictions or terminations based on violence against a survivor can violate fair housing laws. Examples:
 - Policies based on gender stereotypes may violate the FHA.
 - ✖ Ex: An owner evicts women with a history of domestic violence because “they always go back to the men who abuse them.”
 - Treating women differently because of their status as victims of DV may violate the FHA.
 - ✖ Ex: A landlord evicts a DV victim because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police
 - Evictions for property damage caused by the abuser

Common Discriminatory Policies (cont'd)

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- HUD's Memo also states:
 - A neutral policy that negatively affects DV victims may violate the FHA because of its disparate impact on women. Example:
 - ✖ A housing provider has a zero-tolerance policy, under which the entire household can be evicted for the criminal act of one household member
 - ✖ Women are disproportionately affected by the zero-tolerance policy because they are the majority of DV victims and can be evicted as a result of the violence of their abusers
 - ✖ As a result, the housing provider should make exceptions to the zero-tolerance policy for DV victims in order to avoid a disparate impact on women.
 - ✖ Memo available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>
 - ✖ See also FHA's Discrim. Effects Stand., 78 Fed. Reg. 11,460 (2/15/13)

Information Packet

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- CA eviction defense packet
- CA lock changes packet
- VAWA 2013 packet
- Each packet has:
 - Q and A fact sheet for advocates
 - Q and A trifold brochures for survivors (English and Spanish); space to add org's logo/contact info
- CA early lease termination toolkit

Thank You!

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- If you have questions, please contact:
 - Gideon Anders, ganders@nhlp.org, 415-546-7000 x. 3103
 - Karlo Ng, kng@nhlp.org, 415-546-7000 x. 3117
 - www.nhlp.org/OVWgrantees