

# HOUSING JUSTICE

National Housing Law Project

Newsletter December 2012

## Relocation Options in Public Housing for Survivors of Domestic and Sexual Violence

Domestic and sexual violence survivors living in public housing may need to move or “transfer” to a unit in another public housing development for their health, safety, and wellbeing. While the Department of Housing and Urban Development (HUD) has issued some guidance on transfers, housing authorities generally have significant discretion in responding to tenants’ requests to transfer to another unit. The primary sources of authority regarding transfers are HUD’s Public Housing Occupancy Guidebook and the housing authority’s Admission and Continued Occupancy Policy (ACOP), which is the local policy that governs the PHA’s day-to-day operation of public housing. This article provides an overview of common issues that residents encounter when seeking a transfer to another public housing unit.

### Local Transfer Policies

Housing authorities must have local policies that address transfers. Some of the issues that transfer policies should address include acceptable reasons for transfers, waiting lists for transfers, which party will bear the cost of the transfer, eligibility requirements for transfers, whether certain categories of transfers will be prioritized and whether transfers of existing residents will take precedence over new admissions. Policies also should address which categories of transfers are mandatory, meaning that the tenant will be re-

quired to move to another unit, and which categories of transfers are optional, meaning that the tenant has discretion to request a transfer.

In some instances, the housing authority may not have another unit in its inventory that meets a family’s needs. For example, a domestic violence survivor in public housing may need to transfer to a confidential location, but the abuser may be familiar with the locations of all of the housing authority’s public housing developments. In these cases, the family may need to transfer to a public housing unit owned by a different housing authority. Advocates have had somewhat limited success in facilitating transfers between different housing authorities, and there is little guidance from HUD on this issue. However, in some instances, housing authorities have agreed to allow public housing residents to transfer between two different agencies.

In Connecticut, the Housing Authority of the City of Bridgeport and the Housing Authority of the City of New Haven entered into a Memorandum of Agreement stating that the agencies agree to accept public housing resident transfers from one another if a resident is a victim of domestic violence, dating violence, or stalking, and the move is needed to protect the family’s health or safety. Advocates can encourage housing authorities in their jurisdictions to adopt similar transfer agreements.

In instances where a public housing tenant needs to move, but there are no other appropriate public housing units, questions may arise as to whether the housing authority can issue the tenant a Section 8 voucher. Except in cases where a

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housing authority has received targeted assistance from HUD, housing authorities generally are required to select voucher recipients from the voucher waiting list. Accordingly, to ensure that a public housing resident awaiting a transfer can receive a voucher in a timely fashion, a housing authority would need to adopt a voucher preference in its Section 8 Administrative Plan for public housing residents awaiting transfers. While this practice has not been widely adopted by housing authorities, HUD regulations state that it is permissible. HUD regulations provide that housing authorities may provide a preference in the voucher program “to families who live in public housing,” as well as to public housing residents “who are victims of a crime of violence.” Regulations direct PHAs to establish written policies for “participant transfer between ... programs,” which could be interpreted to mean transfers between the public housing and voucher programs. Further, HUD has stated that in assisting domestic violence victims in public housing, “[o]ne tool PHAs may choose is the issuance of a voucher to the victimized family.”

The Boston Housing Authority (BHA) has adopted a “super priority” to allow the issuance of Section 8 vouchers to certain families residing in public housing. BHA’s Section 8 Administrative Plan states that it will admit a public housing resident to the Section 8 voucher program before all other applicants if the resident is a victim of domestic violence, dating violence, or stalking, the resident is at risk of imminent harm, and no other BHA housing sites are an appropriate alternative. If advocates are having difficulties getting clients moved to a safer public housing unit, they can consider asking their local housing authority to adopt a similar policy.

### **Resident-Initiated Transfers**

Residents of public housing developments who need to move to another unit may request a transfer from the housing authority. The procedure for requesting a transfer should be set forth in the housing authority’s Admissions and Contin-

ued Occupancy Policy. If a housing authority denies or fails to act on a public housing resident’s transfer request, the resident has the right to the housing authority’s grievance procedure.

**Domestic violence.** The Violence Against Women Act (VAWA) does not address the obligation of housing authorities to transfer victims of domestic violence to safer public housing units, though HUD has encouraged housing authorities to provide transfers to victims. In cases where housing providers have denied transfers to domestic violence survivors, advocates have had mixed success in pursuing litigation under the Fair Housing Act.

**Disability.** Residents may need to transfer to another unit for reasons related to a disability. For example, a resident with disabilities may need to move to a ground floor unit, to a larger unit, to a unit with accessible features, or to a unit closer to medical facilities. For public housing, HUD has stated that current residents awaiting reasonable accommodation transfers should be prioritized over admissions of new residents from the waiting list. In addition to HUD’s guidance, several courts have held that housing providers may be required to transfer tenants with disabilities as a reasonable accommodation under fair housing laws.

### **Litigation**

Most of the litigation challenging denials of transfers has been filed in the public housing context and has been brought under civil rights laws. Examples of housing authority actions that have been challenged include failures to provide transfers where needed to protect tenants from harassment based on race, color, and national origin, to provide reasonable accommodations for tenants with disabilities, and to protect victims of domestic violence from continued abuse.

The Department of Justice (DOJ) has litigated cases on the theory that a housing authority’s failure to transfer public housing tenants who are experiencing race-based violence or harassment violates the Fair Housing Act (FHA). For example, DOJ filed a lawsuit on behalf of public housing residents alleging that the Boston Housing Authority

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(BHA) engaged in a pattern and practice of tolerating racial harassment and intimidation in its developments in violation of the Fair Housing Act. As part of a settlement, BHA agreed to improve its transfer policies. In a similar case, the San Francisco Housing Authority reached an agreement with DOJ to notify tenants of their right to apply for a transfer and to respond to transfer requests within 14 days.

### Conclusion

For domestic and sexual violence survivors living in public housing, a transfer to another public housing unit is often critical to escaping the perpetrator and mitigating the effects of depression and post-traumatic stress disorder. Advocates seeking to assist survivors in moving to another public housing unit should examine the housing authority's Admissions and Continued Occupancy Policy to determine what procedures will apply. In some instances, the housing authority's policy may need to be improved, or it may need to offer additional options for survivors, such as the option to receive a Section 8 voucher or to move to housing owned by another housing authority. In these instances, advocates should consider working with the housing authority to improve its policies.

If a housing authority refuses a domestic or sexual violence survivor's transfer request, the survivor should appeal the denial by requesting a grievance hearing. If this approach is unsuccessful, an advocate could approach the housing authority's board and explain the importance of using transfers to protect residents' health or safety. If a survivor's safety would not be compromised, advocates could consider contacting the local media to shed light on the housing authority's failure to timely process transfer requests. If there are indications that the housing authority's failure to transfer residents is resulting in harassment based on sex, race, color, national origin, or disability, advocates can consider filing a fair housing complaint with HUD. Further, it may be appropriate to refer the client to pro bono legal counsel to determine whether legal action may be warranted. ■

## Case Examines Reasonable Accommodation Request for Domestic Violence Survivor

A federal court recently ordered a housing authority to offer a Section 8 voucher tenant a new hearing in a case where the tenant alleged that her abusive landlord moved into her apartment and refused to leave. In *Anderson v. Lowell Housing Authority*, 2012 WL 3965112 (D. Mass. Aug. 24, 2012), the housing authority terminated the tenant's voucher on the grounds that she allowed her landlord to live with her in violation of the housing authority's guest policy. The case may be relevant to advocates working with domestic violence survivors who are accused of allowing their abusers to live in their subsidized housing without the housing authority's permission.

### Facts

The tenant had an "on-again, off-again" dating relationship with her Section 8 landlord. When the landlord lost his job, the tenant agreed to allow him to stay with her for a few days. Under the housing authority's guest policy, a person could stay in a voucher tenant's unit for no longer than 14 consecutive days.

The landlord overstayed the two-week limit, and the tenant asked him to leave. The landlord refused, saying that he would change the locks and put her possessions on the street. Several months later, the landlord was still living in the unit and allegedly became violent. The tenant called the police after the landlord allegedly damaged her possessions and pushed and shoved her. She also told her housing authority caseworker that her landlord had moved in, she could not get him out, and she wanted to move to another unit. She gave the caseworker a copy of the police report, which stated that the landlord lived in the unit. The housing authority then sought to terminate the tenant because she allowed an unauthorized occupant—her landlord—to live in the unit.

At the voucher termination hearing, the tenant

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alleged that the landlord was violent, and she was fearful that he would remove her belongings or lock her out if she reported his conduct to the housing authority. Her attorney requested a reasonable accommodation and presented evidence that the tenant suffered from post-traumatic stress disorder (PTSD) from a prior abusive relationship, which made it difficult for her to confront the landlord. The attorney stated that his client would agree to attend therapy, and that one of the goals of the therapy would be to teach the client effective tools for overcoming her fears. The attorney included reference materials regarding PTSD, an affidavit signed by the tenant describing the prior abuse she had suffered, and a letter of support from an assistant district attorney. The hearing officer rejected the reasonable accommodation request and upheld the voucher termination, stating that the tenant allowed an unauthorized person to live with her even though she knew it was a violation of her family obligations.

### Analysis

The tenant filed an action in federal court to challenge the housing authority's termination of her voucher. She alleged that the housing authority violated the Fair Housing Act by failing to provide a reasonable accommodation for her disability, and that it failed to comply with due process requirements. Regarding the tenant's reasonable accommodation request, the court found that the tenant did not establish that she had a disability. The court found that she failed to describe a substantial limit to a major life activity, which is required by federal reasonable accommodation law. The court noted that while the tenant stated that it was difficult for her to focus, she also stated that she did not miss work due to her symptoms, and that she was able to get her work done. Because the court found that the tenant failed to allege that her PTSD substantially limited any major life activity, the court concluded that the housing authority did not err in denying her reasonable accommodation request.

Even though the court found that the tenant was not entitled to a reasonable accommodation,

it still found problems with the voucher termination. The court noted that the hearing officer's decision included information that was not discussed at the hearing. The hearing officer relied on research that she conducted after the hearing regarding allegations that the tenant fraudulently registered her car in another jurisdiction. The court found that this post-hearing investigation contributed to the hearing officer's termination decision. Because the tenant never had an opportunity to respond to the investigation, the court found that she could proceed on her claims that the housing authority violated her due process rights. Ultimately, the court ordered the housing authority to conduct a new termination hearing.

### Conclusion

Domestic violence survivors may have difficulties complying with certain program rules or policies in federally subsidized housing due to PTSD or depression. A reasonable accommodation may help survivors with disabilities obtain a change in a policy or rule when needed to help the survivor participate in federally subsidized housing. However, as *Anderson* illustrates, it is critical to demonstrate that the survivor's disability substantially limits a major life activity, such as working, concentrating, reading, communicating, interacting with others, sleeping, etc. ■

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*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.*