



# Information Packet for California Housing Providers

## Contents

1. Domestic Violence Laws: An Overview for California Housing Providers.....2
2. Sample Qualified Third Party Statement for Early Lease Terminations.....17
3. HUD VAWA Certification, Form HUD-50066 (updated July 2014); HUD VAWA Certification, Form HUD-91066 (not yet updated to reflect VAWA 2013).....21
4. USDA/Rural Development, VAWA 2013 Suggested Format of Certification of Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Attachment C of RD AN No. 4778 (1944-N)).....25

# Domestic Violence Laws: An Overview for California Housing Providers (Updated April 2015)

*There are several laws that protect California tenants who are victims of abuse. This Q&A format addresses both state and federal laws that provide these protections. Please note that this overview is not legal advice and is provided for informational purposes only. If you have questions about a particular situation involving a tenant experiencing abuse, please consult with an attorney.*

## EVICCTIONS

### 1. What does state law say about domestic violence and evictions?

California Code of Civil Procedure Section 1161.3 prohibits a landlord from evicting a tenant (or refusing to renew a tenant's lease) based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against the tenant, or a member of the tenant's household. The law is designed to prevent victims from being evicted for abuse that has been reported.

### 2. When can a victim use this law?

Victims who are renters in California can use this law as a defense to an eviction action, as long as he or she (1) has obtained a restraining order or police report that is not older than 180 days and (2) does not live with the abuser.

### 3. What types of proof does a victim need to use the law?

The victim must have a restraining order or police report documenting the domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse. The restraining order or police report cannot be more than 180 days old.

### 4. Are there limits to the law?

A victim who provides the required information may still be evicted (or fail to obtain a lease renewal) if he or she has already used this law for protection, AND either: (1) the

victim allows the person named in the restraining order or police report to visit the property; OR (2) the landlord reasonably believes the abuser is a physical threat to other tenants or people on the property, or to other tenants' use of the property ("right to quiet possession"). Before evicting the victim, however, the landlord must provide notice to the victim and give him or her three days to address the problem.

Best Practice: It is important to note that, oftentimes, abusers force their way into a victim's home through the use of force, threats, or intimidation, or by engaging in stalking activities. Therefore, a victim may not actually be allowing an abuser to visit the property by choice. For example, an abuser may come to a victim's apartment and begin yelling/ causing a disturbance to compel the victim to allow the abuser to enter the unit.

## 5. What if the victim lives with the abuser?

If the victim lives with the person named in the restraining order or police report, this particular law does not apply.

Best Practice: Even if the law does not apply in a particular situation, landlords may consider alternatives to evicting the victim, such as allowing him or her to relocate to another property owned or managed by the same company.

## 6. My town has a law in place that requires landlords to evict tenants after so many police calls in a certain time period. Do those laws allow me to evict a victim who calls the police because of domestic violence? What if she/he exceeds the allotted number of police calls permitted by the local law?

Under Cal. Gov. Code § 53165, a local agency (which includes cities and towns) cannot require that a landlord evict or fail to renew someone's tenancy based on how many calls are made by anyone "to the emergency telephone system" (i.e., 911) when those calls relate to a tenant or a household member being a victim of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse. This section assumes that the documentation requirements of Cal. Civ. Code § 1161.3(a) are met.

## LOCK CHANGES

### 1. What is the law on changing a victim's locks?

In certain cases, California Civil Code Sections 1941.5 and 1941.6 require landlords to

change exterior locks for victims of domestic violence, sexual assault, or stalking. Section 1941.5 applies in cases where the abuser and victim do not live together, while Section 1941.6 applies in situations where the abuser and victim live together. Note that in either situation, a court order issued to protect victims of threatening or harassing conduct beyond domestic violence, sexual assault, and stalking may also be used to obtain a lock change. Housing providers should consult with an attorney to see if a particular type of court order would require a lock change under state law. This law applies to all rental housing in California.

## 2. When am I required to change a victim's locks?

The law requires housing providers to change a victim's locks within 24 hours after the victim provides the landlord with a written request and a court order or police report documenting domestic violence, sexual assault, or stalking. Landlords must change any exterior lock that allows access to the victim's unit, and give the victim keys to any new locks.

## 3. What proof must the victim give me?

The law varies slightly based on whether the victim and abuser live together. If the abuser and victim *do not* reside in the same unit, then the victim must provide either a court order or police report documenting domestic violence, sexual assault, or stalking to accompany the written lock-change request. The court order or police report cannot be more than 180 days old.

If the victim and abuser live together, then the victim must provide you with a court order excluding the abuser from the unit along with the written lock-change request. This court order cannot be more than 180 days old.

## 4. What if I don't change the locks within 24 hours?

If the landlord does not change the locks within 24 hours, the victim can do so without the landlord's permission. The victim must notify the landlord within 24 hours of having the locks changed.

Additionally, the victim must provide the landlord with keys to any new locks. The new locks must be of "similar or better quality" than the prior locks, and any lock changes must be completed in a "workmanlike manner."

## 5. What if the lease explicitly states that the tenant cannot change locks?

Under the law, the victim can still change the locks, even if the lease prohibits doing so, if the landlord has not changed locks within 24 hours of receiving notice from the tenant. The law applies to leases signed after January 1, 2011.

## 6. What if the abuser and victim are co-tenants?

As referenced above, a victim is entitled to have the locks changed even if the abuser also lives in the unit. The victim must provide you with a court order excluding the abuser from the home.

## 7. If the abuser and victim are both on the lease, is the abuser no longer responsible for rent after being locked out?

If the victim receives a lock change under Section 1941.6, the abuser is still responsible for paying rent even though he or she can no longer access the unit.

## 8. If the abuser and victim live together, will I be liable to the abuser for locking him or her out under this law?

If a landlord changes the locks under Section 1941.6, he or she is not liable to an abuser excluded from the unit.

## EARLY LEASE TERMINATIONS

### 1. What is California's early lease termination law?

California Civil Code § 1946.7 allows people who have a restraining order, a police report, or documentation from a qualified third party to end their leases without owing additional rent. This law was created to protect victims of domestic violence, sexual assault, human trafficking, stalking, and elder/dependent adult abuse. It applies to both private and subsidized housing.

### 2. What does the law do?

This law allows a tenant to terminate his or her lease early, leave the unit, and no longer be required to pay rent. The tenant will be responsible for rent for up to 30 days after notifying the landlord about moving out, but not afterwards. The law applies only if the tenant or a member of his or her household is a victim of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse and meets certain criteria. A "member of the household" is defined as someone in the tenant's family who lives with the tenant.

### 3. Who can use this law?

Renters with leases who have a restraining order, police report, or documentation from a qualified third party, and who feel as though they must leave due to acts of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse committed against them or a family household member can use this law.

### 4. What does the tenant need to provide to use the law?

To use this law, the tenant must provide written notification to the landlord that the tenant (or a family member of the tenant's household) has been a victim of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse, and that he or she wants to end the rental agreement. The notice should be dated.

The tenant must attach to the notice either: (1) a restraining order; (2) a copy of a police report; or (3) documentation from a qualified third party verifying that the tenant (or family household member) was the victim of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse. The restraining order or police report must have been issued no more than 180 days before the request to end the rental agreement.

### 5. How much notice must the tenant provide?

Generally, a tenant must give the landlord at least 30 days' notice before the rental agreement can end. For example, if the notice is dated January 1, 2015, the earliest the rental agreement can end is February 1, 2015. The tenant is free to leave the apartment at any time to flee the abuse. However, the tenant will still be responsible for rent up to 30 days after giving the landlord notice.

Under certain circumstances, Cal. Civ. Code § 1946 may apply where the parties have previously agreed to permit notice to be given within a time period of fewer than 30 days. Housing providers should consult with an attorney to see if this provision applies to a particular rental agreement.

### 6. How long must the tenant continue to pay rent after notifying the landlord about the lease termination?

The tenant will be responsible for paying rent for up to 30 days after giving the landlord notice concerning the lease termination. If the tenant leaves, and the landlord re-rents the unit within 30 days after the tenant provides notice, the landlord must prorate the victim's rent for those days in which the new tenant occupied the unit.

## 6. What type of restraining order must be used?

The law protects a tenant or a family household member who has a domestic violence restraining order, a criminal protective order, a civil harassment order, or a juvenile court restraining order.

## 7. I've heard that the law also allows a tenant to provide documentation from a qualified third party. What does that mean?

Instead of providing a restraining order or police report, a tenant may also provide the landlord documentation signed by a qualified third party indicating that the tenant or a family household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse. This qualified third party must be a physician, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, licensed clinical counselor, sexual assault counselor, domestic violence counselor, or human trafficking caseworker. A sample Qualified Third Party Statement is included in this packet.

If the documentation is provided by a sexual assault counselor, domestic violence counselor, or a human trafficking caseworker, the statement must appear on the letterhead of the counselor or caseworker's office, hospital, institution, center, or organization.

## 8. Is the information provided by the tenant confidential?

Yes. A housing provider cannot disclose any information that the tenant has provided as documentation for purposes of terminating the lease unless (1) the tenant consented to the disclosure in writing or (2) the disclosure is required by law or a court order.

If the tenant provided documentation from a qualified third party, then the landlord is permitted to verify the contents of that documentation by communicating with the qualified third party.

## 9. What if there are roommates who are on the lease?

Roommates who are on the lease and who are not members of the victim's family can remain in the unit and will still be covered by the lease, even after the victim moves out. The roommates must continue to pay the full amount of rent due under the lease, including any share of the rent that the victim was paying.

## 10. What happens to the security deposit?

The law states that “[e]xisting law governing the security deposit shall apply.” Housing providers should consult with an attorney to examine how the law applies to a particular household’s situation.

## THE VIOLENCE AGAINST WOMEN ACT (VAWA)

### A. Overview

What is the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), and how is it different from the Violence Against Women Act of 2005 (VAWA 2005)?

VAWA 2013 is a law that provides protections for victims of domestic violence, dating violence, sexual assault, and stalking who are seeking to access or maintain federally-assisted housing. VAWA 2013 continues VAWA 2005’s housing safeguards and significantly expands housing protections for victims.

Key changes include covering more federal housing programs; covering sexual assault victims and LGBT victims; requiring emergency transfer policies; providing victims time to establish program eligibility after an abuser has been removed from a lease; and notification of VAWA housing rights to applicants and tenants upon admission, upon denial of admission/assistance, and upon termination/eviction.<sup>1</sup>

When did VAWA 2013 become effective?

VAWA 2013 was signed into law on March 7, 2013.

However, there are a few aspects of the law that require federal agency action before implementation can occur, such as the development of certain forms (*e.g.*, a notice of VAWA rights). The basic protections of VAWA 2013, however, are in effect. Basic protections include the prohibition against the denial of admission/assistance, eviction, or subsidy termination of an individual based on his or her status as a victim of abuse.<sup>2</sup> HUD regulations implementing VAWA 2005 continue to be in effect until further notice.<sup>3</sup> Furthermore, HUD has also made certain steps such as issuing an updated VAWA

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<sup>1</sup> See generally 42 U.S.C.A. § 14043e-11.

<sup>2</sup> 42 U.S.C.A. § 14043e-11(b)(1).

<sup>3</sup> See generally 78 Fed. Reg. 47,717 (Aug. 6, 2013); 75 Fed. Reg. 66,246 (Oct. 27, 2010).



certification form HUD-50066 to reflect changes made by VAWA 2013, such as including sexual assault, and only requiring the abuser be named if the name is known by the victim and safe to provide.

On April 1, 2015, HUD published its proposed VAWA regulations in the Federal Register.<sup>4</sup> Those regulations have not been finalized.

## Who is required to comply with the law?

Public housing authorities and owners and managers of housing programs covered by VAWA must comply with the law.<sup>5</sup>

## B. Coverage

### Who does VAWA protect?

VAWA protects anyone who is: (a) a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an “affiliated individual” of the victim; AND (b) living in, or seeking admission to, a federally assisted housing unit covered by VAWA.<sup>6</sup>

### How does VAWA 2013 define “domestic violence,” “dating violence,” “sexual assault,” and “stalking”?

- “Domestic violence” includes felony or misdemeanor crimes of violence committed by:
  - A current or former spouse or intimate partner of the victim;
  - A person with whom the victim shares a child;
  - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
  - Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction.<sup>7</sup>
  
- “Dating violence” is violence committed by a person:

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<sup>4</sup> See generally Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Proposed Rule, 80 Fed. Reg. 17,548 (Apr. 1, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>.

<sup>5</sup> See generally 42 U.S.C.A. § 14043e-11.

<sup>6</sup> See generally 42 U.S.C.A. § 14043e-11.

<sup>7</sup> 42 U.S.C.A. § 13925(a)(8).

- 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.<sup>8</sup>
- “Sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.<sup>9</sup>
- “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for his or her safety or others; or
  - Suffer substantial emotional distress.<sup>10</sup>

## Who is an “affiliated individual” for the purposes of VAWA 2013?

An “affiliated individual” can be: a victim’s spouse, parent, sibling, or child; an individual to whom that victim “stands in loco parentis”; or an “individual, tenant, or lawful occupant” living in the victim’s household.<sup>11</sup>

Under VAWA 2013, “affiliated individuals” do not necessarily have to be related to the victim by blood or marriage.

## What types of housing does VAWA 2013 cover?

The law only provides protections for federally-subsidized housing units, and does not apply to private housing without federal subsidies. VAWA 2013 expanded the list of federal housing programs covered by the statute.<sup>12</sup> The following is a list of housing programs covered by VAWA 2013:

- U.S. Department of Housing and Urban Development
  - public housing
  - Section 8 Housing Choice Voucher program
  - project-based Section 8 housing

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<sup>8</sup> 42 U.S.C.A. § 13925(a)(10).

<sup>9</sup> 42 U.S.C.A. § 13925(a)(29).

<sup>10</sup> 42 U.S.C.A. § 13925(a)(30).

<sup>11</sup> 42 U.S.C.A. § 14043e-11(a)(1)(A)-(B).

<sup>12</sup> 42 U.S.C.A. § 14043e-11(a)(3) (listing covered housing programs).

- Section 202 supportive housing for the elderly
- Section 811 supportive housing for persons with disabilities
- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate housing (BMIR)
- HOME
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney-Vento Act programs for the homeless
- U.S. Department of Agriculture
  - Rural Development (RD) multifamily housing programs
    - Section 515 rural rental housing (42 U.S.C. § 1485)
    - Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484, 1486)
    - Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490p)
    - Section 8 multifamily rental housing (42 U.S.C. § 1490p-2)
- U.S. Department of the Treasury
  - Low-Income Housing Tax Credit program (LIHTC)

Note that VAWA coverage was *not* extended to the RD Voucher program, authorized by Section 542 (42 U.S.C. § 1490r). Additionally, VAWA coverage does not include Indian housing programs.

## C. Admissions and Evictions/Terminations

### How does VAWA affect admissions and terminations?

Under VAWA, a housing provider cannot deny admission or assistance, evict, or terminate housing assistance because a person is a victim of domestic violence, dating violence, sexual assault, or stalking.<sup>13</sup>

Additionally, under VAWA 2013, actual or threatened criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking does not constitute grounds for terminating assistance, tenancy, or occupancy rights of the victim or an affiliated individual of the victim.<sup>14</sup> Furthermore, an abuser's acts of domestic violence, dating violence, sexual assault, or stalking cannot be considered a "serious or repeated" lease violation, or "good cause" for evicting or terminating assistance to the victim or an affiliated individual.<sup>15</sup>

### What if the abuser is a threat to my staff or other residents?

<sup>13</sup> 42 U.S.C.A. § 14043e-11(b)(1).

<sup>14</sup> 42 U.S.C.A. § 14043e-11(b)(3)(A).

<sup>15</sup> 42 U.S.C.A. § 14043e-11(b)(2)(A)-(B).

Despite VAWA's protections, a housing provider may still be able to evict the victim if the housing provider demonstrates the existence of an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted or assistance is not terminated.<sup>16</sup> However, as the next question discusses, such evictions or subsidy terminations should be used as a last resort.

## What does "actual or imminent threat" mean?

Neither VAWA 2005 nor VAWA 2013 defines "actual and imminent threat." HUD regulations implementing VAWA 2005 define "actual and imminent threat" as "a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm."<sup>17</sup> The regulation notes that "words, gestures, actions, or other indicators" constitute such a threat *if they also meet this definition*.<sup>18</sup> The regulation calls for a balancing of factors – such as duration of risk, the seriousness of potential harm, likelihood of the harm occurring, and the time before a harm would occur – to determine if an actual and imminent threat exists.<sup>19</sup>

Additionally, the same HUD regulations remind housing providers that eviction or termination on these grounds should be a last resort taken when "no other actions" could be taken to alleviate the threat.<sup>20</sup> Other actions may include banning the abuser from the property, providing the victim with a transfer, increasing police presence on the property, or pursuing legal remedies to stop the abuser from acting on threats.<sup>21</sup>

## What about criminal activity unrelated to abuse?

VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, sexual assault, or stalking. In determining whether to evict, a housing provider may not hold a victim to a higher standard than other tenants.<sup>22</sup>

## Am I able to evict the abuser while allowing the victim to remain in the unit?

Yes. A housing provider may bifurcate a lease to evict or terminate assistance to a tenant or occupant who commits acts of violence against family members or others.<sup>23</sup> This action may be taken without evicting or terminating assistance to the victim who is also a tenant or

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<sup>16</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii).

<sup>17</sup> 24 C.F.R. § 5.2005(e).

<sup>18</sup> 24 C.F.R. § 5.2005(d)(2).

<sup>19</sup> 24 C.F.R. § 5.2005(e).

<sup>20</sup> 24 C.F.R. § 5.2005(d)(3).

<sup>21</sup> 24 C.F.R. § 5.2005(d)(3).

<sup>22</sup> 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii).

<sup>23</sup> 42 U.S.C.A. § 14043e-11(b)(3)(B)(i).

lawful occupant. Bifurcation is applicable to all leases in the covered housing programs. The eviction or termination of the abuser must comply with federal, state, and local law.

Importantly, under HUD's regulations implementing VAWA 2005, in situations where a family has a Section 8 tenant-based voucher and family break-up occurs due to domestic violence, dating violence, or stalking, the public housing authority *must* ensure that the victim retains the Section 8 voucher assistance.<sup>24</sup>

## What happens when the abuser is evicted or terminated and the victim remains in the unit?

If the abuser was the only household member receiving housing assistance, VAWA 2013 states that the victim must be afforded the opportunity to demonstrate eligibility for the housing program.<sup>25</sup> If the victim cannot establish eligibility for that program, then the housing provider must allow the victim reasonable time to show that he or she qualifies for another covered housing program, or to relocate to other housing.<sup>26</sup> The agency administering the housing program at issue (HUD, USDA, or Treasury) will determine what constitutes a reasonable amount of time.

## What if the victim needs to leave a unit for safety reasons?

PHAs may permit Section 8 voucher holders to move to another jurisdiction, even during a lease term, to protect the health and safety of someone who has been a victim of domestic violence, dating violence, or stalking.<sup>27</sup> Preserving portability for victims was part of VAWA 2005, and was unchanged by VAWA 2013. Thus, sexual assault victims are not explicitly included in this pre-VAWA 2013 protection. However, this should be viewed as an oversight by the authors of VAWA 2013.

VAWA 2013 requires federal agencies administering programs covered by the statute to adopt model emergency transfer policies.<sup>28</sup> Once adopted, these policies will be used by housing providers to allow victims of domestic violence, dating violence, sexual assault, and stalking to find safe, alternative housing through one of the covered housing programs. Under these policies, housing providers must allow a victim to transfer if: the tenant requests the transfer, and the tenant either (a) reasonably believes he or she is threatened by imminent harm by more violence, or (b) is victim of sexual assault on the property up to 90 days before the request.<sup>29</sup>

Under VAWA 2013, HUD must establish policies and procedures enabling victims who

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<sup>24</sup> 24 C.F.R. § 982.315(a)(2).

<sup>25</sup> 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

<sup>26</sup> 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

<sup>27</sup> See 42 U.S.C.A. § 1437f(r)(5).

<sup>28</sup> 42 U.S.C.A. § 14043e-11(e).

<sup>29</sup> 42 U.S.C.A. § 14043e-11(e)(1)(A)-(B).

request an emergency transfer to receive a tenant protection voucher. However, the law is not clear if the victim would be entitled to a tenant protection voucher if no transfer policies are established.<sup>30</sup> Additionally, note that USDA Rural Development (RD) has circulated a model emergency transfer plan in a January 5, 2015 administrative notice.<sup>31</sup>

## Proof of Abuse

### Can I ask for proof of the abuse?

Housing providers may, *but are not required to*, ask an individual for documentation that he or she is a victim in order to assert VAWA's protections.<sup>32</sup> At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement.<sup>33</sup> However, if the housing provider would like documentation, this request must be made in writing.<sup>34</sup>

### How long does the victim have to produce documentation once it's requested?

The victim has fourteen business days to respond.<sup>35</sup> If the individual fails to respond in that timeframe, a housing provider may take an adverse action against the individual. The housing provider is free to extend this timeframe if it is needed by the individual.<sup>36</sup>

### What types of documentation can a victim provide to demonstrate abuse?

If a housing provider requests documentation, the victim may provide:

- a certification form that is approved by the agency administering the program (HUD, USDA, or Treasury), which must state: that the tenant or applicant is a victim of domestic violence, dating violence, sexual assault, or stalking; that the abuse cited is covered by the statute; and the name of the abuser, if the name is known and safe to provide. Form HUD-50066 (public housing, Housing Choice Voucher program) has been updated by HUD post-VAWA 2013, and is included with these materials. Form HUD-91066 (HUD multifamily housing programs) was developed by HUD under VAWA 2005, but has not yet been updated. It is also included with these materials. USDA/Rural Development (RD) has stated

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<sup>30</sup> See 42 U.S.C.A. § 14043e-11(f).

<sup>31</sup> See RD AN No. 4778 (1944-N), Attachment B.

<sup>32</sup> 42 U.S.C.A. §§ 14043e-11(c)(5), (c)(1).

<sup>33</sup> 42 U.S.C.A. § 14043e-11(c)(3)(D).

<sup>34</sup> 42 U.S.C.A. § 14043e-11(c)(1).

<sup>35</sup> 42 U.S.C.A. § 14043e-11(c)(2)(A).

<sup>36</sup> 42 U.S.C.A. § 14043e-11(c)(2)(B).

its intent to get HUD's permission to use the updated version of Form HUD-91066, when available; RD has also created a suggested alternative certification form that it included in its January 2015 notice.<sup>37</sup>

- documentation signed by the victim and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional declares under penalty of perjury the professional's belief that the victim has experienced a form of abuse covered by the statute ("third-party documentation"); OR
- a federal, state, tribal, territorial, or local police, court, or administrative record.<sup>38</sup>

## Can I specifically request third-party documentation?

Generally, a housing provider must accept any of the above-listed forms of certification that the victim chooses to provide. However, an exception applies if there are conflicting certifications (*e.g.*, two people claim to be the victim while accusing the other person of being the perpetrator). In these limited circumstances, the housing provider can require the victim to provide third-party documentation.<sup>39</sup>

## What steps must I take to protect the victim's privacy?

Any information provided regarding an individual's status as a victim must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any other entity or person.<sup>40</sup> The only exceptions are: (1) the victim requests or consents to disclosure in writing; (2) the information is "required for use in an eviction proceeding"; or (3) disclosure is otherwise required by law.<sup>41</sup> HUD regulations implementing VAWA 2005 restrict access to victim information to authorized employees who need such information to perform job duties.<sup>42</sup>

## D. Housing Provider Obligations

### Do I have additional VAWA obligations?

VAWA 2013 requires HUD to develop a written notice of an applicant or tenant's rights under the statute.<sup>43</sup> Once the notice is developed, VAWA 2013 requires covered housing providers to distribute the notice at three points: (1) upon denial of admission; (2) upon

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<sup>37</sup> See RD AN No. 4778 (1944-N), Attachment C.

<sup>38</sup> See 42 U.S.C.A. § 14043e-11(c)(3).

<sup>39</sup> 42 U.S.C.A. § 14043e-11(c)(7).

<sup>40</sup> 42 U.S.C.A. § 14043e-11(c)(4).

<sup>41</sup> 42 U.S.C.A. § 14043e-11(c)(4)(A)-(C).

<sup>42</sup> 24 C.F.R. § 5.2007(b)(4)(ii).

<sup>43</sup> 42 U.S.C.A. § 14043e-11(d)(1).

admission; or (3) with a notice of eviction or subsidy termination.<sup>44</sup> The notice must be accompanied by the federal agency-approved certification form, and must be available in non-English languages for persons with limited English proficiency.<sup>45</sup> However, this notice has not yet been developed by HUD.

Under HUD's regulations implementing VAWA 2005, public housing authorities must provide notice to public housing and Section 8 tenants of their rights under VAWA, including the right to confidentiality, as well as provide notice to owners and managers of covered housing of their rights and obligations under VAWA. In addition, owners and managers of project-based Section 8 units must provide notice to Section 8 tenants of their rights and obligations under VAWA.<sup>46</sup>

## E. Guidance and Resources

### What guidance is available concerning VAWA 2013?

- The VAWA 2013 housing protections are codified at 42 U.S.C.A. § 14043e-11.
- 75 Fed. Reg. 66,246 (Oct. 27, 2010) (VAWA 2005 regulations): HUD's regulations implementing VAWA 2005 are still in effect until the agency indicates otherwise.
- 78 Fed. Reg. 47,717 (Aug. 6, 2013): This notice provides an overview of key aspects of VAWA 2013.
- 80 Fed. Reg. 17,548 (Apr. 1, 2015): This notice includes HUD's proposed regulations regarding implementation of VAWA 2013's housing protections in HUD-covered programs. This notice is available at:  
<http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>
- USDA, RD AN No. 4778 (1944-N) (Jan. 5, 2015): Rural Development Administrative Notice (AN) addressed to RD multifamily housing program directors concerning implementation of VAWA 2013; includes a model emergency transfer plan and suggested VAWA certification notice; updates and clarifications since prior AN on VAWA, available at:  
<http://www.rd.usda.gov/files/an4778.pdf>
- HUD Office of Community and Planning Development (CPD), *HOMEfires* Newsletter (Dec. 2013): outlining VAWA 2013 housing protections while telling housing providers not to wait for HUD rulemaking to extend basic VAWA protections, available at:  
<https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>
- Letter from HUD PIH to PHAs regarding VAWA 2013 (Sept. 2013): Describes VAWA 2013 housing protections and reminds PHAs to update planning

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<sup>44</sup> 42 U.S.C.A. § 14043e-11(d)(2)(A)-(C).

<sup>45</sup> 42 U.S.C.A. § 14043e-11(d)(2)(D).

<sup>46</sup> 24 C.F.R. § 5.2005(a)(1)-(3).



documents to reflect new housing protections, available at:  
<http://nhlp.org/files/Sept%202013%20VAWA%20letter%20to%20PHAs.pdf>

## What about other resources?

- NHLP has a summary of the key provisions of VAWA 2013, which formed the basis of this Q&A. To see the full article, please visit:  
[http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20\(Jan%202014\).pdf](http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20(Jan%202014).pdf)
- For additional questions, please contact Karlo Ng, Staff Attorney, National Housing Law Project, [kng@nhlp.org](mailto:kng@nhlp.org).

**[Form to be used in California for compliance with Civil Code Section 1946.7, notice to terminate tenancy]**

**Providing Proof of Violence – Qualified Third Party Statement**

This is a template for a qualified third party statement, which can be used to show that a tenant, or family member living with the tenant, is a victim of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse, for the purposes of breaking a lease. The tenant completes and signs Part I. Part II is completed and signed by certain professionals, such as sexual assault counselors, domestic violence counselors, human trafficking caseworkers, doctors, registered nurses, or psychologists. **If the professional making the statement is a sexual assault counselor, domestic violence counselor, or human trafficking caseworker, the law requires that the professional provide this statement on his or her organization’s letterhead.**

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**Tenant Statement and Qualified Third Party Statement  
under Civil Code Section 1946.7**

**Part I. Statement By Tenant**

I, \_\_\_\_\_, state as follows:  
[Insert name of tenant.]

I, or a member of my household, have been a victim of:

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[Insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]

The most recent incident(s) happened on or about:

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[Insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:

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[If known and safe to provide, insert name(s) and physical description(s).]

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[Signature of tenant] [Date]

**Part II. Qualified Third Party Statement [As noted above certain professionals must provide this statement on his or her organization's letterhead.]**

I, \_\_\_\_\_, state as follows:  
[Insert name of qualified third party.]

My business address and phone number are:

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[Insert business address and phone number.]

Check and complete one of the following:

\_\_\_ I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

\_\_\_ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

\_\_\_\_ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

\_\_\_\_ I am licensed by the State of California as a: \_\_\_\_\_  
[Insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.]

and I am licensed by, and my license number is:

\_\_\_\_\_  
[Insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that he or she, or a member of his or her household, is a victim of:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[Insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

I understand that the person who made the Statement By Tenant may use this document as a basis for terminating a lease with the person's landlord.

\_\_\_\_\_  
[Signature of qualified third party]

\_\_\_\_\_  
[Date]

**CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing and Urban Development**  
**Office of Public and Indian Housing**

OMB Approval No. 2577-0249  
Exp. (07/31/2017)

**Purpose of Form:** The Violence Against Women Reauthorization Act of 2013 (“VAWA”) protects qualified tenants, participants, and applicants, and affiliated individuals, who are victims of domestic violence, dating violence, sexual assault, or stalking from being denied housing assistance, evicted, or terminated from housing assistance based on acts of such violence against them.

**Use of Form:** This is an optional form. A PHA, owner or manager presented with a claim for continued or initial tenancy or assistance based on status as a victim of domestic violence, dating violence, sexual assault, or stalking (herein referred to as “Victim”) has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. The Victim has the option of either submitting this form or submitting third-party documentation, such as:

- (1) A record of a Federal, State, tribal, territorial, or local law enforcement agency (e.g. police), court, or administrative agency; or
- (2) Documentation signed by the Victim and signed by an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom the Victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) that he or she believes that the incident of domestic violence, dating violence, sexual assault, or stalking is grounds for protection under 24 Code of Federal Regulations (CFR) § 5.2005 or 24 CFR § 5.2009.

If this form is used by the Victim, the Victim must complete and submit it within 14 business days of receiving it from the PHA, owner or manager. This form must be returned to the person and address specified in the written request for the certification. If the Victim does not complete and return this form (or provide third-party verification) by the 14th business day or by an extension of the date provided by the PHA, manager or owner, the Victim cannot be assured s/he will receive VAWA protections.

If the Victim submits this form or third-party documentation as listed above, the PHA, owner or manager cannot require any additional evidence from the Victim.

**Confidentiality:** All information provided to a PHA, owner or manager concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking relating to the Victim (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking) shall be kept confidential by the PHA, owner or manager, and such information shall not be entered into any shared database. Employees of the PHA, owner, or manager are not to have access to these details unless to afford or reject VAWA protections to the Victim; and may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) requested or consented to by the Victim in writing; (ii) required for use in an eviction proceeding; or (iii) otherwise required by applicable law.

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**TO BE COMPLETED BY THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING:**

**Date Written Request Received by Victim:** \_\_\_\_\_

**Name of Victim:** \_\_\_\_\_

**Names of Other Family Members Listed on the Lease:** \_\_\_\_\_

**Name of the Perpetrator\*:** \_\_\_\_\_

**\*Note:** The Victim is required to provide the name of the perpetrator only if the name of the perpetrator is safe to provide, and is known to the victim.

**Perpetrator’s Relationship to Victim:** \_\_\_\_\_

**Date(s) the Incident(s) of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Occurred:** \_\_\_\_\_

**Location of Incident(s):** \_\_\_\_\_

Description of Incident(s) (This description may be used by the PHA, owner or manager for purposes of evicting the perpetrator. Please be as descriptive as possible.):

[INSERT TEXT LINES HERE]

I hereby certify that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence, sexual assault or stalking. I acknowledge that submission of false information is a basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Executed on (Date) \_\_\_\_\_

**Public reporting burden** for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by PHAs and Section 8 owners or managers to request a tenant to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

**CERTIFICATION OF DOMESTIC  
VIOLENCE, DATING VIOLENCE  
OR STALKING**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing

OMB Approval No. 2502-0204  
Exp. 03/31/2014

**Public reporting burden** for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. Information provided is to be used by owners and management agents administering Section 8 project-based assistance under the United States Housing Act of 1937 (42 U.S.C. 1437) to request a tenant to certify that the individual is a victim of domestic violence, dating violence, or stalking. The information is subject to the confidentiality requirements of the HUD Reform Legislation. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

**Purpose of Form:** The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking (collectively "domestic violence") from being evicted or terminated from housing assistance based on acts of such violence against them.

**Use of Form:** If you have been a victim of domestic violence, you or a family member on your behalf must complete and submit this certification form, or submit the information described below under "Alternate Documentation," which may be provided in lieu of the certification form, within 14 business days of receiving the written request for this certification form by the owner or management agent. The certification form or alternate documentation must be returned to the person and the address specified in the written request for the certification form. If the requested certification form or the information that may be provided in lieu of the certification form is not received by the 14th business day or any extension of the date provided by the owner or management agent, none of the protections afforded to victims of domestic violence under the Section 8 project-based assistance program will apply. Distribution or issuance of this form does not serve as a written request for certification.

**Alternate Documentation:** In lieu of this certification form (or in addition to it), the following documentation may be provided:

(1) A federal, state, tribal, territorial, or local police or court record; or

(2) Documentation signed by an employee, agent or volunteer of a victim service provider, an attorney or medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident(s) in question are bona fide incidents of abuse, and the victim has signed or attested to the documentation.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE:**

1. **Date written request is received from owner or management agent:** \_\_\_\_\_
2. **Name of victim:** \_\_\_\_\_
3. **Your name (if different):** \_\_\_\_\_
4. **Name(s) of other family members listed on the lease:** \_\_\_\_\_  
\_\_\_\_\_
5. **Name of the abuser:** \_\_\_\_\_
6. **Relationship of the abuser to the victim:** \_\_\_\_\_
7. **Date of incident:** \_\_\_\_\_
8. **Time of incident:** \_\_\_\_\_
9. **Location of incident:** \_\_\_\_\_

**{Page two must be completed and attached to this form.}**





**USDA Rural Development  
VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 (VAWA)  
SUGGESTED FORMAT OF CERTIFICATION OF VICTIM OF DOMESTIC  
VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

**NOTICE TO TENANT OR APPLICANT:** If you are or have been a victim of domestic violence, dating violence, sexual assault or stalking, you will be asked to provide the information below by the owner/manager or the Rural Development (RD) Multi-Family Housing (MFH) Program Director in your State (State MFH Program Director). The information in Part I below may be provided by you or by someone on your behalf, and given to the owner/manager or the State MFH Program Director for use in determining eligibility for protections under VAWA. The Certification and Signature in Part II, and the Confidentiality Statement in Part III are mandatory statements that must be included with your application. **The HUD Form \_\_\_\_\_ may be used by the applicant in place of this suggested format.**

**Purpose of The Form of Certification:** VAWA provides protections for applicants and tenants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protects applicants and tenants from being evicted, denied housing assistance, or terminated from housing assistance, based on acts of domestic violence dating violence, sexual assault or stalking, committed against them.

If you are an applicant or tenant and a victim of domestic violence, the information requested below is one type of documentation that you may be asked to complete by the “responsible entity,” as indicated on the Notice of Occupancy Rights distributed to you.

**Use of This Form of Certification Is Optional:** Instead of this form, upon the written request by the owner/manager or the RD State MFH Program Director, the tenant or applicant may be asked to submit the alternate documentation below:

- (1) A document signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault or stalking, or the effects of abuse;
- (2) A document signed by the applicant or tenant who states under penalty of perjury that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under VAWA;
- (3) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (4) At the discretion of the owner/manager or RD MFH Program Director, a statement or other evidence provided by the applicant or tenant.

**Time Period For Submission of Documentation:** The time period to submit documentation is 14 business days from the date that the owner/manager or RD State MFH Program Director submits a written request to the tenant or applicant to provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. The time period to submit the documentation may be extended, if the tenant or applicant requests an extension of the time period. If the requested information is not received by the 14th business day or any extension of the date provided, none of the VAWA protections have to be provided to the tenant or applicant. Distribution or issuance of this form does not serve as a written request for certification.

**Part I – Required Information:**

1. Date of applicant’s receipt of written request for documentation
2. Name of victim
3. Name of person completing this form (if different from victim)
4. Name of other family members and lawful tenants listed on the lease
5. Address of victim
6. Name of accused perpetrator (if known and can be disclosed)
7. Relationship of the accused perpetrator to the victim
8. Date(s) of incident(s)
9. Time(s) of incidents(s)
10. Location of incident(s)
11. Description of incident(s) in your own words (attach as many sheets as needed)

**Part II – Mandatory Statement of Certification and Signature:**

This is to certify that the information provided on this form is true and correct and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Part III – Mandatory Statement of Confidentiality:**

All information provided to the owner/manager or other responsible entity concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of the owner/manager or other responsible entity are not to have access to these details unless to provide or deny VAWA protections to the applicant or tenant, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by the victim in writing; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.