

HOUSING JUSTICE

National Housing Law Project

Newsletter March 2015

Rural Development Issues Revised VAWA Implementation Notice

On January 5, 2015, Rural Housing Service (RHS) Administrator Tony Hernandez issued revised Administrative Notice No. 4778 (1944-N) (AN) to State Directors of Rural Development (RD) and Program Directors of RD Multifamily Housing. The AN addresses implementation issues under the housing provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). The revised AN corrects the following key inconsistencies between the RD Model Emergency Transfer Plan issued in the original AN, released in February 2014, and VAWA 2013.

- All survivors covered - In the RD Model Emergency Transfer Plan, the agency amended the language to reflect all the categories of survivors that can make an emergency transfer request under VAWA 2013, including survivors of domestic violence, sexual assault, dating violence, and stalking. Previously, the Transfer Plan only mentioned survivors of domestic violence.

- Conditions for emergency transfer - RD edited the Transfer Plan to reflect correctly the conditions that must exist for a survivor to qualify for an emergency transfer. Under VAWA 2013, the survivor must either reasonably believe that he or she is threatened with imminent harm from further violence if he or she remained in the unit OR, for sexual assault survivors, the sexual assault occurred on the premises within 90 days before the transfer request. In the prior AN, RD had erroneously stated that both conditions, instead of one, had to be met for the survivor to make the request.
- Transfer to all units covered by VAWA – The previous Transfer Plan had also incorrectly stated that survivors could only transfer to safe units assisted under the RD Multifamily Housing programs. Under VAWA 2013, survivors can move to any assisted development covered by the statute, including certain units assisted by the Department of Housing and Urban Development (HUD); the Department of the Treasury, which administers the Low Income Housing Tax Credit Program; and the RD Multifamily Housing programs.

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The current Transfer Plan reflects this change.

In addition, the revised AN includes new information regarding VAWA implementation. First, in the Transfer Plan, RD provides more guidance regarding the process for requesting an emergency transfer. The Transfer Plan states that tenants should contact the property manager to request an emergency transfer. The property manager should then immediately contact the Multifamily Program Director in the RD State Office, the official responsible for issuing a Letter of Priority Entitlement. Second, the AN indicates that RD plans to adopt HUD Office of Multifamily Housing's VAWA 2013 Self-Certification Form 91066, once the form is issued. In addition to using updated HUD Form 91066, survivors seeking VAWA protections in RD Multifamily Housing may use an alternative format for self-certification provided by RHS and outlined in Attachment C of the AN. This alternative documentation is optional and requires much of the same information requested in HUD Form 91066.

The AN will expire December 31, 2015 and can be found at <http://www.rurdev.usda.gov/SupportDocuments/an4778.pdf>. ▀

Resources

For a summary and analysis of the RD Administrative Notice issued on February 10, 2014, see NHLP Newsletter (March – April 2014), *RD Issues Notice on VAWA Implementation*, available at <http://nhlp.org/files/March-April%202014%20Newsletter.pdf>

Survivor Sues Landlord After Losing Housing Due to Attack

Survivors of domestic violence, dating violence, sexual assault, and stalking are often evicted because of the abuse committed against them. Landlords—citing “zero tolerance” policies in which an entire household is evicted for the actions of one person—evict survivors because of the actions of an abuser. As the Department of Housing and Urban Development (HUD) has previously noted, “Housing authorities and landlords evict victims under zero-tolerance crime policies, citing the violence of a household member, guest, or other person under the victim’s ‘control.’” Therefore, survivors are losing their housing because of the violence committed against them. Such zero tolerance policies continue to be used against survivors living in rental housing.

Recently, a survivor in Louisiana was attacked by her ex-boyfriend in her apartment. As a result of the attack, the survivor’s rental property manager told the survivor and her minor son to vacate their residence within three days. The manager cited

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the property's "zero tolerance" policy as the reason why the survivor and her son had to leave their home. The survivor sued both her landlord and the property manager in federal court, alleging that they engaged in housing discrimination against her because of her status as a survivor of domestic violence.

Background

The survivor lived in an apartment in New Orleans, Louisiana with her then three-year-old son. She had resided in the unit for more than three years. In December 2013, the survivor's ex-boyfriend, the father of the survivor's son, visited the apartment to spend time with their child. When the ex-boyfriend attempted to reinitiate an intimate relationship with the survivor, she refused these advances. At that point, the ex-boyfriend "charged [the survivor], grabbed her throat, and brought her to the floor, shattering the bedroom mirror as he did so while still gripping her throat." A security guard called the police, who came and questioned the survivor about the attack. After discussing the attack with police, the survivor sought medical attention.

Less than a day after the attack, the property manager informed the survivor that she and her son would have to move. The property manager said that the property had a "'zero tolerance' policy" with respect to domestic violence, and that the survivor would need to leave her home pursuant to that policy. An addendum to the survivor's lease stated that the "Resident or any member of the Resident's household, or a guest or other person under the residents [sic] control may

Resources

Chaney v. Latter & Blum Prop. Mgmt, Inc., 2:14-cv-02727 (E.D. La. Dec. 3, 2014).

Sarah K. Pratt, HUD Deputy Assistant Secretary for Enforcement and Programs, "Assessing Claims of Housing Discrimination Against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act" (Feb. 9, 2011), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>

not engage in any aspect of Domestic Violence."

When the survivor asked if she could stay in her home, the property manager threatened the survivor with an eviction proceeding if she did not leave. The property manager initially gave the survivor and her son three days to vacate, which was ultimately extended to six days. The survivor and her son moved out of their home to avoid an eviction proceeding. As a result of having to move on such short notice, the complaint alleges that the survivor could only relocate to housing that was "more expensive, further from her place of employment, and less safe and secure." In fact, the survivor was robbed at gunpoint on the premises of her new home. The survivor, along with her son, then moved again to another apartment outside of New Orleans.

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The Lawsuit

In December 2014, the survivor filed a lawsuit against her landlord in federal court. The lawsuit alleges that requiring her to vacate her residence because of the violence committed against her constitutes sex-based housing discrimination. Accordingly, the survivor brought claims under the federal Fair Housing Act (FHA) as well as other claims under state law.

The survivor alleges that her landlord intentionally discriminated against her on the basis of sex by making her leave her apartment due to domestic violence. The survivor asserts that this action violates the FHA. Specifically, the survivor alleges that her former landlord's actions illustrate an intent to engage in sex-based housing discrimination based in part on gender stereotypes about female survivors of domestic violence. The complaint noted that these "gender stereotypes hold battered women accountable for the acts of abusers and attribute to a battered woman responsibility for the actions of those who abuse her."

The survivor also argues that her landlord's policy of threatening survivors with eviction because of instances of domestic violence has a disparate impact on women, in violation of the FHA. In the complaint, the survivor cites statistics to show that women disproportionately experience domestic and sexual violence both nationally and in Louisiana.

Additionally, the survivor includes two claims related to the emotional distress she allegedly experienced as a result of being forced to move from her home with her young son. She also contends that the prop-

erty management company failed to appropriately supervise and train employees, including her apartment complex's property manager.

The lawsuit filed by the survivor asks the court to take several actions: (1) issue a ruling that declares the landlord's and the property manager's actions as unlawful under the FHA; (2) issue an order that would prevent the defendants from evicting or denying tenants housing because they are survivors of domestic violence, or from otherwise engaging in sex-based housing discrimination; and (3) award her damages and attorney's fees, as well as any other relief the court deems should be awarded. ■

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