



National Housing Law Project

Newsletter December 2014

Question of the Month: Landlords Who Refuse to Rent to Survivors

Q: Are there laws that prevent a landlord from refusing to rent to a survivor of domestic or sexual violence explicitly because of violence committed against him or her?

A: Yes.

Survivors of domestic violence, dating violence, sexual assault, and stalking experience numerous hurdles to obtaining safe, decent, and affordable housing. One significant hurdle includes housing discrimination against survivors. Such discrimination endangers the housing security of survivors and their families, and can lead to homelessness.

Housing discrimination against survivors can arise in different contexts during a tenancy. For example, a landlord who knows that a survivor has experienced domestic violence in the past may tell the survivor that he or she cannot rent the unit because of the past violence committed against him or her. Additionally, a landlord may try to evict a survivor who has experienced abuse while living at the rental unit. Housing providers may also hold survivors to a more difficult or demanding standard than non-survivors, meaning that

Resources

Sara 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 (FHAct) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011), available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>

NHLP, *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards* (Jan. 2014), available at: <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>

Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11, Pub. L. 113-4 (Mar. 7, 2013), text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>

Fair Housing Act, 42 U.S.C. § 3601, et seq.

HUD VAWA 2005 Regulation, at 24 C.F.R. § 5.2005.

survivors can be more easily evicted or otherwise denied housing for actions or conduct that would not result in eviction for non-survivors. An example of a more demanding standard applied to survivors would be a landlord who targets a survivor for eviction because of damage to the unit, but does not evict non-survivors with similar unit damage.

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There are two federal laws that protect survivors from being denied rental housing because of the domestic violence committed against them. First, there is the Violence Against Women Reauthorization Act of 2013 (VAWA 2013); the second law is the federal Fair Housing Act (FHA). In 2011, HUD's Office of Fair Housing and Equal Opportunity issued a memo that outlines how VAWA (pre-2013 amendments) and the FHA protect survivors from housing discrimination. Additionally, while not discussed here, state and local laws may afford protections to survivors of domestic and sexual violence from housing discrimination.

VAWA 2013

VAWA 2013 prohibits certain federally subsidized housing providers from discriminating against survivors of domestic violence, dating violence, sexual assault, and stalking. Such HUD housing programs include public housing; the Section 8 Housing Choice Voucher program; project-based Section 8 housing; Section 202 housing for the elderly; Section 811 housing for people with disabilities; Section 236 multifamily rental housing; Section 221(d)(3) Below Market Interest Rate (BMIR) housing; HOME; Housing Opportunities for People with AIDS (HOPWA); and McKinney-Vento Act programs. VAWA 2013 also covers housing programs such as the Low-Income Housing Tax Credit Program, administered by the Department of Treasury, as well as the Department of Agriculture's Rural Development multifamily housing programs. VAWA 2013 prohibits applicants and tenants of these programs from being "denied admission to, denied assistance under, terminated from

participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy." In other words, so long as the survivor meets all other qualifications for living in the federally subsidized unit, a housing provider cannot simply refuse to rent to that survivor, or initiate eviction proceedings because of instances of domestic violence.

Exceptions. Note, however, survivors can still be denied or evicted from their federally subsidized housing units if they do not otherwise meet the qualifications for tenancy. For example, if a survivor does not fall within the income requirements for participating in a federally subsidized housing program (such as earning too high of an income), the survivor's application can still be denied even though he or she is a survivor of domestic violence. In this case, the denial is not based upon the fact that the survivor has experienced domestic violence, but rather on income qualifications. Importantly, under VAWA, survivors cannot be held different standards than non-survivors when the landlord decides to terminate or evict an individual or family. In the earlier example about unit damage, the landlord could not evict a survivor when that same landlord would not otherwise evict a non-survivor for the same issue. (Note that if the unit damage can be tied to the abuse, there is an argument that eviction due to the damage constitutes a VAWA violation because the survivor is being evicted on the basis of being a victim of domestic violence, dating violence, sexual assault, or stalking.)

In very narrow instances, a survivor can be evicted from a federally subsidized

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housing unit if his or her continued tenancy poses an “actual and imminent threat to other tenants or individuals employed at or providing service to the property.” However, HUD regulations note that such an eviction should be taken “only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.” Thus, evicting a survivor because his or her tenancy poses an actual and imminent threat to others on the property is a means of last resort.

Fair Housing Act

The federal FHA prohibits discrimination against members of certain protected categories (race, color, national origin, sex, religion, disability, and familial status). When a landlord explicitly denies housing based on one’s membership in a protected class, this action can give rise to an intentional discrimination (disparate treatment) claim. This type of discrimination requires a demonstration of discriminatory intent. For example, a housing provider may refuse to rent to female survivors on the grounds that they “always go back to their male abusers.” This statement would demonstrate an intent by the landlord to discriminate against female survivors based on a gender stereotype about women. The refusal to rent to female survivors constitutes impermissible intentional discrimination under the FHA, as discrimination on the basis of sex is prohibited under the statute. (In fact, this hypothetical scenario is used in the HUD memo

as an illustration of direct evidence of discrimination.)

FHA intentional discrimination can also occur when a housing provider treats female survivors of domestic violence differently than other male residents. For example, if a housing provider evicts a female survivor because of a break-in by her abuser, but does not evict a male tenant who experienced a burglary unrelated to any sort of domestic violence, that differential treatment can give rise to a sex discrimination claim under an FHA disparate treatment theory. If a housing provider is using an existing policy to single out a survivor and her family for eviction due to the abuse, such conduct would also be impermissible under the FHA. (Note that another legal theory of FHA liability, disparate impact, concerns facially neutral policies that disproportionately affect female survivors. That theory is not discussed here.)

There are several differences between the FHA and VAWA. First, VAWA only applies to certain federally subsidized housing programs, whereas the FHA applies to most types of residences, with a few exceptions. Thus, VAWA is more limited in the scope of housing it covers. Additionally, it remains unclear the extent to which VAWA claims can be brought by private individuals in court. However, private individuals can bring intentional discrimination claims under the FHA in court. Both laws, however, can be used as an eviction defense.

Survivors who have experienced housing discrimination may either file an administrative complaint with HUD’s Office of Fair Housing and Equal Opportunity, or attempt to seek relief in court.▪

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VAWA 2013 Protections for LGBT Survivors

Domestic violence survivors who are lesbian, gay, bisexual, and transgender (LGBT) face many of the same challenges faced by heterosexual survivors. However, LGBT survivors often confront additional obstacles stemming from the abuse. For example, advocacy groups such as the Center for American Progress have noted that abusers will often assert control by threatening to “out” the survivor; that gay and lesbian survivors often hesitate to notify authorities of abuse because doing so may require them to disclose sexual orientation or gender identity; that authorities often misidentify same-sex domestic violence as mutual violence; and, that survivors may refuse to acknowledge abuse out of fear that doing so would perpetuate the myth that same-sex relationships are somehow “dysfunctional.” LGBT survivors also face substantial hurdles when trying to access traditional survivor services. For example, the National Coalition of Anti-Violence Programs found in a 2011 study that over 60 percent of survivors who identify as LGBT, queer, or HIV-positive were denied domestic violence shelter access.

VAWA 2013 protections

In response to the serious problem of LGBT domestic violence, the recent reauthorization of the Violence Against Women Act (VAWA 2013) expands its protections to include LGBT individuals.

Nondiscrimination. VAWA 2013 states that no person can be discriminated against on the basis of sexual orientation or gender

identity in programs or activities that receive federal funding to combat domestic violence, including assistance administered by the Office on Violence Against Women (OVW).

VAWA 2013 includes an exception allowing for consideration of a person’s sex where sex-segregated or sex-specific programming comprises an essential part of a given program. For example, an emergency shelter receiving the above-mentioned federal funding may offer programming that serves only female domestic violence survivors. However, the same shelter may not reject a woman from this shelter because she is a lesbian. Federally funded entities offering sex-segregated or sex-specific programming can meet the nondiscrimination requirement by offering comparable services to a person who, because of his or her sex, cannot participate in the sex-specific or sex-segregated programming.

Underserved populations. VAWA 2013 classifies populations experiencing discrimination on the basis of sexual orientation and gender identity as “underserved populations.” VAWA 2013 provides for grants specifically aimed at services and outreach for survivors from these and other underserved populations. Such grants seek to increase the ability of underserved populations to provide such services, and to expand the capacity of traditional service providers to assist survivors from underserved populations. These grants also aim to identify barriers to services for underserved survivors, as well as to increase awareness among law enforcement, prosecutors, and judges about domestic violence in underserved populations. Additionally, VAWA 2013 expands grant programs that

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fund activities and services aimed at underserved survivor populations on college campuses. Thus, VAWA 2013 aims, in part, to increase LGBT survivors' access to services by boosting providers' abilities to serve the LGBT community.

Updated definition of "domestic violence." VAWA 2013 updated its definition of "domestic violence" to include violence by an intimate partner. This broader definition of domestic violence assists in extending VAWA's expanded housing protections to LGBT survivors.

Resources

Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11, Pub. L. 113-4 (Mar. 7, 2013), text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>

Center for American Progress, *LGBT Domestic Violence Fact Sheet*, available at: http://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/lgbt_domestic_violence.pdf

National Coalition of Anti-Violence Programs, *Lesbian, Gay, Transgender, Queer, and HIV-Affected Intimate Partner Violence* (2011), available at: http://www.avp.org/storage/documents/Reports/2012_NCAVP_2011_IPV_Report.pdf

HUD, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*, 77 Fed. Reg. 5,662 (Feb. 3, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf#page=1>

Additional Protections

In addition to VAWA 2013, LGBT survivors also have these protections:

- **HUD Equal Access Rule.** The new LGBT protections in VAWA 2013 follow the recent adoption of HUD's final regulation concerning LGBT discrimination in HUD housing programs (known as the "Equal Access Rule"). Issued in February 2012, the Equal Access Rule prohibits discrimination on the basis of sexual orientation, gender identity, or marital status in HUD-assisted/insured housing. Additionally, the Rule generally prohibits inquiries into a person's sexual orientation or gender identity in the context of HUD-assisted/insured housing. However, this prohibition "does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled."

- **Fair Housing Act.** While sexual orientation, gender identity, or marital status are not protected classes under the federal Fair Housing Act (FHA), the FHA may still apply in instances where housing discrimination against an LGBT individual intersects with a protected category. For example, if a housing provider refuses to rent to a transgender woman because she does not conform to certain gender stereotypes, such conduct would likely give rise to a sex discrimination claim under the FHA. Whereas VAWA only applies to certain federally subsidized housing programs, the FHA applies to most types of resi-

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dential housing, both subsidized and unsubsidized, with few exceptions. LGBT survivors who feel as though they have experienced housing discrimination can file a complaint with HUD's Office of Fair Housing and Equal Opportunity.

- **State/local protections.** State and local laws may prohibit discrimination on the basis of sexual orientation, marital status, or gender identity, and can have greater protections than those currently found in federal law.▪

Upcoming NHP Webinar

Mark your calendars! NHP is hosting a webinar entitled "Housing Rights for Survivors Interacting with the Criminal Justice System: Admissions and Nuisance Ordinances" on Thursday, January 22, 2015, at 11:00 a.m. (PT)/1:00 p.m. (CT)/ 2:00 p.m. (ET).

The webinar will last 90 minutes, and participants will be able to ask questions of the panelists.

Find out more and register [here](#).

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

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NHLP State Law Compendium

This resource is a compilation of state and local housing protections for domestic violence survivors. The compendium is available at: <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>