

Federal Housing Law and Survivors of Domestic Violence

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Important Abbreviations

- VAWA: Violence Against Women Act
- VAWA 2005: Violence Against Women Act Reauthorization of 2005
- PHA: Public Housing Authority
- LL: Landlord
- USCIS: US Citizenship and Immigration Services
- USC: United States Code



Federal Housing Law

Fair Housing Act

2005 Reauthorization of the Violence
Against Women Act

HUD regulations and Guidance



State/Local Laws to Consider...

This call will address Federal law. You should contact local attorneys/housing organizations for more information on local law. Resources are in the appendix.

- Landlord/Tenant law: Most aspects of LL/T relationship are regulated by local or state laws.
 - Evictions must be conducted in accordance with state/local law

- State Fair Housing law, may include source of income protection

- Other protections for survivors under state/local law, for example states may require:
 - Lock changes (usually paid for by tenant)
 - Installation of security system (usually paid for by tenant)
 - Breaking leases

Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1964; 42 U.S.C. §§ 3601 *et seq*

- Prohibits LL or homeowner from discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin
- Applies to all dwellings except for:
 - Single-family homes where the owner does not own more than 3 of these homes
 - Owner-occupied dwellings containing four or fewer units
- Applies to shelters and transitional housing!
- Most states have comparable laws, though many protect more categories of people. Most states utilize federal interpretations of the law.



Fair Housing Act: Application to Survivors of Domestic Violence

- Disparate Treatment Theory: Policy or Practice that intentionally treats women differently from men
- Disparate impact theory: Policy or practice that is neutral on face but in fact falls more harshly on women than men
 - Use of statistical evidence
 - Generally do not need to show discriminatory intent or motive



Violence Against Women Act

Public Law 109-162

VAWA was originally passed in 1994 and was reauthorized in 2000 and 2005.

The 2005 reauthorization added important housing provisions and Congress made critical findings about the links between domestic violence and housing.

VAWA provides protections for victims of domestic violence, sexual assault, dating violence and stalking.

VAWA protections for evictions and anti-discrimination **only** covers Public Housing and Section 8 (vouchers and project-based) for the discriminatory evictions and denials based on domestic violence, dating violence and stalking. It does NOT cover private housing or other federally subsidized housing. It does NOT cover victims of sexual assault in these provisions.

It **DOES** apply to everyone with respect to confidentiality, HMIS and other funding in the law for all victims of domestic violence, dating violence, stalking and sexual assault.



VAWA: No Discrimination in Admission

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.

If your client gets a denial letter, you may be able to challenge it. Even if the reason is not directly related to DV, she may be able to overcome it and gain admission.

VAWA: Evictions



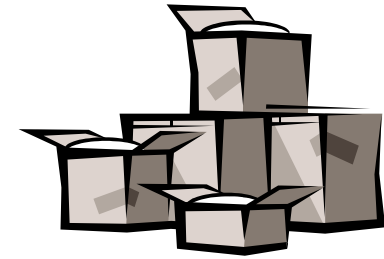
VAWA 2005 prohibits evictions based on real or perceived domestic violence, dating violence or stalking.

- Sexual assault is specifically not included in these provisions.

VAWA explicitly creates an exception to the federal “One-Strike Rule” which states that any drug-related and certain other criminal activity by any household member is grounds for eviction.

Exception: “An incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as serious or repeated violation of lease or good cause for terminating assistance, tenancy, or occupancy rights of the victim”

VAWA: Evictions



Examples of prohibited causes of eviction under VAWA:

- assault by family member
- assault by significant other not living in the household
- Damage to apartment during incident of domestic violence
- Noise from domestic violence incident

VAWA: Evictions



A survivor MAY be evicted for other violations of the lease, but they may not be held to a higher standard than other tenants (or this would be discrimination).

A survivor MAY be evicted if the PHA/LL can show that having the victim remain would pose an “actual and imminent threat” to staff or other tenants (not just to victim).

Permissible causes of eviction of a survivor:

- Criminal activity by the survivor not related to domestic violence (drug activity, child abuse)
- Failure to pay rent
- Actual and imminent threat: Failure to separate from batterer who is actually dangerous to other tenants/staff (must be a proven danger)
- Allowing an unauthorized person to live in the household in violation of a lease.



VAWA: Requests for Certification

Housing Authorities may (but are not required to) ask for a certification in writing of the violence or stalking. Requests must be made in writing and the victim has 14 business days to file the certification. However, the Housing Authority may accept late certifications at its discretion.

This certification can be via the HUD-approved certification form, police or court record or a qualified third party (domestic violence counselor, attorney or medical record)

Certifications must be kept confidential by landlords and the Housing Authority unless they are required to disclose it by law.

Note for Advocates:

You may be asked to provide VAWA certifications or other letters in support of public housing. You should say the least amount possible and you should only do so at the request of your client. You should not disclose her status as a survivor without her consent.

VAWA: Other Housing Relief

Portability: Family with a Section 8 voucher may move to another jurisdiction if family has complied with all other obligations of the program and is moving to protect health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking- even if moving otherwise would be lease violation

VAWA also provides other potential relief:

- PHAs may bifurcate leases
 - PHAs may also turn the voucher/apartment over the survivor if she was a household member but not on the lease
- PHAs may grant emergency transfers

VAWA: Notice and Planning

- Notice Requirements: PHAs must notify all tenants of VAWA rights and must notify Section 8 landlords about these obligations. Minimally, this must be included in leases, Housing Assistance Payment Contracts and Project-Based Section 8 contracts
- Best Practices:
 - Notices should describe the rights in a way that is understandable to non-lawyers
 - Notices should be available in appropriate languages
 - Notices should be sent with all denial letters, termination notices, eviction papers and should be presented to all household members at the annual recertification
- Planning requirements: PHAs must include specifics about their VAWA implementation in their Annual, Five-Year and Consolidated Plans.
 - The HUD FY2008 template does not include VAWA, but it is still a statutory requirement to include planning for VAWA and services for victims in the plan.



VAWA: Other provisions

- HMIS Changes: Requirements for confidentiality for HMIS. This will be updated/re-adopted in the new McKinney Vento bill.
- Authorizes new funding for housing for survivors. Only \$17.4 million has been appropriated of the \$40 million that was authorized in VAWA 2005.

VAWA Recap

- Programs affected by major amendments
 - Public Housing Program
 - Housing Choice Voucher Program
 - Project-Based Section 8
- Protections include:
 - Denial of eviction
 - Ability to bifurcate, break lease, transfer voucher
 - Non-discrimination
- Local planning requirements
- HMIS changes
- Funding for housing programs

What can I do now to help my client be successful in obtaining permanent housing and stay safe?

PHAs have flexibility to help survivors of domestic violence!

- Local PHAs have latitude to establish many policies, but are regulated by federal law and HUD regulations
- Must consider:
 - credit history
 - criminal activity
 - debts to housing authority
 - income requirements.

Some clients may be more challenging to help find housing, particularly if domestic violence affected their credit history, rental history or employability. The only permanent bar to public housing is if a client was caught producing methamphetamines on public housing property. There is discretion for all other applicants.

What can I do now to help my client be successful in obtaining permanent housing and stay safe?

Education:

- Educate your staff about the financial effects of domestic violence. Make this a regular part of employee orientation.
- Educate your clients about the financial impact of domestic violence and potential hurdles in the future.
- Educate future landlords about domestic violence – you can help break stereotypes about renting to survivors!

Resources: Organizations

National Law Center on Homelessness and Poverty: www.nlchp.org

Center for Survivor Agency and Justice: www.csaj.org

ACLU Women's Rights Project: <http://www.aclu.org/womensrights/>

Legal Momentum: www.legalmomentum.org

National Network to End Domestic Violence: www.nnedv.org

National Housing Law Project: www.nhlp.org

National Low Income Housing Coalition: www.nlihc.org

National Consumer Law Center: <http://www.consumerlaw.org/>
(great book on Consumer Rights for Domestic Violence Survivors)

Resources: Governmental

U.S. Department of Housing and Urban Development (HUD): www.hud.gov

Office of Fair Housing: <http://www.hud.gov/offices/fheo/>

Office of Public and Indian Housing: www.hud.gov/offices/pih/

HUD documents: www.hudclips.org

HUD Guidebook:

http://www.hud.gov/offices/pih/programs/ph/rhiip/phguid_ebook.cfm

Office of Violence Against Women, Department of Justice:
<http://www.usdoj.gov/ovw/>

Federal Legislation database: <http://thomas.loc.gov/>



Resources: Other

Womenslaw.org: www.womenslaw.org: Listings of state law relating to domestic violence

Violence Against Women Net:
<http://www.vawnet.org/>: Collection of information about violence against women

DVHousing Reform Listserve: Operated by NLCHP (contact kzeisel@nlchp.org)

Housing Justice Network Listserve: Operated by NHLP (see www.nhlp.org)