



CENTER FOR SURVIVOR
AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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Thirteen



Protections for Survivors Accessing & Maintaining Housing

By **Karlo Ng**

Introduction

Domestic violence survivors and their children face a number of serious housing problems related to the acts of violence committed against them. In enacting the Violence Against Women Act of 2005, Congress recognized that families were being discriminated against, denied access to, and even evicted from housing because of their status as survivors of domestic violence.¹ The Fair Housing Act (FHA) also protects survivors facing discrimination in accessing or maintaining housing. Furthermore, due to economic limitations, survivors may be particularly vulnerable to sexual harassment and assault by landlords, property managers, and their employees. This chapter covers the housing protections available to survivors under federal, state, and local laws, and other resources that may be used to preserve survivors' housing rights.²

¹ See *Violence Against Women and Department of Justice Reauthorization Act of 2005*, Pub. L. No. 109-162, § 41402, 119 Stat. 2960, 3041-49 (2006).

² For more information on the rights of survivors seeking to access and maintain housing, see NHLP, MAINTAINING SAFE AND STABLE HOUSING FOR DOMESTIC VIOLENCE SURVIVORS (2012), available at <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>

Rose's Story

For five years, Rose lived with her son, Mark, in an apartment unit that was subsidized by a Section 8 Housing Choice Voucher. One night, Rose noticed Mark was acting strange and suspected that he might have been on drugs. Later that evening, Mark choked and physically attacked Rose. She escaped and ran to a neighbor's unit to ask for help and to use the phone to call the police. The police arrested the son, and Rose was taken to the hospital.

Currently, the son is in custody and Rose first comes to you to decide whether to file a restraining order against her son. Mark is involved in a local gang and Rose fears that seeking a restraining order will lead to more violence from Mark or his gang members.

Today, Rose tells you that her landlord just sent her and Mark a 60-day termination notice indicating that they had violated the lease by disturbing the peace and by using drugs in the unit. Rose states that she did not know her son had or was using drugs. She also explains that she no longer feels safe in her unit and would like to use the Section 8 voucher elsewhere.

Domestic Violence and Housing Rights

Legal services providers have reported hundreds of cases where tenants were evicted because of acts of domestic violence committed against them.³ Defending survivors' rights to maintain rental housing is particularly crucial because women living in rental housing experience domestic violence at three times the rate of women who own their homes.⁴ As seen in Rose's story above, many survivors face housing instability as a result of abuse. Landlords often evict entire households because of incidents related to domestic violence, regardless of whether the household members are survivors or perpetrators. Also, abusive partners may control the lease and withhold information from survivors, leaving them with poor rental histories or facing eviction. Survivors may also be held responsible for property damage caused by the abusive partner. Effects of abuse also linger in survivors' access to future housing: they are often denied housing on the basis of negative tenancy, credit or criminal history that is related to the acts of abuse.⁵

Furthermore, survivors face violence from actors within the housing system: survivors are particularly vulnerable to sexual harassment and assault by landlords, property managers, and their employees. A survey of rape crisis centers and legal services providers found that 58% had received at least one report from a tenant who was sexually assaulted by a landlord, property manager, or property owner.⁶ Taking the effects of abuse on housing instability and the risk of violence when accessing housing together, it is no surprise that

³ National Law Center on Homelessness & Poverty & National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* (Feb. 2007).

⁴ Bureau of Justice Statistics, *Intimate Partner Violence in the United States* (Dec. 19, 2007).

⁵ See, e.g., Title VIII Conciliation Agreement between Hope (Complainant) and Valencia Village Partners, Ltd., et al., FHEO Case No. 04-11-0574-8 (Apr. 4, 2014), available at <http://nhlp.org/files/Hope-v-Valencia-Village-Conciliation-Agreement.pdf> (domestic violence survivor settled with property management company for allegedly denying her housing for refusing to provide Social Security numbers of minor children for safety reasons). See also NHLP, *Domestic Violence Survivor Settles with Property Managers after Being Denied Housing*, 44 HOUS. L. BULL. 85, 85-86 (Apr./May 2014) (summarizing background and terms of conciliation agreement) (Companion Website).

⁶ Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 CLEARINGHOUSE REV. 441 (2006).

39% of U.S. cities reported that domestic violence was “a primary cause of homelessness” in their cities.⁷ In a number of studies, homeless women have reported that domestic violence was a cause of their homelessness.⁸

Assessing housing concerns

Housing advocacy on behalf of survivors is critical given the link between domestic violence and homelessness. Because survivors face risks of violence from partners, as well as from housing system actors, and must navigate a complicated housing industry, full and open assessment of survivors' needs is critical to identifying advocacy strategies to remedy housing instability issues.

The screening and assessment questions presented here are for issue spotting (often called “intake questions”), are not meant to be prescriptive, and conversations around housing should not be limited to these questions. For a fuller description of a survivor centered approach to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11).

Some key screening questions to consider with survivors include, but are not limited to:

- Does the survivor feel safe in their current home?
- Does the survivor need access to an emergency shelter?
- If the survivor wants to move, where would the survivor feel safe moving?
- Does the survivor need access to affordable housing?
- If the survivor already has a housing subsidy, has the survivor contacted the appropriate entities, such as a public housing authority, to ensure that the survivor does not lose the assistance because of the abuse?
- Is the survivor’s landlord trying to evict them because of incidents related to domestic violence?
- Is the landlord or property staff committing the acts of abuse?

The impact of housing instability

As noted above, housing instability stems from and has implications for many other economic and safety issues facing survivors, including:

- A leading cause of homelessness among women and families is domestic violence.
- Housing discrimination by landlords and owners against survivors because of the abuse committed against them significantly contributes to the obstacles survivors face in accessing and maintaining housing.
- The risk of housing instability and lack of affordable housing options can force survivors to remain in abusive relationships.
- Evictions and displacement can lead to economic insecurity as survivors and their families are relocated and risk losing their jobs and their support networks.
- Evictions increase the risk of long-term housing insecurity as prospective landlords deny survivors who have poor rental histories.
- Formal evictions appear in credit histories and reports, which can lower survivors’

⁷ U.S. Conference of Mayors & Sodexo, Inc., *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America’s Cities* 64 (2007).

⁸ See, e.g., Rebekah Levin et al., *Center for Impact Research, Pathways to and from Homelessness: Women and Children in Chicago Shelters* 3 (2004); Wilder Research Center, *Overview of Homelessness in Minnesota 2006*, at 16 (2007); *Downtown Women’s Action Coalition, Many Struggles, Few Options: Findings & Recommendations from the 2004 Downtown Women’s Needs Assessment* 3, 26 (2005); Wilder Research Center, *Homeless Adults and their Children in Fargo, North Dakota and Moorhead, Minnesota: Regional Survey of Persons without Permanent Shelter* 4 (2007); *The Institute for Children and Poverty, The Hidden Migration: Why New York City Shelters Are Overflowing With Families* (2002).

credit scores and impact their ability to acquire employment and loans.

The Violence Against Women Act: Rights & Protections

The **Violence Against Women Reauthorization Act of 2013 (VAWA 2013)** protects the rights of applicants and tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating violence, sexual assault, or stalking.⁹ **VAWA 2013's** housing provisions prohibit survivors from being evicted or denied housing assistance based on acts of violence committed against them.

What federal housing programs does VAWA 2013 apply to?

VAWA 2013 covers the following federal housing programs (“covered housing programs”) listed by the federal agency in charge of administering the programs:

- Department of Housing and Urban Development (HUD)
 - Public housing;
 - Section 8 Housing Choice Voucher program;
 - Section 8 project-based 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 Trust Fund;
 - Housing Opportunities for People with Aids (HOPWA); and
 - McKinney-Vento Act homeless assistance programs.
- Department of Agriculture
 - Rural Development (RD) multifamily housing programs.
 - Section 515 rural rental housing;
 - Section 514 and 516 Farm Labor housing;
 - Section 533 Housing Preservation Grant Program; and
 - Section 538 multifamily rental housing.
- Department of Treasury
 - Low-Income Housing Tax Credit program (LIHTC)¹⁰

⁹ See 42 U.S.C.A. §§ 14043e-11, 1437d note (West 2017). For a summary of VAWA 2013's key housing protections, see NHLP's article, “VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards,” available at http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated_1.pdf

¹⁰ 42 U.S.C.A. § 14043e-11(a)(3) (West 2017); 24 C.F.R. 5.2003 (definition of “covered housing program” for HUD programs). NHLP has a four-part webinar series that provides a basic overview of each of these federal housing programs. To access the series, please go to <http://nhlp.org/node/1484/> (see webinars held on Nov. 20, 2013, Feb. 27, 2014, Mar. 20, 2014, and May 8, 2014).

Key Terms

Affiliated individual: Under VAWA 2013 – the survivor's spouse, parent, sibling, child; an individual to whom that survivor stands in loco parentis; and anyone living in the survivor's household.

Fair Housing Act: A federal law enacted in 1968 (and amended in 1974 and 1988) providing the HUD Secretary with fair housing enforcement and investigation responsibilities. It prohibits discrimination in all facets of the home buying and rental process on the basis of race, color, national origin, religion, sex, familial status, or disability.

Lease bifurcation (as defined by the Violence Against Women Act): To evict, remove, or terminate housing assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a survivor of such criminal activity who is also a tenant or lawful occupant of the housing.

Portability: When an individual or family moves with a Section 8 Housing Choice Voucher outside of the jurisdiction of the issuing public housing authority.

Public Housing Authority/Agency (PHA): Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the U.S. Housing Act of 1937.

U.S. Department of Housing and Urban Development (HUD): Established in 1965, HUD's mission is to increase homeownership, support community development, and increase access to affordable housing free from discrimination.

The Violence Against Women Act (VAWA): A federal law that is the cornerstone of the nation's response to domestic and sexual violence. Signed into law in 1994, VAWA was reauthorized in 2000, 2005, and 2013. Housing protections for survivors were included for the first time in the 2005 reauthorization and were expanded in VAWA 2013.

VAWA does not cover tenants living in private housing without any type of rental subsidy. If a tenant is not participating in a housing program covered by VAWA, then advocates still should consider whether the tenant may be protected by fair housing laws, as well as other state and local laws that provide protections for survivors in housing. (See discussions below.)

Who does VAWA 2013 protect?

VAWA protects any individual who is or has been a survivor of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and is living in, or seeking admission to, any of the covered housing programs.¹¹ VAWA 2013 applies to survivors of all gender identities and LGBT individuals. Therefore, male survivors and survivors in same-sex relationships can assert VAWA’s protections.¹²

Under VAWA, the definitions of domestic violence, dating violence, sexual assault, and stalking are as follows:

- “Domestic violence” includes 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; or a person similarly situated to a spouse of the victim under state law. VAWA also covers any person who is protected by a state’s family violence laws.¹³
- “Dating violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is based on factors such as its length, type, and frequency of interaction.¹⁴
- “Sexual assault” means any nonconsensual sexual act proscribed by federal, tribal, or State law, including when the victim lacks the capacity to consent.¹⁵

Practice Tip

Because VAWA’s definition of “domestic violence” includes family violence covered under state and local laws, VAWA can cover non-intimate partner violence. For example, if the state family violence laws include violence between roommates, parents and children, grandparents and grandchildren, or siblings, then these forms of abuse are also covered by VAWA. In the survivor scenario above, if Rose lived in a jurisdiction where the family violence laws covered violence between parents and children, then the abuse Mark committed against her would be considered “domestic violence” under VAWA, and VAWA protections would apply to Rose. To be certain of the categories of abuse covered, advocates should check their state and local family violence laws.

¹¹ See generally 42 U.S.C.A. § 14043e-11 (West 2017).

¹² *Id.*

¹³ 42 U.S.C.A. § 13925(a)(8) (West 2017).

¹⁴ *Id.* § 13925(a)(10).

¹⁵ *Id.* § 13925(a)(29).

- "Stalking" is defined as engaging in the course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.¹⁶

Who must comply with the law?

Public housing authorities (PHAs) and owners and managers of housing programs covered by VAWA must comply with the law.¹⁷

Case Scenario: *In Rose's scenario, both the **public housing authority (PHA)** that gave Rose the voucher as well as the private landlord that receives the subsidy payment from the **PHA** must adhere to **VAWA's** requirements.*

What are housing providers' general obligations?

A housing provider covered by VAWA cannot refuse to admit, evict, or terminate housing assistance because a person is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking.¹⁸ Additionally, actual or threatened criminal activity directly relating to the abuse is not grounds for terminating assistance, tenancy, or occupancy rights of the survivor.¹⁹ Furthermore, an abusive partner's acts of abuse cannot be considered a "serious or repeated" lease violation, or "good cause" for evicting or terminating assistance to the survivor.²⁰

Therefore, **PHAs** and owners should not, for example, use unfavorable landlord-tenant histories based on incidents of abuse committed against the applicant now seeking housing assistance. However, few housing providers will explicitly deny a survivor housing on the basis that the person is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking.

Think About It

Survivors are most often denied housing on the basis of negative tenancy, credit or criminal history that is related to the acts of abuse (See **Credit, Debt, and Criminal Records** chapters in this Guidebook for more).²¹ For example, many PHAs have policies of denying admission to applicants who have previously been evicted from federally subsidized housing. Therefore, a survivor who was previously evicted from public housing due to damages caused by the abusive partner may be denied admission to federally subsidized housing if the survivor reapplies at the same PHA or applies at another PHA.²²

¹⁶ *Id.* § 13925(a)(30).

¹⁷ See generally 42 U.S.C.A. § 14043e-11 (West 2017).

¹⁸ See *id.* § 14043e-11(b)(1), (b)(2).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See, e.g., Title VIII Conciliation Agreement between Hope (Complainant) and Valencia Village Partners, Ltd., et al., FHEO Case No. 04-11-0574-8 (Apr. 4, 2014), available at <http://nhlp.org/files/Hope-v-Valencia-Village-Conciliation-Agreement.pdf> (domestic violence survivor settled with property management company for allegedly denying her housing for refusing to provide Social Security numbers of minor children for safety reasons). See also NHLP, *Domestic Violence Survivor Settles with Property Managers after Being Denied Housing*, 44 HOUS. L. BULL. 85, 85-86 (Apr./May 2014) (summarizing background and terms of conciliation agreement) (Companion Website).

²² For arguments on why survivors should not be evicted or terminated from a federal housing subsidy program because of the damage that an abuser caused to her unit, see NHLP, *Questions Corner*, 43 HOUS. L. BULL. 155, 168 (Aug. 2013).

VAWA does not explicitly address denials of housing based on negative tenancy, credit or criminal history that can be traced back to acts of abuse committed against the applicant. Advocates working with survivors who have been denied housing because of such history should still challenge the denial.²⁴ Advocates can argue that denying a survivor housing based on such negative history is equivalent to denying them housing on the basis that the survivor has been a victim of abuse, and that the denial, therefore, violates VAWA.

Practice Tip

Advocates should explain to housing providers the link between the abuse and poor credit, tenancy or criminal history, and why many survivors have such poor history. In making this argument, advocates can cite VAWA language directly. For instance, VAWA's findings section notes that "[b]ecause abusers frequently manipulate finances in an effort to control their partners, survivors often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing."²³

Case Scenario: *Assume for a moment that Rose does not challenge the landlord's eviction, leaves her current unit quickly because she fears for her safety, and attempts to use her Section 8 voucher in an apartment across town. When the prospective landlord contacts Rose's former landlords as part of the background check, he discovers that the most recent landlord had evicted her for disturbing the peace and for using drugs in the unit. The prospective landlord denies Rose's application because of this eviction. In this situation, Rose should challenge the denial arguing that it is a violation of VAWA because the adverse housing decision is based on domestic violence committed against her. Rose should also gather and present to the prospective landlord documentation showing that her prior eviction was related to domestic violence, such as a restraining order issued against her son, statements from neighbors, or letters from service providers, including domestic violence caseworkers and counselors. If Rose is not successful in challenging the denial, then she should seek assistance from her local legal aid office.*

Practice Tip

Advocates should also note that HUD has explicitly advised PHAs to inquire into whether domestic violence was a factor in poor rental history.²⁵

What are the limitations to housing providers' obligations?

There are important limitations on VAWA's protections against evictions and subsidy terminations. First, VAWA does not restrict a housing provider's authority to evict or terminate assistance to a tenant, if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees at the property, and either the tenant is not evicted, or their assistance is not terminated.²⁶ In other words, evictions still may proceed in rare situations where the housing provider shows that an individual's tenancy

²³ 42 U.S.C.A § 14043e(10) (West 2017).

²⁴ For an in-depth discussion of this topic, see NHLP, ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN APPLYING FOR HOUSING (2010), available at <http://www.nhlp.org/node/1428>

²⁵ HUD PUBLIC HOUSING OCCUPANCY GUIDEBOOK, 218 (June 2003).

²⁶ 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii) (West 2017).

presents an actual and imminent threat to other tenants or employees, despite their status as a covered survivor.

HUD regulations state that an actual and imminent threat consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.²⁷ The factors to be considered in determining the existence of an actual and imminent threat include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm will occur.²⁸ Additionally, eviction or termination of a survivor's

Practice Tip

HUD has clearly indicated that the “actual and imminent threat” exception must be used as an absolute last resort by landlords. Survivors and advocates who encounter a landlord using this exception should make sure that the landlord can show all three elements required of “actual and imminent threat” and that no alternative action to eviction is possible to reduce or eliminate the threat.

assistance under the actual and imminent threat provision should occur “only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the survivor 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.”²⁹ In addition, “[r]estrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.”³⁰

Case Scenario: *In our survivor story, the landlord is attempting to evict Rose allegedly because the household violated the lease by disturbing the peace and because of drug use in the unit. The landlord could argue that the alleged violations, and, in particular, the drug use by the household member, were not premised on domestic violence. Rose will need to demonstrate the link between the abuse and the alleged lease violations. Specifically, Rose will need to show that the domestic violence was the reason for the disturbance and the perpetrator was the one who allegedly used drugs. Therefore, as the survivor, Rose should not be evicted for acts of the perpetrator and the domestic violence committed against her. In addition, to bolster her argument that she should not be evicted, Rose should contend that she has been a tenant in good-standing for the five years before the domestic violence incident.*

Think About It

In another example, a survivor may know that their abusive spouse has failed to report all of his income as required by the PHA, but may fear retaliation if the survivor confronts him and asks him to report the income. If the family later faces eviction for the failure to report the income, then the survivor will need to demonstrate the link between the abuse and their failure to report to avoid any argument by the PHA that the program violation was not premised on acts of abuse.

²⁷ 24 C.F.R. § 5.2003 (2017) (definition of “actual and imminent threat”).

²⁸ *Id.*

²⁹ *Id.* § 5.2005(d)(4).

³⁰ *Id.*

Another limitation on VAWA's protections is that the law does not protect survivors if the acts for which they are being evicted are unrelated to domestic violence, dating violence, sexual assault, or stalking.³¹ A circumstance that may be disputed is whether the conduct for which the survivor is being evicted is in fact related to acts of violence committed against her.

Additionally, in determining whether to evict a tenant, a housing provider may not hold a survivor of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than other tenants.³² Therefore, if a survivor can demonstrate that other tenants were not evicted or terminated from assistance based on violations similar to the ones for which the survivor is being penalized, then the survivor may be able to argue that they are being held to a more demanding standard in violation of VAWA.

Remedies for Survivors

Lease bifurcation and family break-up

VAWA establishes a right for a PHA or landlord to bifurcate a lease, or to evict the offender while allowing the survivor to remain in occupancy.³³ VAWA further protects any tenants remaining in the housing as a result of the **lease bifurcation**. Specifically, if the removed offender was the only tenant eligible for the housing assistance, then any remaining tenant can establish eligibility for the assistance. If no tenant can establish such eligibility, then the PHA or owner must provide the tenant reasonable time (as determined by the respective federal agency) to find new housing or to establish eligibility under another covered housing program.³⁴

Importantly, HUD regulations implementing VAWA 2013 provide additional protections for survivors who experience family breakup due to violence in situations involving Section 8 voucher assistance. If a family break-up occurs because of domestic violence, dating violence, or stalking, then "the PHA *must* ensure that the victim retains assistance" (emphasis added).³⁵ In determining who should get the Section 8 voucher, the PHA can consider certain factors, including

- (1) whether the assistance should remain with family members in the original assisted unit;
- (2) the interest of minor children, ill, elderly, or disabled family members;
- (3) whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, or stalking;

³¹ 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii) (West 2017); *see also* Jennings v. Hous. Auth. of Baltimore City, 2015 WL 1085574 (D. Md. Mar. 10, 2015) (housing authority appropriately terminated survivor's voucher because the decision was based on criminal activity of survivor's son that was unrelated to domestic violence); Hammond v. Akron Hous. Auth., 2011 WL 2175801, at *4 (Ohio Ct. App. June 1, 2011) (VAWA was not violated where the court found no evidence that incidents of domestic violence prompted PHA to investigate whether an unauthorized occupant lived with voucher holder).

³² 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii) (West 2017).

³³ *Id.* § 14043e-11(b)(3)(B)(i); 24 C.F.R. § 5.2009(b)(2) (2017) (establishing that remaining household members generally have 90 days from the date of lease bifurcation or end of the lease to establish eligibility for a covered housing program or find alternative housing).

³⁴ 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii) (West 2017).

³⁵ 24 C.F.R. § 982.315(a)(2) (2017). *See also* DEPT. OF VETERAN AFFAIRS, VETERANS HEALTH ADMINISTRATION HANDBOOK 1162.05, HUD-DEPT. OF VETERANS AFFAIRS SUPPORTED HOUSING (VASH) PROGRAM, Sec. 28 (Sep. 14, 2011), available at file:///C:/Users/NHLP3/Downloads/1162_05HK9-15-2011.pdf (when a veteran loses their Veterans Affairs Supported Housing (VASH) voucher for committing domestic violence, dating violence, or stalking against a household member, the survivor must continue to be assisted by the PHA and must either be given a Housing Choice Voucher, if one is available, or continue to use the VASH voucher).

- (4) whether any of the family members are receiving protection as victims, and whether the abusive partner is still in the household; and
(5) other factors specified by the PHA.³⁶

Case Scenario: *Using our survivor story, since Rose has experienced a family break-up because of domestic violence, she can request in a demand letter that the PHA transfer the Section 8 voucher to her name only and remove the abusive partner's name from the voucher by making such a request in writing to the PHA. In addition to the request, the letter should quote the regulatory language that "the PHA must ensure that the victim retains assistance," and discuss the above factors by explaining how they weigh her favor.*

See sample letters at the end of this chapter.

Portability

As part of VAWA, survivors with Section 8 Housing Choice Vouchers maintain the right to port themselves and their families to a new jurisdiction, even if they have left their former rental unit in violation of the lease.³⁷ Therefore, if a survivor were forced to break their lease and move elsewhere to escape their abusive partner, and they failed to seek the PHA's approval before moving, then they can still exercise their right to use their voucher in another jurisdiction. Additionally, HUD's VAWA regulations state that PHA policies restricting the timing or frequency of **portability** moves do not apply if a family needs to relocate due to domestic violence, dating violence, or stalking.³⁸ Therefore, survivors are exempt from PHA policies that restrict portability for one year for families that are new to the PHA's jurisdiction, or that prohibit voucher tenants from moving if they already have moved at least once during the past 12 months.³⁹

Case Scenario: *In our survivor story, Rose would be able to **port** with her Section 8 voucher to another jurisdiction even if she is terminating her lease so long as the **port** is due to the abuse and is necessary to protect health and safety. Rose should also check her state and local laws to see if there are early lease termination laws that provide additional protections for survivors who break their leases because of the abuse committed against them.*

Emergency transfers

VAWA requires that each federal agency in charge of administering the covered housing programs adopt a model emergency transfer plan to be used by PHAs and owners. The transfer plan must allow the survivor to transfer to another available and safe unit assisted under a covered program, if (1) the tenant expressly requests the transfer and (2) either the tenant reasonably believes that, if they remain in the unit, they are threatened with imminent harm from further violence, or the tenant is a victim of sexual assault that

³⁶ 24 C.F.R. § 982.315(b) (2017).

³⁷ 42 U.S.C.A. § 1437f(r)(5) (West 2017); 24 C.F.R. §§ 982.353(b), 982.354(b)(4) & (c)(2)(iii) (2017); HUD, Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension, PIH 2016-09 (HA) (June 6, 2016). Because VAWA 2013 did not amend the portability provision, the statute also did not extend its coverage to survivors of sexual assault. However, because this oversight clearly violates an important purpose of VAWA 2013's housing provisions—to provide protections to sexual assault survivors, advocates should ensure that this protection is implemented by the federal agencies.

³⁸ 24 C.F.R. § 982.354(b)(4) & (c)(2)(iii) (2017).

³⁹ See NHLP, *Survivors Have Rights and Protections to Move with a Voucher* (Apr. 2017), available at <http://nhlp.org/files/2016%20DV%20and%20Portability%20Packet%204.1.16.pdf>

occurred on the premises within 90 days of the transfer request. Also, the transfer plan must incorporate reasonable confidentiality measures to ensure that the PHA or owner does not disclose the location of the new unit to the abusive partner.⁴⁰

In 2016, HUD issued a model emergency transfer policy as part of the agency's proposed rule implementing VAWA 2013.⁴¹ In 2017, the Rural Housing Service/Rural Development (RD) reissued as emergency transfer plan.⁴²

What documentation is required to claim VAWA protections?

If a survivor wants to assert their VAWA rights, then a PHA or owner can apply VAWA to a survivor based solely on the survivor's statement or other evidence.⁴⁶ The PHA or owner can also ask in writing for proof of domestic violence, dating violence, sexual assault, or stalking.⁴⁷ A housing provider may request documentation when the survivor raises their VAWA rights to challenge a denial of housing, an eviction, a subsidy termination, or a denial of a request to move. After a housing provider has requested documentation in writing, a survivor must be given at least 14 business days to respond.⁴⁸ If the survivor does not provide the documentation within 14 business days, then the housing provider may bring proceedings to terminate the survivor's tenancy or assistance.⁴⁹ However, housing providers can extend the 14-day deadline at their discretion, and advocates should encourage them to do so where the survivor can show good cause for an extension.⁵⁰

In 2016, only HUD's Office of Public and Indian Housing has issued a self-certification form under VAWA 2013, Form HUD-5382.⁵¹ The form requests the name of the survivor, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The survivor does not need to provide the perpetrator's name if the survivor does not know the abusive partner's name or doing so would not be safe for the survivor.⁵² Also, the survivor must sign the form and certify that

Practice Tip

In practice, most housing providers will request that the survivor provide documentation regarding the abuse. Therefore, advocates and survivors must make sure that the housing provider makes this request in writing and provides at least 14 days to produce this documentation.

There are three types of documentation the survivor can provide in response to the housing provider's request:

- 1) a self-certification form approved by the appropriate federal agency;⁴³
- 2) a statement from a qualified third party;⁴⁴ or
- 3) a police, court, or administrative record.⁴⁵

⁴⁰ 42 U.S.C.A. § 14043e-11(e) (West 2017).

⁴¹ HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724, Appendix B (Nov. 16, 2016), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=VAWA-ApdixB-EmerTransPlan.docx>

⁴² USDA, RD AN No. 4814 (1944-N), Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs, Attachment A (Jan. 18, 2017).

⁴³ *Id.* § 14043e-11(c)(3)(A).

⁴⁴ *Id.* § 14043e-11(c)(3)(B).

⁴⁵ *Id.* § 14043e-11(c)(3)(C).

⁴⁶ 42 U.S.C.A. §§ 14043e-11(c)(3)(D), (c)(5) (West 2017).

⁴⁷ *Id.* § 14043e-11(c)(1).

⁴⁸ *Id.* § 14043e-11(c)(2)(A).

⁴⁹ *Id.*

⁵⁰ *Id.* § 14043e-11(c)(2)(B).

⁵¹ HUD, Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (exp. June 30, 2017), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx>.

⁵² *Id.*

the information is true and correct. Submitting false information on the form is grounds for termination of assistance or eviction.⁵³

Instead of the self-certification form, the survivor can provide either a statement from a qualified third party, or a police, court or administrative record.⁵⁴ Documentation from a qualified third party must be signed by the survivor and a victim service provider, an attorney, a medical professional, or a mental health professional.⁵⁵ The third party must attest under penalty of perjury to their belief that the survivor has experienced an incident of abuse that meets the grounds for protection under the statute.⁵⁶ VAWA's housing provisions do not define what constitutes a police, court, or administrative record. Examples of documents that should satisfy the documentation requirement include a restraining order, a police report, a criminal complaint or conviction, or records from a custody hearing.

Often, the safest and quickest documentation option for a survivor is [HUD's VAWA self-certification form](#). However, a common area of confusion under VAWA is whether a housing provider may request that a survivor provide multiple forms of documentation, or that a survivor provide a particular type of documentation. For example, housing providers have required those survivors who use HUD's VAWA self-certification form also supply a police report, court order, or third-party verification to corroborate the abuse.

Think About It

Many survivors are often reluctant to contact the police or seek a restraining order for fear of escalating violence from their abusive partners since these actions require that the perpetrators be notified. Furthermore, in emergency circumstances where survivors are fleeing to escape abuse, many survivors do not have the time and resources to obtain court orders or third-party verification. For instance, depending on where the survivor flees to, they might not have access to medical professionals or domestic violence caseworkers to get third-party documentation.

Survivors of color and immigrant survivors are often reluctant to contact the authorities due to their cultural aversion to involving outsiders in family matters or prior negative experiences with the police and the justice systems in their native countries. It is important to be aware of these obstacles and to be able to explain to these survivors that they can use alternative forms of documentation, such as the self-certification form or third-party verification, to claim VAWA housing protections.

Importantly, HUD has made clear that VAWA allows the survivor to self-certify, and that housing providers must accept this form of documentation if this is what the survivor chooses to use.⁵⁷ HUD has also stated that survivors cannot be required to provide its certification form. Rather, survivors have the authority to decide what type of documentation they will provide, whether it is a statement from a qualified third party, a

⁵³ *Id.*

⁵⁴ 42 U.S.C.A. §§ 14043e-11(c)(3)(B)-(C) (West 2017).

⁵⁵ *Id.* § 14043e-11(c)(3)(B)(i).

⁵⁶ *Id.* § 14043e-11(c)(3)(B)(ii).

⁵⁷ HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724, 80,741, 80,764 (Nov. 16, 2016).

Case Scenario: *In our survivor story, Rose is afraid to seek a restraining order because she is afraid of continued or escalating violence from Mark or his gang. Therefore, to claim VAWA protections, she can choose to use a police report, third-party verification, or complete the self-certification form HUD 5382. What does she feel most comfortable with? How can you help her decide which is the safest and most expedient route for her?*

police, court, or administrative record, or the self-certification form.⁵⁸ Additionally, an individual requesting VAWA's protections cannot be required to provide third-party documentation.⁵⁹ Survivors do not have to contact authorities, such as police, or initiate legal proceedings against a perpetrator to qualify for VAWA protections.⁶⁰ Finally, HUD has indicated that housing providers must not evaluate the truthfulness of allegations of abuse.⁶¹

Documentation may be critical in cases where a housing provider has difficulty determining which household member is the survivor and which is the perpetrator. VAWA indicates that, in cases where a housing provider receives documents from two members of a household, each claiming to be a survivor and naming the other household member as the perpetrator, the PHA or owner may require an applicant or tenant to submit third-party documentation.⁶² If any questions remain regarding which household member is the survivor, then "a PHA grievance hearing, informal hearing or informal review could be an appropriate venue to pursue fact-finding and make a determination."⁶³

What confidentiality obligation do housing providers have?

Under VAWA, housing providers are prohibited from disclosing any information a survivor provides to document incidents of domestic violence, dating violence, sexual assault, or stalking.⁶⁴ This includes communications to the abusive partner regarding the survivor's present or future whereabouts that would compromise their safety. Additionally, housing providers may not enter the information into any shared database or provide it to another entity.⁶⁵ Employees of a PHA, owner, or management agent are prohibited from having access to information regarding the violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work.⁶⁶ However, a housing provider is permitted to disclose the information if it chooses to evict the abusive partner based on the acts of domestic violence, dating violence, sexual assault, or stalking.⁶⁷ Certification information may also be disclosed if the survivor requests disclosure in writing, or if disclosure is otherwise required by law.⁶⁸

Practice Tip

Advocates should request that the housing provider contact the survivor first, before taking steps to evict the abusive partner, so that the survivor can plan for their safety.

⁵⁸ *Id.* at 80,763.

⁵⁹ *Id.* at 80,762.

⁶⁰ *Id.* at 80,731.

⁶¹ *Id.* at 80,764.

⁶² 42 U.S.C.A. § 14043e-11(c)(7) (West 2016).

⁶³ HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,253; see also *Badri v. Mobile Hous. Bd.*, 2011 WL 3665340 (S.D. Ala. Aug. 22, 2011) (in voucher termination involving conflicting claims of domestic violence, voucher holder should be given an opportunity to confront and cross-examine witnesses).

⁶⁴ 42 U.S.C.A. § 14043e-11(c)(4) (West 2016).

⁶⁵ *Id.*

⁶⁶ 24 C.F.R. § 5.2007(b)(4)(ii) (2016).

⁶⁷ See 42 U.S.C.A. § 14043e-11(c)(4) (West 2016).

⁶⁸ *Id.*

What other obligation do housing providers have?

Notice of VAWA Protections and Language Access.

VAWA 2013 requires covered housing providers to use HUD's VAWA 2013 housing rights ("[HUD notice](#)"), which includes the right to confidentiality, for all applicants and tenants.⁶⁹ Specifically, PHAs and owners must provide the [HUD notice](#) accompanied by the agency-approved, self-certification form, such as [Form HUD-5382](#), to applicants and tenants at three critical junctures:

- 1) at the time an applicant is denied residency;
- 2) at the time an individual is admitted; and
- 3) with any notification of eviction or termination of assistance.⁷⁰

In addition, HUD has stated that the agency will translate the [HUD notice](#) and [self-certification form](#) into multiple languages to be consistent with HUD guidance concerning language access for individuals with limited-English proficiency.⁷¹

Think About It

If Rose were limited-English proficient (LEP) and primarily spoke Spanish, then she might face additional barriers in communicating and working with her landlord. Many housing providers that receive HUD subsidies do not provide translations of important documents, including eviction notices, to tenants who are LEP. Failure to provide translations of these vital documents can constitute a violation of federal law.

Advocates should work with LEP survivors to make sure that landlords are providing the appropriate legally required language access to them.

For more information on the federal housing rights of LEP survivors, see [NHLP's information packet](#).

The Fair Housing Act

The federal **Fair Housing Act ("FHA")** is a cornerstone of federal civil rights legislation. The **FHA** prohibits housing providers from taking certain actions based on an applicant's or tenant's race, color, religion, sex, national origin, familial status, or disability.⁷² The actions that landlords are prohibited from taking based on a person's membership in a protected class include:

- Refusing to rent or sell a dwelling.
- Setting different terms, conditions, or privileges for sale or rental of a dwelling.
- Providing different housing services or facilities.
- Falsely representing that a dwelling is not available for rent or sale.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, disability, familial status, or any other characteristic protected under the FHA.

⁶⁹ *Id.* § 14043e-11(d)(1); HUD, Notice of Occupancy Rights under the Violence Against Women Act (exp. June 30, 2017), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=VAWA-ApdixA-NoticeOcRight.docx>

⁷⁰ *Id.* § 14043e-11(d).

⁷¹ *Id.* § 14043e-11(d)(2)(D); HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724, 80,725, 80,770, 80, 797 (Nov. 16, 2016).

⁷² See generally 42 U.S.C.A § 3604 *et seq.* (West 2017)

- Refuse to make a “reasonable accommodation” to rules, policies, practices, or services for an individual with a disability.⁷³
- Coerce, intimidate, threaten, or interfere with any person exercising their rights under fair housing laws.⁷⁴

Despite not being explicitly mentioned in the statute as a protected class, survivors of domestic violence are covered by the FHA because statistics show that survivors are overwhelmingly women.⁷⁵ Discrimination against survivors is almost always discrimination against women. Therefore, HUD, the agency that Congress has charged to implement and enforce the FHA, has said that “domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.”⁷⁶ HUD has further indicated that survivors’ FHA claims “may also involve other protected classes, in particular race or national origin.”⁷⁷ Therefore, survivors who experience housing discrimination may have viable FHA claims on the basis of race or national origin as well.⁷⁸ HUD has provided examples of landlord actions that could give rise to FHA claims under theories of gender discrimination liability. For example, a situation involving a landlord who refuses to admit domestic violence survivors based on a stereotype that abused women always reconcile with their abusive partners can constitute direct evidence of sex discrimination.⁷⁹

Survivors have challenged denials of housing or evictions related to domestic violence by using sex discrimination theories.⁸⁰ These theories can be used defensively, such as to defend a survivor against a pending eviction, or affirmatively, such as to file an administrative complaint or lawsuit seeking reinstatement of housing, monetary damages, or a policy change by the housing providers. For example, a survivor sued a housing provider under the FHA for failing to rent to them because the survivor would not provide the Social Security numbers of their minor children, fearing that the abusive partner would use the numbers to track their location.⁸¹ The survivor subsequently entered into a settlement agreement with the housing provider.⁸² In other cases, survivors and HUD have

⁷³ *Id.* § 3604.

⁷⁴ *Id.* § 3617.

⁷⁵ For a detailed discussion on protections for victims of domestic violence under the FHA, see Chapter 4 of NHELP’S MAINTAINING SAFE AND STABLE HOUSING FOR DOMESTIC VIOLENCE SURVIVORS (2012), <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>.

⁷⁶ Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD Office of Fair Housing and Equal Opportunity (FHEO), to FHEO Office Directors and Regional Directors (Feb. 9, 2011).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See, e.g., *Dickinson v. Zanesville Metro. Hous. Auth.*, 975 F.Supp. 2d 863 (S.D. Ohio 2013); *Bouley v. Young-Sabourin*, 394 F.Supp. 2d 675 (D. Vt. 2005); *Meister v. Kan. City Hous. Auth.*, 2011 WL 765887 (D. Kan. Feb. 25, 2011); *Charge of Discrimination, HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8 (2001). See also Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD Office of Fair Housing and Equal Opportunity (FHEO), to FHEO Office Directors and Regional Directors, at 6-9 (summarizing cases) (Feb. 9, 2011).

⁸¹ See Title VIII Conciliation Agreement between Hope (Complainant) and Valencia Village Partners, Ltd., et al., FHEO Case No. 04-110574-8 (Apr. 4, 2014) (Companion Website); see also NHELP, *Domestic Violence Survivor Settles with Property Managers after Being Denied Housing*, 44 HOUS. L.BULL. 85, 85-86 (Apr./May 2014) (summarizing background and terms of the conciliation agreement).

⁸² *Id.*

used VAWA and the FHA to challenge municipalities' nuisance ordinances that penalized survivors for making too many calls to the police within a specific timeframe.⁸³

Sexual harassment in housing

With affordable housing becoming more and more difficult to find, landlords hold a significant amount of power over the terms and conditions of the rental relationship. Survivors, in particular, are susceptible to abuses by landlords and staff because of the additional hurdles they face in the housing market. Many survivor-tenants must pick between acquiescing to the demands of their landlords or homelessness. Due to this power imbalance between landlords and tenants, many tenants are subjected to sexual harassment by landlords and their agents, such as property management staff, maintenance workers, and janitors. Sexual harassment takes various forms. Examples of such harassment include requesting sexual favors in exchange for rent, making sexually derogatory comments, touching the tenant without their consent, and constantly leering and staring at the tenant.

Think About It

Survivors of domestic violence are particularly vulnerable to sexual harassment because they often have no place else to go due to income limitations, lack of credit history, or poor rental history. Many sexual harassment cases involve tenants living in subsidized or affordable housing who cannot pay market rates for housing and must choose between being harassed or being homeless. In several cases, landlords and their agents have targeted single, low-income mothers for sexual harassment, since these tenants are less likely to report incidents of harassment.⁸⁴

Courts have held that the FHA prohibits sexual harassment in housing.⁸⁵ Persons who may bring a claim for sexual harassment in housing include the harassed tenant, persons who lived with the tenant and were injured by the tenant's eviction or threatened eviction, and

⁸³ See, e.g., *Markham v. City of Surprise, Release and Settlement Agreement* (Mar. 21, 2016), available at <https://www.aclu.org/legal-document/nancy-markham-v-city-surprise-settlement-agreement-mar-21-2016> (requiring City to repeal challenged nuisance ordinance provisions, to agree not to enact another policy penalizing crime victims, monetary payment to survivor, and attorneys' fees to be determined by court); Title VIII Conciliation Agreement between HUD and City of Berlin, New Hampshire, Case No. 01-15-0017-8 (Jan. 2015), available at <http://nhlp.org/files/City-of-Berlin.pdf> (requiring City to amend nuisance ordinance, which mandated landlords to evict tenants cited three or more times for "disorderly behavior", to exempt incidents where the resident is domestic violence survivor); Title VIII and Section 109 Conciliation Agreement between HUD FHEO and Municipality of Norristown, Case Nos. 03-13-0277-8 and 03-13-0277-9 (Sep. 2014), available at <https://www.aclu.org/legal-document/hud-v-norristown-hud-conciliation-agreement>. See also EMILY WERTH, SARGENT SHRIVER NAT'L CTR. ON POVERTY LAW, *The Cost of Being "Crime Free"- Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (Aug. 2013); Matthew Desmond & Nichol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 *Am. Soc. Rev.* 117 (2013); Pa. Coal. Against Domestic Violence, *Addressing Discriminatory Housing Barriers for Victims of Domestic Violence: A Toolkit for Advocates* (2013).

⁸⁴ See, e.g., Press Release, U.S. Dep't of Justice, Justice Department Obtains Record \$1.1 Million Verdict in Sexual Harassment Case Against Landlord in Kansas City, Missouri (May 13, 2004) (noting that most of the victims in a sexual harassment case were lower-income, single women who had limited opportunities to seek other housing); Press Release, Fair Hous. Advocates Ass'n, Jury Awards \$31,452 in Sexual Harassment Case (May 14, 2002) (noting that a single mother delayed reporting incidents of sexual harassment because she did not want to risk homelessness).

⁸⁵ 42 U.S.C.A. § 3604(b) (West 2017); *Shellhammer v. Lewallen*, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985). The FHA does not explicitly prohibit sexual harassment in housing, but it does prohibit discrimination on the basis of sex in the rental of housing.

fair housing organizations. Fair housing laws protect both men and women against sexual harassment, including same-sex sexual harassment.⁸⁶

Individuals who may be held liable for sexual harassment include the perpetrator of the harassment and, in certain circumstances, the perpetrator's employer. If an employee were serving as an agent of an owner or manager when the sexual harassment occurred, the owner or manager could be held liable for the acts of an employee, such as a maintenance worker, janitor, or leasing agent “regardless of whether the person knew or should have known” about the discriminatory act.⁸⁷ HUD has indicated that housing providers could be liable under the Fair Housing Act if they fail to “take prompt action to correct and end” sexual harassment committed by tenants against other tenants.⁸⁸

For more information about the legal theories that tenants have used to challenge sexual harassment in housing, see Chapter 4 of [NHLP’s *Maintaining Safe and Stable Housing for Domestic Violence Survivors*](#).⁸⁹

State and Local Protections

It is critical for advocates to examine their state and local laws to determine whether they provide any additional protections for survivors. For example, state and local fair housing laws may provide broader and more comprehensive coverage than the federal Fair Housing Act. The most common types of local housing safeguards for survivors include laws that (1) provide an eviction defense where the landlord tries to evict the victim due to the abuse, including a crime or lease violation committed by the perpetrator at the rental unit; (2) permit early lease termination without further obligation to pay rent where tenants provide landlords with documentation of domestic violence; (3) require landlords to change locks where tenants have provided documentation of domestic violence; (4) obligate the abusive partner to pay for or provide housing for survivors; and (5) offer address or documentation confidentiality for survivors. For more information, see [NHLP’s *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium*](#).⁹⁰

Conclusion

Advocates may need to use a variety of creative strategies and arguments to assist survivors who are facing evictions, subsidy terminations, or other adverse housing actions due to domestic violence committed against them. VAWA, the Fair Housing Act, and related state and local laws are useful tools in helping survivors access and maintain housing. Furthermore, advocates can significantly aid survivors by helping them gather documentation of domestic violence, identifying potential witnesses who can speak in

⁸⁶ HUD, Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008), at 3, available at <http://www.hud.gov/content/releases/q-and-a-111708.pdf>

⁸⁷ See HUD, Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, 81 Fed. Reg. 63,054 (Sep. 14, 2016); *Glover v. Jones*, 522 F. Supp. 2d 496, 506-07 (W.D.N.Y. 2007); *Boswell v. Gumbaytay*, 2009 WL 1515872 (M.D. Ala. June 1, 2009).

⁸⁸ See HUD, Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, 81 Fed. Reg. 63,054 (Sep. 14, 2016). *But see* *Francis v. Kings Park Manor, Inc.*, 91 F.Supp.3d 420 (E.D.N.Y. 2015).

⁸⁹ NHLP, MAINTAINING SAFE AND STABLE HOUSING FOR DOMESTIC VIOLENCE SURVIVORS (2012), available at <http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf>

⁹⁰ NHLP, HOUSING RIGHTS OF DOMESTIC VIOLENCE SURVIVORS: A STATE AND LOCAL LAW COMPENDIUM (2015), available at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>

support of the survivor, and working with the housing provider to resolve the matter informally.

Additional Resources

- National Housing Law Project's Domestic and Sexual Violence Project website at <http://nhlp.org/ovwgrantees>
- NHLP, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2015)
- NHLP, *Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates* (2012)
- NHLP, *Assisting Survivors of Domestic Violence in Applying for Housing* (2010)
- NHLP, *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards* (Jan. 2014)
- NHLP, *Survivors Have Rights and Protections to Move with a Voucher* (2016)
- NHLP, *Federal Housing Rights of Survivors with Limited English Proficiency: An Information Packet* (Sept. 2015)
- NHLP, *Domestic Violence Survivors with Criminal Records: What You Should Know Why Applying for Federally Subsidized Housing* (2013) (in English and Spanish)
- Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD Office of Fair Housing and Equal Opportunity (FHEO), to FHEO Office Directors and Regional Directors (Feb. 9, 2011)
- ACLU, *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*
- Emily Werth, Sargent Shriver Nat'l Ctr. on Poverty Law, *The Cost of Being "Crime Free"- Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (Aug. 2013)
- Matthew Desmond & Nichol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Soc. Rev. 117 (2013)
- Pa. Coal. Against Domestic Violence, *Addressing Discriminatory Housing Barriers for Victims of Domestic Violence: A Toolkit for Advocates* (2013)
- HUD, *Public Housing Occupancy Guidebook*, Chapter 19 (June 2003)

Sample Letter One



September 19, 2007

LA, Leasing Officer
Housing Authority
Leased Housing Division

RE:

Section 8 Participant
Family Break - Up - Request that Voucher be Put in _____'s Name

Dear Ms. A:

This office represents the above - noted _____ regarding her family's Section 8 voucher. Enclosed find a release which will permit you to speak with me about her case.

_____ and _____ are participants the Section 8 program administered by the Boston Housing Authority (BHA) and are currently leased up at _____. While _____ may be the head of household, throughout the family's participation in the Section 8 program, _____ and the two children have been listed on the voucher and the lease and their income has been counted towards household income for rent calculation purposes.

For many years Ms. _____ has been the victim of emotional abuse and physical abuse from _____. He has choked her causing her to black out, threatened her, and in one incident grabbed the phone from her when she attempted to call the police. He has made constant calls to her at work, visited her at work against her wishes and threatened to speak to her supervisors and embarrass her. In April 2007 she was forced to get a 209A order preventing him to stay away from her work place. However, Mr. _____ continued to call and text messages to her and threaten her.

In May 2007 Mr. _____ voluntarily vacated the premises. Ms. _____ does not know where he is residing. . However, he has continued to call her, sent her text messages. She remains afraid of him.

Since leaving the household _____ has contributed nothing towards household income and Ms. _____ has been managing, with difficulty to pay the full rent herself

The family has broken up.

This letter is a request on Ms. _____' behalf, that she be made head of household on the voucher and that _____' name be removed. She also requests that the family's portion of the rent be

recalculated based upon her income alone, deleting that of Mr .

Pursuant to the BHA's Section 8 Administrative Plan section 11.7 (Family Break - Up Policy) where a family breaks up the Section 8 voucher does not necessarily remain with the head of household. Any adult assuming responsibility for one or more minor family members could retain the voucher. Where, as here, no court has determined which family member retains the voucher, the BHA makes this determination considering the following factors:

- a. The interests of any minor children;
 - b. The interests of any ill, Elderly or Disable Persons who are family members;
 - c. Whether family members fled the unit because of actual or threatened violence by a spouse or other member of the Household. (The BHA will take this factor into consideration regardless of whether the individuals leaving the unit are the victims or the perpetrators);
 - d. Whether the assistance should remain with family members remaining in the original assisted unit or those who have fled or left the unit;
 - e. The amount of time since the Household members were added to the Family Composition. The BHA will consider this factor, on a case by case basis, the circumstances surrounding a Household Member's being added or not having been added to the Household.
- Sec. 11.7.2

Under the above criteria, Ms. should retain the voucher. She is the victim of violence from . She has custody of the children and she is remaining in the assisted unit.

The BHA Family Break - Up Policy also provides at sec. 11. 7.7 that when a family breaks up and there is a change in household composition, the BHA should recalculate the family's rent share to reflect the current family composition.

Mr. may have contacted you earlier about the family break - up and attempted to obtain a new voucher for himself alone. Ms. has received nothing from the BHA but Mr. has tried to get her to sign some document. Should this be the case, I trust the BHA will not give the voucher to Mr. alone (and put Ms. at risk of eviction should subsidy payments to her landlord cease) until the issue is settled before the BHA after the process provided in the Family Break - Up Policy

Can you please contact me at [] to discuss transferring the Section 8 Voucher to Ms. and making her Head of Household on the voucher and also recalculating rental share to reflect the current household income - ie. her income alone.

Finally, we would like to make an appointment to view the file.

Very truly yours,

Sample Letter Two

CENTRAL JERSEY LEGAL SERVICES, INC.

Union County Division

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October 3, 2008

Ms. Deborah Heinz
State of New Jersey
Department of Community Affairs
101 S. Broad St.
P.O. Box 800
Trenton, N.J. 08625

RE: Request for Remedies: Section 8 Voucher Program & HPP
Ms. M.M.

Dear Ms. Heinz:

This is an urgent situation. Imminent eviction of a family is in process. Our office represents Ms. M. M. who resides with her three (3) children at ..., N.J. She had been living there with her husband, Mr. A. M., who is an unemployed Social Security recipient of SSD. She was living with her husband, Mr. A.M., and these children at the above address for about five years under the HUD Section 8 voucher program with DCA. Mr. M. was then, and is now, a recipient of SSD from the Social Security Administration. During the period of his residence with the family—he left sometime in April 2008—DCA considered Mr. M. “head of household”, although, during the five years that the couple lived in the apartment they both would go to the DCA each year and execute the income recertification forms.

Ms. M. came to our office in the last few days with a summons and complaint for non-payment of the contract rent on the above apartment of \$967 a month from June 2008 (partial rent) through October 2008: totals about \$4,420. The trial date is October 9, 2008.

Mr. M. for many months had been verbally abusing our client and in April 2008, he decided to contact DCA and request that it issue a “Request for Tenancy Form” for him to leave the present apartment and move-in by himself into a new apartment at ..., N.J. When he was in the act of requesting that DCA cooperate with him, Ms. M. contacted Mrs. X at the DCA office in Elizabeth, N.J. and asked DCA to give her to continue her Section 8 status notwithstanding Mr. M’s notice to DCA that he wanted to take the Section 8 status with him to a new address. Ms. M. states that Ms. X told her that DCA could do nothing about her husband’s request because he was the head of household under DCA’s records and he was disabled.

The problem is that DCA gave the Section 8 voucher to the husband when he vacated in May 2008 and now our client is facing a summary dispossession action for the contract rent on the apartment. It appears that the HAP contract was terminated for the May and/or June 2008 rent because DCA started to pay a new landlord a HAP payment for Mr. M. starting in May or June 2008 at [second address], N.J.

On May 20, 2008, our client obtained a TRO DV order against the husband. The order states that the husband is prohibited from returning to the scene of the violence (the apartment) and he was barred from “the residence of the plaintiff.” The order further stated that the defendant was “granted exclusive possession of ...the residence.”



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Sample Letter Two

On May 29, 2008, our client obtained a final DV restraining order that states that the defendant was barred from the residence of the plaintiff and that the plaintiff was "granted exclusive possession of the residence" and the apartment's address is expressly stated. Ms. M. brought this final DV order to DCA's Elizabeth, N.J. office but the intake receptionist refused to take it and said Ms. M. could leave the police report, which she did.

Our client only receives \$560 a month from the husband for herself and the three children which is from the husband's Social Security Disability. She faces imminent homelessness without the receipt of Section 8 status in the future and without immediate help to pay back rent from DCA's Homelessness Prevention Program.

Our office has reviewed client's rights under the federal Violence Against Womens' Act (VAWA), 42 U.S.C. 1437f(o)(D)ii through vi., the attached HUD regulation, 24 CFR §982.315(a) and (b), and DCA's attached "Housing Choice Voucher Program Administrative Plan" (July 2008). See definition in the latter of "applicant break-up" (p. 1-2), "Family Break-up" (p. 1-4 to 1-5) and "Violence Against Women Act", pp. 7-13 through 7-15.

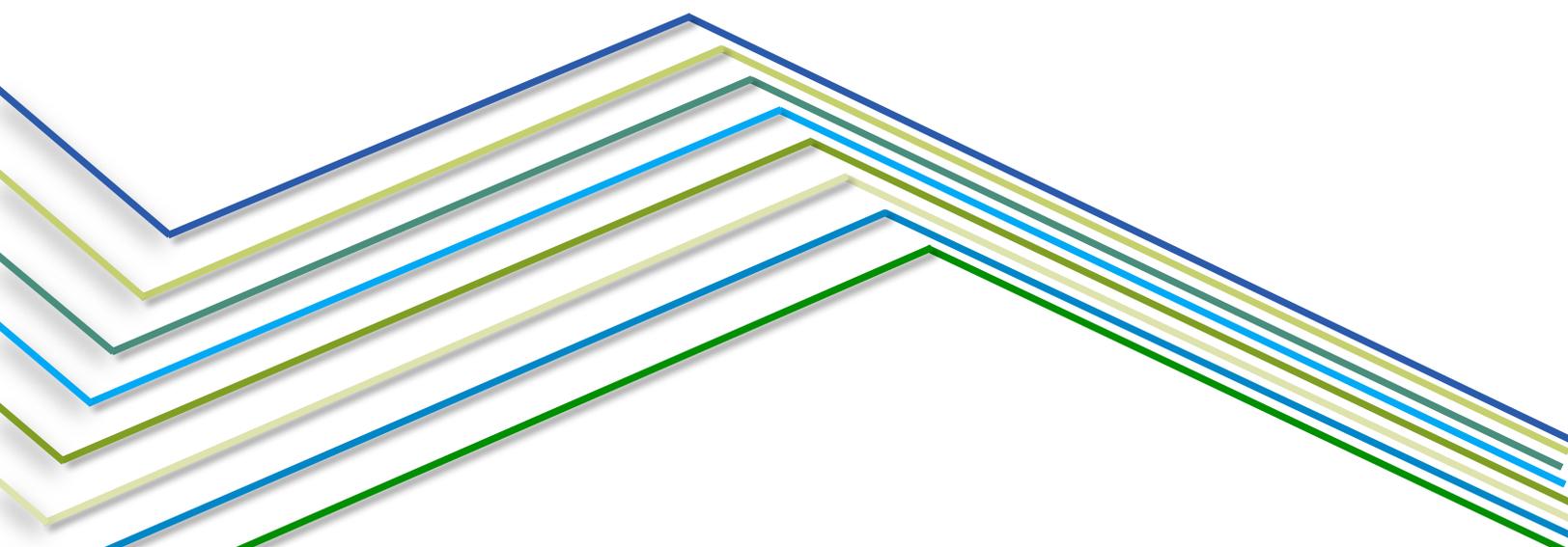
HUD regulation 24 CFR §982.315(b), sets forth certain criteria that PHAs, such as DCA, need to follow in the establishment of their Section 8 Administrative Plans. These include assessing factors when a family break-up occurs, such as: whether the assistance should remain with the family members remaining in the original assisted unit, the interest of minor children, and whether family members are or have faced actual or threatened physical violence against a spouse; as well as "other factors specified" in the PHA Section 8 Administrative Plan. DCA's Administrative Plan, under the definition of "Family Break-up" (p. 1-4 to 1-5) and "Violence Against Women Act", pp. 7-13 through 7-15, has embodied the HUD regulatory standards but it has not followed them in this case.

It would appear that DCA has not properly exercised its discretion under the HUD regulation and DCA's Administrative Plan in that when DCA interviewed Ms. M. in April 2008, it did not place sufficient weight on her needs and those of her children in deciding to award the Section 8 voucher to her husband at the time of the family break-up. Therefore, Ms. M. requests the following remedies:

- Ms. M. requests an immediate administrative hearing on this. Part of the hearing should establish whether Mr. M. committed fraud, 24 CFR §982.551-553, in the representations he made to DCA in his request for a Request for Tenancy Form. (For this, it is requested that I have access to the DCA file for discovery.) See DCA's Administrative Plan, at p. 7-12, which states that DCA must determine whether Mr. M. was "eligible" for the issuance of a new Voucher. It is submitted that his eligibility had to be based on the factors found in the HUD regulation and the DCA Administrative Plan found under the definition of "family break-up" at pp. 1-4 and 1-5. Ms. M. is without a realistic remedy against Mr. M. under the State Domestic Violence Act, N.J.S.A. 2C:25-29(b)(2), to require him to pay for alternative housing at a contract rent because of Mr. M.'s income is Social Security Disability. Rather, Ms. M. depends on the need to obtain Section 8 eligibility from DCA.
- In addition, it is requested that DCA consider invoking that part of its Section 8 Administrative Plan—see definition of "Applicant break-up", pp. 1-2 and 1-3—which permits DCA to open its waiting list for former members of an applicant family that breaks-up. That provision gives the regional supervisor on a case-by-case basis the ability to give consideration "to former members of an applicant family who retain custody of the children...and to actual or threatened physical violence against the former members by a spouse..."
- In addition, because DCA did not properly assess the situation adequately when it issued the Section 8 voucher to Mr. M., rather than deciding that Ms. M. would retain the Section 8 status in her present apartment, it is appropriate that DCA utilize its Homeless Prevention Program in issuing back rent so that Ms. M. can avoid the entry of a Judgment for Possession at the eviction trial date which is scheduled for October 9, 2008.

It is hoped that this matter can be resolved informally. If not, kindly consider this a request for an administrative hearing under DCA's Section 8 Administrative Plan.

Very truly yours,



GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR
AGENCY & JUSTICE**

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