

Homeward Bound



Federal Housing Law and the Rights of
Victims of Domestic Violence, Dating
Violence, and Stalking

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Which federal housing laws address domestic violence?

- Violence Against Women and Justice Department Reauthorization Act of 2005 (Pub. L. 109-162)
- Fair Housing Act (Title VIII of the Civil Rights Acts of 1968)

What housing problems do victims face?

- Eviction
- Loss (termination) of housing benefits
- Denial of admission to housing (private and subsidized)
- Denial of housing benefits
- Discriminatory rules and policies

Why are DV victims evicted or denied housing and housing benefits?

- Violent or criminal activity by abuser (“one strike” policy)
- Police or security being called
- “Nuisance” or “disturbance” of noise or effects of violence
- Property damage because of abuse
- Unauthorized “occupant” or “guest”
- Status: stereotypes and misperceptions about victims
- Criminal history (self-defense or mutual arrest)
- Financial abuse of victim: poor or no credit history; poor or no rental history (prior evictions, terminations)

What areas does VAWA cover?

- Admissions
- Evictions (Public Housing)
- Termination of Assistance (Section 8 Housing Assistance Vouchers)
- Portability
- Confidentiality

Who does VAWA protect?

- Victims of:
 - Domestic Violence
 - Dating Violence
 - Stalking
- Between a state law and federal law definition, the broader definition should prevail
- “Sexual Assault” :
 - Only some of VAWA’s housing provisions cover sexual assault:
 - Explicitly covered in new PHA local planning changes, grant programs, HMIS (Homeless Management Information System)
 - Not explicitly covered under denial and eviction protections

What is “domestic violence”?

- VAWA uses the definition given in 42 U.S.C. § 13925(a)(6). 42 U.S.C. §§ 1437d(u)(3)(A); 1437f(f)(8).
- “Domestic violence” includes felony or misdemeanor crimes of violence committed by:
 - A current or former spouse of the victim
 - A person with whom the victim shares a child in common
 - A person who is cohabitating with or has cohabitated with the victim as a spouse
 - A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
 - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

What is “dating violence”?

- VAWA uses the definition given in 42 U.S.C. § 13925(a)(8). 42 U.S.C. §§ 1437d(u)(3)(B); 1437f(f)(9).
- The term "dating violence" means violence committed by a person —
 - who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

What is “stalking”?

- Definition supplied by VAWA. 42 U.S.C. §§ 1437d(u)(3)(C); 1437f(f)(10).
- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
 - That person;
 - A member of the immediate family of that person; or
 - The spouse or intimate partner of that person.

How does VAWA protect DV victims from eviction and/or termination?

- VAWA essentially creates an exception to the federal “one strike” policy for victims of domestic violence.
- Criminal activity against a tenant or immediate family member by a household member, guest, or “other person under the tenant’s control” “directly relating to” domestic violence, dating violence, or stalking does not constitute grounds for termination of tenancy (eviction) or termination of Section 8 voucher.
- 42 U.S.C. §§ 1437d(l)(6)(A) (public housing); 1437f(c)(9)(C)(i), (d)(1)(B)(iii), (o)(7)(D)(i) (Section 8).
- An incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as “serious or repeated lease violation” or “good cause” for terminating assistance, tenancy, or occupancy rights of victim.
- 42 U.S.C. §§ 1437d(l)(5) (public housing); 1437f(c)(9)(B), (d)(1)(B)(ii), (o)(7)(C) (Section 8).

How does VAWA protect DV victims from being denied admission or assistance?

- 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.
- 42 U.S.C. §§ 1437d(c)(3); 1437f(c)(9)(A); 1437f(d)(1)(A); 1437f(o)(B) (2006).

Can a victim still get rid of an abuser if they share housing or a voucher?

- A landlord may bifurcate a lease to evict, remove, or terminate occupancy rights of a tenant or household member who commits domestic violence while preserving the tenancy or occupancy rights of the victim.
- A PHA may also terminate assistance to the abuser while preserving assistance to the victim.
- 42 U.S.C. §§ 1437d(l)(6)(B) (public housing); 1437f(c)(9)(C)(iv), (d)(1)(B)(iii)(II), (o)(7)(D)(ii) (Section 8).

What other rights does VAWA provide for DV victims?

- Portability Change: A family with a Section 8 voucher may move to another jurisdiction if the 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 would otherwise be a lease violation.
- 42 U.S.C. § 1437f(r)(5).
- A PHA may still ask for documentation from the family regarding the family's desire to move to a new jurisdiction because of domestic violence, dating violence, or stalking.
- 42 U.S.C. § 1437f(ee).

What are the limits to the protections VAWA provides to DV victims?

- Does not apply to lease violations unrelated to domestic violence, dating violence, or stalking.
 - BUT, victims cannot be held to a higher standard than other tenants.
 - 42 U.S.C. §§ 1437d(l)(6)(D) (public housing); 1437f(c)(9)(C)(iv), (d)(1)(B)(iii)(IV), (o)(7)(D)(iv) (Section 8).
- Does not apply if landlord can show that allowing victim to remain would be “actual and imminent threat to other tenants or those employed at or providing service to the property.”
- 42 U.S.C. §§ 1437d(l)(6)(E) (public housing); 1437f(c)(9)(C)(v), (d)(1)(B)(iii)(V), (o)(7)(D)(v) (Section 8).

What about housing protections for DV victims under state or local law?

- When a federal, state, or local law offers greater protection for victims, the more favorable law governs.
- 42 U.S.C. §§ 1437(d)(1)(6)(F) (public housing); 1437f(c)(9)(C)(vi), (d)(1)(B)(iii)(VI), (o)(7)(D)(vi) (Section 8).

How does a resident prove she is a victim of domestic violence?

- PHA or Section 8 landlord may ask for documentation that tenant is or has been a victim. Approved documentation:
 - Police or court record (including DV or family court orders)
 - Statement signed by certain professionals
 - HUD-approved certification form – Form HUD-50066 (Public Housing and Voucher Program) and HUD-90066 (Project-based Section 8)
- Victim has at least 14 business days to provide documentation after receiving written request.
- PHA or Section 8 landlord is not required to request specific type of documentation – may accept various forms, including victim's own statement.
- PHAs and Section 8 landlords should honor civil protection orders and other orders from DV and family court judges that address rights of access to or control of the property.
- 42 U.S.C. §§ 1437d(u) (public housing); 1437f(ee) (Section 8).

How does VAWA protect a victim's confidentiality?

- If victim provides documentation, PHA or Section 8 landlord must keep the information confidential, including the individual's status as a victim.
- PHA or Section 8 landlord may not enter the information into any shared database or provide it to any related entity.
- This is a change for the Section 8 voucher program.
- Additional disclosure clarifications apply.
- Where state or federal law is more favorable to victim than VAWA, more favorable law governs.
- See 42 U.S.C. §§ 1437d(u)(2)(A); 1437f(ee)(2)(A).

How does VAWA protect a victim's confidentiality? (cont'd)

- Local victim services providers who are grantees under federal HUD homelessness assistance programs must not enter personally-identifying information about victims of VAW into any shared database, such as the Homeless Management Information System (HMIS)
- Encoding or scrambling personally identifying information does not make the information subject to disclosure to HUD

How does VAWA protect a victim's confidentiality? (cont'd)

- Only a new issue for federal HUD homelessness assistance grantees who otherwise would be subject to HUD's HMIS reporting ("Continuum of Care" grantees).
 - Nothing new, for example, for HHS grantees receiving FVPSA funds, or for exclusively state or local funds.
 - Local programs should determine where they get funds.
- Also consider state and local privacy laws
- National Network to End Domestic Violence
 - <http://www.nnedv.org/pdf/VAWAConfidentiality.pdf>
- Info from HUD:
 - <http://www.hud.gov/homeless/index.cfm>
- 42 U.S.C. § 11383(a)(8) (federal statute).

What notice of victims' rights under VAWA must PHAs give?

- PHAs must give notice of updated resident rights in admissions, evictions, and terminations of subsidy, confidentiality, and, for voucher participants, new expedited portability rules to:
 - Public housing residents. 42 U.S.C. § 1437d(u)(2)(B).
 - Voucher and project-based Section 8 residents. 42 U.S.C. § 1437f(ee)(2)(B).
 - Section 8 owners and managers. 42 U.S.C. § 1437f(ee)(2)(B).
- Sample notice forms are available from HUD.
- Notices may be addressed in the PHA Plan...

What other new requirements does VAWA impose on PHAs?

- PHA Five Year Plan must include statement of goals that will enable PHA to serve needs of child and adult victims of all VAW, including sexual assault.
- PHA Plan (Annual Plan) must consider and describe:
 - Any services provided to victims of VAW
 - Any activities to prevent VAW or enhance victim safety
 - Any activities that help victims obtain or maintain housing
- 42 U.S.C. §§ 1437c-1 (a) (2), (d) (13).
- PHA Consolidated Plan (“Con Plan”) must now address housing needs of victims of all VAW, including sexual assault.
- 42 U.S.C. § 12705(b)(1).

What issues must PHAs address in their Annual Plan?

- Activities, services, or programs described in PHA Plan may be provided
 - Directly by PHA, or
 - In partnership with other service providers
 - Opportunity for collaboration
- Activities, services, or programs offered to prevent VAW may include, for example
 - Training for staff
 - Workshops for residents, for children of residents
 - Extra security
 - Other

What issues must PHAs address in their Annual Plan? (cont'd)

- Activities, services, or programs offered that help victims of VAW obtain housing, for example:
 - Admissions Policies: Preferences
 - Already encouraged for victims of domestic violence. 24 CFR 960.208(b)(4).
 - Consider reviewing other preferences to determine if they present barriers for victims of VAW, e.g. “working” preference.
 - Consider reviewing other admissions policies that present barriers.
 - For example, poor credit or work history, poor landlord references or rental history, history of disturbances at prior residences, criminal record related to VAW, etc.

What issues must PHAs address in their Annual Plan? (cont'd)

- Activities, services, or programs offered that help victims of VAW maintain housing, for example:
 - Rules regarding eviction and leases, including bifurcation, family break-up, division of assistance
 - Policies regarding termination of voucher subsidy
 - Rules regarding termination of lease by voucher participants and portability policies
 - Certification that individual is a victim of VAW
 - Will PHA allow victim to self-certify? Under what circumstances?
 - Will PHA allow victim more than 14 days to obtain certification; if so, under what circumstances?

Where can I find more information on PHA Plans?

- 42 U.S.C. § 1437c–1 (federal statute).
- 24 C.F.R. Part 903 (federal regulations).
- Federal guidance from HUD:
 - Public Housing Agency [PHA] Plan Desk Guide at <http://www.hud.gov/offices/pih/pha/index.cfm>
 - HUD 50075, PHA Plans Template at <http://www.hud.gov/offices/pih/pha/index.cfm>
- “Resident’s Guide to the New Public Housing Plans”
 - <http://www.communitychange.org/>
- National Housing Law Project: <http://www.nhlp.org>

What issues must PHAs address in their Consolidated Plan (“Con Plan”)?

- Con Plan must address housing needs of all victims of VAW, including sexual assault. 42 U.S.C. § 12705(b)(1).
- Con Plan includes:
 - Identification of needs
 - PHAs can obtain data on VAW and housing needs from state or local welfare, public health, homelessness, justice agencies; also 911, law enforcement, domestic violence courts.
 - Long term strategies
 - Setting priorities
 - Important issue because of inadequate funding.
 - 24 CFR § 91.215.

Where can I find more information on Con Plans?

- 42 U.S.C. § 12705 (federal statute).
- 24 C.F.R. Part 91, as amended by 71 Fed. Reg. 6950 (Feb. 9, 2006) (federal regulations).
- Federal guidance from HUD
 - <http://www.hud.gov/offices/cpd/about/conplan/>
- “HUD’s Consolidated Plan: An Action Plan for Involving Low Income Communities”
 - <http://www.communitychange.org/>

Does VAWA create any pilot programs to address domestic violence?

- **Grants to Combat Violence Against Women in Public and Assisted Housing**
 - Public and assisted housing agency grantees will attest to best practices and non-discrimination in admissions and occupancy policies.
 - To be administered by Office on Violence Against Women, USDOJ, consulting with HUD and HHS.
 - Authorized at \$10 million annually; none yet for FY 2007.
- **Collaborative Grants to Increase the Long-Term Stability of Victims**
 - Housing, homelessness, and victim service providers will collaborate to develop long-term, affordable housing for victims of VAW who are homeless or at risk for it.
 - To be administered by HHS, consulting with HUD.
 - Authorized at \$10 million annually; none yet for FY 2007.

What other housing issues are not explicitly addressed by VAWA?

- Further investigation of negative or potentially disqualifying information to determine if they are the consequence of domestic violence
- Emergency transfers within a jurisdiction
 - Expedited approval and inspection
 - No need for a rescission agreement (mirror cross-jurisdiction protections)
 - Interaction with Texas law
- Emergency transfers within public housing
- Emergency transfers from Section 8 project-based units

What other housing issues are not explicitly addressed by VAWA? (cont'd)

- Charging costs for damages to abuser, not victim
- Procedures for changing locks; for trespass
- Serving immigrant victims and families; providing referrals
- Preferences on waiting lists
- Division of assistance following an incident
 - “Family break-up” policies in Section 8 voucher program
- Abuser revisits or stalks victim
 - Lack of enforcement of court DV protection orders by police
 - Abuse and violence affects victim’s “consent”
 - Landlords and PHAs may want to intervene on behalf of victim
- Lack of training on VAW
 - Staff, managers, security, police can misunderstand facts
- Need for collaboration with domestic violence experts

What other federal housing laws can protect victims of domestic violence?

- Fair Housing Act (“FHA”)
 - Prohibits landlord or homeowner from discriminating against a tenant or a purchaser because of sex.
 - This federal law applies to most private landlords (as well as to public housing and Section 8); also to private owners selling real estate .
 - Only a few exceptions: (1) single-family houses where owner doesn’t own more than three such houses, and (2) owner-occupied dwellings containing four or fewer units.
- Treating an individual differently from other tenants because she is a victim of domestic violence may violate the FHA.

How does the Fair Housing Act protect victims of domestic violence?

- “Disparate impact” – has been used to successfully challenge neutral policy that has the effect of falling more harshly on women. *See Alvera v. Creekside Village Apartments* (HUD ALJ 10-99-0538-8) 2001 (no-violence policy used to evict victim); *Bouley v. Young-Sabourin*, 2005 WL 950632 (D. Vt. Mar. 10, 2005).
- Disparate impact can be shown using statistics.

How does the Fair Housing Act protect victims of domestic violence? (cont'd)

- “Disparate treatment” – a property owner actually intends to discriminate against someone based on their sex.
- Taking actions based on an individual because of sex-based stereotypes can state a claim. *See, e.g., Bouley* (noise, damage to the apartment used as justification to evict – successfully challenged in VT federal district court on sex stereotyping and disparate impact grounds).

Additional Resources

- Federal statutes (see above)
- Federal regulations (see above)
- HUD VAWA implementing regulations (TBA – 2007?)
- HUD Notice PIH 2006-23 (June 23, 2006)
 - Announces VAWA changes in Public and Section 8 housing
 - Available at <http://www.hudclips.org>
- HUD Public Housing Occupancy Guidebook, Ch. 19 (2003)
- National Law Center on Homelessness and Poverty,
http://www.nlchp.org/FA_DV/index.cfm
 - More info on new VAWA housing protections
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