



## Quarterly eNewsletter

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### Housing Rights Under VAWA 2005

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*Author's Note: This article does not include a discussion of the HMIS (Homeless Management Information System) changes implemented by VAWA 2005. For a more thorough discussion of these issues, please refer to the website of the National Network to End Domestic Violence at <http://www.nnedv.org/default.asp?Page=58>*

Enacted in early January 2006, the Violence Against Women Act of 2005 (VAWA) includes specific new protections from denial of housing, eviction or termination of federal housing assistance for survivors who face these housing barriers as a result of the violence committed against them.<sup>1</sup> Congress passed the VAWA housing provisions in response to the strong connection between domestic violence and homelessness, the overbroad implementation of “one-strike” drug-related criminal activity eviction and termination housing policies when applied to survivors, and housing discrimination against domestic violence survivors around the country. The legislation also included new local planning requirements for housing agencies on violence against women. In addition, VAWA authorized new federal pilot grant programs to promote housing agency best practices on violence against women and to develop local affordable housing collaborations targeted at survivors of violence.

Individuals covered by the VAWA housing protections include:

- 1) any survivor of domestic violence, dating violence, or stalking; or their immediate family member,
- 2) who is seeking to reside in, or who resides in,
- 3) federal Public Housing, any housing subsidized by a federal “Section 8” voucher (which eligible low-income individuals use to rent on the private market), or any building receiving a direct federal Section 8 subsidy (“project-based” Section 8).

Local public housing authorities and landlords or building owners who participate in the federal Section 8 program are all required to comply with the new law. This remains true even though HUD has not yet released proposed or final implementing regulations, according to a notice to the field that HUD issued in late June 2006.<sup>2</sup> In the meantime, national

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<sup>1</sup> Pub. L. No. 109-162, 119 Stat. 2960 (2006).

<sup>2</sup> See Implementation of the Violence Against Women and Justice Department Reauthorization Act 2005, PIH 2006-23 (June 23, 2006).

associations of housing authorities and subsidized housing providers have issued alerts to their constituents describing the steps that local agencies and landlords can take to ensure compliance, and national and local advocates on behalf of low-income tenants and survivors of violence against women are conducting extensive education and outreach about the new law.<sup>3</sup>

## **Protection from Denial, Eviction or Termination**

VAWA clarifies that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of housing admission or denial of housing assistance.<sup>4</sup> VAWA also establishes an exception to the federal "one-strike" drug and criminal activity eviction rule for tenants who are victims. The relevant federal housing statutes now explicitly provide that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy, or occupancy rights of a victim.<sup>5</sup> The statutes now also provide that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for terminating a victim's tenancy.<sup>6</sup> In addition, the statutes seek to ensure that public housing authorities (PHAs) and Section 8 landlords and owners honor civil protection orders and other court orders from domestic violence and family court judges that address rights of access to or control of the property.<sup>7</sup> The statutes also clarify that a PHA or landlord may "bifurcate a lease" in order to evict, remove, or terminate the voucher of the abuser while allowing the victim, who is the tenant or lawful occupant, to remain.<sup>8</sup>

The statutes also include language that addresses more specific situations. For example, VAWA clearly protects residents who are victims of criminal domestic violence, dating violence, or stalking from eviction on those grounds. However, a PHA or Section 8 landlord still retains authority to evict a victim for unrelated drug or criminal activity as long as in doing so, the PHA or Section 8 landlord does not hold the victim to a more demanding standard than it holds other residents.<sup>9</sup> There also is a narrow exception to the VAWA protection from eviction, where, if a PHA or Section 8 landlord can demonstrate "an actual and imminent threat to other tenants or those employed at or providing service to the property" unless the tenant's tenancy is terminated, then the PHA or Section 8 landlord may in fact proceed with an eviction or termination action against the victim.<sup>10</sup> The burden of showing such a threat rests with the PHA or landlord.

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<sup>3</sup> See, e.g., National Association of Housing and Redevelopment Officials (NAHRO), Overview of Housing Provisions Violence Against Women Act (VAWA) Reauthorization (2006); *Violence Against Women Act Calls Foul on "One-Strike" Policies and Local and National Agencies Are Eager to Augment Your VAWA Compliance*, Assisted Housing Alert (June 2006).

<sup>4</sup> See 42 U.S.C.A. §§ 1437d(c)(3), 1437f(c)(9)(A), 1437f(d)(1)(A), 1437f(o)(B) (West WESTLAW through P.L. 109-279 (excluding P.L. 109-248, 109-270, 109-271) approved 08-17-06).

<sup>5</sup> See *id.* §§ 1437d(l)(5), 1437f(c)(9)(B), 1437f(d)(1)(B), 1437f(o)(7)(C), 1437f(o)(20)(A).

<sup>6</sup> See *id.* §§ 1437d(l)(6), 1437f(c)(9)(C), 1437f(d)(1)(C), 1437f(o)(7)(D), 1437f(o)(20)(B).

<sup>7</sup> See *id.* §§ 1437d(l)(6)(C), 1437f(o)(7)(D)(iii), 1437f(o)(20)(D)(ii), 1437f(c)(9)(C)(iii), 1437f(d)(1)(B)(iii)(III).

<sup>8</sup> See *id.* §§ 1437d(l)(6)(B) (Public Housing), 1437f(o)(7)(D)(ii) (Housing Choice Voucher Program), 1437f(c)(9)(C)(ii), 1437f(d)(1)(B)(iii)(II) (Project-Based Section 8).

<sup>9</sup> See *id.* §§ 1437d(l)(6)(D), § 1437f(o)(7)(D)(iv), 1437f(o)(20)(D)(iii), 1437f(c)(9)(C)(iv), 1437f(d)(1)(B)(iii)(IV).

<sup>10</sup> See *id.* §§ 1437d(l)(6)(E), 1437f(o)(7)(D)(v), 1437f(o)(20)(D)(iv), 1437f(c)(9)(C)(v), 1437f(d)(1)(B)(iii)(V).

In the case of both the “actual and imminent threat” exception to the no-eviction rule and the new statutory language about lease bifurcation, HUD guidance and regulations will be especially critical in clarifying the operation of the new statute both for landlords and for their tenants. Over time, these interpretation issues also may present themselves through litigation. Despite these lingering issues, HUD has emphasized to local agencies that the law became fully effective as of the date of its signing (January 5, 2006) and has urged local agencies not to wait for federal guidance or regulations before reviewing the new statute and taking immediate steps to comply. Some agencies have begun to do so.

*Editor’s Note: After we received this article, we also heard from Robert A. Nasdor, Legal Director of the National Law Center on Homelessness and Poverty:*

*“We have done some research into the interpretation of the “actual and imminent threat” exception in the 2005 VAWA amendments. Courts will rely on HUD’s anticipated regulations, legislative history and purpose of the amendments and interpretations that courts have given to similar provisions in other statutes. Based on the interpretations of the direct threat exceptions in the Fair Housing Act, Rehabilitation Act and the ADA, it seems clear that a landlord will need to provide individualized proof of threat based on direct evidence. Generalizations about the threat posed to other tenants by domestic violence will not be sufficient. There must be a fact-intensive inquiry weighing the evidence of potential harm. Further, the Supreme Court in City of Los Angeles v. Lyons, 461 U.S. 95, 192 (1983), held that the phrase “actual or imminent” is akin to “real and immediate.” For those that are interested, we have a more detailed memorandum on the topic.”*

You can contact the NLCHP at <http://www.nlchp.org/About/Contact/>

## **Documentation Requirements**

Documentation requirements for a victim to claim protection under the statute are outlined clearly in the new law. When an individual seeks protection from denial or eviction in response to an incident of violence, the applicable PHA or Section 8 landlord may ask the individual for documentation that he or she is or has been a victim of domestic violence, dating violence, or stalking, subject to specific requirements related to confidentiality and the types of documentation that may be used. The new law follows the federal definitions of domestic violence, dating violence, and stalking as the terms have been defined elsewhere in VAWA.<sup>11</sup> State law definitions vary, and the broader of the two definitions may prevail. The amendments do not explicitly extend to victims of sexual assault, which is defined in federal law at 42 U.S.C. § 13925(a)(23) (2006).

HUD addressed the documentation requirements in its June 2006 notice, and in November 2006 released an approved certification form that complies with the documentation requirements of the statute. Under the statute, a PHA or owner is not required to demand that an individual complete this HUD-approved form, nor produce any specific documentation, to be protected. At its discretion, a PHA or landlord may provide protection

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<sup>11</sup> See *id.* §§ 1437d(u)(3)(A), 1437f(f)(8), 13925(a)(6) (domestic violence), 1437d(u)(3)(B), 1437f(f)(9), 13925(a)(8) (dating violence), 1437d(u)(3)(C), 1437f(f)(10) (stalking).

under the law based solely on an individual's statement or other corroborating evidence.<sup>12</sup> The statute, the June notice, and the HUD form itself all reiterate that a broad range of documentation is acceptable for an individual to claim protection under the law.<sup>13</sup>

As outlined in the statute, a tenant who is a victim may fully satisfy a PHA's or Section 8 landlord's request for documentation by producing a federal, state, tribal, territorial, or local police or court record that documents the incident or incidents of violence. Alternatively, a victim may provide a statement in which "an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse" attests under penalty of perjury that the professional believes that "the incident or incidents in question are bona fide incidents of abuse."<sup>14</sup> The victim also must sign or attest to the documentation. In addition, the documentation must name the abuser. Finally, the statute also allows PHAs and Section 8 landlords to request documentation through the certification form approved by HUD.<sup>15</sup>

After a PHA or landlord has requested the documentation in writing, an individual has 14 business days to respond to the request. If an individual does not provide the documentation within 14 business days, the PHA or landlord may bring eviction or termination proceedings against the tenant. However, the PHA or landlord also may extend this timeframe at its discretion.<sup>16</sup>

When an individual provides certification, the PHA or Section 8 landlord must keep the information confidential, including the individual's status as a victim of domestic violence, dating violence, or stalking. A PHA or Section 8 landlord may not enter the information into any shared database, nor provide it to any related entity. However, a PHA or Section 8 landlord may disclose the information if: the victim requests or consents to the disclosure in writing; the information is required for use in eviction proceedings related to whether the incident or incidents in questions qualify as a serious or repeated violation of the lease or criminal activity directly relating to domestic violence, dating violence, or stalking; or disclosure is otherwise required by law.<sup>17</sup>

## **Voucher Portability**

In a related issue, for low-income tenants who receive a subsidy through the federal "Section 8" housing voucher program, the portability of these vouchers across jurisdictional lines around the country has been a critical, long-standing feature of the federal program. To clarify the applicability of housing voucher portability for survivors of domestic violence, however, VAWA amended the program to ensure that survivors can port their vouchers even within the first year of the lease (which is otherwise not allowed). If a survivor chooses to move to another jurisdiction with the housing voucher to escape abuse, he or she can now do so at any time, as long as the family otherwise has complied with all other obligations of

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<sup>12</sup> See *id.* §§ 1437d(u)(1)(D) and 1437f(ee)(D).

<sup>13</sup> See *id.*; 42 U.S.C.A. §§ 1437d(u)(1)(A), (B), (C), (D) and 1437f(ee)(1)(A), (B), (C), (D) (West, WESTLAW through P.L. 109-279 (excluding P.L. 109-248, 109-270, 109-271) approved 08-17-06 ).

<sup>14</sup> *Id.* §§ 1437d(u)(1)(A), 1437d(u)(1)(C), 1437f(ee)(1)(A), 1437f(ee)(1)(C).

<sup>15</sup> See *id.*

<sup>16</sup> See *id.* §§ 1437d(u)(1)(A), 1437d(u)(1)(B), 1437f(ee)(1)(A), 1437f(ee)(1)(B).

<sup>17</sup> See *id.* §§ 1437d(u)(2)(A) and 1437f(ee)(2)(A).

the program and can show that they are moving “to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remained” in the unit.<sup>18</sup> In complying with this part of the law, a PHA may ask for documentation from the family regarding the family’s reasons for moving to a new jurisdiction.<sup>19</sup>

## Local Planning

VAWA requires that local PHAs describe how they are addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking when they are developing their annual and five-year PHA plans, a process that every agency undertakes as a condition of receiving federal funds.<sup>20</sup> VAWA also adds the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the “consolidated planning” process that local communities undertake every five years to receive any HUD grant assistance for housing or community development.<sup>21</sup> These local planning processes are proving to be an important focus for local advocacy to ensure agency compliance with the new denial and eviction protections, as well as for additional common domestic violence and housing issues such as: emergency transfers for victims (within the same jurisdiction), local admissions preferences for victims, family break-up policies and division of housing assistance following an incident of violence, the agency’s response when the abuser revisits or stalks the victim, training for staff on violence against women, collaboration with local experts on domestic violence, and notice to residents of the new law and policies. For example, advocates have developed sample notices to residents and to Section 8 owners and managers about the new protections from denial, eviction, and termination.

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<sup>18</sup> See *id.* §§ 1437f(r)(5) and 1437f (ee).

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* §§ 1437c-1(d)(13) and 1437c-1(a)(2). See also National Housing Law Project, <http://www.nhlp.org>

<sup>21</sup> See 42 U.S.C. § 12705(b)(1) (2006).