



# Maintaining Safe and Stable Housing for Domestic Violence Survivors

A Manual for Attorneys and Advocates



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San Francisco, CA 94103  
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- ACLU of San Diego and Imperial Counties, [www.aclusandiego.org](http://www.aclusandiego.org)
- ACLU Women's Rights Project, [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)
- Advocates for Basic Legal Equality, [www.lawolaw.org](http://www.lawolaw.org)
- Alameda County Family Justice Center, [www.acfjc.org](http://www.acfjc.org)
- Bay Area Legal Aid, [www.baylegal.org](http://www.baylegal.org)
- Bay Area Legal Services, [www.bals.org](http://www.bals.org)
- California Partnership to End Domestic Violence, [www.cpedv.org](http://www.cpedv.org)
- Central Jersey Legal Services, Inc., [www.lsnj.org](http://www.lsnj.org)
- Community Legal Services, Inc., [www.clsaz.org](http://www.clsaz.org)
- Greater Boston Legal Services, [www.gbbs.org](http://www.gbbs.org)
- Legal Aid Foundation of Los Angeles, [www.lafla.org](http://www.lafla.org)
- Legal Aid Society Harlem Community Law Offices, [www.legal-aid.org](http://www.legal-aid.org)
- Legal Assistance Foundation of Metropolitan Chicago, [www.lafchicago.org](http://www.lafchicago.org)
- Legal Momentum, [www.legalmomentum.org](http://www.legalmomentum.org)
- Legal Services of Greater Miami, [www.lsgmi.org](http://www.lsgmi.org)
- Legal Services of Northern California, [www.lsncl.org](http://www.lsncl.org)
- Mid-Minnesota Legal Assistance, [www.midmnlegal.org](http://www.midmnlegal.org)
- National Law Center on Homelessness and Poverty, [www.nlchp.org](http://www.nlchp.org)
- Northwest Justice Project, [www.nwjustice.org](http://www.nwjustice.org)
- Queens Legal Services, Inc., [www.queenslegalservices.org](http://www.queenslegalservices.org)
- Sargent Shriver National Center on Poverty Law, [www.povertylaw.org](http://www.povertylaw.org)
- Southwest Women's Law Center, [www.swwomenslaw.org](http://www.swwomenslaw.org)
- Utah Legal Services, [www.utahlegalservices.org](http://www.utahlegalservices.org)
- Victim Rights Law Center, [www.victimrights.org](http://www.victimrights.org)
- YWCA of San Diego County, [www.ywcasandiego.org](http://www.ywcasandiego.org)

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# Chapter 1: Introduction

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This Manual is designed for advocates and attorneys assisting domestic violence survivors who are at risk of losing their housing or who need to improve the safety of their housing. Survivors often return to abusive partners because they cannot maintain safe and secure housing on their own.<sup>1</sup> As a result, housing advocacy is a critical part of holistic services for domestic violence survivors. The purpose of this Manual is to provide background information and sample documents that can be used to advocate on behalf of survivors facing evictions, rental subsidy terminations, and other forms of housing instability. This Manual does not address the housing application process or strategies for assisting survivors who have been denied access to housing. For information on this topic, see National Housing Law Project’s manual, *Assisting Survivors of Domestic Violence in Applying for Housing*.<sup>2</sup>

This Manual is designed for use by attorneys and non-attorneys. Our goal is to make housing issues accessible and easily understandable to advocates, regardless of their prior knowledge of housing law. However, the information provided in this Manual should not be construed as legal advice. Advocates are encouraged to seek assistance from housing law attorneys to determine how these laws would apply to a particular client’s circumstances.

This Manual contains a number of appendices, including sample letters, court documents, and policies. For ease of reference, each appendix has been assigned a number that can be used to locate the relevant document.

Readers will note that in some instances, we have not redacted the names of domestic violence survivors who were involved in actions to preserve their housing. In cases where domestic violence survivors discussed their cases publicly, either by contacting the media or distributing press releases, we have retained their names. In instances where survivors did not share their stories publicly, we have redacted their names.

### 1.1 Domestic Violence and Housing Instability

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 are being discriminated against, denied access to, and even evicted from housing because of their status as survivors of domestic violence.<sup>3</sup> Legal services providers have reported hundreds of cases where tenants were evicted because of acts of domestic violence committed

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<sup>1</sup> See 42 U.S.C. § 14043e.

<sup>2</sup> Available at <http://www.nhlp.org/files/Domestic%20Violence%20&%20Housing%20Manual%201.pdf>.

<sup>3</sup> See § 14043e.

against them.<sup>4</sup> Focusing on 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.<sup>5</sup>

Due to economic limitations, survivors may be 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.<sup>6</sup>

Housing advocacy on behalf of survivors is critical given the link between domestic violence and homelessness. In a recent study, 39% of U.S. cities surveyed reported that domestic violence was "a primary cause of homelessness" in their cities.<sup>7</sup> In a number of studies, homeless women have reported that domestic violence was a cause of their homelessness.<sup>8</sup>

Fortunately, a growing number of legislators and housing providers are recognizing the connections between domestic violence, evictions, and homelessness. In response, they have enacted policies designed to protect survivors from being evicted or otherwise penalized for acts of violence committed against them. Even in instances where there are no specific housing laws or policies that protect domestic violence survivors, advocates are using a variety of creative strategies to help their clients maintain housing. This Manual covers both the particular housing protections available to survivors, and some of the other arguments and resources that may be used to preserve survivors' housing rights.

## 1.2 The Material Covered in This Manual

This Manual focuses on the rights of domestic violence survivors who are facing evictions, who need to improve the safety of their housing, or who need to relocate. It does not cover the housing application process, as this topic is addressed in a separate publication.<sup>9</sup> Based on our experiences as a technical assistance provider for Office on Violence Against Women (OVW) grantees throughout the country, the Manual is organized around the areas in which we most frequently receive questions. These areas have been divided into chapters as described below.

**Chapter 2: Safety Planning in Rental Housing.** Chapter 2 discusses the actions that survivors can take to improve the safety of their homes and to ensure that they remain safe when they relocate. Survivors living in public or Section 8 housing need to consider additional factors when planning for their safety, which are also discussed in Chapter 2.

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<sup>4</sup> 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* 3 (Feb. 2007), [http://www.nlchp.org/content/pubs/NNEDV-NLCHP\\_Joint\\_Stories%20\\_February\\_20072.pdf](http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20_February_20072.pdf).

<sup>5</sup> Bureau of Justice Statistics, *Intimate Partner Violence in the United States* (Dec. 19, 2007).

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

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

<sup>8</sup> 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).

<sup>9</sup> See NATIONAL HOUSING LAW PROJECT, ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN APPLYING FOR HOUSING (2010), <http://www.nhlp.org/files/Domestic%20Violence%20&%20Housing%20Manual%201.pdf>.

**Chapter 3: Common Landlord-Tenant Issues that Domestic Violence Survivors Encounter.** Chapter 3 discusses some of the most common landlord-tenant issues that survivors encounter, such as survivors’ rights regarding safe housing conditions, eviction of the abuser, lock changes, and lease terminations.

**Chapter 4: Domestic Violence Survivors’ Rights Under Fair Housing Laws.** Chapter 4 discusses how the federal Fair Housing Act (FHA) may be used to protect survivors who are facing evictions related to the acts of violence committed against them. Chapter 4 also discusses the laws that protect survivors against sexual harassment by landlords, property managers, and their employees.

**Chapter 5: Housing Rights of Domestic Violence Survivors With Disabilities.** Survivors with disabilities often need a change in a rule, policy, practice, or service in order to have an equal opportunity to use and enjoy a dwelling. Chapter 5 discusses how advocates can use the reasonable accommodation process to assist survivors with disabilities in maintaining housing.

**Chapter 6: The Violence Against Women Act (VAWA) and Rights of Survivors in Federally Subsidized Housing.** VAWA protects the rights of tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating violence, or stalking. Chapter 6 discusses the scope of VAWA’s housing protections and provides examples of how these rights have been used in practice. Chapter 6 also discusses survivors’ rights to relocate with continued rental assistance and to remove the abuser from a lease or Section 8 voucher.

**Chapter 7: Evictions and Subsidy Terminations in Federally Subsidized Housing.** Chapter 7 discusses some of the most common reasons that survivors face evictions and terminations in subsidized housing, and it sets forth arguments that advocates can use to prevent survivors from losing their housing. Chapter 7 then discusses the steps that advocates should take to prepare a survivor for challenging an eviction or subsidy termination in federally assisted housing.

**Chapter 8: Working with Housing Authorities to Improve Domestic Violence Survivors’ Access to Housing.** To increase the likelihood that domestic violence survivors will be able to obtain affordable housing, advocates should participate in local planning processes. Chapter 8 addresses how advocates can work with public housing agencies (PHAs) to develop policies that serve the needs of survivors living in Section 8 and public housing.

### 1.3 Terminology

Advocates may have questions regarding some of the terminology we use in this Manual. In anticipation of these questions, we offer the following explanations.

**Advocates:** This Manual is intended for use by both attorneys and non-attorneys. As a result, we use “advocates” to encompass actions that can be taken by both attorneys and non-attorneys. When referring to actions that involve practice of the law, we use the term “attorneys.”

**Housing providers:** Throughout this manual, we discuss the laws governing public housing agencies (PHAs) and private landlords. For ease of reference, we collectively refer to PHAs and private landlords as “housing providers.”

**She/He:** We fully recognize that males, females, and transgendered persons are survivors of domestic violence, and that both females and males can be perpetrators. We also recognize that statistical data continue to demonstrate that the vast majority of domestic violence survivors are women.<sup>10</sup> Accordingly, we have chosen to use the female pronoun when describing the survivor and the male pronoun when

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<sup>10</sup> See, e.g., U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

describing the perpetrator. This is not intended to discount or minimize the harms experienced by any survivor of domestic violence, regardless of gender.

**Survivor/Victim:** As a general practice, we use the term “survivor” throughout this Manual, as many individuals who have experienced incidents of domestic violence prefer this term. We use the term “victim” where we cite to or paraphrase statutes or where we excerpt material from other sources.

We hope that advocates will find this Manual helpful in assisting survivors who risk losing their housing. Because the housing laws discussed in this Manual can be quite technical, advocates should review the language of the statute or regulations at issue, or consult with a housing law practitioner. Additionally, domestic violence and housing is a rapidly changing area of the law. While we have made every effort to ensure that the information in this Manual is accurate, it is critical to check for changes in statutes, regulations, and case law. Finally, cases involving domestic violence and housing are often highly fact-specific, and the strategies or legal theories that should be applied in a particular case will depend heavily upon each client’s individual circumstances. This Manual seeks to provide advocates with a starting point for developing action plans for protecting clients’ housing rights. However, advocates should examine whether the client may have additional legal claims that are not discussed in this Manual.



# Chapter 2: Safety Planning in Rental Housing

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### 2.1 Introduction

The danger of violence, including the risk of death, increases when domestic violence survivors leave their abusers.<sup>11</sup> Accordingly, survivors who have experienced domestic violence while residing in rental housing and who are attempting to end the abusive relationship should take steps to protect their safety. In planning for their safety, survivors usually must choose between two options:

- Remain in the existing housing and take additional precautions to maintain their safety; or
- Relocate to a confidential location and take precautions to prevent the batterer from discovering their new home.

This Chapter discusses the actions that survivors can take to improve the security of their homes and to ensure that they remain safe when they relocate. Survivors living in public or Section 8 housing need to consider additional factors when planning for their safety, which are discussed at the end of this Chapter. This Chapter is not intended to provide an in-depth review of safety planning strategies and is limited to issues relating to rental housing. Comprehensive safety planning resources are available online.<sup>12</sup>

### 2.2 Safety Planning for Survivors Remaining in Their Current Homes

Survivors who have experienced domestic violence in or near their homes may decide to stay in their homes because they lack financial resources to move,<sup>13</sup> they want to remain near family, schools, or

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<sup>11</sup> Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 66 (1991).

<sup>12</sup> See, e.g., AMERICAN BAR ASSOCIATION, *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* (2d ed. 2004); American Bar Association, Domestic Violence Safety Plan, <http://www.abanet.org/tips/dvsafety.html>; Massachusetts Coalition Against Sexual Assault and Domestic Violence, Domestic Violence Safety Planning, [http://www.janedoe.org/safety/safety\\_dv\\_planning.htm](http://www.janedoe.org/safety/safety_dv_planning.htm); PEACE AT HOME, DOMESTIC VIOLENCE: THE FACTS, <http://www.betterman.org/dv-the-facts.pdf>.

<sup>13</sup> Some survivors may be able to obtain relocation funds through their state's crime victim compensation program. The National Association of Crime Victim Compensation Boards has created a state-by-state directory that identifies the types of costs that are covered by crime victim compensation funds and the amount of assistance available. See National Association of Crime Victim Compensation Boards, Program Directory, <http://www.nacvcb.org/index.asp>.

jobs, or they feel they can take additional steps to preserve their safety. Advocates should consider discussing the preventive measures below with clients who want to remain in their existing housing.

- Work with your landlord to improve the security of your home.<sup>14</sup> Make sure that all lights, smoke detectors, and fire extinguishers are in working order. Install a porch light if you do not have one already. Trim shrubbery, especially away from doors and windows. Change the locks on your doors.<sup>15</sup> Add deadbolts, window locks or bars, and a home security system. Install a peephole if you do not have one already. In some states, crime victim compensation programs can provide funds for security improvements.<sup>16</sup>
- Work with an advocate to obtain a restraining order requiring the abuser to move out immediately and/or to stay away from the home.
- If the abuser has been ordered out of the home, ask the police to come to your home to protect you while the abuser picks up personal belongings.
- Provide trustworthy neighbors, your landlord, property managers, and security officers with copies of restraining orders and a picture of the abuser and the abuser's vehicle so they can call the police if they see the abuser near your home.
- Keep a phone in a room that locks from the inside, or keep a cell phone in an accessible hiding place. Program all phones with emergency contact numbers.
- Pack a bag with all essential items, including money, passport, driver's license, social security card, immigration documents, birth certificates, bank account records, checkbook, credit cards, school and medical records, copy of restraining order and other court records, favorite toys for children, keys, medications, insurance policies, and any other items needed in the event that you must flee immediately. Store the items in a safe location that is not accessible to the abuser, such as at a friend's house or at work.
- Together with your children, plan and practice escape routes.
- Arrange a signal (such as turning the porch light on during the day) or a code word or phrase with trustworthy neighbors to let them know you need help.

### **2.3 Safety Planning for Survivors Relocating to New Homes**

In some instances, a survivor may need to relocate to a new home to protect her safety. The survivor's top priorities during relocation are preserving her safety while she is moving out and ensuring that the abuser does not discover her new location. In addition to the measures discussed above, consider reviewing the following preventive steps with clients who are moving to a confidential location.

- Before, during, and after the move, develop secure methods of communicating with the landlord, such as establishing a new email account on a safe computer (such as at the library or a friend's place) and using a cell phone to which the abuser does not have access.
- Before moving out, develop a plan for leaving the premises quickly. If you are worried about your safety when moving out, you may request a police escort.

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<sup>14</sup> For information about the landlord's duty to provide safe housing, see Chapter 3.

<sup>15</sup> For information regarding lock changes, see Chapter 3.

<sup>16</sup> See National Association of Crime Victim Compensation Boards, Program Directory, <http://www.nacvcb.org/index.asp?sid=5>.

- If you cannot take everything you need when you leave, ask the police or sheriff’s deputies to escort you to your home to pick up items. In many states, they will only allow you to take possessions that clearly belong to you or your children, such as clothing or toys.
- Many states have address confidentiality programs.<sup>17</sup> These programs provide survivors of domestic violence with an official, substitute address to use in place of their real address. Mail is forwarded from the substitute address to the survivor’s real address. In many states, the substitute address can be used to receive first-class mail, open a bank account, fill out government documents, register to vote, or get a driver’s license.
- Where possible, do not give out your new address and phone number. Use a post office box or the address of a friend or family member, or enroll in your state’s address confidentiality program.
- If your landlord will be mailing your security deposit to you, do not give your landlord your new address. Consider using a post office box or a domestic violence agency address, having a friend or family member pick up the deposit, or having the deposit wired to a bank account that is not accessible to the abuser.

## 2.4 Safety Planning for Survivors in Public Housing

If the survivor lives in public housing, she should consider additional factors in developing a safety plan. As in any case involving domestic violence in rental housing, the survivor will need to consider whether she wants to remain in the unit and take steps to protect her safety, or whether she wants to move to a confidential location. Once the survivor has made this decision, she should contact the public housing agency (PHA) as soon as possible to explain the actions that are needed to protect her safety. Options include having the abuser removed from the lease, working with the development’s security officers to protect the survivor’s safety, requesting a transfer to another unit or development,<sup>18</sup> and requesting a Section 8 voucher. Keep in mind that in areas with few public housing complexes, requesting a Section 8 voucher may be a safer option than transferring to another public housing unit. In addition to the measures discussed throughout this Chapter, consider reviewing the following preventive steps with survivors who are public housing tenants. Advocates should note that many of the steps discussed below will also be applicable to survivors living in project-based Section 8 developments.<sup>19</sup>

- Apply for a restraining order. If the abuser is on the lease or a member of the household, request exclusive possession of the public housing unit in your restraining order application.
- Contact the PHA to explain the situation. Provide PHA employees with copies of restraining orders, other court documents, and police reports. Explain what actions can make you and your family safer. Remind PHA employees that under the Violence Against Women Act (VAWA), they have a duty to keep information regarding domestic violence confidential.<sup>20</sup>
- If you live with the abuser, the PHA can use VAWA to remove the abuser from the lease while allowing you to continue living in the unit.<sup>21</sup> The PHA must follow the standard eviction procedure in removing the abuser, which may take several weeks. Consider temporarily moving

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<sup>17</sup> To determine whether your state has an address confidentiality program, see Jacqueline Symick & Valenda Applegarth, *State Address Confidentiality Programs* (Jan. 2009), <http://www.ncvc.org/src/AGP.Net/Components/DocumentViewer/Download.aspx?DocumentID=46189>.

<sup>18</sup> A sample letter requesting relocation to another subsidized unit is at Appendix 3.

<sup>19</sup> See Appendix 1 for more information regarding project-based Section 8 developments.

<sup>20</sup> 42 U.S.C. § 1437d(u)(2)(A); 24 C.F.R. § 5.2007(b)(4).

<sup>21</sup> 42 U.S.C. § 1437d(l)(6)(B).

to a safe, confidential location while the PHA completes this process. Once the process is complete, ask the PHA to change the locks.

- Provide security officers or property managers at the development with copies of restraining orders and photos of the abuser and the abuser's vehicle. Some developments have a "no-trespass" list, which permits the housing authority to prohibit non-residents from being on housing authority property if they have committed certain violent or criminal acts. Discuss with an advocate whether you should request that the abuser be added to this list.
- If the abuser is evicted from the unit, voluntarily leaves, is ordered to move out as part of a restraining order, or is incarcerated, report this to the PHA and request a recertification of your household income. Reduced income as a result of the abuser's absence may reduce your rent.
- If it is no longer safe for you to live in the unit, contact the PHA to request a transfer to another public housing unit or a Section 8 voucher. Ask for your request to be expedited because you are a victim of domestic violence. Identify the housing developments where the abuser would be least likely to find you and inform the PHA of those developments. Because it may take a significant period of time for the PHA to act, consider temporary housing options while the PHA processes your request for a transfer or Section 8 voucher.
- Ask the PHA to keep all details regarding your transfer request confidential, particularly the location of the unit to which you are moving. Once you have been granted the transfer, ask the PHA not to include your name on mailboxes or public directories.
- Notify the PHA if you must move out of the PHA's jurisdiction (such as to another city, county, or state). Ask the PHA to assist you in contacting PHAs in the new region to which you are moving.

## 2.5 Safety Planning for Survivors with Section 8 Vouchers

Much like survivors in public housing, survivors with Section 8 vouchers will need to communicate with PHA staff regarding their safety needs. Many of the actions that can be taken to protect voucher tenants' safety are similar to those that can be used by public housing tenants. For example, a voucher tenant can request that the abuser be removed from the lease, or she can move to a confidential unit while continuing to receive rental assistance. In addition to the measures discussed throughout this Chapter, consider reviewing the following preventive steps with survivors who are Section 8 voucher tenants.

- Apply for a restraining order. If the abuser is a member of the household, ask the court to assign the Section 8 voucher exclusively to you and to order the abuser to move out.
- Contact the PHA to explain the situation. Provide PHA employees with copies of restraining orders, other court documents, and police reports. Explain what actions the PHA can take to make you and your family safer. Remind PHA employees that under VAWA, they have a duty to keep information regarding domestic violence confidential.<sup>22</sup>
- If the abuser is a member of the household, ask the PHA to remove the abuser from the Section 8 voucher. The PHA can do this without terminating your Section 8 assistance.<sup>23</sup>
- If you live with the abuser, the Section 8 landlord can use VAWA to remove the abuser from the lease while allowing you to continue living in the unit.<sup>24</sup> The landlord must follow the standard

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<sup>22</sup> § 1437f(ee)(2)(A); 24 C.F.R. § 5.2007(b)(4).

<sup>23</sup> 24 C.F.R. § 982.552(c)(2)(ii).

<sup>24</sup> 42 U.S.C. § 1437f(o)(20)(D)(i).

eviction procedure in removing the abuser, which may take several weeks. Consider temporarily moving to a safe, confidential location while the landlord completes this process. Once the process is complete, ask the landlord to change the locks.

- If the abuser is evicted from the unit, voluntarily leaves, is ordered to move out as part of a restraining order, or is incarcerated, report this to the PHA and request a recertification of your household income. Reduced income as a result of the abuser's absence may reduce your rent.
- If it is no longer safe for you to live in the unit, contact the PHA to discuss using your Section 8 voucher at another unit. You can use your Section 8 voucher in any jurisdiction that has a PHA.<sup>25</sup> The PHA must help you in contacting the housing authority in the city where you want to move. Ask both PHAs to keep all details regarding your request to move confidential, particularly the location of the unit to which you are moving.
- If you seek to move with your Section 8 voucher, ask the PHA not to disclose your prior address or prior landlord's contact information to the prospective landlord at the new location.

## 2.6 Conclusion

Safety planning is an essential component in helping survivors maintain their existing housing and in assisting survivors to relocate to a confidential location. Housing advocates should consult with victim service providers to help their clients develop a comprehensive safety plan. As discussed, the safety plan should be tailored to the client's specific housing needs, should consider what additional security measures are needed, and should identify steps to implement those measures. Advocates assisting clients living in federally subsidized housing should communicate the survivor's safety needs to the PHA and/or the subsidized landlord, especially when the survivor lives with the abuser or needs to relocate.

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<sup>25</sup> § 1437f(r); 24 C.F.R. § 982.353(b); HUD, HOUSING CHOICE VOUCHER GUIDEBOOK (7420.10G), Ch. 13, <http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/index.cfm>.

# Chapter 3: Common Landlord-Tenant Issues That Domestic Violence Survivors Encounter

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### 3.1 Introduction

Domestic violence survivors in rental housing typically need to take swift steps to protect their safety. These steps include improving security measures at the property, protecting against other tenants at the property who are abusive or violent, or moving elsewhere to escape violence, threats, or stalking. In taking these actions, survivors often need their landlords’ assistance. This Chapter discusses some of the most common landlord-tenant issues that survivors encounter, including (1) the landlord’s duty to provide safe housing; (2) the domestic violence survivor’s right to have the locks changed; (3) the landlord’s duty to protect survivors from dangerous tenants; (4) the survivor’s right to have the batterer evicted, if the survivor and batterer live together; and (5) the survivor’s right to break the lease without penalty to escape domestic violence, stalking, or sexual assault. In general, the rights discussed in this Chapter will apply to survivors living in either subsidized or private rental housing. Domestic violence survivors living in federally subsidized housing may have additional protections under the Violence Against Women Act, which is discussed in Chapter 6. Further, advocates should consider whether local ordinances regarding rent control or code enforcement may provide additional rights for survivors.

### 3.2 The Landlord’s Duty to Provide Safe Housing

In some jurisdictions, courts have found that landlords must take reasonable precautions to protect tenants from foreseeable criminal assaults.<sup>26</sup> The scope of the landlord’s duty varies considerably from jurisdiction to jurisdiction, so advocates must examine their state’s legal authority to determine the

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<sup>26</sup> For a comprehensive review of this topic, see Tracy A. Bateman & Susan Thomas, Annotation, *Landlord’s Liability for Failure to Protect Tenant from Criminal Acts of Third Person*, 43 A.L.R. 5TH 207 (1996).

scope and extent of a landlord's duty to protect a tenant against criminal acts. In several jurisdictions, a landlord could be found liable for an assault against a domestic or sexual violence survivor if the landlord knew prior assaults had occurred on the premises, reasonable safety improvements could have prevented the assault, and the landlord failed to make those improvements. In such jurisdictions, advocates must determine whether the landlord knew or should have known of criminal activity on the premises, is able to reduce the risk of future criminal activity, and has not acted to reduce the risk. Advocates should consider reminding landlords of their potential liability when asking landlords to improve safety conditions at a survivor's dwelling.

A major factor in determining a landlord's duty to provide safe conditions is the foreseeability of violent criminal activity.<sup>27</sup> Foreseeability generally revolves around whether the landlord knew or should have known that prior similar criminal incidents had occurred on the premises.<sup>28</sup> Courts rarely impose liability where the landlord was unaware of past criminal activity or where past acts were dissimilar, although the past acts need not be identical.<sup>29</sup>

Additionally, courts are more likely to find landlord liability where the burden to improve safety would be minimal.<sup>30</sup> For example, a court may find liability where inexpensive measures such as installing additional or higher quality locks, replacing burned-out light bulbs, or trimming shrubbery could have reduced the risk of criminal activity.<sup>31</sup> On the other hand, courts are less likely to find liability where safety requires more expensive measures, such as hiring full-time security officers or installing fencing.

For example, in *Kwaitkowski v. Superior Trading Co.*<sup>32</sup> the court found a landlord liable when a tenant was raped and robbed in a poorly lit lobby. There had been prior assaults in the building's common areas, and the landlord had received numerous complaints that a malfunctioning lock on the lobby door allowed strangers into the building.<sup>33</sup> The court found that the landlord had a duty to repair the lock because the landlord knew about the assaults and trespassing problems, and the cost of repairing the lock was minimal.<sup>34</sup>

Another example is *Venetal v. City of New York*, where a tenant was raped at gunpoint on the rooftop of her building.<sup>35</sup> The court found that landlords have a common-law duty to take minimal precautions to protect tenants from foreseeable criminal acts by third parties.<sup>36</sup> This duty arises where the landlord has notice of prior criminal activity that puts tenants in danger of physical harm. If a landlord takes reasonable precautions, such as providing functioning locks or other security devices, the landlord

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<sup>27</sup> See, e.g., *Brock v. Watts Realty Co.*, 582 So.2d 438 (Ala. 1991); *Kwaitkowski v. Superior Trading Co.*, 176 Cal. Rptr. 494, 496-97 (Ct. App. 1981); *Tenney v. Atlantic Assocs.*, 594 N.W.2d 11 (Iowa 1999).

<sup>28</sup> See, e.g., *Kwaitkowski*, 176 Cal. Rptr. at 496-97.

<sup>29</sup> See, e.g., *Castaneda v. Olsher*, 162 P.3d 610 (Cal. 2007); *Barber v. Chang*, 60 Cal. Rptr. 3d 760 (Ct. App. 2007); *Verret v. Tonti Mgmt. Corp.*, 662 So. 2d 480 (La. Ct. App. 1995); *Beato v. Cosmopolitan Assocs.*, 893 N.Y.S.2d 578 (App. Div. 2010); *Firpi v. N.Y. City Hous. Auth.*, 573 N.Y.S.2d 704 (App. Div. 1991); *Rodgers v. 673 First Ave. Assocs.*, 550 N.Y.S.2d 633 (App. Div. 1990).

<sup>30</sup> See, e.g., *Rodriguez-Quinones v. Jimenez & Ruiz, S.E.*, 402 F.3d 251 (1st Cir. 2005); *Ambriz v. Kelegian*, 53 Cal. Rptr. 3d 700, 711-12 (Ct. App. 2007); *Jacqueline S. v. City of New York*, 614 N.E.2d 723 (N.Y. 1993); *Venetal v. City of New York*, 803 N.Y.S.2d 609 (App. Div. 2005).

<sup>31</sup> See, e.g., *Duncavage v. Allen*, 497 N.E.2d 433 (Ill. App. Ct. 1986); *Potter v. First Fed. Sav. & Loan Ass'n of Scotlandville*, 615 So. 2d 318 (La. 1993); *Johnston v. Harris*, 198 N.W.2d 409 (Mich. 1972); *Trentacost v. Brussel*, 412 A.2d 436 (N.J. 1980).

<sup>32</sup> 176 Cal. Rptr. at 495.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 500.

<sup>35</sup> 803 N.Y.S.2d at 611.

<sup>36</sup> *Id.*

fulfills his duty.<sup>37</sup> Whether the assailant was able to enter the building due to a defective lock was a material issue of fact, so the court denied the landlord's motion for summary judgment.<sup>38</sup>

Similarly, in *Paterson v. Deeb*,<sup>39</sup> a Florida appellate court found that a tenant had stated a cause of action for negligence when she suffered a sexual assault at her apartment. She also alleged her landlord had violated Florida's statutory duty to provide locks for the leased area and common areas of a rental property and to maintain the common areas in a safe condition.<sup>40</sup> The court held the assault was reasonably foreseeable because the landlord failed to provide adequate locks, even after the tenant notified the landlord that missing and defective locks enabled trespassers to enter the premises. Furthermore, the sexual assault was foreseeable because assault by a trespasser was a common consequence of inadequate locks on doors and windows.<sup>41</sup> The court therefore reversed the lower court's dismissal of the tenant's complaint.<sup>42</sup>

If a domestic violence survivor's rental property lacks adequate security, advocates should submit a written request to the landlord specifying the necessary safety improvements. If other tenants have suffered criminal acts due to the lack of security, advocates should note this in the safety request, and the survivor should ask other tenants to submit requests of their own. Advocates should remind the landlord that the letter serves as notice that conditions at the property are unsafe, that it is foreseeable that tenants at the property will be victims of criminal acts, and that the landlord may be liable if he fails to make the suggested safety improvements.

### 3.3 The Landlord's Duty to Change the Locks

Some states have statutes requiring landlords to change the locks to a tenant's dwelling after the tenant has suffered domestic or sexual violence. As of the date of this publication, at least 13 jurisdictions have adopted such laws.<sup>43</sup> Most states require the survivor to provide documentation of the domestic or sexual violence. If the survivor and perpetrator are cotenants, typically the survivor must provide the landlord with a copy of a restraining order barring the perpetrator from the dwelling before the landlord can change the locks. Several states require landlords to act on the tenant's request within a short period of time, such as within one to five days.<sup>44</sup> The survivor usually must pay for changing the locks, although in several states these costs may be covered by victims' compensation funds, and restraining orders may contain provisions ordering perpetrators to pay these costs.

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<sup>37</sup> *Id.* at 612.

<sup>38</sup> *Id.* at 613.

<sup>39</sup> 472 So. 2d 1210 (Fla. Dist. Ct. App. 1985)

<sup>40</sup> *Id.* at 1213-14.

<sup>41</sup> *Id.* at 1220.

<sup>42</sup> *Id.* at 1221.

<sup>43</sup> ARIZ. REV. STAT. ANN. § 33-1318; ARK. CODE ANN. § 18-16-112; CAL. CIV. CODE §§ 1941.5, 1941.6; D.C. CODE § 42-3505.08; 765 ILL. COMP. STAT. ANN. 750/20; IND. CODE ANN. §§ 32-31-9-9, 32-31-9-10, 32-31-9-11; MD. CODE ANN., REAL PROP. § 8-5A-06; N.C. GEN. STAT. § 42-42.3; OR. REV. STAT. ANN. § 90.459; UTAH CODE ANN. § 57-22-5.1; VA. CODE ANN. §§ 55-225.5, 55-248.18:1; WASH. REV. CODE ANN. § 59.18.585; WYO. STAT. ANN. § 1-21-1304. The text of these statutes is available at Appendix 36.

<sup>44</sup> *E.g.*, CAL. CIV. CODE § 1941.5 (requiring a lock change within 24 hours of receiving a copy of a restraining order or police report); D.C. CODE § 42-3505.08 (requiring a lock change within five days of the victim-tenant's request); 765 ILL. COMP. STAT. ANN. 750/20 (requiring a lock change within 48 hours of the victim-tenant's request); IND. CODE ANN. § 32-31-9-9 (requiring a lock change within 48 hours of receiving a copy of a court order); MD. CODE ANN., REAL PROP. § 8-5A-06 (requiring a lock change by the end of the next business day after receiving the tenant's written request); N.C. GEN. STAT. § 42-42.3 (requiring a lock change within 48 hours of the victim tenant's request); OR. REV. STAT. ANN. § 90.459 (requiring a lock change "promptly" upon tenant's request).



Unfortunately, most jurisdictions do not have statutes requiring landlords to change the locks for domestic violence survivors. However, even in jurisdictions without such statutes, the landlord still could have a common law duty to take reasonable precautions to protect tenants. Advocates in these jurisdictions should caution the landlord that failure to change the locks could expose the landlord to liability if the abuser returns and commits another act of violence.<sup>45</sup> Advocates should be aware that if a survivor changes the locks without consulting the landlord, this may violate a common lease prohibition on alteration of the premises without the landlord's permission.

### 3.4 The Landlord's Duty to Protect Tenants from Criminal Acts by Other Tenants

This section discusses the landlord's duty to protect a tenant from criminal acts committed by another tenant in the same apartment complex.<sup>46</sup> For example, in some jurisdictions the landlord may have a duty to provide additional security measures for the victim tenant, and in some jurisdictions the landlord may have a duty to evict the perpetrator from the building. The law on this topic is highly state-specific, and advocates should examine their jurisdiction's legal authority to determine the extent of the landlord's duty to protect tenants from criminal acts by other tenants.<sup>47</sup> This section provides general information on common factors that courts have considered in determining whether landlords have a duty to protect tenants from other tenants who reside at the same building, and ways landlords may fulfill that duty.<sup>48</sup>

To establish that the landlord has a duty to protect a tenant from criminal acts by another tenant, advocates likely will need to make similar arguments to those discussed in Section 3.2, *supra*, regarding the landlord's duty to provide security measures. Several jurisdictions require tenants to prove the landlord (1) knew of the offending tenant's tendency toward violence, and (2) failed to take reasonable precautions to protect the innocent tenant.<sup>49</sup> Unfortunately, several courts have been reluctant to find that landlords have a duty to evict dangerous tenants.<sup>50</sup> Advocates should discuss with a domestic violence or stalking survivor whether there are options other than evicting the offending tenant that would improve her safety, such as asking the landlord to increase security patrols, provide additional security measures at the survivor's unit, or allow the survivor to transfer to another unit.

In *Madhani v. Cooper* a court found that the landlord had a duty to protect a tenant who had been assaulted by another tenant on numerous occasions, including the duty to evict the perpetrator if necessary.<sup>51</sup> The victim-tenant had complained to property managers at least six times that another

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<sup>45</sup> See the discussion of the landlord's duty to provide safe housing in Section 3.2, *supra*.

<sup>46</sup> For information regarding landlords' liability under fair housing laws for sexual harassment of tenants, see Chapter 4.

<sup>47</sup> For a comprehensive review of each jurisdiction's case law, see Bateman & Thomas, *supra* note 1.

<sup>48</sup> This section discusses tenants who live in the same building as the perpetrator of the violence, but who do not share a dwelling unit with the perpetrator. The next section (Section 3.5) discusses options for domestic violence survivors who live with their abusers.

<sup>49</sup> See, e.g., *Madhani v. Cooper*, 130 Cal. Rptr. 2d 778 (Cal. Ct. App. 2003); *Lambert v. Doe*, 453 So. 2d 844 (Fla. Dist. Ct. App. 1984); *Morgan v. Dalton Mgmt. Co.*, 454 N.E.2d 57 (Ill. App. Ct. 1983); *Waldon v. Hous. Auth. of Paducah*, 854 S.W.2d 777 (Ky. Ct. App. 1991); *Firpi v. N.Y. City Hous. Auth.*, 573 N.Y.S.2d 704 (App. Div. 1991); *Simmons v. City of New York*, 562 N.Y.S.2d 119 (App. Div. 1990); *Gill v. N.Y. City Hous. Auth.*, 519 N.Y.S.2d 364 (App. Div. 1987); *Auburn Leasing Corp. v. Burgos*, 609 N.Y.S.2d 549 (Civ. Ct. 1994); *Doe v. Beach House Dev. Co.*, 737 N.E.2d 141 (Ohio Ct. App. 2000); *Miller v. Tabor W. Inv. Co.*, 196 P.3d 1049 (Or. Ct. App. 2008).

<sup>50</sup> See, e.g., *Castaneda v. Olsher*, 162 P.3d 610 (Cal. 2007); *Smith v. Howard*, 489 So. 2d 1037 (La. Ct. App. 1986); *Blatt v. N.Y. City Hous. Auth.*, 506 N.Y.S.2d 877 (App. Div. 1986); *Firpi v. N.Y. City Hous. Auth.*, 573 N.Y.S.2d 704 (App. Div. 1991); *Morton v. Kirkland*, 558 A.2d 693 (D.C. 1989).

<sup>51</sup> 130 Cal. Rptr. 2d at 781.

tenant had assaulted and threatened her.<sup>52</sup> The managers promised to “take care of the situation,” but they did not warn the perpetrator-tenant that she would be evicted if she continued her assaults, did not take steps to evict her, nor did they install security cameras where the attacks were taking place.<sup>53</sup> Eventually, the perpetrator-tenant threw the victim-tenant down a flight of stairs, causing her serious injury. The court found that this final attack was foreseeable, stating that it was “difficult to imagine a case in which the foreseeability of harm could be more clear.”<sup>54</sup> Thus, the court found that the landlord had a duty to take steps to protect the victim-tenant, such as by evicting the perpetrator-tenant.<sup>55</sup>

Foreseeability was a significant factor in *Waldon v Housing Authority of Paducah*, in which one public housing tenant killed another resident.<sup>56</sup> The decedent and other witnesses had told housing authority employees that the assailant had made several death threats against the decedent.<sup>57</sup> Housing authority employees also knew that the assailant lived in the complex without permission, but they failed to evict him or otherwise prevent his presence at the complex.<sup>58</sup> Despite the reports of the assailant’s threats and other crimes at the complex, there were no security guards at the complex at the time of the shooting.<sup>59</sup> The court determined that a landlord can be liable for the criminal acts of third persons if the landlord does not take reasonable steps to prevent injury from reasonably foreseeable crimes. Accordingly, the court concluded that there were triable issues of fact as to whether the housing authority’s failure to act was a proximate cause of tenant’s death.<sup>60</sup>

A domestic violence survivor who is threatened, assaulted, or stalked by another tenant should notify her landlord in writing and keep a copy of that notice. The survivor should notify the landlord in writing every time there is an incident of violence, threats, or stalking involving the other tenant. Where appropriate, the survivor also should call law enforcement.

If the landlord does not take precautions upon receipt of the survivor’s notices, the survivor should request a meeting with the landlord to discuss security measures, such as installing security cameras, increasing security patrols around her unit, transferring her to a different unit or development, issuing the perpetrator a warning, or evicting the perpetrator. The tenant should bring copies of her written notices to this meeting. Before this meeting, advocates should discuss with the survivor which options are most likely to preserve her safety. If the survivor fears that she will face retaliation if the perpetrator is evicted, it may be safer to seek a restraining order or a transfer to a different property owned by the landlord. If the survivor is unwilling or unable to move, the tenant and advocate should keep in mind that it is up to the landlord to evict the perpetrator, and that the eviction process may take several weeks or months. If the landlord decides to pursue eviction proceedings, the survivor should consider whether she needs to obtain a restraining order and move to a safe, confidential location until the proceedings are complete.<sup>61</sup>

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<sup>52</sup> *Id.* at 779-80.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 780.

<sup>55</sup> *Id.* at 780-82.

<sup>56</sup> 854 S.W.2d at 778.

<sup>57</sup> *Id.* at 779.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See Chapter 2 for more information regarding safety planning.

### 3.5 Removing the Abuser from the Unit

A domestic violence survivor who shares a rental unit with her abuser and is not safe in the unit may need to exclude the abuser from the unit and/or end the abuser's tenancy rights. A survivor's ability to do this will vary significantly depending on the jurisdiction in which she resides and whether she lives in subsidized housing. Survivors have two methods to exclude the abuser-tenant from the unit: they may request that the landlord evict the abusive tenant, or they can get a restraining order that includes a residence exclusion order.

First, a handful of states have statutes enabling landlords to evict domestic violence perpetrators while allowing innocent household members to remain in the unit.<sup>62</sup> Additionally, under the Violence Against Women Act (VAWA), public housing agencies and Section 8 landlords can evict a domestic violence perpetrator while allowing the rest of the household to remain in the subsidized unit, regardless of the jurisdiction in which the family lives.<sup>63</sup>

Second, as an alternative to the eviction process, a survivor may be able to exclude the abuser from the dwelling by seeking a restraining order that directs the abusive co-tenant to vacate and stay away from the survivor's home.<sup>64</sup> One drawback is that once the abuser moves out of the unit, the abuser likely will stop paying his portion of the rent. Because co-tenants on a lease are often jointly liable for the entire rent payment, the survivor can be evicted if she does not make the full payment, including the abuser's share. In many jurisdictions, as part of the restraining order proceedings, attorneys may request that the abuser be ordered to continue paying his share of the rent or to provide suitable alternative housing to the survivor.<sup>65</sup> If the survivor is concerned that the abuser will disregard a court order to pay rent, she may want to consider finding a roommate to share the rent. The survivor should always seek the landlord's written permission before adding a roommate.

Survivors may ask whether they can be evicted for obtaining a restraining order that excludes the perpetrator from the dwelling. At least one court has held that "[i]t violates public policy to evict a woman from her home merely because she got an order of protection against her husband who was physically abusing her."<sup>66</sup> In *Wood v. Wood*, a woman obtained an emergency protective order against her husband that granted her exclusive possession of the home. The husband's parents owned the home. The parents served her with a notice to terminate her tenancy fewer than two weeks later, and then filed an eviction action against her.<sup>67</sup> Citing the state's retaliatory eviction law, the court found that the parents did not have a right to evict the woman because the eviction would contravene the public policy of the state. The court also noted that the state's laws regarding orders of protection should be liberally construed to promote their underlying purpose of "helping victims of domestic violence to avoid further abuse because of fear of retaliation or loss of accessible housing."<sup>68</sup>

Once the abuser is excluded from the unit, a survivor may find that she lacks the resources to continue paying the rent without the abuser's economic contribution. If the landlord owns multiple units,

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<sup>62</sup> See, e.g., 735 ILL. COMP. STAT. ANN. 5/9-106.2; N.H. REV. STAT. ANN. § 540:14; N.M. STAT. ANN. § 47-8-33; OR. REV. STAT. ANN. § 90.445.

<sup>63</sup> See Chapter 6 for more information regarding lease bifurcation under the Violence Against Women Act.

<sup>64</sup> Appendix 36 lists state laws that affect domestic violence survivors' housing rights, including the right to exclude the perpetrator from a common dwelling as part of a restraining order. See also Battered Women's Justice Project, *Advancing the Economic Rights of Domestic Violence Survivors in Protection Order Proceedings* (2004).

<sup>65</sup> Appendix 36 lists state laws that affect domestic violence survivors' housing rights, including the right to seek continued rent payments and other housing costs as part of restraining order proceedings.

<sup>66</sup> *Wood v. Wood*, 672 N.E.2d 385, 390 (Ill. App. Ct. 1996).

<sup>67</sup> *Id.* at 387.

<sup>68</sup> *Id.* at 389.

advocates can negotiate with the landlord to end the survivor's tenancy at the current unit and enter into a new rental agreement for a more affordable unit. For example, if the survivor is unable to afford the two-bedroom unit she was sharing with the abuser, she should explore whether a one-bedroom unit at the complex is within her means. Any agreement with the landlord to end the current tenancy and enter into a new one should be in writing. If all else fails, the survivor should consider terminating the tenancy and moving, which is discussed in detail in the next section.

### **3.6 Breaking the Lease to Escape Violence**

Domestic violence survivors often ask whether they can break their leases without financial penalty. Many survivors need to end their leases and relocate to safe housing to escape their abusers. Unfortunately, in many states, if a tenant breaks the lease, the tenant is liable for rent until the landlord finds another tenant to rent the unit. Tenants who fail to pay this back rent may face civil judgments that could impact their credit. Accordingly, survivors and advocates should examine the survivor's lease terms, as well as local legal authority, to determine whether the survivor can be released from her responsibilities under the lease. This section discusses some of the strategies that may be used to relieve a survivor of her lease obligations.

#### **3.6.1 State Law Protections**

An advocate should first determine whether the jurisdiction has a law permitting tenants to terminate their leases due to domestic violence. As of the date of this publication, at least 21 jurisdictions have laws permitting survivors of domestic violence to break their leases without financial penalty.<sup>69</sup> The laws typically require the tenant to provide proof of domestic violence, often a restraining order or a police report. A few jurisdictions also permit the tenant to verify the domestic violence with a signed statement from a qualified party, such as an attorney, licensed health professional, or social services provider. Most statutes specify the amount of notice the tenant must give to the landlord before breaking the lease. The notice periods typically range from three to 30 days. Of course, the tenant can vacate the unit before the notice period expires, but is responsible for rent until the expiration date.

#### **3.6.2 Negotiating to End the Lease**

Unfortunately, most states have not enacted laws enabling tenants to break their leases due to domestic violence. Even in states that have such laws, a survivor may be unable to use them without the required documentation of domestic violence. If the survivor simply abandons the unit and stops paying rent, the landlord may file an eviction action or a lawsuit against her for the unpaid rent due under the remaining lease term. Therefore, advocates should negotiate with the landlord for a date on which the parties can mutually agree to end the lease. The agreement should be memorialized in writing and signed by both parties.

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<sup>69</sup> ARIZ. REV. STAT. ANN. § 33-1318; CAL CIV. CODE § 1946.7; COLO. REV. STAT. ANN. 38-12-402; CONN. GEN. STAT. § 7-73; DEL. CODE ANN. TIT. 25, § 5314; D.C. CODE § 42-3505.07; 765 ILL. COMP. STAT. ANN. 750/15; IND. CODE ANN. §§ 32-31-9-12, 32-31-9-13; MD. CODE ANN., REAL PROP. §§ 8-5A-02 through 8-5A-04; MICH. COMP. LAWS § 554.601b; MINN. STAT. ANN. § 504B.206; N.J. STAT. ANN. §§ 46:8-9.6, 46:8-9.7; N.Y. REAL PROP. LAW § 227-c; N.C. GEN. STAT. § 42-45.1; N.D. CODE § 47-16-17.1; OR. REV. STAT. ANN. § 90.453; TEX. PROP. CODE ANN. § 92.016; UTAH CODE ANN. § 57-22-5.1; WASH. REV. CODE ANN. § 59.18.575; WIS. STAT. ANN. § 704.16; WYO. STAT. ANN. § 1-21-1303. The text of these statutes is available at Appendix 36.

Advocates should inform the landlord that the survivor has experienced acts of violence on the premises, and that her safety will be jeopardized if she is forced to continue renting the unit. These negotiations may be more successful if advocates submit documents demonstrating the risk of harm the survivor faces if she does not move. Examples of such documents include letters from service providers, statements from neighbors, or medical records. It also may be helpful to have a police officer or prosecutor call the landlord on the survivor's behalf. As discussed in Section 3.2, *supra*, in many states, landlords can be held liable for assaults against tenants where the landlord knew that a tenant was at risk of harm but did not take reasonable steps to protect the tenant's safety. Advocates should research the legal authority in their state regarding landlords' liability for criminal acts committed by third parties. If appropriate, advocates should argue that the landlord could be held liable to the survivor for future attacks if he does not take the reasonable step of negotiating with the survivor to end her lease obligations.

The landlord may be more amenable to negotiations if the survivor or her friends and family members assist in finding a new tenant, such as by advertising and showing the unit. Additionally, advocates should discuss with the survivor whether the apartment has any habitability problems, such as mold, broken windows, inadequate heating, or rodent or insect infestations. In many states, tenants may cite uninhabitable conditions as grounds for terminating the tenancy, and the landlord may be more willing to end the lease if the advocate reminds the landlord of this fact.

Advocates also may want to raise contract arguments, such as unconscionability, breach of the implied covenant of good faith and fair dealing, and breach of the implied warranty of habitability.<sup>70</sup> While there are no published cases that examine these arguments in the domestic violence context, courts have found lease termination appropriate in other circumstances where a tenant's safety was at risk. For example, in *Knudsen v. Lax*,<sup>71</sup> a tenant with three young daughters sued her landlord to terminate her lease after a registered sex offender moved into a neighboring apartment. A clause in her lease allowed the landlord to charge rent for the remainder of her lease term, despite the fact that the tenant had good cause for terminating her lease. The court found this clause unconscionable, and found that the landlord breached the implied covenant of good faith and fair dealing by refusing to terminate the lease.<sup>72</sup>

In *Auburn Leasing Corp. v. Burgos*,<sup>73</sup> a court found that a tenant should be released from her lease obligations after the landlord breached the implied warranty of habitability. A tenant was bullied, harassed, and threatened by neighbors who dealt drugs from their apartment. After the tenant made numerous complaints to the landlord and gathered a petition with over 170 signatures from other tenants to remove the drug-dealing tenants, the tenant and her family moved out of the apartment prior to the expiration of the lease term. The landlord sued the tenant to recover the unpaid balance due on the lease. The court found that the living conditions had become dangerous for the tenant and her family. Additionally, the court found that the landlord was obligated to take the necessary steps to protect the tenants from a violation of their right of quiet enjoyment of the premises. The court concluded that the landlord breached the implied warranty of habitability and the express warranty of use and quiet

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<sup>70</sup> Almost every jurisdiction recognizes that a landlord impliedly promises to maintain the premises in a habitable condition. See ABA, FAMILY LEGAL GUIDE Ch.6 at 10, available at [http://www.abanet.org/publiced/practical/books/family\\_legal\\_guide/chapter\\_6.pdf](http://www.abanet.org/publiced/practical/books/family_legal_guide/chapter_6.pdf). Under this implied warranty of habitability, tenants can withhold rent if the landlord fails to keep the premises in a habitable condition. *Id.* Tenants also can file suit against landlords and can defend against eviction for failure to pay rent by asserting that the landlord violated the implied warranty of habitability. *Id.*

<sup>71</sup> 842 N.Y.S.2d 341 (Jefferson County Ct. 2007).

<sup>72</sup> *Id.* at 350.

<sup>73</sup> 609 N.Y.S.2d 549 (Civ. Ct. Queens County 1994).

enjoyment.<sup>74</sup> Thus, the tenant acted reasonably when she vacated the apartment before the end of her lease term, and the court dismissed the landlord's complaint.

In *Highview Associates v. Kofert*,<sup>75</sup> a tenant was not liable for breaking her lease where the landlord breached the implied warranty of habitability and the express warranty of use and quiet enjoyment. A peeping tom had looked through the tenant's window, and a burglar had attempted to break into her apartment. The tenant fled the apartment before her lease expired. The landlord sued the tenant for costs to re-rent the apartment.<sup>76</sup> The court found that the landlord had notice of frequent thefts and burglaries on the premises, that the apartment complex had become dangerous, and the landlord had not taken the necessary steps to protect tenants from these dangers. Therefore, the landlord breached the implied warranty of habitability and express warranty of use and quiet enjoyment. Accordingly, the tenant was not liable for the costs of re-renting the apartment before her lease expired.<sup>77</sup>

As the above cases illustrate, courts have allowed tenants to break their leases without penalty to escape dangerous living conditions. In jurisdictions where survivors of domestic violence do not have express legal authority to end their leases, survivors still may have rights under contract doctrines such as unconscionability, the implied covenant of good faith and fair dealing, and the implied warranty of habitability.

### 3.6.3 The Landlord's Duty to Mitigate Damages

Even if a domestic violence survivor abandons her unit without negotiating a move-out agreement with the landlord, she may not have to pay all of the rent for the remaining lease term. Most jurisdictions require landlords to mitigate their damages after a tenant has abandoned the property.<sup>78</sup> Where there is a duty to mitigate, courts apply a "reasonableness" standard. Often a landlord discharges the duty to mitigate if he has taken reasonable or good faith steps to re-let the property.<sup>79</sup> Accordingly, if a landlord threatens to charge a survivor with all of the rent remaining due under the lease after she has vacated the unit, advocates can argue that the landlord has a duty to make reasonable efforts to mitigate damages by seeking to re-let the unit.

Because the law on this issue is state specific, advocates will need to examine the extent to which their jurisdiction requires the landlord to mitigate damages. Only five states (Alabama, Georgia, Minnesota, Mississippi, and New York) do not require landlords to mitigate losses; however, even these jurisdictions have exceptions.<sup>80</sup> Arizona, California, Connecticut, Louisiana, Maine, Maryland, Oklahoma, and Washington are somewhat unsettled as to whether a landlord must mitigate damages. However, most of these states are only unsettled as to commercial leases and have statutes imposing on landlords a duty to mitigate when a tenant breaches a residential lease.<sup>81</sup> In any case, advocates should

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<sup>74</sup> *Id.* at 551.

<sup>75</sup> 477 N.Y.S.2d 585 (Suffolk Dist. Ct. 1984).

<sup>76</sup> *Id.* at 585-86.

<sup>77</sup> *Id.* at 587.

<sup>78</sup> For more detailed information on the duty to mitigate and the states' requirements, see Mark S. Dennison, Annotation, *Sufficiency of Landlord's Efforts to Mitigate Damages Following Tenant's Abandonment of Leased Premises*, 72 AM. JUR. PROOF OF FACTS 3D 155 § 1.

<sup>79</sup> *Id.* at § 7. See also, e.g., *JCBC, L.L.C. v. Rollstock, Inc.*, 22 S.W.3d 197, 201 (Mo. Ct. App. 2000) (reasonable efforts do not require the landlord to do "everything imaginable") (quoting *Brywood Ltd. Partners v. H.T.G., Inc.*, 866 S.W.2d 903, 907 (Mo. Ct. App. 1993)); *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896 (Utah 1989) (stating that the standard is the conduct expected of a reasonable landlord renting a similar property in the same market conditions).

<sup>80</sup> Dennison, *supra* note 78, 72 AM. JUR. PROOF OF FACTS 3D 155 § 2. For example, in some states a landlord surrenders the lease when he reenters and assumes full possession of the property, thereby terminating the tenant's rent obligations. *Id.*

<sup>81</sup> *Id.* § 2.

not automatically assume that a survivor who has fled her rental unit will be liable for all the rent due under the lease. If a landlord threatens to seek the full amount of rent from the survivor, advocates should ask the landlord to provide proof of his efforts to re-let the unit, such as advertisements.

### **3.7 Conclusion**

Domestic violence survivors who are concerned about the safety of their rental housing have a variety of options, including asking the landlord to improve security measures, requesting that the landlord take steps to address abusive or violent tenants, seeking a restraining order, or moving to a safer location. Advocates should review all of these options with survivors and discuss which one, or which combination, is most appropriate in light of the responsiveness of the landlord, the survivor's willingness or ability to relocate, and the likelihood that these options will provide the domestic violence survivor with a safer place to live.

# Chapter 4: Domestic Violence Survivors’ Rights Under Fair Housing Laws

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### 4.1 Introduction

Survivors of domestic violence often face evictions and other adverse housing actions that are related to acts of violence committed against them. For example, advocates have reported that survivors have been served with eviction notices due to police presence at the unit, damage caused during incidents of violence, and noisy disturbances caused by the batterer. Federal and state fair housing laws may offer



protections for survivors who are at risk of losing their housing because of the abuser's criminal acts. This Chapter discusses several examples of instances where fair housing laws were used to restore housing to domestic violence survivors who were victims of housing discrimination.<sup>82</sup>

This Chapter also recognizes that due to economic limitations, survivors may be particularly vulnerable to sexual harassment by landlords, property managers, and their employees. Sexual harassment is a form of sex discrimination under fair housing laws, and this Chapter explains the laws that protect survivors from such harassment. Finally, the Chapter concludes by describing the options available to enforce the rights of survivors who have experienced discrimination, including informal advocacy, eviction defenses, administrative complaints, and civil lawsuits.<sup>83</sup>

## 4.2 State and Local Laws Specifically Protecting Victims of Domestic Violence

It is critical for advocates to examine their state and local laws to determine whether they provide any protections for domestic violence survivors who are at risk of losing their housing. Several jurisdictions have enacted laws that prohibit landlords from evicting tenants based on acts of domestic violence committed against them or that provide a special eviction defense for victims of domestic violence. As of the publication of this Manual, those jurisdictions are Arkansas, California, Colorado, Dane County (Wisconsin), the District of Columbia, Illinois, Indiana, Maryland, New Hampshire, New Mexico, North Carolina, Oregon, Rhode Island, Virginia, Washington, Westchester County (New York), and Wisconsin.<sup>84</sup> Advocates who suspect that a client is facing eviction because of her status as a victim of domestic violence should consider asserting these state or local laws in challenging the eviction.

## 4.3 The Federal Fair Housing Act (FHA)

As part of a national effort to promote domestic violence survivors' housing rights, several advocates have argued that housing discrimination against survivors constitutes sex discrimination, because the majority of domestic violence survivors are women. Although this theory is relatively new, it has been used successfully in several cases to restore housing or provide compensation to survivors who faced eviction or were denied housing. This section provides an overview of the federal Fair Housing Act (FHA) and describes the protections it offers to individuals who are applying for housing.

Advocates should note that state and local fair housing laws may provide broader and more comprehensive coverage than the FHA. For example, as discussed above, some states have enacted laws

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<sup>82</sup> As we discuss in Chapter 6, survivors of domestic violence living in certain types of federally subsidized housing have protections against being evicted due to activity relating to domestic violence. These protections are available under the federal Violence Against Women Act of 2005 (VAWA). See 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5) (public housing), 1437f(c)(9)(A)-(B) (project-based Section 8), 1437f(o)(6)(B), 1437(o)(7)(C) (Section 8 voucher).

<sup>83</sup> Several resources are available for advocates seeking to learn more about fair housing litigation on behalf of survivors. See, e.g., U.S. Dep't of Hous. & Urban Dev., Memorandum: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9 2011), available at Appendix 4 [hereinafter HUD Memorandum]; Sandra Park, *Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company*, 43 CLEARINGHOUSE REV. 80 (May/June 2009); ACLU Women's Rights Project, Violence Against Women: Housing, <http://www.aclu.org/fairhousingforwomen>; Legal Momentum, Legal Knowledge Center, <http://www.legalmomentum.org/legal-knowledge/>.

<sup>84</sup> See ARK. CODE ANN. § 18-16-112; CAL. CIV. PROC. CODE 1161.3; COLO. REV. STAT. ANN. § 13-40-104; DANE COUNTY CODE § 31.02; D.C. CODE § 42-3505.01; ILL. COMP. STAT. ANN. 5/9-106.2; IND. CODE ANN. § 32-31-9-8; MD. CODE ANN., REAL PROP. § 8-5A-05; N.H. REV. STAT. ANN. § 540:2; N.M. STAT. ANN. § 47-8-33; N.C. GEN. STAT. ANN. § 42-42.2; OR. REV. STAT. ANN. § 90.449; R.I. GEN. LAWS § 34-37-4; VA. CODE ANN. § 55-248.31; WASH. REV. CODE ANN. § 59.18.580; WESTCHESTER COUNTY CODE § 700.05; WIS. STAT. ANN. § 106.50. The text of these laws is at Appendix 36.

specifically prohibiting landlords from evicting survivors of domestic violence based on acts of violence committed against them. Accordingly, in addition to the FHA, advocates should examine whether a survivor who has been denied housing may have remedies under state and local fair housing laws.

This section discusses the housing that is covered by the FHA, the groups who are protected, the type of conduct that is prohibited, and enforcement options for survivors who have experienced discrimination.

### **4.3.1 Coverage**

The FHA covers all dwellings, with a few exceptions. The FHA generally does not cover (1) a dwelling with four or fewer units, as long as the owner is one of the occupants; (2) a single family home, provided the owner does not own more than three such houses at one time; and (3) certain housing run by private clubs for their members.<sup>85</sup> The FHA also provides certain exceptions for housing owned by religious organizations<sup>86</sup> and for senior housing.<sup>87</sup> In some jurisdictions, state fair housing laws are more protective than the FHA and apply to housing that is not covered by federal law. Thus, it is critical for advocates to examine their jurisdiction's laws, especially in cases where the FHA does not apply.

The FHA covers more than just apartments. The FHA is aimed at "dwellings," which are broadly defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence."<sup>88</sup> Thus, public housing, homeless shelters, hotels, and nursing homes are all considered dwellings for purposes of the FHA.<sup>89</sup>

### **4.3.2 Groups Protected by the FHA**

The FHA makes it illegal to discriminate on the basis of race, color, religion, sex, national origin, familial status (families with children), and disability.<sup>90</sup> Some states have enacted fair housing laws that prohibit discrimination on additional grounds, such as a tenant's source of income, sexual orientation, marital status, or status as a domestic violence victim. Therefore, advocates must examine their local and state laws to determine whether they protect groups in addition to those protected by the FHA.

Survivors of domestic violence are not a protected class under the FHA. As a result, evicting a survivor for reasons related to the domestic violence committed against her is not explicitly barred by the FHA. However, as we explain later, advocates have successfully used sex discrimination theories to protect survivors against housing discrimination.

### **4.3.3 Prohibited Conduct**

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. Some of 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.

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<sup>85</sup> 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

<sup>86</sup> § 3607.

<sup>87</sup> § 3607.

<sup>88</sup> § 3602(b).

<sup>89</sup> 24 C.F.R. § 100.201. *But see* Intermountain Fair Housing Council v. Boise Rescue Mission Ministries, 717 F. Supp. 2d 1101, 1109 (May 12, 2010) (holding that a homeless shelter was not a dwelling subject to the FHA).

<sup>90</sup> 42 U.S.C. § 3604.

- 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.<sup>91</sup>

It is also against the law to:

- 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.<sup>92</sup>
- Refuse to make a “reasonable accommodation” to rules, policies, practices, or services for an individual with a disability.<sup>93</sup>
- Coerce, intimidate, threaten, or interfere with any person exercising their rights under fair housing laws.<sup>94</sup>

At the end of this Chapter, we will explain some of the steps advocates and survivors can take if they believe that any of the discriminatory conduct described above has occurred.

#### **4.4 Discrimination Based on a Tenant’s Status as a Domestic Violence Survivor**

As discussed, the FHA does not explicitly prohibit housing providers from evicting tenants based on their status as survivors of domestic violence. However, survivors still may be able to use fair housing laws to challenge denials of housing or evictions that are related to acts of domestic violence committed against them. In recent years, several advocates have challenged these actions by using sex discrimination theories.<sup>95</sup> These theories may 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 provider.

The use of sex discrimination theories to challenge domestic violence discrimination is relatively new, and this practice is not yet widely accepted or known by the courts. There is only one published federal case on this issue.<sup>96</sup> Still, these arguments have been successful in informal advocacy with housing providers. Such informal advocacy may include making a phone call to the provider, sending a letter asking the housing provider to cease its discriminatory conduct,<sup>97</sup> or asking law enforcement, the local district attorney’s office, a fair housing agency, or a local government official to contact the provider on the survivor’s behalf.

Domestic violence discrimination arguments may be more successful where the survivor can raise multiple theories of discrimination, where the housing provider made stereotypical remarks based on sex, or where the survivor can show that she was discriminated against on the basis of her membership

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<sup>91</sup> § 3604.

<sup>92</sup> § 3604

<sup>93</sup> § 3604. This topic is addressed at length in Chapter 5.

<sup>94</sup> § 3617.

<sup>95</sup> *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Meister v. Kansas City, Kansas Hous. Auth.*, 2011 WL 765887, slip op. (D. Kan. Feb. 25, 2011); *HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* HUD Memorandum, *supra* note 83, at 6-9 (summarizing cases); 1985 Op. N.Y. Att’y Gen. 45 (1985) (finding discrimination against domestic violence survivors had a discriminatory effect on women in violation of state fair housing law).

<sup>96</sup> *See Bouley*, 394 F. Supp. 2d at 675.

<sup>97</sup> A sample letter is included at Appendix 5.

in a protected class other than sex, such as race, religion, or disability. The remainder of this section explains the two major sex discrimination theories that may be used to challenge housing discrimination against domestic violence survivors: (1) disparate treatment theory; and (2) disparate impact theory. In cases challenging housing discrimination against survivors, advocates often raise both theories in tandem.

#### 4.4.1 Disparate Treatment Theory

Disparate treatment claims (also called intentional sex discrimination) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants.<sup>98</sup> An example would be a situation in which a landlord evicts a female tenant after she is involved in a loud argument with a cotenant, but does not evict a male tenant who has been involved in similar noisy disturbances. To succeed on a disparate treatment claim, a plaintiff must provide proof that the housing provider had a discriminatory intent or motive. However, this intent can be inferred from the fact that the housing provider treated male tenants differently from similarly situated female tenants.<sup>99</sup>

Examples of cases that have raised disparate treatment theory on behalf of domestic violence survivors include *Blackwell v. H.A. Housing LP*,<sup>100</sup> *Alvera v. C.B.M. Group, Inc.*,<sup>101</sup> and *Meister v. Kansas City, Kansas Housing Authority*.<sup>102</sup> In *Blackwell*, tenant Wyneneicka Blackwell was denied a transfer to a different complex after her former partner sexually assaulted and beat her in her apartment. The property management company had a policy of transferring tenants under “special circumstances,” and at least two other tenants had been transferred to other complexes under this policy.<sup>103</sup> However, the company denied Ms. Blackwell’s transfer on the basis that she did not have a “good history” with the property due to incidents of domestic violence and a poor payment record.<sup>104</sup> Ms. Blackwell asserted that her request for a transfer was due to special circumstances, that the management company refused to transfer her because of her sex, and that this denial constituted intentional discrimination on the basis of her sex in violation of the FHA.<sup>105</sup> The case settled, with the management company agreeing to implement a domestic violence policy in at least 12 of its properties.<sup>106</sup>

In *Alvera*, tenant Tiffanie Alvera received an eviction notice shortly after her husband assaulted her in their apartment.<sup>107</sup> The eviction notice stated that Ms. Alvera’s tenancy was being terminated because her husband had attacked her in the apartment.<sup>108</sup> Ms. Alvera asserted that the property management company intentionally discriminated against her on the basis of her sex because other tenants in the

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<sup>98</sup> HUD Memorandum, *supra* note 83, at 4.

<sup>99</sup> See *United States v. Reece*, 457 F. Supp. 43 (D. Mont. 1978) (finding that landlord’s policy of refusing to rent to single women without cars while renting to single men without cars violated the Fair Housing Act).

<sup>100</sup> Compl., *Blackwell v. H.A. Hous. LP*, No. 05cv1225 (D. Colo. July 1, 2005). The complaint is included at Appendix 6.

<sup>101</sup> Compl., *Alvera v. C.B.M. Group, Inc.*, No. 01cv857 (D. Or. July 10, 2001), *available at* [http://www.aclu.org/images/asset\\_upload\\_file457\\_33995.pdf](http://www.aclu.org/images/asset_upload_file457_33995.pdf).

<sup>102</sup> 2011 WL 765887, slip op. (D. Kan. Feb. 25, 2011).

<sup>103</sup> Compl., *Blackwell*, *supra* note 100, at 7. The complaint did not specify whether the other tenants who had been transferred were male or female. Ideally, a disparate treatment claim alleges that male tenants were granted privileges, benefits, or protections that were denied to a similarly situated female tenant.

<sup>104</sup> *Id.* at 6.

<sup>105</sup> *Id.*

<sup>106</sup> A copy of the policy is available at Legal Momentum’s Legal Cases Database, <https://www.quickbase.com/db/bdy472as8?a=dr&r=iz&rl=dmm2>.

<sup>107</sup> Compl., *Alvera*, *supra* note 101, at 6.

<sup>108</sup> *Id.*

complex had been the victims of violence, yet had not received eviction notices.<sup>109</sup> The case settled, with the management company agreeing not to evict or otherwise discriminate against tenants because they have been victims of domestic violence.<sup>110</sup>

In *Meister*, a federal court held that a domestic violence survivor could proceed to trial on her FHA lawsuit against a housing authority challenging the termination of her Section 8 voucher.<sup>111</sup> The housing authority terminated plaintiff Melanie Meister's voucher due to damages to her unit. Ms. Meister alleged that the damages occurred when her former partner criminally attacked her. Ms. Meister filed suit against the housing authority, alleging that the termination of her voucher constituted sex discrimination under the FHA. The housing authority filed a motion for summary judgment on Ms. Meister's claims. The court refused to grant summary judgment, finding that there was a material issue of fact as to whether the housing authority knew that the damage to Ms. Meister's unit was caused by domestic violence. The court noted that the hearing officer's decision terminating Ms. Meister's voucher stated that she had testified that she was victimized by the fathers of her children, who routinely vandalized her home.

Disparate treatment claims also have been raised where housing providers made sex-based stereotypical remarks regarding battered women.<sup>112</sup> Reliance on gender stereotypes about battered women can be evidence of intentional sex discrimination.<sup>113</sup> Examples of potentially discriminatory stereotypes include: the battered woman would not make a good tenant because victims always return to the men who abuse them;<sup>114</sup> the battered woman must have deserved the abuse; the battered woman should not have disrupted the integrity of the family by calling the police; and the batterer had a right to exercise dominion and control over the battered woman in his home.

In *Bouley v. Young-Sabourin*, the plaintiff asserted that stereotypical remarks regarding domestic violence can constitute sex discrimination in violation of the FHA.<sup>115</sup> Tenant Quinn Bouley received an eviction notice shortly after her husband assaulted her in their apartment, and she filed a federal lawsuit challenging the eviction on sex discrimination grounds. In deposition testimony, the landlord stated that she did not believe that Ms. Bouley was a victim of domestic violence because she "wasn't in shock, she wasn't concerned about her husband."<sup>116</sup> She also stated that she considered Ms. Bouley to be equally responsible for the domestic violence.<sup>117</sup> Ms. Bouley argued that the landlord's decision to evict her was based on impermissible stereotypical beliefs regarding the characteristics of an innocent female victim of domestic violence.<sup>118</sup> The court found that Ms. Bouley stated a claim for sex discrimination under the FHA, and the case settled shortly thereafter.

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<sup>109</sup> *Id.* at 9. As discussed below, Ms. Alvera also alleged a claim for disparate impact discrimination.

<sup>110</sup> Consent Decree at 5, *Alvera v. C.B.M. Group, Inc.*, No. 01cv857 (D. Or. Oct. 18, 2001), *available at* [http://www.aclu.org/images/asset\\_upload\\_file99\\_33996.pdf](http://www.aclu.org/images/asset_upload_file99_33996.pdf).

<sup>111</sup> *Meister v. Kansas City, Kansas Hous. Auth.*, 2011 WL 765887, slip op. (D. Kan. Feb. 25, 2011).

<sup>112</sup> There are no published housing discrimination cases involving housing providers who made stereotypical remarks regarding male survivors of domestic violence or LGBT survivors of domestic violence. However, if stereotypical remarks made by the housing provider indicate that the housing provider evicted a male survivor because of his sex, the survivor could likely raise a disparate treatment claim. Similarly, if a housing provider denied housing to or evicted an LGBT survivor because of his or her sex or sexual orientation, the survivor could likely raise a disparate treatment claim.

<sup>113</sup> *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1990) (sex discrimination by police department); *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994) (same).

<sup>114</sup> HUD Memorandum, *supra* note 83, at 4.

<sup>115</sup> 394 F. Supp. 2d 675 (D. Vt. 2005).

<sup>116</sup> Mot. Summ. J. at 3-5, *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005) (No. 03cv320).

<sup>117</sup> *Id.* at 10.

<sup>118</sup> *Id.*

#### 4.4.2 Disparate Impact Theory

In addition to disparate treatment theory, survivors have used disparate impact theory to challenge housing policies that have the effect of excluding or evicting survivors from housing. Under disparate impact theory, a gender-neutral policy that can be statistically proven to have a greater negative impact on women than on men constitutes discrimination on the basis of sex. It is not necessary to demonstrate that the landlord intended to discriminate on the basis of sex in adopting the policy.

Advocates have argued that housing policies that have a negative impact on domestic violence survivors in turn have a disparate impact on women, because women constitute the majority of domestic violence survivors.<sup>119</sup> To prove this argument, advocates must establish the link between domestic violence and sex. Statistical data showing that the vast majority of domestic violence survivors are women is crucial in establishing this link. The national statistics below help demonstrate the relationship between domestic violence and a person's sex, for the purpose of fair housing claims. To the extent that state and local statistics regarding domestic violence and sex are available, advocates also should cite them to bolster the survivor's case.

- The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women.<sup>120</sup>
- In 2009, women were about five times as likely as men to experience domestic violence.<sup>121</sup>
- Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women.<sup>122</sup>
- Among people who rent their homes, women are 7.4 times as likely as men to be the victims of domestic violence.<sup>123</sup>

In addition, statistics show that African-American women and Native American women experience disproportionately high rates of domestic violence.<sup>124</sup> Women of certain national origins and immigrant women also experience domestic violence at disproportionate rates.<sup>125</sup> Thus, HUD has stated that victims of domestic violence also may have a cause of action for race discrimination and national origin discrimination under the FHA.<sup>126</sup>

Disparate impact theory has most commonly been used to challenge policies or practices that result in the eviction of an entire household when a violent act is committed at the unit, regardless of who perpetrated the violence.<sup>127</sup> These policies often are referred to as “zero tolerance” or “crime-free” policies. As a result of these policies, survivors have faced evictions due to acts of domestic violence

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<sup>119</sup> See, e.g., U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003) (finding that 85% of victims of intimate partner violence are women).

<sup>120</sup> *Id.*

<sup>121</sup> Jennifer R. Truman & Michael R. Rand, U.S. Dep't of Justice, *Criminal Victimization, 2009* (2010).

<sup>122</sup> L.A. Greenfield et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dep't of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).

<sup>123</sup> Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, *Intimate Partner Violence* (2000).

<sup>124</sup> Truman & Rand, *supra* note 121; Steven W. Perry, U.S. Dep't of Justice, NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime* (2004).

<sup>125</sup> For statistics on specific groups, see American Bar Association Commission on Domestic Violence, *Survey of Recent Statistics*, [http://www.americanbar.org/groups/domestic\\_violence/resources/statistics.html](http://www.americanbar.org/groups/domestic_violence/resources/statistics.html).

<sup>126</sup> HUD Memorandum, *supra* note 83, at 2.

<sup>127</sup> *Id.* at 5.

committed against them in their rental units.<sup>128</sup> Survivors have used fair housing laws to challenge zero tolerance policies by arguing that because such policies negatively affect domestic violence victims, they have a disparate impact on women. Other policies that have been challenged include a policy that held a tenant responsible for damages caused when her batterer broke into her apartment in violation of a restraining order,<sup>129</sup> and a policy that did not provide an emergency transfer for a public housing tenant whose abuser attacked her in her unit.<sup>130</sup>

HUD has outlined four steps that its investigators should follow while reviewing allegations of housing discrimination brought by victims of domestic violence. These steps may be helpful for advocates who are assessing whether a domestic violence survivor has a viable disparate impact claim:

- Identify the policy, procedure or practice of the landlord that is allegedly discriminatory in its effect on women.
- Determine whether the policy, procedure or practice is consistently applied.
- Determine whether the policy, procedure or practice has a significant adverse impact on victims of domestic violence, and if so, how many of these victims are women (or those of a particular race or national origin). Statistics are used to demonstrate the scope of the adverse impact. Statistics should be particularized, and they should demonstrate a causal link between the policy and the adverse impact.
- If the investigation reveals a disparate impact, the analysis shifts to determining the landlord's reasons for enforcing the policy and determining whether the proffered reasons are real and supported by a substantial business justification. Even if there is a substantial business justification, there may have been less discriminatory alternatives available to the landlord. For example, HUD states that "in a case of discriminatory eviction under a zero-tolerance policy, a landlord could adopt a policy of evicting only the wrongdoer and not the innocent victims."<sup>131</sup>

*Alvera v. C.B.M. Group Inc.*<sup>132</sup> is an example of a case investigated by HUD that used disparate impact theory to successfully challenge a zero tolerance for violence policy.<sup>133</sup> As noted above, Ms. Alvera received an eviction notice after her husband assaulted her in their apartment. She filed a complaint with HUD alleging that her landlord had discriminated against her on the basis of sex.<sup>134</sup> After investigating Ms. Alvera's complaint, HUD found that state and national statistics demonstrated that women are more likely than men to be victims of domestic violence.<sup>135</sup> HUD also found that the landlord's policy of evicting the victim as well as the perpetrator of an incident of violence between household members had a disparate impact based on sex, due to the disproportionate number of female

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<sup>128</sup> See *Bouley v. Young- Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Alvera v. C.B.M. Group Inc.*, No. HUDALJ 10-99-0538-8 (HUD Apr. 1, 2001), available at [http://www.aclu.org/images/asset\\_upload\\_file37\\_33994.pdf](http://www.aclu.org/images/asset_upload_file37_33994.pdf).

<sup>129</sup> Compl., *Lewis v. N. End Vill.*, No. 07cv10757 (E.D. Mich. Feb. 21, 2007). The complaint is included at Appendix 7. The *Lewis* case settled, with the landlord agreeing not to evict or discriminate against tenants because they have been victims of domestic violence, dating violence, sexual assault, or stalking. The landlord also agreed to pay monetary damages to the tenant.

<sup>130</sup> *Robinson v. Cincinnati Hous. Auth.*, No. 08cv238, 2008 WL 1924255 (S.D. Ohio Apr. 29, 2008). The court denied the tenant's motion for a temporary order that would have required the housing authority to transfer her to another public housing unit.

<sup>131</sup> *Id.* at 5-6.

<sup>132</sup> *Alvera v. C.B.M. Group Inc.*, No. HUDALJ 10-99-0538-8 (HUD Apr. 1, 2001). The charge of discrimination that HUD filed against the housing provider is included at Appendix 8.

<sup>133</sup> As discussed above, Ms. Alvera also asserted a claim alleging disparate treatment (intentional discrimination).

<sup>134</sup> The HUD complaint process is discussed later in this chapter.

<sup>135</sup> *Alvera*, *supra* note 132, at 6.

victims of domestic violence.<sup>136</sup> The case later settled, with the landlord adopting domestic violence policies and agreeing to pay damages to Ms. Alvera.<sup>137</sup>

In sum, fair housing laws may provide options for individuals who have been evicted or subjected to an adverse housing action because of their status as survivors of domestic violence. Survivors should write down any remarks that the landlord made regarding incidents of domestic violence, the dates on which the remarks were made, and whether anyone else heard the statements. Survivors should keep copies of their leases, house rules, and correspondence from the landlord.

The next section of this Chapter describes the protections that survivors have against being sexually harassed in their housing. The end of this Chapter explains ways in which survivors may enforce their rights under fair housing laws.

## 4.5 Protections Against 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. Due to this power imbalance, 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 her consent, and constantly leering and staring at the tenant.

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.<sup>138</sup>

Fortunately, tenants have protections against sexual harassment in housing. This section explains the laws that prohibit sexual harassment, the basic legal theories that are used in these cases, and examples of successful sexual harassment cases.<sup>139</sup>

### 4.5.1 Overview

Courts have held that the federal FHA prohibits sexual harassment in housing.<sup>140</sup> 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 fair housing organizations.

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<sup>136</sup> *Id.*

<sup>137</sup> Consent Decree at 5, *Alvera v. C.B.M. Group, Inc.*, *supra* note 110.

<sup>138</sup> *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).

<sup>139</sup> For more information regarding sexual harassment in housing, see HUD, Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008), <http://www.hud.gov/content/releases/q-and-a-111708.pdf>; National Housing Law Project, Sexual Harassment and Housing: Rights and Remedies of Tenants, [http://nhlp.org/files/6.%20Sexual%20Harassment%20Outline\\_1.pdf](http://nhlp.org/files/6.%20Sexual%20Harassment%20Outline_1.pdf).

<sup>140</sup> 42 U.S.C. § 3604(b); *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 laws protect both men and women against sexual harassment, including same-sex sexual harassment.<sup>141</sup>

Persons 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 was serving as an agent of an owner or manager when the sexual harassment occurred, the owner or manager can be held liable for the acts of an employee, such as a maintenance worker, janitor, or leasing agent.<sup>142</sup> An emerging issue is whether a property owner or manager can be held liable where one tenant sexually harasses another tenant. Although there is no published case law on the issue, it is possible that a property owner or manager could be liable if he or she knew of the tenant-on-tenant harassment and did nothing to stop it.<sup>143</sup>

As we will discuss below, there are three major theories that tenants have used to challenge sexual harassment and housing: (1) quid pro quo harassment; (2) hostile environment harassment; and (3) fair housing interference. Tenants also may have claims under their leases and state laws governing the landlord-tenant relationship. Advocates often raise a combination of these theories on behalf of tenants who have experienced sexual harassment.

The quid pro quo and hostile environment theories are often used in employment sexual harassment cases. As a result, many courts look to the employment cases for guidance in deciding claims involving sexual harassment in housing. Accordingly, advocates who are assisting survivors who have experienced sexual harassment in housing will likely benefit from consulting with employment attorneys regarding potential strategies.

#### 4.5.2 Quid Pro Quo Harassment

Quid pro quo sexual harassment occurs where housing providers or their agents demand sexual favors from a tenant in exchange for housing or housing benefits, such as continued tenancy, repairs, and stable rent levels. HUD regulations specifically address quid pro quo harassment, stating that housing providers are prohibited from "denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors."<sup>144</sup> A tenant may establish a quid pro quo claim for sexual harassment by proving that:

- She was subjected to an unwelcome sexual advance; and
- Housing or housing benefits were explicitly or implicitly conditioned upon submission to the unwelcome sexual advance.<sup>145</sup>

The first federal case to recognize a quid pro quo claim of sexual harassment in housing is *Shellhammer v. Lewallen*.<sup>146</sup> The owner of the tenant's building asked her to pose for nude photos. When she refused, she and her husband were evicted. The court found that the eviction was in retaliation for the tenant's rejection, and the owner's conduct constituted quid pro quo sexual harassment.

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<sup>141</sup> HUD, Questions and Answers on Sexual Harassment under the Fair Housing Act, *supra* note 139, at 3.

<sup>142</sup> See *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).

<sup>143</sup> See *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, No. 96-2495, 1997 WL 1877201 (D.D.C. Dec. 18, 1997) (finding that a tenant stated a sexual harassment claim against a condominium owners association where the association was aware that another tenant had repeatedly shouted sexist epithets at her and threatened to rape and kill her).

<sup>144</sup> 24 C.F.R. § 100.65(b)(5).

<sup>145</sup> See *Quigley v. Winter*, 598 F.3d 938, 947 (8th Cir. 2010) (citing *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993)); *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1172 (9th Cir. 2001) (quid pro quo sexual harassment in employment).

<sup>146</sup> 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985).

Similarly, in *Quigley v. Winter*,<sup>147</sup> the court upheld a tenant's claim for quid pro quo harassment where she alleged that her landlord intimated that he would return her security deposit only if she engaged in a sexual act with him. After the tenant refused to respond to his advances, the landlord withheld the security deposit. The court awarded the plaintiff damages and attorney's fees.

### 4.5.3 Hostile Environment Harassment

Another theory that is commonly used to challenge sexual harassment in housing is hostile environment theory. Hostile environment claims arise where the sexual harassment is so severe or pervasive that it alters the use and enjoyment of the survivor's home and creates an abusive living environment. Severe conduct may include, but is not limited to, unwanted touching, such as pinching, grabbing, rubbing, or kissing. Pervasive conduct may include, but is not limited to, constant and repeated requests for dates, sexually explicit jokes, or questions about a tenant's sex life. A tenant may establish a hostile environment claim for sexual harassment by proving that:

- The tenant was subjected to verbal or physical conduct of a sexual nature;
- The tenant was subjected to this conduct because of her sex;
- The conduct was unwelcome; and
- The conduct was sufficiently severe or pervasive to alter the use and enjoyment of the home and to create an abusive living environment.<sup>148</sup>

A tenant may need to demonstrate more than one incident of harassment in order to establish a hostile housing environment claim. Some of the factors courts consider include the frequency of the harassing conduct; whether the harassment was part of a pattern or practice of conduct; whether the conduct extended beyond offensive remarks; and the severity of the conduct.<sup>149</sup> Some courts have found that isolated or sporadic sexually inappropriate acts are not sufficiently pervasive and severe to constitute sexual harassment under fair housing laws.<sup>150</sup>

*Beliveau v. Caras*<sup>151</sup> is one example of a successful hostile environment case. After making a repair in the tenant's apartment, the building's resident manager grabbed the tenant's breasts and buttocks. The court found that any such touching would support a sexual harassment claim under the FHA, particularly where the battery was committed in the tenant's own home by a person whose role was to provide a safe environment. The court denied the owner's contention that a single incident of harassment cannot be so severe or pervasive as to alter the conditions of the tenant's housing environment.

In *Glover v. Jones*,<sup>152</sup> a court found that a tenant had stated a claim for hostile environment harassment where a property manager repeatedly stated his desire to have sex with the tenant, put his tongue in her mouth, hugged her, put his arm around her, and touched her breast. The court rejected the property owner's argument that she could not be liable for the manager's conduct because he was acting outside of the scope of his employment. Rather, the court found that the manager's position aided in his harassment of the tenant because it gave him the opportunity to visit her unit at will.

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<sup>147</sup> 598 F.3d at 947.

<sup>148</sup> See, e.g., *DiCenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996); *Honce*, 1 F.3d at 1085; *Hall v. Meadowood Ltd.*, 7 Fed. Appx. 687, 689 (9th Cir. 2001); *Glover v. Jones*, 522 F. Supp. 2d 496 (W.D.N.Y. 2007); *Beliveau v. Caras*, 873 F. Supp. 1393, 1398 (C.D. Cal. 1995).

<sup>149</sup> See *id.*

<sup>150</sup> *Hall*, 7 Fed. Appx. at 689.

<sup>151</sup> 873 F. Supp. at 1398.

<sup>152</sup> 522 F. Supp. 2d 496 (W.D.N.Y. 2007).

#### 4.5.4 Fair Housing Interference

A tenant also may have a claim under fair housing laws where the owner or property manager intimidated, threatened, or interfered with the exercise of her rights under fair housing laws.<sup>153</sup> For example, fair housing laws forbid landlords from retaliating against tenants who file sexual harassment complaints or who refuse to engage in sexual conduct. A tenant may establish a fair housing interference claim by proving that:

- She engaged in activity protected under the FHA;
- The property manager or owner subjected her to coercion, intimidation, threats, or interference; and
- There was a causal connection between the adverse action and the protected activity.<sup>154</sup>

An example of a successful fair housing interference case is *Grieger v. Sheets*.<sup>155</sup> The court found that the tenant stated a fair housing interference claim where the landlord repeatedly demanded sexual favors from the tenant, the tenant refused the landlord's demands, and the landlord consequently refused to repair the tenant's home, damaged the property, threatened not to renew the lease, and forced the tenant to give up her dog.

#### 4.5.5 State Law Claims for Tenants Subjected to Sexual Harassment

In addition to the protections available under fair housing laws, tenants who have been victims of sexual harassment may have state law tort and contract claims. Advocates should therefore examine their jurisdiction's laws to determine whether additional causes of action may be available to sexual harassment victims. State tort law claims may include intentional infliction of emotional distress, assault, battery, or retaliatory eviction. If the harassing conduct violated a provision of the tenant's lease, the tenant may raise a breach of contract claim.

A tenant also may have a claim for breach of the covenant of quiet enjoyment. Almost every jurisdiction recognizes that the landlord impliedly promises not to interfere with the tenant's quiet enjoyment of the premises.<sup>156</sup> The covenant of quiet enjoyment protects the tenant from acts by the landlord that disturb the tenant's peaceful possession of the premises, such as harassment by the landlord that interferes with the tenant's use of her dwelling.

In some jurisdictions, harassment that results in a violation of the tenant's privacy rights may be illegal under state law. Thus, a landlord who enters a tenant's unit without her permission and sexually harasses her may be liable under state landlord-tenant laws that restrict the landlord's access to rental units. For example, in California a landlord only may enter a tenant's unit in case of an emergency, to make necessary or agreed repairs, to show the unit to prospective tenants, or pursuant to a court order.<sup>157</sup>

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<sup>153</sup> See 42 U.S.C. § 3617.

<sup>154</sup> 24 C.F.R. § 100.400.

<sup>155</sup> 689 F. Supp. 835 (N.D. Ill. 1988).

<sup>156</sup> ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 3.3 (WEST 2010).

<sup>157</sup> CAL. CIV. CODE § 1954.

#### **4.5.6 Practice Tips**

One of the factors courts consider in determining whether sexual harassment has occurred is whether the demand or request for sexual favors was unwelcome or unsolicited. Additionally, courts often examine whether landlords and managers were aware of the harassment. As a result, documentation is essential in sexual harassment cases. Tenants who have experienced sexual harassment should write down what the property owner or manager said or did, the dates and places of the incidents, and the names and contact information of any witnesses. Tenants also should keep copies of any harassing, threatening, or sexually explicit materials or letters they received from the owner or manager. If possible, tenants should address the harassment when it occurs, such as by rejecting requests for dates or asking the perpetrator to stop making unwanted comments or physical contact.

The tenant also should consider writing a letter to the perpetrator describing the harassing conduct and requesting that the conduct stop. She should send a copy to the owner, property management company, or the perpetrator's supervisor. If other tenants have been victims, the tenant should ask them to sign on to the letter. The tenant should keep copies of all correspondence.

A tenant who has been assaulted by or who fears harm from her landlord, property manager, or an employee at the property should contact law enforcement.

#### **4.6 Enforcing Rights of Survivors Who Have Faced Discrimination**

Survivors who have been discriminated against based on violence committed against them or who have been subjected to sexual harassment in housing have several options for enforcing their rights. This section outlines those options, including conducting informal advocacy, raising defenses to eviction, filing an administrative complaint, and filing a civil lawsuit.

Survivors have only a short period of time to act if they have experienced housing discrimination. An administrative complaint must be filed within one year of the discriminatory action, and a civil lawsuit under the federal FHA must be filed within two years. Therefore, advocates should act quickly if a survivor indicates that she has experienced discrimination. Advocates who usually do not work on housing issues should consider referring survivors to a local fair housing agency or legal services program.

##### **4.6.1 Informal Advocacy**

Housing discrimination disputes often may be handled informally by offering to meet with the housing provider or by writing a letter.<sup>158</sup> Many landlords are unaware that sexual harassment is against the law, or that HUD has found that discrimination against domestic violence survivors violates the FHA. It is therefore helpful to bring copies of the law and relevant cases to your meeting with the housing provider, or to attach these materials to your letter. Make notes of your conversations with the housing provider, and send a letter to the housing provider afterward that memorializes the content of your conversations. Letters should be sent by certified mail, and advocates should keep copies of all correspondence. If appropriate, it also may be helpful to have law enforcement, the district attorney's office, or a local government official contact the housing provider on the survivor's behalf.

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<sup>158</sup> A sample letter is included at Appendix 5.

## 4.6.2 Eviction Defenses

In many jurisdictions, a violation of fair housing laws may be raised as a defense to an eviction. Thus, tenants facing eviction for reasons related to acts of domestic violence or sexual harassment committed against them have successfully used state and federal fair housing laws as affirmative defenses to the eviction. Attorneys should note that in some jurisdictions it is unclear whether raising the discrimination issue in the eviction case will bar the tenant from later bringing a discrimination claim in a separate affirmative civil action.<sup>159</sup> Under the doctrine of *res judicata*, a final judgment on the merits of an action precludes the parties from relitigating issues that were raised in that action.<sup>160</sup> As a result, a survivor who defends and loses an eviction case on the grounds that the landlord discriminated against her may be barred from raising the discrimination issue again in a separate affirmative civil suit.<sup>161</sup> Attorneys should assess and discuss with the survivor the likelihood of a civil lawsuit's success before raising discrimination as a defense in an eviction case.

In any event, a survivor who has received an eviction notice that is related to acts of domestic violence or sexual harassment committed against her should immediately contact the local legal services program for assistance.

## 4.6.3 Administrative Complaint

A survivor who has experienced housing discrimination may file an administrative complaint with the federal Department of Housing and Urban Development (HUD). The Appendix to this Manual includes a sample housing discrimination complaint filed with HUD.<sup>162</sup> The administrative claim process seeks to reach an agreement between the parties, which may include damages and other relief for the survivor. As will be discussed at the end of this section, survivors can elect to forgo the administrative complaint process and instead file a civil lawsuit in state or federal court.

HUD is responsible for enforcement of the federal FHA.<sup>163</sup> A tenant must file a complaint with HUD within one year after the alleged discrimination. After the complaint is filed, HUD will conduct a telephone interview to determine whether it has jurisdiction over the complaint. If HUD has jurisdiction, it will conduct an investigation and attempt to settle the matter. If the parties cannot reach a settlement and there is reasonable cause to believe that discrimination has occurred, HUD will issue a charge of discrimination to the housing provider. The parties must then decide whether to have the case heard by a HUD administrative law judge or to have the case heard in federal court. Remedies available from a HUD administrative law judge include damages for the tenant, injunctive or other equitable relief, and civil penalties. However, punitive damages are not available.

In cases involving a larger public impact, such as cases where a housing provider has sexually harassed multiple tenants, HUD and the Department of Justice also may file a lawsuit in court, either on behalf of their agencies or on behalf of injured tenants. To file a housing discrimination complaint with HUD, call 1 (800) 669-9777 or visit <http://www.hud.gov/offices/fheo/online-complaint.cfm>.

In addition to HUD, many jurisdictions have state and local agencies that investigate fair housing complaints. If there is a state or local agency that provides rights and remedies that are equivalent to the

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<sup>159</sup> See, e.g., *United States v. Katz*, 2011 WL 2175787 (S.D.N.Y. 2011).

<sup>160</sup> *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

<sup>161</sup> See *Lovely v. Laliberte*, 498 F.2d 1261, 1263-64 (1st Cir. 1974).

<sup>162</sup> See Appendix 9.

<sup>163</sup> For more information about HUD's Office of Fair Housing and Equal Opportunity, visit <http://www.hud.gov/complaints/housediscrim.cfm>.

ones provided by HUD, HUD will refer fair housing complaints to that agency.<sup>164</sup> The agency must begin to work with the complainant within 30 days, or HUD can take the complaint back.<sup>165</sup> HUD generally handles all cases involving federally subsidized housing.

#### 4.6.4 Civil Lawsuits

Instead of filing an administrative complaint, a tenant who has been discriminated against may file a civil suit in state or federal court within two years of the discriminatory act. The Appendix to this Manual includes sample complaints filed in federal courts by survivors alleging housing discrimination.<sup>166</sup> Statutes of limitations for housing discrimination claims under state law may vary, and advocates will need to consult their state laws in order to advise survivors as to the time limitations on state fair housing claims. Agencies that are restricted from filing affirmative civil suits should consider referring survivors to pro bono attorneys who can litigate these cases.

While tenants are not required to file an administrative complaint before filing a civil lawsuit, information gathered by HUD during its investigations may be helpful in a civil action. However, the tenant should avoid a determination by HUD or an equivalent state agency that no discrimination occurred and should withdraw her complaint if this outcome seems likely. Also, if a survivor files her civil lawsuit before filing an administrative complaint with HUD, HUD cannot investigate or otherwise act on the administrative complaint.

Remedies available in civil actions claiming violations of fair housing laws can include:

- Damages for emotional distress, loss of civil rights, or economic injuries, such as relocation or other expenses the tenant incurred due to the discrimination.
- Punitive damages if the housing provider intentionally or flagrantly violated the law.
- Injunctive or other equitable relief, such as ordering the housing provider to stop discriminating against the tenant, to cease any eviction proceedings against the tenant, or to allow the tenant to return to the unit if she already has been evicted.
- Attorney's fees and costs.

In addition to the fair housing claims discussed in this Chapter, additional state law claims also may be available. For example, survivors who have experienced housing discrimination may have state law claims for unfair business practices and retaliation for exercising fair housing rights.

#### 4.7 Conclusion

Survivors of domestic violence have protections against evictions or other adverse housing actions for reasons related to the acts of violence committed against them. Advocates have successfully used state and local laws and fair housing theories, such as disparate treatment theory and disparate impact theory, to challenge denials of housing to domestic violence survivors. Several tools are available to those working on behalf of survivors who have experienced housing discrimination, including informal advocacy, administrative complaints filed with HUD or an equivalent state or local agency, and affirmative litigation.

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<sup>164</sup> HUD's Title VIII Fair Housing Complaint Process, <http://www.hud.gov/offices/fheo/complaint-process.pdf>.

<sup>165</sup> *Id.*

<sup>166</sup> *See* Appendices 6 and 7.

# Chapter 5: Housing Rights of Domestic Violence Survivors with Disabilities

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### 5.1 Introduction

Safe, secure and accessible housing is critically important to all survivors, but it may be especially difficult to secure for victims with physical and/or cognitive disabilities.<sup>167</sup> This is because appropriate, affordable housing stock is often limited and admission may be difficult to gain. Victims with physical disabilities may be barred or impeded from residing in housing that is not designed to accommodate their needs. For example, a victim with a physical disability or mobility challenges may need housing that is wheelchair accessible. A deaf or hard of hearing victim may need a residence where the telephones, smoke alarms, security alarms, and other safety devices are visual instead of auditory. These services and devices may be especially important to a victim who was assaulted in her home, or in situations where the victim believes the perpetrator knows where she resides. Victims with mental or cognitive disabilities are sometimes evicted from or denied entry to certain housing because their mental

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<sup>167</sup> Portions of the chapter, “Housing Issues and Remedies for Survivors with Disabilities,” are excerpted, with permission, from the Victim Rights Law Center’s national manual, BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates. All rights are reserved by the Victim Rights Law Center (VRLC). The material may not be altered or modified without the express permission of the VRLC. Preparation of the manual was supported by VRLC grant number 2004-WT-AX-K062, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, and conclusions expressed in the document are those of the authors and editors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

illness is perceived to or does in fact result in anti-social, physically aggressive, or self-destructive behavior. (For example, some residential facilities will not accept or retain a resident who engages in serious acts of self-harm.) Addressing housing needs may be the first step to providing effective advocacy for victims with disabilities. The following examples illustrate how a disabled victim's circumstances may result in an acute housing need:

- Client was sexually assaulted in her apartment and the landlord denies her request to have a service animal to alert her to visitors;
- Client is not permitted to bring her service animal into emergency or transitional housing;
- Landlord refuses to allow client to make reasonable modifications to apartment to establish or enhance accessibility (e.g., a designated disabled parking space or a parking space closest to an accessible entrance);
- Client faces eviction for failure to pay rent on time due to a traumatic brain injury she sustained during a sexual assault;
- The survivor resides in a group home, family home, or other residential care facility where the perpetrator is employed; or
- Client's safety is at risk and she wishes to relocate but is told there are no accessible units available that can accommodate her disability.

## 5.2 The Right to Reasonable Accommodation

As the examples above illustrate, it is critical that advocates familiarize themselves with the housing issues that survivors with disabilities face. In helping survivors utilize and maintain safe housing, advocates should look not only to laws that specifically protect the housing rights of survivors, but also to laws that protect the housing rights of persons with disabilities. Both federal and state fair housing laws prohibit discrimination based on a person's disability. One form of discrimination under these laws includes a refusal to make reasonable accommodations in rules or policies when needed to provide persons with disabilities an equal opportunity to use and enjoy a dwelling.<sup>168</sup> While other forms of housing discrimination based on disability may occur, this Chapter focuses on the right to reasonable accommodation. This Chapter discusses the reasonable accommodation process and describes how that process can be used to advocate for the housing rights of survivors with disabilities.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Most fair housing laws require that housing providers' policies treat and impact groups equally. In contrast, fair housing laws related to reasonable accommodation require that housing providers make exceptions to policies that may be otherwise nondiscriminatory in order to guarantee equal housing opportunities for persons with disabilities.

Reasonable accommodation laws arise from a number of sources. The Fair Housing Act (FHA),<sup>169</sup> the Americans with Disabilities Act (ADA),<sup>170</sup> and the Rehabilitation Act of 1973<sup>171</sup> are federal laws that require reasonable accommodation for individuals with disabilities. States also have enacted laws requiring reasonable accommodation in terms and conditions of housing. The FHA applies to most housing, except for (1) a dwelling with four or fewer units, as long as the owner is one of the

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<sup>168</sup> 42 U.S.C. § 3604(f).

<sup>169</sup> §§ 3601 *et seq.*

<sup>170</sup> §§ 12101 *et seq.*

<sup>171</sup> 29 U.S.C. § 794.



occupants; (2) a single family home, provided the owner does not own more than three such houses at one time; and (3) certain housing run by private clubs for their members.<sup>172</sup> The Rehabilitation Act applies only to federally assisted housing, and the ADA applies only to state-funded housing. Advocates should note that state and local fair housing laws may provide broader and more comprehensive coverage than the federal laws. Accordingly, in addition to the federal laws, advocates should examine whether a survivor who needs a reasonable accommodation may have remedies under state and local fair housing laws. This section provides a brief overview of the federal reasonable accommodation laws.

### **5.2.1 The Fair Housing Act (FHA)**

In 1988, the Fair Housing Amendments Act amended the FHA to prohibit discrimination against people with “handicaps,” defining handicap in the same way that disability is defined in other federal legislation.<sup>173</sup> Discrimination under the FHA includes a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to give persons with disabilities equal opportunity to use and enjoy a dwelling.<sup>174</sup> The FHA applies to most housing providers, regardless of whether they are government subsidized. The FHA is of primary importance in helping survivors with disabilities obtain safe and accessible housing. The FHA regulations can be found at 24 C.F.R. § 100.204.

### **5.2.2 Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 provides additional protections for survivors living in federally subsidized housing. The statute provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”<sup>175</sup> Section 504 applies only to housing providers receiving federal assistance. Such housing providers include public housing agencies (PHAs) and owners of project-based Section 8 properties, Section 202 properties (housing for seniors), Section 811 properties (housing for persons with disabilities), or properties subsidized by funds from the Community Development Block Grant, HOME, or Housing Opportunities for Persons with AIDS programs. Housing projects subsidized by the U.S. Departments of Veterans Affairs and Agriculture are also subject to Section 504. Section 504 regulations are found at 24 C.F.R. Part 8.

### **5.2.3 The Americans with Disabilities Act (ADA)**

The ADA prohibits discrimination by state and local governments on the basis of disability.<sup>176</sup> Its protections are essentially equivalent to those of Section 504.<sup>177</sup> In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA).<sup>178</sup> The Act clarifies certain definitions under the ADA in response to Supreme Court decisions that had narrowed their scope. The ADAAA

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<sup>172</sup> 42 U.S.C. §§ 3603(b)(1)-(2), 3607.

<sup>173</sup> See Chapter 4 for general information on the Fair Housing Act.

<sup>174</sup> 42 U.S.C. § 3604(f).

<sup>175</sup> See 29 U.S.C. § 794(a).

<sup>176</sup> 42 U.S.C. § 12132.

<sup>177</sup> *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating that the ADA extends Section 504 coverage to state and local programs).

<sup>178</sup> ADA Amendments Act, Pub. L. No. 110-325, 122 Stat. 3553 (effective Jan. 1, 2009).

emphasizes that the definition of disability should be construed in favor of broad coverage. ADA regulations are found at 28 C.F.R. § 35.130(b)(7).

### **5.3 Defining “Reasonable Accommodation”**

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. A housing provider must grant a requested reasonable accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. Failure to provide a reasonable accommodation may be construed as discrimination.<sup>179</sup> Practically, a reasonable accommodation helps individuals with disabilities fully use and enjoy their housing. As discussed below, one of the first considerations in determining whether a survivor has a right to a reasonable accommodation is whether the survivor has a disability as defined under state or federal law.

#### **5.3.1 Federal Definition of Disability for the Purpose of Reasonable Accommodation**

All three federal laws define disability in the same manner,<sup>180</sup> based on the initial definition created in Section 504 of the Rehabilitation Act.<sup>181</sup> A person with disabilities is any person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.<sup>182</sup> Each prong of this definition is discussed in detail below. A survivor need only satisfy one of these prongs to be considered a person with a disability. State fair housing laws may have more expansive definitions of disability than the federal laws, so it is important for advocates to carefully review their jurisdiction’s laws on reasonable accommodation.

##### *Has a Physical or Mental Impairment that Substantially Limits One or More Major Life Activities*

To determine whether a person is “substantially limited,” courts will often consider whether the individual is unable to perform a major life activity at all, or whether he or she is “significantly restricted in the duration, manner, or condition” under which he or she can perform that activity, as compared to the average person.<sup>183</sup> “Major life activities” can include either: (a) certain activities, such as caring for oneself, performing manual tasks, reading, bending, speaking, breathing, or working; or (b) major bodily functions, such as digestive, neurological, bowel, bladder, or reproductive functions.<sup>184</sup>

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<sup>179</sup> 42 U.S.C. § 3604(f)(3).

<sup>180</sup> 29 U.S.C. § 705(20); 42 U.S.C. §§ 3602(h), 12102; 24 C.F.R. §§ 8.3, 100.201; 28 C.F.R. § 35.104.

<sup>181</sup> While a number of Supreme Court decisions had interpreted the ADA definition of disability differently than Section 504, Congress clarified the meaning of various terms in the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102 (effective Jan. 1, 2009).

<sup>182</sup> 29 U.S.C. § 705(20)(B) (1973); 42 U.S.C. § 12102.

<sup>183</sup> *Peters v. City of Mauston*, 311 F.3d 835, 843 (7th Cir. 2002).

<sup>184</sup> 29 U.S.C. § 705(20)(B) (Rehabilitation Act); 42 U.S.C. § 12102(2)(A)-(B) (Americans with Disabilities Act).

### *Has a Record of Such Impairment*

“Having a record” of an impairment requires that a person has a history of, or has been misclassified as having, a disability as defined above.<sup>185</sup> This would include, for example, a survivor who has recovered from cancer or mental illness.<sup>186</sup>

### *Is Regarded as Having Such an Impairment*

This final prong of the definition covers persons who: (a) have an impairment that does not substantially limit a major life activity but are treated as having such a limitation; (b) have an impairment that substantially limits a major life activity only as a result of others’ attitudes toward the impairment; or (c) have no impairment but are treated as having such an impairment.<sup>187</sup> For example, this would cover a survivor with a facial disfigurement who is denied housing because a landlord feared negative reactions from other tenants.<sup>188</sup>

## **5.3.2 Exceptions to the Definition of Disability**

Although fair housing laws cover persons with a range of physical and mental impairments, they do not protect every individual who has an impairment. This section explains the major exceptions to the definition of disability.

### *Drug Use*

A current illegal user of a controlled substance is not disabled for purposes of reasonable accommodation. However, an individual with a disability can include a survivor who has successfully completed drug rehabilitation, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.<sup>189</sup>

### *Direct Threat*

Nothing in the FHA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”<sup>190</sup> Examples of a direct threat may include acts that affect tenants’ health, such as excessive noise or physical violence. A direct threat must be based on objective evidence. It cannot be subjective; other tenants’ perceived fears are not sufficient to create a direct threat, even if those fears are reasonable.<sup>191</sup> Furthermore, the housing provider has an

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<sup>185</sup> 29 C.F.R. § 1630.2(k).

<sup>186</sup> See U.S. Equal Employment Opportunity Commission, U.S. Department of Justice Civil Rights Division, Americans with Disabilities Act: Questions and Answers, <http://www.ada.gov/qandaeng.htm> [hereinafter Americans with Disabilities Act: Questions and Answers].

<sup>187</sup> 45 C.F.R. § 84.3(j)(2)(iv).

<sup>188</sup> See Americans with Disabilities Act: Questions and Answers, *supra* note 186.

<sup>189</sup> 42 U.S.C. § 12210(b).

<sup>190</sup> § 3604(f)(9).

<sup>191</sup> See, e.g., *Twp. of West Orange v. Whitman*, 8 F. Supp. 2d 408 (D.N.J. 1998) (finding that a municipality and homeowners could not use a direct threat argument to prevent the siting of nearby group homes for persons with mental illness where the fear of the risk the home posed was based on generalized, subjective fear); *Wirtz Realty Corp. v. Freund*, 721 N.E.2d 589 (Ill.

obligation to provide a reasonable accommodation that may help mitigate the threat.<sup>192</sup> Therefore, if a survivor presents a direct threat to the health and safety of others for a reason related to disability, advocates should request an accommodation that would mitigate such a threat. For example, a survivor suffering from post-traumatic stress disorder who struck another tenant during a verbal altercation could request that the landlord refrain from evicting her while she enrolls in a specialized treatment program. If an accommodation that eliminates or mitigates the threat cannot be made, then the individual's tenancy may not be protected. Solutions to direct threat allegations will often need to be creative and individualized.<sup>193</sup>

## 5.4 Requesting an Accommodation

There are several components to requesting a reasonable accommodation, including initial requests, verification, reasonableness, and the interactive process. Each of these components is discussed in detail below. For more information, advocates should consult the Department of Housing and Urban Development's (HUD) guidance regarding the process of requesting a reasonable accommodation.<sup>194</sup>

### *Initial Requests*

If a tenant tells a housing provider that she is disabled and needs a rule, policy, practice, or service changed to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.<sup>195</sup> A request may be oral or written. In some cases, the provider may ask the tenant to make the request by filling out a form. While a housing provider may provide such a form, it must also accept a letter or oral request from the tenant. As a best practice, tenants or their advocates should request accommodations in writing, so that there is a clear record in case of a dispute. The appendix to this Manual contains a sample letter requesting a reasonable accommodation.<sup>196</sup> All requests should include a statement that the tenant has a disability, a description of the requested accommodation, an explanation of how the accommodation is related to the tenant's disability, and an explanation of how

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App. 1999) (finding that objective evidence is required for a direct threat, and that residents' belief that they were in danger, even if that belief proved to be "reasonable," did not satisfy this requirement).

<sup>192</sup> *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636 (D.N.H. 1993); JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 4 (2004)[hereinafter Joint Statement], <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

<sup>193</sup> For more information regarding the direct threat exception, see Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #8, Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet8.html>.

<sup>194</sup> See Non-discrimination and Accessibility for Persons with Disabilities, HUD Letter 2007-05 (Sept. 21, 2007) (making permanent Notice on Non-discrimination and Accessibility for Persons with Disabilities, PIH 2006-13 (March 8, 2006)); Joint Statement, *supra* note 192.

<sup>195</sup> Joint Statement, *supra* note 192, at 10.

<sup>196</sup> See Appendix 10.

the accommodation will help the tenant remain in the housing.<sup>197</sup> Note that a housing provider cannot ask about the diagnosis, treatment, nature, or extent of the disability.<sup>198</sup>

### *Verification*

The housing provider may seek to verify the tenant's accommodation request. There are three possible verification scenarios. If a person's disability is obvious or is known to the housing provider, and the need for the requested accommodation is known, then the housing provider may not ask for any more information.<sup>199</sup> If the disability is known or obvious, but the need for the accommodation is not, then the housing provider should ask only for information necessary to verify the need.<sup>200</sup> If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.<sup>201</sup>

In some cases, housing providers should allow individuals to self-certify their disabilities. For example, an applicant/participant may provide proof of Supplemental Security Income (if younger than 65) or Social Security Disability Insurance benefits in order to certify.<sup>202</sup> A doctor or other medical professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may also provide verification of the disability and the need for the accommodation.<sup>203</sup>

### *Reasonableness*

If a housing provider has verified the need for the accommodation, and the requested accommodation is reasonable, then he or she must provide it. The term "reasonable" means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.

An undue burden may be financial or administrative.<sup>204</sup> To determine if an undue financial burden exists, four factors should be considered: the housing provider's financial resources, the costs of the requested accommodation, the benefit to the tenant, and the availability of a less expensive alternative accommodation.<sup>205</sup> Courts have recognized that reasonable accommodation will often cause housing providers some financial or other burden.<sup>206</sup>

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<sup>197</sup> See, e.g., *Andover Hous. Auth. v. Shkolnik*, 820 N.E.2d 815 (Mass. 2005) (holding that tenant's requested reasonable accommodation, delay or withdrawal of eviction action, would not permit the tenant to comply with lease provisions regarding excessive noise); *Landmark Props. v. Olivo*, 783 N.Y.S.2d 745 (N.Y. App. Term 2004) (affirming order of eviction where tenant had not submitted clear evidence establishing that his dog was necessary to his enjoyment of his rental unit); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 20 (2003), <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

<sup>198</sup> PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 197, at 19.

<sup>199</sup> Joint Statement, *supra* note 192, at 12.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 13.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 13-14.

<sup>204</sup> 24 C.F.R. § 8.11.

<sup>205</sup> Joint Statement, *supra* note 192, at 8; see, e.g., *Solberg v. Majerle Mgmt.*, 879 A.2d 1015 (Md. 2005) (finding an undue burden where request would have required landlord to make significant changes to his personal life and daily activities and would have prevented him from inspecting tenant's unit).

<sup>206</sup> *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413 (9th Cir. 1994) (holding that mobile home park owner, under duty to provide reasonable accommodation, may have to incur reasonable financial costs).

An accommodation may also be unreasonable if it fundamentally alters the nature of the program. A housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider does. For example, a tenant's request that a landlord provide daily transportation services would likely be considered unreasonable if the building currently has no such service.

### *Interactive Process*

If a housing provider rejects a tenant's reasonable accommodation request, the housing provider still must engage in an interactive process with the tenant.<sup>207</sup> This means that the housing provider must offer to discuss alternative accommodations that would satisfy the tenant's need while not imposing an undue burden or fundamental alteration to the housing provider's program. During this interactive process, keep in mind that the person with disabilities knows best what accommodation will satisfy her needs. If the two parties cannot agree on an alternative accommodation, it is treated as a denial of the reasonable accommodation request.

Federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities.<sup>208</sup> Therefore, a survivor living in federally assisted housing may use the grievance procedure to challenge an initial refusal to accommodate. In practice, this grievance procedure is often used as the vehicle for the interactive process.

### *Timing of the Request*

A reasonable accommodation may be requested at any time, including prior to application and admission, during occupancy, after termination or eviction, and even during litigation.<sup>209</sup> Advocates should raise a request for a reasonable accommodation as soon as it is apparent that such accommodation is needed.

## **5.5 Common Issues for Survivors**

This section describes some of the reasonable accommodation issues that may be encountered by survivors with disabilities, including requests to have a live-in aide or assistive animal in the unit, requests to transfer or move to units that better serve the survivor's needs, and evictions and subsidy terminations related to the survivor's disability.

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<sup>207</sup> Joint Statement, *supra* note 192, at 7.

<sup>208</sup> 24 C.F.R. § 8.53.

<sup>209</sup> Joint Statement, *supra* note 192, at 12; *see also* Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997) (finding that landlord may be required to halt eviction even if the accommodation request was not made until the eviction proceedings); Douglas v. Kregsfeld Corp., 884 A.2d 1109 (D.C. 2005) (explaining the "general rule under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute"); Hous. Auth. of Bangor v. Maheux, 748 A.2d 474 (Me. 2000) (finding that until writ is issued, landlord remains under obligation to provide reasonable accommodation); Schuett Inv. Co. v. Anderson, 386 N.W.2d 249 (Minn. Ct. App. 1986) (ordering landlord not to evict tenant).

### *Receiving Assistance from an Aide or Animal*

A survivor who has a disability may need a live-in aide to help her perform activities of daily living. A PHA or owner must approve a live-in aide as a reasonable accommodation.<sup>210</sup> In some cases, a housing provider may be reluctant to allow a survivor to have a live-in aide where the prior aide had committed acts of domestic violence against the survivor. However, all reasonable accommodations must be judged on a case-by-case basis, and a housing provider should not restrict a survivor's right to a caregiver because of prior abuse.

A survivor with a disability may need an assistive animal to perform tasks, provide emotional support, or alert the survivor to intruders. State and federal laws protect the right of people with disabilities to keep assistive animals, even when a housing provider's policy prohibits pets.<sup>211</sup> A housing provider may be required to provide an exception to a no-pets policy as a reasonable accommodation to a survivor who needs an assistive animal. For example, a court found that a survivor could request an exception to a landlord's pet policy as a reasonable accommodation where she kept a dog in her apartment to alleviate her post-traumatic stress disorder.<sup>212</sup> The tenant stated that she was a survivor of domestic violence and that the dog lessened her constant state of fear because he preceded her into rooms, switched on lights in darkened rooms, and had been trained to bring her cell phone to her.<sup>213</sup>

### *Transferring or Moving*

Many PHAs and owners have policies restricting transfers to other units or moves with a Section 8 voucher. For example, housing providers often have policies that prohibit tenants from moving during their first year in the unit, or from moving more than once during a 12-month period. Tenants with disabilities can request exceptions to these policies as a reasonable accommodation. Accordingly, a survivor who lives on the third floor of a walk-up apartment complex and who has become disabled as a result of acts of violence committed against her may request relocation to a ground-floor apartment.<sup>214</sup> Similarly, a survivor who is suffering from post-traumatic stress disorder as a result of an assault in the parking lot of her apartment complex may request a transfer to another apartment complex.

A Section 8 voucher tenant who needs to move due to her disability can do so and continue to receive rental assistance. If a survivor with a disability needs to make such a move with her Section 8 voucher, she should request a reasonable accommodation and explain that the relocation is related to her disability.

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<sup>210</sup> § 982.316(a).

<sup>211</sup> See, e.g., *Green v. Hous. Auth. of Clackamas County*, 994 F. Supp. 1253 (D. Or. 1998); *Auburn Woods I Homeowners Ass'n v. Fair Employment & Hous. Comm'n*, 18 Cal. Rptr. 3d 669 (Cal. Ct. App. 2004); see also U.S. Department of Justice, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.ada.gov/qasrvc.htm>; Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #6, Right to Emotional Support Animals in "No Pet" Housing*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>.

<sup>212</sup> *State of Iowa v. Des Moines Mun. Hous. Agency*, 2010 WL 4484005 (Iowa Ct. App. 2010).

<sup>213</sup> *Id.*

<sup>214</sup> See, e.g., *Bentley v. Peace & Quiet Realty 2 LLC*, 367 F. Supp. 2d 341, 346 (E.D.N.Y. 2005) (finding that a request to move between units of an apartment building is a cognizable accommodation under the FHA); *Roseborough v. Cottonwood Apartments*, No. 94cv3708, 1994 WL 695516 (N.D. Ill. Dec. 9, 1994) (same); *United States v. Hialeah Hous. Auth.*, 2011 WL 989815, slip op. (11th Cir. Mar. 22, 2011) (same); PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 197, at 148; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 3-65, 3-67 (2008).

## *Eviction/Termination*

Individuals with disabilities sometimes face evictions or housing assistance terminations that are directly related to the disability. If a PHA seeks to terminate assistance or evict a tenant, it may consider disability as a mitigating circumstance and determine if a reasonable accommodation would allow the tenant to remain in the program.<sup>215</sup> All housing providers must consider a request for reasonable accommodation at any time, including after the housing provider has served an eviction or termination notice. For example, a survivor who has been hospitalized for an extended period of time as a result of a physical or psychological condition may request, as a reasonable accommodation, that an eviction notice for nonpayment of rent be withdrawn and that she be given additional time to pay the rent. As another example, a survivor who failed to attend a meeting with the PHA to certify her income because she was suffering from severe depression may request that the PHA cease any efforts to terminate her subsidy for failure to attend the meeting. As a third example, a survivor who threatened a PHA staff member due to aggressive behavior caused by a change in her medication may request that the PHA cease any efforts to terminate her subsidy for threatening conduct.<sup>216</sup>

### **5.6 Enforcement**

Individuals with disabilities who have been denied their right to a reasonable accommodation have several options for enforcement, including administrative complaints and civil lawsuits. For information on these options, see Chapter 4.

### **5.7 Conclusion**

Survivors with disabilities face unique challenges to accessing safe and stable housing. Advocates must be aware of all the tools available to help survivors with disabilities, including the right to a reasonable accommodation. In many cases, a reasonable accommodation may lead to a swift and responsive solution to the survivor's housing needs.

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<sup>215</sup> 24 C.F.R. § 982.552(c)(2)(i); HUD, HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 15-10 (2001).

<sup>216</sup> See *Wojcik v. Lynn Hous. Auth.*, 845 N.E.2d 1160, 1164 (Mass. Ct. App. 2006) (upholding hearing officer's decision not to terminate a disabled Section 8 voucher tenant who had recently been the victim of a domestic assault and whose children were also disabled).



# **Chapter 6: The Violence Against Women Act and Rights of Survivors in Federally Subsidized Housing**

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## 6.1 Introduction

The Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA 2005)<sup>217</sup> protects the rights of applicants and tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating violence, or stalking. VAWA 2005 marked the first time that the Act included housing protections for survivors of domestic violence, dating violence, and stalking living in federally subsidized housing. The housing provisions, which became effective January 2006, prohibit survivors from being evicted or denied housing assistance based on acts of violence committed against them.

VAWA 2005 amended federal housing statutes, primarily 42 U.S.C. Sections 1437d and 1437f. Congress enacted the housing provisions in response to findings that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”<sup>218</sup>

This Chapter first discusses the scope of VAWA’s housing protections, including the types of housing and individuals to whom VAWA applies and the proof that is required to assert the protections. The Chapter then discusses the housing rights available to survivors, including protections against evictions and subsidy terminations, and provides examples of how these rights have been used in practice. The Chapter also discusses survivors’ rights to relocate with continued rental assistance and to remove the abuser from a lease or Section 8 voucher. Finally, the Chapter concludes with practice tips for using VAWA’s housing protections to their maximum potential.

To help advocates locate the relevant statutory provisions, the appendix to this Manual includes a statutory compendium that contains the text of VAWA’s housing provisions and the relevant citations.<sup>219</sup> Additionally, advocates should consult administrative guidance issued by the Department of Housing and Urban Development.<sup>220</sup>

## 6.2 Types of Housing that VAWA Covers

In determining whether a survivor can use VAWA’s housing protections, advocates first must examine whether the survivor is applying for or living in a federally subsidized housing program that is covered by VAWA. The housing programs VAWA covers are public housing, the Section 8 voucher program, project-based Section 8 developments, and the Section 202 and Section 811 supportive housing programs.<sup>221</sup> If a client needs help determining whether she is a participant in one of these covered programs, review the client’s lease, contact the public housing agency (PHA) or the client’s landlord, or request assistance from either a local legal services program or the National Housing Law Project.

VAWA does not cover any other Department of Housing and Urban Development (HUD) programs, such as Shelter Plus Care. It also does not apply to the Department of Agriculture’s Rural Housing Service programs. Survivors in the Low-Income Housing Tax Credit (LIHTC)

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<sup>217</sup> Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006).

<sup>218</sup> 42 U.S.C. § 14043e.

<sup>219</sup> See Appendix 11.

<sup>220</sup> See § 6.12, *infra*; HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,253 (Oct. 27, 2010); HUD, Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program, H 09-15 (Oct. 1, 2009), *extended by* H 2010-23 (Nov. 9, 2010).

<sup>221</sup> See 24 C.F.R. § 5.2001. For an overview of the federally subsidized housing programs, see Appendix 1.

program are not covered by VAWA unless their rent is subsidized by a Section 8 voucher or the project-based Section 8 program. Finally, VAWA does not cover tenants living in private housing without any type of rental subsidy. If a survivor is not participating in a housing program covered by VAWA, advocates should still consider whether the survivor may be protected by fair housing laws.<sup>222</sup>

### 6.3 Individuals Whom VAWA Protects

VAWA protects any individual who is or has been a victim of actual or threatened domestic violence, dating violence, or stalking.<sup>223</sup> Advocates therefore must determine whether a survivor qualifies as a victim of domestic violence, dating violence, or stalking as defined in VAWA. The statute's definitions of these terms are gender neutral. Thus, male survivors and survivors in same-sex relationships can assert VAWA's protections.

Under VAWA, "domestic violence" includes violence committed by a current or former spouse of the survivor; a person with whom the survivor shares a child; a person who is cohabitating with or has cohabitated with the survivor as a spouse; or a person similarly situated to a spouse of the survivor under state law.<sup>224</sup> VAWA also covers any person who is protected by a state's family violence laws.<sup>225</sup> Some states use definitions of domestic violence that are more expansive than VAWA's. Thus, there may be instances where an individual fails to meet VAWA's definition of domestic violence but can still assert VAWA's protections because he or she meets the state's definition. For example, unlike VAWA's definition of domestic violence, California's definition includes violence against a person to whom the perpetrator is related within the second degree, such as violence against a parent by an adult child or violence between siblings.<sup>226</sup>

Under VAWA, "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 survivor.<sup>227</sup> The existence of such a relationship is based on factors such as its length and frequency of interaction.<sup>228</sup> "Stalking" is defined as following, pursuing, placing under surveillance, or repeatedly committing acts with intent to kill, injure, harass, or intimidate another person.<sup>229</sup> To meet VAWA's definition of stalking, these acts must place the survivor in reasonable fear of death or serious bodily injury, or cause substantial emotional harm to the survivor or an immediate family member of the survivor.<sup>230</sup> In contrast to VAWA's definitions of domestic violence and dating violence, the definition of stalking does not require the survivor to have had a romantic or intimate relationship with the perpetrator.

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<sup>222</sup> See Chapter 4 for more information regarding fair housing laws.

<sup>223</sup> See, e.g., 42 U.S.C. §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

<sup>224</sup> 42 U.S.C. § 13925(a)(6); 24 C.F.R. § 5.2003.

<sup>225</sup> *Id.*

<sup>226</sup> See CAL. FAM. CODE § 6211.

<sup>227</sup> 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.

<sup>228</sup> *Id.*

<sup>229</sup> 42 U.S.C. §§ 1437d(u)(3)(C) (public housing), 1437f(f)(10) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

<sup>230</sup> *Id.* The statutes and regulations do not describe the type of evidence a survivor must produce to show that she had a reasonable fear of death or serious injury, or that she suffered substantial emotional harm. Any documentation of the threats or acts of intimidation that the survivor experienced, as well as records regarding the survivor's physical or mental state, would likely be helpful in supporting her assertion that she experienced fear or emotional harm.

VAWA also protects the immediate family members of the survivor of domestic violence, dating violence, or stalking. An immediate family member is defined as a spouse, parent, sibling, child, or any other person living in the survivor's household who is related by blood or marriage.<sup>231</sup>

Survivors of sexual assault are not explicitly listed among the categories of victims who are entitled to VAWA's housing protections. Advocates representing sexual assault survivors should carefully read VAWA's definitions of domestic violence, dating violence, and stalking, as well as state law definitions of domestic violence. In some instances, advocates may be able to argue that the circumstances surrounding the sexual assault meet one of these definitions. Additionally, one of VAWA's stated purposes is to protect the safety of victims of sexual assault who reside in public or assisted housing.<sup>232</sup> Advocates can therefore argue that extending the housing protections to sexual assault survivors is consistent with VAWA's intent. Further, advocates should consider whether fair housing laws may protect the survivor.<sup>233</sup>

#### **6.4 Proving Domestic Violence, Dating Violence, or Stalking Under VAWA**

This section focuses on one of the first steps in asserting a survivor's VAWA rights: assessing whether and how the survivor can provide documentation of domestic violence, dating violence, or stalking. Advocates should note that a survivor need only provide the documentation discussed in this section if the survivor seeks to assert a right provided in VAWA, and the housing provider requests such documentation.

If a survivor seeks to assert her VAWA rights, a public housing agency (PHA) or landlord can ask for proof of domestic violence, dating violence, or stalking.<sup>234</sup> A housing provider may request documentation in several contexts, such as where the survivor raises her VAWA rights to challenge a denial of housing, an eviction, a subsidy termination, or a denial of a request to move. In deciding whether to apply VAWA's protections, the housing provider can choose to rely solely on the survivor's statement, or can submit a written request for certification to the survivor.<sup>235</sup> After a housing provider has requested documentation, a survivor must be given at least 14 business days to respond.<sup>236</sup> If the survivor does not provide the documentation within 14 business days, the housing provider may bring proceedings to terminate the survivor's tenancy or assistance.<sup>237</sup> 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.<sup>238</sup> If the survivor is ultimately unable to produce documentation, the housing provider must provide the survivor an opportunity for an informal review or informal hearing before denying her VAWA's protections.<sup>239</sup>

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<sup>231</sup> §§ 1437d(u)(3)(D) (public housing), 1437f(f)(11) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2003.

<sup>232</sup> 42 U.S.C. § 14043e-1.

<sup>233</sup> See Chapter 4 for more information regarding fair housing laws.

<sup>234</sup> §§ 1437d(u)(1)(A)(public housing), 1437f(ee)(1)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

<sup>235</sup> §§ 1437d(u)(1)(D) (public housing), 1437f(ee)(1)(D) (project-based Section 8 and vouchers).

<sup>236</sup> §§ 1437d(u)(1)(B) (public housing), 1437f(ee)(1)(B) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(2).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,253 (Oct. 27, 2010).

There are three basic types of documentation the survivor can provide in response to the housing provider's request: (1) a HUD-approved form; (2) statement from a qualified third party; or (3) police or court record.<sup>240</sup> First, the survivor can self-certify by completing a HUD-approved certification form.<sup>241</sup> Survivors participating in the public housing or Section 8 voucher program should complete form HUD-50066, while form HUD-91066 is for survivors living in project-based Section 8 developments. The forms may be obtained from the housing provider, or downloaded from HUD's website.<sup>242</sup> Advocates should download and print several copies of the forms so that they are readily available in the event that a survivor immediately needs to assert her VAWA rights. These forms also are in the appendix to this Manual.<sup>243</sup> Both forms request 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 must sign the form and certify that the information is true and correct. Advocates should note that submitting false information on the form is grounds for termination of assistance or eviction.

If the survivor does not feel comfortable providing the information requested in the HUD-approved form, she can instead provide either a statement from a qualified third party, or a police or court record.<sup>244</sup> Documentation from a qualified third party must be signed by the victim and a victim service provider, an attorney, or a medical professional.<sup>245</sup> The third party must attest under penalty of perjury to his or her belief that the survivor has experienced bona fide incidents of abuse.<sup>246</sup> Unfortunately, VAWA does not contain language protecting any privileged relationship existing between the survivor and the third party. To avoid waiving attorney-client privilege, an attorney representing a survivor generally should not certify that the survivor has experienced bona fide incidents of abuse. Instead, the attorney should explore with the survivor whether there is another individual who can provide the documentation, such as a shelter employee or victim-witness advocate.

As an alternative to submitting the third-party documentation or HUD-approved form, the survivor can provide a federal, state, tribal, territorial, or local police or court record.<sup>247</sup> VAWA's housing provisions do not define what constitutes a police or court record. Examples of documents that should satisfy the documentation requirement include a restraining order, a police report, or a criminal complaint or conviction.

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, in some instances housing providers have requested that survivors provide both the HUD-approved certification form and third-party documentation, or that survivors provide restraining orders. However, HUD has made clear that VAWA allows for the victim to self-certify, and that its certification form satisfies VAWA's documentation

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<sup>240</sup> See 42 U.S.C. § 1437d(u)(1)(A), (C) (public housing); 42 U.S.C. § 1437f(ee)(1)(A), (C) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1).

<sup>241</sup> *Id.*

<sup>242</sup> The forms are available in several different languages at <http://www.hud.gov/offices/adm/hudclips/forms/>.

<sup>243</sup> See Appendices 12 and 13.

<sup>244</sup> See *supra* note 240.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> See 42 U.S.C. §§ 1437d(u)(1)(D) (public housing), 1437f(ee)(1)(D) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1)(ii).

requirements.<sup>248</sup> Housing providers must accept the HUD-approved certification form “as a complete request for relief, without insisting on additional documentation.”<sup>249</sup> An individual requesting VAWA’s protections “cannot be required to provide third-party documentation.”<sup>250</sup>

HUD also has stated that survivors cannot be required to provide its certification form. Rather, third-party documentation or a police or court record must be accepted “in lieu of the HUD standard certification form.”<sup>251</sup> This indicates that survivors have the authority to decide what type of documentation they will provide, whether it is third-party documentation, a police or court record, or the self-certification form. In sum, it is contrary to HUD’s guidance to require the survivor to provide two forms of documentation, or to limit the types of documentation a survivor can provide. It is also unduly burdensome for the survivor, who in some cases will be fleeing from the perpetrator or temporarily staying in a confidential location.

If a housing provider has an overly restrictive documentation policy, advocates should remind the provider of HUD’s regulations and explain why many survivors cannot provide multiple forms of documentation. At the same time, however, advocates should attempt to secure several forms of documentation from the survivor in order to strengthen the case and to avoid a protracted dispute with the housing provider regarding documentation, particularly where the survivor risks eviction or needs alternative housing immediately.

Documentation also may be critical in cases where a housing provider has difficulty determining which household member is the victim and which is the perpetrator. HUD regulations state that in cases where a housing provider receives documents from two members of a household, each claiming to be a victim and naming the other household member as the perpetrator, “the PHA, owner, or management agent may determine which is the true victim by requiring third-party documentation.”<sup>252</sup> If any questions remain regarding which household member is the victim, “a PHA grievance hearing, informal hearing or informal review could be an appropriate venue to pursue fact-finding and make a determination.”<sup>253</sup>

## 6.5 Survivors’ Rights to Confidentiality Under VAWA

Advocates often have questions regarding housing providers’ obligations to keep information about domestic violence confidential. Under VAWA, housing providers are prohibited from disclosing any information a survivor provides to document incidents of domestic violence, dating violence, or stalking.<sup>254</sup> They may not enter the information into any shared database or provide it to another entity.<sup>255</sup> Employees of a PHA, owner or management agent are prohibited from having access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work.<sup>256</sup> However,

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<sup>248</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,251; The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696, 12,698 (Mar. 16, 2007).

<sup>249</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,251.

<sup>250</sup> *Id.*

<sup>251</sup> *See* HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,251; *see also* Notice PIH 2006-42 (Dec. 27, 2006); Form HUD-50066; Form HUD-91066.

<sup>252</sup> 24 C.F.R. § 5.2007.

<sup>253</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,253.

<sup>254</sup> *See* 42 U.S.C. §§ 1437d(u)(2)(A) (public housing), 1437f(ee)(2)(A) (project-based Section 8 and vouchers); 24 C.F.R. § 5.2007(a)(1)(v).

<sup>255</sup> *See id.*

<sup>256</sup> 24 C.F.R. § 5.2007(b)(4)(ii).

advocates should note that a housing provider is permitted to disclose the information if it chooses to evict the batterer based on the acts of domestic violence, dating violence, or stalking.<sup>257</sup> Accordingly, advocates should request that the housing provider contact the survivor first before taking steps to evict the batterer, so that the survivor can plan for her safety.<sup>258</sup>

Certification information also may be disclosed if the survivor requests disclosure in writing, or if disclosure is otherwise required by law.<sup>259</sup> Advocates should remind housing providers of the importance of warning the survivor and giving her adequate time to plan for her safety before the information is disclosed. Advocates also should emphasize the importance of confidentiality in instances where the survivor is relocating or seeking to have the abuser removed from the lease or the Section 8 voucher.

## **6.6 Survivors' Rights in Moving with Section 8 Voucher Assistance**

VAWA also contains provisions affecting the relocation rights of survivors of domestic violence, dating violence, and stalking who are participants in the Section 8 voucher program. In some cases, a survivor who has a Section 8 voucher may need to move from the city or county in which she lives to protect her safety. Tenants in the Section 8 voucher program can use their rental assistance anywhere in the country where there is a PHA administering a voucher program. This feature is known as “portability,” and it allows tenants to relocate to a rental unit of their choice, including one located outside the jurisdiction of the PHA that initially issued the voucher. Below is a summary of the relevant HUD regulations governing the portability feature of the voucher program, and of voucher holders’ rights with respect to moving out of the jurisdiction of the PHA that initially issued their vouchers. To protect victims of domestic violence, dating violence, and stalking, HUD has enacted regulations pursuant to VAWA that exempt abuse victims from some of the restrictions on portability. PHAs’ obligations regarding portability are set forth in HUD regulations, HUD PIH Notices, HUD’s Housing Choice Voucher Program Guidebook, and each PHA’s Section 8 Administrative Plan. This section primarily relies on HUD PIH Notice 2011-3, issued January 19, 2011.<sup>260</sup>

### **6.6.1 Duty of PHAs to Assist Tenants in Porting Their Vouchers**

PHAs have obligations to assist tenants in moving to another jurisdiction while continuing to use their vouchers. This process of moving to another jurisdiction with voucher assistance is called “porting.” The PHA that first issued the voucher to the tenant is known as the “initial PHA.” The PHA in the jurisdiction where the tenant will be moving is called the “receiving PHA.” Portability begins when a voucher tenant contacts the initial PHA and expresses interest in moving to the jurisdiction of another PHA. The portability rules provide that the initial PHA must provide the tenant with contact information for the receiving PHA.<sup>261</sup> It must also contact the receiving PHA on the family’s behalf.<sup>262</sup>

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<sup>257</sup> *See id.*

<sup>258</sup> See Chapter 2 for more information regarding safety planning.

<sup>259</sup> *See supra* note 254.

<sup>260</sup> HUD, Housing Choice Voucher Family Moves with Continued Assistance, PIH 2011-3 (Jan. 19, 2011).

<sup>261</sup> PIH 2011-3, at 3.

<sup>262</sup> *Id.*

The receiving PHA *must* provide an eligible transferring tenant with assistance.<sup>263</sup> Therefore, the receiving PHA's local preferences or priorities for selecting applicants are not relevant to the transferring tenant, and the receiving PHA may not place the porting tenant on its waiting list. However, the receiving PHA may deny assistance, or terminate the family once it has ported, in accordance with its rules regarding screening for criminal history and illegal drug activity.<sup>264</sup> Thus, it is important for any voucher participant who wishes to port to become familiar with the criminal history screening policies of the receiving PHA. This is especially true if the participant or a member of the participant's family has a criminal background.

HUD regulations provide that the receiving PHA *must* issue a voucher to the porting tenant within two weeks of obtaining all of the tenant's documentation.<sup>265</sup> The receiving PHA has the choice of billing the initial PHA for assistance on behalf of the porting family, or of absorbing the family into its own program.<sup>266</sup>

### **6.6.2 Special Rights of Domestic Violence Survivors with Vouchers**

PHAs often impose a number of restrictions on the timing and frequency of moves by Section 8 voucher tenants, and they may not be aware that special rules apply to survivors of domestic violence, dating violence, and stalking. For example, many PHAs restrict portability for one year if a family receiving a voucher for the first time does not reside in the PHA's jurisdiction at the time the family applies for voucher assistance. Further, many PHAs prohibit voucher tenants from moving if they already have moved at least once during the past 12 months. However, 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.<sup>267</sup> Therefore, advocates can use HUD regulations to show PHAs that the typical restrictions on portability may not apply to abuse victims.

PHAs often deny portability in cases where a voucher holder has left her assisted rental unit in violation of the lease. Ordinarily, tenants who vacate the unit before the lease term has ended do not maintain the right of portability. This rule is obviously problematic for a survivor who has fled her unit to escape her abuser and cannot pay rent at a new location without voucher assistance. However, an exception to this rule exists for survivors of domestic violence, dating violence, and stalking. As part of VAWA, abuse victims maintain the right to port themselves and their families to a new jurisdiction even if they have left their prior rental unit in violation of the lease.<sup>268</sup> Thus, if a survivor was forced to break her lease and move elsewhere in order to escape her abuser, and she failed to seek the PHA's approval before moving, she can still exercise her right to use her voucher in another jurisdiction.

PHAs often prohibit tenants from moving if they owe money for repairs or back rent, or if they have not obtained the landlord's permission to end the lease. These policies can endanger a survivor's safety by unnecessarily preventing her from moving. If a PHA has denied a survivor's portability request, the survivor should exercise her right to an informal hearing to challenge the denial.<sup>269</sup> Advocates should urge housing authorities to consider the safety needs of domestic

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<sup>263</sup> *Id.* at 4.

<sup>264</sup> *Id.* at 5.

<sup>265</sup> *Id.* at 4.

<sup>266</sup> *Id.*

<sup>267</sup> 24 C.F.R. § 982.314.

<sup>268</sup> 42 U.S.C. § 1437f(r)(5); 24 C.F.R. § 982.353(b); PIH 2011-3, at 12.

<sup>269</sup> *See* PIH 2011-3, at 5.



violence survivors when they assess portability requests. Advocates also can cite VAWA's provisions stating that the fact that an applicant is a domestic violence survivor is not an appropriate basis for denial of assistance, which are discussed later in this Chapter. To avoid future problems, advocates should urge PHAs to adopt explicit exceptions to their written portability policies where needed to accommodate a domestic violence survivor's safety.<sup>270</sup>

To prevent disputes with the PHA, survivors who must temporarily relocate for safety reasons while the portability request is being processed should inform the PHA of this in writing. Many PHAs have policies limiting the number of days a tenant may be absent from a Section 8 unit before her assistance will be terminated. Further, Section 8 regulations provide that in no case may a tenant be absent from the unit for more than 180 consecutive days.<sup>271</sup> To remain in good standing with the PHA and ensure that the survivor's portability request is processed, the survivor should notify the PHA that she has temporarily moved for safety reasons and that she intends to remain in the Section 8 program.

In working with a survivor who must move, advocates also may need to contact the survivor's existing Section 8 landlord. Section 8 regulations provide that the initial term of the lease must be for at least one year.<sup>272</sup> If the survivor has been in the unit for less than a year, advocates will need to negotiate with the Section 8 landlord to waive or reduce any fees associated with breaking the lease, as VAWA does not protect a victim from being held liable for these fees. In some jurisdictions, the survivor may be able to use state law to break the lease without financial penalty.<sup>273</sup>

After the survivor has terminated the lease, the PHA will give her a new voucher so that she can relocate. The PHA must provide the survivor at least 60 days to search for housing, which is called the initial voucher term.<sup>274</sup> To assist voucher holders in locating suitable housing, many PHAs have elected to increase the initial voucher term beyond 60 days. To determine your PHA's initial voucher term, consult the PHA's Administrative Plan or look at the client's voucher. Additionally, PHAs often grant extensions to the initial voucher term if the voucher holder shows that she was unable to locate housing after an extensive search. Accordingly, advocates should advise survivors to keep a log of all the housing providers they contacted during their housing search. Further, if the survivor was unable to search for housing during a certain time period (due to a disability or injury, for example) she may request that the PHA stop the clock on the voucher search term during that period.

## **6.7 Survivors' Rights in Moving to Another Public Housing Unit**

Like Section 8 voucher tenants, public housing residents may need to relocate to escape domestic violence, dating violence, or stalking. To relocate to another public housing development, a public housing tenant must request a transfer from the PHA. Unfortunately VAWA does not address a PHA's obligation to transfer a public housing tenant to a safer unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. PHAs have a great deal of discretion in deciding the circumstances in which they will allow a public

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<sup>270</sup> See Chapter 8 for more information on PHA policies regarding portability.

<sup>271</sup> 24 C.F.R. § 982.312(a).

<sup>272</sup> § 982.309(a)(1).

<sup>273</sup> See Chapter 3 for information on advocacy in cases where the survivor needs to break the lease due to domestic violence.

<sup>274</sup> § 982.303.

housing tenant to transfer to another unit, and advocates will need to check with their local PHAs to determine what their transfer policies are. Policies regarding transfers should be set forth in the PHA's Admissions and Continued Occupancy Policy (ACOP). The appendix to this Manual contains a sample letter requesting a public housing transfer on behalf of a domestic violence survivor.<sup>275</sup>

Advocates working with survivors who need transfers should carefully examine the ACOP and determine the grounds under which a survivor may be entitled to a transfer.<sup>276</sup> Unfortunately, many PHAs do not have transfer policies for domestic violence or victims of crime, or have policies with unduly burdensome documentation requirements.<sup>277</sup> Further, at least one court has found that a PHA was not obligated to provide a transfer to a domestic violence survivor where the PHA's ACOP did not provide for such transfers.<sup>278</sup> Under that PHA's ACOP, the only crime victims who were eligible for transfers were victims of federal hate crimes. To avoid a similar result, advocates in jurisdictions without domestic violence transfer policies or with overly restrictive policies should encourage PHAs to amend these policies.<sup>279</sup> In fact, HUD has encouraged PHAs to adopt transfer policies for survivors of domestic violence.<sup>280</sup>

To increase the likelihood that the survivor's transfer request will be granted, advocates should give as many reasons as possible for why the PHA should grant the survivor a transfer. For example, many PHAs have transfer policies for tenants living in units that are too small or too large based on the family's size, that are in need of repair due to habitability issues, that are inaccessible to a tenant with disabilities,<sup>281</sup> or that are a significant distance from the tenant's job or school. Advocates should explore with survivors any possible grounds under which they might be entitled to a transfer, particularly where the jurisdiction has no transfer policy for victims of domestic violence.

Before submitting the transfer request, discuss with the survivor whether there are certain developments where the abuser would be less likely to find her, and whether there are certain developments where the survivor would be at greater risk of harm. These developments should be discussed in the transfer application to help expedite the survivor's request and to prevent the PHA from placing the survivor in a development that is no safer than her current home. If there are no public housing developments where the survivor would be safe, advocates should contact the PHA and request that the survivor be issued a Section 8 voucher. In jurisdictions where there are limited numbers of public housing units and vouchers, the survivor should consider signing up for federally subsidized housing waitlists in neighboring jurisdictions.

If the survivor must temporarily relocate for her safety while her transfer request is being processed, it is crucial to inform the PHA in writing that the survivor has temporarily moved but intends to remain in the public housing program. The PHA's ACOP will likely state the maximum number of days a family can be absent from a public housing unit. If the survivor

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<sup>275</sup> See Appendix 3.

<sup>276</sup> PHAs are required to comply with the policies established in the ACOP. See § 903.25.

<sup>277</sup> PHAs often require a tenant to provide documentation from law enforcement in order to obtain a domestic violence transfer, which may be unrealistic for survivors who cannot call the police due to fear of retaliation.

<sup>278</sup> *Robinson v. Cincinnati Hous. Auth.*, 2008 WL 1924255 (S.D. Ohio 2008).

<sup>279</sup> See Chapter 8 for more information on working locally to shape a PHA's Admissions and Continued Occupancy Policy.

<sup>280</sup> See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218-19 (2003).

<sup>281</sup> See Chapter 5 for more information regarding reasonable accommodations in housing for persons with disabilities.

relocates without notifying the PHA, and she is absent from the unit for more than the maximum number of days, the PHA may assume that the unit has been abandoned and may attempt to evict the survivor. To remain in good standing with the PHA and ensure that the survivor's transfer request is processed, the survivor should contact the PHA before or shortly after she relocates to let the PHA know that she has not abandoned the unit.

## **6.8 VAWA's Protections Against Evictions and Subsidy Terminations<sup>282</sup>**

VAWA prohibits survivors of domestic violence, dating violence, or stalking from being evicted or having their rental subsidies terminated based on acts of violence committed against them. These protections were enacted to create an exception for survivors from the federal "one-strike and you're out" criminal activity rule. The rule gives PHAs the authority to evict or terminate a tenant's assistance based on only one instance of criminal activity committed by any household member, guest, or other person under the tenant's control that threatens the health, safety, or peaceful enjoyment of other tenants.<sup>283</sup> Unfortunately, some housing authorities have applied the rule to justify the evictions and subsidy terminations of all members of a particular household, even those who did not commit the criminal acts or were themselves victims of those acts. As a result, many survivors have faced evictions and subsidy terminations based on criminal acts committed by their batterers.<sup>284</sup>

To address this problem, VAWA explicitly provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered grounds for eviction or subsidy termination for the survivor of the domestic violence, dating violence, or stalking.<sup>285</sup> This section provides an overview of VAWA's protections against evictions and subsidy terminations, explains some of the protections' limitations, and discusses how the protections have been used in practice. Advocates should note that in addition to VAWA's protections, clients also may be able to assert similar protections under fair housing laws, which are discussed in Chapter 4.

### **6.8.1 Overview of the Protections Against Evictions and Terminations**

VAWA provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the victim's tenancy or rental assistance.<sup>286</sup> In other words, a tenant cannot be evicted for reasons related to domestic violence, dating violence, or stalking committed against her. Notably, this provision of VAWA refers to "an incident or incidents" of violence, indicating that only one incident is needed to trigger VAWA's protections and that repeated incidents are not required. Further, this provision refers to "actual or threatened" violence, indicating that threats of violence are sufficient to trigger VAWA's protections.

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<sup>282</sup> This section is limited to discussing the protections available to survivors under VAWA. See Chapters 4 and 7 for more strategies for defending against evictions and subsidy terminations.

<sup>283</sup> See 42 U.S.C. § 1437d(l)(6).

<sup>284</sup> See § 14043e.

<sup>285</sup> §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

<sup>286</sup> §§ 1437d(l)(5) (public housing), 1437f(c)(9)(B) (project-based Section 8), 1437f(o)(20)(B) (Section 8 voucher); 24 C.F.R. § 5.2005(a).

VAWA also provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for eviction or subsidy termination if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that violence.<sup>287</sup> This provision is similar to the one discussed above, except that it specifically refers to "criminal activity" directly relating to domestic violence, dating violence, or stalking. VAWA does not define what constitutes "criminal activity" directly relating to abuse. A common question that arises is whether a survivor can be evicted for the abuser's drug-related activity where the survivor could not control this activity due to threats of retaliation by the abuser. Because VAWA does not squarely address this issue, advocates will need to demonstrate that the abuser's drug-related activity was directly related to the domestic violence, dating violence, or stalking. For example, an advocate could provide a statement from a domestic violence expert explaining the risk of harm the survivor would have faced if she had reported the abuser's drug-related activity, or a statement from the survivor documenting the threats or retaliation she experienced when she tried to stop the drug-related activity on prior occasions.

Attorneys should assert VAWA's protections as soon as they become aware that a client is facing an eviction or a subsidy termination that is related to domestic violence, dating violence, or stalking. There are several venues for clients to assert their VAWA rights, such as during informal advocacy with the housing provider, in an administrative proceeding, or in a judicial eviction action. Attorneys can informally assert VAWA's protections by calling the housing provider to explain why VAWA applies, and by sending a letter requesting that the housing provider cease the eviction or subsidy termination proceedings and explaining why VAWA prohibits the adverse action. The appendix to this Manual contains sample letters.<sup>288</sup> Attorneys also should direct the client to request an administrative proceeding, such as the grievance procedure for public housing tenants or the informal hearing procedure for Section 8 tenants, so that the client can assert VAWA rights during the proceeding.<sup>289</sup> If the housing provider has already filed an eviction action in court against the client, the client can assert VAWA as a defense to the eviction or seek summary judgment on the basis of her rights under VAWA. The appendix to this Manual contains examples of documents that have been used in eviction proceedings.<sup>290</sup>

### **6.8.2 Limitations on VAWA's Protections**

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 if either the tenant is not evicted or her assistance is not terminated.<sup>291</sup> In other words, evictions may still proceed in rare situations where the housing provider demonstrates that an individual's tenancy, despite her status as a covered victim, presents an actual and imminent threat to other tenants or employees. This provision is intended to address situations in which a housing provider demonstrates that a perpetrator of domestic

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<sup>287</sup> §§ 1437d(l)(6)(A) (public housing); 1437f(c)(9)(C)(i) (project-based Section 8); 1437f(o)(20)(C) (Section 8 voucher); 24 C.F.R. § 5.2005(b).

<sup>288</sup> See Appendices 10 and 14.

<sup>289</sup> See Chapter 7 for more information on challenging evictions and subsidy terminations.

<sup>290</sup> See Appendices 15 and 16.

<sup>291</sup> §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(D)(iv) (Section 8 voucher); 24 C.F.R. § 5.2005(e).

violence will pose a threat to tenants or employees at the property unless the domestic violence survivor permanently leaves the premises.

HUD regulations provide guidance that advocates can use in assessing whether a victim's continued tenancy presents an actual and imminent threat to other tenants or employees. The 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.<sup>292</sup> 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 would occur.<sup>293</sup> Additionally, eviction or termination of a victim's 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 victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat."<sup>294</sup> Evictions or terminations predicated on public safety "cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents."<sup>295</sup> Accordingly, housing providers must meet a high standard in order to demonstrate that eviction or termination of a victim's assistance is permitted under the actual and imminent threat provision.

Another limitation on VAWA's protections is that the law does not restrict a housing provider's authority to evict or to terminate assistance to a survivor for any lease or program violation not premised on acts of violence against the survivor.<sup>296</sup> In other words, VAWA does not protect survivors if the acts for which they are being evicted are unrelated to domestic violence, dating violence, or stalking. 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. For example, a survivor of domestic violence may know that her abusive spouse has failed to report all of his income as required by the PHA, but may fear retaliation if she confronts him and asks him to report the income. This may be especially true in cases where the abuser exerts excessive control over the family's finances and becomes hostile when the survivor seeks access to information regarding income. If the family later faces eviction for the failure to report the income, the survivor will need to demonstrate the link between the abuse and her failure to report in order to avoid any argument by the PHA that the program violation was not premised on acts of violence. Additionally, in determining whether to evict, a housing provider may not hold a survivor of domestic violence, dating violence, or stalking to a more demanding standard than other tenants.<sup>297</sup> Thus, if a survivor can demonstrate that other tenants were not evicted or terminated from assistance based on lease violations similar to the ones for which she is being penalized, the survivor may be able to argue she is being held to a more demanding standard in violation of VAWA.

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<sup>292</sup> 24 C.F.R. § 5.2005.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> 42 U.S.C. §§ 1437d(l)(6)(D) (public housing), 1437f(c)(9)(C)(iv) (project-based Section 8), 1437f(o)(20)(D)(iii) (Section 8 voucher), 24 C.F.R. § 5.2005(b).

<sup>297</sup> *See id.*

### 6.8.3 Examples of How VAWA's Protections Have Been Used

To help advocates better understand how VAWA's protections have worked in practice, this section describes several cases where survivors successfully asserted VAWA protections to prevent evictions and subsidy terminations. *Metro North Owners, LLC v. Thorpe*<sup>298</sup> and *Brooklyn Landlord v. RF*<sup>299</sup> both involved subsidized tenants whose landlords filed eviction proceedings after the tenants' batterers caused violent disturbances at the subsidized properties. *[Redacted] v. Housing Authority of the County of Salt Lake*<sup>300</sup> involved a Section 8 voucher tenant whose assistance was terminated after she fled her assisted unit to escape domestic violence.

#### *Metro North Owners, LLC v. Thorpe*

In a case involving a survivor of domestic violence who faced eviction after being accused of assaulting her former partner, a New York court found that the subsidized tenant was entitled to VAWA's protections. In *Metro North Owners, LLC v. Thorpe*,<sup>301</sup> police officers responded to a violent incident at the tenant's apartment. Shortly thereafter, the landlord commenced eviction proceedings against the tenant, alleging that she violated her lease by creating a nuisance.<sup>302</sup> The tenant raised VAWA as a defense in her answer to the eviction complaint.<sup>303</sup> She also filed a motion for summary judgment, arguing that VAWA required dismissal of the eviction action before it went to trial.

According to an affidavit from a property manager, the tenant stabbed her former partner during the incident.<sup>304</sup> The property manager also alleged that the tenant allowed her former partner into the building and that they regularly argued loudly.<sup>305</sup> The landlord submitted a security guard's incident report containing similar information.<sup>306</sup>

The tenant denied that she had stabbed her former partner and submitted evidence that the district attorney's office declined to prosecute her for the incident.<sup>307</sup> In an affidavit, the tenant stated that her former partner forcibly entered the apartment and injured himself on broken glass when he threw her into a cabinet.<sup>308</sup> The tenant asked the court to consider the entire history of domestic violence perpetrated by her former partner and submitted several police reports and a criminal protection order.<sup>309</sup> She argued that because the landlord's nuisance allegations were based solely on acts of domestic violence committed against her, VAWA prohibited her eviction.

The court found that the tenant submitted sufficient evidence to establish that she was a survivor of domestic violence, and that the landlord's evidence that the tenant was the assailant

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<sup>298</sup> 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008).

<sup>299</sup> Mot. Summ. J., *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007).

<sup>300</sup> Compl., *[Redacted] v. Housing Authority of the County of Salt Lake* (D. Utah Sept. 27, 2007).

<sup>301</sup> 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008). The tenant was represented by the Legal Aid Society, Harlem Community Law Offices.

<sup>302</sup> *Id.*

<sup>303</sup> The tenant's answer to the eviction complaint is Appendix 15.

<sup>304</sup> *Id.* at 772.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 771.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

was unsubstantiated.<sup>310</sup> As a result, VAWA prohibited the landlord from terminating the tenancy, and the court dismissed the eviction proceeding.<sup>311</sup> The court also stated that the allegations that the tenant allowed her former partner into the building did not refute the evidence that she was a survivor of domestic violence.<sup>312</sup> According to the court, the tenant's conduct in allowing her former partner into the building was characteristic of battered-woman syndrome, which "explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior."<sup>313</sup> The court also noted that domestic violence is cyclical in nature, enticing the survivor to remain with the abuser after the violence ends.<sup>314</sup> This language should prove helpful to advocates who are representing survivors who acted in self-defense or whose batterers have repeatedly returned to the subsidized unit.

### *Brooklyn Landlord v. RF*

In a case involving a survivor living in a project-based Section 8 development, attorneys successfully used VAWA to reach a settlement to prevent the survivor's eviction. In *Brooklyn Landlord v. R.F.*,<sup>315</sup> the landlord sought to evict a domestic violence survivor after her ex-boyfriend shot at the project's security guard. The survivor's ex-boyfriend was not a member of the household, nor was he a guest of the survivor at the time of the incident.<sup>316</sup> At the time of the eviction proceedings, he was incarcerated as a result of the incident and therefore was no longer a threat to tenants or employees at the building. In her answer to the eviction complaint, the survivor asserted VAWA as a defense.<sup>317</sup> She also filed a pretrial motion asserting that VAWA forbids owners of federally subsidized housing from evicting tenants for acts of domestic violence or stalking against them, or for criminal activity by third parties which is directly related to such violence.<sup>318</sup> The motion also alleged that the owner's attempt to evict the survivor constituted sex discrimination in violation of the Fair Housing Act, the New York State Human Rights Law, and the New York City Human Rights Law.<sup>319</sup> After extensive negotiations, the landlord agreed to dismiss the eviction proceedings, and the survivor agreed that she would not knowingly or willingly allow the abuser access into the building.<sup>320</sup>

The settlement is particularly notable given that the abuser threatened other tenants and employees at the property. In cases where the abuser has threatened or harmed other tenants or employees, the landlord or PHA may argue that VAWA's protections do not apply because allowing the survivor to remain would constitute an actual and imminent threat to other tenants or employees. It is crucial to demonstrate that the abuser is no longer a threat, such as by showing that the abuser is incarcerated or has moved out of the jurisdiction, or that the survivor has obtained a restraining order and has taken steps to enforce it.

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<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.* (citing *People v. Torres*, 488 N.Y.S.2d 358 (N.Y. Super. Ct. 1985)).

<sup>314</sup> *Id.*

<sup>315</sup> Mot. Summ. J., *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007) [hereinafter Motion for Summary Judgment]. The tenant was represented by Legal Momentum and South Brooklyn Legal Services.

<sup>316</sup> *Id.*

<sup>317</sup> Answer, *Brooklyn Landlord v. RF* (N.Y. Civ. Ct. Jan. 8, 2007), <http://www.legalmomentum.org/assets/pdfs/answer.pdf>.

<sup>318</sup> Mot. for Summ. J., *supra* note 315. The tenant's motion for summary judgment is Appendix 16.

<sup>319</sup> *Id.*

<sup>320</sup> Stipulation of Settlement at 2, *Brooklyn Landlord v. R.F.* (N.Y. Civ. Ct. May 30, 2007), Appendix 17.

*[Redacted] v. Housing Authority of the County of Salt Lake*

Attorneys used VAWA to successfully settle a case involving a Section 8 voucher tenant whose assistance was terminated by the PHA after she fled her unit to escape domestic violence. In *[Redacted] v. Housing Authority of the County of Salt Lake*,<sup>321</sup> the tenant filed suit in federal district court to seek reinstatement of her voucher on the grounds that the PHA's termination of her assistance violated VAWA. According to the complaint, the tenant obtained permission from the PHA to allow her ex-husband to move into the home, but he became increasingly violent once he moved in.<sup>322</sup> The tenant alleged that when she moved out of the home because she feared for her safety and that of her children, the PHA terminated her housing assistance.<sup>323</sup> The tenant asserted that the PHA violated VAWA and the Fair Housing Act by terminating her voucher because of her need to escape domestic violence.<sup>324</sup>

The PHA later settled the suit by agreeing to reinstate the voucher of the tenant, who had ended her relationship with the abuser. The settlement is significant because it marks one of the first cases where a survivor has used VAWA to affirmatively file a lawsuit against a PHA.<sup>325</sup> Typically, VAWA is used defensively by a survivor in an administrative action or eviction proceeding to prevent the loss of a survivor's housing. Here, the survivor had already lost her voucher and sought to regain it by filing an action in federal court against the PHA. While this approach proved successful, it has not yet been widely used by advocates.

## **6.9 Survivors' Rights in Seeking to Remove the Abuser from the Subsidized Household**

In addition to protecting victims from being evicted or terminated based on acts of abuse committed against them, VAWA provides that the perpetrator of abuse can be removed from the assisted housing unit while the victim remains in place. In cases where the survivor and the abuser live together in federally subsidized housing, the survivor may want to remain in the unit while seeking the housing provider's assistance to remove the abuser from the lease or voucher. Or, if the entire household is facing eviction or subsidy termination due to the abuser's criminal activity, the survivor may request that the housing provider pursue the eviction or subsidy termination against the abuser only. For survivors who live with their abusers in public or Section 8 housing, there are two separate processes at issue. First, survivors living in public or Section 8 housing may need to request that the housing provider remove the abuser from the lease. Second, survivors receiving Section 8 voucher assistance need to take the additional step of asking the PHA to remove the abuser from the voucher.

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<sup>321</sup> Compl., *[Redacted] v. Housing Authority of the County of Salt Lake* (D. Utah Sept. 27, 2007), Appendix 18. The tenant was represented by Utah Legal Services.

<sup>322</sup> *Id.* at 6.

<sup>323</sup> *Id.* at 7.

<sup>324</sup> *Id.* at 10-12.

<sup>325</sup> Another case in which a tenant used VAWA to affirmatively file a lawsuit against a PHA is *Meister v. Kansas City, Kansas Hous. Auth.*, 2011 WL 765887, slip op. (D. Kan. Feb. 25, 2011). Citing limited briefing on the issue, the court declined to rule whether the tenant in *Meister* had an affirmative right of action, enforceable under 42 U.S.C. § 1983, pursuant to the provisions of VAWA.



### 6.9.1 Removing the Abuser from the Lease

Under VAWA, a PHA or Section 8 landlord may bifurcate (split) a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against household members.<sup>326</sup> This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the survivor of such violence.<sup>327</sup> The authority to bifurcate a lease or otherwise remove the abuser is applicable to all leases for families participating in the public housing or Section 8 programs.<sup>328</sup> Housing providers can bifurcate the lease regardless of whether the lease itself has specific language authorizing the bifurcation.<sup>329</sup> Notably, even before VAWA's enactment, HUD encouraged PHAs "to carefully review circumstances where victims of domestic violence may be evicted due to circumstances beyond their control" and to exercise their authority to evict the perpetrator while allowing the victim to remain.<sup>330</sup>

In removing the abuser from the lease, the housing provider must follow federal, state, and local eviction laws.<sup>331</sup> It may take several weeks or even months to complete the eviction process, and the survivor may need to relocate to a safe, confidential location until the eviction proceedings are over. Because survivors who separate from their abusers often risk retaliation, advocates should work with survivors to consider additional security measures that should be implemented during this period.<sup>332</sup> Additionally, advocates should recommend that housing providers consult with the survivor well before taking any action to evict the abuser, so that the survivor has adequate time to plan for her safety.

In any case where the abuser is no longer living in the unit, whether due to eviction, incarceration, or court order, the survivor should immediately request that the PHA recertify the household's income. Federal regulations provide for an adjustment in rent upon a change in family circumstances.<sup>333</sup> In many cases, the survivor's income will likely decrease once the abuser vacates the unit. Because rents in the public housing and Section 8 programs are income-based, a survivor may be entitled to a lower rent if the household's income decreases as a result of the abuser's absence.

At least one court has addressed PHAs' obligations to remove perpetrators of domestic violence from leases and to subsequently adjust the rent. In *St. Louis Housing Authority v. Boone*,<sup>334</sup> a public housing tenant requested that the PHA remove her husband from the lease after he fired a gun in the apartment. Shortly thereafter, the tenant informed the PHA that she had separated from her husband.<sup>335</sup> She requested a hearing and asked for a rent adjustment based on the change in her family composition and income.<sup>336</sup> At the hearing the tenant submitted a restraining order she had obtained against her husband, but the housing authority refused to act

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<sup>326</sup> 42 U.S.C. §§ 1437d(l)(6)(B) (public housing), 1437f(c)(9)(C)(ii) (project-based Section 8), 1437f(o)(20)(D)(i) (Section 8 voucher); 24 C.F.R. § 5.2009.

<sup>327</sup> *See id.*

<sup>328</sup> 24 C.F.R. § 5.2009.

<sup>329</sup> HUD, The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs, 72 Fed. Reg. 12,696, 12,697 (Mar. 16, 2007).

<sup>330</sup> PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 280, at 219.

<sup>331</sup> *See supra* note 326.

<sup>332</sup> See Chapter 2 for more information regarding safety planning.

<sup>333</sup> 24 C.F.R. § 960.209(b).

<sup>334</sup> 747 S.W.2d 311 (Mo. Ct. App. 1988).

<sup>335</sup> *Id.* at 316.

<sup>336</sup> *Id.* at 312-13.

on the tenant's request to remove him from the lease.<sup>337</sup> A court later ordered the PHA to reduce the tenant's rent to reflect the change in her family composition, to terminate the husband's tenancy, and to renew the tenant's lease for one year.<sup>338</sup> The court found that the PHA had authority to terminate the husband's tenancy because he posed a threat to the safety of other tenants and that the tenant was entitled to a rent adjustment to reflect her change in family income once he left the unit.<sup>339</sup>

### 6.9.2 Removing the Abuser from the Section 8 Voucher

In addition to removing the abuser from the lease, survivors in the Section 8 voucher program also need to ask the PHA to remove the abuser from the voucher. In the Section 8 program, PHAs have authority to terminate voucher assistance for perpetrators of criminal activity while permitting innocent family members to continue receiving voucher assistance.<sup>340</sup> Further, HUD's VAWA regulations state that in cases where a voucher family breaks up due to domestic violence, "the PHA must ensure that the victim retains assistance."<sup>341</sup> The PHA does not have to wait for the Section 8 landlord to bifurcate the lease or to evict the batterer before exercising its discretion to remove the abuser from the voucher.<sup>342</sup>

PHAs are required to set forth in their Section 8 Administrative Plans the factors they will consider in assigning the voucher in the event that a family breaks up.<sup>343</sup> Factors that HUD urges PHAs to consider when developing a family break-up policy include the interest of family members who are minor children, ill, elderly, disabled, or victims of domestic violence.<sup>344</sup> Advocates should consult the Administrative Plan and determine whether any of the factors cited in the family break-up policy support awarding the voucher to the survivor. As already noted, if the family has broken up due to domestic violence, the PHA must ensure that the victim retains voucher assistance.<sup>345</sup>

In some instances, the factors set forth in the Section 8 Administrative Plan regarding family breakup may actually weigh against the survivor. For example, some PHAs have policies stating that the PHA will consider whether a family member is listed as the head of household on the Section 8 voucher, has remained in the assisted unit, or has been chosen by the family to retain the voucher. These policies can be problematic, as the abuser is often the head of household, family members may have fled the assisted unit to escape the domestic violence, and the victim of domestic violence may have been coerced by the abuser to agree to allow the abuser to keep the voucher. In these cases, advocates should argue that PHAs must abide by HUD's regulation stating that the victim must retain voucher assistance in cases where the family has broken up due to domestic violence.<sup>346</sup> The appendix to this Manual contains sample letters and pleadings

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<sup>337</sup> *Id.* at 313.

<sup>338</sup> *Id.* at 317.

<sup>339</sup> *Id.*

<sup>340</sup> 24 C.F.R. §§ 982.552(c)(2)(i)-(ii).

<sup>341</sup> § 982.315.

<sup>342</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 73 Fed. Reg. 72,336, 72,338 (Nov. 28, 2008).

<sup>343</sup> 24 C.F.R. § 982.315(a). For more information regarding PHA plans, see Chapter 8.

<sup>344</sup> § 982.315.

<sup>345</sup> § 982.315.

<sup>346</sup> § 982.315.

requesting assignment of the Section 8 voucher to the survivor in cases where the family has separated due to domestic violence.<sup>347</sup>

If a court awards the voucher to the survivor as part of divorce or separation proceedings, the PHA is bound by the court's determination of which family members continue to receive assistance.<sup>348</sup> Accordingly, family law practitioners should request that the voucher be awarded to the survivor in any divorce or separation proceedings.

## 6.10 Housing Authorities' Duties to Provide Notice of VAWA Rights

PHAs must inform landlords and tenants in the Section 8 and public housing programs of their rights and obligations under VAWA.<sup>349</sup> For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other "good cause" for termination of the assistance, tenancy, or occupancy rights of a survivor of abuse;
- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the survivor's assistance, tenancy, or occupancy rights;
- Information provided for purposes of documenting that an individual is a survivor of domestic violence, dating violence, or stalking must be kept confidential.<sup>350</sup>

VAWA does not specify what methods a PHA must use to provide notice. Many PHAs have provided notice by mailing letters to all Section 8 and public housing tenants. However, this method may be ineffective where the abuser monitors the mail, or the notices have not been translated into other languages for households with limited English proficiency. Accordingly, advocates should urge housing authorities to notify tenants in a variety of ways, including providing verbal notice during orientations for new participants; discussing the provisions during a tenant's annual recertification meetings; inserting a paragraph regarding VAWA rights into denial of assistance letters and termination or eviction notices; posting notice of VAWA in the PHA's office; and posting notice of VAWA on the PHA's website.

PHAs can inform Section 8 owners of their VAWA obligations by providing verbal notice during orientations for new landlords; including a notice with the PHA's monthly checks to landlords; including an article regarding VAWA in owner newsletters; and posting notice of VAWA on the PHA's website. The appendix to this Manual contains sample VAWA notices for tenants and landlords.<sup>351</sup>

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<sup>347</sup> See Appendices 19-23.

<sup>348</sup> § 982.315(c).

<sup>349</sup> 42 U.S.C. §§ 1437d(u)(2)(B) (public housing), 1437f(ee)(2)(B) (project-based Section 8 and vouchers).

<sup>350</sup> See *id.*

<sup>351</sup> See Appendices 24-25.

## 6.11 Housing Authorities' Duties to Plan for Survivors' Needs

Under VAWA, PHAs must address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault in their annual planning documents. These obligations are discussed in Chapter 8.

## 6.12 HUD Guidance on VAWA

HUD has issued regulations and notices to implement VAWA's housing provisions, all of which are available on its website.<sup>352</sup> The bulk of HUD's VAWA regulations are found at 24 C.F.R. Part 5. HUD also has summarized the content of these regulations in a Federal Register notice.<sup>353</sup> In addition to the regulations, HUD has issued a notice regarding certification of incidents of domestic violence, dating violence, and stalking;<sup>354</sup> a notice providing guidance to PHAs and owners on implementation of VAWA in the Section 8 voucher program;<sup>355</sup> a notice providing guidance specifically for landlords in the project-based Section 8 program;<sup>356</sup> and a notice summarizing all of VAWA's provisions.<sup>357</sup> These notices closely track VAWA's statutory language and may provide additional support when conducting informal or administrative advocacy on behalf of survivors. Further, because these notices are tailored specifically for PHAs and Section 8 landlords, these housing providers may find the notices easier to understand than the statutes.

Another resource that advocates should consult is Chapter 19 of HUD's Public Housing Occupancy Guidebook.<sup>358</sup> Although the Guidebook predates VAWA, it contains useful language regarding proof of domestic violence, transfer policies, and evictions.

## 6.13 Practice Tips

There are several ways in which advocates can ensure that VAWA's housing protections are used to their maximum potential, such as by educating housing providers and clients, timely asserting a client's VAWA housing rights, engaging the media, and collaborating with housing providers.

### 6.13.1 The Need to Educate Housing Providers

From the outset, advocates should recognize that most PHA staff members, hearing officers, judges, and Section 8 landlords have not received training on VAWA's housing provisions. In

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<sup>352</sup> To download any of the documents discussed in this section, visit [www.hud.gov/hudclips](http://www.hud.gov/hudclips).

<sup>353</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. at 66,251.

<sup>354</sup> HUD, Violence Against Women and Justice Department Reauthorization Act 2005 Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking, PIH 2006-42 (Dec. 27, 2006).

<sup>355</sup> HUD, Housing Choice Voucher Program Administration and the Violence Against Women and Justice Department Reauthorization Act of 2005, PIH 2007-5 (Feb. 16, 2007).

<sup>356</sup> HUD, Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program, H 09-15 (Oct. 1, 2009), *extended* by H 2010-23 (Nov. 9, 2010).

<sup>357</sup> HUD, The Violence Against Women and Department of Justice Reauthorization Act of 2005, Applicability to HUD Programs, 72 Fed. Reg. 12,696 (Mar. 16, 2007).

<sup>358</sup> HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, *supra* note 280, at 216-21.

some cases, these individuals may be unaware that the provisions even exist. Further, many of these individuals may lack a basic understanding of the dynamics of domestic violence, dating violence, and stalking. Accordingly, in advocacy letters, hearing documents, and pleadings, advocates will need to provide these parties with basic information regarding VAWA's purpose and protections. Advocates also should attach copies of VAWA's statutory and regulatory provisions to advocacy letters and bring copies to administrative proceedings.

Advocates also will need to provide fundamental information regarding domestic violence, such as why survivors stay with abusers, the nature and impact of economic abuse, and the psychological impact that battering has upon survivors. To help housing providers understand that domestic violence often consists of a pattern of conduct, advocates should describe and provide documentation of the entire history of the abusive relationship, rather than just the incident for which the survivor is currently facing eviction or termination. This is especially critical in cases where both the survivor and the abuser seek to assert VAWA's protections, with the abuser claiming that the survivor is the perpetrator of the domestic violence.

### **6.13.2 The Need to Educate Clients**

Most survivors lack information regarding their housing rights under VAWA. As a result, survivors often fail to assert VAWA as a defense to an eviction or subsidy termination and needlessly lose their housing. Advocates should develop strategies for educating clients regarding their VAWA rights, such as by posting notices at their offices, on their websites, and at social services agencies. The appendix to this Manual contains sample brochures regarding tenants' VAWA rights.<sup>359</sup> As described earlier in this chapter, advocates also should urge PHAs to use a variety of methods to provide tenants with notice of their VAWA rights. Further, advocates may need to revise their intake procedures to identify whether a survivor may be entitled to VAWA's housing protections. As a standard procedure, advocates should consider asking clients whether a lease or program violation for which they are currently facing an eviction or a subsidy termination was in any way related to acts of violence committed against them.

### **6.13.3 Timing**

Time is often of the essence in cases involving eviction or termination of a survivor's housing benefits. Survivors may have only a few weeks or even days to respond to the housing provider's request for documentation, to exercise their right to request an administrative proceeding, or to respond to an eviction complaint. Further, it can be difficult to use VAWA to seek reinstatement of a survivor's voucher or public housing unit once the survivor has been evicted or her assistance has been terminated. This is because VAWA does not explicitly address a survivor's right to file an affirmative lawsuit to seek reinstatement of housing assistance, and this approach is relatively untested. Accordingly, it is crucial to assist survivors in asserting their VAWA rights before the eviction or termination is complete, such as by raising VAWA in an administrative proceeding or in an eviction answer. To ensure that the survivor has adequate time to gather documentation of domestic violence, advocates may need to contact the housing provider and request a delay of any scheduled proceedings.

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<sup>359</sup> See Appendices 26 and 27.

#### **6.13.4 Engaging the Media**

Advocates have successfully used the media to obtain sympathetic coverage of survivors who have lost their housing or are at risk of becoming homeless due to acts of violence committed against them.<sup>360</sup> This coverage can help pressure the housing provider to resolve the matter quickly, such as by reinstating the survivor's housing or ceasing actions to evict. Advocates should consider issuing press releases where an advocacy letter or complaint has been filed against the housing provider. In most cases, the media will want to interview the survivor, so it is critical to discuss the survivor's willingness to speak about her experiences before going public. Advocates also should consider using the media to increase the public's awareness of VAWA housing rights, such as through newspaper editorials or public service announcements on the radio or local cable access channels.

#### **6.13.5 Collaboration with Housing Providers**

To prevent housing providers from needlessly pursuing evictions or subsidy terminations against survivors, advocates should request meetings with their local housing providers to discuss ways to work together to implement VAWA's protections. Advocates should offer to provide training on VAWA's housing provisions as well as on the fundamentals of domestic violence, dating violence, sexual assault, and stalking. Where possible, advocates also should offer to take referrals in cases where the housing provider becomes aware that a tenant is experiencing domestic violence. Advocates also should volunteer to work with housing providers to develop policies that serve survivors' needs.<sup>361</sup>

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<sup>360</sup> For more information regarding this approach, see Sandra Park, *Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company*, 43 CLEARINGHOUSE REV. 80, 83 (May/June 2009).

<sup>361</sup> See Chapter 8 for more information on working with PHAs on their policies.

# Chapter 7: Evictions and Subsidy Terminations in Federally Subsidized Housing

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### 7.1 Introduction

Domestic violence survivors living in federally subsidized housing often face evictions and subsidy terminations related to acts of domestic violence committed against them. For example, many survivors risk losing their housing because the abuser caused disturbances and damage at the assisted unit, the abuser committed a criminal act at the assisted unit, the abuser refused to make rent payments, or the housing provider mistakenly assumed that the abuser was living in the assisted unit without its permission.

This Chapter discusses some of the common reasons why survivors face evictions and terminations in subsidized housing, and describes arguments that advocates can use to prevent survivors from losing their housing. The Chapter also reviews the procedural rules that a housing provider must follow before it can evict a survivor or terminate her subsidy. The Chapter then discusses the steps that attorneys should take to prepare a survivor for challenging an eviction or subsidy termination in federally assisted housing. The Chapter concludes by discussing factors attorneys should consider in helping a survivor to settle an eviction or termination. Although this

Chapter addresses federally subsidized housing only, some of the strategies discussed may also be applicable to evictions in private unsubsidized housing.<sup>362</sup>

Advocates assisting survivors who are facing evictions and terminations from federally subsidized housing should also consult Chapters 4, 5, and 6, which address protections for survivors under fair housing laws and the Violence Against Women Act. Advocates also should examine whether their state or local laws provide special housing protections for domestic violence survivors.<sup>363</sup> For advocates seeking general information regarding the housing rights of tenants in federally subsidized housing, there are a number of resources that provide a comprehensive review of protections available to these tenants.<sup>364</sup>

## 7.2 Common Lease and Program Violations

This section discusses some of the common lease and program violations that advocates encounter when representing domestic violence survivors who are being evicted or terminated from federally subsidized housing. As discussed below, subsidized housing providers must have good cause—in other words, a good reason—for evicting the survivor or terminating her subsidy. Some of the reasons that housing providers cite in evicting survivors or terminating their assistance include (1) criminal activity at the unit; (2) disturbances at the subsidized unit; (3) damage to the unit; (4) nonpayment of rent; and (5) unauthorized occupancy by a non-household member.

### 7.2.1 The Good Cause Requirement

In federally subsidized housing programs, tenants generally cannot be evicted without good cause.<sup>365</sup> For the most part, good cause reasons for eviction are limited to tenant misconduct, lease violations, or program violations. Given the harsh consequences of eviction from federally subsidized housing, such as a high risk of homelessness, courts often require housing providers to demonstrate serious wrongdoing by tenants before they will grant evictions.<sup>366</sup> One factor

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<sup>362</sup> Additionally, advocates should determine whether a housing provider is the recipient of a transitional housing grant from the Department of Justice's Office on Violence Against Women (OVW) against Women. Recipients of these grants are prohibited from evicting a tenant on the grounds that the tenant refuses to participate in the recipient's supportive services. 42 U.S.C. § 13975(d)(2)(B). Thus, federal law may provide a defense in cases where a tenant faces eviction from an OVW-funded transitional housing program for refusing to participate in supportive services.

<sup>363</sup> A compendium of state and local laws offering housing protections for domestic violence survivors is at Appendix 36.

<sup>364</sup> See, e.g., NHLP, HUD HOUSING PROGRAMS: TENANTS' RIGHTS Ch. 14 (3d ed. 2004 and Supp.); Fred Fuchs, *Defending Against Eviction from Public and Federally Subsidized Housing*, 39 CLEARINGHOUSE REV. 302 (Sept./Oct. 2005); Lawrence R. McDonough & Mac McCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REV. 55 (May/June 2007).

<sup>365</sup> See 42 U.S.C. §§ 1437d(1)(B)(ii) (project-based Section 8), 1437f(o)(7) (Section 8 voucher); 7 C.F.R. pt. 1930, subpt C, Ex. B ¶ XIV A (Section 515 Rural Housing); 24 C.F.R. § 966.4(l) (public housing). In the Section 8 voucher program, the good cause protections apply only during the tenant's initial lease term. A voucher tenant may be evicted without cause at the end of the lease term. See 42 U.S.C. §1437f(o)(7)(C).

<sup>366</sup> See, e.g., 24 C.F.R. §§ 5.852(a)(1) (in determining whether to evict, housing providers can consider the seriousness of the offending action), 966.4(l)(5)(vii)(B) (same), 982.310(h)(1) (same), 982.552(c)(2) (in determining whether to terminate assistance, PHAs can consider the seriousness of the offending action); *Thomas v. Hous. Auth. of Little Rock*, 282 F. Supp. 575 (E.D. Ark. 1967); *Robinson v. Martinez*, 764 N.Y.S.2d 94 (N.Y. App. Div. 2003); *Messiah Baptist Hous. Dev. Fund Co. v. Rosser*, 400 N.Y.S.2d 306, 308 (N.Y. Civ. Ct. 1977); see also 24 C.F.R. §§ 5.852, 966.4(l)(5)(vii) (giving housing providers discretion to consider all the circumstances in deciding whether to



courts use in evaluating the seriousness of the conduct in question is whether it has adversely affected other tenants, project employees, or the project itself.<sup>367</sup> Further, courts often require a showing that the tenant, and not persons who were beyond the tenant's control, was responsible for the lease or program violation.<sup>368</sup> Another factor some courts consider is whether the tenant is willing to make an effort to prevent future violations, such as excluding from the household the person who was responsible for criminal activity or barring from the unit a guest or visitor who has caused disturbances at the property.<sup>369</sup> Advocates should keep these principles in mind in developing arguments in support of survivors who are facing eviction from federally subsidized housing.

The rest of this section focuses on lease and program violations that are commonly cited as good causes for terminating or evicting survivors, including criminal activity, disturbances, damages, nonpayment of rent, and unauthorized occupancy by a non-household member.

## 7.2.2 Criminal Activity

Survivors frequently face eviction or termination from federally subsidized housing due to criminal activity at the assisted unit that was related to domestic violence, dating violence, or stalking. This section discusses some of the strategies and arguments available to advocates assisting survivors who are facing evictions or terminations that are related to criminal activity. The appendix to this Manual includes a sample answer to an eviction complaint filed against a survivor due to the abuser's criminal activity.<sup>370</sup> Additionally, there are a number of resources available to advocates seeking a comprehensive review of all the defenses available to subsidized tenants in criminal activity cases.<sup>371</sup>

Owners of federally subsidized and public housing must use leases that authorize eviction for criminal activity of tenants, household members, guests, and other persons under the tenant's control.<sup>372</sup> Lease provisions regarding criminal activity vary slightly from program to program, so advocates should read them carefully to determine whether the survivor has in fact violated a criminal activity provision. Department of Housing and Urban Development (HUD) regulations give housing providers discretion to decide whether to proceed with eviction of households that violate criminal activity lease provisions.<sup>373</sup> Thus, housing providers are not required to pursue

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evict); Letter from HUD Secretary Mel Martinez to Public Housing Directors re One-Strike Evictions (Apr. 16, 2002) (on file with NHLP) (encouraging landlords to take into account the seriousness of the offending action when making a determination to terminate a tenancy).

<sup>367</sup> *See id.*

<sup>368</sup> *See* 24 C.F.R. §§ 5.852(a)(3) (in determining whether to evict, housing providers can consider the extent of participation by the tenant in the offending action), 966.4(l)(5)(vii)(B) (same), 982.310(h)(1) (same), 982.552(c)(2) (in determining whether to terminate assistance, PHAs can consider the extent of participation by the tenant in the offending action); Maxton Hous. Auth. v. McLean, 328 S.E.2d 290 (N.C. 1985).

<sup>369</sup> *See* 24 C.F.R. §§ 5.852(b) (housing providers may require a tenant to exclude a household member in order to continue to reside in the unit, where that household member committed an act that warrants termination), 966.4(l)(5)(vii)(C) (same), 982.310(h)(2) (same), 982.552(c)(2)(ii) (PHAs may impose, as a condition of continued assistance, a requirement that family members who participated in the offending conduct will not reside in the unit).

<sup>370</sup> *See* Appendix 28.

<sup>371</sup> *See supra* note 364.

<sup>372</sup> *See* 42 U.S.C. §§ 1437d(l) (public housing), 1437f(d) (project-based Section 8), 1437f(o)(7) (Section 8 voucher); 24 C.F.R. §§ 966.4(f)(12), (l) (public housing), 5.850-861 (project-based Section 8), 982.310(c) (Section 8 voucher).

<sup>373</sup> § 5.852 (project-based Section 8), 966.4(l)(5)(vii) (public housing), 982.310(h) (Section 8 voucher); *see also* Oakwood Plaza Apartments v. Smith, 800 A.2d 265, 267-71 (N.J. Super. Ct. App. Div. 2002).

evictions in cases where it can be demonstrated that a tenant was unaware of or could not have prevented the criminal activity at issue. Unfortunately, some housing providers have applied these lease provisions to justify the evictions and subsidy terminations of all members of a particular household, even those who did not participate in the criminal acts or who were in fact victims of those acts. Consequently, survivors have faced evictions and subsidy terminations based on crimes committed against them by their abusers.<sup>374</sup> Fortunately, there are some strategies that can be used to protect these survivors. As discussed below, advocates should examine whether the survivor has protections under state or local laws, whether the Violence Against Women Act (VAWA) applies, whether the person responsible for the criminal activity was a guest, and whether the survivor could have anticipated or controlled the criminal activity. Survivors also may have protections under fair housing laws, which are discussed in Chapter 4.

### *State and Local Laws Specifically Protecting Victims of Domestic Violence*

It is critical for advocates to examine their state and local laws to determine whether they provide any protections for domestic violence survivors who are at risk of eviction. Several jurisdictions have enacted laws that prohibit landlords from evicting tenants based on acts of domestic violence committed against them or that provide a special eviction defense for victims of domestic violence. As of the publication of this Manual, those jurisdictions are Arkansas, California, Colorado, Dane County (Wisconsin), the District of Columbia, Illinois, Indiana, Maryland, New Hampshire, New Mexico, North Carolina, Oregon, Rhode Island, Virginia, Washington, Westchester County (New York), and Wisconsin.<sup>375</sup> Advocates who suspect that a client is facing eviction because of her status as a victim of domestic violence should consider asserting these state or local laws in challenging the eviction.

### *Violence Against Women Act*

If the criminal activity for which the survivor is being evicted was related to acts of domestic violence, dating violence, or stalking committed against her, she can argue that VAWA prohibits her eviction.<sup>376</sup> VAWA provides that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered good cause for eviction or subsidy termination for the victim of the domestic violence, dating violence, or stalking.<sup>377</sup> For example, if a survivor is facing a criminal activity eviction because the police arrested her husband at the family's public housing unit after he assaulted her, the survivor can assert VAWA as a defense to the eviction.

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<sup>374</sup> See 42 U.S.C. § 14043e.

<sup>375</sup> See ARK. CODE ANN. § 18-16-112; CAL. CIV. PROC. CODE 1161.3; COLO. REV. STAT. ANN. § 13-40-104; DANE COUNTY CODE § 31.02; D.C. CODE § 42-3505.01; ILL. COMP. STAT. ANN. 5/9-106.2; IND. CODE ANN. § 32-31-9-8; MD. CODE ANN., REAL PROP. § 8-5A-05; N.H. REV. STAT. ANN. § 540:2; N.M. STAT. ANN. § 47-8-33; N.C. GEN. STAT. ANN. § 42-42.2; OR. REV. STAT. ANN. § 90.449; R.I. GEN. LAWS § 34-37-4; VA. CODE ANN. § 55-248.31; WASH. REV. CODE ANN. § 59.18.580; WESTCHESTER COUNTY CODE § 700.05; WIS. STAT. ANN. § 106.50. The text of these laws is at Appendix 36.

<sup>376</sup> See Chapter 6 for more information regarding VAWA. The statute applies only to tenants in public housing, project-based Section 8, Section 8 voucher, Section 811, and the Section 202 and Section 811 supportive housing programs. 24 C.F.R. § 5.2001.

<sup>377</sup> §§ 1437d(l)(6)(A) (public housing), 1437f(c)(9)(C)(i) (project-based Section 8), 1437f(o)(20)(C) (Section 8 voucher).

### *Guest or Other Person Under the Tenant's Control*

In addition to VAWA, it is critical for advocates to examine whether the person responsible for the criminal activity was in fact a “guest” or “other person under the [survivor’s] control.” As discussed above, federal laws authorize evictions for criminal activity by guests and other persons under a subsidized tenant’s control. In cases where the batterer arrived at the unit uninvited and committed a criminal act, the batterer does not fall within the definition of “guest” or “other person under the tenant’s control.” HUD defines “guest” as a person temporarily staying in the unit with the tenant’s consent.<sup>378</sup> HUD defines “other person under the tenant’s control” as a person who, although not staying as a guest in the unit is, or was at the time of the criminal activity, on the premises because of an invitation from the tenant.<sup>379</sup>

Survivors have a defense to eviction or termination when the person who commits the criminal activity is not a household member, guest, or other person under the survivor’s control.<sup>380</sup> For example, if the abuser forces his way into the survivor’s apartment, is arrested, and is found to have drugs in his possession during a post-arrest search, the survivor could raise as a defense to eviction the fact that the abuser was not a guest or person under her control. In these cases, the issue will often be whether the survivor invited the abuser into the unit or gave the abuser consent to enter the unit. The survivor can bolster her case by presenting evidence demonstrating that she had excluded the abuser from the unit on prior occasions, such as by calling security, summoning the help of neighbors, or obtaining a restraining order.

Even if the survivor gave the abuser permission to enter the unit, she still may have a defense to eviction if she can demonstrate that she could not anticipate or control the abuser’s criminal activity.<sup>381</sup> Advocates should muster all favorable facts showing lack of participation by the survivor and utilize them to convince the housing provider not to proceed with eviction or termination. Further, if there are any steps the survivor can take to exclude the abuser from the unit in the future, the survivor’s willingness to take these steps may bolster her case.

### *Self-Defense and Reliability of Evidence*

Survivors sometimes face evictions or subsidy terminations for criminal activity in cases where they injured their abusers while acting in self-defense. In self-defense cases, it is critical for advocates to determine whether the housing provider’s evidence against the survivor is reliable. Advocates successfully challenged the reliability of a housing provider’s evidence in *[Redacted] v. Boston Housing Authority*.<sup>382</sup> While this case did not involve an incident of domestic violence, the reasoning of the court’s opinion may be helpful where a housing provider relies solely on hearsay evidence in cases involving self-defense.

A Section 8 voucher tenant slashed a woman with a bottle during a violent altercation. The PHA issued a termination notice to the tenant based on violent criminal activity. At the informal

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<sup>378</sup> 24 C.F.R. § 5.100.

<sup>379</sup> § 5.100.

<sup>380</sup> See *Boston Hous. Auth. v. Bruno*, 790 N.E.2d 1121 (Mass. App. Ct. 2003) (finding that PHA could not evict tenant for son’s drug activity because the son was not a household member at the time of the activity); *Assoc. Estates Corp. v. Bartell*, 492 N.E.2d 841 (Ohio Ct. App. 1985) (finding that tenant could not be evicted for disturbance and damages caused by non-guests).

<sup>381</sup> See, e.g., *Cuyahoga Metro. Hous. Auth. v. Harris*, 139 Ohio Misc. 2d 96 (2006) (declining to uphold eviction of public housing tenant where she was unaware that her guest had drugs in his possession).

<sup>382</sup> The court’s opinion is at Appendix 29.

hearing, the tenant testified that she grabbed the bottle in self-defense after the woman stabbed her with a box cutter. The PHA presented no evidence other than the police report, which included the woman's statement that the tenant instigated the fight. The hearing officer rejected the tenant's self-defense claim and upheld the termination of her Section 8 voucher.

A housing court vacated the decision, finding the evidence in the administrative record insufficient to support the hearing officer's conclusion that the tenant did not use the bottle in self-defense. The court noted that once the tenant presented evidence that she acted in self-defense, the burden shifted to the PHA to prove, by a preponderance of the evidence, that the tenant started the altercation. The court determined that it was improper for the hearing officer to rely on the woman's uncorroborated and self-serving hearsay statement that the tenant acted as the aggressor.<sup>383</sup> Because no other evidence in the record showed that the tenant's conduct was unjustified, the court reinstated her voucher.

### 7.2.3 Disturbance at the Unit

Evictions and terminations against survivors living in federally subsidized housing are often based on the abuser disturbing neighbors. In general, federally subsidized tenants must not disturb other residents' peaceful enjoyment of the premises.<sup>384</sup> There are several arguments that advocates can raise in defense of a survivor who is facing eviction for disturbing other tenants. First, if the disturbance was related to acts of domestic violence, dating violence, or stalking committed against the survivor, the survivor can argue that VAWA prohibits her eviction.<sup>385</sup> As discussed above, VAWA provides that an incident of actual or threatened domestic violence, dating violence, or stalking is not good cause for terminating the tenancy of the victim.<sup>386</sup> Thus, if the abuser disturbs the survivor's neighbors by screaming threats at her and pounding on her door, the survivor can argue that the abuser's conduct constitutes an incident of domestic violence, and such an incident is not good cause for terminating her tenancy. Survivors may also have protections under fair housing laws, which are discussed in Chapter 4.

Additionally, advocates should examine whether the disturbance was so serious as to justify the termination of the survivor's federally subsidized housing. If the disturbance occurred only once, or if the housing provider cannot show that the disturbance had an adverse effect on other tenants, then it is not serious enough to constitute good cause for terminating the survivor's assistance.<sup>387</sup> This argument was successful in *Moundville Housing Authority v. Porter*.<sup>388</sup> The survivor was awakened from sleep and beaten by her "live-in companion," who was subsequently arrested for the attack.<sup>389</sup> The housing authority received one written complaint and several phone calls from residents in the building concerning the altercation.<sup>390</sup> However, the survivor testified that her neighbors told her they were not disturbed by the altercation. Two days after the incident, the survivor received an eviction notice for violating a provision of her lease

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<sup>383</sup> *Id.* slip op. at 6, 7 (citing *Costa v. Fall River Hous. Auth.*, 453 Mass. 614 (2009)).

<sup>384</sup> *See, e.g.*, 24 C.F.R. § 966.4(f)(11); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Handbook 4350.3, REV-1, CHG-2, at App. 4-a, ¶ 13(e) (June 2007).

<sup>385</sup> *See* Chapter 6 for more information regarding VAWA.

<sup>386</sup> *See* 42 U.S.C. §§ 1437d(l)(5) (public housing), 1437f(c)(9)(B) (project-based Section 8), 1437f(o)(20)(B) (Section 8 voucher).

<sup>387</sup> *See Moundville Hous. Auth. v. Porter*, 370 S.E.2d 341, 343 (W. Va. 1988).

<sup>388</sup> *Id.* at 342.

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

that required her to ensure that her guests did not disturb other tenants' peaceful enjoyment of the property.<sup>391</sup> The court reversed the survivor's eviction, finding that she had not committed an act amounting to a serious violation of the lease.<sup>392</sup> The court noted that the incident was isolated, there was no evidence that the survivor was otherwise a troublesome tenant, and the companion no longer lived on the premises.<sup>393</sup>

As discussed in the above section regarding criminal activity, advocates should examine whether the abuser was a guest of the survivor at the time the disturbance occurred. HUD defines "guest" as a person temporarily staying in the unit with the tenant's consent.<sup>394</sup> Courts will be less willing to find that the survivor has committed a lease violation where the survivor could not anticipate or prevent the disturbance. This approach was successful in *Associated Estates Corporation v. Bartell*.<sup>395</sup> The tenant had invited guests to her subsidized unit, but asked them to leave when they became noisy.<sup>396</sup> At 2:30 a.m. the "guests" returned to her apartment, banged on her door, damaged the door, and broke the windows in another tenant's car.<sup>397</sup> The court found that the tenant could not be evicted for causing a disturbance, because the persons who caused the disturbance were uninvited, the tenant had filed criminal charges against them, and the tenant was not responsible for their actions.<sup>398</sup>

Even if the abuser was a member of the household when the disturbance occurred, the housing provider should not evict the survivor if the abuser moved out. In that situation the survivor has cured the adverse impact that the disturbance had on other tenants, making it unlikely that such disturbances will recur. Courts may be more sympathetic to these arguments if the survivor can demonstrate that she has done all she can to avoid future incidents, such as obtaining a restraining order or providing security officers with photos of the abuser and instructing them to exclude the abuser from the premises.

### 7.2.4 Damage to the Unit

Survivors often face evictions from federally subsidized housing due to damage to their assisted units caused by their abusers. Much like evictions involving criminal activity and disturbances, evictions involving damage to the unit may be defended if the abuser was not a guest at the time the damage occurred. Leases in the federally subsidized housing programs contemplate that tenants will be responsible for damage caused by household members or guests.<sup>399</sup> The leases do not contemplate that tenants will be responsible for damage caused by vandals or intruders. Accordingly, the survivor should not be liable for damage caused when the abuser came to the subsidized unit without the survivor's consent. Rather, the landlord's remedy in these cases is to pursue an action against the abuser for the cost of repairs. If possible, advocates should bolster these arguments by providing evidence that the survivor has done everything within her ability to prevent the abuser from returning to the premises. Additionally,

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<sup>391</sup> *Id.*

<sup>392</sup> *Id.* at 343.

<sup>393</sup> *Id.*

<sup>394</sup> 24 C.F.R. § 5.100.

<sup>395</sup> 492 N.E.2d 841 (Ohio Ct. App. 1985).

<sup>396</sup> *Id.* at 843.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.* at 847.

<sup>399</sup> See 24 C.F.R. § 966.4(h) (public housing); OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 384, at App. 4-A, ¶ 11; Form HUD-52641-A (Jan. 2007) (Section 8 voucher).

if the damage was related to acts of domestic violence, dating violence, or stalking committed against the survivor, the survivor can argue that VAWA<sup>400</sup> and the Fair Housing Act<sup>401</sup> prohibit her eviction.

Tenants have had some success in arguing that they should not be held liable for damage caused by non-guests. In *Associated Estates Corporation v. Bartell*,<sup>402</sup> the court found that the tenant could not be evicted for damage to her door caused by persons she had previously asked to leave her apartment. In *Branish v. NHP Property Management, Inc.*,<sup>403</sup> the court found that a tenant could not be evicted for damage that her boyfriend caused to the premises because he entered her unit without her consent. The court noted that while invited guests are the responsibility of the tenant, the tenant in this case did not neglect her obligations to prevent damage to the unit because her boyfriend was uninvited when he caused the damage.<sup>404</sup> Similarly, in *Jenkins v. Boyce*,<sup>405</sup> the court held that a tenant was not liable for a trespasser's vandalism of her apartment, stating that to require a tenant to prevent the criminal actions of those who are not guests would impose an unreasonable burden.

### 7.2.5 Nonpayment of Rent

Many survivors face evictions and terminations from federally subsidized housing due to nonpayment of rent stemming from acts of domestic violence. Failure to make rent payments due under the lease constitutes sufficient grounds to terminate a tenancy.<sup>406</sup> However, even if a survivor has failed to pay the rent, there are some situations where that fact alone does not constitute good cause to evict. Specifically, the survivor may have a defense to eviction where the housing provider failed to properly adjust the rent, or forces beyond the survivor's control caused the nonpayment.

In many cases, the nonpayment of rent occurs because the survivor has recently suffered a loss of income. For example, the survivor may be unable to pay the rent if the abuser was the primary source of income and has left the household due to a restraining order or incarceration. Or, the survivor may have been forced to reduce her work hours or quit working entirely due to an injury stemming from domestic violence.<sup>407</sup> Statutes and regulations for federally subsidized housing programs with income-based rents require the landlord to recertify the tenant's income and reduce the rent when the tenant's income drops.<sup>408</sup> These provisions can be used as a defense to eviction when a survivor's income has been reduced and the landlord has not reduced her rent accordingly.<sup>409</sup>

Survivors may also have a defense to eviction where forces beyond the survivor's control caused the nonpayment.<sup>410</sup> For example, this defense may apply if the abuser stole the survivor's

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<sup>400</sup> See Chapter 6 for more information regarding VAWA.

<sup>401</sup> For sample documents that use this approach, see Appendices 6 and 7.

<sup>402</sup> 492 N.E.2d 841 (Ohio Ct. App. 1985).

<sup>403</sup> 694 A.2d 1106 (Pa. Super. Ct. 1997).

<sup>404</sup> *Id.* at 1107.

<sup>405</sup> 703 N.E.2d 392 (Ohio Mun. Ct. 1998).

<sup>406</sup> 24 C.F.R. §§ 247.3(c)(4), 966.4(l)(2)(i).

<sup>407</sup> If the survivor's injury rises to the level of a disability, she may also be entitled to a reasonable accommodation under fair housing laws. See Chapter 7 for more information regarding these laws.

<sup>408</sup> See, e.g., 42 U.S.C. § 1437a(a) (public housing); 24 C.F.R. §§ 5.657(c) (project-based Section 8), 884.218(b) (Section 515 Rural Housing), 966.4(c) (public housing); 982.516 (Section 8 voucher).

<sup>409</sup> See, e.g., *Hous. Auth. of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988).

<sup>410</sup> See, e.g., *Maxton Hous. Auth. v. McLean*, 328 S.E.2d 290 (N.C. 1985).

public assistance check or refused to make child support payments that were included in the survivor's rent calculation.

Additionally, if the survivor can demonstrate a link between her inability to pay the rent and incidents of domestic violence, dating violence, or stalking, she can argue that evicting her for nonpayment of rent would essentially constitute an eviction on the basis of acts of violence committed against her in violation of VAWA.<sup>411</sup>

At least one court has found that a survivor could not be evicted where the PHA failed to adjust her rent after being informed that the abuser had left the household. In *Housing Authority of St. Louis County v. Boone*, the survivor informed the PHA that she had separated from her husband after he fired a gun in the apartment.<sup>412</sup> She requested a hearing and asked for a rent adjustment based on the change in her family composition and income.<sup>413</sup> At the hearing she submitted a restraining order she had obtained against her husband, but the PHA still did not act on her request for a rent adjustment.<sup>414</sup> The PHA subsequently filed an eviction action against the survivor for nonpayment of rent.<sup>415</sup> The court found that federal regulations and the survivor's lease required the PHA to adjust the survivor's rent, and ordered the PHA to renew the tenant's lease for one year.<sup>416</sup>

Another court found that a survivor could not be evicted for nonpayment of rent where her husband refused to pay the rent and assaulted her when she attempted to talk to him about their unpaid bills. In *Maxton Housing Authority v. McLean*,<sup>417</sup> the survivor's husband moved out of the family's subsidized housing unit after failing to make rent payments, which were based on his income. After moving out of the household, the husband refused to pay child support, and the survivor had no income until she was able to secure public benefits.<sup>418</sup> The court found that the PHA did not have good cause to evict the survivor because she had committed no wrongful acts that resulted in her nonpayment of rent, and the husband was at fault for the failure to pay rent.<sup>419</sup> The court noted that "To eject [the tenant] and her two children from their humble abode upon this evidence would indeed shock one's sense of fairness."<sup>420</sup>

### **7.2.6 Unauthorized Household Member**

Survivors frequently face evictions or subsidy terminations on the grounds that they added an additional household member without the housing provider's permission. A tenant's failure to seek permission from the housing provider before allowing additional persons to move into the assisted unit can constitute a lease violation. In cases where the abuser repeatedly returns to the survivor's subsidized unit, housing providers often wrongfully assume that the abuser is living in the unit without their permission. This is more likely to occur in cases where the abuser

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<sup>411</sup> See 42 U.S.C. §§ 1437d(l)(5) (public housing), 1437f(c)(9)(B) (project-based Section 8), 1437f(o)(20)(B) (Section 8 voucher). For more information regarding VAWA, see Chapter 6.

<sup>412</sup> 747 S.W.2d at 312.

<sup>413</sup> *Id.* at 312-13.

<sup>414</sup> *Id.* at 313.

<sup>415</sup> *Id.*

<sup>416</sup> *Id.* at 315-16.

<sup>417</sup> 328 S.E.2d 290 (N.C. 1985).

<sup>418</sup> *Id.* at 291.

<sup>419</sup> *Id.* at 293.

<sup>420</sup> *Id.* at 294.

previously lived with the survivor, and the survivor subsequently requested that he be removed from the household.

To prove that the abuser is not living in the unit, advocates should find out where the abuser is living, whether he pays rent there, whether the abuser uses the survivor's unit as an address, and whether the survivor's neighbors can vouch for the fact that the abuser does not live with her. Ultimately, the matter will depend upon a determination by the trier of fact as to whether the abuser lives in the survivor's home or elsewhere. Below are several cases where domestic violence survivors challenged allegations that they were allowing their abusers to live with them without the PHA's permission.

*Pittman v. Dakota County Community Development Agency*

A domestic violence survivor successfully overturned the termination of her Section 8 voucher where the hearing officer disregarded evidence that the abuser lived at a different address. In *Pittman v. Dakota County Community Development Agency*,<sup>421</sup> the PHA terminated Section 8 tenant Jessica Pittman's voucher for having an unauthorized adult living in the unit. At the informal hearing, Ms. Pittman had testified that this person had been physically violent toward her on several occasions.<sup>422</sup> She introduced mail and a child support order placing the person at another address, and a social worker also testified on her behalf.<sup>423</sup> A court overturned the termination, finding that the hearing officer failed to consider Ms. Pittman's evidence and disregarded mitigating circumstances, such as the fact that Ms. Pittman was the victim of domestic violence perpetrated by the alleged unauthorized occupant.<sup>424</sup>

*[Redacted] v. Sellers-Earnest*

In *[Redacted] v. Sellers-Earnest*,<sup>425</sup> a court ordered a PHA to reinstate a domestic violence survivor's Section 8 voucher after the PHA failed to present sufficient evidence that the survivor's abuser was living with her. The PHA sent a termination notice to a Section 8 tenant on the grounds that an unauthorized occupant, "K," was residing in her unit. According to the PHA, K had used the tenant's address on an arrest record. The tenant requested an informal hearing to challenge the termination of her voucher.

At the hearing, the PHA presented a criminal report affidavit and a domestic violence incident report from the city police department. According to the criminal report affidavit, K told the arresting officer that he and the tenant were dating and lived together. The tenant testified that while K sometimes stayed with her, he lived at his mother's residence. She also submitted a temporary injunction she had obtained against K because of dating violence and an affidavit regarding the dating violence as evidence that K did not reside with her. The hearing officer upheld the decision to terminate the tenant's housing assistance.

The tenant sued the housing authority for violating her procedural rights guaranteed by 24 C.F.R. § 982.555(e)(5)-(6) and her due process rights under the Fourteenth Amendment because the hearing officer relied solely on unreliable hearsay—the police reports. The court found that it

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<sup>421</sup> 2009 WL 112948 (Minn. Ct. App. Jan. 20, 2009).

<sup>422</sup> *Id.* at \*1.

<sup>423</sup> *Id.* at \*2.

<sup>424</sup> *Id.* at \*4.

<sup>425</sup> The motion for preliminary injunction and opinion are at Appendices 30 and 31.



could not assess the reliability of K's statements in the police report since, having been arrested for domestic violence based on the tenant's accusations, he was not free from potential bias. Additionally, the tenant could not cross-examine K or the police officers because she had no authority to subpoena them for the informal hearing. The court concluded that the police reports did not constitute sufficient evidence that the tenant allowed the alleged occupant to reside in her unit, and it ordered the PHA to reinstate her Section 8 voucher.

*[Redacted] v. City of Chandler PHA*

In *[Redacted] v. City of Chandler PHA*,<sup>426</sup> attorneys filed a fair housing complaint with HUD after the PHA terminated a domestic violence survivor's Section 8 voucher for permitting an unauthorized person to reside in her home. The voucher tenant had been assaulted by her ex-boyfriend on several occasions. To escape the domestic violence, the survivor asked the PHA to let her use her voucher in another state. To document the violence, the survivor provided the PHA with copies of police reports. One of the police reports incorrectly stated that the survivor's abuser resided with her in her apartment. The PHA relied on this police report as evidence that the survivor had allowed her abuser to live in her unit without prior approval, and terminated her voucher.

The survivor filed an administrative complaint against the PHA with HUD's Office of Fair Housing and Equal Opportunity. She alleged that the PHA denied her right to appropriate services, terms, and conditions in housing because of her sex and her status as a victim of domestic violence in violation of the Fair Housing Act. She also argued that the termination of her voucher violated VAWA. Further, she alleged that the termination of her voucher for having an unauthorized occupant was pretext for discrimination based on sex. HUD investigated the survivor's allegations and worked with the parties to resolve her complaint. As part of a conciliation agreement, the PHA agreed to reinstate the survivor's voucher and allow her to move out of state.

*Hammond v. Akron Metropolitan Housing Authority*

In *Hammond v. Akron Metropolitan Housing Authority*,<sup>427</sup> the PHA terminated tenant Lisa Hammond's voucher on grounds that she allowed an unauthorized person named Dalton Snow to reside in her unit. The PHA's rules prohibited voucher tenants from having visitors staying in a unit for more than four consecutive days or a total of 15 days in a 12-month period. During an informal hearing on the voucher termination, a PHA police officer testified that he had received a complaint from Mr. Snow's mother that Mr. Snow was residing in Ms. Hammond's unit in violation of PHA rules. The officer also verified with the post office that Mr. Snow used Ms. Hammond's address as his mailing address. Ms. Hammond admitted that Mr. Snow had stayed at her apartment one or two nights per week, but testified that he had moved out because he was incarcerated due to domestic violence against her. Ms. Hammond also testified that she had tried to keep Mr. Snow away, but he kept coming back.

Ms. Hammond argued that the termination of her voucher violated her rights under VAWA, because the PHA terminated her subsidy due to violence perpetrated against her by Mr. Snow. The court found no evidence that incidents of domestic violence had prompted the PHA to

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<sup>426</sup> The fair housing complaint filed in this case is at Appendix 9.

<sup>427</sup> 2011 WL 2175801 (Ohio Ct. App. June 1, 2011).

investigate Mr. Snow's presence at the unit. The court noted that the PHA had investigated Ms. Hammond because Mr. Snow's mother had informed the PHA that he was living in the unit. The court found no indication that Mr. Snow's mother had notified the PHA of the violence or that the PHA had treated Ms. Hammond differently from other voucher holders in its decision to terminate her assistance. Accordingly, the court found that Ms. Hammond failed to show that the termination of her voucher violated VAWA. The case illustrates the need to demonstrate a link between domestic violence and the unauthorized person's presence at the unit. For example, evidence demonstrating that Mr. Snow forced Ms. Hammond to allow him to use her mailing address or that Mr. Snow's mother had reported Ms. Hammond to the PHA in retaliation for Mr. Snow's incarceration may have been helpful in establishing a VAWA claim.

### **7.3 Procedural Protections for Survivors in Federally Subsidized Housing**

This section discusses the procedures attorneys can use to challenge an eviction or termination in federally subsidized housing. In federally assisted housing, the statutes, regulations, HUD guidance, PHA policies, and leases pertaining to each program provide procedural protections for tenants facing eviction or termination of assistance. The procedures differ among the federal housing programs. As a result, the procedures that will apply in an individual case will depend on which housing program the survivor is in. For example, survivors in public housing are usually entitled to a more elaborate set of procedural protections than those in other subsidized housing programs. This section describes the procedural protections available to survivors in the major federally subsidized housing programs.

#### **7.3.1 Overview of Procedural Protections**

Survivors in federally subsidized housing are entitled to notice and an opportunity to be heard before they can be evicted or terminated from the program. The survivor must be notified of the adverse action in writing, and the notice must inform her of the specific grounds for termination or eviction.<sup>428</sup> The time period in which the survivor must respond to the notice will depend on the housing program she is in and the nature of the alleged violation. For example, a survivor in public housing must receive 14 days' notice for an eviction due to nonpayment of rent.<sup>429</sup>

In many instances, federally subsidized tenants are entitled to an informal meeting or hearing before they may be evicted or their subsidies may be terminated. Depending on the program, the proceeding is called a grievance hearing, an informal hearing, or a meeting.<sup>430</sup> The proceeding provides the survivor an opportunity to raise the arguments discussed above regarding criminal activity, disturbances, damages, nonpayment of rent, and unauthorized residents. The survivor can also use the proceeding to demonstrate that the housing provider relied on erroneous information, failed to consider mitigating circumstances related to domestic violence, or violated VAWA or fair housing laws. Whether a survivor is entitled to a pre-eviction administrative

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<sup>428</sup> 42 U.S.C. § 1437f(d)(1)(B)(iv) (Section 8 voucher); 24 C.F.R. §§ 966.4(k) & (l)(3)(ii) (public housing), 982.310(e), 982.552(d) (Section 8 voucher); OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 384, at App. 4-A ¶ 23 (June 2007) (project-based Section 8).

<sup>429</sup> 24 C.F.R. § 966.4(l)(3)(i)(A).

<sup>430</sup> For public housing, the proceeding is called a grievance hearing. For the voucher program, it is called an informal hearing. For HUD-assisted housing and Section 515 Rural Housing, it is called a meeting.

proceeding will depend upon which housing program she is in. The procedures for the major federal housing programs are discussed below.

### **7.3.2 Public Housing**

In the public housing program, tenants are usually entitled to a pre-eviction grievance hearing.<sup>431</sup> This hearing is preceded by an informal meeting where the parties attempt to settle the matter.<sup>432</sup> If the informal meeting does not yield a settlement, the tenant can request a grievance hearing.<sup>433</sup> Before the hearing, the PHA must provide the tenant a reasonable opportunity to examine any documents that it has that are directly relevant to the eviction.<sup>434</sup> During the hearing, the tenant has the right to be represented by counsel or a representative of her choice, to present evidence and arguments, to rebut contrary evidence, and to cross-examine witnesses.<sup>435</sup> After the proceeding, the hearing officer must issue a written decision that includes the reasons for the decision.<sup>436</sup>

Attorneys should note that if the eviction is based on criminal activity that threatens health or safety or involves drug-related activity, the PHA can decline to offer the grievance procedure and directly proceed with eviction.<sup>437</sup> Thus, a PHA may decline to offer a survivor the grievance procedure in cases where she is facing eviction due to criminal acts committed by the abuser that threaten health or safety. If the survivor was the victim of these criminal acts, attorneys should ask the PHA to reconsider its decision not to offer the grievance procedure. Because the survivor likely has a defense against eviction under VAWA<sup>438</sup> or fair housing laws,<sup>439</sup> pursuing the eviction may be a waste of the PHA's time and resources, and may harm the survivor's credit history. It is therefore preferable to resolve these cases using the grievance procedure.

### **7.3.3 Section 8 Vouchers**

As a preliminary matter, eviction of a Section 8 tenant must be distinguished from the termination of the tenant's voucher. An eviction is handled by the Section 8 landlord and is commenced by filing an action in court. By contrast, termination of the voucher is handled by the PHA and is commenced by issuing a notice of proposed termination that informs the Section 8 tenant of her right to request an administrative proceeding called an informal hearing to challenge the decision. In some circumstances, eviction for breach of the lease can be grounds for termination of the Section 8 voucher, but the PHA still must follow the notice and informal hearing procedure in order to terminate the voucher.<sup>440</sup>

In the voucher program, landlords are not required to offer tenants an informal meeting or other proceeding before pursuing an eviction action in court. However, advocates should contact

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<sup>431</sup> 42 U.S.C. § 1437d(k); 24 C.F.R. §§ 966.50-57. Advocates should also examine their PHA's Admissions and Continued Occupancy Policy for further information regarding the grievance procedure.

<sup>432</sup> 24 C.F.R. § 966.54.

<sup>433</sup> § 966.55(a).

<sup>434</sup> 42 U.S.C. § 1437d(k); 24 C.F.R. § 966.4(m).

<sup>435</sup> 24 C.F.R. § 966.56(b).

<sup>436</sup> § 966.57(a).

<sup>437</sup> § 966.51(a)(2).

<sup>438</sup> See Chapter 6 for more information regarding VAWA.

<sup>439</sup> See Chapter 4 for more information regarding fair housing laws.

<sup>440</sup> See § 982.552.

the Section 8 landlord anyway to determine whether the matter can be resolved informally, particularly where the survivor has a defense under VAWA or fair housing laws.<sup>441</sup>

In contrast to the judicial eviction process, PHAs must provide the opportunity for an informal hearing to a tenant before it can terminate her Section 8 voucher assistance.<sup>442</sup> During the informal hearing, the tenant may be represented by counsel or other representative, may present evidence, and may question witnesses.<sup>443</sup> After the proceeding, the hearing officer must promptly furnish the tenant with a written decision that includes the reasons for the decision.<sup>444</sup>

### **7.3.4 HUD-Subsidized and Project-Based Section 8 Developments**

If a tenant is facing eviction from a HUD-subsidized or project-based Section 8 development, she must be given 10 days to request a meeting where she can discuss the proposed eviction with the landlord.<sup>445</sup> Although this does not entitle the tenant to the procedural protections of the public housing grievance hearing or the Section 8 informal hearing, it does give the tenant a chance to explain the circumstances surrounding the alleged lease violation. Advocates should use this meeting as an opportunity to informally resolve the eviction.

### **7.3.5 Section 515 Rural Housing**

Much like tenants in HUD-subsidized and project-based Section 8 developments, tenants facing eviction from Section 515 Rural Housing must be given an opportunity to meet with the owner to discuss the lease violation.<sup>446</sup> This gives the tenant a chance to informally resolve the dispute before the owner files an eviction proceeding.

## **7.4 Preparation for Challenging an Eviction or Subsidy Termination**

This section provides a general overview of some of the steps that attorneys can take to help survivors who are facing evictions or terminations.<sup>447</sup> These steps include requesting a meeting with the housing provider, gathering and reviewing documents, requesting a hearing, and preparing evidence.

### *Requesting a Meeting*

After interviewing the survivor and reviewing the eviction or termination notice, the attorney should contact the housing provider to request an informal meeting to discuss the eviction or

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<sup>441</sup> See Chapters 4 and 6 for more information regarding VAWA and fair housing laws.

<sup>442</sup> See § 982.555(a).

<sup>443</sup> See §§ 982.555(e)(3)-(5).

<sup>444</sup> See § 982.555(e)(6).

<sup>445</sup> See OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, *supra* note 384, at ¶ 8-14-B-2(c)(4).

<sup>446</sup> See 7 C.F.R. Part 1930, Subpart C, Ex. B, ¶ XIV.

<sup>447</sup> A comprehensive review of all the strategies available for challenging evictions and subsidy terminations is beyond the scope of this Manual. Advocates that lack housing law expertise should refer survivors to an agency that has experience in representing clients in eviction and termination proceedings.

termination.<sup>448</sup> Requests for meetings should be put in writing to document that the survivor attempted to resolve the matter informally. A meeting may be especially beneficial where the survivor believes that the housing provider is relying on inaccurate information, there are mitigating circumstances, or the eviction or termination violates VAWA or fair housing laws. The purpose of this meeting is to discuss the steps that can be taken to address any lease or program violations without putting the survivor through the stress and uncertainty of an administrative hearing or an eviction proceeding. The end of this Chapter discusses some of the factors that advocates should consider in negotiating an agreement with a housing provider to cease eviction or termination proceedings against a survivor.

### *Gathering Documents*

Before the meeting, the survivor or her advocate should contact the housing provider and assert the survivor's right to inspect her tenant file. Copies should be made of all documents related to the termination or proposed eviction, which may include the lease, written complaints, agreements to pay back rent or repairs, witness statements, notes of conversations, damage claims, and police reports. The survivor or her advocate should ask the housing provider to identify all documents it intends to rely on in any pre-termination hearing.

### *Requesting a Hearing*

If the meeting with the housing provider does not yield a resolution, the advocate and survivor must decide whether to request a hearing. The decision should usually be to request a hearing, because a survivor has more to gain than lose by going through the hearing process. As explained, pre-termination administrative hearings are generally available where a PHA seeks to terminate a tenant's Section 8 voucher assistance or seeks to evict a public housing tenant. Tenants are not entitled to an administrative hearing before they may be evicted from project-based Section 8 developments, Section 515 Rural Housing, or housing paid for with a Section 8 voucher. However, many of the steps that must be taken to prepare for an administrative hearing will be the same as the steps needed to prepare for an eviction proceeding.

### *Preparing Evidence*

Advocates should determine what documents are needed to prove the facts that the survivor will rely on in defending against an eviction or termination of assistance. This can include police reports, court records, letters, medical records, pictures, or notes from phone calls. Advocates should also consider what witnesses may be helpful in proving the survivor's case, such as neighbors who can testify as to the survivor's efforts to exclude the abuser from the unit or service providers who can testify to the survivor's efforts to end the abusive relationship. It may also be helpful to have expert witnesses explain the effects of domestic violence, such as an expert who can explain why a survivor may have been afraid to ask security officers to remove the abuser from the unit or why a survivor's erratic behavior may have been the result of post-

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<sup>448</sup> In public housing, project-based Section 8 housing, and Section 515 Rural Housing, housing providers are required to provide an opportunity for an informal meeting before proceeding with eviction. While there is no similar requirement for landlords participating in the Section 8 voucher program, they may welcome the opportunity to informally resolve the proposed eviction.

traumatic stress disorder. Advocates should anticipate that the survivor may have difficulty clearly explaining her side of the story to a hearing officer, particularly where the survivor is still suffering trauma from incidents of violence. Where possible, advocates should seek to bolster the survivor's testimony with documentary evidence and testimony by other witnesses.

## **7.5 Settlement of an Eviction or Termination Proceeding**

The remainder of this Chapter discusses issues attorneys should consider when a housing provider offers to settle an eviction or termination proceeding. Generally, the best outcome where a survivor is facing eviction or termination of her subsidy is a settlement agreement (also known as a stipulation). A settlement will save the survivor time and avoid the emotional stress and uncertainty of an eviction or termination proceeding.

Settlements typically contain provisions allowing for the continuation of the tenancy or assistance if the survivor agrees to certain conditions, such as a probation period, permanent exclusion of the person who caused the lease or program violation, repayment of back rent or repair costs, or periodic inspections by the housing provider. If the survivor violates the settlement agreement, the violation could be cause for evicting the survivor or terminating her subsidy. Therefore, it is crucial for attorneys to carefully review the terms of any proposed settlement and candidly discuss with the survivor whether she can feasibly comply with those terms. The survivor should not enter into a settlement agreement if it is unlikely that she will be able to comply with it. The appendix to this Manual contains a sample settlement agreement.<sup>449</sup>

In cases involving criminal activity, disturbances, damages, or unauthorized occupancy by the abuser, one of the most problematic settlement terms that housing providers propose is that the survivor permanently exclude the abuser from the premises.<sup>450</sup> Advocates should discuss with the survivor whether it is feasible for her to deny the abuser access to the property, particularly where the parties have children together and visitation has previously taken place at the property. If the survivor feels that she can abide by this condition, advocates should also discuss whether the survivor will need additional security measures to exclude the abuser from the property, such as reinforced doors, security bars on windows, improved locks, and additional security patrols.<sup>451</sup> Advocates should ask that the housing provider agree to provide these additional security measures as part of the settlement, and that the housing provider agree to take all steps necessary to respond to the survivor's requests for assistance regarding the abuser. Advocates should also closely review the language of the settlement agreement regarding exclusion of the abuser. The language should state that the survivor will not *willingly or knowingly* allow the abuser on the premises. This protects the survivor from violating the settlement agreement in instances where the abuser arrives at the premises uninvited or breaks into the unit.

In some cases, housing providers will ask the survivor to seek a restraining order as a condition of remaining in the unit. However, it may be unrealistic for the survivor to seek a restraining order, particularly where she will face retaliation from the abuser if she seeks the order, she is suffering from severe trauma and cannot discuss the incidents of violence publicly, she lacks the evidentiary support needed for the order, or she is unable to take time off from

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<sup>449</sup> See Appendix 17.

<sup>450</sup> See 24 C.F.R. §§ 5.852(b) (housing providers may require a tenant to exclude a household member in order to continue to reside in the unit, where that household member committed an act that warrants termination), 966.4(l)(5)(vii)(C) (same), 982.310(h)(2) (same), 982.552(c)(2)(ii) (PHAs may impose, as a condition of continued assistance, a requirement that family members who participated in the offending conduct will not reside in the unit).

<sup>451</sup> For more information regarding safety planning, see Chapter 2.

work to obtain the order. Further, there is no guarantee that a court will grant the restraining order. Attorneys should approach this type of settlement provision with caution and be prepared to discuss other steps the survivor can take to end contact with the abuser.

In cases involving repair costs or back rent, the housing provider will likely ask the survivor to enter into an agreement to pay back some of these costs over time. If the abuser is clearly responsible for the damages or back rent, advocates should suggest that the housing provider seek these costs from the abuser instead. This approach may be more effective if the survivor agrees to take reasonable actions to assist the housing provider in these efforts, such as agreeing to draft a declaration regarding the circumstances surrounding the costs. If the housing provider is insistent that the survivor pay part of the costs, advocates should work with the survivor to review her monthly expenses to make sure that the repayment agreement is feasible.

## **7.6 Conclusion**

Advocates may need to use a variety of creative strategies and arguments to assist survivors who are facing evictions or subsidy terminations due to domestic violence committed against them. VAWA, the Fair Housing Act, the good cause eviction requirement of the federally subsidized housing programs, and the procedural protections available to subsidized tenants under federal law are useful tools in preserving survivors' housing. In any case, advocates can significantly aid survivors by helping them gather documentation of domestic violence, identifying potential witnesses who can speak in support of the survivor, working with the housing provider to resolve the matter informally, and assisting the survivor in negotiating and reviewing the terms of any proposed settlement agreement.

# Chapter 8: Working with Housing Authorities to Improve Domestic Violence Survivors' Access to Housing

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### 8.1 Introduction

Advocates can improve local housing policies that affect domestic violence survivors by participating in the public housing agency (PHA) annual planning process. PHAs, commonly referred to as housing authorities, must develop plans each year that set forth the policies



governing their Section 8 voucher and public housing programs. This process is crucial for advocates who want to prevent survivors from being needlessly terminated from public housing or Section 8. It provides an opportunity for advocates to comment on their local PHA's policies on domestic violence (or to ask the PHA to adopt such policies), and to work toward implementing policies that serve their clients' housing needs. This Chapter outlines the different types of PHA plans, explains the PHA plan process, and provides examples of policies that PHAs can adopt to protect domestic violence survivors' housing stability. This Chapter does not address policies affecting the subsidized housing admissions process. For more information on this topic, see NHLP's manual "Assisting Survivors of Domestic Violence in Applying for Housing."<sup>452</sup>

## **8.2 Public Housing Agency (PHA) Plans**

This section describes how advocates can shape three types of PHA plans: (1) Annual Plans; (2) Section 8 Administrative Plans; and (3) public housing Admissions and Continued Occupancy Policies. The Annual Plan is a document that PHAs must submit yearly that summarizes some of the PHA's policies regarding the public housing and Section 8 programs. The Administrative Plan details the policies that a PHA uses in the day-to-day operation of its Section 8 voucher program. The Admissions and Continued Occupancy Policy serves a similar function for the PHA's public housing program.

### **8.2.1 Annual and 5-Year Plans**

Most PHAs, which administer public housing units and Section 8 vouchers, are required to submit Annual and 5-Year Plans to the Department of Housing and Urban Development (HUD).<sup>453</sup> PHAs must submit an Annual Plan each year, with supporting documents, that states some of the PHA's policies regarding the public housing and Section 8 programs. Every five years, all PHAs must update and submit 5-Year Plans stating their mission, goals, and objectives. Additionally, as discussed in the next section, the Annual and 5-Year Plans must contain a statement regarding the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault.

#### **8.2.1.1 Violence Against Women Act**

Under the Violence Against Women Act of 2005 (VAWA), PHAs now have obligations to address the housing needs of survivors of domestic violence, dating violence, stalking, and sexual assault. In the 5-Year Plan, PHAs are required to include a statement of the goals, objectives, policies, or programs that will enable the PHA to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking.<sup>454</sup>

In the Annual Plan, PHAs are required to include a description of:

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<sup>452</sup> This manual is available at <http://nhlp.org/node/1428>.

<sup>453</sup> There are exemptions from the Annual Plan requirements for PHAs with 550 or fewer public housing units and Section 8 vouchers. See HUD, Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs, PIH 2008-41 (Nov. 13, 2008).

<sup>454</sup> 42 U.S.C. § 1437c-1.

(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(B) any activities, services, or programs provided or offered by a public housing agency that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.”<sup>455</sup>

A PHA’s description of the activities, services, or programs offered to survivors of domestic violence must be readily available to the public.<sup>456</sup> However, many PHAs have not yet developed this description. Others include only a cursory description of activities that serve survivors’ needs, such as “The housing authority has amended its policies to comply with VAWA.” Advocates should urge PHAs to describe in detail the activities, services, or programs that they offer to help survivors to obtain or maintain housing. For example, if a PHA has trained its staff on domestic violence or VAWA’s provisions, designated staff members to handle VAWA cases, or made arrangements to refer tenants or applicants to a victim service provider, the PHA should describe these activities and indicate the steps it has taken to make survivors aware of the services. If a PHA has not yet implemented any programs to assist survivors, advocates should offer to meet and discuss ways in which the PHA and local service providers can work together to provide this assistance. Later in this Chapter, we provide tips regarding collaboration with PHAs. In setting meetings with PHAs, advocates should consider the timeline for the PHA planning process, which is discussed in the next section.

### 8.2.1.2 PHA Planning Process

#### *Timeline for PHA Plans*

PHAs must follow a federally mandated timeline when developing and submitting their Annual Plans. The plans must be submitted to HUD 75 days before the end of the PHA’s fiscal year.<sup>457</sup> Additionally, the PHA must give the public 45 days’ notice of the public hearing on the plan, which is typically published in local newspapers.<sup>458</sup> As an example, a PHA may operate on a fiscal year that begins on July 1. Therefore, the PHA’s plans must be submitted to HUD by April 16, 75 days before the end of the fiscal year. The public hearing should be set to allow the PHA enough time to respond to the public’s comments. Because the public must be given a 45-day notice regarding the hearing, a July 1 PHA will often begin the comment process in early to mid-January. Advocates can determine which fiscal year their local PHA is on by visiting HUD’s website.<sup>459</sup> Below is a chart detailing the timeline of the PHA Plan Process for varying fiscal year start dates.

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<sup>455</sup> § 1437c-1.

<sup>456</sup> HUD, Instructions Form HUD-50075, at 1 (2005).

<sup>457</sup> 24 C.F.R. § 903.23(b)(2).

<sup>458</sup> 24 C.F.R. § 903.17(b).

<sup>459</sup> HUD, View Approved Plans—By State, <http://www.hud.gov/offices/pih/pha/approved/>.

As a practical matter, advocates should begin working with the PHA long before the official comment period is open. This allows advocates to influence the initial drafting process, during which the PHA may be more open to ideas and input. To do this, advocates can contact the PHA’s executive director or the persons in charge of administering the Section 8 program and the public housing program and indicate their interest in working on the plan process.

**Timeline for PHA Plan Process**

<b>Action</b>	<b>Jan. 1 FY Start Date</b>	<b>April 1 FY Start Date</b>	<b>July 1 FYI Start Date</b>	<b>Oct. 1 FY Start Date</b>
PHA should begin to develop plan for coming year. Resident Advisory Board (RAB) and tenants should review prior year plan, develop issues, determine progress on prior year goals and strategies. Current year approved plan attachments and supporting documents are available for review.	May (Prior Year)  8 months	Aug. (Prior Year)  8 months	Nov. (Prior Year)  8 months	Feb.  8 months
PHA should have available a draft plan and should be discussing the plan with RAB, tenants and other advocates, such as housing advocates, disability rights groups, homeless advocates, and other agencies.	Mid-July (Prior Year)  5.5 months	Mid-Oct. (Prior Year)  5.5 months	Mid-Jan.  5.5 months	Mid-April  5.5 months
Notice of hearing, proposed plan on file for review.	Mid-Aug. (Prior Year)  4.5 months	Mid-Nov. (Prior Year)  4.5 months	Mid-Feb.  4.5 months	Mid-May  4.5 months
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon public comment).	First week of Oct. (Prior Year)  3 months	First week of Jan.  3 months	First week of April  3 months	First week of July  3 months
Plan due at HUD.	Mid-Oct. (Prior Year)  2.5 months	Mid-Jan.  2.5 months	Mid-April  2.5 months	Mid-July  2.5 months
HUD approves the plan and notifies PHA. PHA provides RAB with a copy of the approved plan. Or HUD rejects the plan.	Jan. 1	April 1	July 1	Oct. 1

*Obtaining PHA Plans*

To obtain copies of the Annual Plan, advocates should contact their PHAs. PHAs must make available to the public their Five-Year and Annual Plans, along with all required attachments and

supporting documents. The Five-Year and Annual Plan are posted on HUD's website. Many PHAs post their plans, including the Administrative Plan and ACOP, on their own websites. Often, an advocate can simply request the plans from the PHA via email and receive electronic copies. Advocates should review the plans, especially in areas where the PHA's policies do not fully serve survivors' needs. For example, if survivors have complained about lengthy wait periods before they are able to transfer to another public housing unit, even in emergency situations, the advocate should determine exactly what the PHA's policies are regarding transfers and whether they can be improved.

### *Written Comments*

The written comment process should be interactive. Advocates should offer to meet with the PHA to discuss potential changes to its policies. The PHA may be more receptive if advocates explain how they can assist the PHA, such as by conducting trainings on VAWA and domestic violence or by accepting referrals from PHA staff members who are assisting tenants experiencing domestic violence. In any case, advocates should submit written comments by the deadline provided by the PHA. Advocates should consider submitting the comments in conjunction with other organizations. The appendix to this Manual includes several sample comments. Generally, written comments on the plans are due the day of or shortly before the public hearing. The public hearing is typically before the PHA's board of commissioners, which must approve the plan before it is submitted to HUD.

### *Public Hearing*

The PHA must hold a public hearing to accept comments on its proposed plans. The hearing must be held in front of the PHA's board of commissioners. This can often be a vital tool for influencing the plans, as the board can pressure PHA staff to make changes. Advocates have found that the board is often interested in hearing how the PHA is addressing domestic violence, particularly whether the PHA is complying with VAWA. PHA plans are typically but one item on the board's agenda. There is usually a time limit on public comments—sometimes just two or three minutes per person. Thus, advocates should prepare statements that briefly summarize their concerns and explain how the PHA's policies could be improved. Even with such a short time for comment, the hearing process can be an important part of advocating for policies that improve survivors' access to housing.

### *Follow-Up*

PHAs are required to respond in writing to resident comments regarding plans and to submit those responses to HUD with its Annual Plan. Most PHAs will also respond to comments from the general public. These responses are sometimes useful to understanding the reasoning behind a PHA's refusal to make a change. After submitting comments, advocates should request follow-up meetings with the PHA. Through these meetings, the advocates can work with the PHA to make and implement policy changes.

## *HUD Review*

HUD reviews PHA Annual Plans to determine if a plan contains all the information required by law, including information on how the PHA is serving victims of domestic violence, dating violence, and stalking. Once HUD approves a plan, it must be made available to the public.

## *Enforceability*

HUD regulations require that a PHA must follow the rules and policies set forth in its approved PHA Plan.<sup>460</sup> HUD has the authority to respond to complaints of noncompliance. If a PHA has failed to include information regarding domestic violence in its Annual Plan and has not responded to requests to address this deficiency, advocates should contact their regional HUD office of Fair Housing and Equal Opportunity.

### **8.2.1.3 Other Policy Documents**

In addition to commenting on the Annual Plan, advocates should also review their PHA's Section 8 Administrative Plan and public housing Admissions and Continued Occupancy Policy (ACOP). These two documents govern the PHA's day-to-day operation of its subsidized housing programs. The Administrative Plan sets forth the policies that the PHA uses in its Section 8 program,<sup>461</sup> while the ACOP sets forth the policies that are used in the public housing program. Although some PHAs revise the Administrative Plan and ACOP on the same timeline as the Annual Plan, they are not required to do so, and some PHAs do not regularly revise these documents.

Regardless of when a PHA last revised its Administrative Plan and ACOP, advocates can review these documents to determine whether the PHA has adopted policies that serve the housing needs of domestic violence survivors. As we will discuss, PHAs should amend their terminations and confidentiality policies in the Administrative Plan and ACOP to comply with VAWA. The rest of this section discusses in detail the VAWA protections that should be incorporated into the Administrative Plan and ACOP. Advocates should note that VAWA's statutory language providing protections against terminations applies only to survivors of domestic violence, dating violence, and stalking. However, PHAs are free to extend these protections to survivors of sexual assault, and the Administrative Plan and ACOP can be amended accordingly.

In addition to incorporating VAWA's language, PHAs should adopt a variety of other policies to improve survivors' chances of maintaining housing. These policies are discussed throughout this Chapter, and a sample PHA domestic violence policy is included in the appendix to this Manual.<sup>462</sup> Advocates should consider providing proposed policy language when submitting comments on the Administrative Plan and ACOP.

Advocates should also review the policies in the Administrative Plan and ACOP regarding language access for limited English proficient (LEP) families and reasonable accommodations for persons with disabilities. This helps to ensure maximum access to subsidized housing for

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<sup>460</sup> 24 C.F.R. § 903.25.

<sup>461</sup> This includes both the Housing Choice Voucher Program and the project-based voucher program.

<sup>462</sup> See Appendix 32.

survivors with disabilities and LEP survivors. It may be particularly effective to collaborate with disability and immigrants' rights organizations to review the policies and submit comments.

## **8.2.2 Section 8 Administrative Plan**

The Administrative Plan contains the policies that the PHA uses in administering its Section 8 voucher program.<sup>463</sup> Many of these policies may impact a survivor's ability to maintain housing. Below we discuss some of the Administrative Plan policies that advocates should review and submit comments upon, including portability, family absence from the unit, family breakup, termination of assistance, and certification of domestic violence.<sup>464</sup> Many of these policies should also be included in the public housing ACOP, which is discussed in detail later in this Chapter. Sample comments on PHA Administrative Plans and sample Administrative Plan language are included in the appendix to this Manual.<sup>465</sup>

### **8.2.2.1 Restrictions on Moving**

A PHA's Administrative Plan sets forth the policies that are used when a Section 8 voucher tenant seeks to move to another unit. Most PHAs have detailed procedures regarding "portability," which is when a Section 8 tenant seeks to move and use her voucher assistance outside of the housing authority's jurisdiction. Portability is particularly important to domestic violence survivors who must move to a confidential location to escape their batterers.

Ordinarily, a Section 8 voucher family cannot continue to receive assistance if they move out of their assisted apartment in violation of the lease.<sup>466</sup> However, VAWA provides an exception to this restriction on portability. If a Section 8 voucher family has moved to protect the safety of a victim of domestic violence, dating violence, or stalking who reasonably believed she would be threatened by further violence if she remained, the family may continue to receive assistance.<sup>467</sup> A PHA cannot refuse to issue a voucher to an assisted family due to the family's failure to seek the PHA's approval before moving if the family moved to protect the health or safety of a domestic violence victim.<sup>468</sup> Advocates should urge PHAs to amend their Administrative Plans to include VAWA's language regarding portability.

Additionally, advocates should also ask their PHAs to amend existing policies that restrict survivors' ability to move. Many PHAs have policies that require a family to lease a unit within the PHA's jurisdiction for the initial 12 months of assistance before they can move to another jurisdiction. Additionally, PHAs often have policies stating that a family can only move during the initial term of the lease (generally 12 months) if the landlord agrees to end the lease. Some PHAs also have policies stating that families may only move once during a 12-month period. However, VAWA provides that PHA policies restricting the timing or frequency of portability

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<sup>463</sup> Many PHAs do not administer a Section 8 voucher program and only operate a public housing program. As a result, these PHAs do not maintain an Administrative Plan.

<sup>464</sup> For information on advocating for policies that can assist survivors who are applying for subsidized housing, see NATIONAL HOUSING LAW PROJECT, ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN APPLYING FOR HOUSING 55-65 (2010), <http://nhlp.org/files/Domestic%20Violence%20&%20Housing%20Manual%201.pdf>.

<sup>465</sup> See Appendices 33-35.

<sup>466</sup> 42 U.S.C. § 1437f(r)(5).

<sup>467</sup> § 1437f(r)(5); 24 C.F.R. § 982.353(b); PIH 2011-3, at 12.

<sup>468</sup> HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed. Reg. 66,246, 66,263-66,264 (to be codified at 24 C.F.R. § 982.314) (Oct. 27, 2010) [hereinafter VAWA Final Rule].

moves do not apply if a family needs to relocate due to domestic violence, dating violence, or stalking.<sup>469</sup> Advocates therefore should ask PHAs to amend these policies to provide explicit exceptions for families who must move to protect the safety of survivors of domestic violence. Further, advocates should ask PHAs to adopt a policy stating that if it is necessary for a family member to break a lease to escape domestic violence, the PHA will not terminate the victim from the Section 8 program. Finally, advocates should ask PHAs to include a statement in the Administrative Plan that the address to which an individual fleeing domestic violence has relocated will be confidential and will not be shared with any person outside the PHA unless the individual waives confidentiality.

### **8.2.2.2 Family Absence from the Dwelling Unit**

The Administrative Plan must include the PHA's policies regarding how long a family may be absent from the assisted dwelling unit before their assistance will be terminated.<sup>470</sup> For example, many PHAs have policies stating that if the entire family is absent from the assisted unit for more than 30 consecutive days, the unit will be considered abandoned and the family's assistance will be terminated. Advocates should urge PHAs to adopt exceptions to these policies if the family's absence was due to domestic violence. A family experiencing domestic violence may be forced to relocate to a shelter or other confidential location while they develop a safety plan, obtain a restraining order, or wait for law enforcement to apprehend the perpetrator. Accordingly, PHAs should adopt a policy stating that prior to determining that a family has abandoned the unit, the PHA shall take into account the role domestic violence played in the absence.

### **8.2.2.3 Family Breakup**

Family breakup policies in a PHA's Section 8 program can have a significant impact on survivors. For example, a survivor who lives with her batterer may need to flee the Section 8 unit due to domestic violence. Or, the batterer may be forced to leave the Section 8 unit as a result of a restraining order or incarceration. In these circumstances, PHAs have discretion to determine which members of the family will continue to receive Section 8 assistance.<sup>471</sup> The Administrative Plan must state the PHA's policies on how it will decide who remains in the Section 8 program if the family breaks up.<sup>472</sup> PHAs can consider a variety of factors in making this decision.<sup>473</sup> However, if the Section 8 assistance has been allocated under a settlement or judicial decree as part of divorce or separation proceedings, the PHA must follow the court's determination of which family members continue to receive assistance.<sup>474</sup>

Advocates should review their PHA's family breakup policy to ensure that it considers whether domestic violence caused the family to split up. HUD's VAWA regulations provide that if the family has broken up due to domestic violence, the PHA must ensure that the victim retains voucher assistance.<sup>475</sup> This policy should be clearly stated in the PHA's Administrative Plan. If

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<sup>469</sup> 24 C.F.R. § 982.314.

<sup>470</sup> § 982.54(d)(10).

<sup>471</sup> § 982.315(a).

<sup>472</sup> §§ 982.54(d)(11), 982.315(a).

<sup>473</sup> § 982.315(b)(3).

<sup>474</sup> § 982.315(c).

<sup>475</sup> § 982.315(a)(2).

there is a dispute as to which member or members of the family should continue receiving Section 8 assistance after a family separation, the PHA must prioritize survivors of domestic violence where that violence contributed to the household's breakup.

Many PHAs have not amended their Administrative Plans since the publication of HUD's VAWA regulations. As a result, advocates should ask their PHAs to amend family breakup policies that assign the voucher to the head of household, to the family member who remains in the assisted unit, or to the family member who has been chosen by the household to retain the voucher. Advocates should explain that these policies can be problematic because in cases where the abuser controls all of the family's finances and resources, it is likely that the abuser will have listed himself as head of household on the voucher, forced the survivor to leave the unit, or forced the survivor to agree to assigning him the voucher. The Administrative Plan should make clear that such policies do not apply in cases where the family has broken up due to domestic violence, and that the PHA will ensure that the victim retains voucher assistance.

#### **8.2.2.4 Termination of Assistance**

Advocates should encourage PHAs to incorporate into the Administrative Plan VAWA's protections against subsidy terminations, as well as other policies that protect survivors from losing their housing due to violence committed against them. The Administrative Plan should include VAWA's language providing that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim justifying termination of assistance.<sup>476</sup> The Administrative Plan should also include VAWA's provision stating that the PHA may terminate voucher assistance to individuals who engage in violence against family members or others without penalizing the victims of such violence.<sup>477</sup> Finally, the Administrative Plan should state that if a victim has committed a lease violation unrelated to domestic violence, dating violence, or stalking, the PHA may not hold the victim to a more demanding standard than other tenants in deciding whether to terminate.<sup>478</sup>

In addition to adopting VAWA's language, advocates should ask PHAs to amend their Administrative Plans to state that in making termination decisions, the PHA will consider the role that domestic violence played in lease violations or program violations. In many cases, it may not be readily apparent that a survivor's failure to comply with a lease provision or program requirement was related to acts of domestic violence. For example, a survivor may miss appointments with the PHA because she is afraid to leave the home due to threats of violence by the batterer, or because she has taken refuge at a shelter or has been hospitalized. If inquiries by the PHA reveal that a family's action or failure to act was the consequence of domestic violence against a member of the household, a PHA should not deny or terminate assistance.

Furthermore, while a PHA may evict or terminate assistance to a victim if the PHA can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the victim is not removed, the Administrative Plan should outline how the PHA will determine what an "actual and imminent threat" is. 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

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<sup>476</sup> 42 U.S.C. § 1437f(o)(20)(B).

<sup>477</sup> § 1437f(o)(20)(D)(i); *see also* 24 C.F.R. § 982.552(c)(2) (stating that a PHA may terminate voucher assistance to culpable family members while permitting the innocent family members to continue receiving assistance); HUD Notice PIH 2007-5 (Feb. 16, 2007) (same).

<sup>478</sup> 42 U.S.C. § 1437f(o)(20)(D)(iii).



serious bodily harm. Advocates should make sure that there is language in the Plan listing the factors a PHA will consider in determining this kind of threat, which include:

- the duration of the risk,
- the nature and the severity of the potential harm,
- the likelihood that the potential harm will occur and
- the length of time before the potential harm would occur.<sup>479</sup>

Advocates should also make sure the Administrative Plan states that terminating assistance for a domestic violence victim because of an “actual and imminent threat” should occur only if no other actions would reduce or eliminate the threat. Therefore, before evicting a victim, a PHA should consider alternatives such as transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Evictions or terminations predicated on public safety cannot be based on stereotypes and must be tailored to particular concerns about individual residents.<sup>480</sup>

#### **8.2.2.5 Documentation of Domestic Violence and Confidentiality**

If a survivor asserts VAWA’s protections, a PHA may request documentation of domestic violence. The Administrative Plan should clearly set forth a PHA’s requirements for documenting domestic violence. VAWA permits survivors to certify their status as victims of domestic violence in any of the following three ways: (1) completing a HUD-approved certification form; (2) providing documentation signed by 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, in which the professional attests under penalty of perjury to the professional’s belief that the incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or (3) providing a police or court record.<sup>481</sup> Advocates should be aware that a PHA must accept the self-certification form as a complete request for relief, without insisting on additional documentation from the individual seeking protection.<sup>482</sup> In addition, they should review the Administrative Plan to ensure that their PHA has a policy of accepting any one of these three types of documentation. Advocates should also consider whether there are other documents that should be added to the list, such as medical records, a statement from a clergy member or social worker, or a signed statement by the survivor.<sup>483</sup> The Administrative Plan should also set forth the deadline for documentation<sup>484</sup> and what will be considered good cause for extending the deadline, such as hospitalization or continuance of a court date.

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<sup>479</sup> VAWA Final Rule, 75 Fed. Reg. at 66,259 (to be codified at 24 C.F.R. § 5.2005).

<sup>480</sup> *Id.*

<sup>481</sup> § 1437f(ee)(A), (C).

<sup>482</sup> VAWA Final Rule, 75 Fed. Reg. at 66,251.

<sup>483</sup> VAWA provides that PHAs are not required to demand official documentation and may rely solely on the survivor’s statement. § 1437f(ee)(1)(D).

<sup>484</sup> At a minimum, the survivor must be given 14 business days to respond to the PHA’s written request for certification. § 1437f(ee)(1)(B). Advocates can ask the PHA to provide for a longer period of time in the Administrative Plan.

In addition, advocates should make sure that the Plan includes language about the PHA's procedures in cases where it has difficulty determining which household member is the victim and which is the abuser. When a PHA receives documents from two members of a household, each claiming to be a victim and naming the other household member as the perpetrator, the PHA may determine which is the true victim by requiring third-party documentation.<sup>485</sup> Furthermore, if any questions remain regarding which household member is a victim, a PHA grievance hearing, informal hearing or informal review could be appropriate.<sup>486</sup>

The Administrative Plan also should make clear that the PHA shall keep confidential any information regarding an individual's status as a survivor of domestic violence and that this information may not be entered into a shared database or provided to other entities.<sup>487</sup> It should outline that employees of a PHA may not have access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it is necessary to their work.<sup>488</sup> The Administrative Plan also should acknowledge that VAWA provides exceptions to confidentiality where disclosure is requested by the survivor in writing, where the information is required for use in an eviction proceeding, or where otherwise required by the law.<sup>489</sup> Finally, the Administrative Plan should state that the PHA will inform the survivor before disclosing information so that safety risks or alternatives to disclosure can be identified.

#### **8.2.2.6 Notice to Tenants**

PHAs are required to provide Section 8 tenants with notice of their rights under VAWA.<sup>490</sup> The Administrative Plan should set forth the notification procedures that the PHA will use. PHAs should notify tenants in a variety of ways, including providing verbal notice during orientations to the voucher program and annual recertification meetings; inserting a paragraph regarding VAWA rights into termination notices; posting notice of VAWA in the PHA's office; and posting notice of VAWA on the PHA's website. The appendix to this Manual includes a sample VAWA notice for Section 8 and public housing tenants.<sup>491</sup> Advocates should urge PHAs to make VAWA information accessible to individuals with disabilities and limited English proficiency.

#### **8.2.2.7 Definitions of Domestic Violence, Dating Violence, and Stalking**

PHA staff members often have questions as to whom can be considered a victim of dating violence, domestic violence, or stalking. PHAs should therefore include VAWA's definitions of these terms in the Administrative Plan.<sup>492</sup> Additionally, VAWA's definition of "domestic violence" incorporates state law definitions of the term. Therefore, PHAs should include the jurisdiction's definition of domestic violence in the Administrative Plan and ACOP.

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<sup>485</sup> VAWA Final Rule, 75 Fed. Reg. at 66,260 (to be codified at 24 C.F.R. § 5.2007).

<sup>486</sup> *Id.* at 66,253.

<sup>487</sup> § 1437f(ee)(2)(A).

<sup>488</sup> VAWA Final Rule, 75 Fed. Reg. at 66,259 (to be codified at 24 C.F.R. § 5.2007).

<sup>489</sup> § 1437f(ee)(2)(A).

<sup>490</sup> § 1437f(ee)(2)(B).

<sup>491</sup> *See* Appendix 24.

<sup>492</sup> *See* 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10), 13925(a)(6), (8).

### **8.2.2.8 Linkages to Community Resources**

Advocates should urge PHAs to include a statement in the Administrative Plan on how they will inform survivors of domestic violence about community resources. For example, the Administrative Plan could state that the PHA will maintain updated domestic violence referral information and will place posters on domestic violence services at its offices. Advocates should volunteer to assist the PHA in developing these materials. The Administrative Plan also could state that the PHA will give resources on domestic violence to new residents in their orientation packets and to all current residents during their annual recertification interviews. Where possible, advocates should offer to provide PHAs with these resources and should urge PHAs to make them accessible to LEP and disabled individuals. Finally, the Administrative Plan could state that the PHA will collaborate with domestic violence advocacy groups on providing outreach to residents and on meeting the training needs of PHA staff. Advocates should encourage PHAs to develop relationships with organizations that serve LEP survivors as well as survivors from underserved ethnic and cultural groups.

### **8.2.3 Public Housing Admissions and Continued Occupancy Policy**

The Admissions and Continued Occupancy Policy (ACOP) contains the policies that the PHA uses in administering its public housing program.<sup>493</sup> These policies are often similar to or even identical to the policies contained in the Administrative Plan. As a result, most of our suggestions regarding the Administrative Plan will apply equally to the ACOP. In reviewing the ACOP, advocates should look at the previous sections in this Chapter on the following topics: Family Absence from the Dwelling Unit; Family Breakup; Termination of Assistance; Certification of Domestic Violence and Confidentiality; Notice to Tenants; Definitions of Domestic Violence, Dating Violence, and Stalking; and Linkages to Community Resources.<sup>494</sup>

In addition to the topics discussed in our overview of the Administrative Plan, there are several issues that are unique to the public housing ACOP that advocates should review. These issues, which are discussed below, include emergency transfers, splitting the lease, and damages to the unit. Sample comments on PHA ACOPs and sample ACOP language are included in the appendix to this Manual.<sup>495</sup>

#### **8.2.3.1 Emergency Transfers**

A domestic violence survivor living in public housing may need to move or “transfer” to another public housing unit to protect her safety. PHAs set forth their policies regarding public housing transfers in the ACOP. In many jurisdictions, unless a tenant qualifies for an emergency or priority transfer, the tenant may have to wait several weeks or even months before the transfer is granted. Advocates should therefore ask PHAs to adopt policies that provide emergency transfers or Section 8 vouchers for public housing tenants who are at significant risk of harm as a

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<sup>493</sup> Many PHAs do not have a public housing program and only operate a Section 8 voucher program. As a result, these PHAs do not maintain an ACOP.

<sup>494</sup> For information on advocating for policies that can assist survivors who are applying for subsidized housing, see NATIONAL HOUSING LAW PROJECT, ASSISTING SURVIVORS OF DOMESTIC VIOLENCE IN APPLYING FOR HOUSING 55-65 (2010), <http://nhlp.org/files/Domestic%20Violence%20&%20Housing%20Manual%201.pdf>.

<sup>495</sup> See Appendices 32-35.

result of incidents or threats of domestic violence. This approach has been encouraged by HUD in its Public Housing Occupancy Guidebook, which states that “PHAs may adopt a transfer policy that includes a preference for victims of domestic violence who wish to move to other neighborhoods or even other jurisdictions. One tool PHAs may choose to use is the issuance of a voucher to the victimized family.”<sup>496</sup>

To ensure that survivors are granted transfers in a timely fashion, advocates should recommend that PHAs act on domestic violence transfer requests within a certain timeframe, such as 10 business days. Finally, advocates should ask PHAs to adopt a policy that the address to which a domestic violence survivor has relocated will be kept strictly confidential and will not be shared with any person outside the PHA unless the survivor voluntarily waives confidentiality.

It should be noted that at least one court has found that a PHA was not obligated to provide a transfer to a domestic violence survivor where the PHA’s ACOP did not provide for such transfers.<sup>497</sup> Under the PHA’s ACOP, the only crime victims who were eligible for transfers were victims of federal hate crimes. Accordingly, advocates should press for policies that explicitly state that incidents of domestic violence are grounds for an emergency or priority transfer.

### **8.2.3.2 Splitting the Lease**

VAWA provides that a PHA may split or “bifurcate” a public housing lease to evict a perpetrator of domestic violence without evicting the victim of such violence.<sup>498</sup> Advocates should ask PHAs to incorporate this language into the ACOP and public housing leases.

### **8.2.3.3 Damages to the Unit**

Survivors of domestic violence living in public housing often lack the funds needed to pay for damages their batterers cause to their units. As a result, these survivors may face eviction for failing to reimburse the PHA for repairs made to the unit. Advocates should urge PHAs to adopt a policy that where damages to a unit result from an incident of domestic violence, the victim of such violence will not be held liable for such damages. PHAs should instead seek repayment from the perpetrator of such violence.

### **8.2.3.4 Public Housing Leases**

In addition to the ACOP, advocates should also urge PHAs to amend their public housing leases to address domestic violence survivors’ rights. Under VAWA, public housing leases must include eviction protections for survivors, including a statement that an incident of domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim of that violence.<sup>499</sup> Similarly, public housing leases must include a statement that criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the tenancy if the tenant is a victim of that violence.<sup>500</sup>

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<sup>496</sup> See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 218-19 (2003).

<sup>497</sup> *Robinson v. Cincinnati Hous. Auth.*, 2008 WL 1924255 (S.D. Ohio 2008).

<sup>498</sup> 42 U.S.C. § 1437d(l)(6)(B).

<sup>499</sup> § 1437d(l)(5).

<sup>500</sup> § 1437d(l)(6)(A).

Further, the lease must contain a statement that the PHA may bifurcate the lease to evict an individual who engages in acts of violence without evicting the victim of such violence.<sup>501</sup> Accordingly, advocates should remind PHAs that they must add this language to their public housing leases.

### **8.3 Practice Tips: Advocating with PHAs**

As noted above, PHAs are required to submit Annual Plans to HUD each year. Domestic violence advocates throughout the country have participated in this process by submitting written policy suggestions that would improve survivors' access to housing. Examples of these comments are included in the appendix to this Manual to assist advocates who are interested in submitting comments of their own.<sup>502</sup> Further, it is often helpful to provide PHAs with proposed domestic violence policies. The appendix to this Manual contains sample policies.<sup>503</sup>

Advocates should consider requesting a meeting with the PHA well in advance of the annual planning process to discuss policy changes that would assist survivors. This gives the PHA time to amend its existing policies before the policies are submitted to its board of commissioners for approval. Even if advocates are too late to participate in the annual planning process during a particular year, they can still begin the process of meeting with the PHA and discussing proposed changes to the Administrative Plan and ACOP. Other issues that advocates should raise with the PHA include whether the PHA has trained its staff and Section 8 landlords on domestic violence and VAWA; whether the PHA has adequately notified tenants and Section 8 landlords of their rights and obligations under VAWA; and whether the PHA has a protocol for staff members who become aware that a participant is experiencing domestic violence.

The PHA may be more receptive to working on these issues if advocates begin by explaining the services they can provide to the PHA, such as training and materials on recognizing, understanding, and addressing domestic violence. Another strategy is to secure the support of other organizations, elected representatives, or members of the PHA's board of commissioners. Where appropriate, advocates should volunteer to take referrals from PHA staff members who are assisting applicants or tenants who are experiencing domestic violence.

Advocates who submit written comments during the annual planning process also should attend the public hearing on the PHA's plan. This hearing is held before the PHA's board of commissioners, who likely will be interested in hearing what the PHA is doing to comply with VAWA. After the PHA planning process has ended, advocates should contact the PHA regularly to determine what it is doing to implement the advocates' policy suggestions.

### **8.4 Conclusion**

By participating in local planning processes, advocates can ensure that PHAs adopt policies that consider the special housing needs of domestic violence survivors. Because VAWA requires PHAs to describe any activities or services that they provide to assist victims of domestic violence, dating violence, sexual assault, and stalking, advocates have an opportunity to engage PHAs in dialogue on these issues. Ways in which advocates can form working relationships with their PHAs include meeting with the PHA to discuss ways to assist tenants who are experiencing

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<sup>501</sup> § 1437d(l)(6)(B).

<sup>502</sup> See Appendices 33-35.

<sup>503</sup> See Appendix 32.

domestic violence, offering to provide training on the dynamics of domestic violence, submitting written comments on the PHA's policies, and attending public hearings on the PHA's policies.