

HUD Expands Protections for Victims/ Survivors of Domestic Violence

Survivors of domestic violence often face housing discrimination because of their history or acts of their abusers. The Violence Against Women Act (VAWA) protects survivors of domestic violence, dating violence, sexual assault, or stalking, in public and other federally subsidized housing, from denial of housing, eviction, or termination of assistance based on violence perpetrated by their abusers. In the fall of 2016, HUD finalized a new rule to protect the housing of survivors of domestic and dating violence, sexual assault, and stalking (regardless of sex, gender identity, or sexual orientation). These expanded key protections are a part of larger effort to safeguard those living in fear in their homes

TYPES OF PUBLIC AND SUBSIDIZED HOUSING PROTECTED UNDER VAWA:

- Public housing
- HOME Investment Partnerships program
- § 202 supportive housing for the elderly
- Section 236 Rental Program
- § 811 supportive housing for people with disabilities
- Section 221 (d)(3) Below Market Interest Rate (BMIR) Program
- Section 8 & Project-based Section 8
- HOPWA (Housing Opportunities for Persons with AIDS) housing program
- HUD's McKinney-Vento homeless programs
- Low-Income Housing Tax Credit properties
- U.S. Department of Agriculture Rural Housing Properties

KEY PROVISIONS OF VAWA, unaffected by Dec. 16, 2016 expansion:

Prohibits covered housing providers from **denying admission** based on an individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking.

Prohibits covered housing providers from **evicting** a victim of domestic violence, dating violence, sexual assault, or stalking based solely on criminal activity related to an act of violence against her. Domestic violence incidents or threats of abuse cannot be considered a serious or repeated violation of the lease or any other "good cause" to evict the victim of abuse.

Requires covered housing providers to **honor protection orders, divorce decrees, and other court orders** that address access to or control of the housing unit.

Permits **lease bifurcation** if both the victim and the perpetrator of domestic violence, dating violence, sexual assault, or stalking are parties to the lease, in order to evict the perpetrator and allow the victim to remain.

Requires covered housing providers to maintain **victim-tenant confidentiality**, unless the tenant agrees that the housing provider can share the information with someone else, or if the information is necessary to an eviction proceeding (e.g. to evict an abuser).

Requires appropriate agencies to develop a **notice of rights under VAWA** for tenants and provide that notice when a person applies for housing, when a person is admitted as a tenant, and when a tenant is threatened with eviction or termination of housing benefits.

EXPANSIONS OF VAWA, effective December 16, 2016:

Self-Certification: Allows a survivor of domestic violence, dating violence, sexual assault, or stalking to self-certify with a covered housing provider in order to exercise their rights under VAWA. Third party documentation is not needed in most circumstances.

Emergency Transfers: Requires covered housing providers to transfer a survivor of domestic violence, dating violence, sexual assault, or stalking in an emergency to another safe and available unit if they fear for their life and safety. VAWA required HUD to adopt a model emergency transfer plan for survivors which:

- Allows a survivor to self-certify their need for an emergency transfer;
- Allows the survivor to determine what is a safe unit for purposes of the transfer;
- Requires housing providers to allow for a resident to move immediately if there is another safe and available unit which does not entail the survivor to undergo an application process;
- Requires housing providers to explain the efforts they will take when there is not a safe and available unit at the ready for an emergency transfer;
- Encourages housing providers to partner with victim services and advocates and other housing providers to assist a survivor; and
- Requires housing providers to document requests for emergency transfers, including the outcome of the request, and to report annually to HUD.

Protections against effects of abuse: Prohibits covered housing providers from denying tenancy or occupancy to a survivor of domestic violence, dating violence, sexual assault, or stalking based solely on adverse social and economic factors that are a direct result of being a survivor.

- Examples include: poor credit history due to the abuser taking out credit cards under the survivor's name, poor rental history due to an abuser causing damage to survivor's property, arrests resulting from policies requiring arrest of both parties in a domestic dispute, etc.

PROTECTIONS FOR WOMEN SURVIVORS OF VIOLENCE IN PRIVATE HOUSING:

The HUD guidance confirms that the Fair Housing Act provides some protections to survivors of domestic violence in private housing, or housing not covered by VAWA. Statistics demonstrate that women are overwhelmingly the victims of domestic violence and therefore discrimination against survivors of domestic violence is almost always discrimination against women. Approximately 1.3 million women are victims of assault by an intimate partner each year; and 1 in 4 women will experience intimate partner violence in their lifetimes. Therefore, survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.