

The Rights of Domestic Violence Survivors in Public and Subsidized Housing



■ What sort of housing discrimination do women who have experienced domestic violence face?

Sometimes landlords believe that they can ensure safety on their properties by keeping domestic violence survivors out. To do this, landlords sometimes evict victims of domestic violence or deny applications from women who have experienced domestic violence in the past. These landlords often explain their actions by pointing to “zero tolerance” or “one strike” policies that permit the eviction of a tenant if any criminal activity occurs in her home. Such policies fail to take into account whether an individual was a victim of violence or the perpetrator.

■ What protections do women who have experienced domestic violence have from discrimination in public housing?

The Violence Against Women Act of 2005 (VAWA) prohibits public housing authorities (PHAs) from denying admission to any person simply because she has been a victim of domestic violence, dating violence, or stalking. It also requires PHAs to use leases that make clear that domestic violence, dating violence, or stalking is not good cause for evicting the victim of that

violence. In general, tenants in public housing can be evicted for criminal activity engaged in by their guests or people “under their control” when that activity threatens others’ health, safety, or right to peaceful enjoyment of the premises. Some PHAs previously relied on this rule to evict victims based on the violence of their abusers. Under VAWA, a PHA can only evict an individual based on the violence against her if it can prove that there is an “actual and imminent threat” to other tenants or staff if she is not evicted.

■ Do these rules apply to other low-income housing?

The same protections against discrimination apply to project-based Section 8 housing. In other words, a project-based Section 8 landlord cannot deny housing to someone because she has been a victim of domestic violence, dating violence, or stalking and cannot evict an individual based on the violence against her unless the landlord can show that there is an “actual and imminent threat” to other tenants or staff if she is not evicted.

In addition, victims of domestic violence, dating violence, or stalking are protected from discrimination in the

Section 8 housing voucher program. An individual cannot be denied a housing voucher simply because she has been a victim of domestic violence, dating violence, or stalking, and a landlord is not permitted to deny housing to a voucher holder just because she has been a victim of violence. In addition, a landlord cannot evict a voucher holder based on the violence against her unless the landlord can show that there is an “actual and imminent threat” to other tenants or staff if she is not evicted, and a PHA cannot terminate voucher assistance to an individual based on the violence unless it can show an “actual and imminent threat” to other tenants or staff if assistance is not terminated.

Federal law does not specifically address the rights of survivors of domestic violence in other kinds of housing. However, housing discrimination against women who have experienced domestic violence may violate other laws, such as fair housing laws that prohibit sex discrimination or state laws that specifically address the housing rights of victims of domestic violence. For more information, consult with an attorney or contact the ACLU Women’s Rights Project.

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■ What is an “actual and imminent threat”?

Although VAWA became law in early 2006, HUD has not issued regulations and it is not yet clear how this language will be interpreted. At the very least, however, the law appears to require the PHA or landlord to put forward specific evidence proving that there is a real threat to other tenants or to staff if the victim of domestic vio-

lence is not evicted or if her voucher is not terminated. Presumably, a PHA or landlord would not be permitted to rely on stereotypes or assumptions about domestic violence or battered women in making this showing, but would have to provide actual proof about the specific situation. Tenants and their advocates should also explore with PHAs or landlords whether there are alternative ways, short of eviction of the victim, of

addressing any such threat—for example, evicting the abuser or allowing the victim to transfer to a new unit where her abuser cannot locate her.

■ Can my abuser be evicted from public housing or Section 8 housing?

Yes. VAWA makes clear that a PHA, project-based Section 8 landlord, or a landlord accepting a Section 8 voucher can evict an abuser while allowing the rest of the household to remain. This is called “bifurcating” a lease.

How can I prove that I am a victim of domestic violence?

A PHA, a project-based Section 8 landlord, or a landlord accepting a voucher can ask a tenant to “certify” that she is a victim in order to determine whether the VAWA protections apply to her. In order to receive the protections of VAWA, a tenant can complete a form provided by the PHA or landlord in which she describes the incident of domestic violence and identifies her abuser. The tenant must also sign the form.

In addition to or instead of a certification form, the tenant can show that she has experienced this violence by providing any one of the following:

- A written, signed statement from a **victim services provider**, **medical professional**, or **attorney** asserting that the incidents in question were acts of domestic violence, dating violence, or stalking against the tenant.
- A **police record** that indicates that the tenant is a victim of domestic violence, dating violence, or stalking.
- A **court record** (e.g., a protective order) that indicates that the tenant is a victim of domestic violence, dating violence, or stalking.

Any certification must include the name of the perpetrator. A tenant must be given at least 14 business days to submit the certification and/or obtain one of these documents. A PHA or landlord can grant more time and can also accept other forms of proof, at the PHA or landlord’s discretion.

Must a PHA or Section 8 landlord keep this information confidential?

Yes. In general any information that a tenant provides about the violence against her must be kept confidential by the PHA or landlord unless the tenant agrees that the PHA or landlord can share the information with someone else. A PHA or landlord may disclose this information, however, if the information is necessary to an eviction proceeding (e.g., in order to evict an abuser). A PHA or landlord can also disclose this information if required to do so by law.

For more information about housing discrimination against domestic violence victims, contact:

American Civil Liberties Union Women’s Rights Project

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New York, New York 10004
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www.aclu.org/womensrights
womensrights@aclu.org

What can I do to enforce these rights?

If you are a survivor of domestic violence, dating violence, or stalking and believe your PHA or Section 8 landlord is violating VAWA, contact an attorney who can explain to your PHA or landlord what the law requires and advise you on whether and how to make a complaint. If your PHA or landlord is attempting to evict you in violation of VAWA, you can defend against the eviction by arguing that VAWA prohibits punishing victims of domestic violence for the acts of their abusers except in certain narrow circumstances. In some instances, you may also be able to file a lawsuit in court asserting your rights. An attorney can help you determine your options.