

**PENNSYLVANIA HOUSING FINANCE AGENCY  
2019 CONFERENCE**

**VIOLENCE AGAINST WOMEN ACT**

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1. **What is the Violence Against Women Act?**

The Violence Against Women Act (“VAWA”) was enacted to protect the rights of applicants and tenants in certain federally subsidized housing programs who are victims of domestic violence, dating violence, or stalking. Pursuant to VAWA’s housing provisions, tenants and applicants who are victims of domestic violence, dating violence, or stalking are protected from being evicted or denied housing assistance based upon acts of violence committed against them. VAWA applies equally to men and women.

2. **What are the covered programs?**

VAWA does not cover all subsidized housing programs.

a. **Covered Programs**

VAWA is applicable to the following subsidized programs:

- i. Public Housing;
  - ii. Section 8 Voucher Program;
  - iii. Section 8 Project Based Construction; and
  - iv. Section 202 and Section 811 supportive housing programs.
- See, 24 C.F.R. §§5.2001, 891.575, 891.610, 891.630 (2015).

b. **Non-Covered Programs**

VAWA does not cover the following subsidized programs:

- i. Rural Housing Service Programs;
- ii. Low Income Housing Tax Credit (LIHTC) Program<sup>1</sup>; and
- iii. Private housing of any type.

3. **Eligibility for VAWA Protection**

The provisions of VAWA are gender neutral. The provision of VAWA apply to male victims as well as victims in same-sex relationships. VAWA protects individuals who is or has been a victim of the following:

- Actual domestic violence;
- Threatened domestic violence;
- Dating violence; and
- Stalking

See, e.g., 42 U.S.C. §1437(d)(1)(6)(A)(public housing); 1437 f(c)(9)(C)(i)(project-based Section 8); 1437f(o)(20)(C)(Section 8 voucher). (2015).

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<sup>1</sup> Tenants who have Section 8 vouchers and are housed in LIHTC, however, are covered by VAWA.

4. **The Provisions of VAWA Define the Types of Situations for VAWA Protections.**

VAWA defines “dating violence” as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 42 U.S.C. §13925(a)(8) (2015); 24 C.F.R. §5.2003 (2015). VAWA is written in such a manner that the existence of the social relationship is based upon factors such as the length of the relationship and the frequency of the interaction.

The term “domestic violence” pursuant to VAWA’s provisions includes violence committed by any one of the following individuals:

- A current or former spouse of the victim;
- A person with whom the victim shares a child;
- A person who is cohabiting with or who has cohabited with the victim as a spouse; or
- A person similarly situated to a spouse of the victim under state law.

42 U.S.C. §13925(a)(6) (2015); 24 C.F.R. §5.2003 (2015).

VAWA also defines the term “stalking.” “Stalking” is defined as following, pursuing, placing under surveillance, or repeatedly committing acts with intent to kill, harass, or intimidate another person. 42 U.S.C. §§1437d(u)(3)(C)(public housing); 1437f(f)(10)(project-based Section 8 vouchers) (2015); and 24 C.F.R. §52003 (2012). To meet VAWA’s definition of stalking, the acts must place the victim in reasonable fear of death or serious bodily injury, or cause substantial emotional harm to the victim or an immediate family member of the victim.

The provisions of VAWA extend to protecting the immediate family members of the victim of domestic violence, dating violence, or stalking. A immediate family member is defined as a spouse, parent, sibling, child, or any other person living in the victim’s household who is related by blood or marriage. 42 U.S.C. §§1437d(u)(3)(D)(public housing), 1437f(f)(11)(project based Section 8 voucher) (2015); and 24 C.F.R. §5.2003 (2015).

One category of eligibility for protection under VAWA are victims of sexual assaults. Victims of sexual assaults are not explicitly listed among the categories of victims who are entitled to VAWA’s housing protection.

5. **Protections under VAWA.**

VAWA provides a number of protections for individuals who meet eligibility requirements those protections include the following:

a. **Access to housing for victims of domestic violence, dating violence, and stalking, including the following:**

- i. Protection against denials of admission;
- ii. Protection against evictions and subsidy terminations;
- iii. Protection against denial of portability;
- iv. Confidentiality protections regarding documentation of domestic violence, dating violence, and stalking; and
- v. Requirements that owners of subsidized apartment units notify tenants and owners of their rights and responsibilities under

VAWA.

b. **Protections for Qualified Individuals under VAWA:**

i. **Protection against Denials of Admission**

Neither public housing nor owners of subsidized housing units may use an individual's status as a victim of domestic violence, dating violence, or stalking as a basis for denying such person admission into public housing or project-based Section 8 housing. 42 U.S. §§1437f(c)(9)(A); 1437f(d)(1)(A) (2012); and 24 C.F.R. §5.2005(a) (2015). Therefore, an unfavorable landlord/tenant history based upon incidents of violence committed against the applicant, which violence occurred in a situation which would be covered by the provisions of VAWA, cannot to be used against the applicant now seeking housing assistance.

ii. **Protection against Evictions and Terminations**

The provisions of VAWA provide that criminal activity directly related to domestic violence, dating violence, or stalking cannot be the cause for eviction or subsidy termination if a tenant or an immediate member of the tenant's family is the victim or threatened victim of that violence. 42 USC §§1437d(l)(6)(A) (Public Housing); 1437f(c)(9)(C)(i) (Project-based Section 8); 1437f(o)(20)(c) (Section 8 voucher) (2015) and 24 C.F.R. §52005(b) (2015).

Specifically, VAWA states that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as "serious or repeated violation of the lease" by the victim or threatened victim of that violence and shall not be "good cause for good cause for terminating the victim's tenancy or rental assistance." 42 U.S.C. §§1437d(l)(5) (Public Housing); 1437f(c)(9)(B) (Project-based Section 8); 1437f(o)(20)(B) (Section 8 voucher) (2012) and 24 C.F.R. §5.2005(a) (2015).

VAWA does not restrict a housing provider's authority to evict or terminate assistance to a tenant where the housing provider can demonstrate an actual and imminent threat to other tenants or employees of the property if either the tenant is not evicted or assistance is not terminate. 42 U.S.C. §§1437d(l)(6)(A) (Public Housing); 1437f(c)(9)(C)(i) (Project-based Section 8); 1437f(o)(20)(D)(iv) (Section 8 voucher) (2015); and 24 C.F.R. §5.2005(e) (2013). This provision applies to those limited situations where a housing provider can demonstrate that an individual's tenancy, despite the tenant's status as a covered victim, presents an actual and imminent threat to other tenants or employees. HUD regulations with regard to this provision state that an actual or imminent threat consists of a physical danger that is real, should occur within an immediate time frame and such danger could result in death or serious bodily injury. 24 C.F.R. §5.2005(e) (2015).

The provisions of VAWA do not restrict a housing provider's authority to evict or terminate assistance to a victim for any other lease or program violation not based upon acts of violence against the victim. 24 C.F.R. §5.2005(d)(3). VAWA was never intended and does not intend to protect victims if acts for which they are being evicted are unrelated to domestic violence, dating violence, or stalking. A housing provider, in determining whether to evict, may not hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than any other tenant who finds themselves in a similar situation. 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) (2015) and 24 C.F.R. §5.2005(b) (2015).

All Notices to Quit or Termination must give notification of VAWA protection.

A landlord or housing provider, pursuant to the provisions of VAWA may bifurcate a lease in order to evict an offender while allowing the victim to remain in occupancy. 42 U.S.C. §§1437f(c)(9)(1)(B)(iii)(11) (Section 8 Existing housing projects); 1437f(c)(9)(C)(ii) (Other project based Section 8 housing programs); 1437f(o)(7)(D)(ii) (Vouchers); and 1437d(l)(6)(A) (Public Housing) (2015) and 24 C.F.R. §5.2005(c) (2015). The provisions of VAWA provide that housing providers can bifurcate the lease regardless of whether the lease itself has specific language authorizing the bifurcation of the lease. HUD, VAWA, and the Department of Justice Reauthorization Act of 2005: Applicability of HUD Programs, 72 Fed. Reg. 12696, 12697 (Mar. 16, 2003). A landlord, in seeking to remove an abuser from the lease, must follow state and local eviction laws. 42 U.S.C. §§1437f(d)(1)(B)(iii)(II) (Section 8 existing housing programs); 1437f(c)(9)(C)(ii) (Other Project-based Section 8); 1437f(o)(7)(D)(ii) (Voucher); and 1437d(1)(6)(A) (Public housing) (2012) and 24 C.F.R. §5.2005(c) (2015).

iii. **Portability**

A unique provision of VAWA provides that if a victim of abuse is required to break his or her lease and move elsewhere to escape an abuser and the tenant has failed to seek the authorization to move from a public housing authority before moving, the tenant may still exercise their right to use their voucher in another jurisdiction. HUD and VAWA regulations state that a public housing authority's policies restricting the time or frequency of portability do not apply if a family needs to relocate due to domestic violence, dating violence, or stalking. 24 C.F.R. §982.314 (2015). Thus, victims are exempt from public housing authority policies that restrict portability for one year

for families that are new to the public housing's jurisdiction or prohibit voucher tenants from moving if they have already moved at least once during the past twelve months.

iv. **Confidentiality**

The provisions of VAWA prohibit employees of a housing provider or management agents 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. Under VAWA, housing providers also prohibited from disclosing any information a victim provides to document incidents of domestic violence, dating violence, or stalking. 42 U.S.C. §§1437d(u)(2)(A) (Public housing); 1437f(ee)(2)(A) (Project-based Section 8)(2012) and 24 C.F.R. §5.2007(a)(1)(v) (2015). A landlord is permitted to disclose information if it chooses to evict the batterer based on the acts of domestic violence, dating violence, or stalking. 24 C.F.R. §5.2007(b)(4)(ii) (2015).

v. **Raising Defenses under VAWA to Evictions**

(1) **Tenant's Right to Raise the Defense**

Under VAWA, a tenant may raise as a defense to an eviction action that the eviction is being based upon acts of domestic violence, dating violence, or stalking. This defense may be used at administrative proceedings such as the grievance procedure for public housing tenants or at the informal hearing procedure for Section 8 tenants. The defense may also be raised for the first time after an action seeking the eviction of a tenant has been filed.

(2) **Landlord's Right to Request Documentation of Abuse**

A landlord may, in situations where a victim has asserted VAWA rights, request proof of domestic violence, dating violence, or stalking. 42 U.S.C. §§1437d(u)(1)(A) (Public housing); 1437f(ee)(1)(A) (Project-based Section 8 vouchers) (2015) and 24 C.F.R. §5.2007(a)(1) (2015). There are several contexts in which the landlord may request documentation. These situations arise where a tenant raises his or her VAWA rights to challenge a denial of housing, an eviction, a subsidy termination, or denial of a request for transfer. In determining whether to apply VAWA protection, the landlord can choose to rely solely on the victim's statement or can submit a written request for documentation to the tenant. 42 U.S.C. §§1437d(u)(1)(D) (Public housing); 1437f(ee)(1)(D) (Project-based Section 8 and vouchers) (2015). If a landlord requests documentation, the victim must be given at least fourteen

business days in which to respond to the request. 42 U.S.C. §§1437d(u)(1)(B) (Public housing); 1437f(ee)(1)(B) (Project-based Section 8 and vouchers) (2015) and 24 C.F.R. §5.2007(a) (2015). In the event the tenant does not provide the documentation within fourteen business days, then the landlord may bring proceedings to terminate the tenant's tenancy or assistance based upon the events that lead to the alleged abuse. *Id.* The fourteen business day deadline may be extended by a landlord.

(3) **Types of Approved Documentation of Abuse**

There are three types of documentation the victim can provide in response to a landlord's request for documentation of the abuse. The three types of documentation are as follows:

- (1) A HUD-approved form;
- (2) Statement from a qualified third party; and/or
- (3) Police report record.

42 U.S.C. §§1437d(u)(1)(A)(c) (Public housing); 1437f(ee)(1)(A)(c) (Project-based Section 8 and vouchers) (2012) and 24 C.F.R. §5.2007(a)(1) (2015).

(a) **HUD Forms**

The HUD-approved form is a self-certifying document completed by the tenant set forth on a HUD-approved certification form. The form used by tenants in public housing or Section 8 voucher programs is HUD form-50066, while HUD form-91066 is for tenants residing in Project-based Section 8 developments. (See attached Exhibits 1 and 2.) Both of these forms request the name of the tenant, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The important aspect of the form is that the tenant must sign the form and certify under oath that the information is true and correct. Submitting false information of HUD form 50066 or form 91066 is grounds for termination of assistance or eviction.

(b) **Qualified Third Party**

A victim may provide a statement from a qualified third party. The documentation from a qualified third party must be signed by the tenant and the tenant's service provider, an attorney or medical professional. 42 U.S.C. §§1437d(u)(1)(A)(c) (Public housing); 1437f(ee)(1)(A)(C) (Project-based Section 8 and

vouchers) (2012) and 24 C.F.R. §5.2007(a)(1) (2015). The third party must attest under the penalty of perjury to his or her belief that the tenant has experienced bonafide incidents of abuse.

(c) **Court Records**

Finally, a tenant may provide police or court records which verify an incident of abuse. VAWA does not set forth what constitutes a police or court record.

Obviously, a police or court record would include, but not be limited to a police incident report, a police report, a criminal complaint, conviction record, or, in Pennsylvania, a copy of the criminal record from the Commonwealth's justice portal system.

The provisions of VAWA are quite clear. A housing provider may not request that a victim provide multiple forms of documentation, or that a victim provide a particular type of documentation. HUD provides that the victim may self-certify, however that certification must satisfy VAWA's documentation request including that the self-certification be signed under penalty of false verification. An individual tenant who requests VAWA's protection cannot be required to provide third Party documentation of the incident of abuse. Interestingly, HUD has stated that a tenant cannot be required to provide a report of the abuse on HUD's own certification form. Rather third party documentation or police or court records must be accepted "in lieu of HUD standard certification form." See, HUD Programs: Violence Against Women Act Confirming Amendments 75 Fed. Reg. at 66251. HUD's position in this matter indicates that tenants have authority to decide what type of documentation they will provide. However, it is clear that documentation must be provided.

Documentation is critical in cases where a landlord has difficulty in determining which household member is a victim and which is the perpetrator. A reading of the HUD regulations in this area states that in cases where a landlord is met with a situation where they receive documents from two members of a family, 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. 24 C.F.R. §5.2007 (2015).

6. **Actual Implementation of VAWA**

VAWA protections can be raised in any number of situations. One example is a claim for damage caused by a significant other to the apartment unit. The significant other was a guest when the damage occurred. A tenant may raise the defense of VAWA to a claim for payment to the property damage. Under most HUD standard form leases, a tenant has thirty (30) days to pay for damages to an apartment unit. This is an unusual use of the statute to protect a tenant from payment for damage and eviction for nonpayment caused by a guest who, after being invited to the premises, took such action to bring the tenant within the protection of the provisions of VAWA. There is no reported case law as to whether this would be an appropriate defense to the claim for damages. Where this defense has been previously raised, the prosecution was not based upon the disturbance caused by the perpetrator but, instead, the damage to the property and the nonpayment of that property within 30 days after having been invoiced for the damage. In reviewing the matter, the owner argued that the tenant in the Lease Agreement is responsible for the acts of their guests and individuals over whom they have control. Since the damage was caused by a guest who, during a visit, committed acts against the tenant which caused damage to the owner's property, the court found the tenant to be the gate keeper to those individuals whom she allowed to enter her apartment unit. Under that theory, she was in the best position to control whom she allowed into her apartment unit and therefore is the person who is responsible by contract to the landlord for repair of the premises. The court noted that the tenant had every right to bring action against the perpetrator who actually caused the damage in the same or another proceeding.

VAWA is also frequently raised as a defense where a landlord seeks to terminate a Lease Agreement on the basis that a significant other is unlawfully residing in an apartment unit or, in the alternative, has caused situations and circumstances which have threatened the right of quiet enjoyment of all other tenants. A frequently raised response by a tenant is that they have no control over their significant other who has caused the difficulties and they have no control over the manner in which their significant other "acts out," while at the apartment unit. This, technically, is not a situation which is covered under VAWA's protection. VAWA only protects tenants who have been the victims of domestic violence, threatened domestic violence, dating violence, or stalking. Therefore, VAWA's protection are not involved in this situation as the conditions required by the provisions of VAWA have not been met.

Another setting in which VAWA rights have been raised involves tenant who have obviously been physically abused by significant others. The abuse generally occurred at or near the apartment unit, has caused police activity, and threatened the health, safety, and welfare of other others (i.e., children) and encroached upon other tenants' right to the quiet enjoyment. The tenant, however, has not sought the criminal prosecution of their significant other, filed an action for a Protection of Abuse Order, has refused to testify against the significant other, and has simply taken no action to preclude further abuse. Complaints about the tenant are received by management. The landlord files a Proposed Notice to Quit, at which time the tenant raises the issue of protection under the provisions of VAWA. In these situations, it is appropriate from the landlord to request some type of documentation be provided by the tenant, verifying that the tenant was a victim of actual or threatened domestic violence, dating violence, or stalking. Obviously, the tenant cannot provide a court or police report. Therefore, the tenant is left to providing a third party verification of the abuse

or, in the alternative, completing self certifying documentation on the appropriate HUD forms verifying the actual or threatened domestic violence, dating violence, or stalking verifying the actual or threatened domestic violence, dating violence, or stalking. If the tenant fails to provide such documentation within the 14 business days provided for under HUD regulations, the landlord is free to bring proceeding to terminate the tenant's tenancy or assistance. (See attached HUD Form.)

On a number of occasions, the first time a tenant raises a claim of VAWA protections does not occur until the case is before a Magisterial District Judge at the time of an eviction hearing. If the defense is raised at that time, a request for documentation may be made by the landlord and if such documentation is not produced at the time of the hearing, a request for dismissal of the defense could be made based upon the tenant's failure to have such documentation at the time of trial. A motion for continuance of the hearing would also be an avenue of relief in order to require the tenant to provide the information required under VAWA within the 14 business days. At the end of the 14 business days, if the documentation was provided, the case could continue. In the alternative, if the material was not provided, the landlord can move for the striking of the defense.

There are situations in which a tenant has been the victim of actual or threatened domestic violence or dating violence or stalking. In these situations, it is highly recommended that some form of written documentation be requested by the landlord and provided by the tenant. It is suggested that the self-authenticating documentation, such as the HUD forms 5006 and 91066, be sought and secured. If other documentation has contained within it a certification by the person signing the document that the information is true and correct subject to criminal prosecution for false swearing or perjury. In the event that such documentation is secured and later it is determined that the tenant has again invited the same perpetrator onto the property and there has again been a disturbance in the community as the result of the perpetrator's acts or actions which, combined with non-activity by the tenant in protecting themselves from the perpetrator (i.e., failure to prosecute assault charges; failure to prosecute harassment charges; failure to prosecute stalking charges; failure to file Protection from Abuse Order; and/or failure to notify management and seek cooperation from management to ban the individual from the property), is a ground for eviction or termination of the subsidy.

It is also suggested that the abused tenant be advised to obtain a Protection from Abuse Order. Another form of protection is to request the tenant to authorize management, in writing, to issue a notice to the perpetrator that he or she is no longer authorized to be on the property and, if found on the property, he or she will be prosecuted for trespass. If the tenant refused to obtain a Protection for Abuse Order or authorize the issuance of defiant trespass notice to the perpetrator, such refusal should be obtained in writing from the tenant or, if the tenant refuses to sign, then at least be noted to the tenant's file. This type of information can be later used to impeach the credibility of a tenant when he or she alleges that they have attempted to protect themselves from further abuse.

## 7. **Conclusion**

Actual and threatened domestic violence, dating violence, and stalking are the types of crime that nobody should have endure. The situations under which abuse occurs leads to numerable deaths and injuries. Where such conditions and circumstances exists, management and

owners should be sensitive to the fear that such actions instill into a tenant and cooperate with the tenant to the fullest extent to eliminate a perpetrator from the property. Unfortunately, not unlike Protection from Abuse Orders, the provisions of VAWA have been raised by some tenants as a knee jerk defense to the allegations they have violated the terms and conditions of the Lease Agreement by the actions of their guests, boyfriends, and girlfriends. As a result, if managers and owners are not proactive and demand verification and documentation of the alleged acts of domestic violence, such owners and managers run the risk of becoming captives under the Act. By this, I mean, that if you are not proactive, you will be subject to not moving forward with a case the facts of which are not controlled by VAWA. You should also be consistent. If a VAWA defense is raised, you should require documentation of the same. If a tenant can demonstrate that other tenants were not evicted or were not terminated from assistance based upon violations similar to the ones for which they are being evicted or their assistance terminated, then the tenant may be able to argue he or she is being held to a more demanding standard, all of which is a violation of VAWA.

Therefore, the best advise one can give to managers and owners of subsidized property is as follows:

- (1) Give notice to all tenants of the Violence Against Women Act by having the appropriate posters and information distributed to the tenants;
- (2) If a tenant alleges that she or he is a victim of actual or threatened domestic violence, dating violence, or stalking, take the allegation seriously and demand documentation of the actions from each tenant;
- (3) Do not place yourself in the position of being the judge and jury of any tenant claims of protection under VAWA. By that I mean do not put yourself in a situation where you require some tenants to document VAWA claims while others you do not, on the basis that it is clear that in some cases a tenant has been physically abused and/or is being stalked and that such abuse is clearly obvious while in others it is questionable. Regardless of whether the claims are obvious or questionable, all claims require the same documentation from each tenant in order to avoid claims of special treatment; claims of demanding different standards from different tenants; or claims of selective prosecution.