

SPECIAL RELIEF FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT: HOUSING ISSUES

VIOLENCE AGAINST WOMEN ACT (“VAWA”) AND
NUISANCE ORDINANCES
2021 PLAN VOCA GRANTEE TRAINING – JUNE 3, 2021

TODAY’S DISCUSSION

- Issue spotting
 - Violence Against Women Act (“VAWA”)(subsidized housing)
 - Market rate/private housing (where VAWA does not apply)
 - Nuisance and crime-free ordinances
 - Recent change to a Rule of Civil Procedure
- Collaboration with PLAN Housing Law Group: PLAN Housing Law Group listserv - plan-housing@googlegroups.com (contact Hank Leone at PLAN if you wish to be added)
- National Housing Law Project’s Protections for Survivors of Domestic and Sexual Violence website/resource center - <https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/>
- National Housing Law Project’s Nuisance and Crime-Free Ordinances Initiative website/resource center - <https://www.nhlp.org/initiatives/nuisance/>
- Example of a good case

VAWA (HISTORICAL BACKGROUND AND CURRENT STATUS)

- The Violence Against Women Act (“VAWA”) is a law that protects victims and threatened victims of domestic violence, dating violence, sexual assault, and stalking from being discriminated against by certain housing providers because of the abuse committed against them
- Congress passed the Violence Against Women Act of 1994 as part of the Violent Crime Control and Law Enforcement Act of 1994. The protections and provisions afforded by the 1994 legislation were subsequently expanded and improved in the Violence Against Women Act of 2000 and the Violence Against Women and Department of Justice Reauthorization Act of 2005

VAWA (CURRENT STATUS)

- Most recently, Congress passed the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”)(34 U.S.C. § 12491), which reauthorized most VAWA programs until Congressional authorization for VAWA’s grant programs expired on December 22, 2018
- *However*, VAWA 2013’s housing protections do not have sunset provisions and, thus, did NOT expire when Congressional authorization for VAWA’s grant programs expired. VAWA’s statutory housing provisions, related implementing regulations, and any/all related HUD guidance therefore remain in effect

VAWA (GENERAL APPLICABILITY)

- VAWA 2013's housing statute – 34 U.S.C. § 12491
- 24 C.F.R. §§ 5.2001-5.2011 (applicability, definitions, protections, etc.)
- VAWA provides housing protections for survivors of domestic violence, sexual assault, dating violence, and stalking who are applying for or are living in federally assisted housing – VAWA *does not* apply to market-rate/private rental housing *unless* a federal subsidy is involved (see next slide)
- The law applies to a survivor (actual or perceived) regardless of sex, gender identity, sexual orientation, disability or age and also to lawful household members
- The overwhelming majority of victims are female; however, VAWA protections are gender neutral and, therefore, apply equally to both men and women victims of domestic violence, dating violence, and stalking

VAWA (GENERAL APPLICABILITY)(CONT'D)

VAWA covers these federal housing programs:

- U.S. Department of Housing and Urban Development (HUD): **Public housing**; **Section 8 Housing Choice Voucher Program**; **Project-based Section 8**; Section 202 supportive housing for the elderly; Section 811 supportive housing for persons with disabilities; Section 236 multifamily rental housing; Section 221(d)(3) Below Market Interest Rate housing (“BMIR”); HOME; Housing Trust Fund; Housing Opportunities for Persons with AIDS (“HOPWA”); and McKinney-Vento Act programs (including Emergency Solutions Grants and Continuum of Care)
- U.S. Department of Agriculture, Office of Rural Development (RD): Section 515 Rural Rental Housing; Section 514 and 516 Farm Labor Housing; Section 533 Housing Preservation Grant Program; and Section 538 Multifamily Rental Housing
- U.S. Department of Treasury: **Low-Income Housing Tax Credit program (“LIHTC”)**(*look for the “Lease Addendum”)

VAWA (APPLICABILITY IN SUBSIDIZED HOUSING)

Under VAWA, survivors who apply for or participate in the covered housing programs have the right to:

- Not be denied admission, not be evicted, and not have their assistance terminated because of the violence committed against them. For example, a housing provider cannot deny an applicant housing assistance because of domestic violence, sexual assault, stalking and dating violence, including if the survivor has a criminal history or poor credit history directly related to the violence;
- Be provided a notice of their housing rights under VAWA (Form HUD-5380) and VAWA self-certification form (Form HUD-5382) from the housing provider when they are admitted into a housing program OR when they are denied admission or assistance OR when they receive an eviction or termination notice;
- Request that an abuser be removed from the lease and housing, where applicable;
- (For participants with a Housing Choice Voucher) Move with continued assistance;

(list cont'd on next slide)

VAWA (APPLICABILITY IN SUBSIDIZED HOUSING)(CONT'D)

Under VAWA, survivors who apply for or participate in the covered housing programs have the right to:

- Seek an emergency transfer to another unit in the same program and/or under another federally subsidized housing program;
- Stay in the unit, even if there is (or has been) criminal activity that is directly related to the violence;
- Strict confidentiality of information about the domestic violence, dating violence, sexual assault, or stalking, including their victim status. This information can only be shared if requested by the survivor in writing for a time-limited disclosure; is required for use in an eviction proceeding; or is otherwise required by law; and,
- Self-certify using the HUD self-certification form (Form HUD-5382, which is available in at least 11 different languages). If there is conflicting information, a provider may ask for additional documentation

VAWA (APPLICABILITY IN SUBSIDIZED HOUSING)(CONT'D)

There are some limitations to VAWA. In particular, housing providers:

- Can still evict or terminate assistance for violations that are not covered by VAWA; and
- Can still evict or terminate assistance of a survivor if the landlord can show that by not doing so, there would be an “actual and imminent threat” to other tenants or the staff who work at the property – i.e. landlord must be able to show that allowing the survivor to remain in the unit poses a physical danger that is real; would occur within an immediate time frame; and could result in death or serious bodily harm. Importantly, HUD has emphasized that this exception must be used as a last resort after landlord has explored alternatives that would keep tenants and staff safe while maintaining the survivor’s housing assistance

VAWA (APPLICABILITY IN SUBSIDIZED HOUSING)(CONT'D)

Forms to Know:

- HUD 5380 – Notice of Occupancy Rights under the VAWA
 - Required to be provided either (1) At the time the applicant is denied OR provided assistance or admission under a covered housing program; (2) with any notification of eviction or of termination of assistance; or (3) during the 12-month period following December 16, 2016, either during the annual recertification or lease renewal process, whichever is applicable, or, if there was no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means. 24 C.F.R. § 5.2005(a)(2)
- HUD 5381 – Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- HUD 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (*Note: This is a self-certification form)
- HUD 5383 – Emergency Transfer Request for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- *Note: The current versions of most/all of these forms say they expire in 2017 but they are still valid

POTENTIAL SOLUTIONS FOR VICTIMS OF DOMESTIC VIOLENCE IN MARKET RATE/PRIVATE HOUSING

- The Fair Housing Act (as amended) – 42 U.S.C. § 3601, *et. seq.*
- Applies broadly to almost all market rate/private housing, with only a few exceptions
- Current statute makes it illegal for a landlord to discriminate on the basis of race, color, religion, **sex**, familial status, disability, and/or national origin in the sale or rental of housing
- While a person's status as a domestic violence survivor is not a protected class, there are arguments and claims to be made (which have been made successfully) by tying domestic violence to sex discrimination, especially given that women are much more likely than men to be victimized by an intimate partner
- Intentional Discrimination (Disparate Treatment) and Disparate Impact – *See NHLP's Domestic Violence and Fair Housing Act Toolkit

NUISANCE AND CRIME FREE ORDINANCES

- Nuisance ordinances take several different forms and may also be referred to as “disorderly” or “disruptive house” laws (can take the form of fines against the tenant and/or requiring the landlord to evict tenant or face losing rental license)
- All have at least one thing in common: When applied, these ordinances put victims of domestic violence and stalking at grave risk of harm, either by evicting the victim from stable housing or by deterring the victim from accessing police protection when needed
- Briggs v. Norristown case (PA ACLU and ACLU Women's Rights Project (with PCADV amicus brief))
 - Local “3 Strikes” ordinance threatening loss of police protection for and eviction of DV victim
 - HUD Conciliation Agreement reached wherein, amongst other things, ordinance was repealed and damages were paid by Norristown to the victim
- 2014 Act 200 and 53 Pa. Cons. Stat. Ann. § 304 – protections for DV victims against penalties imposed by such ordinances

RECENT RULE CHANGES BENEFITTING VICTIMS OF DOMESTIC VIOLENCE IN APPEALS FROM MAGISTERIAL DISTRICT COURTS

- Effective January 1, 2021, the following changes were made to the PA Rules of Civil Procedure for Magisterial District Judges:
- Pa. R.C.P.M.D.J. Rule 501 – “Victim of domestic violence” defined as “a person who has obtained a protection from abuse order against another individual or can provide other evidence of abuse”
- Rule 514 – the Notice of Judgment shall include notice that a tenant in a residential lease action who is a victim of domestic violence may appeal the judgment within 30 days of the date of entry of judgment, as well as filing instructions for asserting such an appeal
- New Rule 514.1 – creates a Domestic Violence Affidavit
 - AOPC form, to be filed at the MDJ’s office as well as in the Court of Common Pleas (“CCP”) along with the appeal
 - Filing of the Affidavit at the MDJ’s office operates as an automatic stay on the execution of an Order for Possession
 - Affidavit is not a public record and can only be challenged by landlord in CCP
- Rule 1002 – specifies that a victim of domestic violence has 30 days to appeal a MDJ’s judgment to CCP, even the possession portion of the judgment (any tenant who is not a victim of domestic violence has only 10 days to appeal possession)

GOOD CASE EXAMPLE

- Attorney Mary Beth Clark, Judicare/Volunteer Attorney, North Penn Legal Services
- DV victim incarcerated as a result of DV incident
- DV victim’s landlord evicted her and discarded most/all of her belongings during her period of incarceration
- DV victim ultimately exonerated and released – came home to adverse L/T judgment (for possession and money damages) and belongings gone
- Settlement with landlord in which landlord agreed to:
 - Concur in the filing of a motion for leave to appeal MDJ judgment *nunc pro tunc* (“late appeal”); and
 - Sign stipulation which was filed in the Court of Common Pleas (filed along with a proposed Order) for CCP to a) enter a judgment of *non pros* in the appeal case in CCP and b) direct MDJ/AOPC to remove (“expunge”) the record of underlying MDJ judgment from Unified Judicial System

RESOURCES

- PCADV Toolkit – Addressing Discriminatory Housing Barriers For Victims of Domestic Violence (2013)
- Aforementioned National Housing Law Project websites
 - NHLP Survivor Housing Protections Non Legal Advocate Toolkit (May 2019)
 - NHLP COVID-19 resources
- HUD Notices PIH-2017-08 and PIH 2017-05
- Congressional Research Service memos – “The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization” and “Domestic Violence in the Context of COVID-19”

ACCOUNTABILITY SLIDE

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