



Gender Based Discrimination in the #metoo Era: Housing Protections For Domestic Violence Survivors

Project Sentinel Fair Housing Symposium

April 4, 2019

How is Housing Related to Domestic Violence?

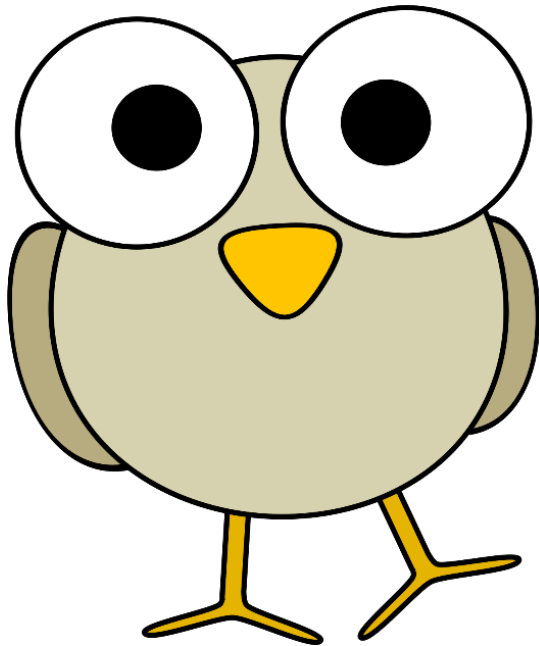
- Women living in rental housing experience domestic violence at three times the rate of women who are homeowners.
- Many survivors remain in abusive relationships because they cannot maintain safe housing on their own.
- Congress included housing protections in the Violence Against Women Act (VAWA) to ensure that survivors do not lose their housing for reporting the crimes committed against them.

Introduction to Housing Protections Under the Violence Against Women Act (VAWA)

Violence Against Women Reauthorization Act of 2013 (VAWA 2013) Basics

- Only applies to federal housing programs
- Seeks to encourage survivors receiving housing subsidies to report and seek help for the abuse committed against them, without fear of eviction
- Protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them
- Applies to survivors regardless of sex, gender, identity, or sexual orientation

Reauthorization of VAWA?



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- VAWA has not been reauthorized:
- **Does this mean the housing protections under VAWA have lapsed?**

What Programs Does VAWA Cover?

HUD Programs

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| • Public Housing | • § 236 Multifamily rental housing |
| • Section 8 vouchers | • § 221d3/d5 Below Market Interest Rate (BMIR) |
| • Project-based Section 8 | • HOME |
| • Section 202 Supportive Housing for the Elderly | • HOPWA (Housing Opportunities for People w/AIDS) |
| • Section 811 Supportive Housing for People with Disabilities | • McKinney-Vento Homelessness Programs (includes ESG; CoC) |
| • Housing Trust Fund | |

Department of Agriculture

- Rural Development (RD) Multifamily

Department of Treasury/IRS

- Low Income Housing Tax Credit (LIHTC)

Who is Protected by VAWA?

VAWA covers people who are subject to:

Domestic violence: Any felony or misdemeanor crimes of violence committed by: a current/former spouse or intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim; a person against a victim protected from acts under state/local domestic and family violence laws.

Dating violence: Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

Sexual assault: Any nonconsensual sexual act prohibited by law

Stalking: Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

VAWA applies to applicants and tenants

VAWA Includes Anti-Discrimination Protections

- Applicants and tenants who are survivors of domestic violence, dating violence, sexual assault, or stalking cannot be discriminated against because of their status as a survivor of these covered crimes.
- This means that survivors cannot:
 - Be denied admission to a covered housing program,
 - Be denied assistance under a covered housing program,
 - Have their assistance terminated, or
 - Be evicted from federally assisted housing**because of the violence committed against them.**

VAWA 2013 Has Important Notice Requirements

- Covered housing providers must provide all tenants and applicants a notice describing VAWA housing rights and a VAWA self-certification form.
- Forms must be provided to tenants and applicants when applicants are denied assistance, when an individual receives assistance under a covered housing program, and when an individual receives a notice of eviction or subsidy termination from a covered housing program.
- Forms are available in 15 languages on HUD's website.

Proving Eligibility for VAWA Housing Protections

- Survivor generally gets to choose form of documentation.
 - Housing providers must accept VAWA self-certification form.
 - Survivors do not have to contact the police or initiate legal proceedings against abuser or perpetrator.
- Exception for when there is conflicting evidence; housing providers can then ask for third-party documentation
- Covered housing provider is also free to take tenant at their word, or can make a written request asking tenant to provide proof of DV

Documentation Options

1. Self-certification form

- **HUD Form 5382 (all HUD programs)**

2. Police, court or administrative record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

3. Statement from third party

- Can be from a victim service provider, medical professional, mental health professional or attorney.
- Must be signed by both third party and survivor under penalty of perjury.

4. Statement or other evidence (accepted at housing provider's discretion)

Other VAWA Housing Protections

- Confidentiality
 - Information must be maintained in “strict confidence”
- Emergency transfers
- Maintaining assistance for the survivor
 - Lease bifurcations
 - Family breakups
 - Moving with a Section 8 voucher (portability)

Domestic Violence and Fair Housing

The Relationship Between Fair Housing and Domestic Violence

- Survivors of domestic violence are not a protected class under the Fair Housing Act or FEHA, but most are women.
- HUD 2016 guidance: “From 1994 to 2010, approximately 80 percent of the victims of intimate partner violence in the nation are women.”

Examples of Discriminatory Policies

- Policies **based on gender stereotypes** may violate the Fair Housing Act
 - Example from 2011 HUD memo: An owner does not rent to women survivors because he assumes they will reconcile with their abusers
- **Treating women differently** because of their status as survivors of DV may violate the FHA.
 - Ex: A landlord evicts a DV survivor because her abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police.
 - Ex: A landlord evicts a survivor because of damage caused to her unit by her abuser, but does not evict a male tenant due to damage caused by a break-in.

Examples of Discriminatory Policies (cont.)

- HUD's 2011 DV memo:
 - A neutral policy that negatively affects DV survivors may violate the FHA because of its disparate impact on women.
- Example:
 - Women are disproportionately affected by a housing provider's zero-tolerance policy.
 - The housing provider could make exceptions to the zero-tolerance policy for DV survivors in order to avoid a disparate impact on women.

Nuisance and Crime-Free Housing Ordinances

- Local laws and policies that penalize landlords and tenants when **police are called too many times** to the premises within a time period, or for “criminal activity” at the property
 - Impose fines or criminal charges on property owners
 - Nuisance activities range from violent crime to disorderly conduct
 - Landlords pressured to evict tenants, even those who are crime victims
- These laws can:
 - Harm and punish domestic violence survivors and persons with disabilities who seek help from the police (e.g., calling 911)
 - Negatively impact communities of color

See ACLU’s “I Am Not a Nuisance” [Website](#); Shriver Center’s “Cost of Being ‘Crime-Free’” Report

- Nuisance and crime-free ordinances can violate the Fair Housing Act by disproportionately impacting certain groups (e.g., women survivors of DV)
- Jurisdictions can also violate the Fair Housing Act by intentionally using the adoption or enforcement to discriminate (e.g. selective enforcement).
- Suggests repealing ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.

California Assembly Bill 2413

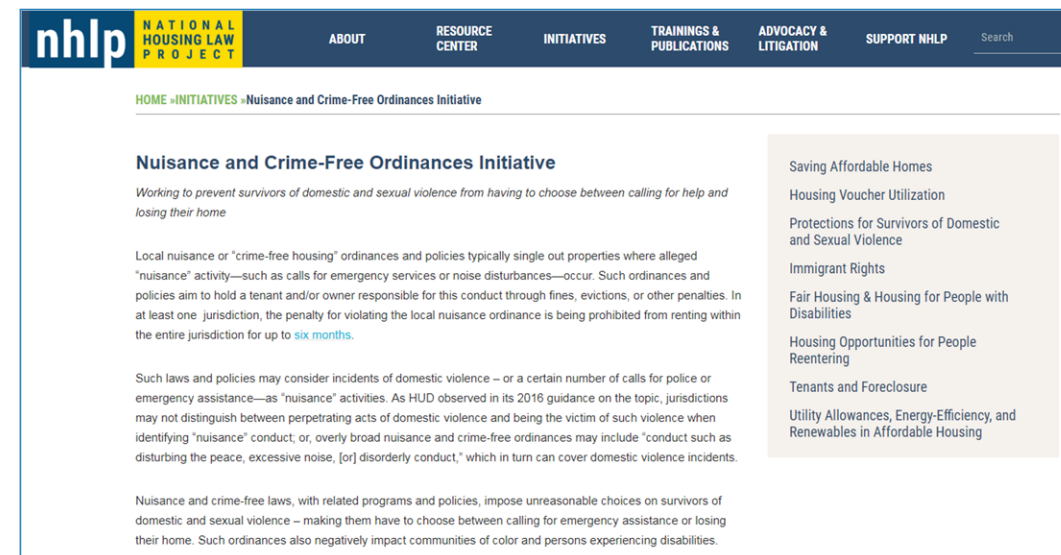
- Became effective January 2019
- Summary of protections
 - Protects individuals who need to call for police or emergency assistance (including other crime victims and individuals in an emergency) from penalties such as eviction;
 - Provides an eviction defense for tenants, residents, and occupants who face eviction for police/emergency calls; and
 - Overrides existing local ordinances that penalize tenants and landlords due to police/emergency calls, regardless of when the law was adopted.

Evaluating Nuisance Ordinances

- How “nuisance” is defined?
- Is “domestic violence” referenced as an example of “nuisance” activity? Is domestic violence excluded?
- Could domestic or sexual violence be read to be included in “nuisance activity”?
- Does the ordinance distinguish between penalties for perpetrators and victims/survivors?
- Are a certain number of calls for emergency/police service counted toward a “nuisance” designation?

NHLP's Initiative

- NHLP offers training and technical assistance on nuisance ordinances and crime-free housing policies
 - nuisance@nhlp.org
- Nuisance initiative website
 - Resources, including case summaries, info sheets, and articles



www.nhlp.org/initiatives/nuisance

Our Initiative Website

- We plan to update our website to include
 - Informational sheets for different audiences
 - Training materials
 - Additional case summaries
 - Additional links to studies and research reports
- If you feel like a specific resource would be helpful, please let us know.



Getting Evicted for Calling the Police: Nuisance Ordinances and Their Impacts on Domestic Violence Survivors *Information for Local Advocates*

What are Nuisance Ordinances?

Nuisance ordinances are local laws that often impose penalties (e.g., fines) on property owners for activity on their property that is considered to be “nuisance” activity. For example, failure to maintain one’s lawn is an example of a “nuisance.”

Such ordinances may also define nuisance activity as calling law enforcement or emergency assistance to a property a certain number of times within a certain timeframe. For example, if someone calls the police to their apartment complex too many times within a month or year, making such calls may be considered “nuisance” activity under local law. In response, property owners cited under nuisance ordinances may evict renters to avoid penalties.

How can Nuisance Ordinances Negatively Affect Domestic Violence Survivors and Other Populations?

- Local nuisance ordinances may count incidents of domestic violence or calls to 911 for assistance as nuisance activity, subject to penalties.
- Nuisance ordinances discourage survivors from calling for police or emergency assistance out of fear of eviction or other penalties. This makes survivors choose between their homes and their safety.
- Nuisance ordinances have also been shown to negatively affect persons with disabilities and communities of color.

Are there Possible Protections Under the Law?

Enforcement of nuisance ordinances against domestic violence survivors and other populations may violate laws such as:

- The Fair Housing Act and similar state laws that prohibit sex, race, and disability discrimination;
- The Violence Against Women Act, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federal housing programs;
- The U.S. Constitution, including one’s First Amendment right to seek help from the government; and
- Any state laws prohibiting nuisance ordinances that adversely impact survivors or other populations.

Need More Information?

To request training or technical assistance, please contact Renee Williams, rwilliams@nhlp.org.

Please note that this fact sheet is provided for informational purposes only, and should not be considered legal advice.

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Thank You!

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Please consult an attorney where you live to obtain advice about any particular situation.*