

The Safe Homes Act & VAWA

Housing Rights for Victims of Domestic and Sexual
Violence in the Private Rental Market, Public, and
Subsidized Housing

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Sargent Shriver National Center on Poverty Law

Speakers for this Session

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Sargent Shriver National Center on Poverty Law



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Sargent Shriver National Center on Poverty Law

- ❑ The mission is to provide national leadership in identifying, developing, and supporting creative and collaborative approaches to achieve social and economic justice for low income people.
- ❑ The Center fulfills its legal advocacy and policy development mission through a comprehensive set of initiatives, including representing low-income people on a variety of issues that affect their social and economic well-being and managing communications and access to poverty law strategies and policy-related information.

What were the problems prior to VAWA and the SHA?

- ❑ A leaseholder who was a victim of domestic or sexual violence had no way to leave unsafe rental housing without paying for the rest of the lease unless the landlord agreed to let them end their lease early.
- ❑ Before the passage of the Safe Homes Act, victims who fled unsafe apartments could still be liable for rent and damages accrued after their departure.
- ❑ Prior to the passage of VAWA, victims of violence living in or in need of public or subsidized housing were denied housing assistance or evicted because of their status as victims of violence.

Purpose of the Safe Homes Act (SHA)

- To enable victims of domestic and sexual violence and their families to flee existing dangerous rental housing or make their current housing safe.

Purpose of the Housing Provisions of VAWA

- To protect victims of violence who live in public housing, voucher housing, or project-based Section 8 housing from evictions/terminations, admission denials, and ensure their privacy and ability to safely move to another jurisdiction.

What Does the Safe Homes Act Do?

This law allows tenants and members of their households who are survivors of violence to:

- ❑ Vacate their housing and terminate their lease early to protect their physical safety and emotional well-being.
- ❑ Change the locks on an emergency basis to keep the perpetrator out of the home.

What Type of Housing Is Covered?

- All private-market rental housing regardless of size.
- All subsidized rental housing, including “Section 8” Housing Choice Vouchers (HCV) and project-based housing.
- **NOT COVERED:** Public housing

Ending the Lease Early—Domestic Violence and Sexual Violence

For Oral or Written leases:

- ❑ A tenant or *any member* of their household who is a *victim* of violence can end their lease early, even if perpetrator is a member of the household, if:
 - There is a credible imminent threat of future harm
 - The incident will occur on the premises
 - The tenant provides written notice of their fear of future harm to the landlord or property manager 3 days before or after they vacate the residence.
 - No additional proof required.

“Credible Imminent Threat”

- ❑ The abuser comes to the tenant or household member’s job and they fear the abuser will come to their home.
- ❑ A stalker stands across the street from the tenant or household member’s apartment.
- ❑ An abusive ex-boyfriend finds out where the tenant lives.
- ❑ The tenant is sexually assaulted on the premises and the perpetrator has not been caught by the police.

Ending the Lease Early—SV ONLY

For Oral or Written leases:

- Sexual violence victims can leave their apartment early, even if they CANNOT show a credible imminent threat of future harm if:
 - The sexual assault occurred on the premises, AND
 - They provide written notice 3 days before or after leaving the apartment, **plus evidence** (e.g., police report, medical record, court record, or statement from victim services organization) within 60 days of the sexual assault or as soon as possible.

“On the Premises”

- Can be anywhere in or around the building
 - e.g., hallway, laundry room, backyard, garage, parking lot, street or sidewalk in front of or behind property.
- If the stalker is stationed across the street
 - If the perpetrator knows the area where the victim lives, there is a threat of harm “on the premises.”

“Written Notice”

- Examples of acceptable description of credible imminent threat in written notice:
 - “My ex-husband just got out of jail and found out where I live. He said that he would find me and kill me. I have to leave with my kids.”
 - “My date sexually assaulted me in my apartment last night and I don’t feel safe here anymore. I plan to leave as soon as possible.”

Tips on Ending Your Lease Early

- ❑ Victims must remove all of their belongings and surrender their keys to the landlord or property manager. This shows that they have given up the apartment.
- ❑ Victims should be sure to indicate the date that they are sending the letter
- ❑ Victims should keep a copy of the written notice. Victims with Housing Choice Vouchers (HCV) should notify their HCV administrator immediately of their intent to use SHA.

Protections in Civil Court

- If a landlord sues the victim for the remainder of rent due after the victim has moved, the Safe Homes Act is the affirmative defense.
 - If the victim has properly exercised their rights under the Safe Homes Act, the victim does not owe the rent that accrued after leaving the apartment.

NOTE: Victim's court/attorney fees are NOT covered.

Lock Changes: Written Leases, Perpetrator Not On Lease

- ❑ Victims with written leases where the perpetrator is NOT on the lease can ask for a lock change from their landlords:
 - Request must be from all parties on the lease.
 - Request must be in writing and due to credible imminent threat of violence against a tenant or a member of the tenants' household.
 - Notice must include one form of evidence:
 - ❑ medical, court, or police evidence; or statement from victim services organization where tenant sought services.

Lock Changes: Written Leases, Perpetrator On the Lease

- If perpetrator is on the written lease, required notice to the landlord requesting lock change must include:
 - A request from all parties on the lease, except the perpetrator or person posing threat of violence.
 - Request must be in writing and due to credible imminent threat of violence against a tenant or a member of the tenants' household.
 - Notice must include: a Plenary order of protection or a plenary civil no contact order granting tenant exclusive possession of the premises.

Lock Change: Oral Leases

- Victims with oral leases may request a lock change from their landlords.
 - A request from all parties on the oral lease, except the perpetrator or person posing threat of violence.
 - Request must be in writing and due to credible imminent threat of violence against a tenant or a member of the tenants' household.
 - Notice must include: a Plenary order of protection or a plenary civil no contact order granting tenant exclusive possession of the premises.

Lock Changes: Landlord Responsibilities

- ❑ Once the landlord has received notice of a request for lock change plus evidence:
 - The landlord shall, within 48 hours, change the locks OR
 - Give tenant permission to change the locks within 48 hours.
- ❑ Whoever changes the locks shall make a good faith effort to give a new copy of the key to the other party as soon as possible but not more than 48 hours later.
- ❑ If the landlord refuses or does not respond within 48 hours, the tenant may change the locks without the landlord's permission or sue the landlord in court to change the locks.

Lock Change Continued

- ❑ Tenants who successfully bring suit against the landlord for refusal to change the locks are entitled to attorney fees and court costs;
- ❑ In all cases (unless the lease states otherwise) the tenant is responsible for the cost of the lock change;
- ❑ If tenant changes the locks, tenant must ensure lock change is done in a “workman like manner.”

Nondisclosure, Confidentiality, and Privilege (New)

- A landlord may not disclose to a prospective landlord that:
 - A tenant or a member of a tenant's household exercised their rights under the Act, or;
 - Any information provided to the landlord by the tenant or a member of the tenant's household.
 - Unless the tenant or the member of the tenant's household who is a victim of the violence consents to disclosure in writing.
 - Unless disclosure is otherwise required by law.

Nondisclosure, Confidentiality, and Privilege (continued)

- ❑ A victim who uses the Safe Homes Act does not waive confidentiality or privilege between themselves and a third party, including a victim service organization.
- ❑ A landlord who discloses that a tenant has used the Safe Homes Act, or discloses any evidence provided by the survivor, is liable for actual damages resulting from the disclosure up to \$2,000.

NOTE: A tenant who successfully brings an action pursuant to this section may be awarded reasonable attorney's fees and costs.

Safe Homes Act Compliance Problems

- ❑ Landlords taking security deposits;
- ❑ Landlords still demanding third-party evidence, even when not required;
- ❑ Landlords reporting debt to collection agency;
- ❑ Victims not understanding how to properly use the law – i.e., handing landlord a copy of the Safe Homes Act brochure.

Violence Against Women Act (VAWA) 2005

Title VI: Housing Provisions

- 2005 Reauthorization: Key provisions for victims of violence who live in/with:
 - Public housing
 - Project-based Section 8 housing
 - Housing Choice “Section 8” Vouchers

Explanation of Types of Housing

- ❑ Public Housing – public housing authority owns the housing; subsidy/affordability tied to the unit – i.e., if tenant leaves unit they lose the subsidy;
- ❑ Project-based Section 8 housing – private entity in contract with HUD to provide affordable housing; private entity owns the unit; subsidy tied to the unit – i.e., if tenant leaves unit they lose the subsidy.
- ❑ Housing Choice “Section 8” Voucher Program – public housing authority provides a rental voucher to tenant; tenant uses voucher in the private rental market and enters into lease with private landlord; landlord receives payment from housing authority and tenant; subsidy tied to tenant – i.e., if tenant leaves unit, the subsidy/voucher goes with the tenant.

Purpose of Housing Section

- To reduce domestic violence, dating violence, sexual violence, and stalking, and to prevent homelessness by:
 - Protecting the safety of victims in their homes.
 - Ensuring victims' meaningful access to the criminal justice system without jeopardizing their housing.
 - Creating long-term housing solutions for this population.
 - Building collaborations among victim providers and housing agencies to provide services, training, and interventions.
 - Enabling Public Housing Authorities (PHAs) and landlords to respond appropriately to violence while maintaining safe housing for everyone.

Provisions

- Notice to Tenants/Plans
- Admissions Protections
- Termination/Eviction Protection
- Removing the Abuser ONLY
- Confidentiality
- Portability

Sexual Violence NOT covered

- ❑ Congress would not include VAWA protections for victims of sexual assault, because Congress believed not sufficient proof of sexual assault survivors being denied admission or evicted from public and subsidized housing;
- ❑ Advocates can push housing authorities to still protect sexual assault survivors;
- ❑ Some possibility of including sexual assault with next administration.

Notice to Tenants/PHA/Owner Plans

- ❑ Housing authorities/PBS8 owners must notify tenants of VAWA rights;
- ❑ Contracts and leases should contain VAWA language;
- ❑ PHA annual and five-year plans must include VAWA information and show how they will work with providers;
- ❑ Project-based owners should include VAWA information in Tenant Selection Plans/House Rules

Admissions

- ❑ PHAs/voucher administrator/owner CANNOT use an applicant's history of domestic violence, dating violence, or stalking or the fact that they are currently experience violence as a reason to deny housing assistance if they otherwise qualify.

Termination

- CANNOT TERMINATE ASSISTANCE DUE TO:
 - ACTUAL **or** THREATENED violence.
 - Criminal activity directly relating to violence, by a member of a tenant's household, any guest, or other person.
- Must honor court orders regarding the property or who has a right to the housing, including civil protection orders.

Termination, cont.

- ❑ BUT CAN terminate assistance if:
 - It is a lease violation NOT based on act/s of violence against the tenant or member of the tenant's household.
 - Able to demonstrate an **ACTUAL AND IMMINENT** threat to other tenants or those employed at or providing service to the property if that tenant stays at their current housing.
- ❑ The standards for eviction or termination CANNOT be higher for victims of domestic violence, dating violence, or stalking than for other residents.
- ❑ Other remedies may be appropriate before termination of assistance is considered (i.e., moving the victim).

Removing the Abuser

- ❑ CAN terminate assistance/evict the abuser ONLY;
- ❑ Can provide separate leases/housing to both;
- ❑ The victim's housing will not be affected by termination proceedings against the abuser.

Notifying PHA/Owner of Violence

- ❑ If victim asserting VAWA to stop eviction, termination, or admission denial, PHA/owner can require victim, within 14 days of request, to provide one of the following:
 - HUD form of “bona fide” incident - must name perpetrator;
 - 3rd party evidence from medical, legal, or victim organization under penalty of perjury;
 - court or police record;
 - Self-certification;
 - PHA/owner to decide what form sufficient.

Confidentiality

- Information given to any housing provider or property manager, including the fact that an individual is a victim of violence, must be kept confidential.
 - NOT entered into any shared databases.
 - NOT provided to any other entity.
 - Unless disclosure is requested by the individual in writing.
 - Unless it is otherwise required by law.

Portability – Housing Choice Vouchers

- ❑ Congress recognized that victims of violence or stalking with HCVs may flee their unsafe housing first and then obtain approval from the housing authority.
- ❑ VAWA allows a family to remain eligible to move (called “porting”) to another housing authority’s jurisdiction if they already moved out of the unit, but did so to protect their health and safety and because there was an imminent threat of future violence if they remained in the home.
- ❑ The family must be in compliance with all other provisions of the HCV program.

VAWA 2005

Implementation Problems in Illinois

- ❑ VAWA requires PHAs/owners to be in compliance since January 2006 – many are not;
- ❑ PHAs/owners still evicting or denying admission to victims of violence;
- ❑ Many PHA/owner plans do not include VAWA language or have harmful language;
- ❑ Many PHAs/owners have not notified tenants of their VAWA rights;

Interested in Helping with VAWA/SHA Implementation?

- ❑ Shriver Center conducting statewide review of housing authority compliance with VAWA;
- ❑ Please contact Kate Walz or Sam Tuttle for information about your local housing authority's compliance and how you can help;
- ❑ We can also help determine if project-based Section 8 developments are in compliance.

Other Housing Laws Protecting Victims of Domestic Violence

- ❑ The Federal Fair Housing Act, Illinois Human Rights Act, and local human rights ordinances—treating a victim of domestic or sexual violence differently because of their status could constitute sex discrimination.
- ❑ State common law or local housing ordinances prohibit landlords from failing to maintain the property's safety. If a landlord fails to secure doors, windows, or entryways, a tenant can break their lease for fear of continued or future violence.
 - This is especially true if the landlord or property manager is the perpetrator.

Legal Resources

- Sargent Shriver National Center on Poverty Law:
 - Contact Kate Walz at 312.263.3830 ext. 232, katewalz@povertylaw.org, Samantha Tuttle at ext. 235, samtuttle@povertylaw.org; or Wendy Pollack at ext. 238, wendypollack@povertylaw.org.
- Cook County: Legal Assistance Foundation of Metropolitan Chicago, call 312.341.1070
- Outside of Cook County call Land of Lincoln Legal Help 800.252.8629 or Prairie State Legal Services 800.531.7057

Conclusion

- ❑ The Shriver Center welcomes the opportunity to conduct free, in person training sessions for members of your organization on the Safe Homes Act and the VAWA housing provisions.
 - For information regarding training sessions or for additional materials, contact Michaella Furman at 312.263.3830 ext. 243 or michaellafurman@povertylaw.org;
 - Materials are available in nine languages and are posted on the Center's website, along with sample written notices, FAQ, and various HUD documents concerning VAWA.