



Beyond the Criminal Justice System

HOUSING CONSIDERATIONS FOR SURVIVORS OF SEXUAL ASSAULT

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This project was supported by Grant No. 15JOVW-21-GK-02205-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

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I. INTRODUCTION

Stable, affordable housing is necessary for safety, health, and self-determination. However, housing is consistently one of survivors' most frequently cited unmet needs. The lack of affordable housing for all who need it means that survivors are at risk of becoming homeless because of sexual violence, or they could be forced to make a choice that nobody should ever have to face: choosing between the roof over their heads or their safety. Survivors are weighing multiple factors at once in assessing their housing needs: physical and psychological safety, privacy, financial burdens, and access to social and community support.

Housing may become unsafe for various reasons. For example, the assault may have taken place in or near the home and the trauma they experience makes their home unsafe. A perpetrator may be aware of where the survivor lives and could jeopardize their safety there. Someone affiliated with the landlord—or the landlord themselves—may be the perpetrator. In these instances, clients may prioritize seeking emergency relocation to a new home. They may need to do so in a way that preserves existing housing benefits or minimizes the financial consequences of an emergency move. The goal in these cases is to help clients relocate quickly or access affordable alternative housing to ensure safety and healing. Other clients may want to stay in their housing and will need support to mitigate the risk of future harm through actions like lock changes and other on-site safety enhancements, collaboration with housing providers to enforce abuse prevention orders, or participation in address confidentiality programs.

In other instances, survivors may face adverse actions by their landlords because of the sexual assault or its impact on them. Common actions include retaliation, discrimination, or even eviction for reasons related to the assault. Survivors may also be at risk of losing lifelong housing benefits. The goal in these cases is to prevent the loss of housing so that the client can remain housed and connected to their community resources.

Housing advocacy on behalf of survivors is defined by a nationwide shortage of affordable housing for all who need it¹ and the difficult reality that there are not enough emergency shelter resources for everyone. Advocating for survivors in this environment of extreme scarcity can mean assessing which is the best among several sub-optimal choices. While client-centered, trauma-informed legal advocacy cannot always help clients access the housing they need and deserve right away, it can go a long way towards restoring a client's sense of dignity and control over their lives.

II. ADDRESSING HOUSING ISSUES: INITIAL CONSIDERATIONS

A. Assess Safety and Client Priorities

The most important first step in advocating for a survivor's housing needs is to center their safety. Attorneys and their clients should have a conversation about housing safety as early in the representation as possible to identify whether the goal of the advocacy will be relocation or housing stabilization. If the survivor plans to stay in place, find out if there are any harm mitigation precautions they might need (like lock changes, for example). Priorities may shift over the course of representation as safety and other considerations evolve, so check back with your client about whether their goals have changed since your initial conversation.

Take time to connect the client with community resources dedicated to survivors and make sure that they are accessing all the mental and physical health care they need. It is best practice to connect your client to someone who is trained in safety planning (such as a sexual assault advocate), however, you should still do some basic safety planning around housing. You may want to ask them who they would feel comfortable calling for help if they are in danger, and what safety considerations might lead them to reevaluate their goals and priorities in the housing representation. (See *Safety and Protection Orders*)

The menu of possible housing options (discussed in greater detail below) to talk through with your client could include:

¹ There is a shortage of 7.3 million affordable rental homes for extremely low-income renters. NAT'L LOW INCOME HOUSING COALITION, THE GAP: A SHORTAGE OF AFFORDABLE HOMES (Mar. 2023), https://nlihc.org/sites/default/files/gap/2024/Gap-Report_2024.pdf.

- **Relocating:** Apply for an emergency transfer or terminate the lease early to move out.
- **Staying in place:** Try to remove a perpetrator from the housing but stay in place; fight an eviction or subsidy termination initiated by a landlord; get the locks changed or request other safety measures.
- **Accessing affordable housing:** Apply for permanently affordable housing (which is a long-term process rather than a short-term solution).

B. Identify Housing Status and Needs

The next step in advocating for the housing rights of a survivor is to determine what type of housing they live in so that you can determine what rights or remedies are available. The most common rental housing accommodations are:

1. **Public housing:** federal or state-funded housing administered by a local housing authority;
2. **Project-based subsidized housing:** federal or state-funded housing owned and operated by a local housing authority, non-profit, or for-profit entity;
3. **Tenant-based housing subsidy:** a mobile housing benefit that a participant can place in a private-market apartment in which the local housing authority pays a share of the rent directly to the landlord;
4. **Private market:** all other rental housing where there is no government subsidy attached.

Survivors may also be students living in campus housing, members of the military living on bases, homeowners, residents of someone else's home, or persons experiencing homelessness. Available housing rights and protections depend on the type of housing in which the survivor lives. Ask to see a copy of the lease, tenancy agreement, or program rules that apply to their living situation to help determine in what type of housing a client lives.

Determine whether the housing emergency is purely a result of the assault, or whether the landlord or housing program independently initiated an action that will harm your client. Ask your client to show you any notices they received from their landlord or housing provider, and whether they have been called to court or another type of hearing related to their housing. Deadlines in housing-related lawsuits and administrative proceedings can be extremely short. Therefore, find out as soon as possible whether your client needs to respond to a deadline to defend themselves.

III. VAWA PROTECTIONS AND FEDERALLY SUBSIDIZED HOUSING

A. The Violence Against Women Act

If your client lives in covered housing funded by the federal government, their housing is protected by the Violence Against Women Act (“VAWA”). VAWA protects all survivors regardless of sex, gender identity, and/or sexual orientation.²

1. Overview of Covered Housing

Covered housing under VAWA includes federal housing programs providing affordable housing to low- and moderate-income people including public housing, Section 8 and Emergency Housing Vouchers, Project-based Section 8, Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for People with Disabilities, the Housing Trust Fund, § 236 Multifamily rental housing, §221d3/d5 Below Market Interest Rate housing, HOME, Housing Opportunities for People with AIDS/HIV, McKinney-Vento Homelessness Programs, Rural Development Multifamily and Voucher Programs, the Low Income Housing Tax Credit program, Section 202 Direct Loan program, Transitional Housing Assistance for Homeless Veterans, grants for homeless veterans with special needs, Supportive Services for Veteran Families, Veterans Affairs Supportive Housing (VASH), and Transitional Housing Assistance Grants for victims of domestic violence, dating violence, sexual assault and stalking.³ The U.S. Department of Housing and Urban Development (“HUD”) has a comprehensive website about VAWA’s housing protections at

² 24 C.F.R. § 5.2001(a) (2024).

³ 34 U.S.C. § 12491(a)(3).

www.hud.gov/vawa. Attorneys and survivors alike will find this resource informative and empowering.

2. Introduction to Essential VAWA Protections

VAWA protects survivors of any nonconsensual sex act prohibited by federal, tribal, or state law, including when a survivor lacks the capacity to consent (in addition to survivors of domestic violence, dating violence, and stalking).⁴ The core housing protections under VAWA prevent denial or eviction/termination for reasons related to experiencing gender-based violence and allow survivors to relocate for safety reasons. Housing providers must also affirmatively inform applicants and tenants of these rights periodically. HUD encourages covered housing providers to “undertake whatever actions are permissible and feasible” under their programs to assist survivors to remain in their units or otherwise access safe units under the program—including bearing the costs associated with preserving the housing or relocating.⁵

3. Documenting Eligibility for VAWA Protection

If a survivor seeks the protection of VAWA, a housing provider may (but is not required to) ask for documentation to demonstrate eligibility for the protection.⁶ If the housing provider does ask, the survivor must respond within 14 business days from the written request to be eligible for the protection (though the housing provider may extend this deadline at its discretion).⁷ The survivor has the right to provide the safest, most appropriate documentation from the following list of approved forms of verification:

1. a signed self-certification form issued by HUD,⁸

⁴ 34 U.S.C. § 12291(a)(35).

⁵ 24 C.F.R. § 5.2009(c).

⁶ 34 U.S.C. § 12491(c)(1).

⁷ 34 U.S.C. § 12491(c)(2)(A).

⁸ 34 U.S.C. § 12491(c)(3)(A). Note that the self-certification form, HUD-5382, is the lowest barrier means of verifying eligibility for VAWA protection and it is given the exact same weight under the statute as a restraining order or police report. Survivors should be encouraged to use this means of verification if other forms are not immediately available or safe to obtain.

2. a letter from an employee, agent, or volunteer of a victim service provider, an attorney, medical professional, or mental health professional from whom the survivor sought assistance relating to the effects of abuse,⁹
3. a record of a federal, state, tribal, territorial or local law enforcement agency, court, or administrative agency,¹⁰ or
4. at the housing provider's discretion, any statement or other evidence by the survivor.¹¹

Attorneys should work closely with their clients to determine what type of documentation is safest and most accessible, always working to prioritize survivor privacy and thinking carefully about the record you are building to support your client's request for protection.

The only exception to the rule that survivors get to choose how to document their eligibility for VAWA is when the housing provider receives conflicting evidence about who is the survivor and who is the perpetrator.¹² This may occur if both the survivor and the perpetrator seek the protection of VAWA. In those cases, the housing provider should not go on a fact-finding mission to determine who is or is not the survivor; however, they can ask for third-party verification to help resolve the conflicting information.¹³

4. Confidentiality

VAWA includes a powerful mandate that housing providers keep information related to a request for protection under VAWA confidential, and that documentation provided in support of a request be kept out of

⁹ 34 U.S.C. § 12491(c)(3)(B). Third-party verification may be more easily available than a police report or court record, but the letter must comply with very specific requirements to meet the standard set forth in the statute: it must be signed by both the third-party and the survivor, and it must state under the pains and penalties of perjury that the verifier believes that the incident of abuse meets the requirements of VAWA.

¹⁰ 34 U.S.C. § 12491(c)(3)(C).

¹¹ 34 U.S.C. § 12491(c)(3)(D).

¹² 34 U.S.C. § 12491(c)(7).

¹³ 34 U.S.C. § 12491(c)(7).

shared databases to avoid disclosure to other entities or individuals.¹⁴ This protection requires particular care on the part of the housing provider to safeguard information about a tenant's survivor status and is especially important for survivors who live with their perpetrators.

B. Relocating to Safe Housing

1. Emergency Transfers

Under VAWA, survivors who need to relocate for safety reasons may seek an emergency transfer to another apartment.¹⁵ Every covered housing provider should have an emergency transfer plan that allows survivors to transfer to another available and safe apartment under the program.¹⁶ To access a transfer, the survivor needs to request a transfer in writing and needs to believe that they are threatened with imminent harm from further violence or assert that they are a victim of sexual assault and that the sexual assault occurred on the premises during the last 90 day period.¹⁷ The housing provider's emergency transfer plan must allow a survivor to make an internal transfer when a safe unit is immediately available.¹⁸ An internal transfer refers to a unit where the tenant would not be categorized as a new applicant (depending on the size of the housing provider and the type of program, the internal transfer may only afford a survivor the right to move to another apartment in the same building or development). An emergency transfer plan must also detail the reasonable efforts the housing provider will take to assist a tenant who wishes to make an external emergency transfer (to a unit where the survivor would be considered a new applicant) when a safe unit is not immediately available.¹⁹

Given that internal transfers are usually not safer than staying in place, and the housing provider requirements for facilitating external transfers are vague under current HUD regulations, emergency transfers have not been

¹⁴ 34 U.S.C. § 12491(c)(4).

¹⁵ 34 U.S.C. § 12491(e).

¹⁶ 34 U.S.C. § 12491(e)(1).

¹⁷ 34 U.S.C. § 12491(e)(1).

¹⁸ 24 C.F.R. § 5.2005(e)(5).

¹⁹ 24 C.F.R. § 5.2005(e)(5)-(7).

as impactful as advocates had hoped. If a survivor lives in public housing, they may have more options for internal transfers that can relocate them to a safer location (because the housing provider may have multiple developments throughout the city or town), but due to historically low vacancy rates, waitlists for transfers can be so long that survivors are effectively unable to access anything remotely close to “emergency” relocation.

2. Early Lease Termination

Although Section 8 Voucher holders are normally locked into their leases for the first year of a tenancy, VAWA allows survivors to break their lease for safety reasons without jeopardizing their housing benefit.²⁰ This safe harbor is crucial for survivors who would otherwise be forced to choose between relocating for safety reasons or holding on to a housing voucher that would otherwise make housing in the private market affordable for their entire lives. Effective representation in these cases involves advocacy with the landlord as well as with the housing authority to ensure that the client is not penalized by either when relocating to safe housing.

C. Keeping Housing When the Perpetrator is a Co-Tenant or Household Member

1. Bifurcation of lease or voucher

A covered housing provider can “bifurcate” a lease or a voucher to remove the perpetrator while allowing the survivor to remain.²¹ The housing provider must follow all applicable laws in evicting or terminating the perpetrator but can allow the survivor to remain housed in the process. This remedy allows a survivor to remain housed even if the perpetrator is removed, even though they were jointly and severally liable with the perpetrator under the lease. While bifurcation holds a lot of promise for many survivors, for others it can be difficult to access during a family break-up because it often involves rendering the perpetrator homeless. While many survivors do want stable, affordable housing, many may not feel safe

²⁰ 42 U.S.C. § 1437f(r)(5).

²¹ 34 U.S.C. § 12491(b)(3)(B)(i).

taking the drastic step of collaborating with the housing provider to dispossess the perpetrator of their home.

If an abuser is removed through this process and the survivor is not already a tenant, the housing provider should give the remaining resident 90 days to establish eligibility for the program or to find alternate housing if they are found ineligible.²² In the Section 8 Housing Choice Voucher program, housing providers are required to ensure that a survivor retains assistance if a family breakup and bifurcation are due to abuse.²³

2. Abuse Prevention and Stay Away Orders

VAWA also requires housing providers to honor court orders like civil protection orders among household members.²⁴ If a survivor obtains a restraining order that requires the perpetrator to vacate the home, a housing provider must honor the restraining order even if the perpetrator is on the lease.

An abuse prevention order generally does not terminate a tenancy or tenancy obligations, so while a perpetrator may be barred from returning to a particular apartment for the period of time specified in the order, their tenancy obligations are usually unchanged by the order. In light of this, survivors with abuse prevention orders against their perpetrators may decide to pursue bifurcation to permanently remove a perpetrator from the lease or voucher because if they do not, the perpetrator's income continues to count toward the household's rent share. If the perpetrator's income continues to count toward the household rent share, the survivor and their household may fall behind on rent (if the perpetrator stops contributing) and be exposed to eviction for non-payment. In these difficult situations, bifurcation may be the best remedy available for housing stabilization.

²² 34 U.S.C. § 12491(b)(3)(B)(ii).

²³ 24 C.F.R. § 982.315(a)(2).

²⁴ 34 U.S.C. § 12491(b)(3)(C)(i).

D. Keeping Subsidized Housing When the Landlord Takes Action Against the Survivor

1. Preventing Eviction

Survivors often face eviction by a landlord after experiencing gender-based violence or assault. One of the most powerful housing protections in VAWA is the affirmative defense to eviction; survivors may not be evicted on the basis that they are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.²⁵ This means that a survivor can raise a VAWA defense to any basis for eviction that is a direct result of abuse.²⁶ Furthermore, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking cannot be considered a “serious or repeated lease violation” by the victim²⁷ and housing providers cannot evict a victim solely for criminal activity directly related to abuse.²⁸

HUD has published guidance for housing providers that explains the connection between factors that may seem unrelated to gender-based violence but are in fact a direct result of abuse.²⁹ HUD gives multiple examples of possible “adverse factors” that could be a direct result of abuse and therefore should not be used to evict a survivor if the survivor asserts a VAWA defense.³⁰ These examples include non-payment of rent or inconsistent rental payment, property damage, noise complaints, drug activity, sex work, and crimes committed in self-defense.³¹ Attorneys should think creatively and expansively about how to assert the nexus between the basis for eviction and the experience of sexual assault to substantiate a VAWA defense.

²⁵ 34 U.S.C. § 12491(b)(1)-(2).

²⁶ 24 C.F.R. § 5.2005(b)(1).

²⁷ 34 U.S.C. § 12491(b)(2)(A).

²⁸ 34 U.S.C. § 12491(b)(3)(A).

²⁹ See U.S. DEP’T OF HOUS. AND URB. DEV., OFF. OF PUB. AND IND. HOUS., *H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents* (June 30, 2017) and U.S. DEP’T OF HOUS. AND URB. DEV., OFF. OF PUB. AND IND. HOUS., *PIH-2017-08 (HA), Violence Against Women Reauthorization Act of 2013 Guidance* (May 19, 2017).

³⁰ H 2017-05 at 8-10 and PIH-2017-08 (HA) at 7-8.

³¹ H 2017-05 at 8-10 and PIH-2017-08 (HA) at 7-8.

HUD outlines a process for housing providers to undertake to determine whether the “adverse factor” (i.e., the basis for eviction) is a direct result of domestic violence, dating violence, sexual assault, or stalking.³² After receiving information from the survivor that the reason for the eviction is a direct result of sexual assault, the housing provider should consider the information and may only ask for additional documentation if what has been provided is ambiguous as to who is the survivor and who is the perpetrator.³³ The housing provider must then make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of abuse and notify the survivor in writing of the determination.³⁴ If the survivor disagrees with the determination, they can (and should) appeal it through the program’s appeal or grievance procedures, or seek judicial review (as appropriate).³⁵

Attorneys representing survivors facing eviction for reasons directly related to their experience of sexual assault should raise the VAWA defense in the eviction proceeding and press the housing provider at the same time to comply with their obligations set forth in the HUD guidance to engage in a case-by-case assessment of whether the adverse factor is a direct result of sexual assault. If the housing provider fails to engage in this process in good faith, attorneys should consider filing a complaint with HUD’s Office of Fair Housing and Equity (see below for more details on VAWA enforcement).

Attorneys should push back on courts hearing eviction matters probing into the basis of a survivor’s VAWA defense. Instead, the inquiry surrounding a VAWA defense should be about whether the survivor invoked the defense, provided statutorily sufficient documentation of eligibility (which is dispositive on the question of whether someone is an eligible survivor for purposes of invoking the VAWA defense), and whether they have established a nexus between the experience of sexual assault and the basis for eviction.

³² H 2017-05 at 7-10 and PIH-2017-08 (HA) at 9.

³³ H 2017-05 at 10-11 and PIH-2017-08 (HA) at 9.

³⁴ H 2017-05 at 11 and PIH-2017-08 (HA) at 9.

³⁵ H 2017-05 at 11 and PIH-2017-08 (HA) at 9.

2. Right to Report Crime

In response to the proliferation of local nuisance ordinances that incentivize the eviction of tenants who call the police for emergency assistance, VAWA's most recent reauthorization prohibits covered housing providers from taking action against anyone for seeking law enforcement (or other emergency) protection when they experience domestic violence, dating violence, sexual assault, or stalking.³⁶ This protection preempts any local ordinances that may compel landlords to take action against residents who call emergency services for help.

3. Anti-Retaliation

VAWA also prohibits retaliation against anyone who asserts or assists another in asserting their VAWA rights.³⁷ This means that a housing provider cannot coerce, intimidate, threaten, interfere with, or retaliate against any person who either exercises their rights or helps another access their housing rights under VAWA.

E. VAWA Exceptions

While a zealous attorney can usually find a way to help a survivor keep VAWA-covered housing, there are some narrow exceptions to VAWA that attorneys should be familiar with. First, a survivor can be evicted for reasons that are not related to their experience of abuse, and second, a housing provider may proceed with an eviction if it can demonstrate an actual and imminent threat to other tenants or housing provider staff if the tenant is not evicted.³⁸ The second exception can only be invoked if the housing provider has objective evidence of words, gestures, actions, or other indicators that demonstrate that the risk of danger is real, would occur in an immediate time frame, and could result in death or serious bodily harm.³⁹ The factors a housing provider should consider when evaluating "actual and imminent threat" include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will

³⁶ 34 U.S.C. § 12495(b)(1)-(2).

³⁷ 34 U.S.C. § 12494.

³⁸ 24 C.F.R. § 5.2005(d)(2)-(3).

³⁹ 24 C.F.R. § 5.2005(d)(3); 24 C.F.R. § 5.2003.

occur, and the length of time before the potential harm would occur.⁴⁰ In other words, this exception should not be invoked based on assumptions or stereotypes, but rather on an in-depth and case-by-case evaluation of the specific circumstances. HUD regulations are unequivocal that this exception should only be used by housing providers when no other actions could be taken to reduce or eliminate the threat including, but not limited to, a transfer of the survivor, a lock change, barring the perpetrator from the property, allowing the survivor to be temporarily absent from the unit, or helping the victim access local support services.⁴¹ Housing providers cannot subject survivors to higher or different standards than other tenants; an eviction should not be instituted against a survivor if the housing provider's general policy is not to evict non-survivor tenants for the same reasons.⁴²

F. VAWA Enforcement

HUD and the U.S. Attorney General are charged with implementing and enforcing VAWA consistent with the rights and remedies provided for in the Fair Housing Act.⁴³ Non-compliance with VAWA's housing protections can be reported to HUD through the Office of Fair Housing and Equity (FHEO) within a year of the non-compliance.⁴⁴ Survivors may file a complaint with FHEO using the online form,⁴⁵ which will trigger an investigation by HUD.⁴⁶ The investigation involves interviews with the complainant and respondent and collecting evidence about the alleged non-compliance. At the

⁴⁰ 24 C.F.R. § 5.2003.

⁴¹ 24 C.F.R. § 5.2005(d)(4); see also H 2017-05 at 38-39 and PIH-2017-08 (HA) at 48.

⁴² 34 U.S.C. § 12491(b)(1).

⁴³ 34 U.S.C. § 12495(d).

⁴⁴ U.S. DEP'T OF HOUS. AND URB. DEV., *FHEO-2023-01, Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA)* (Jan. 20, 2023). See generally U.S. DEP'T OF HOUS. AND URB. DEV., OFF. OF FAIR HOUS. AND EQUAL OPPORTUNITY, *Your Rights Under the Violence Against Women Act (VAWA): How to File a Complaint, Coverage, and Protections*, https://www.hud.gov/program_offices/fair_housing_equal_opp/VAWA (last visited Nov. 20, 2024).

⁴⁵ The online complaint is located at: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.

⁴⁶ 42 U.S.C. § 3610(a)-(b).

conclusion of the investigation (which is supposed to occur within 100 days of the complaint), both sides will receive the investigator's written findings.

Concurrent with the investigation is a conciliation process, also undertaken by a HUD employee.⁴⁷ The complaint can be resolved if the parties agree to enter into a settlement agreement through conciliation. An agreement can include compensation for actual damages, injunctive relief, equitable relief, payment of reasonable attorney's fees, and payment of civil penalties (if they are in the public interest).

If the investigation results in a decision that there is no reasonable cause to believe that a violation of VAWA has occurred, the complaint will be dismissed.⁴⁸ Survivors may still petition for reconsideration in writing to FHEO.⁴⁹

If FHEO's investigation determines that there is reasonable cause to believe discrimination occurred, it will issue a Determination of Reasonable Cause and a Charge of Discrimination. Both sides have twenty days to decide whether to remove the matter to Federal District Court, and if they do not, the case is heard by a HUD Administrative Law Judge (ALJ).⁵⁰ The parties have expedited discovery rights and the administrative proceeding should commence no later than 120 days after the charge is issued.⁵¹ The parties should have a decision from the ALJ within 60 days of the hearing.⁵² If the ALJ finds that the respondent has violated VAWA, they will issue an order for relief which can include actual damages, injunctive or

⁴⁷ 42 U.S.C. § 3610(b).

⁴⁸ 42 U.S.C. § 3610(g)(3).

⁴⁹ Petitions for reconsideration should be sent to: Director, FHEO Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 5226, Washington, DC 20410-2000. For additional information about FHEO's complaint and investigation process visit their website at: https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process

⁵⁰ 42 U.S.C. § 3612(a).

⁵¹ 42 U.S.C. § 3612(g)(1).

⁵² 42 U.S.C. § 3612(g)(2).

other equitable relief, civil penalties that are in the public interest, and attorney's fees.⁵³

Survivors can also enforce VAWA by filing a Fair Housing Act claim in federal court. As VAWA does not have a private right of action, it cannot be enforced directly by an aggrieved survivor but can be the basis for a sex-based discrimination claim under the Fair Housing Act. (See below.)

IV. ACCESSING AFFORDABLE HOUSING

While affordable housing is not universally available to those who need it, survivors and their attorneys should be aware of the full range of subsidized housing options that they can apply for. Because of the low subsidized housing inventory, survivors should be on as many waitlists as possible to increase the likelihood that they will get a spot and apply with as many preferences and priorities as they qualify for.

A. Public Housing and Vouchers

Assisted housing may include public housing and voucher assistance, both of which limited to low-income families and individuals. To qualify for public housing, a survivor's household income cannot exceed 80% of the median income for the county or jurisdiction.⁵⁴ To qualify for voucher assistance, the household income generally cannot exceed 80% percent of the median income for the area, with preference in placement given to households whose income does not exceed 30% of the average median income for the area.⁵⁵ Income limits vary from jurisdiction to jurisdiction, so a survivor may be eligible at one public housing agency (PHA) but not at another. Some housing authorities and agencies have "priorities" or "preferences" for their federal programs.

Survivors seeking public housing must go through the same (lengthy) application and screening process as other applicants. A survivor may apply to any housing authority; they do not have to live in the city or town

⁵³ 42 U.S.C. §§ 3612(g)(3), 3612(p).

⁵⁴ 42 U.S.C. § 1437a(b)(2)(A)-(C); 24 C.F.R. § 960.201.

⁵⁵ 42 U.S.C. § 1437a(b)(2); 24 C.F.R. §§ 982.201(a)-(b), 5.603(b).

currently to be eligible to submit an application.⁵⁶ However, if they wish to live in a particular community, they must apply with the PHA for that specific community. Survivors can apply to as many PHAs as they choose. Given the long waiting lists, even for priority applicants, survivors may want to apply to many different PHAs.

The federal Housing Choice Voucher Program (“Section 8”) allows eligible families to choose and lease affordable, privately-owned, rental housing.⁵⁷ If a survivor wishes to obtain a Section 8 voucher, they must apply separately at each individual PHA or, in some jurisdictions, at the regional non-profits (RNP) that administer Section 8 programs.⁵⁸ As discussed above, there are income guidelines for a rental voucher. Financial eligibility will vary depending on the PHA.⁵⁹ Those who qualify for Section 8 vouchers pay approximately 30% of their income toward rent. The housing authority pays the remainder directly to the landlord.⁶⁰

Long waiting lists make these vouchers difficult to obtain. However, each voucher program allows for priority status in certain cases.⁶¹ Federally funded developments may use their own priority schemes, which may or may not include priorities for victims of violent crime generally, or victims of domestic violence, sexual assault, dating violence, or stalking, in particular.⁶²

⁵⁶ Local public housing authorities are prohibited from adopting a residency *requirement* but can utilize a residency *preference*. 24 C.F.R. § 960.206.

⁵⁷ See *generally*, 24 C.F.R. § 982.1(a).

⁵⁸ See *generally*, Emily Cooper & Lisa Sloane, SECTION 8 MADE SIMPLE: USING THE HOUSING CHOICE VOUCHER PROGRAM TO END CHRONIC HOMELESSNESS (2016), <https://www.tacinc.org/resources/section-8-made-simple/>; CTR. ON BUDGET AND POL’Y PRIORITIES, *Introduction to the Housing Voucher Program* (May 15, 2009), <https://www.cbpp.org/research/introduction-to-the-housing-voucher-program> (families can apply for vouchers at any agency that administers the voucher program).

⁵⁹ 24 C.F.R. § 982.201.

⁶⁰ See U.S. DEP’T OF HOUS. AND URB. DEV., *Housing Choice Vouchers Fact Sheet*, https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Nov. 20, 2024).

⁶¹ 24 C.F.R. §§ 982.54(d); 982.202; 982.203.

⁶² *Id.*

With a tenant-based voucher from a PHA, a tenant may live anywhere in the state and, after the first year, may live anywhere in the country.⁶³ Once an applicant's name comes to the top of the list for the units to which they applied, they will be called into the PHA office. If they are granted a priority, the PHA will determine whether they still qualify for the priority and will check their income, past tenancy history, and criminal history. If they meet all of the eligibility criteria, they will be given a voucher that is valid for a set period of time. They must secure housing before the voucher expires. As described above, the specific time allocated varies by PHA, but it is often 120 days (with the possibility of extensions). Many PHAs grant extensions or toll the time period if a survivor cannot search for housing because of a disability or for some other allowable reason.⁶⁴

Project-based vouchers may also be a component of a PHA's housing choice voucher program. Under this portion of the program, PHAs enter into assistance contracts with private owners for specified units and a specified term.⁶⁵ To obtain a project-based voucher, a survivor must apply at each particular PHA, just as they would for a tenant-based voucher. The PHA will then refer eligible applicants on the waiting list to properties that have project-based voucher assistance when units become vacant.⁶⁶ Unlike tenant-based vouchers, which are linked to the tenant and therefore allow for continued assistance to a survivor who permissibly terminates their lease to move to new housing, project-based voucher assistance is tied to the unit.⁶⁷ Therefore, when a survivor moves from a project-based unit, they may not have a right to continued housing assistance.

⁶³ 24 C.F.R. § 982.353(a)-(b).

⁶⁴ 24 C.F.R. § 982.303(a)-(b). The voucher must be valid for at least 60 days and extensions may be granted at the discretion of the PHA. Federal law leaves the determination of search time, extensions, tolling, priorities and other details of the Section 8 program to the discretion of each PHA, which must put these details in their Section 8 Administrative Plan. This is a public record and available at each PHA.

⁶⁵ See U.S. DEP'T OF HOUS. AND URB. DEV., *Project Based Vouchers*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project (last visited Nov. 20, 2024).

⁶⁶ *Id.*

⁶⁷ See 24 C.F.R. §§ 982.1(b).

B. Privately Owned and Managed Subsidized Housing

A survivor might want to apply to several privately owned subsidized developments. These are privately owned and operated, and funded by either the federal government, a state government, or a combination of both. The survivor must apply at each particular development or management company serving that development. For a list of privately owned subsidized housing developments, contact the survivor's PHA. This information is also available on HUD's website, which provides a link to search for subsidized housing in each state.⁶⁸

C. Priorities and Preferences

Due to the overwhelming demand for public and subsidized housing, a new unit may have a long waitlist. Public housing and subsidy programs are subject to various local, state, and federal screening processes and preferences.⁶⁹ Survivors may qualify for high priority or emergency status when applying for some public housing. Because of the importance of such status in reducing the wait for public housing, attorneys will want to determine what priority categories are available in the PHA or housing unit desired, and whether and how a survivor may fit into one or more of the priority status categories. The best way to learn about which preferences are available is to call the PHA. To determine whether a survivor is eligible for priority status, attorneys will want to carefully consider the facts of the specific assault and make sure to have the information necessary to make an assessment.

Federal law permits each PHA to set its own priorities for its public housing and Section 8 programs.⁷⁰ The PHA's priorities for the public housing programs are outlined in its Public Housing Occupancy Plan. The PHA's

⁶⁸ See HUD's Local Office Directory, U.S. DEP'T OF HOUS. AND URB. DEV., <https://www.hud.gov/local> for a link to each state's local housing authority's page.

⁶⁹ For important laws and regulations governing eligibility, see 42 U.S.C. § 1437a and 24 C.F.R. § 960 (federally subsidized housing); 42 U.S.C. § 1437f and 24 C.F.R. § 982 (Section 8); 42 U.S.C. § 1436a and 24 C.F.R. § 5 (general HUD applicability requirements).

⁷⁰ See 42 U.S.C. § 1437f(d)(1)(A); 24 C.F.R. § 960.206(a)(1) ("The PHA may adopt a system of local preferences for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA.").

Section 8 priorities are in its Section 8 Administrative Plan. Both are public documents and should be provided upon request if they are not published on the PHA's website.

A PHA may opt (or decline) to give priority to local residents; survivors of natural disasters or residential condemnations; people who are homeless; survivors of domestic violence; or those who must relocate to avoid retaliation.⁷¹ Most PHAs, if they have priorities, will give them to those who are homeless or imminently homeless. Ideally, the PHA to which your client is applying will have already established sexual assault as a priority. If not, your client may be able to qualify for one or more of the other established priorities, depending on the PHA. As discussed below, each priority requires different forms of proof. Establishing this proof is often difficult for survivors who may have vacated a unit quickly for safety reasons, fear reprisal (e.g., government witness), or are otherwise unable to safely provide the evidence required. When claiming sexual assault as a priority area, the survivor will have to show a connection between the assault and their current or imminent homelessness.

If the survivor's perpetrator is a household member, they may qualify for a domestic violence priority. To be eligible for this priority, the survivor must usually be or will imminently become homeless due to domestic violence committed by a household member. PHAs usually seek some proof of domestic violence, such as a court order, police report, hospital report, statement of a neutral third party, etc. Although the survivor does not have to be in a shelter to be eligible for this priority, they likely will not be considered "imminently" homeless if more than six months have passed since the assault.

A survivor may be eligible for a reprisal priority (sometimes known as a "relocation to avoid reprisal" priority) if the perpetrator is not a household member and the survivor is not eligible for a domestic violence priority. A reprisal priority typically applies when a survivor has been involved in the civil or criminal court system or has contacted the police, and, in the opinion of a law enforcement official, needs to relocate for their safety. The

⁷¹ See 24 C.F.R. § 960.206.

survivor will usually need a law enforcement official to document this need for relocation.

To be eligible for a homeless priority, some PHAs require that the applicant be in a shelter. This requirement may be especially onerous for survivors who are not eligible for shelter. Some PHAs will not consider someone who is temporarily staying with friends or relatives “homeless”. The applicant will usually have to obtain certification of homelessness from the shelter provider. Given the lack of short-term housing for sexual assault survivors, obtaining such documentation may be difficult. In addition, because of the traumatic effects of sexual assault, many survivors will feel unsafe staying in a homeless shelter after an assault, and this can make it difficult to provide the necessary documentation. A written statement from a social worker, sexual assault crisis counselor, or physician, which explains why the survivor is not in emergency shelter (e.g., that they are too traumatized to reside in a shelter but have no safe and reliable place to live) may be acceptable to the PHA in lieu of shelter certification. If the PHA determines that the survivor voluntarily made themselves homeless by leaving their last home, detail the safety or psychological reasons why they fled their previous residence.

D. Considerations for Immigrant Survivors

Applying for and/or receiving government-subsidized housing assistance may have unique – and grave – consequences for a non-citizen or undocumented sexual assault survivor. Take special care in any housing case where the client is not a U.S. citizen. If you are not an expert in immigration law, you should consult with an immigration expert before pursuing a government-funded housing remedy. (For additional information on serving non-citizen sexual assault survivors, see *Serving Immigrant Survivors of Sexual Assault*.)

A survivor does not have to be a citizen or permanent resident to receive government-assisted housing. However, they and each member of their household must be an “eligible non-citizen”⁷² to receive a full housing

⁷² See 24 C.F.R. § 5.506(a); 42 U.S.C. § 1436a (Eligible non-citizens include lawful permanent residents, registry immigrants (admitted for permanent residence by the U.S. Attorney General

subsidy from a federally funded housing program. If some but not all of the household members are citizens or “eligible non-citizens” (i.e., some of the household members are “out of status” with the Department of Homeland Security,⁷³ and thus are present in the U.S. illegally), the household is eligible only for partial federal housing assistance. The assistance will be pro-rated, depending on the percentage of household members who are citizens or “eligible non-citizens.”

When a survivor applies for federal housing under “eligible non-citizen status,” the information provided to the housing agency will be confirmed with the Department of Homeland Security (DHS) database. The verification of “eligible non-citizen” status is the only automatic DHS check the housing authority will conduct. Housing authorities and owners of subsidized housing are not required to verify information with DHS or report the client’s status to DHS. State privacy laws also prohibit housing programs from sharing a client’s information without authorization unless they are required to do so by law.

V. ADDITIONAL HOUSING PROTECTIONS

Federally funded housing programs help around five million households nationally. A smaller group of tenants live in subsidized housing that is funded by state or other local programs.⁷⁴ But the vast majority of the 45 million renters⁷⁵ in the United States live in private market, unsubsidized housing, which means that most survivors do not have access to the

and eligible for citizenship), refugees or asylees, conditional entrants, parolees, withholding grants, people granted 1986 amnesty status, residents of the Marshall Islands, Micronesia, Palau, or Guam, or victims of trafficking or relatives of such victims.).

⁷³ Formerly known as the Immigration and Naturalization Service, or INS.

⁷⁴ Attorneys should look to regulations promulgated by state and local housing departments to understand the rights of survivors in locally funded subsidized housing.

⁷⁵ See JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., HARV. GRADUATE SCH. OF DESIGN AND HARV. KENNEDY SCH., AMERICA’S RENTAL HOUSING 2024 (Loren Berlin ed., 2024), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf.

protections of VAWA.⁷⁶ These survivors may have to look to other laws for housing protection.

A. Using the Federal Fair Act to Protect Survivor Housing

Fair housing laws can be powerful tools to help protect survivor housing rights. Many of the fair housing laws described below apply to a broad cross-section of housing, so even if VAWA does not apply to your client, and laws in their jurisdiction are not helpful, federal fair housing laws may provide some relief.

The Federal Fair Housing Act (FHA) makes it illegal to discriminate against people on the basis of their race, color, religion, sex, familial status, disability, or national origin in the marketing, sale, and rental of housing.⁷⁷ The FHA applies to most housing; the only exemptions are: 1. single-family homes sold or rented by someone who does not own more than three such homes, and 2. an owner-occupied home that contains housing for four or fewer families.⁷⁸

1. Sex Discrimination

While being a survivor of sexual assault is not a protected class under the FHA, attorneys have successfully argued that the FHA applies to survivors

⁷⁶ See Caroline LaPorte, *Policy Brief – The Violence Against Women Act Housing Provisions and Impacts to Indigenous Survivors of Domestic and Sexual Violence*, STTARS INDIGENOUS SAFE HOUSING CENTER, NAT'L INDIGENOUS WOMEN'S RES. CTR., (Dec. 23, 2022), <https://www.niwrc.org/resources/policy-brief/policy-brief-violence-against-women-act-housing-provisions-and-impacts>. Some tribal housing programs may be covered by VAWA; however, Indian Housing Block Grants are exempt from VAWA protections. Tribes may enact their own protections for survivors, which will vary between sovereign nations.

⁷⁷ 42 U.S.C. § 3604.

⁷⁸ 42 U.S.C. § 3603(b).

of gender-based violence through a sex discrimination theory,⁷⁹ and HUD has recognized that these claims have merit.⁸⁰

The FHA can be used to protect survivors from discrimination when trying to access housing, it can be used as a defense against eviction, and it can be a tool to help ensure that survivors are being treated equally during their tenancies. There are two ways to establish discrimination under the FHA. The first is to argue that a housing practice is intentionally discriminatory and constitutes disparate treatment based on sex. These types of claims can challenge policies and practices that single out tenants based on their sex or stereotypes about their sex.

The second approach to asserting an FHA claim is through a disparate impact theory, which can be advanced to challenge facially neutral policies that have a disproportionate impact on survivors based on their sex. To succeed in a disparate impact claim, attorneys need to establish a robust causal connection (through statistics) between the challenged policy and the disproportionate harm to members of the protected class.⁸¹ If the housing provider can show a valid interest served by the policy, then the burden shifts back to the plaintiff to prove that those interests could be served by another practice that has a less discriminatory effect on the protected group.⁸²

⁷⁹ See *Butler v. Sundo Capital, LLC*, 559 F. Supp. 3d 452 (W.D. Pa. 2021). Note that sex discrimination includes discrimination based on gender identity and sexual orientation. See Exec. Order No. 13988, 86 Fed. Reg. 7024 (Jan. 25, 2021), available at <https://www.govinfo.gov/content/pkg/DCPD-202100057/pdf/DCPD-202100057.pdf>.

⁸⁰ See generally, Sara K. Pratt, U.S. DEP'T OF HOUS. AND URB. DEV., *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011).

⁸¹ *Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 521 (2015).

⁸² *Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 527 (2015).

2. Sexual Harassment

Sexual harassment by a landlord (or agent/employee of the landlord) constitutes sex-based discrimination under the FHA⁸³ and may also violate state fair housing laws. Sexual harassment could involve unwanted touching or groping, unwelcome sexual comments or advances, requesting sexual acts in exchange for housing benefits, or retaliation against someone who resisted sexual advances. The FHA prohibits both *quid pro quo* sexual harassment as well as sexual harassment that creates a hostile living environment.⁸⁴ *Quid pro quo* harassment involves a housing provider (or someone affiliated with a housing provider) implicitly or explicitly conditioning access to tangible housing benefits on engaging in sexual conduct. Survivors can assert *quid pro quo* discrimination even if they have acquiesced to these demands. Hostile environment harassment involves unwelcome conduct that is so severe and pervasive that it interferes with a person's right to enjoy their home.

Tenants, their household members, guests, and even applicants for housing are protected from sexual harassment under the FHA. The unwanted conduct need not be motivated by sexual desire to qualify as sexual harassment; harassment based on someone's sex, sexual orientation, or gender identity qualifies as sexual harassment even if it is motivated by hostility rather than sexual desire.⁸⁵ The harassment need not have resulted in loss of housing to be actionable. While the law is clear that landlords are directly or vicariously liable for anyone they employ, courts are split as to whether landlords are affirmatively liable for failing to prevent sexual harassment by other tenants.⁸⁶

⁸³ See U.S. DEP'T. OF JUST., *What Is Sexual Harassment in Housing?* (2018), <https://www.justice.gov/crt/what-sexual-harassment-housing>.

⁸⁴ 24 C.F.R. § 100.600.

⁸⁵ *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63054, 63058 n.14 (Sept. 14, 2016), available at <https://www.federalregister.gov/d/2016-21868>.

⁸⁶ *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63054, 63067 (Sept. 14, 2016), available at <https://www.federalregister.gov/d/2016-21868> ("In the context of the rule, liability for discriminatory conduct by a "third-party" is appropriately limited to a non-employee or non-agent

3. Disability Discrimination

The FHA also prohibits housing discrimination against survivors with disabilities during the application process and during their tenancies.⁸⁷ Under the FHA, a person with a disability is defined as someone who has a physical or mental condition that substantially impairs one or more major life activities.⁸⁸ The FHA prohibits any negative treatment of tenants based on their disability, but it also affords people with disabilities the affirmative right to receive reasonable accommodations and modifications from their landlords.⁸⁹ This section will focus primarily on requests for reasonable accommodations, as they come up more often in the representation of survivors.

a. Modifications

The FHA requires that tenants with disabilities be allowed to make reasonable modifications to the premises.⁹⁰ A “reasonable modification” is a structural change to a unit or building necessary to enable a tenant with a disability to use and enjoy their housing.⁹¹ Examples of reasonable modifications include removing a carpet for someone with respiratory conditions or installing a security system or camera for someone with PTSD. Under the FHA, the tenant is generally expected to pay for reasonable modifications to the premises.

who engaged in quid pro quo or hostile environment harassment of which the housing provider knew or should have known and had the power to correct.”).

⁸⁷ Section 504 of the Rehabilitation Act (“Section 504”) and the Americans with Disabilities Act (“ADA”) also protect survivors with disabilities from discrimination in housing. Section 504 applies only to housing providers that receive federal funds, but the ADA applies to housing that qualifies as a public accommodation (such as shelters) as well as housing that is offered by a public entity (regardless of whether that entity is federally funded). While these protections may be duplicative of FHA protections in certain circumstances, look to these laws if they apply to your client’s housing to see if you can assert any additional benefits on their behalf. For additional discussion on housing protections for survivors with disabilities, see *Representing Survivors of Sexual Assault with Disabilities*.

⁸⁸ See 24 C.F.R. § 100.201.

⁸⁹ 42 U.S.C. § 3604(f)(3).

⁹⁰ 42 U.S.C. § 3604(f)(3).

⁹¹ See 24 C.F.R. §§ 100.201, 100.203.

b. Reasonable Accommodations

Under the FHA, tenants with a qualifying disability are entitled to a reasonable accommodation. A “reasonable accommodation” is a change or adjustment to a rule, policy, practice or service that is necessary to afford the person with a disability an equal opportunity to use and enjoy the dwelling.⁹² A tenant can make a reasonable accommodation request at any time.⁹³ In response to a request for accommodations, a housing provider is allowed to ask for medical verification but cannot demand access to medical records.⁹⁴ A landlord should grant a request for a reasonable accommodation unless they can establish one of the following exceptions:

1. that the tenant poses a direct threat to other tenants or staff,⁹⁵
2. that the accommodation would constitute a fundamental alteration of the housing program, or
3. that it would place an undue financial or administrative burden on the housing provider.⁹⁶

Survivors or their attorneys need to request accommodations in a way that a reasonable person could understand as a request. They do not need to use the magic words “reasonable accommodation” or fill out any particular form to make the request; however, best practice is to make this request in

⁹² 24 C.F.R. § 100.204.

⁹³ See U.S. Dep’t. of Just. & U.S. Dep’t of Hous. and Urb. Dev, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, 6 (May 17, 2004) available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

⁹⁴ See U.S. Dep’t. of Just. & U.S. Dep’t of Hous. and Urb. Dev, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, 13-14 (May 17, 2004) available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

⁹⁵ 24 C.F.R. § 100.202(d).

⁹⁶ *Giebeler v. M & B Associates*, 343 F.3d 1143, 1157 (9th Cir. 2003) (quoting *Howard v. City of Beavercreek*, 276 F.3d 802, 806 (6th Cir. 2002)); see also U.S. DEP’T. OF JUST. & U.S. DEP’T OF HOUS. AND URB. DEV, *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act*, 7 (May 17, 2004) available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

writing. The request must establish a nexus between the person's disability and the requested accommodation.

[PRACTICE TIP: Attorneys should work closely with medical providers to write verifications that both meet the legal standards and protect the survivor's privacy as much as possible. To protect physician-patient privacy, the survivor might want the verification from someone other than their primary care provider. The letter should be on the provider's letterhead and signed by the provider. The letter should contain the following information: how long the provider has been treating the survivor, that the survivor has a physical or mental impairment that substantially impacts one or more major life activities (and describe those major life activities briefly), the requested accommodation, and how that accommodation will allow the survivor to use and enjoy their home. The medical verification should not state a medical diagnosis (unless the survivor wants to disclose it) and should not invite the landlord to reach out with follow-up questions.]

Some examples of reasonable accommodations may include allowing a service animal⁹⁷ for someone with a vision impairment or mental health condition in spite of a no-pet policy,⁹⁸ assigning a parking spot that is closer to the entrance of a building for someone with mobility impairments or PTSD, requiring that a landlord not enter the premises without prior notice for an individual with PTSD, changing a rent due date for someone on a

⁹⁷ 24 C.F.R. § 100.204(b); see also U.S. DEP'T OF HOUS. AND URB. DEV, *FHEO-2020-01, Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act* (Jan. 28, 2020), available at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalINC1-28-2020.pdf>.

⁹⁸ For an in-depth discussion and analysis of the legal concerns related to emotional support animals, service animals and assistance animals, see GREAT LAKES ADA CENTER, *Assistance Animals Under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Air Carriers Access Act*, Brown, S. (2019), available at https://www.adagreatlakes.org/Publications/Legal_Briefs/BriefNo39_Service_Animals_and_the_ADA.pdf and GREAT LAKES ADA CENTER, *Service Animals and the ADA*, Taylor, B., & Weisberg, R. (2018), available at https://www.adagreatlakes.org/Publications/Legal_Briefs/BriefNo39_Service_Animals_and_the_ADA.pdf.

fixed income whose benefits are received after the first of the month, or delaying or dismissing an eviction in favor of a reasonable accommodation service plan to address the basis for eviction.

4. Enforcement of the FHA

HUD's Office of Fair Housing and Equal Opportunity (FHEO) receives and investigates allegations of housing discrimination within a year of the last act of discrimination. Survivors can also file suit in federal court within two years of the discrimination. (See prior section on VAWA enforcement for more information about the FHEO enforcement process.)

B. State and Local Housing Laws

While federal laws provide substantial housing protections to survivors, attorneys should also look to their state, tribal, municipal, or other local legal protections.⁹⁹ These laws may be more expansive than federal law or cover housing arrangements that are not covered by federal law. Attorneys should therefore become familiar with the local-level housing protections (if any) that apply in the jurisdiction where the survivor lives.

Many states have passed a state equivalent to the FHA; check your state's fair housing law to see if there are concurrent or more expansive protections available to survivors.¹⁰⁰ Other state housing protections for survivors may include DVSAS eviction defenses, early tenancy termination rights, lock-change rights, lease bifurcation laws, and anti-nuisance ordinance laws. Some states have laws that allocate financial liability for things like lock changes, moving expenses, and alternative housing to perpetrators. Finally, most states have abuse prevention laws that permit courts to exclude perpetrators from housing and grant possession of an apartment to the survivor, as well as address confidentiality programs that shield survivor housing records.

⁹⁹ See the National Housing Law Project's *Housing Rights of Domestic Violence and Sexual Assault Survivors: A State and Local Law Compendium* (2023) for each state's laws that impact the housing rights of survivors, available at <https://www.nhlp.org/wp-content/uploads/2024-NHLP-Compendium-of-Housing-Rights-for-DVS.pdf>.

¹⁰⁰ To find a state-by-state comparison of fair housing laws see TEMPLE UNIV. CTR. FOR PUB. HEALTH LAW RSCH., *State Fair Housing Protections*, LawAtlas.org, (Aug. 1, 2019), www.Lawatlas.org/datasets/state-fair-housing-protections-1498143743

Each law has its own documentation and eligibility standards. Some require survivors to have contact with the criminal legal system to qualify for housing protections, others allow third-party verifications from attorneys, medical treatment providers, or others to whom the survivor has disclosed the assault. A small number of states and localities allow for self-certification (as VAWA does) where the survivor can verify their own status as a survivor.

C. Tenant Rights

Tenants have a variety of non-federal law rights in private market housing. These rights can be used to protect the housing of survivors or to increase their safety at home. Most jurisdictions recognize a warranty of habitability that is implied by common or statutory law in all residential tenancies, and which cannot be waived by a lease agreement.¹⁰¹ This warranty typically covers the security and safety of the leased premises, requiring that the landlord provide safe conditions, and may serve as the basis for a landlord's liability for a sexual assault. The warranty typically covers the maintenance, provision, and repair of the *physical* facilities; it extends to common areas of the leased premises. A landlord generally does not need to have intended to breach the warranty, but simply must have had knowledge of the conditions, to be liable for a material breach of the implied warranty of habitability.¹⁰²

The jurisdictions that recognize a tenant's right to quiet enjoyment of their home will hold a landlord liable if they interfere with a tenant's use and enjoyment of the apartment. Even if a tenant owes rent, it may not be a bar to bringing a claim for breach of quiet enjoyment.¹⁰³ In the context of sexual assault, be aware that if the perpetrator was the landlord, the survivor will

¹⁰¹ See generally, 49 AM. JUR. 2D *Landlord & Tenant* § 449 (2005).

¹⁰² See, e.g., **California:** *Kwaitkowski v. Superior Trading Co.*, 123 Cal. App. 3d 324 (Cal. App. 1981) (landlord's failure to improve security while landlord had knowledge of risk constituted breach of the warranty of habitability); **Florida:** *Paterson v. Deeb*, 472 So. 2d 1210 (Fla. Dist. Ct. App. 1985) (landlords failure to provide locks constituted breach of warranty of habitability).

¹⁰³ Restatement (Second) of Property (Landlord & Tenant) §§ 6.1, 11.1 (2006); *Northern Terminals, Inc. v. Smith Grocery, etc.*, 138 Vt. 389, 394-396 (Vt. 1980); *Bedell v. Los Zapatistas, Inc.* 805 P.2d 1198, 1199-1200 (Colo. Ct. App. 1991).

likely have a strong claim against the landlord for monetary damages for breach of the covenant of quiet enjoyment.

VI. CONCLUSION

Without safe and stable housing, a survivor may not be able to recover physically and emotionally from the assault, maintain employment, continue education, and otherwise participate in the daily activities of their recovery. Many survivors and their attorneys may not be aware of the housing remedies available to them following their assault. Attorneys should familiarize themselves with the housing policies in the survivor's jurisdiction and the resources available locally. Discuss housing needs and concerns with the survivor, including safety issues. Even if the survivor is ineligible for the legal protections discussed in this chapter, a comprehensive safety plan can help them feel safer wherever they live.