

PROTECTIONS FOR VICTIMS
OF DOMESTIC VIOLENCE
UNDER NEW YORK STATE LAW
AND THE FEDERAL VIOLENCE
AGAINST WOMEN ACT (VAWA)

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NEW YORK STATE PROTECTIONS

▶ NY Real Property Law 227-c

- ▶ Tenant has to have order of protection in place. After it is issued, the tenant may on ten (10) days notice to the court request an order of the family or criminal court that issued the OOP to authorize the tenant to terminate the lease subject to RPL 227-c(2)(b)(i-iii).
- ▶ The order shall specify the termination date as no earlier than 30 days and no later than 150 days after the due date of the next rental payment after the date the order is served on the landlord.
- ▶ Tenant shall then be allowed to surrender possession and be released from any liability to pay landlord rent, or other payments after date of termination.
- ▶ If there is more than one tenant on the lease, the order shall sever the co-tenancy. All other remaining parties on the lease are still liable to the landlord.
- ▶ This does not bar a landlord from recovering rental arrears against the former tenant that predate the OOP. *Riverwalk on the Hudson, Inc. v. Culliton*, 87 NYS3d 852(2018 N.Y. Slip OP 28350).

NEW YORK CONTINUED

- ▶ Cannot be evicted based on his or her domestic violence status. RPAPL 744(1).
- ▶ This can be an affirmative defense to an eviction.
- ▶ Landlord may rebut the defense by showing that he or she seeks to recover possession of a residential unit because of any other lawful ground.
- ▶ Under RPAPL 744, a person is a “domestic violence victim” and possesses “domestic violence victim status” if:
 - ▶ Person is or has been or is a parent accompanied by a minor child or children who is or has been in a situation in which such person or child is a victim of an act that would constitute a violent felony offense as enumerated under the Penal Law (Penal Law 70.02), or a family offense enumerated under the Family Court Act (FCA 812(1)) and such act is alleged to have been committed by a member of the same family or household.

WHAT IS VAWA?

- ▶ The Violence Against Women Act (VAWA) is a landmark piece of federal legislation passed in 1994 that sought to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States. Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act, H.R. 3355) signed as Pub. L. 103-322 by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040).
- ▶ The Act provided \$1.6 billion toward investigation and prosecution of violent crimes against women, imposed automatic and mandatory restitution on those convicted, and allowed civil redress in cases prosecutors chose to leave un-prosecuted. The Act also established the Office on Violence Against Women within the Department of Justice.
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- ▶ Reauthorized and amended in 2000 and 2005.

NEW YORK V. VAWA DIFFERENCES

- ▶ Unlike NYS, the federal law does not require that victims of domestic violence first obtain an OOP from a court.
- ▶ Rather, the federal law encourages the victim to seek assistance from a victim service provider, attorney, medical professional or the agency operating the housing to certify and evidence the tenant's status as a domestic violence victim.

History of VAWA

- ▶ Expanded and improved in the Violence Against Women Act of 2000 (VAWA 2000)
 - ▶ Improved protections for battered immigrants
 - ▶ Sexual assault survivors and
 - ▶ Victims of dating violence.
 - ▶ The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)
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 - ▶ Access to services for communities of color, immigrant women and tribal and Native communities.
 - ▶ Court Training and Improvements, Child Witness and Culturally Specific programs.
 - ▶ Victims of dating violence.

2013 Reauthorization and Final Rule

- ▶ March 7, 2013, President Obama signed VAWA 2013 Reauthorization
- ▶ Hud issued final regulations implementing VAWA 2013 on November 16, 2016, which were effective December 16, 2016.

Statistics

- ▶ An estimated 1.3 million women are the victims of assault by an intimate partner each year, and about 1 in 4 women will experience intimate partner violence in their lifetimes.
- ▶ 85% of domestic violence are women.
- ▶ Certain racial and ethnic groups experience disproportionately high rates of domestic violence:
 - ▶ African- American women experience intimate partner violence at a rate 35% higher than that of white females and about 2.5 % higher than the rate of women of other races
 - ▶ Native Americans are victims of violent crime, including rape and sexual assault, at more than double the rate of other groups.

Federal Housing Programs covered by VAWA

- ▶ Public Housing
- ▶ Section 8 Housing Choice Vouchers
- ▶ Section 8 Project Based Housing
- ▶ Section 202 housing for the elderly
- ▶ Section 811 housing for people with disabilities
- ▶ Section 236 multifamily rental housing
- ▶ Section 221(d)(3) BMIR HOME
- ▶ Housing Opportunities for Persons with AIDS (HOPWA)
- ▶ McKinney-Vento homelessness programs
- ▶ Housing Trust Fund
- ▶ USDA Rural Development Multifamily Housing
- ▶ Low-Income Housing Tax Credit

Whose covered?

- ▶ VAWA protects individuals applying for and living in federally subsidized housing from being discriminated against because of domestic violence, sexual assault, dating violence, and stalking (VAWA crimes) committed against them.
- ▶ Applies to survivors regardless of age, sex, gender, identity or sexual orientation.
- ▶ Only applies to federal housing programs.

Protections include

- ▶ **Domestic Violence:** Any felony or misdemeanor crimes of violence committed by a current or 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

Who is protected

- ▶ Affiliated individual of the survivor (unless on lease will not be protected by VAWA)
 - ▶ Spouse, parent, brother, sister or child of that individual or a person to whom that individual stands in the place of a parent or guardian
 - ▶ Immediate family or individual living in a household
 - ▶ DOES NOT APPLY TO LIVE IN AIDES
 - ▶ Affiliated individual is protected as applicant and cannot be denied admission or assistance because of VAWA crime.

Evictions & Terminations

- ▶ PHAs, landlords, and owners may not deny assistance to, terminate assistance for or evict a tenant on the basis that she is or has been a domestic violence survivor.
- ▶ Crimes against a survivor “directly relating to” the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- ▶ An incident of actual or threatened domestic violence does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.

Evictions continue

- ▶ Must comply with court orders regarding property rights
- ▶ Housing providers can still evict or terminate assistance if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
 - ▶ Consists of physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.
 - ▶ Most subject survivor to the same standard as other tenants (i.e., cannot impose more demanding standard on survivor)
 - ▶ Housing providers can evict or terminate assistance for violation not premised on VAWA crimes.

Bifurcation: Remove the Abuse

- ▶ PHA or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits domestic violence while preserving the survivor’s tenancy rights.
- ▶ New protection for tenants remaining in housing as a result of lease bifurcation
 - ▶ If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant at least 90 calendar days or until lease expiration (with a possible 60 day extension) to establish eligibility for the existing program, establish eligibility for another covered housing program or find alternative housing.
 - ▶ PHA may terminate Section 8 assistance to the abuser, while preserving assistance to survivor. If the family breaks up due to domestic violence, the PHA must ensure that the victim retains assistance. 24 C.F.R. Section 982.315.

Lease bifurcation exceptions

- ▶ HOPWA- provide remaining tenants reasonable grace period of at least 90 days and at most a year. Must notify participants of grace period and may assist them with information on other available housing programs and moving expenses. Lease expiration does not necessarily terminate assistance.
- ▶ Continuum of Care - transitional housing
 - ▶ Household retains assistance for time remaining in original assistance period. Once assistance period concludes, household can recertify or reapply.
 - ▶ Can extend assistance beyond 24 months to facilitate movement to permanent housing.
 - ▶ Permanent supportive housing if qualifying member evicted due to lease bifurcation, remaining household has right to rental assistance until lease expires.

Voucher Portability

- ▶ If Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety 24 C.F.R. Section 982.314.
- ▶ Emergency transfers: VAWA 2013
 - ▶ Transfer plan must allow survivor tenants to transfer and
 - ▶ Either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request.
 - ▶ Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser.
 - ▶ HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher.

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 - ▶ HUD has a model emergency policy transfer plan

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Proving abuse

- ▶ Housing providers are free to have the tenant prove the VAWA crime instead of just taking a tenant's word.
- ▶ Any request by the housing provider for proof must be made in writing
- ▶ Tenant has 14 business days from the housing provider's request to provide the proof of abuse.
 - ▶ Self-certification form HUD form 5382, HUD forms 50066 & 91066
 - ▶ Police, court or administrative record from a federal, state, tribal, territorial or local entity or administrative record.
 - ▶ Statement from a 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.
 - ▶ Statement or other evidence (housing provider's discretion)

Documentation

- ▶ Survivor gets to choose documentation option; housing providers must accept whatever documentation the survivor gives.
- ▶ Only exception- when there is conflicting evidence, housing provider may ask for third party documentation aside from the self-certification.
- ▶ Housing providers are not allowed to judge the merits of claims of VAWA crimes.

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