

# The Professional Property Managers Guide to Compliance with the Violence Against Women Act (VAWA)

2017 Edition

\*Sample\*

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# Introduction to VAWA

The Violence Against Women Act of 1994 (VAWA) is Title IV of the Violent Crime Control and Law Enforcement Act, which was signed into law by President Bill Clinton on September 13, 1994. 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 that were not criminally prosecuted. The Act also established the Office on Violence Against Women in the Department of Justice.

The office of Senator Joe Biden (D-DE) drafted VAWA, with support from a broad coalition of advocacy groups. VAWA was reauthorized by bipartisan majorities in Congress in 2000, and again in December 2005, and signed by President George W. Bush. Congress again reauthorized VAWA on February 28, 2013. President Obama signed the law on March 7, 2013, and this is the law that is in effect today.

One of the specific areas of protection under the law is housing - specifically housing with federal assistance; this is the area of the law covered by this Guide.

The purpose of this guide is to assist property managers in navigating the complex requirements of VAWA as those requirements relate to the operation of multifamily housing developments. To the extent possible, I have endeavored to cover every requirement of the law as it applies to housing, at least the requirements in place at the time of publication.

The Department of Housing and Urban Development (HUD) is charged with enforcing the VAWA in the area of housing, and as such, much of this guidance comes from HUD, in particular the HUD Final VAWA Rule published on November 16, 2016. I have also included the most recent guidance from HUD, published as Notice H 2017-05 on June 30, 2017. VAWA applies to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. It is an important law, meant to deal with a major societal problem, and it is my hope that this guide will help property managers in their understanding of the law and their responsibilities under it.

**This manual does not provide legal advice. Laws, regulations, and interpretations can change, and owners are advised to consult with qualified legal advisors regarding their properties' compliance.**

# Definitions

This section includes terms and definitions relating to VAWA that all operators of covered housing projects should be familiar with.

## **Actual and Imminent Threat**

Refers to a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm. In determining whether an individual would pose an actual or imminent threat, the factors to be considered include: (A) the duration of the risk; (B) the nature and severity of the potential harm; (C) the likelihood that the potential harm will occur; and (D) the length of time before the potential harm would occur.

## **Affiliated Individual**

This means -

- A. A 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 (e.g., the affiliated individual is a person in the care, custody, or control of that individual); or
- B. Any individual, tenant, or lawful occupant living in the household of that individual.

## **Bifurcate**

To divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD covered program and State or local law. This means that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

### **Covered Housing Program**

Consists of the following HUD programs:

- A. Section 202 Supportive Housing for the Elderly;
- B. Section 811 Supportive Housing for Persons with Disabilities;
- C. Housing Opportunities for Persons with AIDS (HOPWA) Program;
- D. HOME Investment Partnerships (HOME) program;
- E. Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act, including the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Stability Assistance Program;
- F. Multifamily rental housing under section 221(d)(3) of the National Housing Act with a below-market interest rate (BMIR) pursuant to section 221(d)(5);
- G. Multifamily rental housing under section 236 of the National Housing Act;
- H. HUD programs assisted under the United States Housing Act of 1937, specifically:
  - i. Public housing;
  - ii. Tenant-based and project-based Section 8 housing;
  - iii. Section 8 Moderate Rehabilitation Single Room Occupancy; and
  - iv. The Housing Trust Fund

### **Covered Housing Provider**

The individual or entity under a covered housing program, and as defined by each program in its regulations, that has responsibility for the administration and/ or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofits or for-profit organizations or entities.

## Dating Violence

Violence committed by a person:

- A. Who is or has been in a social or romantic relationship of an intimate nature with the victim; and
- B. When the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. The length of the relationship;
  - ii. The type of relationship; and
  - iii. The frequency of interaction between the persons involved in the relationship.

## Domestic Violence

Includes felony or misdemeanor crimes of violence committed by:

- A. A current or former spouse or intimate partner of the victim;
- B. By a person with whom the victim shares a child in common;
- C. By a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner;
- D. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
- E. By any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The phrase "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship or a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**AJJ Note:** Dating violence is often referred to as domestic violence. In most cases, the difference between dating violence and domestic violence is that in the case of domestic violence, the victim and the perpetrator either live together or have lived together.

**Sexual Assault**

Any nonconsensual sexual act proscribed by Federal, State, or Tribal law, including when the victim lacks capacity to consent.

**Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- A. Fear for their individual safety or the safety of others; or
- B. Suffer substantial emotional distress.



## Who is Protected by VAWA

VAWA protections cover tenants and assisted families, as defined under applicable program regulations. Applicants for admission to a covered housing program are also covered.

Victims of domestic violence, dating violence, sexual assault, or stalking are eligible for protections without regard to sex, gender identity, or sexual orientation. Both men and women are protected.

Victims under the age of 18 are also protected if they are the victims of domestic violence, dating violence, sexual assault, or stalking. In situations involving youth victims, PHAs and owners must follow the exact same documentation and confidentiality procedures as with any other VAWA case.

**Note:** *Un-emancipated minors are not eligible to sign leases under HUD programs. When a minor claims to be a victim of domestic violence, dating violence, sexual assault, or stalking, housing providers should contact child welfare, child protective services, or law enforcement.*

### In a Covered Housing Program, Who is Not Protected by VAWA?

Guests, unassisted members, and live-in aides of a household are ineligible for VAWA protections. VAWA protection is available only to tenants and participants.

However, as a reasonable accommodation, a tenant/participant may request VAWA protection based on the grounds that a live-in aide is a victim of domestic violence, dating violence, sexual assault, or stalking.

If a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault, or stalking, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault, or stalking of the guest or unassisted member.

Unassisted members who are on the lease may qualify for VAWA protections to “some degree”. The degree to which they may qualify is outlined in 24 CFR Part 5.2005(c). This section of the code states that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as: (1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or (2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

So, protections for unassisted members exist only if the unassisted member is on the lease, and only means that the domestic violence, dating violence, sexual assault, or stalking will not be considered a lease violation and the household’s rights of tenancy and assistance shall not be terminated as a result of such an act.

## Determining Eligibility for VAWA Protections

The first step in determining whether an individual is subject to VAWA protections is to determine whether an adverse factor is a “Direct Result” of domestic violence, dating violence, sexual assault, or stalking.

The law prohibits owners from denying admission to, denying assistance under, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be the direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

An adverse factor refers to any factor that can be used as a basis for denying admission or assistance, terminating assistance or participation in a program, or evicting a tenant. If a denial or termination is required by a federal statute, based on a particular adverse factor, the owner must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking. For example, if an applicant is subject to a lifetime registration requirement under a State sex offender registration program, the owner must deny the applicant admission, even if the sex offense(s) was (or were) a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault, or stalking.

Examples of When Adverse Factors Might Be a Direct Result of Domestic violence, Dating violence, Sexual assault, or Stalking:

The presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may be present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following list of examples is neither exhaustive nor definitive.

- Poor credit history, such as
  - Forcing a victim to obtain credit, including credit cards for the perpetrator's use;
  - Using a victim's credit or debit card without permission;
  - Selling victim's personally identifiable information to identity thieves;
  - Running up debt on joint accounts;
  - Obtaining loans/mortgages in a victim's name;
  - Preventing a victim from obtaining and/or maintaining employment;
  - Sabotaging work or employment opportunities, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews;
  - Placing utilities or other bills in a victim's name and then refusing to pay;
  - Forcing a victim to work without pay in a family business, or forcing him or her to turn the earning over to the abuser;
  - Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
  - Job loss or lost wages due to missed work to attend court hearings, or seek counseling or medical care; and
  - Hospitalization or medical bills the victim cannot pay or cannot pay along with other bills.
- Poor rental history - for example:
  - Property damage;
  - Noise complaints;
  - Harassment;
  - Trespassing;
  - Threats;
  - Criminal activity;
  - Missed or late utility payments;
  - Missed or late rental payments;
  - Writing bad checks to the landlord; and
  - Early lease termination and/or short lease terms.
- Criminal record - for example:
  - Forcing a victim to write bad checks;
  - Property damage;
  - Theft;

- Disorderly conduct;
- Threats;
- Trespassing;
- Noise complaints;
- Family disturbance trouble;
- 911 abuse;
- Public drunkenness;
- Drug activity;
- Crimes related to sex work;
- Failure to protect a child from a batterer's violence;
- Crimes committed by a victim to defend him or herself or in defense of another person; and
- Human trafficking.
- Failure to pay rent - for example:
  - The victim's injury or temporary incapacitation;
  - The arrest of the only wage earning member of the household;
  - Preventing a victim from obtaining and/or maintaining employment;
  - Sabotaging work or employment opportunities, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews;
  - Placing utilities or other bills in a victim's name and then refusing to pay;

It is the owner/management's responsibility to determine when adverse factors are a direct result of domestic violence, dating violence, sexual assault, or stalking. However, it is the responsibility of the applicant or tenant to trigger the direct result analysis. In order to do this, the applicant/tenant must:

1. Inform the owner that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the owner to make a determination that the adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.

Once adequate information is received from the applicant/tenant, the owner should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.

If further information is necessary for this determination, the owner may request additional supporting documentation. However, any request for documentation must:

1. Be in accordance with the owner's policies or practices;
2. Not require evidence of domestic violence, dating violence, sexual assault, or stalking other than as specified in the law (see the next section, titled Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, and Stalking); and
3. Not violate the VAWA Final Rule's confidentiality requirements.

Once all necessary information is received, the owner must make an objectively reasonable determination based on all the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

# Certification and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The VAWA Final Rule transmitted the certification form, "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation," form HUD-5382. This form supersedes the Multifamily Housing VAWA certification form, HUD-91066, which is now obsolete.

This certification form, as required by 24 CFR 5.2005(a)(1)(ii), must be made available by the owner in multiple languages, consistent with HUD's LEP guidance. O/As may obtain the required VAWA forms in multiple languages at [HUD.gov](http://HUD.gov) and clicking on "VAWA HUD Forms."

## Documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking.

1. Acceptance of Verbal Statement: owners are not required to ask for documentation when an individual presents a claim for VAWA protections; the owner may instead choose to provide benefits to an applicant or tenant based solely on the individual's verbal statement or other corroborating evidence.
2. Requesting Documentation: If the owner chooses to request that an applicant or tenant documents his or her claim of domestic violence, dating violence, sexual assault, or stalking, the owner must make such request in writing. Simply providing the victim the certification form HUD-5382 does not constitute a written request for documentation, unless a dated letter requesting documentation accompanies the certification form. An applicant or tenant may satisfy this request by providing any one of the following documents:
  - a) Form HUD-5382; or
  - b) A document:
    - i. Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental

health professional from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, of the effects of abuse.

- ii. Signed by the applicant or tenant; and
- iii. That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- iv. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency (e.g., a police report); or
- v. At the discretion of the owner, a statement or other evidence provided by the applicant or tenant.

#### Time to Submit Documentation

The owner may require submission of documentation within 14 business days after the date that the individual received the written request for documentation. However, the owner may extend this period at its discretion.

#### Acknowledging Receipt of Documentation; Failure to Provide Documentation in a Timely Manner

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner. (HUD will propose such additions when next updating HUD Handbook 4350.3, CHG-4).



## Requests for Third Party Documentation of Victim Status

Under VAWA, an owner may not require a victim to provide third party documentation of victim status, unless:

1. More than one applicant or tenant provides documentation to show he or she is a victim of domestic violence, dating violence, sexual assault, or stalking, and the information in one person's documentation conflicts with the information in another person's documentation, or
2. Submitted documentation contains information that conflicts with existing information already available to the owner.

In the case of either #1 or #2 above, applicants or tenants may submit any of the following to meet the third-party documentation request:

1. A document:
  - Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical or mental health professional from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
  - Signed by the applicant or tenant; and
  - That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR §5.2003; or
2. A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking, or
3. At the discretion of the owner, a statement or other evidence provided by the applicant or tenant.

### Timeframe to Respond

Applicants or tenants must be given 30 calendar days from the date of the request to provide such documentation. If an applicant or tenant does not submit any third party documentation within the required time or submits the documentation that does not meet the criteria noted above, the owner may, but is not required to, accept that applicant or tenant's assertion (form HUD-5382 or verbal statement) of victim status for the VAWA protections.

### Denying VAWA Protections

If the owner requests, but does not receive, third party documentation, the owner has the option to deny VAWA protections and must notify the applicant or tenant. If this results in one of the tenants being terminated from assistance, the owner must hold a separate hearing for that tenant, in accordance with HUD Handbook 4350.3, Chapter 8, Section 3.

Alternatively, the owner may develop or follow an existing family break-up policy that may provide assistance to both persons seeking VAWA protections.

## **VAWA Lease Addendum**

The Office of Multifamily Housing will soon issue an updated form HUD-91067, “VAWA Lease Addendum,” which will include the additional provisions required in the final rule. The updated lease provisions in HUD-91067 will include updates regarding:

- 1.** Definitions;
- 2.** VAWA protections;
- 3.** Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking; and
- 4.** Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

Owners will be required to provide a new VAWA lease addendum (when the revised form HUD-91067 is issued) to all current households. This may be done at each household’s next Annual Recertification (AR) or at another timely opportunity. All subsequent new move-ins must also receive the updated VAWA lease addendum.

## End of Sample

This has been just a small sample of the information provided in the full version of The Professional Property Manager's Guide to Compliance with the Violence Against Women Act (VAWA). The full version provides easy to understand explanations about a variety of topics and issues, including emergency transfers, lease bifurcation, waiting list issues, and more.

The Guide is an invaluable resource for anyone working in the multi-family housing industry. Whether your goal is to provide yourself with an easy to use reference guide, or increase your knowledge about how the Violence Against Women Act impacts the operation of your property and/or company, The Professional Property Manager's Guide to Compliance with the Violence Against Women Act (VAWA) will meet your needs.

To purchase the full version of The Professional Property Manager's Guide to Compliance with the Violence Against Women Act (VAWA) please visit <https://www.ajjcs.net/vawa>.