

Winchester Housing Authority

Amendment to WHA's Violence Against Women ACT (VAWA)

and the Housing Choice Voucher (HCV) Program Policy

The Violence Against Women Act adopted by the WHA Board of Commissioners September 26, 2007 is herein amended as follows Per Reauthorization Act of 2013 (VAWA 2013):

AMENDMENT REGARDING THE PROVISIONS OF VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF (VAWA) 2013

I Purpose

The purpose of this policy is to implement the applicable provisions of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4, 127 Stat. 54) (VAWA 2013). VAWA 2013 reauthorized and amended the Violence Women Act of 1994, as previously amended, (title IV, sec. 40001 – 40703 of Pub. L. 103-322, 42 U.S.C. 13925 et seq.).

II Other WHA Policies and Procedures

To the extent any provisions of this policy shall contradict any previously adopted policy or procedure of the WHA, the provisions of this Policy shall prevail.

III Changes to Existing WHA VAWA Policy

A. Expanding Housing Protections to Victims of Sexual Assault

1. Expansion

VAWA 2013 expands housing protections to victims of sexual assault. All housing protection previously provided and described in WHA policies for "victims of domestic violence, dating violence, or stalking", shall now be expanded to include, "victims of domestic violence, dating violence, sexual assault or stalking."

2. Definition

Sexual Assault is defined as any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

B. Expanding Protections Relating to the Prohibition of Terminating Assistance to Affiliated Individuals

1. Expansion

VAWA 2013 provides that criminal activity directly relating to domestic violence, dating violence sexual assault, or stalking that is engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

To the extent that prior VAWA policy relating to the prohibition of terminating assistance because of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking uses the term "immediate family member" it shall be replaced with the term "affiliated individual."

2. Definition

Affiliated Individual – means, with respect to an individual

- i. The spouse, parent, brother, sister, or child of the individual, or an individual to whom that individual stands in loco parentis; or
- ii. Any individual, tenant, or lawful occupant living in the household of that individual

C. Expansion of the Protections Regarding Lease Bifurcation

1. Expansion

Pre-VAWA 2013 requirements provided that notwithstanding the restrictions placed on admission, occupancy, and termination of occupancy or assistance, or any Federal, State, or local law to the contrary, a HA, owner, or manager of assisted housing any bifurcate a lease for housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing who engages in criminal acts of physical violence against family members or others without evicting, removing, terminating the assistance to, or otherwise penalizing a victim of such violence, who is a tenant or lawful occupant.

VAWA 2013 continues to allow for lease bifurcation, but changes the language regarding the violent acts. Specifically, “criminal acts of physical violence against family members or others” is now changed to “criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual.”

Thus where applicable in existing WHA policies in this area the language :“criminal acts of physical violence against family members or others” shall be replaced with: “ criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual.”

2. Opportunity for Remaining Tenant

VAWA 2013 mandates that if such bifurcation occurs, and the removed tenant or lawful occupant wale the sole tenant eligible to receive assistance under a covered housing program, the HA, owner, or manager shall provide any remaining tenant the opportunity to establish eligibility for the covered housing program. If the remaining tenant cannot establish eligibility, the HA, owner, or manager is required to provide the tenant a reasonable time to find new housing or establish eligibility under another covered housing program.

VAWA 2013 provides that the appropriate agency, in this case HUD, with respect to HUD covered programs, is to determine what constitutes a reasonable time for remaining tenant to find new housing or establish eligibility under another HUD covered housing program. The HA will adopt such HUD policies as they are published.

D. Expansion of Forms of Documentation that a Victim May Provide

1. Expansion

As provided within VAWA 2013, forms of documentation a victim may provide are expanded to include a record of an administrative agency, and documentation from a mental health professional.

2. Name on 50066 only if Safe to Provide

The WHA will require the victim to provide the name of the perpetrator on the HUD-50066 only if the name of the perpetrator is safe to provide and is known to the victim.

E. Expansion of the Notification Requirements

WHA will provide VAWA the notice when a person is denied assistance, when a person is admitted, and when a tenant is notified of eviction or termination of housing benefits and will require that the notice be provided together with form HUD-5066.

IV Additional HUD Guidance

The WHA will amend policies and procedures as required by HUD provides additional guidance on VAWA 2013. Specifically HUD has indicated that additional guidance will be provided with regard to certain lease bifurcation issues, provisions of Sample Notice

Attachment A

WHA's Violence Against Women Act (VAWA) and the Housing Choice Voucher (HCV) Program Policy

The Violence Against Women and Justice Department Reauthorization Act of 2005 (VA WA) extends certain rights and protections to qualified Housing Choice Voucher (HCV) assisted tenants and qualified family members of tenants who are victims of criminal domestic violence, dating violence, sexual assault and stalking.

Protection from Denial of Public Housing Assistance and Admission

Under the VAWA, if an applicant or participant in the HCV program is otherwise eligible and qualified for assistance or admission, the fact that the applicant or participant is or has been a victim of domestic violence, dating violence, or stalking (as these terms are defined in the VAWA) is not an appropriate basis for denial of program assistance or for denial of admission.

Protection from Eviction

VAWA also provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

While criminal activity directly relating to domestic violence, dating violence, or stalking engaged in by a member of a tenant's household or any guest or other person under a tenant's control shall not be cause for termination of assistance, tenancy or occupancy rights—provided that the tenant or an immediate member of the tenant's family is the victim or threatened victim of such violence—owners and managers are permitted to bifurcate a lease in order to evict, remove or terminate assistance to a tenant or lawful occupant who engages in criminal acts of physical violence against family members and others, without evicting or penalizing the victim(s).

Portability to a New Location

HCV households in good standing may move to another location after one (1) year of assistance and their assistance will follow them. However, the law does not permit portability if the family was in violation of its lease when it moved.

VAWA permits portability if a family has otherwise complied with all other HCV requirements, but moved out of the assisted dwelling unit in violation of the lease in

order to protect the health and safety of an individual who is or has been the victim of domestic violence, dating violence or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

Certification

Tenants seeking protection against eviction or termination of assistance under VAWA may be required to complete and submit a HUD-approved certification form certifying that the individual is a victim of domestic violence, dating violence, or stalking, that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and otherwise meet the requirements of VAWA protection.

Certification shall include the name of the perpetrator and may be accomplished by completion and delivery of the above-referenced HUD-approved certification form mentioned above, by providing documentation signed, under penalty of perjury, by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim (the tenant or another member of the tenant's immediate family) has sought assistance in addressing domestic violence, dating violence, or stalking or the effects of the abuse, or by producing and delivering, a Federal, State, tribal, territorial, or local police or court record.

Failure to provide certification within fourteen (14) business days after receipt of a written request to do so may result in the loss of VAWA protections.

Confidentiality

Information provided by way of certification must be retained in confidence by a property owner, manager or public housing authority. This information may not be entered into any shared database nor provided to any related entity except to the extent disclosure is requested or consented to by the individual in writing or as necessary for use in an eviction proceeding or as otherwise required by law.

Additional Limitations

The above-referenced protections are circumstantially specific. Nothing contained in VAWA prevents terminating assistance, tenancy or eviction for any violation not involving domestic violence, dating violence, or stalking. Additionally, if an actual and imminent threat to other tenants or those employed at or providing service to the property can be demonstrated, a tenant will not be protected from termination of tenancy and eviction under the VAWA.

Definitions

For purposes of interpreting and applying VAWA, the following non-exhaustive list of definitions is applicable:

Dating Violence, as defined in Section 40002 of VAWA 1994, means:

“SEC 40002(a)(8) – “DATING VIOLENCE – The term ‘dating violence’ means violence committed by a person—

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where 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.
 - (iii) The frequency of interaction between the persons involved in the relationship.”

Domestic Violence, as defined in Section 40002 of VAWA 1994, means:

“SEC 40002(a)(6) – “DOMESTIC VIOLENCE – The term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, 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 by any other 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.”

Immediate Family Member means:

“with respect to a person –

- (A) a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands *in loco parentis*; or
- (B) any other person living in the household of that person and related to that person by blood or marriage.”

Stalking means:

- “(A) (i) to follow, pursue, or repeatedly commit acts with the

intent to kill, injure, harass, or intimidate another person;
and

- (ii) to place under surveillance with the intent to kill, injure, harass or intimidate another person; and

(B) in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to –

- (i) that person;
- (ii) a member of the immediate family of that person; or
- (iii) the spouse or intimate partner of that person; ...”

Adopted by the WHA Board of Commissioners September 26, 2007.