

Tab 7:

**The Intersection of Housing, Domestic Violence, and Family Law**

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# THE INTERSECTION OF HOUSING, DOMESTIC VIOLENCE, & FAMILY LAW

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2010 Family Law Conference

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## What we're covering today

- Case studies illustrating the intersection of housing, domestic violence, & family law
- Brief overview of applicable housing & Family law:
  - Civil Code § 1946.7
  - Fair housing laws
  - Violence Against Women Act (VAWA)
  - DVPA: (Fam. Code, § 6321)
  - Property control orders in family law proceedings
- Advocacy strategies

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## Luz

- Luz lived by herself in a private unit. One night her ex-boyfriend, whom she had a RO against, came onto the premises without being invited. He broke a window at her unit and vandalized her door.
- The landlord told Luz that if she signs a repayment agreement to pay for the damages, he will not file an eviction.
- Luz doesn't want to sign the agreement because she can't afford the payments. She is also considering breaking the lease and moving.

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## Mia

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- Mia, her husband AJ, and their 3 kids had a Section 8 voucher. AJ was listed as the head of household.
- Mia obtained a RO against AJ excluding him from the unit.
- AJ asked the housing authority to let him use the voucher to move into a unit by himself
- Mia asked the housing authority to let her keep the voucher in the interest of her children
- The housing authority let AJ move with the voucher and terminated Mia's assistance

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## Laura

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- Laura lived in a public housing unit. She separated from her husband, Jake, and obtained a RO excluding him from the unit after he fired a gun in the home.
- Jake stopped paying rent on the public housing unit.
- Laura asked the housing authority to adjust her rent due to the change in her family income/composition.
- The housing authority did not act on Laura's request and filed an eviction action against her for nonpayment of rent.

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## Mirna

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- Mirna had obtained an RO against her ex-boyfriend, Amir and gotten orders for temporary exclusive use of common dwelling.
- Amir is listed in the deed of the home and the two are not married, although they chose the home together, Mirna renovated it and paid half the mortgage since they moved in.
- Amir files an eviction action to remove Mirna from dwelling, even though he has been excluded from home through the DVRO orders.

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## Applicable Housing Law

Survivors have protections under Civil Code § 1946.7, fair housing laws, and the Violence Against Women Act (VAWA)

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## Civil Code § 1946.7: Leases

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- The law applies to all landlords
- The law permits survivors of domestic violence, sexual assault, and stalking to terminate their leases upon 30 days' written notice to the landlord
- Survivor may move anytime after providing notice. If unit is re-rented within the 30-day notice period, the survivor's rent must be prorated
- Survivor has to pay rent for the 30-day period following the notice.

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## Civil Code § 1946.7 (cont'd)

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- Along with written notice, survivor must provide the landlord with either a police report or restraining order issued in the past 60 days
- Existing law governing security deposits still applies—landlord is required to return the deposit within 21 days after survivor leaves
- If survivor does not have the required documentation, ask the landlord for an agreement to end the lease.

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## Civil Code § 1946.7: Practice Tips

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- Most landlords are clueless, so be prepared with a copy of the law.
- Must act somewhat quickly—restraining order or police report can only be 60 days old.
- Can be difficult to recover deposit in cases where survivor has a roommate.
- Client has to pay rent for 30 days from notice.
- A police report number is not acceptable. Attach actual report or RO.

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## DV and Fair Housing Laws

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- Fair housing laws apply to most landlords, regardless of whether they are subsidized:
  - Federal Fair Housing Act (FHA)
  - CA Fair Employment & Housing Act (FEHA)
  - CA Unruh Civil Rights Act
- These laws prohibit landlords from discriminating against an applicant or tenant because of sex
- However, DV survivors are not a protected class under the FHA or most state fair housing laws

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## DV and Fair Housing Laws

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- Advocates have challenged “zero tolerance” policies, which state that the entire family may be evicted when an act of violence occurs at or near the rental unit
- “Zero tolerance” policies have a disparate impact on women, because women constitute the majority of DV victims
- Advocates have successfully argued that these policies discriminate on the basis of sex

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## Fair Housing: Case Example

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- *Alvera v. Creekside Vill. Apts.* (Ore. 2001):
  - Landlord sought to evict tenant under a “zero tolerance for crime” policy, because her husband had assaulted her at the rental unit
  - The federal Department of Housing and Urban Development (HUD) investigated the tenant’s complaint
  - HUD found cause to believe that the tenant had been discriminated against on the basis of her sex, because the “zero tolerance” policy had a disproportionate impact on women

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## VAWA: Who Is Protected?

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### VAWA covers these categories of housing ONLY:

1. Public housing
2. Section 8 Voucher housing
3. Project-Based Section 8 Housing
4. Supportive housing for the elderly or disabled

### VAWA covers these categories of victims:

1. A survivor of domestic violence
  2. A survivor of dating violence
  3. A survivor of stalking
- \* Survivors of sexual assault may be covered

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## VAWA: Evictions/Terminations

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- Crimes against a survivor “directly relating to” DV are not grounds for evicting the survivor or terminating her rental subsidy.
- Incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
- There are limits to these protections.

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## VAWA: Removing the Abuser

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- Public Housing Agency (PHA) or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV while keeping the survivor in place.
  - PHA or landlord must follow federal, state, and local law in evicting the perpetrator
  - Safety planning is essential in these cases
- PHA may terminate Section 8 assistance to the abuser while preserving assistance to survivor

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## Applicable Family Law

The Family Code and its application to housing issues

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## Applicable Family Law

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- Family Code §6321 (DVPA) allows an applicant for a DVRO to ask for “temporary exclusive use of common dwelling of parties.”
- DVRO applicants can also obtain orders for payment of rent and/or installments.
- There is a catch-all “other orders” that can be used to have the court make orders on Sec.8 vouchers that are in both parties’ names.

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## Applicable Family Law (cont'd)

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- DVRO can also be used to request “payments for costs and services” which can be used to have orders made for damaged property IF CAUSED directly by the person restrained.
- If married/registered domestic partners, a subsequent OSC to the DVRO can be used for orders relating to payment of rent, return of Sec.8 vouchers, having court make orders regarding who should have the voucher assigned, damages to the property, etc.

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## Advocacy Approaches

Attorneys have used a variety of tools in advocating on behalf of clients in these cases.

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## Housing law tools used in these cases

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- Informal advocacy, i.e., letters and calls to the landlord or housing authority
- Helping clients get together documents and witnesses for administrative & judicial proceedings
- Using media to “embarrass” housing providers
- Filing administrative complaints (or threatening to)
- Working with housing providers to improve their policies regarding domestic & sexual violence
- Filing affirmative litigation

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## Family law tools used in these cases

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- Using the DVRO requests to have courts make orders for property control, use.
- Using automatic restraints in dissolution proceedings to successfully obtain orders preventing change in nature of Sec.8 vouchers.
- OSCs to obtain orders regarding temporary use of property, payment of rent, payment of damages.
- Working with housing courts to ensure that protections in family courts are upheld.

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## Luz: Advocacy approaches

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- Luz's attorney reminded the landlord that her lease stated that she could be held responsible only for damages caused by guests or household members.
  - Assoc. Estates Corp. v. Bartell, 492 N.E.2d 841 (Ohio Ct. App. 1985)
  - Branish v. NHP Prop. Mgmt. Inc., 694 A.2d 1106 (Pa. Super. Ct. 1997)
- Luz's attorney told the landlord that he would file a fair housing complaint if he tried to evict Luz.
- Luz considered using CC § 1946.7 to end the lease.

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## Luz: Advocacy approaches (cont'd)

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- Luz could use the once in a lifetime "Special Needs" Homelessness grant which can be used to pay for rent plus utility deposits to move to another unit.
- Luz can also file an OSC in her DVRO action for orders directing her ex to pay for costs (See part 16 of DVRO form DV-100).
  - CAUTION: This may not get heard till up to 6-8 weeks, so this is not an immediate option.
- If Luz does end up paying, she can file a small claims action to attempt reimbursement from ex.

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## Mia: Advocacy approaches

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- Mia's attorney wrote a letter to the housing authority arguing:
  - Termination of Mia's assistance violated VAWA
  - The housing authority failed to follow HUD regulations and its own policies when it assigned the voucher to AJ
- Mia's attorney requested:
  - An administrative hearing
  - Homeless prevention funds to cover Mia's back rent

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## Mia: Advocacy approaches (cont'd)

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- When Mia applied for DVRO she can ask for orders on exclusive use of common dwelling, property restraints and other orders.
- Mia can have the family court make orders regarding the Sec.8 voucher in "other orders" portion- courts have ordered return of passports, SS cards, other such documents under this portion.
- If there is a pending dissolution action between the parties, an OSC in the disso can also be used for temporary control orders.

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## Laura: Advocacy approaches

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- Laura's attorney argued that Laura could not be evicted because federal regulations and her lease required the housing authority to adjust the rent.
  - 24 C.F.R. § 960.257(b).
  - Hous. Auth. of St. Louis County v. Boone, 747 S.W.2d 311 (Mo. App. Ct. 1988).
- Laura's attorney also raised VAWA as a defense to the eviction

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## Laura: Advocacy approaches (cont'd)

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- When Laura filed her DVRO, she can use the property control items to ask for orders directing Jake to pay rent until prorated by Housing Authority.
- If the RO has already been granted, a subsequent OSC can be filed in the RO with request for either an ex-parte hearing or an order shortening time so that the matter be taken up soon.
- If a disso pending, use OSC in disso to ask for similar orders.

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## Mirna: Advocacy approaches

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- Mirna's attorney used a retaliation defense in her eviction hearing to have the court dismiss the action.
  - Wood v. Wood*, 672 N.E.2d 385 (Ill. App. Ct. 1996)
- Mirna's attorney also successfully argued that her payments of mortgage and their past relationship does not establish a landlord-tenant relationship.
- In her DVRO request, Mirna asked for temporary exclusive use of common dwelling showing that she has possession under color of law.

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## Mirna: Advocacy approaches (cont.)

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- Mirna also used the DVRO to ask for court to order Amir to continue paying his share of mortgage.
- Mirna filed a quiet title action in civil court based on the fact that the parties invested together in the property.
- A subsequent OSC was filed by Amir in the DVRO asking for orders on temporary control to end. Mirna used her quiet title action as an answer to the OSC.

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## Housing remedies: Takeaway points

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- Evictions are summary proceedings—time is of the essence!
- Seeking help from gov't agencies can be time consuming. Act quickly to get survivors help before they're removed on a procedural technicality.
- An eviction stays on credit history for 7 years. Advocates must choose cleverly to prevent least amount of damage to survivor.
- Advocates working with survivors should seek training on basic housing issues.

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## Family law remedies: Takeaway points

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- DVRO is a great tool to get comprehensive, summary assistance on a variety of issues, including housing
- Clients who have ongoing dissolution/EPR/support & custody matters can use the existing matter to file OSCs for remedies relating to housing
- If client has already obtained a permanent DVRO, client can still use DVRO to ask for housing remedies.

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## Outreach and Education

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- Work with local Bar Associations to educate them about laws such as CC § 1946.7 to end lease.
- Organize cross trainings at Bar Associations to open up the meetings to more than one section- family law, housing, civil litigation.
- Educate shelter and agencies working with survivors about options for survivors.
- Use DVRO to more aggressively advocate for housing rights of survivors and families.

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## Contact Us

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## Resources

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Domestic Violence & Housing: A Manual & Toolkit  
for California Advocates (Toolkit is password-  
protected; contact Meliah for a copy.)

<http://www.nhlp.org/guidebooks>

Other resources:

<http://nhlp.org/resourcecenter?tid=62>

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# Protecting the Housing Rights of Domestic Violence Survivors



This outline covers:

- The housing provisions of the **Violence Against Women Act of 2005**
- Protections available for domestic violence survivors under **fair housing laws**

## 1. What laws did the Violence Against Women Act of 2005 (VAWA) amend, and whom does VAWA protect?

### A. Statutory provisions amended by VAWA

Title VI of VAWA 2005 (Pub. L. 109-162; 119 Stat. 2960; HR 3402) amended the Public Housing Program, the Housing Choice Voucher Program, and the Project-Based Section 8 statutes. Section 606 of VAWA amends 42 U.S.C. § 1437d (Public Housing) and Section 607 amends 42 U.S.C. § 1437f (Section 8 programs).

### B. Types of housing that VAWA covers

VAWA's protections cover tenants in:

- Public Housing (42 U.S.C. § 1437d);
- The Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f(o));
- Section 8 Project-Based housing (42 U.S.C. §§ 1437f(c), (d));
- Supportive housing for the elderly or disabled (73 Fed. Reg. 72,338).

VAWA does not cover HUD's other housing subsidy programs, programs administered by the Department of Agriculture's Rural Housing Service, or the Low-Income Housing Tax Credit program. VAWA also does not cover tenants living in private housing without any type of rental subsidy. However, as discussed below, such tenants may be protected by fair housing laws or by state laws granting certain housing protections to domestic violence survivors.

### C. Parties whom VAWA protects

VAWA protects anyone who:

- (1) Is a victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage, or any person to whom the victim stands in loco parentis); AND
- (2) Is living in, or seeking admission to, Public Housing, the Section 8 Voucher program, Section 8 Project-Based Housing, or the supportive housing program for the elderly or disabled.

See 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11); 72 Fed. Reg. 12,696.

## 2. How does VAWA define domestic violence, dating violence, and stalking, and must the incidents be repeated?

### A. **Domestic violence:** 42 U.S.C. § 13925(a)(6)

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

- Current or former spouse of the victim
- Person with whom the victim shares a child
- Person who is cohabitating with or has cohabitated with the victim as a spouse
- Person similarly situated to a spouse of the victim under the domestic violence or family violence laws of the jurisdiction
- VAWA’s definition of domestic violence also includes crimes of violence committed against a person who is protected under the domestic violence or family violence laws of the jurisdiction.

### B. **Dating violence:** 42 U.S.C. § 13925(a)(8)

“Dating violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship is determined based on the following factors:
  - Length of the relationship.
  - Type of relationship.
  - Frequency of interaction between the persons involved in the relationship.

### C. **Stalking:** 42 U.S.C. §§ 1437d(u)(3)(C), 1437f(f)(10)

VAWA defines “stalking” as

- To follow, pursue, or repeatedly commit acts with intent to kill, injure, harass, or intimidate; or
- To place under surveillance with intent to kill, injure, harass, or intimidate; and
- To place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
  - That person;
  - A member of the immediate family of that person; or
  - The spouse or intimate partner of that person.

### D. **Must the incidents be repeated?**

VAWA does not include a minimum number of incidents of violence that must occur before a tenant or applicant may claim its protections. Rather, VAWA explicitly protects victims of any actual or threatened acts of domestic violence, dating violence, or stalking. Only one incident is required to trigger VAWA’s protections, and the incident does not have to be one of actual violence.

### 3. Who is required to comply with VAWA, and when did the law become effective?

#### A. Parties who must comply with VAWA

Public housing agencies (PHAs) administering the Public Housing and Section 8 Voucher programs and all landlords, owners, and managers participating in the Section 8 Voucher and Project-Based programs must comply with VAWA.

#### B. Effective date

VAWA's housing provisions became effective January 5, 2006. HUD has issued notices instructing PHAs to implement the law without waiting for HUD to issue regulations.

### 4. How does VAWA affect admissions to federally subsidized housing?

#### A. Denials of admissions or housing assistance

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance. *See* 42 U.S.C. § 1437d(c)(3); 42 U.S.C. § 1437f(c)(9)(A); 42 U.S.C. § 1437f(o)(6)(B). Therefore, victims cannot be denied admission to Public Housing or Section 8 Project-Based housing, or denied eligibility for the Section 8 Voucher program due to incidents of domestic violence, dating violence, or stalking committed against them. Owners renting to Section 8 tenants also cannot deny housing to victims on the basis of acts of abuse committed against them.

#### B. Areas that VAWA does not address

An individual's status as a victim of domestic violence, dating violence, or stalking does not guarantee that he or she will be accepted into a federally assisted housing program. VAWA does not require that PHAs institute a preference for victims of abuse when making admissions decisions. However, PHAs have discretion to institute such a preference, and local advocates can encourage them to do so.

VAWA does not explicitly address whether a PHA or owner must waive an admissions requirement if the applicant cannot meet the requirement due to incidents of abuse. For example, VAWA does not provide guidance for screening applicants who have been the victims of abuse and, as a result, have poor tenancy, credit, or work histories. Note that HUD has encouraged PHAs to inquire into the circumstances and whether domestic violence was a factor in the poor rental history. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19 (2003). Further, 24 C.F.R. § 960.203 provides that if a PHA receives unfavorable information with respect to an applicant, "consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense)."

## 5. Does VAWA address safety moves?

### A. Portability of Section 8 vouchers

A PHA may permit a family with a Section 8 voucher to move to another jurisdiction if the family has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking. The PHA may permit the family to move even if the family's lease term has not yet expired. *See* 42 U.S.C. § 1437f(r)(5). A PHA may ask for documentation from the family regarding the family's desire to move to a new jurisdiction. *See* 42 U.S.C. § 1437f(ee).

VAWA does not address the liability that a tenant may incur from the Section 8 owner for breaking the lease. Advocates may need to work with their clients to negotiate an agreement with the landlord to terminate the lease. Additionally, several states have enacted laws permitting domestic violence survivors to terminate their leases early. For a list of these states, *see* [www.nlchp.org/content/pubs/DV\\_Housing\\_State\\_Laws\\_Aug20081.pdf](http://www.nlchp.org/content/pubs/DV_Housing_State_Laws_Aug20081.pdf)

### B. Emergency transfers in public housing

VAWA does not explicitly address a PHA's obligation to transfer a public housing tenant to another unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. However, PHAs already have the discretion to adopt policies to ensure that a public housing tenant can move if he or she is experiencing domestic violence. HUD has urged housing authorities to implement such policies. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook §§ 19.2, 19.4 (2003).

## 6. How does VAWA affect evictions?

### A. Evictions directly related to abuse

VAWA establishes an exception to the federal "one-strike" criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds (either as a "serious or repeated violation of lease", or as "good cause") for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim. *See* 42 U.S.C. § 1437d(l)(5); 42 U.S.C. § 1437f(c)(9)(B); 42 U.S.C. § 1437f(d)(1)(B); 42 U.S.C. § 1437f(o)(7)(C); 42 U.S.C. § 1437f(o)(20)(A).

### B. The "actual and imminent threat" provision

Despite the eviction protections described above, a PHA or owner may still evict a tenant if the PHA or owner can demonstrate an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted. VAWA does not define the phrase "actual and imminent threat," nor does it explain what evidence a PHA or owner must provide to establish such a threat. *See* 42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C. §§ 1437f(c)(9)(C)(v) and (d)(1)(B)(iii)(V); 42 U.S.C. §§ 1437f(o)(7)(D)(v) and (o)(20)(D)(iv).

### C. Criminal activity unrelated to abuse

VAWA protects tenants from being penalized for acts of violence committed against them. It does not protect them if the acts for which they are being evicted or denied admission are unrelated to domestic

violence, dating violence, or stalking. However, in determining whether to evict, a PHA or owner may not hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants. *See* 42 U.S.C. § 1437d(l)(6)(D); 42 U.S.C. §§ 1437f(c)(9)(C)(iv) and (d)(1)(B)(iii)(IV); 42 U.S.C. § 1437f(o)(7)(D)(iv) and (o)(20)(D)(iii).

#### **D. Removing an abuser from a unit**

A PHA or owner may bifurcate a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim who is also a tenant or lawful occupant. The authority to bifurcate a lease or otherwise remove an individual is applicable to all leases for families participating in the public housing or Section 8 programs. The eviction or termination of assistance must be effected in accordance with federal, state, and local law. *See* 42 U.S.C. § 1437d(l)(6)(B); 42 U.S.C. § 1437f(o)(7)(D)

### **7. Can a PHA or owner ask for proof of the abuse?**

#### **A. Discretion of PHA or owner to ask for certification**

PHAs and owners may, but are not required to, ask an individual for certification that he or she is a victim of domestic violence, dating violence, or stalking if the individual seeks to assert VAWA's protections. At their discretion, owners or PHAs may apply VAWA to an individual based solely on the individual's statement or other corroborating evidence. Any requests for certification must be in writing. *See* 42 U.S.C. §§ 1437d(u)(1); 42 U.S.C. § 1437f(ee)(1).

#### **B. Types of certification permitted**

If an individual seeks to assert VAWA's protections, a PHA, owner, or manager may request in writing that the individual certify that he or she is a victim of domestic violence, dating violence or stalking. The individual can self-certify by completing form HUD-50066, available at [www.hud.gov/hudclips](http://www.hud.gov/hudclips). The form requests the name of the victim, the name of the perpetrator, the date on which the incident occurred, and a brief description of the incident. The victim must sign the form and certify that the information is true and correct. The form provides that submission of false information is grounds for termination of assistance or eviction.

In lieu of the certification form, the victim may provide:

- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional in which the professional attests under penalty of perjury to the professional's belief that the victim has experienced bona fide incidents of abuse; or
- A federal, state, tribal, territorial, or local police or court record.

*See* 42 U.S.C. § 1437d(u)(1)(D); 42 U.S.C. § 1437f(ee)(1)(D).

#### **C. Certification time limit**

After a PHA or owner has requested certification in writing, an individual has fourteen business days to respond to the request. If an individual does not provide the documentation within fourteen business days, a PHA or owner may bring eviction proceedings against the tenant or terminate assistance. However, a PHA or owner has discretion to extend this timeframe. 42 U.S.C. § 1437d(u)(1)(A), (B); 42 U.S.C. § 1437f(ee)(1)(A), (B).

## **D. Confidentiality**

Any information provided to certify incidents of domestic violence, dating violence, or stalking must be kept confidential, including the individual's status as a victim. PHAs or owners may not enter the information into any shared database or provide it to any related entity. However, advocates should note that disclosure of the certification form may be required for use in an eviction proceeding if the housing authority or Section 8 landlord seeks to evict the batterer. The information may also be disclosed if the victim requests disclosure in writing, or if otherwise required by law. *See* 42 U.S.C. § 1437d(u)(2)(A); 42 U.S.C. § 1437f(ee)(2)(A).

## **8. What other obligations do PHAs and owners have under VAWA?**

### **A. Obligation to honor court orders**

PHAs and owners must honor court orders addressing rights of access to or control of property. Thus, PHAs and owners must observe civil protection orders issued to protect the victim, as well as court orders addressing the distribution or possession of property among household members when a family breaks up. *See* 42 U.S.C. § 1437d(1)(6)(C); 42 U.S.C. §§ 1437f(c)(9)(C)(iii) and (d)(1)(B)(iii)(III); 42 U.S.C. §§ 1437f(o)(7)(D)(iii) and (o)(20)(D)(ii).

### **B. Notification requirement**

PHAs must inform tenants and owners of their rights and obligations under VAWA. For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim of abuse;
- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the victim's assistance, tenancy, or occupancy rights;
- Information provided for purposes of certifying that an individual is a victim of domestic violence, dating violence, or stalking must be kept confidential.

*See* 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B).

Public housing leases must include this information, as must the Housing Assistance Payments (HAP) contract between PHAs and owners in the Section 8 Voucher program and contracts in the Project-Based Section 8 program. *See* 42 U.S.C. § 1437d(1)(5), (6); 42 U.S.C. § 1437f(o)(20); 42 U.S.C. § 1437f(o)(7)(C), (D).

### **C. PHA planning process**

A PHA must include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, stalking, or sexual assault. A PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims' housing needs. In addition, VAWA added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the consolidated planning process that local communities undertake every five years to receive HUD assistance. *See* 42 U.S.C. §§ 1437c-1(a)(2), 1437c-1(d)(13); 42 U.S.C. § 12705(b)(1).

The National Housing Law Project is available to assist local advocates in urging housing authorities to update their annual plans, Section 8 Administrative Plans and public housing Admissions and Continued Occupancy Policies to address VAWA.

## 9. What other resources should I look to in enforcing survivors' housing rights under VAWA?

### A. VAWA's findings section

VAWA contains several important findings, including:

- That there is a strong link between domestic violence and homelessness
- That women and families are experiencing housing discrimination because of their status as victims of domestic violence
- That victims of domestic violence often return to abusers because they cannot find long-term housing
- That victims often lack steady income, credit history, landlord references, and a current address due to financial abuse by their batterers

*See* 42 U.S.C. § 14043e.

### B. State or local laws

VAWA sets out the minimum protections for survivors. Many states and local jurisdictions are developing laws that include added protections, such as laws that make VAWA's protections applicable to private housing. Where these state or local laws exist, they are not preempted by VAWA. *See* 42 U.S.C. § 1437d(u)(1)(E); 42 U.S.C. § 1437f(ee)(1)(F).

### C. HUD documents implementing VAWA

The following documents may be useful to advocates working with PHAs and owners to implement VAWA's protections. All of the documents are available at [www.hud.gov/hudclips](http://www.hud.gov/hudclips)

- **73 Fed. Reg. 72,336 (Nov. 28, 2008):** Transmits an interim rule that would amend existing regulations governing the federally subsidized housing programs to conform with VAWA. HUD has not yet published final regulations implementing VAWA.
- **HUD Notice PIH 2006-23:** States that VAWA became effective January 5, 2006 and directs PHAs to notify tenants and owners of their rights and obligations under VAWA.
- **HUD Notice PIH 2006-42:** Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification of incidents of abuse. Notes that a signed statement from a third party or a police or court record may be provided "in lieu of" the certification form.
- **Form HUD-50066:** The HUD-approved certification form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **Form HUD-91066:** The HUD-approved certification form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of domestic violence, dating violence, or stalking.
- **HUD Notice PIH 2007-5:** Transmits the revised Housing Assistance Payments (HAP) contract and the revised Tenancy Addendum for the Section 8 voucher program, and directs PHAs to use these documents when executing any HAP contracts or approving new leases. Provides guidance to PHAs and owners regarding bifurcation and portability.
- **72 Fed. Reg. 12,696 (Mar. 16, 2007):** Reminds PHAs that VAWA's provisions are effective even without regulations from HUD. States that PHAs must include a VAWA statement in their

annual plans “in their next regularly scheduled plan submission.” States that victims can satisfy the certification requirement by providing a certification form, or third party verification, or a police or court record.

- **HUD Notice H 08-07:** Provides guidance to owners and managers administering project-based Section 8 properties.

## 10. Has any litigation been brought under VAWA?

- **Metro N. Owners LLC v. Thorpe, 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008):** Landlord sought to evict Section 8 tenant on the grounds that she stabbed her partner during a domestic dispute. The tenant submitted police reports and a restraining order showing that she was the victim of domestic violence, along with evidence that the district attorney’s office declined to prosecute her for the alleged stabbing. The court found that the tenant was the victim of domestic violence, and that VAWA precluded the landlord from evicting her.
- **Brooklyn Landlord v. RF (N.Y. Civ. Ct. 2007):** The tenant lived in a project-based Section 8 unit with her children. The tenant’s abuser, who had stalked and physically abused her for many years, confronted and shot at the security guard at her building. The tenant raised VAWA as an affirmative defense to eviction. The landlord eventually dismissed the eviction proceeding. Pleadings are available at [www.legalmomentum.org](http://www.legalmomentum.org)
- **Tenant v. Hous. Auth. of Salt Lake County (D. Utah 2006):** Plaintiff alleged that her Section 8 voucher was terminated by the PHA after she was forced to flee her apartment due to domestic violence. Plaintiff alleged that PHA violated VAWA and fair housing laws by terminating Plaintiff’s voucher because of her need to escape domestic violence. Case settled, with the client’s voucher reinstated by the PHA.

## 11. What steps can advocates take to implement VAWA?

- Request a meeting with the PHA and local domestic violence agencies to discuss implementation.
- Offer to train PHA staff, hearing officers, Section 8 owners, and resident groups on VAWA and the dynamics of domestic violence.
- Offer to assist the PHA in developing procedures for assisting program participants who are experiencing domestic violence.
- Remind PHAs to revise their public housing leases to include VAWA’s protections.
- Submit comments during the PHA’s annual planning process.
- Urge the PHA to provide notice of VAWA rights through several different channels, such as denial of assistance letters, briefing packets, tenant newsletters, recertification meetings, termination letters, posters in the PHA’s lobby, and the PHA’s website.
- Develop intake screening tools to determine whether a denial of housing, eviction, or termination of assistance is related to domestic violence. Many subsidized housing participants are unaware of their VAWA rights, particularly those who live with their batterers or who are limited English proficient.

## 12. What rights do survivors have under fair housing laws?

Domestic violence survivors who do not live in subsidized housing and therefore are not covered by VAWA may still be protected by fair housing laws. This portion of the outline describes the fair housing theories available to individuals who have experienced housing discrimination based on acts of domestic violence committed against them.

### A. Disparate impact claims

- Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.
- Statistical data are crucial to these cases:
  - The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003).
  - Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
  - Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat’l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998).

### B. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Impact Theory?

- **Lewis v. N. End Vill. et al., 07cv10757 (E.D. Mich. 2008):** Plaintiff’s ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from “lack of proper supervision” of her “guests.” Plaintiff argued that the policy of interpreting the word “guest” to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)
- **Warren v. Ypsilanti Housing Commission, 02cv40034 (E.D. Mich. 2002):** Plaintiff’s ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a “one-strike” rule in its lease permitting it to evict a tenant if there was any violence in the tenant’s apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, *see* [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)
- **Alvera v. Creekside Village Apartments, HUD ALJ No. 10-99-0538-8 (2001) (Oregon):** Management company sought to evict a tenant under a “zero tolerance for violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of

domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)

### C. Disparate treatment claims

- Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

### D. Have Any Actions Been Filed on Behalf of Survivors Asserting Disparate Treatment Theory?

- **Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):** Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.
- **Blackwell v. H.A. Housing LP, 05cv1255 (D. Colo. 2005):** Project-based Section 8 complex denied Plaintiff's request to transfer to another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at [www.legalmomentum.org](http://www.legalmomentum.org).
- **Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005):** Plaintiff was evicted after her husband assaulted her. The landlord stated that plaintiff did not act like a "real" domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord's motion for summary judgment was denied, and the case settled. Case documents are available at [www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen).

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October 3, 2008

Ms. D.H.  
State of New Jersey  
Department of Community Affairs

RE: Request for Remedies: Section 8 Voucher Program & HPP  
Ms. M.M.

Dear Ms. H:

This is an urgent situation. Imminent eviction of a family is in process. Our office represents Ms. M. M. who resides with her three (3) children at ..., N.J. She had been living there with her husband, Mr. A. M., who is an unemployed Social Security recipient of SSD. She was living with her husband, Mr. A.M., and these children at the above address for about five years under the HUD Section 8 voucher program with DCA. Mr. M. was then, and is now, a recipient of SSD from the Social Security Administration. During the period of his residence with the family—he left sometime in April 2008--DCA considered Mr. M. "head of household", although, during the five years that the couple lived in the apartment they both would go to the DCA each year and execute the income recertification forms.

Ms. M. came to our office in the last few days with a summons and complaint for non-payment of the contract rent on the above apartment of \$967 a month from June 2008 (partial rent) through October 2008: totals about \$4,420. The trial date is October 9, 2008.

Mr. M. for many months had been verbally abusing our client and in April 2008, he decided to contact DCA and request that it issue a "Request for Tenancy Form" for him to leave the present apartment and move-in by himself into a new apartment at ....., N.J. When he was in the act of requesting that DCA cooperate with him, Ms. M. contacted Mrs. X at the DCA office in Elizabeth, N.J. and asked DCA to give her to continue her Section 8 status notwithstanding Mr. M's notice to DCA that he wanted to take the Section 8 status with him to a new address. Ms. M. states that Ms. X told her that DCA could do nothing about her husband's request because he was the head of household under DCA's records and he was disabled.

The problem is that DCA gave the Section 8 voucher to the husband when he vacated in May 2008 and now our client is facing a summary dispossess action for the contract rent on the apartment. It appears that the HAP contract was terminated for the May and/or June 2008 rent because DCA started to pay a new landlord a HAP payment for Mr. M. starting in May or June 2008 at [second address], N.J.

On May 20, 2008, our client obtained a TRO DV order against the husband. The order states that the husband is prohibited from returning to the scene of the violence (the apartment) and he was barred from "the residence of the plaintiff." The order further stated that the defendant was "granted exclusive possession of ...the residence."

On May 29, 2008, our client obtained a final DV restraining order that states that the defendant was barred from the residence of the plaintiff and that the plaintiff was "granted exclusive possession of the residence" and the apartment's address is expressly stated. Ms. M. brought this final DV order to DCA's Elizabeth, N.J. office but the intake receptionist refused to take it and said Ms. M. could leave the police report, which she did.

Our client only receives \$560 a month from the husband for herself and the three children which is from the husband's Social Security Disability. She faces imminent homelessness without the receipt of Section 8

status in the future and without immediate help to pay back rent from DCA's Homelessness Prevention Program.

Our office has reviewed client's rights under the federal Violence Against Womens' Act (VAWA), 42 U.S.C. 1437f(o)(D)ii through vi., the attached HUD regulation, 24 CFR §982.315(a) and (b), and DCA's attached "Housing Choice Voucher Program Administrative Plan" (July 2008). See definition in the latter of "applicant break-up" (p. 1-2), "Family Break-up" (p. 1-4 to 1-5) and "Violence Against Women Act", pp. 7-13 through 7-15.

HUD regulation 24 CFR §982.315(b), sets forth certain criteria that PHAs, such as DCA, need to follow in the establishment of their Section 8 Administrative Plans. These include assessing factors when a family break-up occurs, such as: whether the assistance should remain with the family members remaining in the original assisted unit, the interest of minor children, and whether family members are or have faced actual or threatened physical violence against a spouse; as well as "other factors specified" in the PHA Section 8 Administrative Plan. DCA's Administrative Plan, under the definition of "Family Break-up" (p. 1-4 to 1-5) and "Violence Against Women Act", pp. 7-13 through 7-15, has embodied the HUD regulatory standards but it has not followed them in this case.

It would appear that DCA has not properly exercised its discretion under the HUD regulation and DCA's Administrative Plan in that when DCA interviewed Ms. M. in April 2008, it did not place sufficient weight on her needs and those of her children in deciding to award the Section 8 voucher to her husband at the time of the family break-up. Therefore, Ms. M. requests the following remedies:

- Ms. M. requests and immediate administrative hearing on this. Part of the hearing should establish whether Mr. M. committed fraud, 24 CFR §982.551-553, in the representations he made to DCA in his request for a Request for Tenancy Form. (For this, it is requested that I have access to the DCA file for discovery.) See DCA's Administrative Plan, at p. 7-12, which states that DCA must determine whether Mr. M. was "eligible" for the issuance of a new Voucher. It is submitted that his eligibility had to be based on the factors found in the HUD regulation and the DCA Administrative Plan found under the definition of "family break-up" at pp. 1-4 and 1-5. Ms. M. is without a realistic remedy against Mr. M. under the State Domestic Violence Act, N.J.S.A. 2C:25-29(b)(2), to require him to pay for alternative housing at a contract rent because of Mr. M.'s income is Social Security Disability. Rather, Ms. M. depends on the need to obtain Section 8 eligibility from DCA.
- In addition, it is requested that DCA consider invoking that part of its Section 8 Administrative Plan—see definition of "Applicant break-up", pp. 1-2 and 1-3—which permits DCA to open its waiting list for former members of an applicant family that breaks-up. That provision gives the regional supervisor on a case-by-case basis the ability to give consideration "to former members of an applicant family who retain custody of the children...and to actual or threatened physical violence against the former members by a spouse... ."
- In addition, because DCA did not properly assess the situation adequately when it issued the Section 8 voucher to Mr. M., rather than deciding that Ms. M. would retain the Section 8 status in her present apartment, it is appropriate that DCA utilize its Homeless Prevention Program in issuing back rent so that Ms. M. can avoid the entry of a Judgment for Possession at the eviction trial date which is scheduled for October 9, 2008.

It is hoped that this matter can be resolved informally. If not, kindly consider this a request for an administrative hearing under DCA's Section 8 Administrative Plan.

Very truly yours,

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Attorney P  
Legal Aid

Attorneys for Petitioner, Petitioner

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE – Branch

\*\*\*\*

Petitioner,	)	No. 00000000
	)	
Petitioner,	)	MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN SUPPORT
-vs-	)	OF EXCLUSIVE USE OF
Respondent	)	COMMON DWELLING
	)	OF BOTH PARTIES
	)	UNDER CALIFORNIA
	)	FAMILY CODE § 6321
Respondent.	)	Date: 12/22/09
	)	Time: 8:30 a.m.
	)	Dept: MH
_____	)	

INTRODUCTION

The petitioner, Petitioner, submits the following points and authorities in support of her request for orders of exclusive temporary use of common dwelling of both parties under California Family Code § 6321. Section 6321 allows the courts to issue orders to exclude a party from the common dwelling of both parties, regardless of which party holds title to or is the lessee of the dwelling. The party seeking the orders to stay in the dwelling has to show that she has a right under color of law to possession of the premises, the party to be excluded has assaulted or threatened to assault the other party AND physical or emotional harm would result to the other party who is seeking orders to stay in the dwelling of the family. As explained in the factual background and in the arguments, Petitioner has the

1 right under Fam.C. §6321 to seek orders in her request for restraining order to temporary  
2 exclusive use of dwelling of family as she has a right to possession under color of law, she  
3 has been assaulted by Respondent and she will suffer grave emotional and physical harm  
4 were she removed from the home because she has no job, she has no means of support and  
5 she will be homeless.

#### 6 BRIEF STATEMENT OF FACTS

- 7 1. The parties, Petitioner (hereinafter petitioner) and Respondent (hereinafter respondent) had  
8 a relationship with each other over the last 3 years. They purchased a home together in  
9 March 2009, and had the respondent's name put on the title. The parties did not have the  
10 money for the down payment on the home but the respondent qualified for a VA home  
11 loan so it was agreed by both parties that respondent would put his name on the title and  
12 would add petitioner's name once all formalities were complete because they were not  
13 married. Both parties equally split payment of utilities, insurance and mortgage for the  
14 home, apart from having other financial obligations together.
- 15 2. In September 2009, the respondent moved out of the home after a domestic violence  
16 incident. The respondent was arguing with the petitioner and she locked herself inside their  
17 master bedroom to end the fight but he broke the door down, proceeded to physically  
18 assault the petitioner and caused her to have bruises on her arm. Respondent proceeded to  
19 serve the petitioner with a 3-day Notice to Pay Rent or Quit after his attempts at harassing  
20 and intimidating her to move were unsuccessful. On the day of serving her with the notice,  
21 respondent arrived at the home, threatened to remove the petitioner, proceeded to walk to  
22 the back of the property and haul their boat away and then had his friend serve her with the  
23 3 day Notice. Fearing that the respondent would render her homeless and further  
24 physically harm her, petitioner called the police to seek assistance. She told them about  
25 having been assaulted by the respondent earlier in September 09. Since her bruises were  
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1 still visible, the police filed a complaint against the respondent, gave the petitioner an  
2 emergency protective order and advised petitioner to seek DVRO orders. (ATTACHED  
3 EXHIBIT 1)

- 4 3. Petitioner filed 11111111 and had the same dismissed when the respondent's friend  
5 approached her and said that respondent would not evict her if she took back her  
6 restraining order. (ATTACHED EXHIBIT 2). The respondent did not keep his end of the  
7 agreement and filed TE11111111, an action for unlawful detainer. He dismissed that  
8 matter on 10/07/09 because of a defective 3 Day Notice but on the same day filed TEU  
9 3333333, another unlawful detainer action, against petitioner. TE222222222 was  
10 dismissed on 10/27/09 as the judge ruled "there was significant question of ownership"  
11 between the parties. (ATTACHED EXHIBIT 3)
- 12 4. On the day of the unlawful detainer trial, respondent who was visibly upset at having lost  
13 his case, threatened the petitioner and her witness in court after the hearing. As a result of  
14 that threat and in light of his prior abuse, the petitioner filed the present request for DVRO.  
15 Temporary orders were granted on 10/29/09 and the orders were continued on 11/17/09.

## 17 ARGUMENTS

### 18 A. THE PETITIONER IS ENTITLED TO ORDERS UNDER FAMILY CODE §6321(a) 19 FOR EXCLUSION OF RESPONDENT FROM RESIDENCE

20 The California Family Code §6321(a) states:

21 (a) The court may issue an ex parte order excluding a party from the  
22 family dwelling, the dwelling of the other party, the common dwelling  
23 of both parties, or the dwelling of the person who has care, custody,  
24 and control of a child to be protected from domestic violence for the  
25 period of time and on the conditions the court determines, regardless  
26 of which party holds legal or equitable title or is the lessee of the  
27 dwelling.

28 The petitioner sought and obtained ex parte orders for exclusive temporary use of common  
dwelling of both parties in the instant proceedings two days after an unlawful detainer case filed

1 against her by the respondent (TEU008040) was dismissed by the court on the grounds that “there  
2 were serious questions of ownership”. Color of law as defined by *Ballentine’s Law Dictionary*, ©  
3 *Lexis Law Publishing, 1996*, means a mere semblance of a legal right. In *People v. Plesniarski* 22  
4 Cal. App. 3d. 108, the appellate court discussed the term “color of law” and said, *inter alia*, that  
5 the term meant under pretense of law. *Ibid at 112*. The ruling by the unlawful detainer judge in  
6 respondent’s actions against the petitioner, clearly gives the petitioner rights to the dwelling of the  
7 parties under color of law, because the unlawful detainer judge determined that there were serious  
8 questions of ownership, acknowledging that petitioner had some rights under law as to ownership  
9 of the subject premises. Whether the rights are conclusive or not, *whether they hew to the line of*  
10 *their authority or overstep it, (Id at 112)* is not something this court must consider at this time.  
11

12 B. PETITIONER IS ENTITLED TO ORDERS UNDER CALIFORNIA FAMILY CODE  
13 §6321(B) AFTER A NOTICED HEARING  
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15 The California Family Code §6321(b) states:  
16

17 (b) The court may issue an order under subdivision (a) only on a  
18 showing of all of the following:

19 (1) Facts sufficient for the court to ascertain that the party who will  
20 stay in the dwelling has a right under color of law to possession of the  
21 premises.

22 (2) That the party to be excluded has assaulted or threatens to assault  
23 the other party or any other person under the care, custody, and control  
24 of the other party, or any minor child of the parties or of the other  
25 party.

26 (3) That physical or emotional harm would otherwise result to the  
27 other party, to any person under the care, custody, and control of the  
28 other party, or to any minor child of the parties or of the other party.

As stated above, the petitioner, who is seeking to stay temporarily in the dwelling, has a  
right under color of law to possession of the premises. *Law Revision commission comments 1993*  
states that this code section was enacted to clarify application of the section to unmarried persons.

1 The remedy being sought by the petitioner is purely under the provisions of the Domestic  
2 Violence Prevention Act(Family Code §6200 et seq) and for exclusion orders under §6321,  
3 requires that the parties have a common dwelling. She had a right to, as previously stated,  
4 possession of the common dwelling of the parties under color of law which has already been set  
5 forth above.

6  
7 The statute also requires that the party seeking exclusive orders to stay show that the party  
8 to be excluded has assaulted or threatened to assault the other party. Petitioner filed a police  
9 complaint for domestic violence in September 09 and her statements therein have been affirmed.  
10 Additionally, she was threatened by the respondent again on 10/27/09. When she returned home  
11 that night, the respondent was in their home waiting for her after having threatened her earlier in  
12 the day following the unlawful detainer trial. In her declaration supporting her request for  
13 restraining orders, she has stated that she was intimidated, harassed, physically attacked and  
14 respondent has even said to the petitioner “you should have kept your mouth shut”. The petitioner  
15 does not feel safe around the respondent, and since he knows where she lives, he has the ability to  
16 continue to cause her to be in fear of her life, and her safety unless this court issues orders  
17 restraining the respondent from any such conduct. Even if, arguendo there was no physical  
18 violence, in *In re marriage of Nadkarni* 173 Cal. App. 4<sup>th</sup> 1483, the court held that certain types  
19 of non-violent conduct, like contacting the other party or disturbing the peace of the other party,  
20 constitutes abuse under Family Code§6320.  
21

22  
23 Finally, Family Code §6321(b) requires a showing that physical or emotional harm would  
24 result to the party seeking the exclusive use of the family dwelling were the orders denied. The  
25 petitioner in this case has nowhere to go. The respondent was the one who moved out after the  
26 parties’ relationship fell apart in September 2009. The petitioner is trying to get a job so she can  
27 save some money and pursue actions to assert her ownership rights in the property, but she has  
28

1 been inundated with lawsuits by the respondent. He unsuccessfully filed eviction actions that were  
2 dismissed due to issues of ownership. Respondent has served the petitioner with a small claims  
3 action seeking damages for \$7000 due to his arrest for domestic violence, he has filed another  
4 unlawful detainer action against the petitioner with a pending trial date and he has filed a  
5 restraining order proceeding that is consolidated with this action. The petitioner, even if she were  
6 to obtain gainful employment, will have to take time off to defend all the lawsuits brought by the  
7 respondent. To meet all the procedural deadlines, she will have to take time to prepare her  
8 documents and she will have to have the mental frame of mind to keep it all together. If she is not  
9 granted orders for exclusive use of the home, she will have one more thing to worry about, a roof  
10 over her head, in the winter time, while being unemployed and broke. Studies have shown that  
11 domestic violence is a leading cause of homelessness and that 46% of homeless women report that  
12 they had previously stayed in abusive relationships because they had nowhere to go.

13 ([http://www.fairhousingrights.org/Resources/Educational\\_Materials/FHRC/Domestic\\_Violence/D](http://www.fairhousingrights.org/Resources/Educational_Materials/FHRC/Domestic_Violence/D)  
14 [V%20Homelessness.pdf](http://www.fairhousingrights.org/Resources/Educational_Materials/FHRC/Domestic_Violence/D) )

15  
16 The petitioner feared that she would be out on the streets because the respondent had his  
17 name on the title of the home, and that fear led to her reporting the domestic violence against her.  
18 If the court now denies her exclusive use of the dwelling of the family, the petitioner will be left to  
19 fend for herself after having relied on the promise of the respondent to include her on the home's  
20 title, and after having spend monies on payment of half of the utilities, insurance and the upkeep  
21 of the home, not to mention her having invested physically in the improvement of the home.

## 22 CONCLUSION

23  
24 For the forgoing reasons, the petitioner prays that she be allowed to have exclusive  
25 temporary use of the common dwelling of the parties under California Family Code §6321 for the  
26 duration of the restraining order or any reasonable period of time that the court determines fit to  
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allow the petitioner exclusive use.

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Dated: \_\_\_\_\_

Respectfully submitted,

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Attorney P  
Attorney for the Petitioner