

# HOUSING AUTHORITY OF THE CITY OF UPLAND

## NOTICE TO SECTION 8 OWNER/MANAGEMENT AGENT OF RIGHTS AND RESPONSIBILITIES UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act (VAWA) provides protections for certain victims of criminal domestic violence, dating violence or stalking, as well as members of the victims' immediate families. VAWA protections apply to Section 8-assisted tenants. Housing Authorities are required to notify property owners and management agents of their rights and obligations under VAWA. Please note that VAWA does not supersede any Federal, State or local law that provides greater protections than VAWA. These protections apply to men and children as well as women.

### What Property Owners and Management Agents Must Do

- , Notify their tenants of their rights under VAWA;
- , Attach the HUD-approved Lease Addendum, Form HUD-91067, to each existing or new lease. (A copy of Form HUD-91067 is attached.)

### VAWA Protections Against Eviction or Termination of Assistance

VAWA establishes the following protections:

- , Prohibition of Denial Because Applicant is a Victim: An owner/management agent may not refuse to lease to an otherwise eligible applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.
- , Prohibition of Eviction or Termination for "Serious or Repeated Lease Violation" and "Good Cause": An incident of actual or threatened domestic violence, dating violence, or stalking cannot not be construed to be:
  - A serious or repeated lease violation by the victim; or
  - Good cause to terminate the tenancy, occupancy rights, or assistance to the victim.

Under this provision, the tenant may not be evicted based on an incident or incidents of actual or threatened domestic violence, dating violence or stalking if the tenant is the victim of the domestic violence, dating violence or stalking.

- , Prohibition of Eviction for Criminal Activity: An owner/management agent may not evict based on criminal activity by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or immediate family member of the tenant is the victim and the criminal activity was directly related to domestic violence, dating violence, or stalking.

### What Property Owners and Management Agents Can Do

While VAWA is designed to protect victims of domestic violence, dating violence and stalking, the law also provides remedies to owners/management agents. Under VAWA, the following actions are permitted:

- , Bifurcation of the Lease: The owner/management agent may bifurcate the lease to evict a leaseholder who engages in criminal acts of violence to family members/others without evicting the victimized lawful occupants;
- , Honor Court Orders: The owner/management agent may honor court orders regarding rights of access or control of the property;
- , Eviction for Good Cause Unrelated to Domestic Violence, Dating Violence or Stalking: The owner/ management agent may evict tenants for other good cause unrelated to the incident or incidents of domestic violence, provided that the victim is not subject to a more demanding standard than non-victims;
- , Eviction for Actual and Imminent Threat: The owner/management agent may evict if it can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted.

### Documentation of Victim Status

If an applicant or tenant claims they are a victim of domestic violence, dating violence or stalking, the owner/management agent may require the tenant to provide documentation that the tenant is a victim of domestic violence, dating violence or stalking and that the incident or incidents are bona fide incidents of such actual or threatened abuse. Please note that the owner/management agent has the discretion not to require such documentation. If documentation is requested, the request must be made in writing. The documentation requirement may be satisfied in one of the following three ways:

- , By self-certification of the victim: Form HUD-91066 shall be used for this certification. A copy of the form is attached. The victim's certification must include the name of the perpetrator; **OR**
- , With third-party documentation from professional: The documentation can be from an employee, agent, or

volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking or the effects of the abuse. The documentation must be signed by the professional and the professional must attest under penalty of perjury (28 U.S.C. 1746) to his/her belief that the incident(s) in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, or stalking must also sign or attest to the documentation; **OR**

, With other third-party records: federal, state, tribal, territorial, or local police or court records.

The owner/management agent may require that the victim provide the documentation within 14 business days after the individual receives the request. The 14-business day timeframe begins when the individual receives the written request. The owner/management agent may choose to provide more than 14 business days, but not less.

If the individual fails to provide the documentation within the requested timeframe, the owner/management agent may evict the tenant or a family member for violations of the lease or family obligations that otherwise would constitute good cause to evict or grounds for termination.

### **Confidentiality of VAWA-Related Information**

All information provided to an owner/management agent relative to a claim for VAWA protection must be kept confidential. Property owners/management agents shall not:

- , Enter the information contained in the documentation into any shared database; or
- , Allow employees, or those within their employ (e.g., contractors) to have access to such information unless explicitly authorized by the owner/management agent for reasons that specifically call for these employees or those within their employ to have access to this information; or
- , Disclose this information to any other entity or individual, except to the extent that the disclosure is requested or consented to in writing by the individual making the documentation, required for use in an eviction proceeding, or otherwise required by applicable law.

### **Definitions**

The following definitions apply for purposes of interpreting and applying the provisions of VAWA:

Actual and imminent threat (HUD guidance): An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual an imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Bifurcate (HUD Definition): with respect to a public housing or a Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Dating Violence (VAWA 2005 definition): violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) 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; and (iii) the frequency of interaction between the persons involved in the relationship.

Domestic Violence (VAWA 2005 definition): 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 cohabitating with or has cohabitated 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 (U.S. Code definition): with respect to a person: (1) a spouse, parent, brother, or sister, or child of that person, or an individual to whom that person stands in loco parentis; or (2) any other person living in the household of that person and related to that person by blood or marriage.

Stalking (HUD definition): (1)(i) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; **and** (2) 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.

### **For Additional Information**

Please visit the U.S. Department of Justice website, <http://www.ovw.usdoj.gov/regulations.htm>.