

# **STRATEGIES FOR RECOGNIZING & WORKING WITH SURVIVORS OF DOMESTIC VIOLENCE**

Santa Clara County CoC Training

Thursday, February 20, 2020

# OBJECTIVES

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- To understand the goals & requirements of the Violence Against Women Act (VAWA) & how it applies to CoC-funded programs
- To understand additional protections for survivors under California housing law
- To learn about confidentiality & privacy protections for survivors of violence
- Discuss predisposed notions about domestic violence
- Learn about best practices for working with survivors
- Understand how to incorporate these practices when implementing VAWA policies
- Address any questions or concerns you have about working with survivors

# AGENDA

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## I. The Violence Against Women Act (VAWA) and the Santa Clara County CoC Quality Assurance Standards (QAS)

A. Required Notices & Contract Terms

B. Coordinated Assessment Confidentiality Safeguards

C. Emergency Transfers

D. Limitations of VAWA Protections

## II. California Housing Law Protections

# THE VIOLENCE AGAINST WOMEN ACT

## THE FEDERAL REGULATORY LANDSCAPE

# WHAT IS THE VIOLENCE AGAINST WOMEN ACT (VAWA)?

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- Landmark legislation passed in 1994 & reauthorized in 2000, 2005, & 2013
- Recognition that domestic violence (DV) is an epidemic
- Provisions include:
  - Funding for coordinated community response to DV, sexual assault, dating violence, & stalking
  - Creation of a special DOJ Office on Violence Against Women
  - Strengthened protections for native, immigrant, & LGBTQ survivors
  - Protections for survivors in HUD-funded programs (implemented by 11/6/16 Final Rule)
- VAWA protections apply to all genders!

# WHOM DOES VAWA PROTECT?

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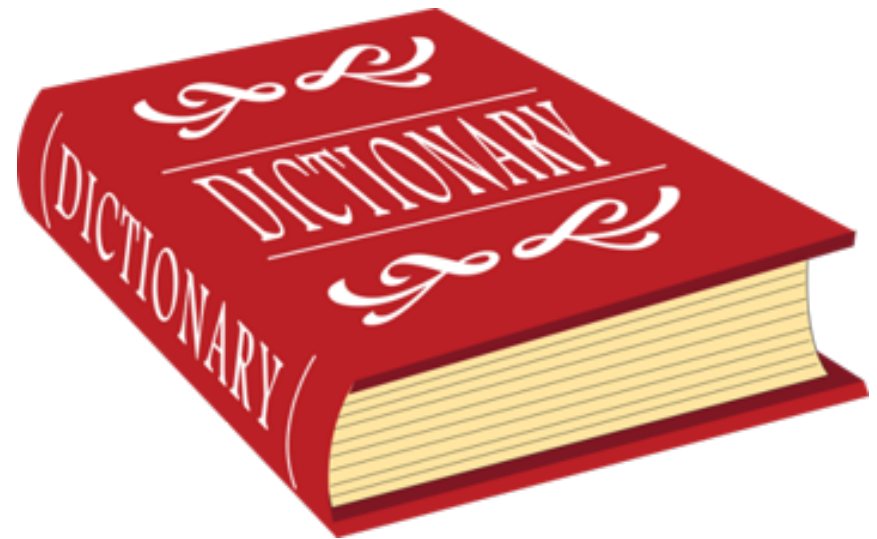
VAWA provides protection for survivors of:

- Domestic violence
- Dating violence
- Sexual assault
- Stalking

# VAWA DEFINITIONS

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- **Domestic Violence** – Crimes of violence committed by a current or former spouse or intimate partner, or by a person with whom the victim shares a child in common
- **Dating Violence** – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- **Romantic/Intimate Relationship** is determined by the length & type of the relationship & the frequency of interaction



# VAWA DEFINITIONS, CONT.

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**Sexual Assault** – Any nonconsensual sexual act proscribed by law, including when the victim lacks capacity to consent



**Stalking** – Conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.



In this training, we will use the term “DV survivor” to refer to anyone who has survived domestic violence, dating violence, sexual assault, or stalking.



# REQUIRED NOTICES & CONTRACT TERMS

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ASSURANCE STANDARDS

# REQUIRED NOTICES TO CLIENTS

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- All **CoC-funded PSH, RRH & TH** must provide each household with a Notice of Occupancy Rights & Certification Form at each of the following times:
  - ✓ The household is **denied** assistance
  - ✓ The household is **admitted** to the program
  - ✓ The household receives notification of **eviction**
  - ✓ The household is notified of **termination** of assistance
- ***Notice of Occupancy Rights*** explains VAWA protections, including the right to confidentiality & limitations of the protections
- ***Certification Form*** to be completed by the survivor to document an incident of domestic violence, dating violence, sexual assault or stalking

Model forms are available on the Santa Clara CoC website

# REQUIRED TERMS FOR CONTRACTS BETWEEN COC RECIPIENTS & LANDLORDS

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- Owner/landlord will comply with 24 C.F.R part 5, subpart L (VAWA)
- Any lease between owner/landlord & participant or agreement between program & participant will incorporate the provisions required by 24 C.F.R § 5.2005(b)-(c):
  - ✓ Participants **cannot be denied or terminated assistance or evicted from housing** due to their status as survivors of DV or due to criminal DV acts committed against them in the home
  - ✓ DV against a participant **cannot be grounds for claiming** the participant has engaged in a “repeated or serious violation of a lease” or as good cause for terminating their assistance, tenancy, or occupancy rights

Any lease between landlord & participant or agreement between program & participant *may* specify that protections under 24 C.F.R part 5, subpart L **only apply during the period of assistance** under the CoC program

# MORE ON TERMS FOR CONTRACTS BETWEEN COC RECIPIENTS & LANDLORDS

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## **If TBRA, then include the following terms:**

- Owner/landlord will provide the Notice of Occupancy Rights and Certification Form to the program participant with any notification of eviction
- The recipient is bound by 24 C.F.R § 5.2007(c) to keep in strict confidence any information provided by the participant, including the fact that domestic violence occurred, when requesting an emergency transfer

## **If not TBRA, then include the following term:**

- Any agreement between program & participant will permit the participant to terminate the agreement without penalty if the program determines the participant qualifies for an emergency transfer

# REQUIRED TERMS FOR LEASES BETWEEN LANDLORDS & PARTICIPANTS

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The landlord will comply with 24 C.F.R part 5, subpart L (VAWA), including the prohibited bases for eviction & restrictions on construing lease terms under 24 C.F.R § 5.2005(b)-(c):

- ✓ Participants **cannot be evicted from housing** due to their status as survivors of DV or due to criminal DV acts committed against them in the home
- ✓ DV against a participant **cannot be grounds for claiming** the participant has engaged in a “repeated or serious violation of a lease” or as good cause for terminating their assistance, tenancy, or occupancy rights

May specify that protections under 24 C.F.R part 5, subpart L only apply during the period of assistance under the CoC program

# REQUIRED TERMS FOR AGREEMENTS BETWEEN COC RECIPIENTS & PARTICIPANTS

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The recipient will comply with 24 C.F.R part 5, subpart L (VAWA), including the prohibited bases for eviction & restrictions on construing lease terms under 24 C.F.R § 5.2005(b)-(c):

- ✓ Participants **cannot be denied or terminated assistance or evicted from housing** due to their status as survivors of DV or due to criminal DV acts committed against them in the home
- ✓ DV against a participant **cannot be grounds for claiming** the participant has engaged in a “repeated or serious violation of a lease” or as good cause for terminating their assistance, tenancy, or occupancy rights

May specify that protections under 24 C.F.R part 5, subpart L only apply during the period of assistance under the CoC program

If not TBRA, then include the following term as well:

- ✓ The participant **may terminate the agreement without penalty** if the program determines the participant qualifies for an emergency transfer

# TAKEAWAYS

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The required terms must be incorporated into any contracts, leases, subleases, & occupancy agreements:

- Entered into; or
- Renewed
  - Including those renewing automatically!

# COORDINATED ASSESSMENT CONFIDENTIALITY SAFEGUARDS

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# ASSESSMENTS BY NON-VSPS

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If a household indicates that they are DV survivors at risk of harm, offer the choice of:

- An **immediate warm handoff** to a VSP (Victim Service Provider) for services, including safety planning and the VI-SPDAT;
- Continuing to receive the VI-SPDAT at your agency and having their **information entered anonymously** in the community queue in HMIS; or
- Continuing to receive the VI-SPDAT at your agency and having their **information entered** in the community queue in HMIS

If a DV survivor is already in the community queue because they have undergone a Family VI-SPDAT with their abuser, the survivor should be given the option to be **re-assessed without the abuser**

# EMERGENCY TRANSFERS

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ASSURANCE STANDARDS

# COC-LEVEL VAWA COMPLIANCE

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- Establish an **Emergency Transfer Plan** (p. 70 of QAS)
- Make the Emergency Transfer Plan **available to tenants & the public**
- Keep **a record of all emergency transfer requests & outcomes** of those requests for five years & report to HUD annually
- Update **CoC written standards** to include an emergency transfer priority for CoC-funded projects

# KEY TERMS

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- ***Emergency transfer plan*** – Provides for emergency transfers for DV survivors receiving rental assistance or in units subsidized under a covered housing program
- ***Internal emergency transfer*** – Emergency relocation of a tenant to another unit where the tenant would not be a new applicant
- ***External emergency transfer*** – Emergency relocation of a tenant to another unit where the tenant would be considered a new applicant
- ***Safe unit*** – A unit the DV survivor believes is safe

# WHO QUALIFIES FOR AN EMERGENCY TRANSFER PER THE QAS?

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A client qualifies for an Emergency Transfer if:

- They are a **survivor** of domestic violence, dating violence, sexual assault, or stalking;
- They **expressly request** the transfer; **AND**
- Either:
  - They reasonably believe there is a **threat of imminent harm** from further violence if they remain in the dwelling unit; or
  - If they are a survivor of sexual assault, the sexual assault occurred on the premises during the **90-calendar-day period preceding** the date of the request for transfer.

# SCC COC EMERGENCY TRANSFER PROCESS

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- ❑ The participant should submit a **written request** to program staff, certifying that they meet the emergency transfer qualification requirements
  
- ❑ The program may – but is not required to – request **additional documentation** of the occurrence for which the participant is requesting an emergency transfer. No other documentation is required.
  
- ❑ **Program staff** must communicate with their Coordinated Assessment System matchmaker at the Office of Supportive Housing to inform them:
  - ✓ That an emergency transfer request has been made; and
  - ✓ Whether the request is for an internal transfer, external transfer, or both

# INTERNAL TRANSFERS

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- ❑ Where the participant requests an internal emergency transfer, take steps to immediately transfer them to a safe unit **if a unit is available**
  - ✓ Requests for internal emergency transfers should receive **at least the same priority** as the program provides to other types of transfer requests
  
- ❑ **If a safe unit is not immediately available**, inform the participant that their options are to:
  - ✓ **Wait for a safe unit** to become available for an internal transfer;
  - ✓ Request an **external emergency transfer**; and/or
  - ✓ Pursue **both an internal & external transfer** at the same time in order to transfer to the next available safe unit in the CoC.

# EXTERNAL TRANSFERS

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- A participant requesting an external emergency transfer has priority over all other applicants for CoC-funded housing assistance
- The matchmaker will facilitate the referral of the participant to the next available appropriate unit
- The household retains their original homeless or chronically homeless status for purposes of the transfer



# CONFIDENTIALITY

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Any information provided by a participant when requesting an emergency transfer, including the fact that domestic violence occurred, must be **kept in strict confidence** by the recipient:

- ❑ No employees or contractors may have access to confidential information unless explicitly authorized by law;
- ❑ The information must not be entered into any shared database or disclosed to anyone unless the disclosure is:
  - ✓ Requested or consented to in writing by the individual in a time-limited release;
  - ✓ Required for use in an eviction proceeding or hearing regarding termination of assistance; or
  - ✓ Otherwise required by applicable law.

# MORE ON CONFIDENTIALITY

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Programs must ensure **strict confidentiality measures** are in place to prevent disclosure of the location of the client's new unit to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the client.



# BIFURCATING LEASES

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Housing providers may bifurcate TBRA (Tenant-Based Rental Assistance) leases to evict, remove, or terminate assistance to a household member who engages in DV-related criminal activity **without penalizing a victim** of such criminal activity who is also a tenant or lawful occupant

- ✓ **TBRA and any utility assistance shall continue** for the family member(s) who are not evicted or removed
- ✓ In PSH, if the family's eligibility was based upon the evicted or removed family member's **disability or chronic homeless status**, the remaining family members may stay in the project through the end of the lease

Non-TBRA participants who have not already established independent program eligibility at the time of bifurcation **have 90 days** to establish their eligibility or locate other housing

# LIMITATIONS OF VAWA PROTECTIONS

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- ❑ A program participant may be terminated or evicted:
  - ✓ For **any violation not based on an act of DV** against the tenant or an affiliated individual so long as the tenant is not subjected to a more demanding standard than other tenants in determining whether to evict or terminate assistance
  - ✓ If the housing provider can demonstrate an **actual and imminent threat** to other tenants, employees, or service providers
  
- ❑ **Actual and imminent threat** – A physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. 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
  - ✓ The **length of time** before the potential harm would occur

**Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents!**

# EVICTION/TERMINATION ONLY AS A LAST RESORT

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- Eviction or termination of assistance should occur only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to:
  - Transferring the victim to a different unit
  - Barring the perpetrator from the property
  - Contacting law enforcement to increase police presence or develop other plans to keep the property safe
  - Seeking other legal remedies to prevent the perpetrator from acting on a threat

# CALIFORNIA HOUSING LAWS

# RELEVANT CALIFORNIA HOUSING LAWS

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- ❑ Landlords are **required to change locks within 24 hours** of receiving a request in writing & a court order excluding the abuser (or police report if the abuser does not live with the survivor) issued within 180 days
  - ✓ If the landlord does not change the locks, the DV survivor may change them without permission
- ❑ A landlord **cannot evict a tenant** based upon their status as DV survivor unless, after having used the defense that they are a DV survivor, the tenant persists in allowing the abuser onto the property or the landlord reasonably believes that the abuser poses a threat to other tenants
  - ✓ Landlord must provide tenant with at least 3 days' notice to allow DV survivor to correct the violation





Questions?

Contact us at:

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