**Obligations of Kings Tulare Homeless Alliance Housing Providers Under the Violence Against Women Act and Related California Laws**

# Background

The Violence Against Women Act (“VAWA”) and California state laws protect survivors of domestic violence, sexual assault, dating violence, stalking, and human trafficking from discrimination in accessing and maintaining federally assisted housing because of the violence committed against them. In 2013, Congress expanded VAWA’s housing protections by covering additional federal housing programs, including housing assistance funded by the Continuum of Care and Emergency Solutions Grants programs. Additionally, California laws require housing providers to provide early lease terminations and lock changes for survivors in all rental housing. This checklist outlines the obligations of housing providers, including owners and managers, funded by HUD, under VAWA and state law.

# Failure to Meet Obligations

When housing providers do not meet these obligations, it can be the difference between survivors accessing/maintaining safe housing or becoming homeless/returning to a violent situation. Further, failure to meet these obligations may lead to court finding of federal and state fair housing violations or other related laws due to discrimination, unequal treatment, or disparate impact**.**

# Basic Obligations

# Survivors Cannot be Denied Housing, Evicted, or Terminated Because of the Violence

* + Housing providers cannot deny admission or evict a tenant on the basis of, or as a direct result of, the fact that the tenant is or has been the survivor of domestic violence, sexual assault, dating violence, stalking, or human trafficking (“Covered Crimes”). These protections also apply to applicants and tenants who have been threatened with an incident of a Covered Crime.
  + An incident of an actual or threatened Covered Crime is not considered a serious or repeated violation of the lease or other “good cause” for terminating the assistance, tenancy, or occupancy rights of the survivor.
  + Housing providers cannot consider criminal activity directly relating to Covered Crimes, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated

Individual1 of the tenant is the survivor of the violence. For example, a tenant cannot be evicted if the police are called to respond to violence committed against the tenant by their partner who is a guest in the unit.

* + Housing providers cannot subject survivors of Covered Crimes to a more demanding standard than other tenants when determining whether to evict.
  + **Exception:** Housing providers can evict or terminate the assistance of a survivor if they can demonstrate an actual and imminent threat2 to other tenants or employees at the property if the survivor is not evicted or terminated from the assistance.

# Confidentiality

* + Under VAWA, housing providers are required to keep *strictly confidential* all information submitted by the tenant related to their status as a survivor.
  + Housing providers may not enter any of this confidential information into a shared database or disclose this information to another entity or individual, except to the extent that the disclosure is: requested or consented to by the survivor in writing, required for use in an eviction or termination proceeding, or otherwise required by law.

# Notification

* + Housing providers are required to notify all tenants of their VAWA rights by providing each tenant a Notice of Occupancy Rights Form [HUD-5380](https://portal.hud.gov/hudportal/documents/huddoc?id=5380.docx) and VAWA Self-Certification Form [HUD-5382](https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx) with any notification of eviction or notification of termination of assistance in multiple languages.
  + These forms are available in 14 other languages (Arabic, Armenian, Cambodian, Creole, Hmong, Japanese, Korean, Lao, Chinese/Mandarin, Russian, Somali, Spanish, Thai, and Vietnamese) and can be found on HUD’s website.3
  + Housing providers must customize [HUD- 5381: Emergency Transfer Plan](https://www.hud.gov/sites/documents/5381.docx)  and the [HUD-5383: Emergency Transfer Plan Request](https://www.hud.gov/sites/documents/5383.docx)by providing information about the program and contact information.
  + *Continuum of Care housing providers were required to distribute these forms to existing tenants by*

***December 16, 2017****.*4

# Leases, Subleases, and Occupancy Agreements

* + Housing providers must include in contracts, leases, subleases, and occupancy agreements all VAWA requirements for tenants, owners, and managers, including prohibited bases for eviction and restrictions on construing lease terms.
  + These agreements must allow survivors to terminate the lease or occupancy agreement without penalty, if the owner or manager determines that the survivor qualifies for an emergency transfer.

1 *Affiliated individual* means “(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or (2) Any individual, tenant, or lawful occupant living in the household of that individual.” 24 C.F.R. § 5.2003.

2 *Actual and imminent threat* means “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 and 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.” 24 C.F.R. § 5.2003.

3 <https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a>

4 24 C.F.R. § 5.2005(a)(2)(iv) (“During the 12-month period following ***December 16, 2016,*** either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.” (emphasis added)).

# Remedies for Survivors

* + Emergency Transfers: Housing providers must assist tenants and their affiliated individuals who are survivors with an emergency transfer in accordance with their emergency transfer plan. *Housing providers should have developed VAWA emergency transfer plans by* ***June 14, 2017****.*
  + Early Lease Terminations: Under California law, survivors can terminate their leases by providing a 14-day notice along with a police report, restraining order, or third-party verification.5
  + Funds for Breaking A Lease: Owners and managers of Tenant-based Rental Assistance can use CoC grant funds to pay for rent owed by survivors for breaking the lease, if the family qualifies for an emergency transfer.
  + Lock Changes: California law requires that landlords change locks within 24 hours for survivors who have made such a written request and have provided a police report or restraining order.6
  + Funds for Property Damage: CoC grant funds can be used to pay for property damages caused by the action of a program participant.
  + Lease Bifurcations: Owners and managers can decide whether to allow a lease bifurcation where a lease is modified to remove a perpetrator on the lease for committing a Covered Crime against the survivor. Removing the perpetrator from the lease does not generally impact the assistance of the survivor. Remaining tenants can stay in the unit, even if they are not qualifying members.

# Documentation

* + Although not required, housing providers may request, in writing, that the tenant seeking VAWA protections certify that the individual is a survivor. To receive protections under VAWA, the tenant has the choice to submit either a VAWA Self-Certification Form [HUD-5382,](https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx) or other documentation as noted on the certification form, completed and submitted within 14 business days, or an agreed-upon extension date. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction or admission denial.
  + If the housing provider receives conflicting certifications, the housing provider can require an applicant or tenant to submit third-party documentation permitted under VAWA.

# Maintaining Records

* + Housing providers must maintain sufficient records and data for emergency transfers requested by survivors and the outcomes of these requests. The records must include situations where a program participant moved to a different CoC for VAWA reasons.
  + These records are subject to VAWA’s confidentiality requirements.

# Court Orders

* + Housing providers must honor all court orders addressing rights of access or control of property, including protective orders issued to survivors, and any orders addressing the distribution or possession of property.

5For more information, see the National Housing Law Project’s California Early Lease Termination Packet, [http://nhlp.org/files/Early-](http://nhlp.org/files/Early-Lease-Termination-Toolkit%20Sep%202017.pdf) [Lease-Termination-Toolkit%20Sep%202017.pdf](http://nhlp.org/files/Early-Lease-Termination-Toolkit%20Sep%202017.pdf)

6 For more information, see the National Housing Law Project’s California Lock Changes Packet, [http://nhlp.org/files/CA-Lock-](http://nhlp.org/files/CA-Lock-Changes-Packet-Advocates-and-Survivors.pdf) [Changes-Packet-Advocates-and-Survivors.pdf](http://nhlp.org/files/CA-Lock-Changes-Packet-Advocates-and-Survivors.pdf)