

C. PROTECTIONS FOR VICTIMS OF ABUSE

[Pub.L. 109-162 and 109-271]

The Violence Against Women Reauthorization Act of 2005 (VAWA) provides that “criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate family member of the tenant’s family is the victim or threatened victim of that abuse.” VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit the OHA’s authority to terminate the tenancy of any tenant if the OHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property.

1. Victim Documentation

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant’s control and a tenant or immediate family member of the tenant’s family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the OHA will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

- a. A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking.
- b. One of the following:
 - 1) A police or court record documenting the actual or threatened abuse.
 - 2) A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the OHA within 14 business days after the OHA request is received by the victim. Upon written request from the tenant, the OHA will extend the 14-day deadline for an additional 10 business days as long as the extension request is submitted within the initial 14 business-

day period. If the individual does not provide the required certification and supporting documentation within 14 business days or the approved extension period, the OHA will provide with termination of the family's lease.

If the OHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated, the OHA will bypass the standard process and proceed with the immediate termination of the family's lease.

2. Terminating or Evicting a Perpetrator of Domestic Violence

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the OHA the explicit authority to bifurcate a lease, or to remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority supersedes any local, state, or other federal law to the contrary. However, if the OHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance [Pub.L. 109-271].

When the actions of a tenant or other family member result in a determination by the OHA to terminate the family's lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the OHA will request that the victim submit the above-required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame or any approved extension period, the OHA will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, the OHA will proceed with termination of the family's lease.

If the OHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated, the OHA will bypass the standard process and proceed with the immediate termination of the family.

3. OHA Confidentiality Requirements

All information provided to the OHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.