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Understanding Violence Against Women's Act: The final rules - by Jeffrey Turk and Therese Quijano

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On November 16, 2016, HUD published the long-awaited “Final Rules” concerning the implementation of the Violence Against Women’s Act (VAWA). While VAWA was originally enacted by Congress in 1994, these Final Rules were intended to clarify and effectuate the law in a concise and straightforward manner. Of course, HUD’s “concise” statement of the Final Rules is comprised

of no less than 400 pages. While the scope of the Final Rules is quite broad, owners and managers of subsidized housing are required to ensure that they are fully implemented and followed.

As an initial matter, the Final Rules expand the scope of the properties to which the federal VAWA law applies. While VAWA once applied only to Public Housing, Section 8 voucher holders, Project based Section 8 and Supportive Housing for the Elderly and Disabled (Section 202 and 811 housing), it has now been extended to include Section 236 Multifamily Rental Housing, HOME and BMIR (Below Market Interest Rate Housing), HOPWA (Housing Opportunities for People with Aids), and McKinney-Vento Homeless Programs. It has also been extended to housing provided through the Department of Agriculture (Rural Development Multifamily Housing) and the Department of Treasury (Low Income Housing Credit Programs - LIHTC). Therefore, it is important to confirm whether your specific property is included within the types of subsidized housing to which this law now applies. Of course, even if the federal VAWA law does not apply, you should confirm whether your state has adopted state specific VAWA protection. For example, Massachusetts has a state specific VAWA law which applies to a more expansive scope of properties.

Assuming your property is covered by this law, it is important to understand the protections and requirements which the Final Rules impose. These protections may be broken down as follows:

1. Continued Protections: The Final Rules codify the basic protections of the existing VAWA law. These protections include the requirement that victims of domestic violence, dating violence, sexual assaults, and stalking are not denied housing or evicted based on their status. For a more detailed discussion on the basic protections of VAWA, refer to our previous article which may be found at www.tqlawfirm.com.
2. Emergency Transfers: One of the primary elements of the VAWA housing protections is the right of the victim to obtain an emergency transfer. In order to effectuate this protection, covered housing providers are required to adopt an "Emergency Transfer Plan" to identify the manner in which such a request will be processed. While owners are permitted to adopt their own Emergency Transfer Plan, HUD has provided a model plan which includes: (a) the right of the victim to self-certify the need for an emergency transfer; (b) allowing the victim to determine what a "safe" unit would be; (c) requires the Owner to allow for immediate transfer to an available unit; (d) requires the Owner to explain efforts which will be made if a unit is not immediately available; and (e) requires the Owner to document all such requests and the outcome of the requests. Regardless of whether you adopt the HUD plan or create your own plan, the Final Rules require the Emergency Transfer Plan to be in place no later than June 15, 2017. It should also be noted that the Final Rules provide for a transfer within the subject property. Managing agents are not required to transfer victims to other properties which they manage but are separately owned. Of course, VAWA also allows victims to elect to terminate their tenancies without penalty as an alternative to transferring within the property.
3. Protections Against Adverse Effects of Abuse: The Final Rules clarify that victims may not be denied tenancy rights based solely on negative factors which are the direct result of such abuse. Domestic violence can often have negative consequence on the victim beyond just physical effects. These may include both economic and criminal impacts. The Final Rules recognize that abusers will

often procure credit cards in the name of the victim and take other actions which negatively impact the victim's credit. Likewise, the abuser can cause poor landlord references and evictions for the victim through their abusive conduct. The Final Rules prohibit an owner from denying or terminating housing rights based on such adverse factors directly related to the abuse.

4. Lower Barrier Certification Process for Survivors: The Final Rules clarify that, in most cases, a victim must be permitted to self-certify their status in order to exercise their rights under VAWA rather than being required to seek and provide third-party verification. HUD has published a model "self-certification" form for use by owners.

5. Notice of Occupancy Rights: One of the most important new obligations imposed by the Final Rules is the requirement to provide notice of these new rights to residents and applicants. To ensure that these persons are aware of their VAWA rights, owners are required to provide each household with a "Notice of Occupancy Rights" and "Certification Form". The Notice of Occupancy Rights is required to advise residents of their VAWA rights, including the right to confidentiality of any information provided. These forms must initially be provided to residents at their annual recertification or upon lease renewal. Effective December 15, 2017, Owners will be required to provide these forms to all applicants that are denied housing AND to all residents at the time the resident takes occupancy. This timeline will insure that all current and new residents are provided with copies of these notices in a timely manner. The Final Rules also strongly encourage covered housing providers to post the Notice of Occupancy Rights in public areas of their properties where tenants may view them, and also to provide links on associated websites. Of course, it is imperative that all Owners adopt a "Notice of Occupancy Rights" and "Certification Form" at this time.

Clearly, the Final Rules impose significant new requirements on covered housing providers. The most pressing obligation, of course, is to adopt an Emergency Transfer Plan. Likewise, covered housing providers must adopt and distribute the Notice of Occupancy Rights within the time period provided by the Final Rules. Finally, covered housing providers would be well served to create a formal VAWA policy to ensure that management staff members understand the rights afforded residents and applicants, and the obligations imposed by this law. Such a policy will also insure that staff applies and adheres to a uniform policy to afford residents these rights and avoid violations. As noted, the Final Rules are contained within 400 pages of text. While some managers may relish the opportunity to peruse the actual text on their summer vacations, a written VAWA policy will insure that managers are able to follow a simple and uniform plan to afford victims the rights to which they are entitled. We would strongly encourage all covered housing providers to contact their legal counsel to obtain a complete understanding of the legal requirements imposed by VAWA, and to discuss the adoption of the foregoing documents and policies.

The foregoing article is intended for information purposes only and should not be considered or relied upon as legal advice. You should consult your qualified attorney for any legal advice.

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