

Chair

Debbie Segal
Kilpatrick Townsend & Stockton LLP
Atlanta, GA

Board of Governors Liaison

Cheryl I. Niro
Robinson Niro LLC
Chicago, IL

**Special Advisor and Liaison from
National Association of Women Lawyers**

Margaret Drew
University of Cincinnati College of Law
Cincinnati, OH

Commission Members

Cheri Allison
Alameda County Family Justice Center
Oakland, CA

Ruth A. Bahe-Jachna
Greenberg Traurig, LLP
Chicago, IL

Phyllis G. Bossin
Phyllis G. Bossin & Associates, LPA
Cincinnati, OH

Hon. Jerry J. Bowles
Circuit Judge, Jefferson County
Louisville, KY

Anita Britton
Britton Osborne Johnson PLLC
Lexington, KY

Rosie Hidalgo
Casa de Esperanza
Washington, DC

Kaethe Morris Hoffer
Chicago Alliance Against Sexual Exploitation
Chicago, IL

Linda Lopez
Sanctuary for Families
New York, NY

David D. Martin
King County Prosecuting Attorney's Office
Seattle, WA

Jessica Mindlin
Victim Rights Law Center
Portland, OR

Myrna S. Raeder
Southwestern Law School
Los Angeles, CA

Maya Raghu
Futures Without Violence
Washington, DC

Kavitha Sreeharsha
Global Freedom Center
San Francisco, CA

David Thomas
Johns Hopkins University
Division of Public Safety Leadership
Columbia, MD

Angela C. Vigil
Baker & McKenzie
Miami, FL

Marshall J. Wolf
Wolf & Akers, LPA
Cleveland, OH

AMERICAN BAR ASSOCIATION**Commission on****Domestic & Sexual Violence**

740 15th Street, NW
Washington, DC 20005-1022

Phone: (202) 662-1744

Fax: (202) 662-1594

www.ambar.org/cdsv

April 4, 2013

Hon. Joan Zeldon, Chair

Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act
District of Columbia Superior Court
515 Fifth St., N.W., Room 219
Washington, DC 20001

Dear Judge Zeldon,

Thank you again for welcoming the Commission's participation at the February drafting committee meeting. We are so pleased that the committee is addressing housing protections for survivors of domestic violence, sexual assault and stalking in the revised act; as you know, housing stability is a critical component of victim safety. Our Deputy Chief Counsel, Rebecca Henry, will be present as an observer at the April 19-20 meeting as well.

We are writing now with some comments regarding the revised draft, circulated via email on April 2. The members of our Commission were able to review and discuss some of the victim-protective provisions of the February draft at our spring business meeting in March, so these comments are based on their input and concerns, adjusted to reflect the April revisions. In addition to these comments, we have included an attachment with proposed alternative language.

1. DEFINITIONS

The terms "victim advocate" and "victim service provider" have become terms of art in the field, along with the term "victim assistant". All three terms are defined in the Violence Against Women Act ("VAWA"), and these terms have been adopted by VAWA-funded programs (including states and courts) across the country. For continuity, it would be helpful if the definitions in the revised act tracked the language in VAWA.

An "attesting third party" in the act is someone who can verify a tenant's status as a victim of domestic violence, sexual assault or stalking; as such, the listed professionals should probably include attorneys and members of clergy (as well as victim assistants, see above), as they are very likely to be a professional in whom the victim-tenant will confide.

"Dating violence" is currently not included in the draft, presumably on the assumption that dating violence will be covered by an adopting state's domestic violence statute(s). While that assumption may hold true in some jurisdictions, there are several states that have defined "dating violence" separately in statute, and some that have established separate civil protective orders for dating violence. Also, VAWA has included dating violence as a separate offense since 2005. We recommend including dating violence, cross referenced to a state's own definition, in brackets, as an alternative that individual states can adopt if it makes sense within their own statutory structure. It would be regressive for this act to leave out a victim population that a state has already identified, if it could be included.

2. FORECLOSURE OF REMEDIES

There are several places in the act where a tenant's remedy against a landlord for some wrong is curtailed due to the tenant's 'unclean hands' in creating the wrongful condition. This, of course, is just and has a long precedent in civil law.

However, there are some cases where a tenant may be held accountable for the bad acts of a perpetrator. In many instances, perpetrators know this, and intentionally create dangerous or destructive conditions as a means of further harming the victim-tenant. An example is the perpetrator who intentionally damages the dwelling, whether during a violent incident aimed at injuring or controlling the victim-tenant; as a means of creating an unavoidable "signature" for the victim-tenant to live with, reinforcing the perpetrator's power and control; or even to intentionally render the home uninhabitable for the victim-tenant.

In all of these cases, the tenant is a victim of crime, and, as a matter of public policy, should not be held accountable for the perpetrator's criminal acts under the terms of the lease. There are two possible ways to address this: one is to add exemption language at every point; we have included suggested language to accomplish this in the attachment. Another alternative, adopted by the Violence Against Women Act in the case of public housing, is to simply include a blanket exemption; this language is also included in the attachment.

3. INFORMATION TO BE DISCLOSED TO LANDLORD; TIMEFRAME; PENALTIES

Sections 508 and 509 require certain disclosures by a victim-tenant to the landlord as a prerequisite for terminating the lease. Of course, some disclosure and verification of facts is necessary, but the Commission believes the current draft requires disclosure of facts unnecessary to the process of lease termination, and which could intrude on the privacy of the victim-tenant and unintentionally and unnecessarily render the landlord an adjudicator of fact. Specifically, we see no need to require the victim-tenant to swear to experiencing a "reasonable fear" of "bodily injury or death," if they have already sworn to being a victim of domestic violence, sexual assault or stalking, and had a reliable third party swear in corroboration. In fact, this requirement will exceed the standard required in many states to be granted a civil protective order by a court—which is in itself sufficient under the act to terminate a lease.

Additionally, a clause from VAWA clarifying that the requirement of formal notification and verification can be waived by the landlord may be useful here in promoting administrative efficiency for parties in more informal landlord-tenant relationships.

Sections 508 and 509 also require that the victim-tenant request the termination within 90 days of the most recent incident. This is reasonable, except for cases where the perpetrator was arrested and jailed for the incident, or was subject to a civil or criminal stay-away order after the latest incident, during which time the victim-tenant felt safe to remain in the dwelling. However, when the incarceration or protective order expires (often without advanced notice in the case of incarceration) the victim-tenant may feel the need to relocate quickly, and require an early lease termination.

Finally, we were very pleased to see the addition in this draft of a parallel penalty for landlords who willfully refuse to terminate a lease for a victim-tenant. However, the penalty for submitting a false verification is still so harsh as to be a significant disincentive for victim-tenants to avail themselves of the benefits of the act. We strongly urge the committee to consider adding "bad faith" language (so the penalty would only apply if the tenant submitted a false verification "willfully and in bad faith"—which

would protect victim-tenants who were merely confused or mistaken in their verifications) and to eliminate the inclusion of a perjury charge.

4. PREVENTING PERPETRATOR ACCESS AFTER COURT ORDER

Finally, we suggest a small but significant change in Section 512, designed to make clear that once a court order to vacate has issued, the landlord is neither required *nor permitted* to provide access to the dwelling by the perpetrator.

Once again, thank you so much for the opportunity to present these concerns and comments. If we can be of any further assistance to you, please don't hesitate to contact our staff directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'VHuelgo', with a long horizontal flourish extending to the right.

Vivian Huelgo
Chief Counsel

Cc: Debbie Segal, Chair, ABA Commission on Domestic & Sexual Violence
John Sebert, Staff Liaison, Uniform Law Commission

PROPOSED ALTERNATIVE LANGUAGE

1. DEFINITIONS

(VAWA) 42 USC 13925: (*emphasis added for clarity*)

(41) *Victim advocate.*— The term “victim advocate” means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a victim services provider.

(42) *Victim assistant.*— The term “victim assistant” means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a court or a law enforcement or prosecution agency.

(43) *Victim service provider.*— The term “victim service provider” means a nonprofit, nongovernmental or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for domestic violence, dating violence, sexual assault, or stalking victims, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

SECTION 102: DEFINITIONS

(7) “Attesting third party” means a law enforcement official, a licensed health care professional, an attorney, a member of the clergy, a victim’s advocate, victim assistant, or a victim services provider who has had contact with the tenant or an immediate family member who has been the victim of domestic violence, sexual assault, or stalking.

2. FORECLOSURE OF REMEDIES

SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.

(e) A tenant may not seek remedies under this section to the extent:

(1) the noncompliance was caused by the act or omission of the tenant, an immediate family member, or a person on the premises with the tenant’s consent, other than the landlord or the landlord’s agent, unless the act or omission was caused by a perpetrator of domestic violence, [dating violence,] sexual assault, or stalking against the tenant or immediate family member; or

SECTION 503. SELF-HELP FOR MINOR DEFECTS.

(d) A tenant may not repair under subsection (b) at the landlord’s expense to the extent:

(1) the condition was caused by the act or omission of the tenant, an immediate family member, or other person on the premises with the tenant’s consent, other than the landlord or the landlord’s agent, unless the act or omission was caused by a perpetrator of domestic violence, [dating violence,] sexual assault, or stalking against the tenant or immediate family member; or

SECTION 504. LANDLORD’S WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE.

(b) Rights of a tenant under this section do not arise if the condition was caused by the act or omission of the tenant, an immediate family member, or other person on the premises with the tenant’s consent, other than the landlord or the landlord’s agent, unless the act or omission was caused by a perpetrator of domestic violence, [dating violence,] sexual assault, or stalking against the tenant or immediate family member.

SECTION 901. RETALIATORY CONDUCT PROHIBITED.

(a) Except as otherwise provided in subsection (c), a landlord may not retaliate against a tenant by taking one of the actions described in subsection (b) because the tenant has:

[...]

[(4) exercised [in good faith] a legal right or remedy under the lease or this [act]]; or

[(5) pursued [in good faith] a legal action against the landlord or testified [in good faith] against the landlord in court].

(6) been a victim of a crime which is the purported justification for the landlord's retaliatory action.

[...]

(c) A landlord is not liable for retaliation if:

(1) the violation of which the tenant's complained in subsection (a)(1) or (2) was primarily caused by the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, unless the violation was caused by a perpetrator of domestic violence, [dating violence,] sexual assault, or stalking against the tenant or immediate family member;

[...]

(4) the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, engaged in conduct that presents a threat to the health or safety of another tenant of the dwelling unit or another dwelling unit on the premises, except that engaging or continuing in a relationship in which the tenant is a victim of domestic violence, [dating violence,] sexual assault or stalking shall not be considered a threat to the health or safety of other tenants;

(VAWA) 42 U.S.C. § 41411. Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking.

(b) Prohibited Basis for Denial or Termination of Assistance or Eviction.—

(1) In general.—An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) Construction of lease terms.—An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

(3) Termination on the basis of criminal activity.—

(A) Denial of assistance, tenancy, and occupancy rights prohibited.—No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person

under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

(B) Bifurcation.—

(i) In general.—Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) Effect of eviction on other tenants.—If a public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

(C) Rules of construction.—Nothing in subparagraph (A) shall be construed—

(i) to limit the authority of a public housing agency or owner or manager of housing assisted under a covered housing program, when notified of a court order, to comply with a court order with respect to—

(I) the rights of access to or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(II) the distribution or possession of property among members of a household in a case;

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an immediate family member of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate;

(iii) to limit the authority to terminate assistance to a tenant or evict a tenant from housing assisted under a covered housing program if a public housing agency or owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted; or

(iv) to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

3. INFORMATION TO BE DISCLOSED TO LANDLORD; TIMEFRAME; PENALTIES

SECTION 508. EARLY TERMINATION OF LEASE BY TENANT AS THE RESULT OF DOMESTIC VIOLENCE, [DATING VIOLENCE] SEXUAL ASSAULT, OR STALKING.

(a) If a tenant or an immediate family member becomes the victim of an act of domestic violence, [dating violence,] sexual assault, or stalking, ~~which creates a reasonable fear in the tenant or the immediate family member that the tenant or the immediate family member will suffer serious bodily harm or death by continued residence in the dwelling unit,~~ the tenant is released from the lease on the date specified in the notice [described in paragraph (1)] if the tenant sends the landlord:

(1) notice in a record signed by the tenant not later than [90] days after the act of domestic violence, [dating violence,] sexual assault, or stalking, unless the perpetrator has been sentenced to jail or subject to a court order preventing access to the tenant because of the perpetrator's act of domestic violence, [dating violence,] sexual assault, or stalking, in which case the date shall be no more than 90 days from the date of the tenant's notification of the perpetrator's release from jail or expiration of the court order, and at least [14] days before the release date specified in the notice ~~specifying facts giving rise to the fear and~~ of the tenant's intent to be released from the lease; and

(2) one of the following documents:

(A) a copy of a valid outstanding temporary or permanent civil or criminal court order ~~of a court of any state~~ which restrains a perpetrator from contact with the tenant or an immediate family member;

(B) a copy of the conviction of a perpetrator for an act of domestic violence, [dating violence,] sexual assault, or stalking against the tenant or an immediate family member; or

(C) a verification in a record signed by the tenant and an attesting third party which complies with Section 509.

[...]

(d) If a tenant complies with this section, the landlord:

(1) except as otherwise provided in subsection (c), shall return the tenant's security deposit and prepaid rent recoverable by the tenant under Section 1204 after the tenant vacates the dwelling unit;

(2) may not assess a fee or other penalty against the tenant solely for exercising a right granted under this section; and

(3) may not disclose information required to be reported to the landlord under this section, including the fact that a tenant is a victim of domestic violence, [dating violence,] sexual assault, or stalking, unless:

(A) the tenant provides specific, time-limited, and contemporaneous consent to the disclosure in a record signed by the tenant; or

(B) the information is required to be disclosed by a court order or other law.

[(e) If a landlord willfully refuses to release a tenant who under this section is entitled to be released from the lease, the court shall award the tenant an amount equal to [three] months' periodic rent or [triple] actual damages, whichever is greater, and costs, and reasonable attorney's fees.]

SECTION 509. VERIFICATION.

(a) A verification provided by a tenant under Section 508(a)(2)(C) must include the following:

(1) to the best knowledge and belief of the tenant:

(A) the tenant's name and the address of the dwelling unit;

~~(B) the approximate dates during which the domestic violence, sexual assault, or stalking described in Section 508 occurred;~~

(C) the date of the most recent act of domestic violence, [dating violence,] sexual assault, or stalking, or the date on which the tenant received notice of the perpetrator's release from jail or expiration of the court order;

~~(D) a statement that because of the acts of domestic violence, sexual assault, or stalking, the tenant or an immediate family member has a reasonable fear that the tenant or the immediate family member will suffer serious bodily harm or death by continued residence in the dwelling unit.~~

(E) the proposed date for the termination of the lease or the tenant's release from the lease; and

(F) a statement that the tenant understands that the statements could be used in court and that the tenant could be liable for ~~perjury as well as~~ the damages provided in subsection (b) for making false statements in the verification; and

(2) to the best knowledge and belief of an attesting third party:

(A) the name, business address, and business telephone number of the attesting third party;

(B) the capacity in which the attesting third party received the information regarding the domestic violence, [dating violence,] sexual assault, or stalking;

(C) a statement that the attesting third party has read the tenant's verification and has been advised by the tenant that the tenant or an immediate family member is the victim of domestic violence, [dating violence,] sexual assault, or stalking ~~and has a reasonable fear of serious bodily harm or death by continued residence in the dwelling unit;~~

(D) a statement that the attesting third party, based on the tenant's verification, believes the tenant and understands that the verification may be used as the basis for releasing the tenant from a lease or terminating the tenant's interest under the lease; and

(E) a statement that the attesting third party understands that the verification could be used in court and that the attesting third party could be liable for perjury for knowingly making a false statement in the verification.

(b) If a tenant willfully and in bad faith submits a false verification to the landlord under subsection 508(a)(2)(C), the court may award the landlord an amount up to [three] months' periodic rent or [triple] actual damages, whichever is greater, and costs, and reasonable attorney's fees.

(c) Verification not required.—Nothing in this subsection shall be construed to require a landlord to request that a tenant submit verification of their status as a victim of domestic violence, [dating violence,] sexual assault, or stalking. See VAWA 42 USC 41411(c)(5)

4. PREVENTING PERPETRATOR ACCESS AFTER COURT ORDER

SECTION 512. EFFECT OF COURT ORDER TO VACATE.

(a) Upon issuance of a court order requiring a perpetrator to vacate the dwelling unit, ~~neither~~ a landlord ~~nor a tenant~~ has neither a duty nor a right to:

- (1) allow the perpetrator access to the unit unless accompanied by a law enforcement officer; or
- (2) provide the perpetrator with keys to the unit.