The Fair Housing Handbook

Your Complete Guide to Fair Housing Compliance

Paul Flogstad

ASSISTED HOUSING ALERT
Essential how-to-tips and business strategies for HUD, fair housing and ADA compliance

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ABOUT THE AUTHOR

For over twenty years, Paul Flogstad has been involved in the appraisal of residential, multifamily, farm and commercial properties throughout the Midwest. Most recently, he was a consultant for affordable, multi-housing properties in 22 different states. This involved properties in HUD, Rural Development, HOME and Tax Credit programs. Paul holds numerous professional property management designations and currently holds the prestigious RHM designation from the National Center for Housing Management.

Paul was previously Vice President of the South Dakota Multi-Housing Association, Vice Chairman of the Minnehaha County Housing and Redevelopment Commission, and Chairman of the Sioux Falls Property Appeals Board. In 2009, he received the Outstanding Educator of the Year award from the South Dakota Multi-Housing Association. He has been involved in the real estate industry for the past 38 years. He has been involved in sales, construction, project management, appraisal, mortgage consulting and brokerage, property management, and property management consulting/training. Through his consulting company, Property Management Solutions, he provides training and consulting services nationwide to owners, management companies, multi-housing associations, as well as state and federal agencies. Paul specializes in fair housing issues and has developed fair housing and outreach programs for governmental agencies as well as presented seminars to property management companies, apartment associations and the general public. He also conducts research analysis for impediments to fair housing for grantees of federal CDBG funds.

Most recently, he has been a consultant to the City of Sioux Falls. In this assignment he has developed a program that is a first-of-its-kind in the nation. It involves a three-pronged approach to fair housing awareness. First a website was developed which is a “one-stop shop” for fair housing information. The second approach involves taking fair housing classes to where it is needed the most. He has held classes for the immigrant population, neighborhood associations, and tenants in affordable housing, multicultural centers, social service agencies, church groups and the likes. The third approach involves working as a fair housing ombudsman. Paul takes calls from anyone who may have a fair housing or landlord tenant question. By listening carefully, he determines if the situation is a fair housing issue or a landlord/tenant problem. Next, he attempts to resolve these issues by working with both sides, and in many cases a common resolution is found. This helps to reduce the need to submit a formal complaint to the fair housing office at HUD. This program started in April, 2014 on a six month trial using CDBG funds. Because of the outstanding success the contract was extended for another full year. As of April 1, 2015, this program has gone statewide. Paul has been engaged by the State of South Dakota to act in the same capacity as with the City of Sioux Falls.

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INTRODUCTION

Private fair housing organizations, state and local governments, civil and human rights agencies, HUD, and DOJ collectively handle more than 27,000 complaints of housing discrimination every year. Each party named in a fair housing complaint has responsibility to respond to the allegations, to produce documentation, and to make themselves available for interviews. FH violations can result in fines up to $10,000 for the first offence and $25,000 for the second offence in a five year period and up to $50,000 in a seven year period. Plaintiffs are also entitled to compensatory and punitive damages as well as attorney's fees. Therefore, it makes sense to keep yourself informed and updated.

Assisted Housing Alert brings the ***Fair Housing Handbook*** in collaboration with industry veteran Paul Flogstad to help all stakeholders in assisted housing provide housing to all. Paul has been involved in the appraisal of properties for more than 20 years and is a resource of information on Fair Housing practices.

This book covers in detail, the HUD's expectations from housing providers in regards to fair housing practices, the consequences of discriminatory practices and most importantly, how to avoid discrimination claims and penalties inadvertently. This book is divided into four sections and contains real-life examples and case studies to clarify the fair housing requirements. The first section, titled 'Fair Housing Basics', covers the Acts and Regulations governing fair housing, such as the Fair Housing Act, the Americans With Disabilities Act, and the Civil Rights Act, and covers what constitute the 'protected classes'. This section covers how housing providers can advertise for potential tenants while showing non-discriminatory intent.

The second section, discusses how providers need to ensure their employees, including maintenance staff, remain compliant with the conditions of Fair Housing. This section looks at the screening process for applicants and how providers can avoid discriminatory practices, whether inadvertent, during background checks, credit checks etc. This section also details the code of conduct required by employees and maintenance staff of a fair housing property.

The next section covers reasonable accommodation and reasonable modification for disabled tenants. In 2011, the number one reason for discrimination claims was Disability. Housing providers are legally obliged to provide reasonable accommodation and modification to disabled tenants or potential tenants who ask for it. This section details the instances when providers must provide accommodation, types of accommodation and modifications and how to avoid disability discrimination claims! The fourth, and last section of this book details Fair Housing discrimination cases and litigations that have taken place over the past few years. This section is particularly useful in understanding the kinds of conduct that could lead to discrimination claims being filed against the housing provider.

Fair Housing is a right for all and this book clarifies the requirements laid down by Fair Housing regulations in detail. It is our hope, that the Fair Housing handbook will equip property owners, managers and agents with the necessary information required to provide nondiscriminatory service to applicants and tenants.

Section 1:
Fair Housing Basics

The Basic Intent of FHA

The basic intent of the Fair Housing Act is to prohibit discrimination in housing in the United States.

The Fair Housing Act

The Fair Housing Act, as amended ("FHAA"), is a federal law that prohibits unlawful discrimination in all aspects of housing including, but not limited to:

- **rental/ leasing, sales**
- **mortgage lending**
- **appraisals**
- **advertising**
- **zoning**
- **design & construction**
- **municipalities**
- **Home owner associations**

It is enforced by HUD, the United States Department of Housing and Urban Development.

The Fair Housing Act is different from Fair Housing Laws but the two often cross over. Fair housing laws vary state by state and there are also fair housing laws at the local level. Fair housing laws deal with aspects of the landlord/ tenant relationship (Rights and Responsibilities). The areas where fair housing laws apply include security deposit handling, termination or eviction proceedings, abandoned property, entry by landlord, maintaining premises etc.

The Americans with Disabilities Act (ADA) and Fair Housing

The ADA does not apply to residential housing. Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations. However, Title III of the ADA covers public and common use areas at housing developments when these public areas

are, by their nature, open to the general public or when they are made available to the general public.

Title II of the ADA covers the activities of public entities (state and local governments). Title II requires public entities to make both new and existing housing facilities accessible to persons with disabilities. Housing covered by Title II of the ADA includes, for example, public housing authorities that meet the ADA definition of public entity, and housing operated by States or units of local government, such as housing on a State university campus. The ADA, when it is applicable to a residential housing project, does not supersede Section 504, assuming Section 504 is also applicable. Instead, where both laws apply to a housing project, the project must be in compliance with both laws. For example, it covers the rental office, since, by its nature, the rental office is open to the general public. In addition, if a day care center, or a community room is made available to the general public, it would be covered by Title III. Title III applies, irrespective of whether the public and common use areas are operated by a federally assisted provider or by a private entity. However, if the community room or day care center were only open to residents of the building, Title III would not apply.

Section 504 of the Rehabilitation Act (Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq.), is a civil rights law that prohibits discrimination against individuals with disabilities.

The Architectural Barriers Act

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA requires that covered buildings comply with the Uniform Federal Accessibility Standards (UFAS), Architectural Barriers Act.

The ABA does not cover privately-owned housing, but covers buildings or facilities financed in whole or in part with Federal funds. The ABA applies to public housing (24 CFR 40), and to buildings and facilities constructed with CDBG funds (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and Title II of the ADA will conform to the requirements of the ABA.

Administration and Enforcement of Fair Housing

At the federal level, the administration and enforcement of the Fair Housing Act and Section 504 of the Rehabilitation Act is under the Department of Housing and Urban Development (HUD). HUD has regional offices throughout the nation. At the federal level, the Department of Justice administers and enforces the ADA. The statute of limitations is two years; however, it can be extended to three or more years. The Attorney General enforces fair housing, ADA, and

civil rights laws. They are usually looking for pattern of discrimination or blatant violations and there is no statute of limitations for them to get involved.

Private attorneys can file a suit in state or federal court. This right is in addition to the right to file with an administrative agency. The statute of limitations is two years, however, it can be extended to three or more years.

Complaint Process and Cost of Violations

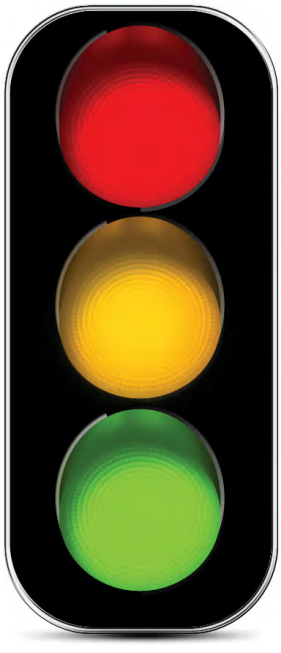
If the complainant wins the case, the remedies that may be options are the payment of compensatory damages that sometimes number in the hundreds of thousands of dollars, as well as the payment of actual damages. Another outcome could be orders to conduct comprehensive corrective action and the loss of federal subsidy. A fair housing complaint could also result in the reward of punitive damages and the payment of civil payments to the government. Plaintiffs are entitled to compensatory and punitive damages, as well as attorney's fees.

Fair Housing Violations can result in fines up to $10,000 for the first offense and $25,000 for the second offense in a five year period and up to $50,000 in a seven year period.

Exemptions to the Fair Housing Act

Sale or rental of a single-family home

Single Family Homes sold or rented by an owner who Does not own or have an interest in more than 3 Single Family Homes at one time if No Real Estate Agent is Used.



Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.[1]

For the owner with home for sale or rent can own more than three properties but cannot advertise in any way shape or form through a flyer, newspaper etc. If the owner engages the public at large scale it is considered advertising. In this case, the fair housing exemptions no

1 http://www.hud.gov/offices/fheo/library/huddojstatement.pdf

longer apply. Essentially this leaves the owner with the option of word of mouth. The owner also cannot use a property professional or realtor.

Four or fewer units when owner lives in one

Dwellings with no more than 4 units if the owner resides in one of the units are exempt from fair housing requirements. This is also known as the Mrs. Murphy exemption.

Why Mrs. Murphy? The exemption is based on the hypothetical Mrs. Murphy, an elderly widow, dwelling in one out of four or fewer units and wanting to rent the rest out. Being old, and presumably, set in her ways, she may want to specifically pick out her tenants!

However, they are still subject to discriminatory advertising. For example, a woman who rents rooms in her house can advertise for females only, but cannot exclude any woman applicant because of race.

Property owned and operated by religious organizations or private club (for non-commercial purposes)

Housing sponsored by a religious organization may be restricted to members of that particular religious organization, provided the religion doesn't discriminate in its membership policies. The religious exemption applies where no commercial transactions take place. For example, monks can live in monasteries.

An organization that restricts its membership may provide restricted housing to its members, as long as it doesn't offer housing to the general public.

Housing for Older Persons

The Fair Housing Act excludes from familial status housing for older persons, in which all residents of housing facility or development are age 62 or over; or the Fair Housing Secretary certifies that the housing is for older persons; or the housing is for persons 55 years and older.

For housing with residents who are 55 and over, at least 80% of the occupied units need to be occupied by one person over the age of 65. The development must be housing intended for older persons and must reflect itself as age restricted community. To show this, there should be signs on the door, brochures, monument sign leading into the property, and the property has to be surveyed every two years and records need to be maintained forever at a minimum. Owner/ managers must show that age verification procedures are in effect. Only with these conditions met, owners can exclude children. Some properties have a 100% occupancy and prevent anyone under 30 from living there. If you decide to make your property age restricted, consider the decision carefully. However, the law offers some wiggle room.

For example, say an age restricted property is 80% occupied by people who are 55 or older. If a couple with a toddler fall in love with the property, how does the property owner do business with them in terms of their desire to buy into this property? The answer is that there is nothing to restrict who owns the property; the couple may buy the property with the understanding that they cannot live there, i.e. they may be able to buy into the community but may not be able to live there.

Note: The exemption is ONLY from Familial Status Provisions!

Civil Rights Act of 1866

Following the Civil War, Congress passed a series of laws to implement the 13th Amendment banning slavery and to eliminate its vestiges. One of these laws, the Civil Rights Act of 1866 banned discrimination in the sale, transfer, lease or use of property, including real estate and housing. In a 1968 decision that is still applicable today, the United States Supreme Court held, in Jones v. Mayer, that the 1866 Act prohibits all forms of racial discrimination in real estate, whether committed by government or private parties.

Here's a timeline of the additions and amendments to this Act.

1968 - Title VIII of the Civil Rights Act included the first four protected classes in regards to housing (race, color, religion and national origin)

1974 – Sex (gender) was added as a protected class

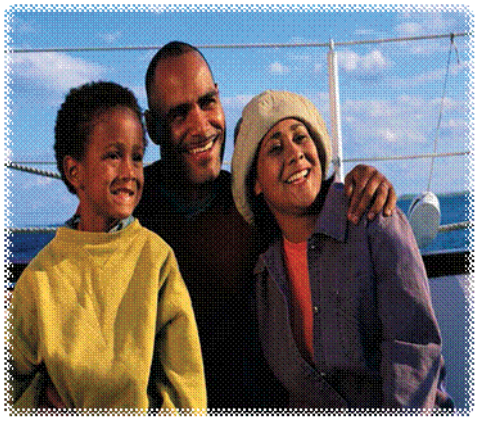
1988 – Familial status and handicap (disability) were added

1995 – Housing for Older Persons Was Added

Protected Classes include race, color, religion, national origin, sex (gender), disability and familial status.

Race

Race is defined as a geographic or global human population distinguished as a distinct group by genetically transmitted physical characteristics. Examples of race include African-American, Asian, and Caucasian etc.



In 2013, race was the second highest protected status category under which discrimination claims were filed. At HUD, it made up 28% of the total claims, and ranged from 19.2 to 32% of total claims at other agencies.

Ensure that all individuals are treated the same within your settings. Residents, as well as staff and visitors are accountable for practicing nondiscrimination and it is management's responsibility to ensure discrimination isn't happening.

It is not appropriate to screen or ask questions regarding RACE (or any other protected class) on any materials used for resident selection or residency decision making within the Senior Living Community.

Color

The color or tone of one's skin, not to be confused with race. Color and race are very similar, but do have some subtle differences. There can be many shades of skin color within each race and many people are a blend of multiple races. However, persons with darker skin tend to experience more incidents of discrimination in housing.

Despite being a separate protected class, color can be combined with Race at times, in claims of discrimination.

Religion

Next is the protected class of religion. Religion pertains to an individual's membership (or lack thereof) in an organized religious group or their spiritual ideas or faith beliefs or practices. This protection guarantees that no individual in the United States will be discriminated against in housing due to his or her faith, practice or religion.

For example, the Good Samaritan Society is a Christian, faith-based provider and incorporates a Christian symbol within the company logo. It is particularly important that Good Samaritan Society advertising and documentation consistently use the appropriate disclaimers to show that they accept all faiths and beliefs and do not discriminate on the basis of religion.

National Origin

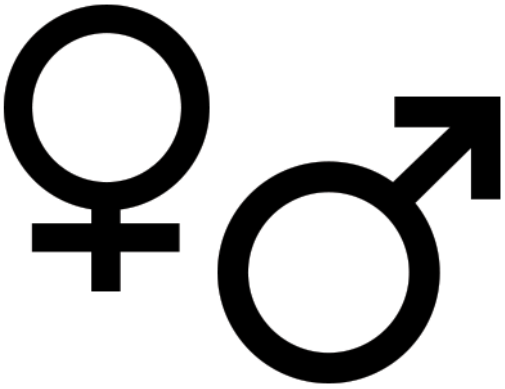
The Fair Housing Act prohibits discrimination based on national origin, i.e. the country where the individual was born, and this may include ancestry, language and customs. Discrimination is prohibited based either upon the country of an individual's birth or from where his or her ancestors originated.

Common issues include limited English proficiency, citizenship, and status as legal resident and immigration. Property owners can alleviate limited English proficiency issues through the use of interpreters. If the property is subsidized, the owner must pay and provide interpreters. If it is a non-subsidized property, the owner does not have to pay for the interpreter, although the owner must help the applicant find an interpreter by means of community contacts, directories etc.

Sex (Gender)

Sex or Gender refers to male or female. This does not include sexual orientation, although some states have that as an additional protected class. Sexual harassment is also covered under this protected class.

Sexual Harassment



Definition: Unwelcome conduct that is sexual in nature, and which creates an offensive, hostile or intimidating environment. A compliment is not sexual harassment, i.e. telling someone they look nice is not sexual harassment as long as it isn't given all the time and doesn't make the recipient uncomfortable.

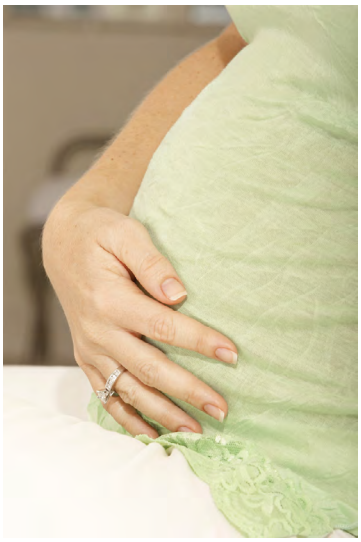
The courts recognize two types of sexual harassment:

- **Quid pro quo- asking for sexual favors**
- **Hostile environment- sexual jokes, come-ons, or behavior that creates a hostile relationship**

There is also the distinction of intent vs. effect. A property manager/ owner has a duty not to engage in sexual harassment and to ensure employees do not engage in sexual harassment. An owner can be held either directly or vicariously liable for sexual harassment that occurred without the owner's knowledge by an agent or employee of the owner.

Familial Status

The next protected class to discuss is familial status, or the exemption to the familial status protected class, which constitutes of the presence of one or more children under the age of 18 in the household and can also include pregnancy. Covered under familial status are persons under the age of 18 living with a parent or legal custodian, the designee of a parent or custodian with written permission, pregnant women and persons in the process of securing legal custody.



Familial status protection guarantees that families with children under the age of 18 in the United States will not be discriminated against in housing. The only housing that can exclude this protected class is bona fide senior housing. This is the one protected class that, in the example under religion, the same Good Samaritan Society, is exempt from in our housing communities. The Society is allowed to have age-restricted communities for older persons if all Housing for Older Persons requirements are met (HOPA).

Housing for Older Persons Act (HOPA)

The Housing for Older Persons Act (HOPA) is an amendment to the federal Fair Housing Act. Under this law, a community that qualifies for the housing for older persons (55 or older) exemption can refuse to rent to families with children, provided it meets certain requirements (80% of occupied units have at least 1 occupant who is 55 or older).

Three types of housing qualify under HOPA:

- **HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State, or local program**

- **It is occupied solely by persons who are 62 or older; or**

- **It houses at least one person who is 55 or older in at least 80% of the occupied units and adheres to a policy that demonstrates the intent to house persons who are 55 or older**

Not covered by HOPA are a portion of a single building, a duplex, a group of single family houses dispersed throughout a geographical area.

No National Occupancy Policy

Familial Status: Occupancy Standards

The HUD guidance shows that an occupancy policy of two persons per bedroom is, as a general rule, reasonable. However, in certain cases, the occupancy can be 2+1. Local ordinance or codes may be used to establish occupancy limits. Maximum number of people is usually based on square footage of potential sleeping area of the dwelling. The HUD limits the number of persons who can reside in a unit, but does not specify the gender which should reside in each room. [2]

Another example involves the age of the children. The following hypotheticals involve two housing providers who refused to permit three people to share a bedroom. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first, but not in the second instance.

Other factors HUD will consider include the size of the bedrooms, the configuration of the unit (for example the presence of a den or small extra room), the overall size of the dwelling, capacity of septic, sewer or other building systems, existence of state or local laws, and any pretextual evidence of discrimination by the housing provider. It also states that an occupancy policy that limits the number of children in a unit is less reasonable than one which limits the number of people in a unit.[3]

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2 http://www.justice.gov/crt/about/hce/documents/clarendonhillsettle.pdf
http://www.azlawhelp.org/viewquestions.cfm?mc=3&sc=24&qid=18459
http://www.fhcsp.com/Laws/occ.html

3 http://www.fairhousing.com/index.cfm?method=page.display&pagename=HUD_resources_keatingmmo

Handicap (Disability)

Definitions: "Disability" means a person who has a physical or mental impairment that substantially limits one or more major life functions. An individual can have either a history of the impairment or can be viewed by others as having an impairment.

Under Fair Housing laws it is illegal to screen or use admission criteria in housing based on medical information, health status, diagnosis or disability. Individuals in housing must be able to meet basic residency requirements, but they cannot be rejected for not having the ability to "live independently." This also means individuals cannot be rejected for needing to obtain services that allow them to meet the community's residency requirements.

Assisted living communities, home health/hospice agencies and nursing centers in the Society are healthcare providers and are therefore considered as "covered" settings under HIPAA. They must follow HIPAA rules regarding keeping residents' or clients' health information private and secure. Assisted living communities only need the medical or health related information for the proper delivery of assisted living services and must protect and not share this information with non-covered entities unless it is allowed by HIPAA. Keep in mind that housing with services settings are not healthcare providers. Therefore, the housing community does not have the need or the right to know about a resident's health or medical condition.

In 2011, the number one reason for discrimination claims was discrimination on the basis of disability. Disability had the highest percentage of total complaints for a protected class.

In FY 2014, disability was the most common basis of complaints filed with HUD. There were 4,606 complaints, or 54% of total complaints.

Under Fair Housing, property owners/ managers cannot screen or deny housing based upon disability. A major reason for disability discrimination claims was that providers were not allowing for reasonable accommodations or were treating disabled residents "differently". Providers are obliged to allow for requests for reasonable accommodations under Fair Housing Law and yet many providers refuse to provide them. Practices such as inappropriately screening, rejecting or terminating occupancy based upon disability leave providers open to claims of discrimination.

Who is NOT protected?

Discrimination based on the following factors are not covered by the Fair Housing Act:

- **Smoking**
- **Source of income**

- **Criminal History, including Sexual Offenders and Juvenile Offenders**
- **Non-recovering users of illegal substances**

Under the Fair Housing Act, it is against the law to:

- **Refuse to rent to an individual or refuse to sell them housing**
- **Tell a potential applicant that housing is unavailable when in fact it is available**
- **Deny a person with children under the age of 18 a specific unit in an apartment building for which he or she has otherwise qualified**
- **Show applicants apartments or houses in certain neighborhoods only**
- **Advertise housing to preferred groups of people only**
- **Threaten, coerce, intimidate, or interfere with someone who is advocating for his or her fair housing rights**

To prevent discrimination claims when leasing, providers must represent availability accurately and let all prospective residents/buyers know about available housing. Providers should also accept applications/offers from all qualified applicants. Providers can negotiate, rent or sell to any qualified individual. Providers must avoid steering and establish reasonable costs (deposits, earnest money, rent, sales price) and apply them to all applicants, regardless of their protected class.

Steering

Steering is any action designed to discourage people from seeking housing in a particular community, neighborhood or other development. Steering in fair housing occurs when owners or managers direct persons to certain locations on the property because they are from a protected class. It is generally defined as attempting to control the outcome of where a person lives based on his or her protected class. Some examples include:

- **Encouraging or restricting families with children to live**
    - **near the playground**
    - **in a downstairs unit**
    - **in an end unit**

  - **in a unit over a garage**
  - **in a particular building**
  - **in a particular section of the community or**
  - **in another apartment down the street or across town.**

- **Suggesting to disabled applicants that they should live in a downstairs unit.**
- **Suggesting to persons of color or a certain nationality that they should live in a particular section of the community or building or another part of town.**
- **Situating the elderly in a particular building or section of the community.**
- **Directing persons from a protected class to undesirable neighborhoods, properties, or rental units, such as an unprepared unit, the most distant one or one that overlooks the dumpster area, in hopes that they won't want to live there.**

Property owners/ managers should let applicants know what they have available, then let them decide where they want to live. Everyone is entitled to equal housing opportunities. If an applicant volunteers that he or she wants a downstairs unit or one by the playground, that's acceptable, but providers should document the fact that they made the request. It only becomes steering when the provider subtly encourages it or suggests it first.

If an applicant says he or she would like to live next to "someone like myself," or someone who is the "same nationality" or who "has children" or "doesn't have any children," the provider should let the applicant know they cannot accommodate their request and remind them that they are an equal opportunity housing provider and all units are open to all qualified people. If necessary, the provider should explain that they do not keep such records on their residents and cannot discuss such issues because of fair housing laws.

What Realty Agents and Leasing Agents won't tell you…because they can't

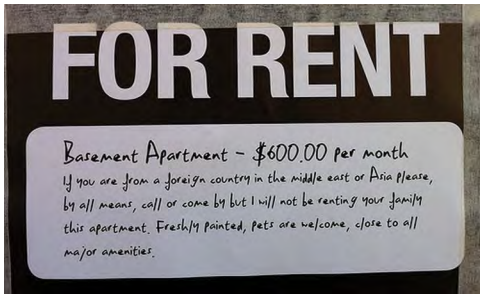
Agents can't speak about neighborhood demographics, quality of schools, crime statistics, sexual offenders in the area and cannot "steer" clients toward or away from a property.

Agents also can't tell clients about where to find answers to questions pertaining to the above information. For information about schools the resources are, NationalCenterforEducationStudies.com, NationalSchoolMatters.com, Greatschools.com. For crime statistics, the local law enforcement agencies are the best options. For environment information, the U. S. Environmental Protection

website or Scorecard.com. The U. S. Census Bureau website is a useful resource for information on demographics.

Advertising

Advertising covered under Fair Housing Laws



Fair housing laws prohibit making, printing or publishing any notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class.

Who is responsible for nondiscriminatory advertising?

There are no exemptions to the fair housing advertising guidelines. Everyone involved in the advertising process is responsible for ensuring that no statements or notices show preference for or limitation against any protected class. Property owners and managers must ensure that everyone involved in advertising rentals is aware of the nondiscriminatory advertising requirements. On-site leasing agents, off-site property management company, and any advertising media should be informed that they should follow nondiscriminatory advertising standards.

To expand marketing options, providers may consider advertising sources such as minority newspapers, social services agencies and organizations for people with disabilities. Local fair housing agencies may be able to provide references to some of these resources.

What are the requirements for using fair housing logos and posters?

Using the fair housing logo is a great way to show a commitment to fair housing. Many housing providers use the Equal Housing Opportunity logo in their ads and on their written materials to show that they do business in compliance with fair housing laws.

HUD requires that owners and managers display a fair housing poster with this logo at rental offices. This applies to rentals covered by the federal Fair Housing Act, and to dwellings rented through a real estate broker/agent. (see 24 CFR 100). Providers should display the “dog house” with the words below. An important point to note is that without the words, it does not qualify.

In space or box advertising the logo should meet the following size requirements:

- **Half page or more 2” X 2”**
- **1/8 to ½ Page 1” X 1”**

EQUAL HOUSING OPPORTUNITY

- **4 column inch to 1/8 ½" X ½"**

If other logo types are used the Fair Housing Logo should be equal in size to the largest of the other logos used. This must go on business cards, letterhead, brochures, and flyers.

Can Providers affirmatively market to any protected class?

Fair housing laws permit marketing for certain protected classes. It's acceptable to advertise that rentals are accessible for people with disabilities; that families are welcome, or emphasizing amenities such as a playground; that those who participate in the Section 8 program are welcome or that this is a HOPA property for seniors, as long as the property meets HOPA requirements.

However, providers should avoid using pictures or images that show a preference or discourage anyone because of protected class.

Example: Providers shouldn't use a series of newspaper ads publicizing vacancies using only young white models.

For advertising with photographs or drawings of people, providers must ensure the advertising portrays a variety of individuals who reflect the population as a whole, i.e. men, women, children, people with disabilities, and people of various races and ages.

Acceptable Advertising

The language used to advertise can pose fair housing problems. Property owners/ managers should avoid using words or phrases that show a preference or discourage anyone because of protected class. Providers should also avoid using religious landmarks or any landmark associated with a protected class in any written directions to the property site, such as, "across the street from St. Johns Catholic Church. Instead the use of "social neutral" landmarks, i.e. anything that is neutral to social society, is acceptable, such as "next door to Hy-Vee", pharmacies, post office, etc. The use of the term "low income" is also not recommended, especially as some states have adopted source of income as a protected class. Providers can instead list the specific programs that their site accepts. i.e. "We accept section 8 vouchers". For 100% tax credit properties, providers can include maximum income levels or state "Rent rates are based on income". Property owners must be inclusive rather than exclusive in their marketing and avoid "red-flag" words, to be covered further ahead. Property owners/ managers must also ensure the proper use of "Equal Housing Opportunity" logo, slogan and statement and should display the Fair Housing poster.

Prohibited Advertising

The use of race, color, national origin is prohibited when advertising. Property owners/ managers should use words to describe the housing, not the current or potential residents, neighbors or neighborhoods in racial or ethnic terms, i.e. the use of terms such as white family, Hispanic, or Irish neighborhood etc. Property owners and managers can use facially neutral terms in advertising, such as master bedroom, rare find, or desirable neighborhood.

Ads should not contain an explicit preference on account of religion, i.e. no Jews or, Christian Family Home. If the provider uses a legal name, i.e. Roselawn Catholic Home, they must make sure the ad includes a disclaimer that the Home does not discriminate on the basis of race, color, religion, national origin, sex, disability or familial status. Ads for single family dwellings or separate units in a multi-family dwelling should not contain explicit preference, limitation or discrimination based on sex. Real estate ads should not contain exclusions, limitations, or other indications of discrimination based on disability, i.e. statements such as no wheelchairs. Certain descriptions such as great view, or fourth floor walkup, walk-in closets, or descriptions of services or facilities such as jogging trails or accessible features available are acceptable for real estate advertising.

The property owner/ manager can describe the conduct required such as non-smoking or non-drinking, while taking care not to describe the person. Ads may not contain limitations on the numbers or ages of children, or state a preference for adults, couples or singles. Ads describing the property are acceptable such as, two bedroom, cozy or family room. However, terms such as “Adult Living” or “Perfect for the empty nester” or “Ideal for retiree” are not acceptable for use.

Advertising: Terms to Consider

Acceptable words or statements

Architectural descriptions such as master bedroom, family room, or terms like no drinking/ smoking, seasonal rates, single family home, in-law quarters, kids welcome, rare find, desirable neighborhood are acceptable terms or descriptions to use. This applies to notices, STMTs, MLS, verbal and written communication connected with sale or rental of property. Providers should examine the wording in the context used.

Cautionary words or statements

Statements such as no children, Christian, adult-living, perfect for empty nester, active adults, gentleman’s farm, golden agers, sports-minded, perfect for young professionals, couples encouraged integrated welcomed, adult building may leave the provider open to discrimination claims. Phrases such as Christian Female to share, adult community, single’s complex, ideal for couple, ideal for singles, all Christian Community, no Jews, quiet, non-smoker, two people for 2 bedroom, white family home, no Irish, no wheelchairs, can leave the provider open to discrimination claims. It’s better to describe the property, not the people (tenants) who live there. It’s also important that providers sound inclusive in advertising rather than exclusive.

Internet Advertising: Freedom to Discriminate?

Craigslist, the source of the overwhelming majority of housing advertising in today’s market, and other Internet sites provide a convenient forum for illegal housing discrimination. Under current court decisions, these websites are not considered to be publishers and thus can neither be held liable under the Fair Housing Act nor be required to screen out illegal housing advertisements. However, the individual landlords or real estate agents who create and post discriminatory ads online can be held responsible.

Illegal Target Marketing

Providers should avoid advertising only in select editions of the local newspaper; advertising only in a strategically limited geographical area that is populated by a particular racial, ethnic, or religious group or limiting advertising to small papers, free journals, or niche publications that cater to particular racial, ethnic, or religious groups.

Questions

What should you do if your client wants you to do a search of a neighborhood based on race or religion?

In simple words, don't take the risk or incur the liability. State your support for the Fair Housing Act and state that you cannot facilitate a search if it requires any potential discriminatory practices or procedures. It is the client's choice where they want to live; but let them choose only after you have given them all of the options.

An example: an Orthodox Jew wants to find a house near walking distance to a Synagogue.

Provide information where they may find listings of Synagogues in the area; i.e. from the yellow pages etc. Let the client choose where to live.

"Do you take children?"

Some callers may ask this question because they don't want to live where there are a lot of children. But more commonly, people ask this question because they still encounter managers and owners who don't want children living on their properties. If your property is not a senior community, simply say, "Of course. People of all ages are welcome here." If you have specific amenities that are attractive to children, this is a good time to add, "In fact, we have a wonderful playground here and a great wading pool."

How many blacks live here? I like to live with "my people". I'm African American so it's ok. "You can trust me, I won't say anything to anybody". Who lives next door?

You could answer "I'm prohibited from commenting, but you could always see for yourself". However, this is NOT a good response. The potential applicant is not prohibited from seeing for himself. However, YOU are prohibited from making this seemingly innocent suggestion.

You also cannot refer them to other residents or neighbors, or suggest that they sit nearby and watch who comes and goes. All these acts or anything like that are violations of the Fair Housing Act.

"Are there many children living here?"

Parents want to know this. They want their kids to have friends to play with, but you still can't answer their question because you would be providing information about the protected class called familial status.

"What kinds of people live here?"

Similar to the previous question, this is usually a "curiosity" issue. However, some people who ask this don't want to live in a "mixed" community and may be trying to filter out such properties.

"Is the property in a safe/high crime/drug/gang area?"

While not a fair housing question per se, the answer you give could create a problem. First, never tell an applicant that you have a safe property. Should anything happen to him or her, you will no doubt be sued for "guaranteeing" that it was safe to live there. The police and internet sites can provide the applicant with crime statistics or other information. Second, don't use this question as a means of discouraging someone from a protected class from living on the property.

Note: Recent on-site criminal activity may need to be disclosed to applicants to protect against liability for negligence.

"Are the schools around here any good?"

Direct the applicant to the school district for information about local schools. Do not use this question as a means of discouraging families with children by saying that the local schools are poor.

One final point: When applicants ask these types of questions, providers mustn't encourage them to "come back" or "drive by later and look for yourself." The reason for this is that the applicant has asked the provider a discriminatory question and they have just given them a positive response to help the applicant find out exactly the things the provider isn't allowed to tell them!

Discrimination Based on Protected Status

Discrimination Based on Familial Status

- 4BR: “Looking for responsible adults to enjoy home” Newport, VT
- 3BR: “Couples over 55 preferred” Gallatin, TN
- 3BR: “[N]o small children” New Orleans, LA
- 3BR: “Looking for a responsible, neat, adult, non-smoker who is respectful of other people’s belongings and can treat antiques with loving care.” Bennington, VT
- 3BR: “Adults only” Colorado Springs, CO
- 3BR: “Prefer quiet, respectful professional” MO 3BR: “No kids allowed.” Odessa, TX
- 3BR: “No kids allowed.” Odessa, TX 3BR: “3 Adults” Keaau, HI
- 2BR: “Mature couple or single with no children” Brooklyn, NY 2BR: “No children, pets ok” Brooklyn, NY
- 2BR: “[N]ot suitable for kids” HI
- 2BR: Duplex: “Ideal for 1-2 adults.” Boston, MA
- 2BR: “PERFECT FOR 2 ADULTS….seeking a maximum of 2 tenants” New Haven, CT
- 2BR: “Looking for 1-2 quiet adults” New Haven, CT
- 2BR: “Looking for retired couple or older person” Tallahassee, FL
- 2BR: “Couples preferred” Chicago, IL
- 2BR: “Looking for two responsible adults to take over the apartment” Philadelphia, PA
- 2BR: “No smoking, kids, pets” Fort Collins, CO
- 1BR: “Building is a quiet adult 4plex” Plattsburgh, PA 1BR: “[N]o-children build-

ing" Florida

- 1BR: "[A]partment available for a Christian single or couple" AZ
- "Looking for a white lady who has a car and that's drawing a check. No Children, teenagers" Nashville, TN
- "No Kids" Mira Loma, CA
- "[N]o couples, working persons only, no pets, no children" Visalia, CA
- "No families or anything" Kannapolis, NC

Discrimination Based on Religion

- 3BR: Duplex: "Christian atmosphere" Evansville, IN
- 2BR: "Christian landlord is living in one of the units." Chicago, IL
- 1BR: "Prefer clean Christian" AK
- 1BR: "Apartment available for a Christian single or couple" AZ
- RV Hookup "Hopefully we can find someone that is a Christian and loves God with all of their hearts" OR

Discrimination Based on Disability

- 2BR: "We're trying to make cheaper rent available for able bodied people who can do a few things for themselves." Savannah, GA

Discrimination Based on National Origin

- 2 BR: "English speaking only please" Las Vegas, NV

Recent Cases

De Forest, WI – August 2013 $180,000 penalty

Mrs. Marsh (African American) called to see apartment but when she got there she was told it was "rented". When she called again, she was told one was available but when she came to see it, no one was available to show her around the property. When she called to see why no one was there to show it, was told it had just been rented "today".

Iron Gate, MI

Single mother with one child inquired about an apartment. Told that complex had no smoking, no pets and no children policy. Advertising even said "no smoking, pets, kids". The penalty was $400,000.

Kensington, OH – March 2013

White applicant was approved to move in to apartment but was denied when landlord found out she had two children and a black boyfriend. The penalty was $180,000.

Las Vegas, NV - March 2011

The provider assigned black people to less desirable units, refused to move wheelchair bound residents to first floor after request and moved families with children into the same building. The penalty was $450,000.

Louisville, KY (November 2010)

Louisville Observer fined $50,000 for permitting ads to say:

- **Ideal for single older person**
- **Ideal for 1**
- **Perfect for single looking for extra space**
- **Seeks single…older woman**

May 25, 2012, Buffalo, New York

A South Buffalo landlord will have to pay a $10,000 settlement as a result of an advertisement on craigslist that described an apartment for rent in a "nice Irish neighborhood."

Boise, ID (September 2011)

Thrifty Nickel Weekly Newspaper fined $125,000 for ads that excluded potential owners and renters because of their familial status.

Section 2:

Specialized Training for Managers and Maintenance Staff

Application & Screening

Property managers or owners must set useful qualification standards and establish a reasonable application and screening process for applicants looking at their properties to remain compliant with Fair Housing laws.

Property owners/ managers should ensure they are following the same process for every applicant and must apply selection procedures consistently. Particularly important is to avoid off-the-cuff judgment calls and stereotyping of applicants. Providers should also document the selection process and keep a paper trail to justify rental decisions. Here are some criteria that should be kept in mind to keep the application and screening process non-discriminatory:

Offer Applications to All

Providers must ensure that they offer applications to all prospective residents who come to the property. Property owners or managers may be accused of discrimination if they offer applications only to those applicants they would prefer to have as residents or simply offering applications only when they remember to do so. Property owners or managers must avoid "prequalifying" some applicants before they have screened their applications, otherwise they are not offering the same treatment to all prospects. If the provider has given the applicants a copy of their rental criteria and they wish to apply, they should be allowed to do so.

Avoid using codes or symbols

Providers must avoid making any marks on the applications that could be mistaken for discriminatory coding.

Case in point: Several years ago, a management company had employees put a "happy face" on all the applications of minority applicants because they didn't want to rent to them. The company paid well over $1,000,000 in penalties as a result.

That's not all. Drawing little pictures of the applicants on the application (or guest card) to remember what they looked like can be construed as discriminatory in intent!

Make Date and Time Notations

It's recommended that providers note the date and time of the application submission just in case the provider needs to prove it later on. For example, if a qualified applicant from a protected class claims the provider selected someone else's application after he turned in his application, the provider may have to defend themselves with supporting paperwork. A policy of first come, first qualified, and first served is the safest policy. Once the application has been approved or

denied, the provider should write the date and time of the decision on the application. This may be important if the provider ever needs to prove exactly when a dwelling became unavailable.

Use the Proper Application Form

The Leasing Process – Applications and Screening

Housing providers have the right to determine if an applicant has the income and rental history necessary to be a good tenant. However, providers must ensure they screen applicants in a manner that complies with fair housing laws. It is best to have clear criteria for rental of a dwelling that does not take into account an applicant's protected class. Providers must ensure that all employees involved in the rental process are familiar with and follow each policy consistently with all applicants. The screening agency should also be aware of fair housing requirements.

If applicants want the same rental, can the provider choose who they think is best, based on experience?

While experience is invaluable, providers must be careful not to take possible discriminatory actions based on unconscious biases.

A fair screening process that is applied equally to all applicants will get results that are more consistent (and result in fewer fair housing complaints). If several applicants are interested in the same rental, it's best to screen them on a first-come, first-served basis, using objective criteria, then offer the rental to the first qualified applicant. It's also a good idea to date and time-stamp applications.

Can a provider say that a rental is not available when it actually is if they feel an applicant won't be a good resident?

It is a violation of fair housing laws to state that a rental is not available when it actually is.

It is best to rely on an objective screening process, not assumptions, to determine if applicants meet the provider's criteria. Fair housing complaints are more easily avoided when applicants receive clear and consistent information about all housing options, including waiting lists.

Screening Process

Providers must verify the information on the application by conducting relevant reference checks. The procedure for conducting verifications must remain consistent across the applicants. When contacting former landlords, providers must ensure they remain unbiased.

References and Verifications

Providers must take out the time to call the references provided by applicants as this is the ideal time to find out information and make verifications, before the applicant actually moves into the

property. Providers should make sure they have the names, phone numbers and addresses of the personal references of applicants, in case they need to be followed up with.

In the case of prior property owner/ manager references, the ideal situation is if three references are provided. It's a good idea to call the previous property owners/ managers as well as current ones as they offer the most honest information on the applicant. Providers should also ensure that rental history matches the addresses in the credit report. To verify employment, if on HUD, tax credit, or rural development, forms must be sent and returned.

Qualifications for Approval

Screening standards should be applied to all applicants indiscriminately. If applicants do not meet standards, their applications must be denied. Criteria for screening applicants can involve judging their credit worthiness, i.e. their continued ability to pay their rent if selected. Previous record of evictions or problems at former properties are also a criteria for screening applicants. Applicants' rental history is a useful guide to understanding how they will take care of their apartment, such as whether they will follow the set rules and be good neighbors.

Credit Screening

Credit screening is a "must", an essential part of the screening process. Providers should define their individual parameters for effective screening such as how many late payments has the applicant made in the past, whether they owe utility companies anything. Providers can get credit scores, information on collections and judgements related to the applicant, as well as information about any bankruptcies filed. Another "must" is for providers to define their individual parameters related to their particular properties such as crime free housing guidelines, misdemeanors, felonies or whether to accept sex offenders in their housing.

Criminal Checks – Required?

States do not require criminal history checks to be done, however, the Crime Free Program does require them to be done. Checks are another "tool" to determine what a resident will be like. Like a credit check, the provider is looking for past patterns to identify what kind of tenant the applicant will be.

Criminal Background

Having a criminal record is not a protected class under fair housing laws. Housing providers can establish screening criteria that rejects applicants with criminal records. However, it's essential not to confuse arrests with convictions. Patterns of arrest have been viewed as discriminatory against some protected classes, so arrest records are likely inappropriate to use as a screening criteria. It is discriminatory to perform criminal background checks only on certain applicants, or to distinguish between applicants with criminal records based on protected class. For example, a manager should not conduct criminal checks only on African American males; or a landlord cannot accept a female applicant with an assault conviction, and reject male applicants with similar convictions.

How do fair housing laws affect income and employment requirements?

Housing providers can use income and employment requirements as long as they apply them consistently, without regard to an applicant's protected class. However, some issues to consider are that landlords can set standards for renters but they must apply them to everyone equally. Examples include situations where applicant criteria is based on income range, credit checks including owing too much money, landlord references, and criminal background checks, but are applied across the entire spectrum of applicants consistently. Another issue is that as a reasonable accommodation, an applicant with a disability may ask to use a co-signer or third party payee. Providers can have requirements where income stability may be as relevant as employment history across all applicants.

Office Tour and Interview

The provider must ensure that they offer the same information to all applicants and offer applications to all potential applicants. If conducting a tour of the property, ensure that it remains the same every time and for every applicant.

To ensure safety during an interview, providers should ask for a copy of picture identification. During the tour of the unit, to ensure safety, providers should have a plan that minimizes risk, such as asking another person to accompany them if they are uncomfortable, or faking a phone call or knowing whether to lead or guide from the rear during the tour, where to stand when showing the apartment so that their mobility isn't restricted during a difficult situation.

Taking it a step further, how the office where applicant interactions take place is also an important factor for ensuring safety. Office plans should include a second exit, position desks in such a way as to increase chances of reaching the second exit. In some cases, installing a panic button within close reach and a large mirror behind the desk might be useful.

During the tour, if the applicant is walking around the property and asks questions, they can be referred to the manager. In certain scenarios, the applicant's questions could invite discriminatory answers. Fair housing agencies use a similar testing process to the actual process to assess a specific complaint or to check a random market for fair housing compliance. Any applicant could be a fair housing tester! The HUD sends testers who may ask just such questions. All staff employed at the property are responsible for non-discriminatory behavior. For example, a maintenance man in Michigan recently told a passer-by that "only real Americans" lived in the apartment complex where he worked. This is a scenario that can potentially lead to discrimination claims. Another such scenario could be when a rental office has pictures of residents participating in community activities. However, all pictures are of white young upwardly mobile people and none show children or persons of different races or nationalities.

Testing

Fair Housing Testing is based on Matched Pair Testing. This involves the use of a pair of testers with profiles that are matched or very similar but one of the testers may belong to a protected class. Another form of testing is Accessibility Testing which is used to check availability and accessibility of fair housing for disabled individuals. Phone Testing is another way that the HUD tests housing providers on non-discriminatory testing. Courts have recognized that testing evidence is admissible in proving housing discrimination.

Linguistic Profiling

Sometimes an applicant suspects that an accent was the reason for not getting a call-back, for being told no rental was available, or for being given minimal rental information. Although some people claim they didn't know a caller's race, research shows that most people can determine race just by hearing a caller's voice. These studies indicate that "linguistic profiling" occurs when people use speech characteristics or dialect to identify a speaker's race, national origin, ancestry or religion. Under fair housing laws, it is illegal to consider an applicant's race, national origin or ancestry when making rental decisions.

Name Discrimination

This happens when a housing provider takes a negative rental action based on names alone. A recent housing study showed that more than half of the time, housing providers did not respond or responded negatively to an e-mail from someone with a "black" sounding name, and one-third failed to respond positively to an e- mail from a person with an Arab-sounding name. The study's authors noted that "names may disclose our religious affiliation, sex, social position, ethnic background, tribal affiliation and even age." As discussed before it violates fair housing laws to refuse rental because of the perceived national origin, religion or race of an applicant's name.

Profiling

A survey conducted in Pennsylvania indicated that 54% of testers that sounded African American were treated less favorably that testers that sounded white. 8% of testers sounding African American did not receive return calls when all of white testers received calls. 29% showed preferential treatment of white over African Americans. 27% showed individuals with disabilities were denied reasonable accommodations or modifications. 19% showed preferential treatment favoring households without children over households with children.

Is it legal to request to see photo ID from applicants?

Some housing providers request identification from applicants for safety reasons or to verify identity. This is okay as long as the request is not based on an applicant's protected class. For example, require ID from all applicants, not just from Hispanics. Federally funded properties may be required to provide certain rental documents in foreign languages under HUD's Limited English Proficiency regulations.

Can providers verify that someone is legally in the U.S.?

Employers are held responsible if they hire someone who may not legally work in the U.S., but housing providers have no similar responsibilities (check state regulations, as they differ), and are not held accountable if any of their residents are in the U.S. without status.

Tenancy Policies and Rules

From a fair housing perspective, providers must be aware of certain considerations when setting policies and enforcing tenancy rules. Having a policy and procedures manual is essential; a written manual that describes all operating policies and procedures that employees are to follow. Providers must ensure that all employees are familiar with parts of the manual that apply to their job. In case there are any deviations, document what was done differently and why. Fair housing laws require that policies and rules do not single out residents based on their protected class. Rules should not be enforced differently because of a resident's protected class. Fair housing laws do not prevent a housing provider from warning residents who break the rules, disturb others, create a nuisance, or do not pay rent. Fair housing laws simply require that a resident's protected class doesn't enter into the equation.

Good business practices often are good fair housing practices, too. Put rules and policies in writing to ensure that all residents are aware of them and apply the rules and policies equally, regardless of a resident's protected class. Treat residents similarly when they don't follow rules. Finally, keep thorough written records of all actions taken when enforcing resident rules and regulations.

Most rental housing communities have general tenancy rules that outline expected actions and behaviors, such as making timely payments, observing quiet hours, parking in assigned spaces, etc. Review these rules or policies to make certain they do not target any protected class group. For example, don't state "children cannot ride bikes in the parking lot", instead say, "bicycle riding is not allowed in the parking lot". Many housing communities have begun adopting anti-harassment and anti-discrimination policies. Providers should ensure any such policy includes mention of all the protected classes of individuals for the area where the rental housing is located. House rules should be updated yearly, be comprehensive and be enforced! In case of changes and updated rules, provide a 30 day notice to residents.

Giving a friend more favorable treatment may leave management vulnerable to accusations of discrimination. Playing favorites may cause other residents to feel that the different treatment is based on their protected class.

What are some examples of evictions that could violate fair housing laws?

An eviction will comply with fair housing laws if the resident's protected class is not a factor in the decision to evict.

- **For example, a single female resident is told that her partner is approved to move in with her, then is evicted when management learns that her partner is of a different nationality or race than the resident.**
- **Another example is when a couple in a large one bedroom rental are asked to vacate after they have a child.**
- **Residents who associate with people of a particular sexual orientation are treated negatively by management.**

How can providers evict residents without violating fair housing laws?

A housing provider can evict a resident for valid, nondiscriminatory reasons such as breaking the rules after being warned, repeatedly being late with rent, failing to pay rent, damaging the rental property, or breaking public laws. The resident's protected class should not be considered in the decision to evict. Remember to be consistent and keep thorough written records.

When can providers make an exception to the rules?

Providers can make an exception to the rules whenever an exception is needed. If exceptions must be made when implementing rules, they must be documented carefully. Providers must analyze situations on a case-by-case basis when making exceptions to a rule. However, don't make exceptions based on someone's protected class and document the reasons for the exceptions thoroughly.

What records should be kept to document management actions?

It's best to keep all written records concerning resident payments, complaints from other residents, warnings issued, both verbal and written and information leading to an eviction. Remember that people can file fair housing complaints from six months to a year after the alleged discriminatory action, depending on the jurisdiction (and longer to file a lawsuit), keeping thorough records will help in responding to allegations of discrimination. Also keep all applications, resident files and prior policies on file for a reasonable length of time to be able to respond to any fair housing complaints or lawsuits.

Can rules that prohibit smoking be established?

Being a smoker is not a protected class under fair housing laws, so housing providers can set and enforce any rules they like about smoking (including having no-smoking buildings or no- smoking areas). Housing providers have a right to establish reasonable rules and regulations for the

comfort and peaceful enjoyment of all residents. Providers can even declare their properties as non-smoking properties. There is no law prohibiting the designation of a property to non-smoking. However, the non-smoking designation must be written as policy in house rules. It's best not to "grandfather" smoking residents.

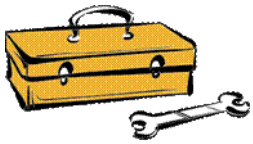
What fair housing issues should providers be aware of in processing maintenance requests?

A common complaint that fair housing enforcement agencies receive is that members of one protected class get their maintenance requests handled more quickly than do members of another protected class. To avoid such complaints, providers should consider establishing a clear maintenance response policy and document the requests for repairs. Keep thorough documentation of work requests and maintenance actions taken, for one year or longer. Providers should stay in communication with residents about their repair requests, especially if there are delays. Housing providers are responsible for the actions of all employees, so it is very important to train maintenance staff on fair housing issues.

Maintenance

Both maintenance practices and personnel can be subjects of a fair housing complaint. Maintenance has considerable contact with residents – often more than the office staff. Providers must make sure maintenance staff are providing consistent, quality service.

Code of Conduct



Maintenance staff must not touch residents' belongings when in their home. Don't make comments about them or how they have decorated their home, as items in their homes may have religious meaning. Maintenance staff shouldn't tell jokes or stories that involve sex, race, nationality, disability or any other protected class, no matter how funny you think they are. Maintenance staff must not make sexual comments to a resident, ever and should never tell a resident they will make their repair if the resident goes out with them. Avoid gossiping about a resident when with another resident or better yet, avoid gossip about residents entirely to avoid any claims or lawsuits. Maintenance staff must also never disclose any information about a disabled resident to another resident.

Do not enter the apartment of a resident to make a repair if there is a child under 18 and no adult present. If there is an emergency and it becomes imperative to enter, be accompanied by another person. Do not enter the apartment of a resident who is inappropriately dressed. Explain that you will return at a more convenient time. Return to the office and document the situation. Don't enter an apartment to make a repair if the resident is at home but does not answer the door. The resident may be in the shower or be sleeping, in which case, entry could be embarrassing for both of you

and poses a potential sexual harassment risk. Don't agree to make impromptu repairs for residents. It can be tempting to agree if the person asking is very attractive. It could be considered favoritism and discriminatory. The resident should make their requests to the office according to the normal procedure followed at the property.

Consensual relationships with residents should be avoided. Maintenance staff should make sure people they are romantically involved with live on someone else's property to avoid the risk of a claim of sexual harassment, if the relationship ends. Maintenance staff should also ensure there is no pornography or inappropriate pictures or photos in their maintenance area or shop and should avoid telling off color jokes or stories or talk about their sex life in front of others. All employees should ensure that their friends don't send dirty jokes or other inappropriate emails to the office computer.

Don't treat female maintenance personnel differently than male personnel. Don't make comments about a woman's body or stare or leer. Don't tease male residents or employees who may or may not be homosexual. Don't touch a resident in any way; no patting, pinching, tickling, hugs, brushing up against or fondling of that person. You may think that your actions are no big deal, but the residents or other employees may feel uncomfortable, which is what counts.

Recent Cases

Akron, OH – July 2011

The landlord sexually harassed tenant. "Used explicit language to gain sex from tenant" and "tied sexual favors to repairs" and retaliated against tenant when she threatened to complain. The penalty was $386,640.

St. Paul, MN – January, 2011

Employees at the housing property subjected female tenants to unwanted sexual touching and advances, conditioned the terms of women's tenancy on the granting of sexual favors and entered apartments of female tenants without permission or prior notice. The penalty was $425,000.

Smithville, MO – August, 2011

Maintenance man sexually harassed female tenants by sexual comments to them. The penalty was $95,000.

Sioux City, IA - March 2011

Maintenance individual discriminated against female tenant when she spurned sexual advances and failed to do necessary repairs until she succumbed to sexual advances. The penalty was $125,000.

Montgomery, AL – June, 2011

The Landlord tried repeatedly to coerce renter into having sex with him and the raised her rent and attempted to evict her when she refused. The penalty was $150,000.

Harassment

Types of Conduct considered as Sexual Harassment

Sexually harassing conduct can be Verbal (derogatory remarks, slurs, jokes, intimidation, and even threats of violence), Physical (body gestures, whistling, ogling, unwelcome touching or physical violence), or Visual (inappropriate sexually-oriented written materials or pictures). Sexual harassment also occurs when a resident's housing is conditioned on agreeing to sexual favors.

For example, a manager demands a date in exchange for a rent reduction. The legal term for this type of harassment is quid pro quo- "this for that".

The treatment is considered harassment if it rises to the level of "severe or pervasive" conduct.

A resident said our maintenance worker told her she'd get a quicker repair if she gave him a kiss. What should we do?

This is an example of quid pro quo harassment. Employers are responsible for the behavior of their employees and vendors who work on-site. If a resident complains of sexual harassment, take prompt action to remedy the situation and prevent harassment in the future. Follow up with the resident and document everything.

This type of situation can be handled more effectively if there is a written harassment policy. The policy should clearly outline what a resident can do and who to contact if harassment occurs.

Handling Maintenance Requests and Repairs

Providers must make sure all maintenance requests are in writing. Maintenance staff should determine what information they need to perform the repair promptly and correctly and should determine the order in which requests are to be handled. Maintenance staff should let residents know what they consider to be an emergency in case they give attention to the emergency before an earlier request that was not time sensitive. Maintenance staff should also have standard procedure established for each type of repair and should document the progress of the repair from start to finish. It's preferable to communicate to the resident any delays, such as due to unavailability of parts etc. Otherwise, make the repair promptly and correctly.

Section 3:
Reasonable Accommodation

Disability

Identifying Disability

The term "disabled" applies to someone who has a physical or mental condition that substantially limits a major life activity; has a record or history of disability; is regarded as having a disability.

"Disability" means a person who has a physical or mental impairment that substantially limits one or more major life functions. One can have either a history of the impairment or can be viewed by others as having an impairment.

The term "disability" constitutes of a three pronged definition based on a physical, sensory or mental condition that substantially limits one or more major life functions; having a record of such an impairment; or being regarded as having such an impairment.

First Prong

Person with a physical or mental impairment that substantially limits one or more major life activities. This is sometimes referred to in the EEOC regulations as a person who has an "actual disability." The key is to look at the extent, duration, & impact of the impairment.

Major Life Activities include caring for oneself; performing manual tasks and basic activities such as walking, seeing, hearing, speaking, standing, eating, even breathing as well as activities such as learning, working, concentrating, communicating, thinking, lifting, bending, and, reading.

The ADA Amendments Act has clarified that major life activities is expanded to include Bodily Functions.

Major Body Functions include functions of the immune system, normal cell growth, digestive function, bowel function, bladder function, brain function, functions of the respiratory system, circulatory function, neurological function, endocrine function, and, reproductive function.

Second Prong

The second prong of disability is a person having a "record of having a disability". Examples include diseases such as cancer, heart disease, or other debilitating illness, mental illness, epilepsy, lupus etc. and whether those illnesses are either cured, controlled or in remission.

This 2nd prong protects people who have a history of a disability, regardless of whether or not they are currently substantially limited in a major life activity. It protects people with a history of cancer, heart disease, or other debilitating illness, whose illnesses are either cured, controlled or in remission.

It also protects people with a history of mental illness. This part of the definition also protects people who may have been misclassified or misdiagnosed as having a disability. It protects a person who may at one time have been erroneously classified as having mental retardation or as having a learning disability.

If an employer relies on any record, e.g., an educational, medical or employment record, containing such information to make an adverse employment decision about a person who currently is qualified to perform a job, the action is subject to challenge as a discriminatory practice. For example, if a job applicant was hospitalized for treatment for cocaine addiction several years ago, he was successfully rehabilitated and has not engaged in the illegal use since, this applicant has a record of an impairment that substantially limited his major life activities. If he is qualified for perform a job, it would be discriminatory to reject him based on the record of his former addiction.

Some of the illnesses considered under disability include a history of mental illness, heart disease, cancer, muscular dystrophy, epilepsy and multiple sclerosis.

Third Prong

The third prong of disability relates to a person who is "regarded as having an impairment". This part of the definition protects people who are "perceived" as having disabilities from discriminatory decisions based on stereotypes, fears, or misconceptions about disability. Such protection is necessary because, as the Supreme Court stated, "Society's myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments."

An individual meets the requirement of being regarded as having an impairment if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived impairment that is not both "transitory and minor" – regardless of whether or not the impairment limits or is perceived to limit a major life activity.

For example, a housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant.

The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he

would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Characteristics of a Disability

The disability must "substantially limit" one or more "major life activities." This means that a disability must significantly affect activities such as walking, talking, seeing, hearing, breathing, performing manual tasks, caring for one's self, learning, and working.

The disability doesn't have to be obvious. People don't need to be able to know a person has a disability just from seeing them or even from spending time with them. For example, an applicant might be an asthmatic who, thanks to medication, doesn't have noticeable difficulty breathing when meeting with a leasing agent.

The disability doesn't have to require the individual to use any assistive device. If the individual has a mobility impairment, it can qualify as a disability under the FHA even though the individual doesn't use a wheelchair, cane, or any other assistive device. Similarly, if an individual has a hearing impairment, they don't have to use a hearing aid to be eligible for the FHA's protections.

The disability doesn't have to be physical. The FHA protects prospects and tenants who have "physical or mental impairments". Chronic fatigue syndrome, a learning disability, and mental illness all fit the FHA's definition.

Addictions are disabilities, too. People who have a drug or alcohol addiction qualify as having a disability.

What is NOT protected?

Discrimination based on the following factors are not covered by the Fair Housing Act:

- **Smoking**
- **Source of income**
- **Criminal History, including Sexual Offenders and Juvenile Offenders**
- **Non-recovering users of illegal substances**

Persons NOT included in the Definition of Disability

Persons currently engaging in the illegal use of a controlled substance; persons whose tenancy would constitute a "direct threat" to the health or safety of other individuals or whose tenancy

would cause substantial physical damage to the property of others; persons convicted of illegal manufacture or distribution of a controlled substance; juvenile offenders and sex offenders, by virtue of that status.

Providing Documentation of Disability

Prospective residents should not have to provide copies of their medical records. Any information that they provide should be kept confidential, except in cases of an emergency.

Determining Prohibited Conduct

Housing Providers and their employees may be liable for discrimination claims in certain circumstances, such as discrimination in the rental of housing because of a handicap or disability of the renter or of a household member or person associated with the renter; discrimination in the terms or conditions of rental or in the provisions of services or facilities because of a handicap or disability of the renter; inquiries to determine whether a person seeking to rent a dwelling unit has a disability and the use of discriminatory advertising.

Accommodations and Modifications

A person may request an accommodation or modification when they are applying for housing; at any time during tenancy; or when they face eviction. Till this point, Fair Housing requirements have wanted housing providers to treat all requests for housing and all applicants equally. With regards to disability, that gets thrown outside the window. With disability, the housing provider is required to be flexible, and a different mindset is required here, this is an exception and the provider has to accommodate to meet the needs of the disability.

Reasonable Accommodation

Reasonable Accommodations are changes in rules, policies, practices, and the way services are provided. Reasonable accommodations enable a person with a disability to have an equal opportunity to use and enjoy a dwelling unit or any common areas.

Reasonable Accommodation is a change to practices, procedures and policies and is generally cost-neutral. Scenarios for accommodation can be that the individual needs to be on the first floor; or they get their check on the 3rd and payment is due on the 1st. Reasonable Modification deals with physical changes required, whereas Reasonable Accommodation may require changes to practices, such as setting aside a no pets policy. Providers may have to adjust the way they do business, but it has to be done professionally. For physical changes, the resident is on the hook for the cost of work and to put it back the way it was.

In case of a physical change or programmatic change, the provider has the right to get something in writing from health provider and/or case worker to be assured of legitimacy. The provider may ask for proof. For example, if a double amputee asks for a parking place, providers might not be so

skeptical but if an able person asks for disability accommodation, the provider may want to ask for proof in writing. If the provider knows the individual has a physical disability, and that there is a significant impact on walking, seeing, hearing, etc., the provider may have to provide reasonable accommodation or modification. However, it is perfectly acceptable for providers to want to know of the connection between what the resident is asking for and their disability. For example, a disabled student who asks for law accommodation disability, is entitled to it but isn't entitled to someone typing their term paper for them.

The Accommodation Process

The housing provider is only obliged to provide reasonable accommodation and modification if the resident requests accommodation. Providers must consider all accommodation requests and engage in an interactive process. Providers can require the resident to provide written proof of need for the accommodation. Providers can grant accommodations on case-by-case basis, depending on the resident's disability, needs and circumstances.

Common Reasonable Accommodations

Common requests for reasonable accommodations include waiving No Pet Policy and/or pet fees, explaining what is in the lease agreement and what the rules of the complex are, providing a reserved parking stall, transferring from upstairs unit to ground floor, early release from lease, providing tenant written information vs. verbal, meeting in an accessible location.

Reasonable Accommodation for Visual Impairments

These include allowing a service animal, reading notices aloud to the tenant or putting notices in large print, audio tape or Braille, providing ample inside and outside lighting, providing large print or Brailled numbers on the front door or common use areas, removing protruding objects from hallways and outside pathways and providing a non-slip, color-contrast strip on stairs.

Reasonable Accommodation for Hearing Impairments

These include provision of a doorbell flasher, a visual alarm system on smoke detectors, and provision of a sign language interpreter for tenant meetings. If phones are provided, using a visual flasher attachment, installing a TTY in the rental office and amplifying a communications system.

Reasonable Accommodation for Cognitive Disabilities

Providers may be required to provide reasonable accommodations for tenants with cognitive disabilities such as writing the application, rental agreement and notices in clear and simple terms, explaining rental agreement and tenancy rules, showing where the water shutoff valve is and when to use it, showing how to use appliances and common use areas. Providers may also make outside door locks or security locks simpler and provide a reminder at the beginning of the month that the rent is due.

Reasonable Accommodation for Psychiatric Disabilities

Providers would need to allow a service animal, move a tenant to a quieter unit, if requested, place an application back on the waiting list (if applicant missed intake interview or got paperwork in late due to the disability). Upon request, providers would need to provide intervention if the tenant is being harassed.

Reasonable Accommodation for Environmental Disabilities

Providers would need to make changes such as the use of non-toxic fertilizers for landscape areas and non- toxic cleaning products for common areas, allowing the removal of carpet from the apartment, posting 'No Smoking' signs in common areas, removing the ballast or fluorescent lights from the kitchen and bathroom.

Reasonable Accommodation for Physical Disabilities

Reasonable accommodations for physical disabilities include allowing mail-in applications, meeting at an accessible location, allowing the widening of doorways, and ramp to be built, allowing the installation of grab bars, allowing the lowering of closet rods, allowing a personal care attendant to live with the tenant. Other accommodations include wrapping the kitchen and bathroom pipes with insulation, installing anti-skid tape on floors and stairs, allowing lowering of environmental controls, providing lever door handles and automatic door closers, moving a tenant to another floor or to the ground floor for easier mobility, if requested, and clear shrubs away from pathways and trim to eye level.

Reasonable Accommodation for HIV and Aids

Providers may move a tenant to another/ground floor for easier mobility, if requested, allow a personal care attendant to live with the tenant in a 2-bedroom unit. If requested, providers may need to provide intervention if the tenant is being harassed and provide or allow a person from the community to educate other tenants about the condition.

Requests for Reasonable Accommodations

In requesting an accommodation the individual has disclosed that he or she has a disability. If the disability is not apparent, the landlord may ask for verification that the tenant has a disability as defined by the Fair Housing Act. No additional inquiry into the nature or extent of the disability, beyond establishing the need for the accommodation, is allowed. Providers should establish that there is an identifiable relationship between the requested accommodation and the individual's disability. In other words, the accommodation will enable the person with the disability to have equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

A provider can deny a request if the request was not made by or on behalf of a person with a disability, if there is no disability-related need for the accommodation, if it would impose undue financial or administrative burden or if would alter the nature of the providers operations.

The provider must determine that the accommodation is reasonable, i.e. it would not impose an "undue burden" or result in a "fundamental alteration" of the nature of the housing program.

What is "Reasonable"?

This depends on the answers to two questions. First, does the request impose an undue financial and administrative burden on the housing provider? Second, would making the accommodation require a fundamental alteration in the nature of the provider's operations? If the answer to either question is yes, the requested accommodation is not reasonable. However, even where a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations that do qualify as reasonable.

Undue burden

Undue burden of a request can be determined by examining various factors such as the cost of the requested accommodation, the financial resources of provider, the benefits that the accommodation will provide to requestor, and the availability of alternative accommodations. The provider must examine each accommodation request and the undue burden on a case by case basis.

Fundamental Alteration

Fundamental Alteration refers to a modification that alters the essential nature of a providers operations. For example, requesting transportation when provider does not provide transportation services. Once an accommodation is determined to be reasonable, the landlord cannot directly or indirectly impose on the tenant the expense of providing the accommodation (for example, a pet deposit cannot be required for a service animal). Though not required, the recommended practice is to have requests for reasonable accommodations to be made in writing. If the request is denied by the provider, the individual should try to initiate an interactive process to reach compromise agreement. If conciliation does not work then the individual should file a complaint with HUD Fair Housing Office. The housing provider cannot charge extra fees or require additional deposits as a condition of granting reasonable accommodation.

Reasonable Accommodation – Marijuana

Recently, a number of states have legalized the use of marijuana specifically for medicinal purposes. Some states have legalized the use of marijuana for recreational purposes. Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Based on federal law, new admissions of medical marijuana users are prohibited. QHWRA requires that owner/agents establish lease standards that prohibit admission based on the illegal use of controlled substances

including state legalized marijuana. State laws that legalize medical marijuana directly conflict with QHWRA and thus are subject to federal preemption.

Admissions Policies

Landlords can refuse to rent to someone who either:

- **fails to meet legitimate screening criteria, such as the financial ability to pay the rent, or**
- **who would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others**

Poor credit and criminal history are common barriers for many tenants, including persons with disabilities. Some frequent situations of disability-related credit concerns are shown in the following scenarios:

- **Mary had a serious illness that interrupted her working life and resulted in bankruptcy.**
- **John had an untreated mental illness that created a period of uncontrolled spending, causing him to default on loans, pay bills late and hurt his credit history.**

Similarly, a prospective tenant may have a criminal record as a result of their disability:

- **Susan, who is in recovery from addiction to illegal drugs, was convicted in the past on drug charges.**
- **Samuel had an untreated mental illness that resulted in homelessness and convictions for trespassing, vagrancy and assault, all of which can be part of surviving on the streets.**

All of the above are reasons to consider making a reasonable accommodation. Using the examples from the scenarios above, some circumstances that could warrant an accommodation in the application procedure may include:

- **After Mary declared bankruptcy, she has paid her bills on time**
- **John is receiving psychological counseling for his mental illness and is in compliance with a repayment plan**
- **Susan no longer uses illegal drugs and has not been arrested since she completed substance abuse treatment; and**

- **Samuel has not been convicted of a crime since he began taking medications to treat his mental illness**

Legally Acceptable Questions

Housing providers are allowed to ask certain questions such as:

- **Will the applicant be able to pay rent and other fair changes in a timely manner?**
- **Will the applicant care for and avoid damaging the unit and the common areas, use facilities and equipment in a reasonable way, create no health, safety or sanitation hazards, and report maintenance needs?**
- **Will the applicant avoid interfering with the rights and enjoyment of others and avoid damaging the property of others?**
- **Will the applicant avoid criminal activity that threatens the health, safety, or rights of others and avoid drug-related criminal activity?**
- **Will the applicant comply with necessary and reasonable house rules, program requirements of HUD (if applicable), and health and safety codes?**

Questions that Should NOT be asked

Housing providers must take care not to ask questions that relate to an applicant's protected class, such as:

- **Whether an applicant has a disability?**
- **Whether an applicant has a particular type of disability?**
- **Questions about an applicant's disability, including its severity**
- **Any question such as "Do you take any medications?" that would require an applicant to tell about his or her disability**
- **Whether any member of the applicant's family or any friend or associate has a disability; and**
- **Whether the applicant has the ability to live independently or evacuate safely**

According to the Census 2010 Brief on Disability Status, 19.3%, i.e. 49.7 million or nearly 1 in 5 people, have some type of long-lasting condition or disability.

In 2011, the number one reason for discrimination claims was Disability.

Disability has the highest percentage of total complaints for a protected class. At HUD, it made up 50% of the complaints, and in other agencies it ran between 37-47% of the total complaints.

Remember that under Fair Housing, housing providers cannot screen or deny housing based upon disability. A big reason for discrimination claims over disability is that providers don't allow for reasonable accommodations or treat disabled residents "differently". Allowing for requests for Reasonable Accommodations is required by FH Law yet many providers refuse them. Inappropriately screening, rejecting or terminating occupancy based upon disability is still a big problem.

Reasonable Modification

Reasonable modification is defined as a change to the physical environment (dwelling or common area) necessary for a resident to use and enjoy these spaces. The Fair Housing Act requires all 'covered Multifamily housing' new buildings designed after March 13, 1991 to be accessible to handicapped or individuals with disabilities.

The basics of Reasonable Modifications are that the resident must fully describe the modification, the provider must allow the change if reasonable, the tenant/ resident pays for modifications, the modification must be done properly (to code), i.e. it complies with all necessary building and architectural codes and a certified contractor completes the work, the resident may need to set aside restoration monies and the resident may have to restore interior changes. Also, the resident does not have to undo changes that are neutral or that enhance access.

Under Section 504 of the Rehabilitation Act 1973, and the Fair Housing Act, HUD stipulates that if a disabled person needs modification to the living area or common area, and that accommodation would help them enjoy their living situation, the provider should permit the modifications which may include brick and mortar changes. In private sector housing, the resident has to incur the costs for the change and to revert the change back at the end of their residency. Modification is relatively conservative, and includes cosmetic changes such as ripping up the carpet and putting up vinyl. Residents with mental disability are required to follow the rules regardless of disability. Providers don't have to tolerate residents breaking rules which is based on disability. When residents with disabilities are acting up, providers don't have to put up with it, but also have to keep in mind that changes to medicines of individuals with disabilities may have effect on them. Providers may give residents time to withhold and allow the medicines to work as an

accommodation. In such scenarios residents have to be given a reasonable time to fix the issue and straighten it out, but the burden is on the individual to work it out. If disruptive behavior continues, it becomes an issue with conduct not disability.

Examples of Reasonable Modifications

Examples of reasonable modifications include installing an automatic water faucet shut-off for people who can't remember to turn off the water, installing pictures, color-coded signs or pathways for people whose cognitive disabilities make written signs impossible to use, installing carpeting or acoustic tiles to reduce noise made by a person whose disability causes him or her to make a lot of noise, disconnecting a stove and installing a microwave for a person unable to operate a stove safely.

ALL units are available to the disabled as long as the applicant meets the property's rental standards. However, since physically or mentally disabled persons cannot always do the same things in the same way as able bodied persons, they have been given several "rights" to help them.

Modifying the Apartment

Modifications are made at resident's own expense (except subsidized), must be done to code/ workmanlike manner and the modifications must be related to disability. Reasonable modifications cannot permanently damage the property and management must be apprised of what is to be done.

Requests for Reasonable Accommodations

A housing provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation and the provider then could be charged with a violation of the Fair Housing Act.

Requests for Reasonable Modification

In requesting a modification the individual has disclosed that they have a disability. If the disability is not apparent, the landlord may ask for verification that the tenant has a disability as defined by the Fair Housing Act. No additional inquiry into the nature or extent of the disability, beyond establishing the need for the modification is allowed. The provider can establish that the modification is necessary. In other words, the modification will enable the person with the disability to have equal opportunity to use and enjoy a dwelling unit, including public and common areas. The provider can determine that the modification is reasonable, i.e. whether the modification is structurally possible, cost effective and will overcome the barrier. The provider should ensure that the modification will not damage the property or interfere with other tenants' use of their units or common areas. Though not required, the recommended practice is to have requests for reasonable modification be made in writing.

Who Pays for the Modification?

If the property was developed, even in part, with federal funds, the landlord must pay for the modification, as long as it does not cause a significant financial or administrative hardship. Section 504 requires that in making an accommodation, a federally assisted housing provider will be required to bear costs which do not amount to an undue financial and administrative burden. In application, this means that such a housing provider may be required to spend money to provide legally required reasonable accommodations. If a building was ready for occupancy for the first time after March 13, 1991, it is subject to the Fair Housing Act and must be physically accessible. If the modification requested is necessary because the building is out of compliance with the Fair Housing Act, owners are financially responsible for all expenses necessary to have the property meet these requirements. If the property did not receive funding from a federal source and meets the minimum accessibility requirements required by law, then the tenant can be required to pay for the modification.

Standards for Modifications

If the tenant is paying for the alteration, the landlord can require that the work be done properly, that it comply with all necessary building and architectural codes and that a certified contractor complete the work.

Move Out

The landlord can also require that at the end of the tenancy the modification be removed and the unit restored to its original condition, but only if the modification will interfere with a future tenant's use of the unit.

Consequences

The negative consequences for management companies and owners, of not providing reasonable modification include actual damages to a tenant, including pain and suffering; injunctive relief, which could cover future business activities, such as preventing a company from buying other apartment complexes; civil penalties of $10,000 for the first offense; and punitive damages. In addition, projects that receive Low Income Housing Tax Credits can have their credits recaptured by the IRS under Treasury Regulation 1.42-9.

Assistive Animals

Service/companion animals ARE NOT pets. No pet apartments still need to allow for service/companion animals.

Assistive Animals as Accommodation

The housing provider must allow the disabled resident to keep the assistive animal if three conditions are met, which are that the resident must meet the definition of disabled as defined in the fair housing law; the housing provider must know about or should have known about the resident's disability; and, the accommodation may be necessary to afford the disabled resident an equal opportunity to use and enjoy the dwelling.

Service/Assistive Animals as Accommodation

To be classified as a Service animal under ADA, an animal must meet two requirements, which are that the animal must be individually trained and the animal must work for the benefit of the disabled individual. For assistive animals there is no requirement as to the amount of training that the animal must take nor is there a requirement as to the amount of work that the animal must do for the disabled resident.

Reasonable Accommodations & Modifications

Assistive animals need no "certification". There are no state or national standards for certifying service animals, and no government agencies provide certification. A person may train his or her own assistive animal. When an applicant or resident who has a disability requests to live with an assistive animal, providers should follow the usual accommodation process. It is a reasonable accommodation to allow residents to live with assistive animals that meet their disability-related needs. Assistive animals are not pets. A person with a disability uses a service animal as an auxiliary aid – similar to the use of a cane, crutches or wheelchair.

ON LINE "PRESCRIPTIONS," "CERTIFICATIONS," AND "REGISTRATIONS"

There is NO "official" registry of assistance animals.

Assistance animals are not required to have any particular certification or license. The vests and ID cards are a scam to separate people from their money. A third party verifier should have a therapeutic relationship with the requester related to the disability. The relationship should not be solely for the purpose of obtaining permission or a "prescription" for an assistance animal.

What if the next door neighbor is allergic? ("Competing Disabilities")

You are not required to determine either who is more disabled or who is more entitled to an accommodation. If compromise cannot be achieved, the person who requested the accommodation first should prevail.

Fair housing laws require that assistive animals be permitted despite “no pet” rules. Owners of assistive animals should not be charged pet deposits or fees. General cleaning or damage deposits can be charged, if all residents are similarly charged. A resident with an assistive animal is liable for any damage the animal causes. While the most common assistive animals are dogs, they may be other species, such as cats, monkeys, birds or other animals. Assistive animals may be any breed, size or weight. Do not apply pet size or weight limitations to assistive animals. Assistive animals need no special licenses or visible identification. However, some owners of service animals choose to put special collars or harnesses on their animals. If city or county laws require pet licenses for dogs and cats, rental management can require service dogs or cats to be licensed. In some cases, such licenses are free or discounted for service animals.

Note: If management does not require licenses for pet dogs and cats, then licenses cannot be required for dogs or cats that are assistive animals.

Reasonable Requests Companion Animal Request Form

Companion Animal Request

NAME: _____ SSN: _____

The above named individual has requested our permission to keep an animal at the site. To process this request we must verify that the individual qualifies as "disabled" under federal law and requires the animal in order to have an equal opportunity to use and enjoy the site. The applicant/resident is not required to sign this request if it is not clear who will be providing or receiving the information.

By signing below I authorize the below stated Individual/Department to provide this information and return it to the person indicated.

Applicant / Resident Date

This form should be completed by:	This form should be returned to:
Physician:	Manager:
Clinic:	Company:
Address:	Address:
City, St:	City, St:
Phone:	Phone:
Fax:	Fax:

Information Requested

Is the household member disabled as defined on the attached page?

Yes_____ No_____

In your professional opinion, does the household member need to keep an animal at the site in order to have the same opportunity that a non-disabled individual has to use and enjoy the site?

Yes_____ No_____

Please list type of animal authorized:

_____

DEFINITION OF "DISABILITY"

Person with a Disability (Handicapped Person).* [24 CFR 891.505 and 891.305] A person with disabilities means:

1. **Any adult having a physical, mental, or emotional impairment that is expected to be of long- continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.**

2. **A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:**

    a. **Is attributable to a mental or physical impairment or combination of mental and physical impairments;**

    b. **Is manifested before the person attains age 22**

    c. **Is likely to continue indefinitely**

    d. **Results in substantial functional limitation in three or more of the following areas of major life activity:**

        i. **Self-care**

        ii. **Receptive and expressive language**

        iii. **Learning**

        iv. **Mobility**

        v. **Self-direction**

        vi. **Capacity for independent living, and**

        vii. **Economic self-sufficiency**

    e. **Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.**

A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)

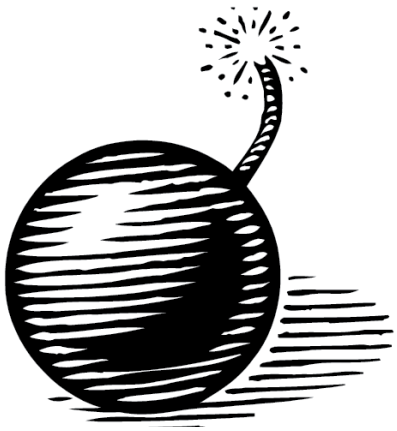
Penalties for Misusing This Consent

18, Section 1001 of the US Code states that a person is guilty of a felony for knowingly and willingly making false and fraudulent statements to any department of the United States Government. HUD, the PHA, and any owner (or any employee of HUD, the PHA, or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willfully requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD, the PHA, or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at 41 USC 208 (f)(g) and (h). Violations of these provisions are cited as violations of 42 USC 408 f, g, and h.

Printed Name/Title Date

Terrorism



After 9/11 the FBI issued an alert which directed landlords to be more aware of suspicious activities, renters or rental agreements. HUD responded that Fair Housing agencies would be watching for any complaints of "profiling". There are some behaviors that could be suspicious and of interest to the FBI and Homeland Security. Maintenance staff are out and about and in the units so have more of an opportunity to see what is going on. There are a number of characteristics that are considered to be potential indicators of terrorist activity.

Some of the characteristics are that the person lives in an apartment with only rented furniture or no furniture and has no family photos or personal items, the person carries a number of phones that ring constantly, but you notice that they only reply by text messages, the person is extremely possessive of his/her cell phone and becomes agitated if it is touched or if someone asks to use it. The person makes negative comments about the United States in a serious manner.

Looking out for potential terrorist activity involves being aware of unusual chemical odors from an apartment, such as sulfur, ammonia, or fuel. Each of these characteristics or situations separately would not raise concern about an individual. However if a number of them are present and/or there is other suspicious activity, contact the manager, who then can contact the proper authorities, if appropriate.

Words and Phrases to Watch For

Providers must not refer to a person's protected class such as:

- **Hey, I notice you've got an accent. Where are you from?**
- **So, are you guys married?**
- **You don't look like you can take care of yourself. Don't you need someone to live with you? What if you fell down and hurt yourself? (disabled)**

Providers should avoid making comments that could lead a resident to think the provider doesn't want them to live here.

- **We have a very quiet property, mostly older people, so we try to keep the kids from making too much noise.**
- **This isn't a very safe neighborhood for kids.**

- **You may have noticed that this property isn't very safe for children because of (fill in the blanks…balconies, stairs, busy street..)**

- **No, this property wasn't meant for children. Some of the families who used to live here have moved down the street to the "Acme Apartments" because they have a great playground. (steering)**

- **The manager prefers to have the families with children live in ground floor units or near the playground so the noise doesn't bother the other residents. (steering)**

Miscellaneous Concerns

Bribes or gifts should be avoided. Avoid the appearance of favoritism when taking gifts, especially in Christmas season and avoid giving gifts to residents. A policy of "Friendly to all…friend to none" is best.

Housing Providers should remember two things about fair housing:

- Consistency- **Do the same thing every time. Treat everyone the same.**

- Document- **Keep good records and document everything.**

Disparate Impact and HUD New Guidance Dealing With Criminal Background of Potential Residents

What is Disparate Impact?

Section 100.500(a) provides that a "discriminatory effect" occurs where a facially neutral practice actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact), or on the community as a whole on the basis of a protected characteristic (perpetuation of segregation). Any facially neutral action, e.g., laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule.

Simply stated, disparate impact occurs when a housing provider's policies or actions, although neutral and non-discriminatory on their face, serve to disproportionately negatively impact a protected class of individuals, as defined under the Fair Housing Act. These "Protected Classes" include race, color, religion, gender, national origin, familial status (presence of children under 18), and handicap (mental or physical disability).

Even when an intent to discriminate cannot be proven, fair housing cases have been successfully pursued through courts and Administrative Law Judges, using the theory of disparate impact. In formal adjudications of charges of discrimination under the Fair Housing Act over the past 20 years, HUD has consistently concluded that the Act is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.

Let's say, for example, that you have an occupancy restriction that addresses the number of people that can live in one of your rental properties. It doesn't address children (familial status), or any other protected class, specifically. It just limits the total number of people. And, for the sake of discussion, let's say that policy limits occupancy to 3 people in a 2-bedroom apartment.Because your occupancy restriction disproportionately impacts families with children, a fair housing claim could likely be proven based on the disparate impact of the occupancy restriction.

Even if a policy has a discriminatory effect, it may still be legal if supported by a legally sufficient justification. To summarize its justification for publication of this final rule, HUD goes on to say:

Compliance with the Fair Housing Act has for almost 40 years included the requirement to refrain from undertaking actions that have an unjustified discriminatory effect. The rule does not change that substantive obligation; it merely formalizes it in regulation, along with the applicable burden-shifting framework. Here is a final take on the ruling:

Most property managers have every intention of running fair and non-discriminatory rental businesses. However, this final rule makes it very clear that, whether or not you intend to discriminate, you can still be found in violation of fair housing law, through the theory of disparate impact.

Advice:

Take a close look at all your policies, procedures, and rules. Do any of them have a potentially negative impact on any protected class under Fair Housing law? Make sure each policy/procedure/rule has a very clear and necessary business justification. Moreover, make sure you can prove that justification.

On those rules or policies that might negatively impact one or more protected classes, examine whether there exists a replacement policy that would accomplish the same business goal, yet be less discriminatory than the policy you currently have in place. Frustrated by the pace of progress in securing new protections for ex-offenders through the legislative process, tenants' rights groups and some government officials are looking to the courts to achieve their goals.

Much of this litigation is based upon the legal theory of "disparate impact." According to this theory, a policy has a disparate impact when it is neutral on its face, but has a disproportionate, negative impact on protected groups. Therefore, by virtue of this disparate impact, that policy is illegal under federal, state and local fair housing and employment laws.

On April 4, 2016, HUD's General Counsel released guidance for ALL housing providers (not just those who are HUD subsidized) regarding how the use of criminal background checks could potentially violate fair housing laws.

If you are a Landlord and run criminal background checks as part of your screening process, it is important for you to become familiar with the guidance. Although this is HUD guidance, rather than law, it clearly outlines how HUD would analyze a fair housing complaint based on the use of criminal background checks to deny housing.

The HUD guidance states that due to the higher than average incarceration rates among certain races (Hispanics and African Americans) in the United States relative to their percentage of the total population and when compared against the incarceration rates of non-Hispanic Caucasians, the use of criminal history to deny housing can cause a disparate impact on these particular races.

Therefore, if Landlords want to use criminal background checks as part of their rental criteria, they have the burden to show: (1) it is necessary to use criminal background checks in order to achieve a non-discriminatory business objective and; (2) there is no less discriminatory alternative. (The "business objective" would presumably be the protection of resident safety and/or property.

However, the guidance states that the business objective cannot be prospective in nature. The landlord must prove that the use of the criminal background checks actually accomplishes the business objective.) The HUD memo goes on to state that in order to meet this burden when a Landlord's policy has a disparate impact, Landlords must consider the following:

Arrest Records: HUD states that landlords should not use arrest records as a basis for excluding applicants. According to HUD's General Counsel, an arrest which does not lead to a subsequent conviction does not prove that an individual engaged in illegal activity. Therefore, the use of arrest records would not provide information regarding whether the applicant who was arrested would be a threat to the safety of other residents or their property.

Prior Convictions: Although prior convictions are sufficient evidence to prove that an individual engaged in criminal conduct, HUD's General Counsel states: "A housing provider that imposes a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then- will be unable to meet this burden."

In other words, according to HUD's General Counsel, if a landlord is going to use criminal records as part of the screening criteria, the policy must be narrowly tailored. The guidance goes on to state that even then a landlord would still need to prove that this "tailored" policy is necessary to serve a "substantial, legitimate, nondiscriminatory interest."

In order to do this, a landlord must be able to show that its "tailored" use of criminal background checks "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not."

So what does this all mean?

Can Landlords take into account the criminal background of applicants as part of their screening criteria without violating fair housing laws? This latest HUD guidance does confirm that there is one "safe harbor" available to landlords: If a landlord uses criminal background checks and only excludes applicants who have been convicted of the illegal manufacture or distribution of a controlled substance, a landlord will not run afoul of fair housing laws.

This is because the Fair Housing Act specifically states that landlords do not have to make housing available to persons with such a conviction. The guidance warns, however, that the exclusion is only for manufacture or distribution (making or selling) controlled substances and does not extend to other drug-related crimes such as use or possession.

What if a landlord wants to exclude applicants who have been convicted of other crimes? Will it be considered a fair housing violation? Other than the safe harbor addressed above, the HUD memo does not specify what types of criminal convictions would warrant a denial to rent.

However, the HUD guidance does provide some general guidelines which landlords must consider if they choose to go beyond denial of applicants convicted of illegal manufacture or distribution of controlled substances:

Nature of the Conviction: The guidance states that a landlord who wants to use criminal background checks must take into account the "nature and severity" of an individual's conviction. For example, the landlord should consider the exact crime and how severe it was. Moreover, the landlord should consider whether the fact that the applicant engaged in this particular type of criminal activity means this applicant will be a greater risk to resident safety and/or property.

This closer scrutiny that HUD is requiring means that landlords should avoid blanket restrictions such as a policy that excludes all applicants who have any felony conviction. When the Criminal Activity Occurred: The guidance also states that a landlord who screens for criminal history must take into account how long ago the criminal activity occurred.

According to HUD's general counsel, there is "criminological research" which shows that over time, "the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense."

In other words, crimes that occurred a long time ago should be considered less relevant as compared to more recent crimes (and possibly not considered at all). So how far back should a landlord look? Could a landlord safely consider a crime that took place 5 years ago? 10 years ago?

Unfortunately HUD offers no guidance on this question. It is left up to the landlord to be able to make an Individualized Assessment: The HUD memo goes on to state that not only do Landlords need to narrowly tailor their use of an applicant's criminal history, but they must also show that this narrowly tailored policy has the least possible discriminatory affect.

In order to accomplish this goal, HUD recommends that Landlords conduct an "individualized assessment" of each applicant, considering "relevant mitigating information" such as; the facts or circumstances surrounding the criminal conduct; (2) the age of the individual at the time the conduct occurred; (3) evidence that the individual has maintained a good tenant history before and after the conviction or conduct; (4) and evidence of rehabilitation efforts to defend whatever policy they choose to implement.

Finally, the guidance states even if a Landlord's use of criminal background checks is narrowly tailored by taking into consideration the nature and severity of the crime, the length of time since conviction occurred, and where individualized assessments are carried out, a Landlord "will still bear the burden of proving that any discriminatory effect caused by such policy or practice [involving the use of criminal background checks] is justified."

Based on this guidance from HUD, the only sure way a Landlord can avoid fair housing liability if he/she wants to consider an applicant's criminal history is to limit the policy to exclude only applicants with prior convictions for illegal manufacture or distribution of controlled substances. If a landlord wants to deny an applicant for any other convictions, the landlord must be able to prove that the particular policy is necessary in order to achieve a substantial, legitimate, non-discriminatory interest, and that there is no less discriminatory way to achieve this interest.

Note that project-based HUD subsidized properties must also prohibit admission to sex offenders subject to a lifetime registration requirement under state government's sex offender registration program or to individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing.

HUD states that landlords should not use arrest records as a basis for excluding applicants. HUD's reasoning is that an arrest which does not lead to a subsequent conviction does not prove that an individual engaged in illegal activity.

Therefore, the use of arrest records would not provide information regarding whether the applicant who was arrested would be a threat to the safety of other residents or their property. HUD indicates that blanket prohibitions, such as denial of housing to persons with any conviction (or any felony) will not stand up to fair housing scrutiny. HUD suggests that housing providers establish a policy under which other qualifying criteria are considered first.

For example, you could check the applicant's credit, income, rental history and ability to meet any other qualifying criteria and if the applicant does not qualify, deny the application on that basis. By doing this, you would be able to prove that criminal history did not influence the decision to deny the application and thus no disparate impact discrimination occurred. Criminal history would only be considered if the applicant met all of the other qualifying criteria.

While this would not completely eliminate potential liability, it could have the effect of reducing the pool of potential complainants. While HUD does not provide specifics on how a housing provider might tailor its policies in this manner, it does provide some general guidelines. It states that criminal screening standards must take into account the "nature and severity" of an individual's conviction, how long ago the criminal activity occurred, and conduct an "individualized assessment" of each applicant, considering "relevant mitigating information"

Relevant mitigating information" such as: (1) the facts or circumstances surrounding the criminal conduct; (2) the age of the individual at the time the conduct occurred; (3) evidence that the individual has maintained a good tenant history before and after the conviction or conduct; (4) and evidence of rehabilitation efforts.

It is recommended that you consider eliminating policies that deny for less serious convictions such as infractions and misdemeanors and focus only on felonies that they reasonably believe would pose a risk to resident safety and/or property. You would then need to decide the length of time since conviction that could be defensible as posing a current threat to resident safety and/or property.

Lastly, you would need to conduct the aforementioned individualized assessment for each applicant. HUD gives no insight or examples of how to prove that policies have the desired effect. If evidence shows that a property was experiencing high incidents of, and/or police calls to service for, certain prior crimes to implementing the criminal screening standards and that those incidences dropped significantly after the criminal screening was implemented, the burden could be met. This would likely require an individualized assessment on each property.

It is strongly recommended that decisions regarding the policies and individualized assessments be made by owners or upper management rather than by on-site employees and that the policies be reviewed by an attorney with expertise in fair housing before implementation.

Section 4:
Recent Fair Housing Cases and Penalties

Enforcement of Fair Housing

At the federal level, the HUD enforces Fair Housing and gives one year to file a claim. The HUD has regional offices throughout the nation.

At the federal level, the Department of Justice (DOJ) Attorney General enforces fair housing, ADA, and civil rights laws. They are looking for a pattern of discrimination or blatant violations. There is no statute of limitations for them to get involved.

The Fair Housing Act is under the Department of Housing and Urban Development (HUD), the Americans with Disability Act under the Department of Justice (DOJ), and Section 504 of Rehabilitation Act under the Department of Housing and Urban Development (HUD).

Private attorneys may file suit in state or federal court. This right is IN ADDITION to the right to file with an administrative agency. The statute of limitations is two years; however, it can be extended to three or more years.

Complaint Process

If the complainant wins the case, the remedies which are possible are compensatory damages (sometimes numbering in the hundreds of thousands of dollars); actual damages; orders for comprehensive corrective action; loss of federal subsidy; awards of punitive damages; and civil penalties to the government.

Cost of Violations

Fair Housing Violations can result in fines up to $10,000 for the first offense and $25,000 for the second offense in a five year period and up to $50,000 in a seven year period. Plaintiffs are also entitled to compensatory and punitive damages as well as attorney's fees.

Louisiana Public Housing Authority Settles Race Discrimination Case

The Housing Authority of the city of Ruston, L.A., recently agreed to pay $175,000 and adopt comprehensive new policies to settle a race discrimination lawsuit filed by the Justice Department.

The complaint alleged that the housing authority had long segregated the 300 apartments in its five public housing developments by assigning vacancies to applicants based on their race, rather than on their place on the waiting list. Specifically, the department claimed that the housing authority disproportionately assigned white applicants to its two developments that were located in two predominantly white neighborhoods. At the same time, the department alleged, the housing authority primarily assigned African-American applicants to the complexes located in three predominantly African-American neighborhoods.

When it originally began developing housing in the 1950s and early 1960s, the housing authority explicitly reserved two of the communities for "white" persons, while reserving two others for what it termed "colored" persons, according to the Justice Department. Although the housing authority no longer enforced those provisions, it allegedly continued to segregate its complexes in practice. A former project manager admitted skipping over earlier-applying African-American applicants to fill vacancies at a predominantly white community with later applying white applicants. And, on multiple occasions, she allegedly didn't offer eligible white applicants available apartments in other, nearly all-black, communities, but instead offered those units to later-applying African-American applicants.

Under the settlement, the housing authority agreed to implement nondiscriminatory policies and procedures to ensure that housing units are made available for rent based on an applicant's position on its waiting list, regardless of race. *In addition, the housing authority will pay $175,000 to compensate 19 individuals allegedly passed over for available housing units because of their race; they may also request a transfer to another complex on a priority basis.*

"People who seek public housing, like all other home seekers, have the right to access housing free from racial discrimination," Vanita Gupta, Principal Deputy Assistant Attorney General of the Civil Rights Division, said in a statement. "It is particularly distressing that, almost 50 years after the passage of the Fair Housing Act, this public housing authority was still filling vacancies based on the color of an applicant's skin, rather than based on when he or she had applied. We are pleased that the Ruston Housing Authority has agreed to dismantle this segregated system and compensate its victims."

Minnesota Owner Accused of Discriminating Against Asian Family

HUD recently announced that it has charged the owner and manager of a Minnesota property with housing discrimination based on national origin for refusing to rent a home to an Asian family of Hmong descent.

The case began when a family—a mother, her adult son, and two minor children—filed a complaint with HUD after trying to rent a three-bedroom townhouse in March 2014. After visiting the home and paying an $80 application fee, they said the landlord expressed concerns about the mother's English language skills. In an email to the adult son, the landlord allegedly wrote: "During your visit to the address, you prompted your mom to say something to me. She appears to know some simple phrases, but understanding lease legal terms is very unlikely."

Though they met all the requirements for rental, the family said that the landlord wanted them to pay $500 to have the lease translated and then denied their application, stating: "I regret that the rental application has been denied. Both adults would have to sign the contract. [Your mother] appears to have limited English skills.... [T]he contract must be translated to her native language. If not, she could easily break the lease. Such translations are very costly."

When the son challenged the denial as unlawful discrimination, the landlord allegedly threatened to report the son, who holds a real estate license, to the Minnesota department that governs real estate licensing.

Following an investigation, HUD charged the landlord with refusing to rent to the family, attempting to charge them to have the lease translated, making discriminatory statements based on their national origin, and retaliating against them for exercising their fair housing rights. The charge will be heard by a HUD administrative law judge unless either party elects to take the case to federal court.

$135K Settlement in Suit Alleging Discrimination Against Families with Children

The owner and operator of a Massachusetts community recently agreed to pay $135,000 to settle allegations of discrimination against families with children in a lawsuit filed by the Justice Department.

Specifically, the complaint accused the community of maintaining policies to segregate families with children in certain buildings and to restrict them to certain floors and units within the 224-unit complex. The allegations were based on evidence generated by the department's fair housing testing program, in which individuals pose as renters to gather information about possible discriminatory practices.

Under the settlement, the community will pay $135,000 into a fund to compensate alleged victims of discrimination, along with $7,500 in civil penal ties. The agreement requires the community to ensure that families with children are not restricted from renting units anywhere at the complex.

"Discrimination against families because they have children limits their ability to find suitable housing and will not be tolerated," Vanita Gupta, Principal Deputy Assistant Attorney General of the Justice Department 's Civil Rights Division, said in a statement. "We appreciate the defendant's cooperation with our investigation and willingness to resolve the claims."

Source: Justice Department

Do Your House Rules Discriminate Against Families with Children?

In separate cases, rental communities in Kansas and Missouri and a condominium community in Minnesota recently agreed to pay a combined $280,000 to settle allegations of discrimination against families with children in violation of the Fair Housing Act.

In one case, the Justice Department sued the owners and operators of communities in Kansas and Missouri accusing them of enforcing policies that unreasonably restricted the activities of children, including a policy that required that anyone under the age of 16 be physically accompanied by an

adult at all times. The case arose from a HUD complaint filed by a family who claimed that they were forced to move after complaining about the policies. *Under the settlement, the community agreed to pay $60,000 to the family; $100,000 into a victim fund to compensate other aggrieved families; and $10,000 as a civil penalty.*

In the other case, the Justice Department sued a Minnesota condominium community for allegedly enforcing rules in a manner that prevented children from equal enjoyment of common areas and making statements that indicated a preference against families with children. The complaint alleged that the community required children to be supervised at all times when in a common area, prohibited or unreasonably restricted children from using the common areas, and selectively enforced the common-area rules by issuing warnings and violation notices to residents with children, but not to adult residents engaging in the same activities. *Under the settlement, the community agreed to pay $100,000 to six families involved in the case, along with a $10,000 civil penalty.*

To help make sure your house rules and employees don't run afoul of the Fair Housing Act's familial status protections, see "What NOT to Do When Dealing with Families with Children," available to subscribers here.

Chicago Housing Providers Accused of Discriminating Against Deaf

Five housing providers in Chicago are facing lawsuits accusing them of discriminating against people who are deaf. The complaints, filed by Access Living earlier this month, allege that the housing providers violated fair housing law by denying rental options to members of the deaf community because of their disability.

The complaints were based upon fair housing tests, involving matched pairs of testers, conducted by Access Living. Deaf testers called housing providers using the Internet Protocol Relay System (IP Relay), an Internet-based system that allows people who are deaf or hard of hearing to communicate by telephone. Non-disabled testers called the housing provider using a standard telephone.

In each of the five complaints, the housing providers are accused of discriminating against the disabled tester by abruptly hanging up on the tester, refusing to provide information , not returning phone calls, or providing different pricing information than was provided to the non-deaf tester.

Source: Access Living

RE Firm Resolves Claims of Housing Discrimination Against Families with Children

A Massachusetts real estate brokerage firm recently agreed to implement fair housing training and adopt new antidiscrimination policies to resolve allegations that it discriminated against families with children in housing rentals. *The firm will also pay up to $17,500, including $5,000 to*

the Childhood Lead Poisoning Prevention Program, according to Attorney General Maura Healey.

Massachusetts law prohibits discrimination against prospective tenants on the basis of familial status. It is illegal for a realtor to place a rental advertisement indicating a preference for tenants without children. Landlords are required to comply with Massachusetts and federal lead laws, and a realtor may not steer families away from available housing because renting to them may trigger a landlord‘s obligation to de-Lead.

The complaint alleged that an agent at the real estate firm posted several online rental ads that discouraged applications from families with children. Allegedly, fair housing testing revealed he engaged in a pattern of discrimination by indicating to prospects with children that landlords had expressed unwillingness to de-lead their properties.

“Families with children are protected under Massachusetts law and have the right to live in housing where lead hazards have been abated,’’ Healey said in a statement. “Massachusetts realtors must understand that they cannot steer families with children away from available housing because of a landlord’s refusal to comply with the lead laws.”

Source: Massachusetts Attorney General’s Office

Brooklyn Co-op Charged with Discriminating Against Disabled Veteran

HUD recently charged a Coney Island cooperative community with discrimination against a veteran with a psychiatric disability for refusing to let him keep an emotional support animal.

HUD charged the 1,144-unit community, along with the president of its board of directors, with wrongfully denying the veteran’s request for a reasonable accommodation and taking steps to evict him and his wife in retaliation for filing a fair housing complaint.

Federal fair housing law makes it unlawful to refuse to make reasonable accommodations in policies or practices when a person with a disability requires such an accommodation, including refusing to grant waivers to “no-pet” policies for persons who use assistance or support animals.

Despite the community’s no-pets policy, the veteran, who served in combat in Afghanistan and Kosovo, said he got a dog, a Shi Tzu named Mickey, as an emotional support animal at the recommendation of his physician. Allegedly, the community refused his request for a reasonable accommodation and pursued eviction proceedings, even though he provided medical documentation verifying his condition and need for the dog. The couple also accused the community of retaliating against them for filing their complaint by freezing their place on the wait list for parking in the development‘s main parking lot and removing the wife from the co-op’s board of directors.

HUD's charge will be heard by a U.S. Administrative Law Judge unless any party to the charge elects to have the case heard in federal district court.

"For many people with disabilities, support animals are essential to their ability to perform everyday activities that others take for granted," Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. "The Fair Housing Act requires housing providers to grant reasonable accommodations, and HUD is committed to taking action if they fail to meet that obligation."

Source: HUD

N.C. Housing Agency and Employees Sued for Sexual Harassment

The Justice Department recently sued a public housing agency that administers the Section 8 voucher program in North Carolina, along with two of its employees, for sexual harassment in violation of the Fair Housing Act.

The complaint alleged that the employees-the Section 8 housing coordinator and the housing inspector-subjected female program participants and applicants to unwanted sexual comments, sexual touching, and other sexual acts; conditioned or offered Section 8 benefits in exchange for sexual acts; and took adverse housing actions against those who rebuffed their sexual advances. The complaint claimed that the men engaged in this conduct while exercising their authority as employees of the housing agency, which failed to take reasonable preventive or corrective measures.

The suit seeks monetary damages to compensate victims, civil penalties, and a court order requiring additional preventive measures. The complaint is an allegation of unlawful conduct; the allegations must be proven in federal court.

"No one, including those who seek public assistance for housing benefits, should be subjected to sexual harassment, particularly by the very people tasked with providing critical assistance," Acting Assistant Attorney General Vanita Gupta for the Civil Rights Division said in a statement. "The Justice Department will continue its vigorous enforcement of the Fair Housing Act against those who abuse their power and authority."

Source: U.S. Department of Justice

Must You Permit Medical Marijuana Use as Reasonable Accommodation?

In early December, the federal court in Michigan ruled a federally assisted housing community was not required to allow use of medical marijuana as a reasonable accommodation under fair housing law.

In early 2013, the resident signed a lease for a townhome in a project-based, Section 8, federally assisted housing community operated by a property management company. The lease documents indicated that the management company "may" terminate the agreement for several reasons, including drug-related activity or criminal activity. The resident had been diagnosed with multiple sclerosis and received Social Security disability benefits due to her condition. Her doctor prescribed medical marijuana to alleviate her symptoms, and she obtained a state-issued medical marijuana card.

A few months after she moved in, the management company initiated eviction proceedings in state court, but the resident argued that she was entitled to a reasonable accommodation to use medical marijuana at the community.

The management company turned to the federal court, seeking a declaration that the resident was not entitled to a reasonable accommodation under federal fair housing law to use medical marijuana in her unit at the Section 8 federally assisted community.

Siding with the management company, the court ruled that the resident was not entitled to a reasonable accommodation for medical marijuana use under federal fair housing law. Although state law permitted use of medical marijuana, it was trumped by federal law, which classifies marijuana as an illegal drug with no medically acceptable uses.

Fair housing law does not require federally assisted communities to grant reasonable accommodations of medical marijuana use, because doing so would fundamentally alter the nature of their housing program. Requiring the community to grant the reasonable accommodation to use marijuana would require the community to violate federal law. Such a requirement would fundamentally alter the nature of its operations by thwarting its mission to provide drug-free federally assisted housing.

Moreover, the resident wasn't entitled to a reasonable accommodation under Section 504 of the Rehabilitation Act. The law bans discrimination against individuals with disabilities, but not when it's based on current use of illegal drugs.

Nevertheless, the court declined to rule that the resident's use of medical marijuana was cause to evict her--or order her to stop using marijuana at the property, saying it was up to the state courts to decide [Forest City Residential Management Inc. v. Beasley, Dec. 3, 2014].

HUD Cracks Down on Discrimination against Residents with Disabilities

HUD recently announced settlements with two communities-and charges against two others for alleged discrimination against residents with disabilities. The announcement follows the release of HUD's latest fair housing report, which shows that more than half of the discrimination complaints filed with HUD in 2013 were based on disability.

"We continue to see more cases of discrimination against persons with disabilities than any other type," Gustavo Velasquez , HUD's Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. "It is unacceptable that individuals with disabilities have to fight for the opportunity to live where they want, or to have reasonable accommodations extended to them so they can enjoy their dwelling. The cases we're announcing today reflect our ongoing commitment to leveling the playing field for all Americans when it comes to housing."

Alabama: A homeowners association agreed to pay $42,000 to settle allegations that it unreasonably delayed or denied a couple's request to approve disability-related modifications needed for their home because the husband uses a wheelchair.

Michigan: The operators of five "independent living" properties agreed to a $35,000 settlement to resolve allegations that it fired an employee because she raised fair housing concerns about the company's policy of monitoring the health of applicants and residents. The agreement is the first HUD enforcement action involving independent living properties in Michigan. Allegedly, fair housing testers found practices that included the regular and uniform collection of medical data of applicants and current residents and "gate-keeping" practices in which residents who had to leave their units for hospital stays were not allowed to return or remain in their units once they were deemed not "independent" enough. As part of the settlement, the communities agreed to no longer require residents returning from hospital stays to undergo a "gatekeeping review" or provide medical information.

California: HUD charged the owners of a San Francisco community with discrimination for initially refusing to allow a resident with disabilities to keep an emotional support animal. Even after receiving medical documentation attesting to her need for the animal, the owners allegedly refused to grant her reasonable accommodation request so she sent the animal to live with a friend. Though the owners ultimately granted the accommodation, the resident allegedly suffered psychological distress from living without the support animal for five months.

New Hampshire: HUD charged a homeowners association and related parties with violating fair housing law by denying the request of a resident with disabilities to use the visitor parking space in front of his unit as a reasonable accommodation. Allegedly, the resident had difficulty climbing stairs and his designated space could only be accessed via a staircase with nine steps.

The charges will be heard by an administrative judge unless either party elects to take the cases to federal court.

Source: HUD

DOJ: Manager, Maintenance Worker Sexually Harassed Residents

Earlier this month, the Justice Department sued a West Virginia community, alleging that a maintenance worker and a manager sexually harassed female residents, and that the community's site manager failed to take appropriate steps when residents complained about the harassment.

According to the complaint, the harassment included entering the residences of female residents without permission or notice; conditioning housing or housing benefits on female residents' agreement to engage in sexual acts; coercing female residents to engage in unwelcome sexual acts; making unwelcome sexual comments and unwelcome sexual advances to female residents; subjecting female residents to unwanted sexual touching and other unwanted sexual acts; and taking adverse actions against female residents when they refused the sexual advances or reported the unwelcome conduct. The complaint is an allegation of unlawful conduct; the allegations must be proven in federal court.

‘’No woman should have to live in fear of sexual harassment in her home," Acting Assistant Attorney General Vanita Gupta for the Civil Rights Division said in a statement. "The Fair Housing Act protects tenants from sexual harassment and retaliation by their Landlords, and the Justice Department enforces the Fair Housing Act to vindicate these important rights."

"These housing providers preyed on poor women by sexually harassing them and retaliating against them," said Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity. "HUD is committed to working with the Justice Department to stop this unacceptable and illegal behavior."

Illinois Community to Pay $255K to Settle Disability Discrimination Claims

The owner and operator of a 500-unit HUD-subsidized apartment complex in Illinois recently agreed to pay $255,000 to settle allegations of disability discrimination and retaliation, according to a recent announcement by HUD.

The voluntary settlement is the result of complaints filed on behalf of two residents with disabilities, accusing the community of violating fair housing laws when it failed to meet the needs of persons with disabilities and retaliated against a resident with disabilities for requesting a reasonable accommodation. Allegedly, the community assigned a mobility-impaired resident to a third-floor unit in a building with no elevator, and threatened her with eviction for having her adult daughter, who was serving as her caregiver, in the unit, even though she had documentation verifying her disability and need for the accommodation.

Under the settlement, the community owner will pay $255,000, which includes attorney fees, to the two individuals who filed complaints and work with a local fair housing organization to develop a new reasonable accommodation policy. The complex will also conduct a needs assessment of current tenants and applicants who require accessible units to determine if their needs are being met and ensure that 5 percent of its units are fully accessible, either by constructing new units or converting existing units.

"No one with a disability should be denied the accommodations they need to fully enjoy their home," HUD's Assistant Secretary for Fair Housing and Equal Opportunity Gustavo Velasquez said in a statement. "This agreement reflects HUD's commitment to working with housing providers,

including owners of HUD-funded housing, to meet their obligation to comply with the nation's fair housing laws."

HUD: Kids Forced to Clean Toilets for Playing Outside

HUD recently announced action in two fair housing cases against communities for allegedly enforcing overly restrictive rules on children playing outside. In one case, HUD claimed that children were forced to clean the manager's office toilet when they were found outside unaccompanied by an adult.

The owner of a California community agreed to a $30,000 settlement to resolve HUD complaints filed by seven families and a fair housing organization that the manager cursed at children when he found them playing outside unaccompanied, and then ordered them into his office and to sit on the floor. Once at the office, the manager allegedly required the children to clean the office toilet and pick up trash around the complex, and threatened them by telling them that their families may be evicted if they didn't comply with his instructions. *Among other things, the settlement requires the community to pay $3,750 to the fair housing organization, waive rent for five families (totaling $19,000), and to pay two former tenants a total of $7,000.*

In a separate case, HUD charged the owners and property managers of a Kansas community for allegedly adopting policies prohibiting children under the age of 16 from freely using the common areas of the property. According to HUD's charge, the policies required children to be supervised by an adult at all times and prohibited youth from playing anywhere on the property except the playground. The rules also allegedly prohibited kids from playing any team sports on the property, and from riding bicycles, skateboards, or scooters on the property. HUD claimed that when a mother complained that her 14-year-old son was essentially on "lockdown," the management office refused to renew the family's lease in retaliation. The case remains pending an administrative hearing unless a party elects to take it to federal court.

"Placing special rules on families with children unfairly singles them out and creates a hostile living environment that is authoritarian and unequal," Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. "The Fair Housing Act protects the rights of families with children to enjoy their homes the same way as other households."

Source: HUD

Community Pays $550,000 to Settle Sexual Harassment Lawsuit

The owners and operators of a Michigan community recently agreed to pay $550,000 and to terminate its property manager to settle a lawsuit for sexual harassment in violation of fair housing law.

The Justice Department filed the complaint, accusing the former manager of sexually harassing female residents at the community he managed. The lawsuit included the owners of the complex and claimed that they were liable for his actions.

The complaint alleged that the manager made unwelcome sexual comments and sexual advances to female residents, touched himself in a sexual manner in front of them, entered their homes without notice or permission, conditioned housing benefits on tenants engaging in sexual acts, and took adverse action against those who refused his advances.

Under the settlement, the community agreed to pay $510,000 to victims of the sexual harassment and a $40,000 penalty. The $510,000 will be used to pay damages to 13 women who have already been identified and to any additional victims who are identified through the process established in the settlement agreement.

The settlement also prohibits all of the defendants from engaging in discrimination, and it requires that the owners create nondiscrimination policies for their properties and participate in fair housing training to prevent such conduct in the future. It also bars the former manager from personally participating in the management or operation of residential rental properties in the future and requires him to retain an independent manager to manage any rental properties he may later own.

“The magnitude of this settlement reflects the seriousness of the defendant’s conduct,” Molly Moran, Acting Assistant Attorney General for the Civil Rights Division, said in a statement. “No woman or her family should have to endure sexual harassment to keep the keys to their home.”

Source: U.S. Department of Justice

City Agrees to $495,000 Settlement in Domestic Violence Case

The American Civil Liberties Union (ACLU) recently announced a settlement in its lawsuit against the city of Norristown, Pa., challenging a municipal ordinance that allegedly punished domestic violence victims and their landlord s for requesting police assistance.

The ACLU filed the lawsuit on behalf of a domestic violence victim, who allegedly faced eviction after requesting police protection from an abusive ex-boyfriend. As part of the settlement, the city agreed to repeal the ordinance and to pay $495,000 to the woman and her lawyers.

The ordinance encouraged landlords to evict tenants when the police were called to a property three times in four months for “disorderly behavior,” including for incidents of domestic violence, according to the ACLU. The complaint claimed that the woman was threatened with eviction under this policy after the police responded to her home and arrested her abusive ex-boyfriend for physically assaulting her.

Allegedly, the woman feared losing her home and didn’t call the police for future incidents, including one in which her ex-boyfriend attacked her with a brick. When neighbors called the police after her

ex-boyfriend stabbed her in the neck with broken glass and she was airlifted to the hospital, the city allegedly threatened her with forcible removal from her home under the ordinance. She has since found alternate housing and secured an order of protection against her ex-boyfriend.

“The ordinance puts lives at risk by blaming domestic violence victims for the crimes occurring in their homes,” Sandra Park, senior staff attorney with the ACLU Women‘s Rights Project, said in a statement. “Norristown’s repeal of the ordinance is an important step in ensuring that all residents have equal access to police services without risking homelessness.”

The ACLU reported that HUD also filed a fair housing complaint, which remains outstanding pending its settlement negotiations with the municipality.

Source: ACLU

Cleveland Community Pays $l00K to Settle Discrimination Case

The manager and owner of a Cleveland community recently agreed to pay $100.000 to resolve allegations that they violated federal fair housing law by refusing to rent units at the 205-unit complex to families with children.

The lawsuit, filed by the Justice Department, also alleged that the community maintained a policy of refusing to rent units to families with children and evicting residents--or asking them to relocate-if they had children while Living there . Although the Fair Housing Act allows housing that is reserved for older persons to limit residency to adults under certain circumstances, the Justice Department said that the community did not meet the requirements for this exemption.

In addition to the monetary settlement, the community agreed to remove any restrictions on occupancy by families with children and to take certain steps such as training employees and reporting to the Department of Justice to make sure that such discriminatory policies are not implemented in the future.

“Finding decent, safe, and affordable housing is critical for working families,” Molly Moran, Acting Assistant Attorney General for the Civil Rights Division, said in a statement. “Such families should not be turned away from housing merely because they have children.”

Source: U.S. Department of Justice

Kent State Charged with Housing Discrimination

Earlier this month, HUD charged Kent State University and four of its employees with housing discrimination for allegedly refusing to allow a student with disabilities to keep an emotional support animal in her campus apartment.

The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations in policies or practices when a person with a disability requires such an accommodation, including refusing to grant waivers to "no pet" policies for persons who use assistance or support animals.

HUD's charge stems from complaints filed by a Kent State University student, who allegedly lived with her husband in university-owned and operated housing that was set aside for upperclassmen and their families. She said that a university psychologist documented her disabilities and wrote a letter stating that the best way for the student to cope with her disabilities was by having a support animal. The student subsequently obtained a dog and submitted a reasonable accommodation request to the university seeking a waiver to the apartment complex's "no pets" rule.

In her complaint, the student alleged that the university offered her academic accommodations, which she didn't need, but denied her request to keep her support animal. As a result of the denial, the student said that she and her husband were forced to move to an apartment the university didn't own.

HUD's charge will be heard by a United States Administrative Law Judge unless any party to the charge elects to have the case heard in federal district court.

Domestic Violence Victim Gets Settlement in N.H. Housing Discrimination Case

The owners and managers of two New Hampshire communities recently agreed to settle allegations that they engaged in housing discrimination by refusing to rent to a woman who was a victim of domestic violence.

The agreement is the result of two complaints filed by a woman with HUD in December 20 13. The first complaint was against her current landlord, who allegedly refused to renew her lease because of police visits responding to her domestic violence-related 911 calls. The second complaint arose when she was searching for another home after her lease was not renewed, alleging that another landlord refused to rent her an apartment based on the previous domestic violence-related police visits.

To resolve both complaints, the landlords agreed to pay $13,550 to the woman and to participate in fair housing training and undergo monitoring by HUD. The owner and manager of the first community also agreed to revise the policies and leases for all HUD-subsidized properties to comply with the Violence Against Women Act and HUD's regulations providing protection for victims of domestic violence in public and federally funded housing.

''No woman should be denied housing based on her status as a domestic violence survivor," Gustavo Velasquez, HUD's assistant secretary for Fair Housing and Equal Opportunity, said in a statement. "HUD remains committed to ensuring and promoting fair housing opportunities for women and men alike."

Source: HUD

Community Settles Claims Its Rules Restricted Children's Outdoor Play

The owners and operators of a California community recently agreed to pay $80,000 to settle allegations that its rules discriminated against families with children in violation of the Fair Housing Act.

The lawsuit arose from HUD complaints filed by five families who lived at the 37-unit community. They alleged that the community enforced a rule that prohibited children from playing outside in the common grassy areas of the complex and stated that families would be evicted if they violated this rule.

In addition to the monetary settlement, the community agreed to implement a nondiscrimination policy, establish new enforcement procedures for rule violations, and undergo fair housing training.

"Federal law guarantees families with children the right to equal access to housing, including full access to their homes' amenities and facilities," Acting Assistant Attorney General Jocelyn Samuels for the Civil Rights Division said in a statement. "Settlements such as this one help ensure that all families can enjoy that right."

"An apartment complex may not impose conditions on families with children that they do not impose on other residents," added HUD's Assistant Secretary for Fair Housing and Equal Opportunity Gustavo Velasquez. "HUD and DOJ remain committed to enforcing fair housing laws that ensure all people share the same rights to use and enjoy their homes."

Source: U.S. Department of Justice

Condo Community Pays $10K to Settle Disability- Related Parking Dispute

An administrative judge in Maryland recently ruled that a condominium community violated state fair housing law by denying a resident's request for a reserved parking space as a reasonable accommodation for her disability, according to the Maryland Civil Rights Commission.

The resident, who lived at the community since 1998, had a reserved parking space next to her unit for 13 years due to her disability. After a 2011 repaving project, the community removed the reserved parking accommodation, and later refused her request to reinstate it. She contacted a local fair housing organization, which referred the matter to the Maryland Commission on Civil Rights. After an investigation, the commission found probable cause of discrimination and, when conciliation efforts failed, the matter was referred to the state Office of Administrative Hearings.

After a four-day trial, the judge ruled that the community violated fair housing law by denying the resident a reasonable accommodation for her disability. The community had argued that the resident no longer needed the specially designated parking space, but the court said that

the community based the decision on its unilateral and unproven determination that it was unnecessary, but offered no persuasive reason for denying the accommodation. The judge concluded that the resident's request was not unreasonable and that the community violated fair housing law by denying it.

The judge ordered the community to pay damages to the resident and a civil penalty to the state. The community and its management company also accepted commission's recommendation to participate in fair housing training.

Source: Maryland Commission on Civil Rights

Brokers Pay $24K to Settle Discriminatory Ad Claims

Two realty companies and a broker in Connecticut recently agreed to pay $24,000 to settle allegations that they published discriminatory listings and advertisements for condominiums specifying that children were not permitted.

Federal fair housing law makes it unlawful to refuse to sell or rent housing on the basis of familial status, which includes refusing to allow families with children under 18, unless the property qualifies as housing for older persons.

The agreement resolves a HUD complaint filed by the Connecticut Fair Housing Center (CFHC), an organization that receives HUD funding to investigate housing discrimination. The complaint alleged that the companies placed Internet advertisements and a listing in the Multiple Listing Service that specified that children were not permitted at the advertised condominiums.

Allegedly, a CFHC tester, who was posing as a buyer, was told about the policy prohibiting families with children. The community did not qualify as housing for older persons, according to HUD.

"Refusing to sell or rent housing to families with children is against the law unless the property meets the very specific requirements of housing for older persons ," Bryan Greene, JIUD's General Deputy Assistant Secretary for Fair Housing and Equal Opportunity , said in a statement. "HUD will continue to enforce the Fair Housing Act and ensure that real estate brokers and agents do not illegally limit the housing options of families because they have children."

Source: HUD

New Orleans Community Accused of Discriminating Against Deaf Prospects

The Greater New Orleans Fair Housing Action Center (GNOFHAC) recently sued the owner of a New Orleans community for alleged discrimination against deaf individuals seeking to rent apartments based on the results of a fair housing investigation last year.

During its year-long investigation, GNOFHAC said it used "mystery shopping" to uncover suspected discrimination at the community. In May a deaf mystery shopper allegedly called the community using a relay system to inquire about renting a one-bedroom unit. GNOFHAC claimed that an agent told the mystery shopper that she "didn't have time" and hung up; when the mystery shopper called back, the agent allegedly hung up on her again. On the third call, the agent allegedly told the mystery shopper that there were "no units available."

It was a different story later when a hearing mystery shopper called later that day to inquire about renting a one-bedroom, according to GNOFHAC. Allegedly, the agent told the tester that a one-bedroom apartment was available for $1,675 per month.

During a follow-up investigation, GNOFHAC claimed that an agent told a deaf mystery shopper over the phone that she "can't devote a long time to [the deaf individual] on the phone'' and that the deaf individual "need[s] to have someone who can hear to speak" and hung up the phone.

The complaint accused the community of violating fair housing law by misrepresenting the availability of housing and making discriminatory statements to deaf individuals who expressed interest in renting homes from the company. The case is currently pending in federal court in Louisiana.

Source: Greater New Orleans Fair Housing Action Center

Philly Real Estate Company to Pay $25K to Resolve Racial Steering Allegations

A Philadelphia-area real estate company recently agreed to a $25,000 settlement to resolve allegations that employees steered white testers posing as rental applicants to neighborhoods they described as safer, while directing black testers to areas agents considered "rough."

The Fair Housing Act makes it unlawful to discriminate in the terms, conditions, or privileges associated with the sale or rental of a dwelling on the basis of race, including steering potential renters or homebuyers to different neighborhoods.

The case came to HUD's attention when the National Fair Housing Alliance (NFHA), a national fair housing organization that receives HUD funds to combat housing discrimination, filed a complaint accusing the company of unlawfully denying housing opportunities to African American prospects. Specifically, NFHA alleged that agents steered black testers to one of its properties in a high-crime, less desirable neighborhood, while telling white testers about a different property in an area they considered to be safer.

The settlement requires the company to pay $25,000 in damages, get fair housing training for all of its leasing agents and managers, and establish a nondiscrimination rental policy.

"Testing remains one of our most effective tools for exposing unlawful housing discrimination," Bryan Greene, HUD's General Deputy Assistant Secretary for Fair Housing and Equal Opportunity,

said in a statement. “HUD will continue to enforce the Fair Housing Act to ensure that no family has their housing options limited because of their race.”

Source: HUD

N.Y. Community Pays $165K to Settle Race Discrimination Claims

The owner and property manager of a rental community on Long Island, N.Y., recently agreed to pay $165,000 to settle a fair housing case alleging racial discrimination, according to an announcement by ERASE Racism, a New -York based fair housing advocacy group.

The case stemmed from a fair housing investigation in which testers were sent to the 75-unit building on several occasions. Allegedly, the testing revealed significant discrepancies between the welcoming responses received by white testers and discriminatory actions against African American testers who inquired about one-bedroom apartments for rent. The lawsuit accused the community of violating fair housing law by representing that housing was not available for inspection or rent when in fact it was available; discriminating in the terms and conditions of rentals by quoting higher rents; and making rentals unavailable because of the prospect’s race or color.

As part of the settlement, the owner agreed to adopt and implement nondiscrimination policies to prevent future fair housing law violations. These policies include fair housing training, recordkeeping requirements, and compliance monitoring.

“We brought this case because we had compelling evidence of racial discrimination and African Americans cannot be denied housing choice based on race,” Elaine Gross, president of ERASE Racism, said in a statement. “While many people would like to believe that this type of housing discrimination is no longer an issue, it is a shame that the burden falls on a small number of concerned organizations, like ERASE Racism, to document the discrimination and use the courts to stop it.”

Source: ERASE Racism

Florida Community Settles Complaint by Alleged Domestic Violence Survivor

A Florida community recently settled a fair housing complaint filed by the American Civil Liberties Union on behalf of an alleged domestic violence survivor. According to the complaint, the community refused to rent to the woman unless she provided her children’s Social Security numbers, which the ACLU said would endanger her family by revealing their location to their alleged abuser.

The complaint alleged that the woman, “Hope,” changed her name and Social Security number after fleeing her abuser but didn‘t change her children’s names because doing so would require her to notify their abusive father. Allegedly, the rental office told Hope that they needed the children’s Social Security information for auditing purposes, and to confirm that she had legal custody of the children to prevent anything “dramatic” from happening. Allegedly, she offered to provide

documentation to prove she had sole legal custody of the children and that she had been abused, but she was denied an apartment.

According to the ACLU, there is no law that requires rental offices to collect the Social Security numbers of minor children. Moreover, the ACLU said that disclosing her children's information and allowing the company to perform a background check could potentially reveal the family's location through the children's credit reports.

Under the settlement agreement, the management company agreed to adopt housing protections contained in the federal Violence Against Women Act (VAWA) and to provide reasonable accommodations to survivors of domestic violence, dating violence, sexual assault, and stalking at all its properties , as well as pay monetary damages and attorneys' fees. The ACLU said that the settlement was the first HUD agreement to address the rights of domestic violence survivors.

"Domestic violence survivors should be able to access secure housing without facing bias and compromising their safety" Sandra Park, senior staff attorney with the ACLU Women's Rights Project, said in a statement. "Sadly, this kind of discrimination is all too common. But victories like this are a step toward making this widespread mistreatment a thing of the past."

Source: ACLU

Landlord Accused of Discriminating Against Teenager's Mom

A Michigan landlord recently agreed to settle a discrimination claim based on familial status for allegedly denying housing to the mother of a teenager.

The complaint, filed with the assistance of the Fair Housing Center of Southwest Michigan, claimed that the landlord showed the prospect a unit over a storefront, but then refused to rent it to her after discovering that the prospect had a 15-year-old son.

The complaint was initially filed with HUD, which transferred it for investigation by the Michigan Department of Civil Rights. Allegedly, the department found a posting in the storefront by the landlord prohibiting children. As a result, the Fair Housing Center sent testers who acted as potential home seekers and reported their experiences to the Fair Housing Center staff.

Under the terms of the settlement, the landlord agreed to reimburse the prospect for her expenses and to attend fair housing training.

Sources: Michigan Department of Civil Rights; Fair Housing Center of Southwest Michigan

Michigan Landlord Agrees to $20K Settlement in Fair Housing Case

A Michigan landlord recently agreed to pay $20,000 to settle allegations of discrimination based on familial status against a mother and her two children, according to an announcement by the Fair Housing Center of Southeastern Michigan.

The prospective renter contacted the fair housing center to report that the leasing agent took a rental application away from her after the agent learned that she has two children. Based on her complaint, the fair housing center sent out testers who acted as potential home seekers at various times during the period of a month. The fair housing center reported that the results of its investigation strongly supported the prospect's claim of discrimination based on familial status.

According to the prospect's complaint, the community owner told her that "they really do not want children living here." The lawsuit also alleged that the owner told fair housing testers that "you can't have kids, "it is an adult unit," and that when a previous tenant "found a girlfriend with kids," she "got rid of them."

Source: Fair Housing Center of Southeastern Michigan

Nevada Community to Pay $167,500 in Discrimination Settlement

The Justice Department recently announced court approval of a fair housing settlement in which the owners and operators of a 902-unit community in Reno, Nev., will pay $167,000 to resolve a lawsuit alleging discrimination against persons with disabilities who use assistance animals.

The case began when a family who had sought housing at the community contacted a fair housing organization after they were allegedly turned away because a household member used an assistance animal. After the organization conducted fair housing testing, the family and the organization filed discrimination complaints with HUD. The matter was ultimately referred to the Justice Department.

The complaint alleged that the community's owners, employees, and management company violated the fair housing law by limiting individuals with certain assistance animals to a particular section of the community; subjecting such individuals to pet fees; requiring assistance animals to be licensed or certified; and barring companion or uncertified service dogs altogether.

Under the settlement, the community agreed to pay a total of $127,500 to the family and the fair housing organization; $25,000 to compensate others allegedly harmed by the policies; and $15,000 to the government in civil penalties. In addition, the community agreed to adopt and maintain a new policy regarding assistance animals, provide fair housing training to employees, and comply with record-keeping and monitoring requirements for the terms of the agreement.

"The Fair Housing Act ensures that persons with disabilities searching for a home are protected from discrimination, " Jocelyn Samuels, Acting Assistant Attorney General for the Civil Rights

Division , said in a statement. “The Justice Department will continue to vigorously protect the civil rights of persons with disabilities in Nevada and across the country.”

“Assistance animals play a vital role in helping people with disabilities conduct everyday activities and fully enjoy their homes,” added Bryan Greene, HUD’s Acting Assistant Secretary for Fair Housing and Equal Opportunity. “HUD and DOJ will continue to enforce the Fair Housing Act’s protections and ensure that housing providers do not illegally limit assistance animals.”

Source: U.S. Department of Justice

Community to Pay $150K to Settle Suit Involving Occupancy Limits

Last week, the Justice Department announced that a Florida condominium association and its former management company have agreed to pay $150,000 to settle a fair housing claim alleging that they enforced occupancy limits that discriminated against families with children.

The lawsuit arose from a HUD complaint filed by a family with six children living at the 249-townhome community. After the family moved into their four-bedroom unit, the defendants allegedly indicated that there was a problem with the number of people living in the home and threatened to evict the family. The family eventually moved out, and the Justice Department sued, alleging that the restrictive occupancy policies discriminated against families with children.

Under the settlement, the defendants agreed to pay $45,000 to the family that filed the complaint; $85,000 into a fund to compensate other alleged victims; and $20,000 in civil penal ties.

“Twenty-plus years of HUD guidance and cases have put housing providers on notice that occupancy standards which unfairly limit or exclude families with children violate the Fair Housing Act,” Bryan Greene, HUD’s Acting Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. “HUD and the Department of Justice are committed to making sure that all people have equal access to the housing for which they financially qualify.”

The September 2013 issue of Fair Housing Coach, which was published before the settlement was announced, profiled an earlier court ruling in the case and discussed the lessons to be learned in applying occupancy limits without violating fair housing law. To learn more about the case-and other court rulings on such issues as whether to allow a resident to sublet, when residents may be required to get rental insurance, and how to deal with requests for assistance animals-click here.

Sources: U.S. Department of Justice

California Landlord Settles Sexual Harassment Suit for $2.13M

The owner and manager of dozens of residential rental properties in Bakersfield, Calif., recently agreed to pay more than $2 million to settle allegations that he sexually harassed female prospects and residents. This represents the largest monetary settlement ever agreed to in a sexual harassment lawsuit brought by the Justice Department under the Fair Housing Act.

The owner has been in the real estate business for more than 30 years, according to the Justice Department. The complaint alleged that he sexually harassed the women by making unwelcome sexual comments and advances, exposing his genitals to female residents, touching women without their consent, granting and denying housing benefits based on sex, and taking adverse actions against women who refused his sexual advances.

Under the settlement, the owner must pay $2.075 million in monetary damages to 25 individuals identified as victims and a $55,000 civil penalty, the maximum allowed under the Fair Housing Act. The settlement also requires the owner to hire an independent manager to manage his rental properties and imposes strict limits on his ability to have contact with current and future residents.

"The conduct in this case was egregious," Thomas E. Perez, Assistant Attorney General for the Justice Department's Civil Rights Division, said in a statement. "Women have the right to feel safe in their homes and not to be subjected to sexual harassment just because their families need housing. The Justice Department can and will vigorously prosecute landlords who violate those rights."

Source: U.S. Department of Justice

Community Must Pay $38K for Discriminatory Craigslist Ad

A Massachusetts landlord and property manager have been ordered to pay more than $38,000 in a housing discrimination case alleging discriminatory online advertisements against families with young children, according to a recent announcement by Attorney General Martha Coakley.

In May 2013, a court found the owner and property manager violated state law by posting an advertisement on Craigslist stating that an apartment "is not de-leaded , therefore it cannot be rented to families with children under six years old." Under Massachusetts law, it's illegal to refuse to rent or steer families away from rental properties because they have young children whose presence triggers an owner's duty to eliminate lead hazards that pose serious health risks.

The court order requires the owner and property manager of the 20-unit community to pay a civil penalty of$10,000 and more than $28,000 in attorneys' fees and costs. They must also de-lead the next two-bedroom units that haven't yet been de-leaded when they become available for rent.

"Massachusetts law is very clear-landlords cannot avoid their obligations under the state's lead paint laws by refusing to rent to families with young children," AG Coakley said. "This judgment demonstrates that there are serious consequences for violating anti-discrimination laws."

Source: Massachusetts Attorney General's Office

Conclusion

Fair Housing is a right for all individuals and the HUD and DOJ are very particular about the enforcement of fair housing rights for all. However, despite their best efforts, HUD, DOJ, private fair housing organizations, state and local governments, and civil and human rights agencies, collectively handle more than 27,000 complaints of housing discrimination every year.

FH violations can result in fines up to $10,000 for the first offence and $25,000 for the second offence in a five year period and up to $50,000 in a seven year period. Providers accused of discrimination may be required to pay, not just the fines, but also compensatory and punitive damages as well as attorney's fees, as seen throughout the cases discussed in this book. After going through this book, readers will understand the importance of keeping themselves informed and updated about FH requirements and expected conduct.

This book, by Audiosolutionz in collaboration with industry veteran Paul Flogstad is an attempt to explain, in simple terms, the various requirements under Fair Housing regulations, and to assist housing providers in making the application and screening process non-discriminatory and avoid discrimination claims. This book discusses landlord responsibilities for reasonable accommodation and modification, and details the types of accommodations and modifications providers must offer. In addition, this book has covered recent cases and litigations of discrimination claims to help readers understand situations that could lead to adverse action for them and how to avoid such situations.

We hope this book has been instructive and useful, and would like to have your say in making future additions better still. Contact us at **1-800-223-8720** or email us at support@audiosolutionz.com.

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