



# **Fair Housing Training for Diana T. Myers and Associates**

**The Webinar will begin at  
10:00 am  
on April 13, 2021**





# Agenda

- Fair Housing Act Review
- Disability Issues
  - Reasonable Accommodations
  - Assistance Animals
  - Direct Threat
- Recent HUD Guidance and Program Rules
  - Criminal Records
  - Harassment
  - Limited English Proficiency
  - Equal Access and Gender Identity Rules
- Common Mistakes
- Best Practices



# Fair Housing Act Review

# Federal Fair Housing Act



The Civil Rights Act of 1968 was passed 7 days after the assassination of Martin Luther King, Jr. and prohibits discrimination in housing related transactions based on race, color, national origin, and religion.



# Federal Fair Housing Act

Amended in 1974 to prohibit discrimination based on sex and again in 1988 to outlaw disability and familial status discrimination.

The 1988 amendments also added an administrative enforcement mechanism through HUD's Office of Fair Housing and Equal Opportunity. Prior to 1988 the FHA was only enforceable through private lawsuits, making it very difficult and costly for individual consumers to assert their rights.



# Affirmatively Furthering Fair Housing

From its inception, the Fair Housing Act not only prohibited discrimination in housing related activities and transactions but also imposed a duty on the federal government to affirmatively further fair housing (AFFH).

Because in practice HUD programs have historically perpetuated patterns of racial and economic segregation AFFH seeks to begin to remedy the impact of historical segregation.

The AFFH obligation covers all activities, policies, and procedures of recipients and sub-recipients of federal housing funding including Community Development Block Grant entitlement jurisdictions and public housing authorities. These entities are responsible to hold staff accountable for complying with all Fair Housing Act requirements.



# Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

**Race**

**Color**

**Religion**

**National Origin**

**Sex**

**Disability**

**Familial Status\***

*\* Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.*



# Federal Fair Housing Act

A February 11, 2021 memo states that HUD's Office of Fair Housing and Equal Opportunity will begin enforcing the Fair Housing Act to prohibit housing discrimination based on:

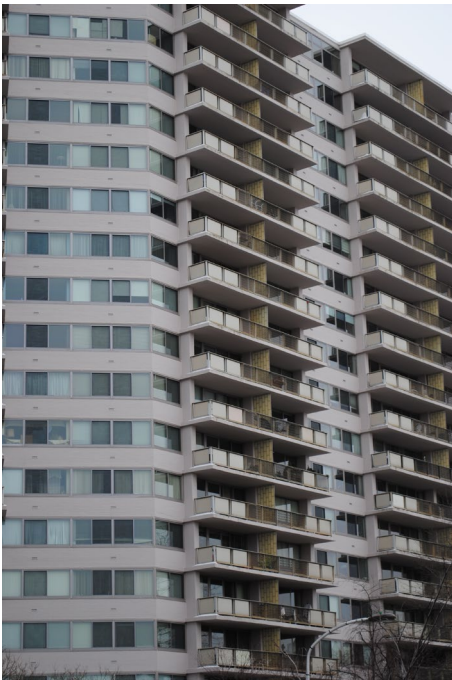
**Sexual Orientation**  
and  
**Gender Identity**





# Federal Fair Housing Act

It is against the law, because of a protected class, to:



- Refuse to rent housing
- Refuse to negotiate for housing
- Make housing unavailable or deny housing is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way
- Threaten, coerce, or intimidate anyone exercising their fair housing rights or assisting others in exercising those rights



# Definition of “Dwelling”

## What is a Dwelling under the Fair Housing Act?

Defined by the law as:

“any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”

What factors determine if a shelter or housing program is “intended for occupancy as a residence”?

- Length of stay
- Intent to return each night
- Existence and terms of occupancy agreement
- Existence of a rent payment, fee, or in-kind exchange or requirements
- Whether a resident has another current dwelling and whether they intend to return to that dwelling
- Whether the primary purpose of the program is to provide housing



# Federal Fair Housing Act

## Covered Transactions:

- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use
- Housing programs offering rental assistance, housing counseling, etc.

## Covered Properties:

- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Nursing homes
- Homeless shelters
- Transitional housing
- Group homes
- Addiction recovery homes



# Federal Fair Housing Act

## Who Must Abide by Fair Housing Laws?

Landlords  
Property Managers  
Nonprofit Housing  
Subsidized Housing  
Portfolio Managers  
Maintenance Crews and Contractors  
Housing Industry Trade Associations  
Property Owners and Sellers

Sales Agents and Brokerage Offices  
Listing Services  
Builders and Developers  
Architects  
Condo and Homeowner Associations  
Mortgage Lenders, Appraisers, and Servicers  
Homeowners Insurance Companies

Long Term Care Facilities  
Governmental Jurisdictions  
Employees of Housing Providers  
Other Residents or Neighbors Acting as Agents of Housing Providers  
Housing Counselors  
Basically Everyone!



# Penalties for Violating the FHA

Administrative complaint or federal lawsuit

Economic and non-economic damages

Punitive damages

Civil penalties

Government monitoring

Attorneys fees

Injunctions

Loss of tax credits



# Pa Human Relations Act Local Ordinances

- PA Human Relations Act – illegal to discriminate based on age (40 and over) or users, handlers, or trainers of assistance animals for persons with disabilities
- Local ordinances may prohibit discrimination based on sexual orientation and gender identity, source of income, and/or other additional protected classes – 45+ municipalities in PA have ordinances which include additional protected classes



# Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications.

The ADA prohibits discrimination based on disability in programs and activities provided by public entities (including housing related programs) and in goods, services, facilities, and privileges of places of public accommodation owned or operated by private entities.



# Americans with Disabilities Act

Public housing agencies are covered by the ADA as are dormitories, correctional institutions, homeless shelters, and hotels/motels.

Public and common use areas which are open to the general public or residents of a development are covered by the ADA. Rental offices are covered by the ADA and must be accessible. Community rooms are covered by the ADA if they are made available to the public.





## Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity receiving federal funding, including subsidized housing. Housing and housing programs receiving federal financial assistance must comply with Section 504.

While public housing and the administration of the Section 8 housing voucher program is covered by Section 504, private landlords who accept Section 8 housing vouchers are not covered by Section 504.



- Title VI of the Civil Rights Act of 1964 – prohibits discrimination based on race, color, and national origin in any program receiving federal funding
- The Fair Housing Act, the ADA, and Section 504 each require reasonable accommodations and modifications when necessary to permit equal access for individuals with disabilities to covered programs or facilities.

## **Important to Remember:**

Programs that may not be required to comply with the Fair Housing Act (for example, emergency one-night shelters) are still covered by other laws, such as Section 504 or the ADA, which require non-discrimination, accessibility standards, and reasonable accommodations and modifications for persons with disabilities.



# Discriminatory Treatment

Individuals who are similarly situated or qualified are treated differently based on their membership in a protected class.

For example:

- ➔ Discrimination during the application process
- ➔ Different terms and conditions or rules
- ➔ Failure to make reasonable accommodations/modifications
- ➔ Inquiries into nature or severity of a participant's disability
- ➔ Harassment, intimidation, coercion, retaliation (including retaliatory terminations)



# Discriminatory Effects Liability

**Facially neutral policies or practices can be discriminatory even if the provider had**

**NO INTENT to discriminate!**

Housing providers or programs may be liable under the Fair Housing Act if a policy or practice has a disparate impact on a particular protected class more than on the general population.

Disparate Impact claims were upheld by the US Supreme Court in July, 2015 in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*



# Discriminatory Effects Liability

**Three step, burden-shifting standard to prove liability under a disparate impact claim.**



Plaintiff/complainant must show a policy impacts a particular protected class more than the general population.



Defendant/respondent must show a legally sufficient justification: ***a substantial, legitimate, nondiscriminatory interest (cannot be hypothetical or speculative)***



Plaintiff/complainant must show that the interest could be served by a policy or practice that has a less discriminatory effect.



# Fair Housing Act Permissible Activities

- The Fair Housing Act does not guarantee any person a right to housing they cannot afford.
- Property owners may set rents or sales prices at whatever the market will bear.
- An housing provider may refuse to rent to a person if they have reliable information that the person has a recent history of violent, disruptive, or destructive behavior.



# Fair Housing Act Permissible Activities

- An agent or property owner can adopt and apply uniform, objective, and nondiscriminatory criteria designed to evaluate a prospective tenant or buyer's credit worthiness, income level, or criminal history.
- An agent or property owner is not required to rent to users and dealer of illegal drugs.
- In Pennsylvania, landlords may chose whether or not to participate in the housing choice voucher program (Section 8) as long as source of income is not protected under local law.



# Fair Housing Act Exemptions

- Owner occupied buildings with four or fewer rental units (two or fewer units under PA state law)
- For Sale By Owner - single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time
- Housing operated by religious organizations and private clubs may limit occupancy to members
- Housing for Older Persons - must comply with the HOPA definition - either 80% of households with a resident age 55+ or 100% of residents age 62+
- No exemption for discriminatory statements and/or advertising





# Advertising



- It is unlawful to print or publish discriminatory advertisements for the sale or rental of housing units that indicate any preference on the basis of the protected classes.
- Advertisements for housing and programs should describe the property, NOT potential occupants
- If it is found that an advertisement is discriminatory, both the publisher and the advertiser can be held liable





# Sex Discrimination

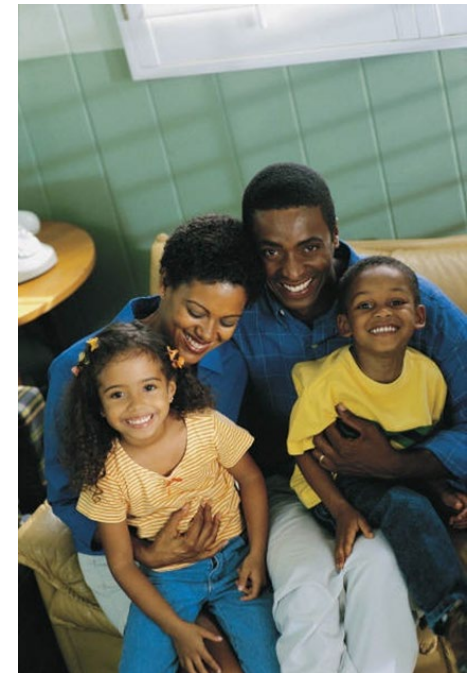
- Discrimination based on sex is prohibited by the Fair Housing Act.
- Providers and housing programs may not segregate residents by gender, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.
- Rules that prohibit boys and girls from sharing a sleeping area are not permissible.
- Sexual harassment in housing is recognized as discrimination under the Fair Housing Act.



# Families with Children

Illegal discrimination against families with children includes:

- Denying housing to families with children—only senior housing (under HOPA) can restrict families with children
- Segregating housing so the families with children are only permitted in certain buildings or on certain floors
- Restricting children because of “unsafe conditions”
- Rules that prohibit parents and children or boys and girls from sharing a bedroom





# Families with Children

Illegal discrimination against families with children includes:

- Charging a higher rent or security deposit to families with children
- Rules and regulations that treat children under 18 differently from adults in the use of housing facilities
- Per capita charges (per person fees) and occupancy restrictions can have a disparate impact on families with children





# Religious Discrimination

- An organization may retain religious terms in their name, mission, governing documents, etc. – but they should not contain an explicit preference, limitation or discrimination based on religion. Advertising containing a religious reference or symbol should be accompanied by a disclaimer.
- HUD forbids recipients of federal money from requiring residents to participate in religious services as a condition of tenancy. Religious activities must be offered separately in time or location from the HUD funded programs, activities or services and participation must be voluntary.



# National Origin and Immigration Status

- Immigration status does not affect fair housing rights
- Housing discrimination based on any protected class is illegal regardless of the victim's immigration status
- It has been HUD's practice not to ask about immigration status when people file fair housing complaints
- It is illegal to coerce, intimidate, threaten, or interfere with a person's exercise of rights protected by the Fair Housing Act. This includes threats to report a person to U.S. Immigration and Customs Enforcement if they report housing discrimination to HUD.



# National Origin and Immigration Status

- Housing providers are allowed to request identity documentation and conduct inquiries to determine whether a potential resident meets the criteria for occupancy, so long as the same procedure is applied to ALL potential residents
- If social security cards or numbers are ordinarily used as part of the applicant screening process, alternative documents such as taxpayer ID numbers or benefit award letters should be accepted



# Disability and the Fair Housing Act





## **DISABILITY DEFINED**

A physical or mental impairment that substantially limits one or more of a person's major life activities.

Includes people having a history of an impairment and people being perceived as having an impairment.



# Disability Defined

## Major life activities can include:

- caring for one's self
- walking
- seeing
- hearing
- speaking
- breathing
- learning
- working

Those recovering from drug addiction who have successfully completed a treatment program are covered under the law. Individuals who are current users of illegal drugs are **not** protected.



# Reasonable Accommodation and Modification Requests

A **reasonable accommodation** is a change in rules, policies, practices, or services that enables a person with a disability equal opportunity to use and enjoy a dwelling.

A **reasonable modification** is a change in the physical structure of a dwelling that enables a person with a disability equal opportunity to use and enjoy that dwelling.



# Reasonable Accommodation and Modification Requests

## How should a consumer request a reasonable accommodation or modification?

- A person with a disability must notify the housing provider if they need a reasonable accommodation or modification. It is **not** the responsibility of a housing provider to offer an accommodation, even if they are aware of the disability or related need.
- A reasonable accommodation or modification request can be made at any time—when applying for housing, when moving in or moving out, while living in a unit, or even during an eviction hearing.



# Reasonable Accommodation and Modification Requests

## Can housing providers require specific forms for reasonable accommodation and modification requests?

- Housing providers sometimes create standardized forms for reasonable accommodations, however they cannot require a certain form.
- Housing providers must consider, and may not deny, a request even if a consumer did not use their preferred form or procedure for making the request.
- Reasonable accommodation requests can be made verbally, but it is best to make the request in writing so that there is documentation of the request and it was made. A request can be made on behalf of a person with a disability.



# Reasonable Accommodation and Modification Requests

## When must a housing provider allow a reasonable accommodation or modification?

A housing provider must grant a request for a reasonable accommodation or modification if:

- The person making the request fits the Fair Housing Act definition of a person with a disability;
- Due to their disability, the person needs the requested accommodation or modification in order to use and enjoy their dwelling; and
- The request is “reasonable”.

# What is Reasonable?



A request for an accommodation or modification is considered reasonable if that request:

- Does not cause an undue financial and administrative burden to the housing provider
- Does not cause a basic change in the nature of the housing program available
- Will not cause harm or damage to others
- Is technologically possible



# Negotiating Reasonable Accommodations

## What if a housing provider believes a request is unreasonable?

- Each reasonable accommodation/modification request is individual and must be evaluated on a case by case basis.
- If the request proposed by a tenant is unreasonable, the housing provider **must** engage in an interactive dialogue with the tenant to determine if there is an alternative accommodation that will meet the tenant's needs.
- A housing provider may not stall or delay in responding to a request for reasonable accommodation.





# Fees for Reasonable Accommodations

## Can a housing provider charge extra fees or deposits or require conditions?

- Housing providers cannot place any financial conditions upon a reasonable accommodation or modification or require some action or condition before granting a request.
- For example, a housing provider cannot require a resident with a disability to purchase insurance to protect the landlord should someone be injured by a wheelchair ramp.
- Housing providers are not permitted to charge a fee for a reasonable accommodation and must forego collecting pet deposits or pet fees for assistance animals.



# Examples of Reasonable Accommodations

- Exception to application criteria when poor credit or rental history or negative references are due to a disability
- Extra time to remedy sanitary or fire hazards for individuals who engage in compulsive hoarding
- Revised rental due dates or waiver of late fees for individuals receiving SSDI payments mid-month
- Including a case manager or other professional support service on all correspondence
- Permitting a home health aide or live-in personal care attendant



# Examples of Reasonable Accommodations

- Notice before entering an apartment or additional locks for individuals with PTSD
- Rescind a notice to quit or eviction notice for lease or program violations when an individual can demonstrate that a reasonable accommodation will mitigate the disability-related behavior that led to the violations
- Rent due date or maintenance or inspection reminders if an individual has a cognitive disability



# Examples of Reasonable Accommodations

- Assigning a person with a disability a reserved parking spot near their unit even though tenant parking is generally on a first come, first served basis
- Allowing a person with a disability to keep an assistance animal despite a “no pets” policy
- Providing a lease application in large print
- Allowing a transfer to a first floor or a more accessible unit or community



# Assistance Animals

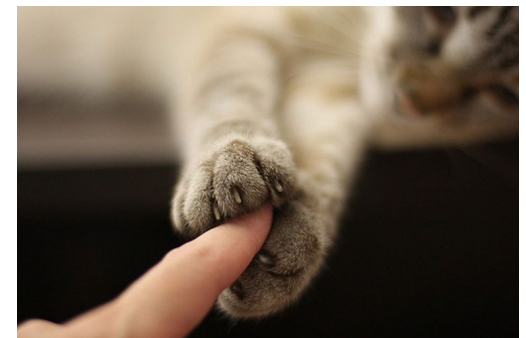
The Fair Housing Act requirements concerning assistance animals differ from the standards required under the ADA. The Fair Housing Act applies to dwellings and has a broader definition of assistance animal.

Under the Fair Housing Act, it does not matter whether an animal is a service animal, a therapy animal, or an emotional support animal. The animal does not need to be trained to perform a specific service. The important factor is that the assistance animal serves a disability-related need and allows a person with a disability equal opportunity to use and enjoy a dwelling.

# Assistance Animals

A housing provider cannot:

- Refuse to allow someone with a disability the right to an assistance animal when it's reasonable
- Deny occupancy, or evict a person with a disability because they request an assistance animal
- Charge extra fees or deposits
- Stall or delay on responding to a request
- Require training or certification for an assistance animal





# State Laws Regulating Assistance Animals

## **Pennsylvania Assistance and Service Animal Integrity Act**

Makes it a third degree misdemeanor to:

- misrepresent an animal as an assistance or service animal
- intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing
- provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing
- fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates it is an assistance animal for use in housing

# Assistance Animals



Assistance animals come in many species, breeds and sizes





# Verifying Disability and Need

**If disability is obvious and need for accommodation or modification is clear** – No additional documentation may be required

**If disability is known, but need for accommodation or modification is not clear** – Only information to evaluate disability-related need may be required

**If disability and need are not known** – Provider may request documentation that tenant has a disability and a disability-related need



# Verifying Disability and Need

## A housing provider may not ask:

- Questions about the nature or severity of a disability or about a specific diagnosis
- If an individual is able to live independently
- Questions that would require an individual to waive their rights to confidentiality regarding their medical condition or history
- To see medical records



# Who Pays for Reasonable Modifications?

Generally the expense of reasonable modifications is the responsibility of the tenant.

However, if the housing is federally subsidized (such as a Public Housing Authority, but excluding private landlords accepting Section 8 housing vouchers) physical modifications are called reasonable accommodations and the housing provider is responsible for the cost of installation.



# Reasonable Modifications

- The housing provider may require that a plan be provided, that the work will be performed in a workmanlike manner, and that necessary building permits be obtained.
- A housing provider may not require a certain type of construction, color, contractor, or type of plan.
- If a provider would like a more expensive modification to meet any aesthetic concerns, the design must still meet the tenant's needs and the provider should pay for the additional cost.
- If the resident installing the modification is going to be the only one using it, then that resident is obligated to provide the upkeep of the modification. If the modification is in common use areas, then the housing provider is obligated to provide upkeep, including insurance.



# Reasonable Modifications

- A housing provider can require that the tenant restore any interior modifications to their original condition upon moving out of the unit **only** if the modification will interfere with the next tenant's use and enjoyment of the premises. For exterior modifications, restoration is generally not required.
- If the modification is in a common area and could benefit future tenants, the provider cannot require that the tenant restore the dwelling to its original condition upon moving out of the unit.
- If restorations will be necessary when a tenant moves out, a provider may request payment into an interest-bearing escrow account. Payments may be made over a reasonable period and the amount cannot exceed the cost of the restorations. The interest accrues to the benefit of the tenant.



# Examples of Reasonable Modifications

- Installing a ramp access to the entrance of the dwelling
- Installing visual or tactile alert devices
- Widened doorways in unit
- Installing grab bars in the bathroom or at the entrance into unit
- Removal of below-counter cabinets
- Installation of a fence or awning
- Replacing door handles with levers



# Direct Threat

The direct threat assessment must take into account the nature and severity of the risk of injury as well as the probability that an injury will occur and whether there are any reasonable accommodations that would eliminate the direct threat.

Even in cases of tenants who **do** in fact present a “direct threat” due to their disabilities, these tenants are entitled to a determination whether any reasonable accommodation would mitigate any risk posed by their disability-related behaviors prior to denying them housing or eviction.



# Direct Threat

The Fair Housing Act does **not** require that housing be made available to persons, including those with disabilities, who would constitute a direct threat to the health or safety of others or who would constitute a risk of substantial damage to the property of others. However:

- Housing providers may not deny housing opportunities based on fear, speculation, or stereotypes about a particular disability or disabilities in general
- Even in cases of individuals who **do** in fact present a “direct threat” due to their disabilities, these individuals are entitled to a determination whether any reasonable accommodation would mitigate any risk posed by their disability related behaviors prior to termination or eviction





# HUD/DOJ Joint Statements

## DOJ and HUD have provided joint statements on **Reasonable Accommodations Under the Fair Housing Act** and **Reasonable Modifications Under the Fair Housing Act**

- Clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act

- Available at:

[www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf)

[www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable\\_modifications\\_mar08.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable_modifications_mar08.pdf)



# Additional Resources

National Alliance to End Homelessness Sample Guidelines for Emergency Shelters that Welcome Service/Emotional Support and Other Animals

[endhomelessness.org/wp-content/uploads/2018/08/NAEH-Pet-Friendly-Shelter-Policy-Example.doc](https://endhomelessness.org/wp-content/uploads/2018/08/NAEH-Pet-Friendly-Shelter-Policy-Example.doc)



# Common Mistakes by Housing Providers

- Always requiring forms and not accepting letters or verbal requests
- Being rigid or overly burdensome with rules, policies, and procedures
- Not responding to requests in a timely manner
- Not engaging in an interactive process
- Not training all employees who deal with tenants/prospective tenants
- Charging fees or deposits such as a transfer fee or a pet deposit



# Common Mistakes by Housing Providers

- Conditioning a request by requiring some action before it is granted
- Requiring medical documentation or completion of a particular form before considering an accommodation when the disability or the need for the accommodation is obvious
- Requesting information about the nature or severity of a disability
- Requiring an annual reapplication or recertification of a reasonable accommodation request

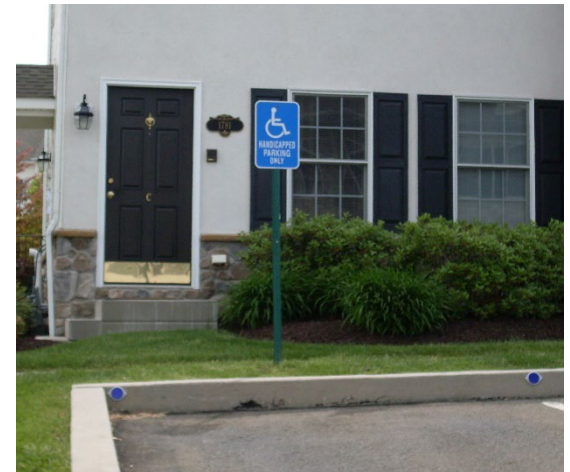


# Accessibility Requirements for New Construction

Applies to covered multifamily housing built after March 13, 1991, including housing for rental and for sale.

## The following multifamily dwellings must comply:

- All buildings containing four or more dwelling units, if the buildings have one or more elevators
- All ground-floor units in buildings containing four or more units, without an elevator





# Accessibility Requirements for New Construction

## Seven Design and Construction Requirements:

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors – allow passage by people using wheelchairs
4. Accessible route in and through covered units
5. Light switches and other environmental controls must be in accessible locations
6. Reinforcements in bathroom walls must be installed so that grab bars can be added when needed
7. Usable kitchens and bathrooms



# Accessibility Requirements for New Construction

The Fair Housing Act shouldn't be confused with the Americans with Disabilities Act (ADA).

- The ADA covers public accommodations, while the Fair Housing Act covers housing.
- Many builders and developers believe that if they are ADA compliant then they have fulfilled their legal responsibilities. This isn't necessarily true.
- ADA does apply to common use areas in residential developments if the facilities are open to persons other than owners, residents, and their guests (sales/rental office, pool, reception room, etc.).



# Accessibility Requirements for New Construction

## HUD FHA Design Manual

[https://www.huduser.gov/portal/publications/PDF/  
FAIRHOUSING/fairfull.pdf](https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf)

## Fair Housing Accessibility First



Design and Construction Resource Center: 888-341-7781

[www.fairhousingfirst.org](http://www.fairhousingfirst.org)

- Information on "safe harbors" (sets of access standards that guarantee compliance with the Fair Housing Act)
- Training and other resources





# Recent HUD Guidance and Program Rules



# Recent HUD Fair Housing Guidance and New Program Rules

- Criminal Records
- Harassment
- Limited English Proficiency
- Nuisance and Crime-Free Housing Ordinances
- Equal Access and Gender Identity Rules



# Criminal Records



# Criminal Records

In April 2016 HUD released Guidance on Application of Fair Housing Act Standards to the **Use of Criminal Records by Providers of Housing and Real Estate Related Transactions**

- Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history based restrictions on access to housing are likely to disproportionately burden African Americans and Hispanics.
- The Fair Housing Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, however arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification.
- A discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the FHA.



# Criminal Records Disparate Treatment

## Examples:

- Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics.
- Treating individuals with comparable criminal history differently because of their race, national origin or other protected characteristic.
- Telling only African American applicants about credit check and criminal record checks while not mentioning it to white applicants.
- Applying application standards more harshly to minority applicants than white applicants.



# Criminal Records Disparate Impact

Having a criminal record is not a protected class.

However, since African Americans and Hispanics are arrested, convicted, and incarcerated at rates disproportionate to their share of the general population, criminal records based barriers to housing are likely to have a disproportionate impact on minority home seekers and therefore may violate the Fair Housing Act.



# Criminal Records Disparate Impact

Example:

A housing provider has a policy of not renting to anyone who has an type of criminal record. The policy was established with the intention of ensuring the safety of residents.

Three step burden shifting rule:

- Does this policy have a disparate impact on members of a protected class?
- Is there a substantial, nondiscriminatory reason for the policy?
- Could this legitimate interest be met with a less discriminatory policy or rule?



# Criminal Records Disparate Impact

An individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account.

- Facts or circumstances surrounding the criminal conduct
- The age of the individual at the time of the conduct
- Evidence that the individual has maintained a good tenant history before/after the conviction or conduct
- Evidence of rehabilitation efforts





# Criminal Records Disparate Impact

Blanket bans no matter when conviction occurred, with no consideration of what underlying conduct entailed or what the convicted person has done since then will be unable to meet the burden of proving a substantial, legitimate, nondiscriminatory interest.

- Decisions must be made on a cases by case basis.
- Providers must consider nature and severity of conviction.
- Providers must consider amount of time that has passed since the criminal conduct occurred.



# Criminal Records

## Exemption from Fair Housing Act Liability:

- Section 8097 (b) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted...of the illegal manufacture or distribution of a controlled substance...”
- Housing providers will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.
- Limitation: Conviction for drug manufacturing and distribution only. Does not include arrest for such offenses or conviction for possession.



# Harassment



# Harassment

In September 2016 HUD released published a new final rule entitled **Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act**. This rule formalized standards for evaluating claims of hostile environment and quid pro quo harassment in the fair housing context. The rule also clarified housing providers' liability for harassment or discrimination by agents and third parties.

- **Quid Pro Quo Harassment** involves subjecting a person to an unwelcome request or demand and making submission to the request or demand a condition related to the person's housing.
- **Hostile Environment Harassment** involves subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person of the right to use and enjoy the housing.



# Harassment

- An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces to the request or demand.
- Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the housing related services transaction.
- Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.
- Harassment can be written, verbal, or other conduct, and does not require physical contact.
- A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment or evidences a quid pro quo.



# Harassment

Not only does the housing provider or other covered entity have liability for its own conduct, it is also liable for:

- Failing to take prompt action to correct and end discriminatory housing practice by its employee or agent, where it knew or should have known of the discriminatory conduct;
- Failing to take prompt action to correct and end a discriminatory housing practice by a third party, where it knew or should have known of the conduct and had the power to correct it; and
- Vicarious liability for a discriminatory housing practice by its agent or employee, regardless of whether the housing provider knew or should have known of the discriminatory housing practice.



# Limited English Proficiency



# Limited English Proficiency

In January 2007 HUD released Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting **Limited English Proficient Persons**.

- Guidance seeks to ensure HUD funded agencies do not “leave some behind simply because they face challenges communicating in English.”.
- Agencies may be required to provide translation of printed documents and/or interpretation of spoken English.





# Limited English Proficiency

To determine the extent of an agency's obligation to provide LEP services, agencies must conduct a four factor analysis:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.
2. The frequency with which LEP persons come in contact with the program.
3. The nature and importance of the program, activity or service to people's lives.
4. The resources available to the grantee/recipient and the costs.



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Proportion of LEP population:

- Determine your geographical service area.
- Look at census and other data to determine the language populations that may need translation.
- Consider the frequency with which a given population has historically needed service.
- Consider whether a lack of outreach to that community may be reducing the amount of people requesting service.



# Limited English Proficiency

Frequency of contact:

- In considering the type of resources that need to be developed, programs should consider the nature of the service they provide.
  - If a program has contact on an almost daily basis with a given language group, they may need to hire bilingual staff or contract with interpreters.
  - A program with only occasional contact with LEP clients may be able to get by using a telephonic interpretation service.



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Importance of service:

- If a given communication has more serious consequences, there is a greater obligation by the agency to provide translation.
- A program should consider whether denial or delay in services could have serious or life threatening consequences.
- “Decisions by HUD to make a form or activity compulsory in order to participate in the program should be considered as strong evidence of the activity’s importance.”



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## Resources Available:

- The final factor to consider is the resources available to the agency, and the cost.
- Smaller agencies with less resources have less obligation to provide the same level of language services, as compared to large agencies, with large budgets, serving many clients.
- “Reasonable steps” may cease to be reasonable if the cost of translation exceeds the value of the benefit.



# Limited English Proficiency

In September 2016 HUD released Guidance on Application of Fair Housing Act Protections for **Persons with Limited English Proficiency**.

- LEP, race, and national origin are so intrinsically linked as to be almost indiscernible from each other, therefore discrimination based on LEP will be treated as national origin discrimination.
- Lack of English proficiency is often used as a proxy for national origin discrimination.
- Some courts have recognized as legitimate the needs of employers to require that employees speak English, however the new HUD guidance states that these reasons are inapplicable with regards to housing, lending, or other real estate related transactions covered by the Act.



# Equal Access and Gender Identity Rules



## Equal Access

In February 2012 HUD published a final rule entitled **Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity**. This rule prohibits discrimination on the basis of sexual orientation, gender identity, or marital status in all HUD programs. Housing providers that receive HUD funding and/or have loans insured by the Federal Housing Administration (FHA), must comply with this rule.

### Definitions:

- Sexual orientation: homosexuality, heterosexuality, or bisexuality
- Gender identity: actual or perceived gender-related characteristics
- Family and household: includes persons regardless of actual or perceived sexual orientation, gender identity, or marital status





## Equal Access

Applies to all HUD-funded programs :

- Housing Choice Voucher Program (Section 8)
- Public Housing
- Community Development Block Grants and subrecipients
- Housing Opportunities for Persons with AIDS (HOPWA)
- Supportive Housing for the Elderly and Persons with a Disability
- Federal Housing Administration (FHA) insured loans
- Does not apply to private housing providers who do not receive HUD funding



# Gender Identity

In September 2016 HUD published a new final rule entitled **Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs.**

- Equal access is to be provided in all HUD assisted programs.
- Individuals are to be placed in accordance with their gender identity.
- No requirement for individuals to “prove” gender identity (no invasive questions or medical verification are permitted).
- Providers must update their policies and procedures to reflect requirements.
- Non-discriminatory steps must be taken to address safety/privacy concerns of transgender participants, however participants must not be required to accept accommodations.



# Gender Identity

“What pronouns would you like us to use?”

“How would you like me to address you?”

“Is this the name you would like to use throughout your time here?”

“Are there any times and places that you would like me not to use this name or pronoun?”

Provide space on intake forms for preferred names and pronouns for the consumer to self-identify.



# Gender Identity

- Let transgender clients know if and when you are required to use their legal name. “I wanted to let you know that we will need to use your legal name for this paperwork, but we will continue to use the name that is most affirming to you in all of our other interactions.
- Remember that being “outed” as transgender can be a major safety risk for that individual. Let the consumer know who will have access to that information and under what circumstances and why. Create a safety plan as needed.
- Maintain confidentiality. Avoid referring to a consumer as “the transgender client” or having conversations in spaces where others might overhear.



# Gender Identity

Resources:

Gender Identity Non-Discrimination Model Policy for Homeless Shelters

[www.glad.org/wp-content/uploads/2017/01/shelter-gi-non-discrimination-model-policy.pdf](http://www.glad.org/wp-content/uploads/2017/01/shelter-gi-non-discrimination-model-policy.pdf)

Shelter for All Genders: Best Practices for Homeless Shelters, Services, Programs in MA Serving Transgender Adults and Gender Non-Conforming Guests

[www.masstpc.org/wp-content/uploads/2012/10/Shelter-for-all-Genders.pdf](http://www.masstpc.org/wp-content/uploads/2012/10/Shelter-for-all-Genders.pdf)



# Best Practices

## Review Policies, Procedures, and Training

- Review all rules, policies, procedures, and eligibility standards to ensure that they are not intentionally discriminatory and do not have a discriminatory effect on members of protected classes. Implement a nondiscrimination policy if one does not exist.
- Establish a process for responding in a timely manner to reasonable accommodation requests.
- Make sure all staff receive regular fair housing compliance training.
- Contact HECP for technical assistance as fair housing issues and questions arrive.



# Best Practices

## Clear and Consistent Application Process

- Develop consistent and transparent admissions criteria and application process and apply equally to all applicants.
- Qualify applicants based on factual, specific, objective, and verifiable criteria.
- Adopt standardized and written intake and application process and forms.
- Retain application, documentation, and reasons for rejection for at least two years.
- Permit reasonable accommodations during the application process when necessary.



## Clear and Consistent Application Process

- If a funding source requires specific preferences (such as for persons with specific types of disabilities), the funder should be consulted to assist with developing policies and record keeping to document compliance with Fair Housing laws.
- Any prioritization of applicants must not discriminate against members of protected classes.
- Applicants should not be accepted or rejected for assumptions or subjective reasons, either positive or negative (for example, a perception of odd behavior or an intuitive sense about an applicant).

## **Nondiscriminatory Community and Program Rules**

- Community rules should be standardized, written, and communicated to all residents.
- Rules should not single out or target protected class (for example, quiet times or curfews should apply to everyone, not just children).
- Rules should be enforced consistently. Avoid the appearance of discrimination by not showing favoritism among participants.
- Reasonable accommodation requests involving exceptions to rules and policies should be documented.

## Procedures for Termination of Residents

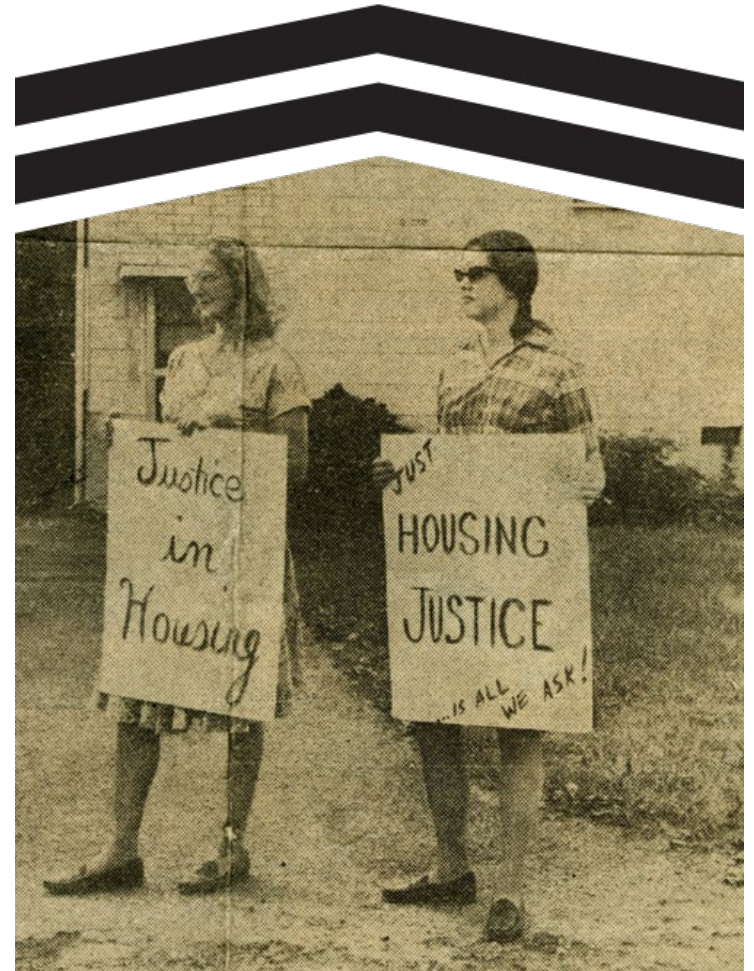
- Evictions or terminations from a housing program or shelter should be based on documented violations of the occupancy or program agreement or the community rules (for example, nonpayment of rent, destruction of property, harassment of other residents, etc.).
- Process and reasons for termination should be standardized, written, and communicated to all residents and should be applied consistently.
- Retain documentation and reasons for terminations or evictions for at least two years.



# Housing Equality Center

Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America's oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia.



OPENING DOORS SINCE 1956



# Housing Equality Center

The Housing Equality Center provides:

- Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.
- Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.
- Publications, fact sheets and resources to educate the public and housing professionals about fair housing.



# Report Discrimination

## (267) 419-8918

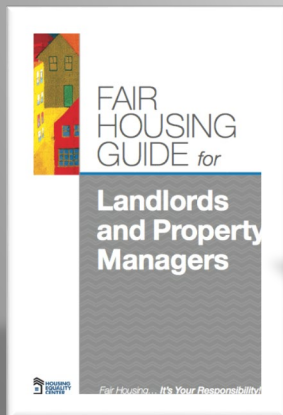
Consumers, providers, and advocates should contact the **Housing Equality Center of Pennsylvania** to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.

# equalhousing.org



- ✓ Sign up for fair housing news
- ✓ Register for an upcoming fair housing event or meeting
- ✓ Learn about fair housing laws
- ✓ Download guides, resources, fact sheets and fair housing guidance
- ✓ Request fair housing training or publications for your clients, colleagues or offices
- ✓ Report discrimination online





## Fair Housing Questions? Technical Assistance?

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