



Fair Housing Training for Nonprofit Housing Providers

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OPENING DOORS SINCE 1956



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Agenda

Section 1

Fair Housing Overview

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

Section 2

Equal Access and Gender Identity

- Equal Access Rule
- Gender Identity
- Terminology
- Respectful and Appropriate Interaction
- Best Practices
- Resources

Section 3

PA Landlord-Tenant Law

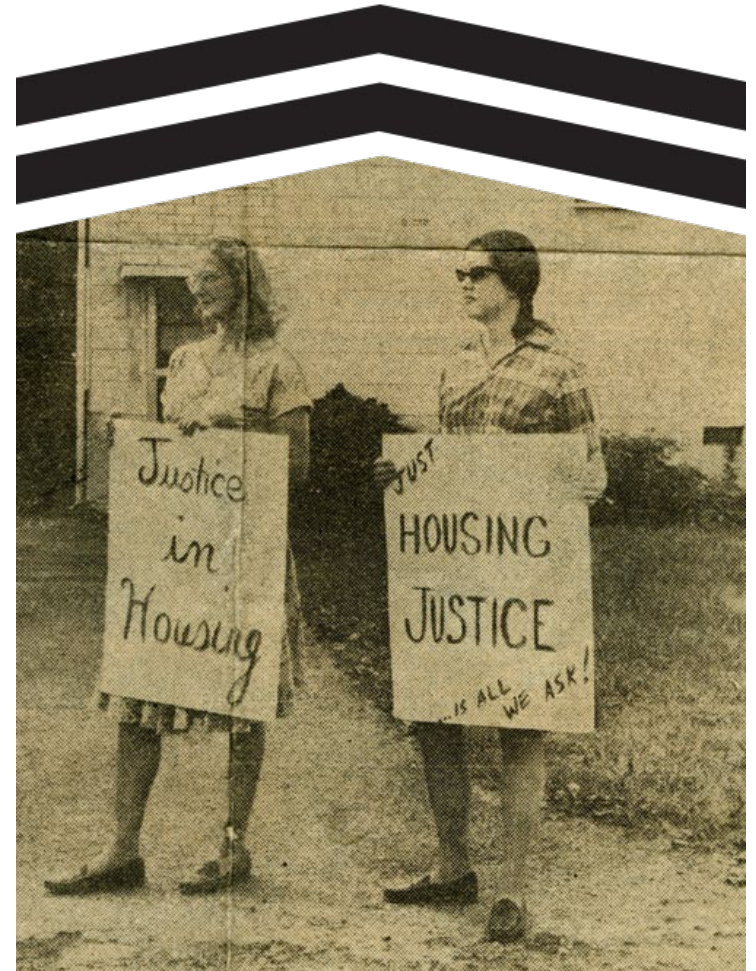
- Lease Terms
- Covenant of Quiet Enjoyment
- Implied Warranty of Habitability
- Security Deposit
- Eviction
- Resources



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.



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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.



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.*

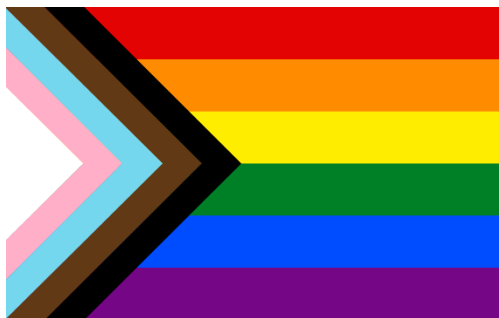


Executive Order 13988

An Executive Order 13988 issued on January 20, 2021 states:

“Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love...All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

Executive Order 13988 directed the heads of all federal agencies to develop agency actions to **fully** implement existing statutes that prohibit sex discrimination. HUD’s Office of Fair Housing and Equal Opportunity responded by stating on February 11, 2021 that will begin enforcing the Fair Housing Act to prohibit housing discrimination based on sex to include

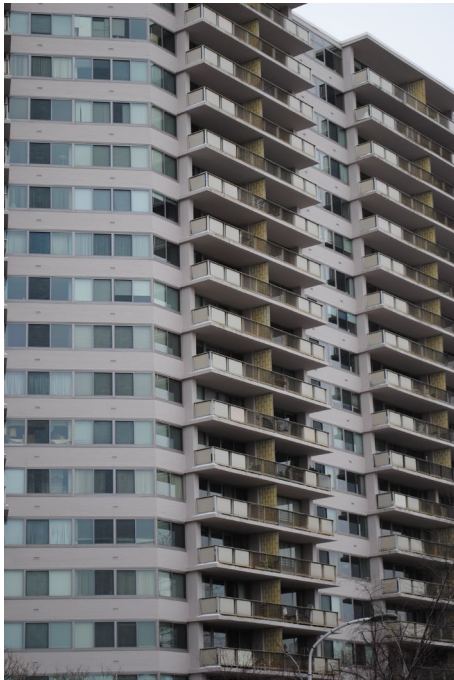


Sexual Orientation
and
Gender Identity



Federal Fair Housing Act

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



- Refuse to rent or sell 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 marital status, veteran status, source of income, and/or other additional protected classes – 50+ 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 (PA law does not contain this exemption)
- 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

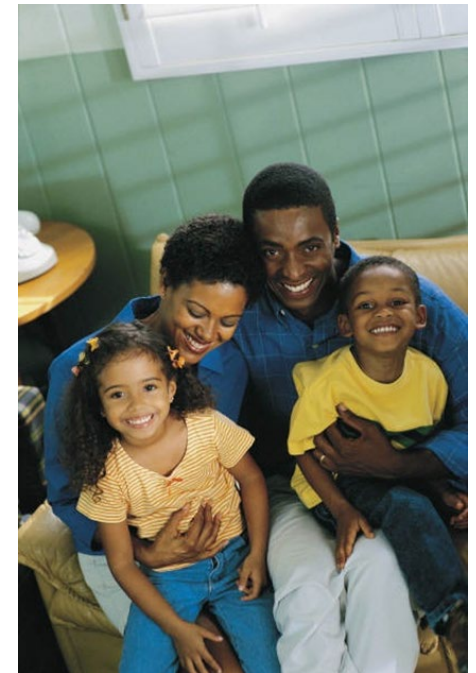
- Discrimination based on sex is prohibited by the Fair Housing Act. Includes sexual orientation and gender identity.
- Providers and housing programs may not segregate residents by gender, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.
- Rules that 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

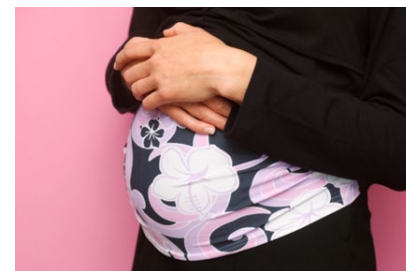




Families with Children

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.



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



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

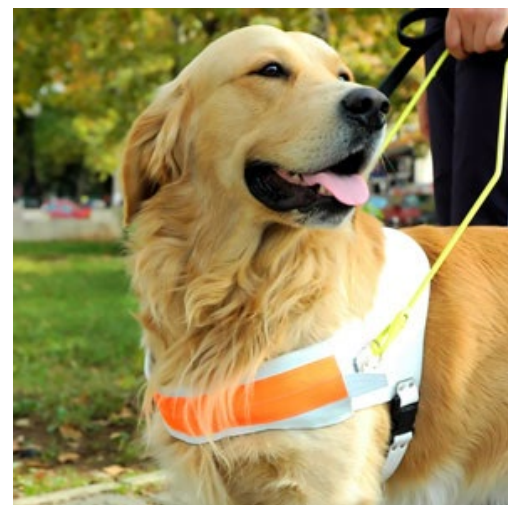
- Exception to application criteria when poor credit or rental history or negative references are due to a disability
- Extra time to remedy sanitary or fire hazards for individuals who engage in compulsive hoarding
- Revised rental due dates or waiver of late fees for individuals receiving SSDI payments 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

Assistance Animals



Assistance animals come in many species, breeds and sizes



Americans with Disabilities Act

Americans with Disabilities Act of 1990 – 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.

SERVICE DOGS under the **ADA** are individually trained to do work or perform tasks for people with disabilities.



Fair Housing Laws

Pa State Human Relations Act and the federal Fair Housing Amendments Act apply to DWELLINGS and have a broader definition of assistance animal.

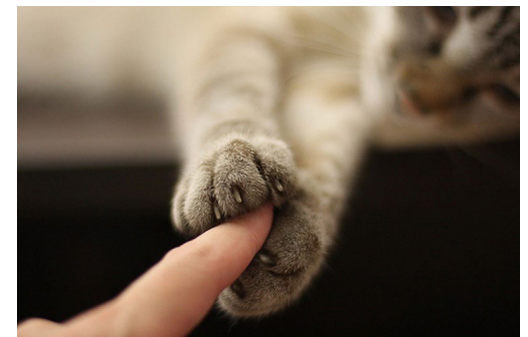
ASSISTANCE ANIMALS do **NOT** need to be trained or certified.

ASSISTANCE ANIMALS serve a disability related need and allow 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



State Laws Regulating Assistance Animals

Pennsylvania Assistance and Service Animal Integrity Act

Indemnifies landlords who have allowed Assistance Animals as a reasonable accommodation. Cannot be sued for damages if the animal hurts someone on the property.



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



Assistance Animals

Does a provider have to accept an online “Emotional Support Animal” certificate?

- No official registration or certification for emotional support animals or assistance animals exists.
- Housing providers can request a letter from a medical professional who is familiar with the patient or client making the request, their disability and the disability related need for the animal.



Other Considerations

- Owner must clean up after the animal and provide all proper care.
- Owner must maintain control of the animal (must be leashed outside).
- Owner is responsible for any damages caused by the animal.
- Dog must be properly licensed.
- Dogs and cats must be vaccinated as required by law.
- If animal disturbs neighbors (i.e. barking) the accommodation may no longer be reasonable.



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

www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable_modifications_mar08.pdf



HUD Guidance on Assistance Animals

Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

This notice explains certain obligations of housing providers under the Fair Housing Act (FHA) with respect to animals that individuals with disabilities may request as reasonable accommodations.

<https://www.equalhousing.org/wp-content/uploads/2020/01/HUDAsstAnimalNC1-28-2020.pdf>



Fair Housing Guide to Reasonable Accommodations and Modifications

HECP offers a comprehensive guide to reasonable accommodations and modifications for consumers with disabilities. Available at: www.equalhousing.org/wp-content/uploads/2020/02/Fair-Housing-Guide-to-Reasonable-Accommodations-and-Modifications.pdf





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

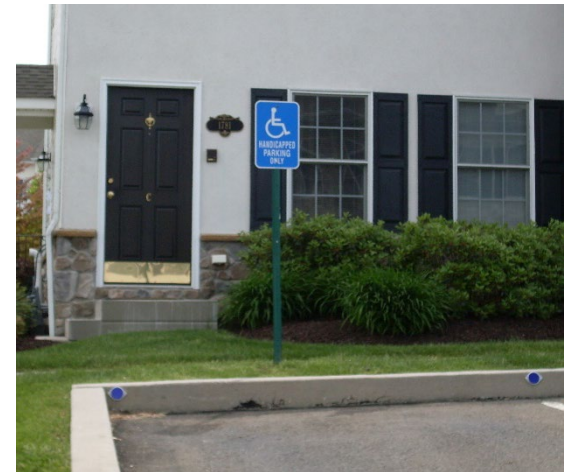


Accessibility Requirements for New Construction

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

- 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
- Equal Access and Gender Identity



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.



Limited English Proficiency

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.



Limited English Proficiency

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.”



Limited English Proficiency

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



Transgender Appropriate and Respectful Interaction

Janis Stacy

Intake Specialist

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About the Presenter: Janis Stacy

- Intake Specialist, Housing Equality Center of PA
- Planning for QueerMarch NYC 2021, 2022, 2023
- Planning Philadelphia Trans March
- Board of Indigenous People's Day Philadelphia
- Philadelphia Trans Health Conference
 - – Co-Chair 2014 through 2018
 - Lead for Spirituality and Native American
 - Planning committee 2007 through 2018
- TransFaith - Board Member
- Co-Founder of a Two Spirit Society
- Leadership member on a Multi-Faith LGBTQ2SIA organization

- Worked on transgender insurance coverage, workplace inclusion, local legislation, federal legislation, racial and gender equality
- Worked with homeless shelters for Trans people
- Have been an Out and Equal registered trainer
- Co-Founder of National Center for Transgender Equality
- Engineer and Project Management



Statistics – US Trans Survey 2022 19 Oct to 5 Dec 2022

- **47% of Trans People surveyed considered moving to another state because their state government considered or passed laws that target trans people for unequal treatment.**
- **5% of those did move.**
- **34% of respondents were experiencing poverty.**
- **30% of respondents had experienced homelessness in their lifetime.**
- **3% of respondents reported that they were physically attacked in the prior 12 months because of their gender identity or expression.
(Take note of Covid19 restrictions 2021 to 2022.)**



Statistics – US Trans Survey 2015

- **23% of Trans People experienced some form of housing discrimination** in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.
- **30% of Trans people have experienced homelessness** at some point in their lives.
- **12% Trans People experienced homelessness** because of being transgender.
- **26+% of homeless Trans avoided staying in a shelter because they feared being mistreated** as a transgender person. Those who did stay in a shelter reported high levels of mistreatment:
- **70% respondents who stayed in a shelter in the past year reported some form of mistreatment**, including being harassed, sexually or physically assaulted, or kicked out because of being transgender.



Statistics

- Estimated **0.6% of adults in US identify as Trans (1.4 Million)**.
Philadelphia could be between 0.6% to 2.5%. (Williams Institute)
- **Trans children are about 1%** of the people to come to shelters. (Williams Institute)
- **20 to 40% of homeless children are LGBT** (2.5 to 5 times the rate of non-LGBT people) (Williams Institute)
- 1 in 3 homeless children are in prostitution within 48 hours of becoming homeless. (National Runaway Switchboard)
- In Short – You could see between **1 to 15 people per hundred** in the Philadelphia area.



Terminology / Language

- **Transgender – Trans* - Trans – T :**

A term for people whose gender identity, gender expression or behavior is different from those typically associated with their sex listed on their birth certificate. Trans or Transgender is a broad term and is good for non-transgender people to use. NOTE: Trans is not necessarily short for Transgender.

- **Trans Man – TransMasculine – TransMasc – FTM :**

A term for a trans individual who identifies as a male.

- **Trans Female - Transgender Woman – TransFem - MTF :**

A term for a trans individual who identifies as female.

- **Gender Non-Conforming – GNC :**

A term for individuals whose gender expression is different from societal expectations related to gender identity.



Terminology / Language

- **Transsexual:**

An older term for people whose gender identity is different from their sex listed at birth and who seeks to transition physical sex from male to female or female to male. Many do not prefer this term because it is thought to sound overly clinical though it is having increased use recently.

- **Cross-dresser:**

A term for people who dress in clothing traditionally or stereotypically worn by the other sex, but who generally do not have a gender identity different than their physical sex. The older term “transvestite” is considered derogatory by many in the United States.

- **Bi-gendered:**

One who has a significant gender identity that encompasses both male and female identities. Some may identify such that male or female is more prevalent, but both identities are there.

- **Genderqueer and Non-Binary:**

A term used by some individuals who identify as neither entirely male nor entirely female or such that their gender expression is fluid between male and female.



Terminology / Language

Two-Spirit:

A contemporary term that refers to the historical and most current Native American & First Nations people whose individual spirits were a blend of male and female spirits. This term is used by some Native Americans in order to reclaim their heritage.

Transition:

The time when a person begins to living so their gender identity matches they gender presentation which is different than their administrative sex (birth certificate). This often includes changing one's name and dressing and grooming consistent with their gender identity. Transitioning may or may not also include medical and legal aspects, including taking hormones, having surgery, or changing identity documents (e.g. driver's license, Social Security record) to reflect one's gender identity. NOTE: Medical and legal steps are often difficult for people to afford.



Terminology / Language

- **Physical Sex:**
Apparent arrangement of reproductive organs. (Dangly bits).
- **Gender – Has 3 primary components:**
 - **Gender Identity**
An individual's internal sense of being male, female, or something else.
 - **Gender Expression**
How a person represents or expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice or body characteristics.
 - **Gender Role**
Cultural norm considered appropriate for a given physical sex and or gender identity.



Terminology / Language

- **Gender Identity:**
An individual's internal sense of being male, female, or something else. Since gender identity is internal, one's gender identity is not necessarily visible to others.
- **Gender Expression:**
How a person represents or expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice or body characteristics.
- **Assigned Sex:**
The sex assigned to someone at birth.
- **Administrative Sex – Legal Sex:**
The sex listed on documents (drivers license, SS, passport, birth certificate).



Respectful / Appropriate Interaction

- **Name to use:** Ask the person the name they want use for them.
- **Administrative Name / Name on legal documents:** Ask the person their administrative name or name on legal documents if it's needed.
- **Use the name they told you to use regardless!**
- **Use the self-identified gender / sex** - If documentation doesn't match the gender/ sex they told you, use the gender / sex they told you for interactions with them.
- **Use their self-identified pronouns** – He, She, They, Them are most common.
- **Avoid using sex or gender on forms given to clients.**
- **Ask if they need any special accommodations.**
- **If someone reveals they are Trans. Know this is huge!** They are trusting you. **Acknowledge the disclosure and assure them** being Trans will not negatively impact the help you provide.
- **If documentation shows a sex mismatch, ask** what gender or sex the person wants you to use. I.E. – If needed, ask what gender / sex, name and pronouns to use.



Respectful / Appropriate Interaction DO NOT DO THIS!

- Do not ask about genitalia.
- Do not ask about surgical status.
- Do not use **Sir, Ma'am, Mr or Ms or Mrs.** Unless you know for certain!
- **You will make mistakes. Learn** from them.
- You may encounter someone who you may think overreacts. Learn what you did wrong. Understand that they may have had any number of negative experiences before this one.



Respectful / Appropriate Interaction

- Have information readily available that lists information for Trans people.
 - Support services – Wrap around services (Medical, Psychological, Community, Clothing, Grooming, Self-care, Spiritual).
 - Published - How to complain and what will be done with the complaints.
 - Printed material explaining how Trans people access services.
 - Hats...
 - Razers for women, sanitary napkins for men.
 - Appropriate grooming products for TPOC.
 - Other orgs are providing some trans needs (binders, clothing...).
- Treat Trans people with respect. As you would anyone else.



Conflict Resolution

- Have written policies stating non-discrimination including Gender Identity and Expression.
- Have a complaint procedure posted.
- Have a written complaint procedure.
- Have a written conflict resolution procedure.
- Complaints and or conflicts should be swiftly addressed.
- The person(s) responsible for resolving complaints and or conflict should be trained in how to resolve complaints and conflicts.



Resources

- Mazzone - <https://www.mazzonecenter.org/>
- Penn Medicine - <https://www.pennmedicine.org/for-patients-and-visitors/find-a-program-or-service/lgbtq-health>
- Jefferson Health - <https://www.jeffersonhealth.org/clinical-specialties/lgbtq-health-program>
- Einstein Health - <https://www.einstein.edu/pride-program>
- William Way Center - <http://waygay40.org/>



Resources

- Williams Institute – Adult Trans US population estimate- <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>
- Williams Institute - America's Shame: 40% of Homeless Youth Are LGBT <http://williamsinstitute.law.ucla.edu/press/americas-shame-40-of-homeless-youth-are-lgbt-kids/>
- Williams Institute - <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-Update-Jun-2015.pdf>
- Williams Institute - <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>
- US Trans Survey 2015 and 2022 - <https://www.ustranssurvey.org/reports>
- HUD Interactive LGBTQIA+ Fair Housing Toolkit - <https://www.hudexchange.info/news/new-interactive-lgbtqia-fair-housing-toolkit-now-available-on-the-hud-exchange/>



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



HUD Guidance on Equal Access

In 2016 HUD published a rule entitled:

[Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs](#)

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.



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.



On June 15, 2020, the Supreme Court ruled in a 6–3 decision in *Bostock vs. Clayton County* that prohibitions against sex discrimination in the workplace contained in Title VII of the Civil Rights Act of 1964 extend to and include discrimination on the basis of sexual orientation and gender identity.

Relying on this landmark decision, the President issued Executive Order 13988...

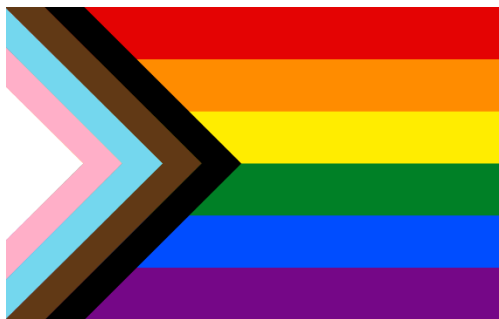


Executive Order 13988

An Executive Order 13988 issued on January 20, 2021 states:

“Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love...All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

Executive Order 13988 directed the heads of all federal agencies to develop agency actions to **fully** implement existing statutes that prohibit sex discrimination. HUD’s Office of Fair Housing and Equal Opportunity responded by stating on February 11, 2021 that will begin enforcing the Fair Housing Act to prohibit housing discrimination based on sex to include



Sexual Orientation
and
Gender Identity



Sexual Orientation and Gender Identity

2021 – HUD Memo on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation

- Covers Gender Identity and Sexual Orientation.



Examples of Discrimination

- A shelter employee hanging up immediately after caller reveals she is transgender
- A shelter employee making references to genitalia or surgery as requirements for appropriate housing.
- A shelter employee refusing to enroll a participant “because they would make other participants feel uncomfortable or unsafe.”



Examples of Discrimination

- Management of housing projects of facilities failing to address complaints from LGBT individuals regarding harassment by other residents
- Project staff revealing an individual's status as transgender or requiring special procedures for households with a transgender person.
- Project staff excluding individuals based on family composition.



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

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



Best Practices



Equal Access Rule Best Practices

- Does your agency have an anti-discrimination policy?
- Does it include gender identity, gender expression, and sexual orientation in the list of protected attributes?
- Is it posted publicly?
- Are your staff, volunteers, and contractors trained on this policy?

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).



Best Practices

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.



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.



What To Do If You Have Experienced Housing Discrimination

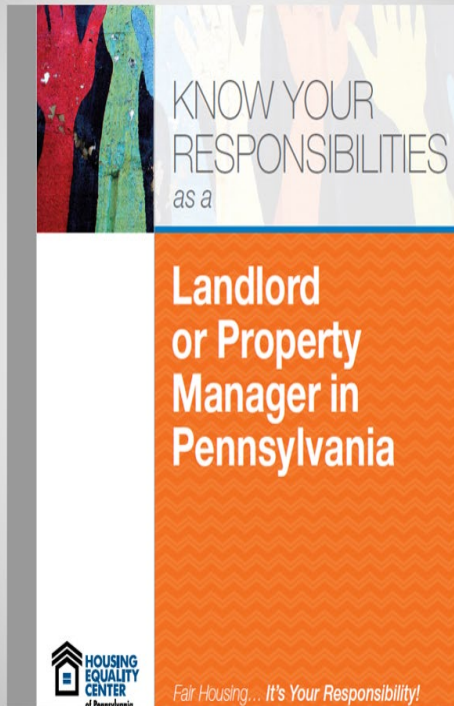
To file a complaint with the **U.S. Department of Housing and Urban Development**, call HUD's Housing Discrimination Hotline at 1-800-669-9777 or visit www.hud.gov. Complaint must be filed within **one year** from the date of the incident.

To file a complaint with the **Pennsylvania Human Relations Commission**, call 717-787-4410 or visit www.phrc.pa.gov. Complaints must be filed within **180 days** from the date of the incident.

A lawsuit can be filed in federal court up to **two years** from the date of the incident.

To file a complaint with the **Philadelphia Commission on Human Relations**, call 215-686-4670 within **300 days** unless you have valid legal justification for not filing within that time period.

<https://www.phila.gov/humanrelations/pages/default.aspx>



96 page comprehensive manual -available for FREE in print or digital format

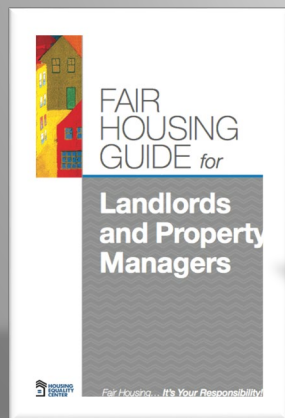
Guidance on state and federal Fair Housing Law compliance

PA Landlord Tenant Law

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



Renters.equalhousing.org



- ✓ Learn about fair housing laws
- ✓ Learn about the rights of renters in PA
- ✓ Download sample letters to landlord
- ✓ Request assistance with requesting a reasonable accommodation or modification
- ✓ Report discrimination online

Landlords.equalhousing.org

Know Your Responsibilities as a Landlord or Property Manager in Pennsylvania

I'm interested in...



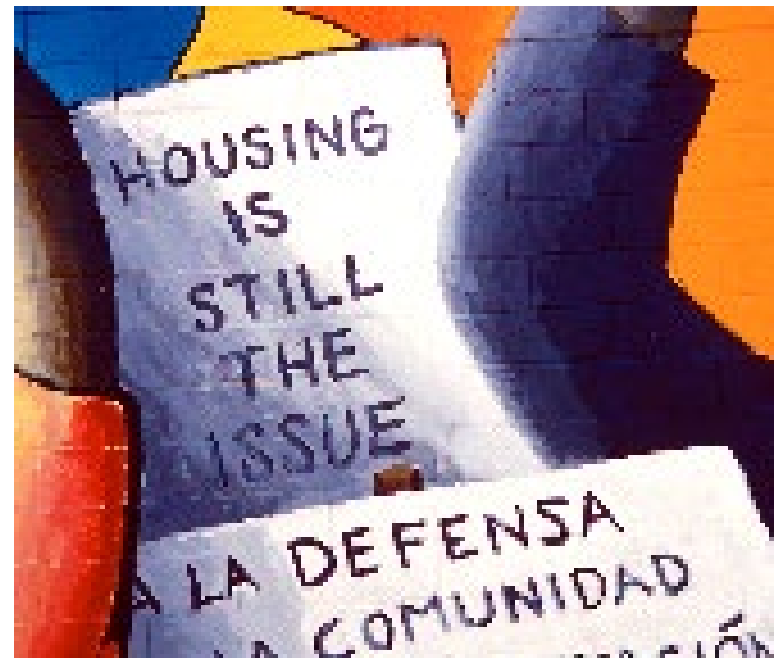
It is our hope that this site will help to guide you through a successful experience as a landlord by providing general information and self-help resources regarding state and federal fair housing laws and Pennsylvania Landlord Tenant Law as it pertains to the rental of private residential property.

[LEARN MORE](#)



Know Your Rights as a Renter in Pennsylvania:

Landlord-Tenant Law





Agenda

PA Landlord-Tenant Law

- Leases
- Covenant of Quiet Enjoyment
- Implied Warranty of Habitability
- Security Deposit
- Eviction
- Resources



Lease Terms

A lease is a binding legal contract – for example, an agreement to pay the landlord \$12,000 in \$1,000 monthly installments. Leases can be either **verbal** or **written**.

Changes to the Lease

Any changes to the lease should not be made until the beginning of a new rental period, which is when the tenant and the landlord renew the lease, unless both parties agree to a proposed change before the end of the lease term. Unless the lease specifies how changes are to be made, the landlord will be required to give one full rental period before the change is to take place.



Unenforceable Lease Provisions

Tenants are usually bound by the terms and conditions of the lease they sign, however some terms and conditions are legally unenforceable in court. **Examples of unenforceable lease terms and conditions include:**

- While tenants can be held liable for damages to an apartment, they cannot be made responsible for all normal maintenance and repairs, or all repairs under a certain dollar amount.
- The tenant cannot be made to accept the house or apartment “as is.” Under the Implied Warranty of Habitability, the facilities and services provided at the leased premises must allow the unit to be occupied for its reasonably intended purpose as a dwelling unit.



Unenforceable Lease Provisions

Examples of unenforceable lease terms and conditions include:

- The tenant cannot waive the right to represent themselves in a court of law.
- The tenant cannot be made to agree that if he/she/they breaks any promise in the lease, the landlord has the right to break into the apartment, change the locks, and seize the tenant's possessions.
- The landlord cannot make the tenant agree to waive his/her/their rights to a hearing or confession of judgment.



Landlord Fraud

- Landlord promises apartment will be ready at a certain date but it is not
- The property has been rented to another party
- There is no heat or water
- The utility services are in someone else's name and you are required to pay it
- You are being asked to pay rent to someone who you do not think is the landlord or who does not own the property.

PA Attorney General

717-787-9707

Bureau of Consumer Protection 800-441-2555 (Toll-Free Helpline)

[Submit a Complaint – PA Office of Attorney General](#)

Consult an attorney. Unfair Trade Practices.



Tenant's Right to Privacy

Pennsylvania Law states that in every lease (whether written or verbal), there is a promise that the landlord will not unreasonably interfere with the right to possess the leased premises. This **Covenant of Quiet Enjoyment** also includes the right to privacy.

- Tenants have the right to enjoy the premises without unreasonable and excessive intrusions by the landlord.
- Landlords only have the right to reasonable access to the leased premises.
- If the landlord enters the rental unit for no reason or disturbs tenants at night, they may be breaching the lease.



Tenant's Right to Privacy

- The landlord does have the right to enter rental premises occasionally for reasonable purpose including inspection and maintenance, repairs, or to show the property to potential buyers or renters.
- The landlord should come at a reasonable time, give the tenant advance notice first, and should knock first—unless there is an emergency.
- If there is an emergency such as broken water pipes or smoke detectors activated, then the landlord has the right to enter immediately without prior notice.



Implied Warranty of Habitability

Pennsylvania state law states that a rental unit must be **"safe, sanitary and fit for human habitation."**

A landlord's obligations under the Warranty of Habitability cannot be thrown away even if the tenant signs a lease that says they are renting the property "as is" or that the tenant is responsible for all repairs. **Any lease clause attempting to give away that right is unenforceable.**

The Supreme Court decision says a tenant can only use the Warranty of Habitability for **serious problems**. The tenant must tell the landlord about the problems and give them a chance to fix them.

A serious problem is one that causes a large amount of discomfort or creates a realistic danger of harm.



Implied Warranty of Habitability

Essential for basic health and safety:

Adequate Heat. International Property Maintenance Code 602.2: Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68 degrees in all habitable rooms and bathrooms. (local Ordinances may differ)

Hot and Cold Running Water

Electricity – absence of frayed wiring, adequate service

Sewer – must be in good working order

Infestation – rodent or insect

Structural Safety – Doors and windows that secure and lock. Roof that doesn't leak. Absence of unsafe structural components that make it dangerous to occupy the premises (unsafe floors, stairs, porches, handrails).



Implied Warranty of Habitability

The Implied Warranty of Habitability **does not** require the landlord to make nonessential/cosmetic repairs or upgrades/improvements unless they agreed to do so.

If landlord has agreed to cosmetic repairs, tenant should get it in writing and completed preferably **before** moving in.

Examples of nonessential/cosmetic repairs:

- Paint
- Carpet
- Broken cabinets
- Broken tiles



Strategically Handling Habitability Issues

Does the defect interfere with your ability to inhabit the unit?

Remember, a serious problem is one that causes a **large amount of discomfort or creates a realistic danger of harm.**

Tenants, **must** take specific steps to establish and protect their rights!

Strategy: First, you must **notify landlord in writing** about the problems and give the landlord a **reasonable** amount of time to make the repair.

Document the problem – a picture is worth a thousand words.

Keep a copy of all letters, emails, and text messages!



Strategically Handling Habitability Issues

Before undertaking a remedy option, the tenant will need to make sure that they can show that they gave the landlord ample time/opportunity to correct the problem and the landlord failed to correct it and the tenant had no choice but to remedy the situation.

Remedy Options

1. Terminate the lease and move out.
2. Withhold all or part of the rent. Put in escrow account.
3. Repair and deduct – get consent of the landlord. Get estimates and save receipts.
4. File legal action to recover cost of repairs or to force landlord to make repairs.

Establish and protect your rights and be fully prepared before proceeding. Proper legal advice is invaluable.



Strategically Handling Habitability Issues

- Pennsylvania Law prevents landlords from evicting tenants because they raised a habitability issue.
- If tenant improperly withhold rent, they can be evicted.
- If tenant has broken the lease, landlord may try to evict.

Strategy: You will need to show that you gave ample time/opportunity to correct the problem so you can demonstrate that the landlord failed to correct the problem and you had no choice but to remedy the situation.

Think ahead – what would a judge want to see if this goes to court?
Lease, written notices, receipts, photos etc.

Keep in mind – landlord might try to evict you. Be prepared.



Security Deposits

Limits on amounts of security deposit that can be held:

- 1st year – 2 months rent
- 2nd year and thereafter – no more than 1 months rent
- After the first year, tenant can request return of money held that is greater than 1 months rent.
- If rent increases, landlord can increase amount of security deposit held.
- Security deposit cannot be used for the last months rent.



Security Deposits

- Landlord should **not** use security deposit to pay for ordinary wear and tear.
- What is considered ordinary wear and tear vs. damages?
- Length of time in the apartment should be considered

Damages:

Carpet is burned or heavily stained
Walls are damaged with holes
Broken windows
Filthy fridge or oven
Debris or belongings left behind

Ordinary Wear and Tear:

Carpet is old or worn down
Walls have some scuff marks



Security Deposits

Strategy: Moving out – **think ahead!**

Tenant should make sure to do these things when moving out:

1. Give proper **written** notice in accordance with lease (30, 60, 90 days)
2. Give landlord a written notice with your forwarding address - where to return security deposit!

Certified Mail, Return Receipt Requested

3. Clean the apartment unit. Clean inside fridge and oven too.
4. Make sure no rent is owed
5. Take **photos** of the condition
6. Return the keys. Get a receipt for return of keys.

Keep a copy of all letters and receipts!

If a carpet cleaner was rented, keep the receipt.

Hold onto receipt for return of the keys.



Security Deposits

Within **thirty (30) days** after the termination of the lease, the landlord must give the tenant:

A written list of any damages for which the landlord claims the tenant is responsible, with payment of the remainder of the security deposit (if any) **or**
A check for the entire amount of the security deposit.

If the landlord fails to do either one of the above within 30 days, on the 31st day, the tenant can sue the landlord for **double** the amount of the security deposit held in escrow plus interest (if any). Note that if the tenant did not provide a forwarding address or returned the keys, the landlord cannot be held to the 30-day deadline.

Contesting Damages Charged to Your Security Deposit

The landlord should not charge the tenant for ordinary wear and tear. For example, if a landlord decided the apartment needed to be repainted at the end of a lease, a tenant should not be charged for the repainting unless the tenant caused more than normal wear.



Rent Increases

Pennsylvania has no rent-control law.

Landlords may raise the rent as much as they want. However, changes must be made in accordance with the contract (lease).

- The rent increase must follow the proper notice procedures outlined in the written or verbal lease.
- The landlord may not raise the rent in the middle of the lease term unless the tenant agrees to the rent increase.



Avoiding Eviction

The tenant is legally responsible to pay the **full amount of rent on time** in accordance with the lease agreement unless another agreement has been made (this should be in writing).

If the tenant is responsible for any utilities, they must be paid on time. If not, this could result in an eviction.

Strategy:

- **Make sure you get receipts and save receipts for all payments to the landlord!**
- Paying the rent by check is preferable - a canceled check provides a record that rent was paid.
- If rent is paid by cash or money order, make sure you get a receipt of the payment.
- Paying utilities on time is essential.



Avoiding Eviction— Guests and Allowing Others to Move In

- Tenants have the right to invite social guests for reasonable periods of time without the interference of the landlord.
- Guests must comply with all rules that apply to tenants.
- The lease will specify who is allowed to occupy the rental property.
- The landlord might want to perform background checks on the new tenant, raise the rent, or require that they be added to the lease.

Strategy:

- If you want to have someone move in or stay for an extended period of time, you will need to ask the landlord's permission.
- Make sure that any agreement allowing others to move into the rental unit is in writing.
- Charging extra rent for either minor children or live-in aides for tenants with disabilities may be a violation of the Fair Housing Act.



Preventing Eviction: Falling Behind on Rent

Strategy:

1. Rent is still due and must be paid! Talk to the landlord as soon as possible. Do not wait until the due date or after the due date. Explain why and try to make a payment agreement. Get it in writing and keep a copy.
2. Investigate local programs that may offer emergency rental assistance.
3. Keep the utilities on.
4. Go on COMPASS.state.pa.us to see if tenant qualifies for benefits.
5. The landlord is not legally allowed to interfere with utility services even if the tenant falls behind in rent.
6. The landlord is not legally allowed to lock a tenant out of the rental unit even if they have fallen behind in rent. The landlord must go through the proper eviction process.



Self-Help Evictions are Illegal

If the tenant is not out of the apartment by deadline given by the Landlord, the tenant legally cannot be locked out with a “Self-Help Eviction.” The landlord must file an eviction complaint with the Magistrate Court and go through the proper legal procedure. **Only** a constable with an order of possession can legally lock a tenant out of a rental unit.

Self help evictions – landlord changes the locks, blocks access to the unit, removes the door or windows, turns off the water or electricity, threatens tenant by force or threat of injury or violence, or otherwise renders a dwelling unit or any part of a unit inaccessible to a tenant.



Self Help Eviction Strategy

- Call the Police.
- Show you have the right to occupy the premises. Show your ID and have copy of lease or other documents (such as utility bills) somewhere outside the home
- If necessary, ask to speak to a Sergeant or Supervisor. Unless the landlord can produce an Order of Possession, the police should allow the tenant to regain possession of the premises immediately. Ask for a police report to be filed.



Eviction Process

Notice to Quit

Unless the lease says otherwise, the landlord must give tenant **written notice** before filing an eviction case. This is called a **Notice to Quit**.

The amount of time the landlord must give you depends on length of lease and reason you are being asked to move.

- Non payment of rent – 10 days
- Any other reason and lease does not specify how much notice is required -15 days for lease of one year or less, 30 days notice for lease of more than one year.

REMEMBER: Lease can require longer or shorter notice, or no notice at all!



But I Need More Time!!!

- The tenant does not have the right to demand more time to find a new place to move. It does not matter if the tenant is a senior citizen or if they have children – the landlord can still evict the tenant.
- The landlord can evict the tenant if they fall behind on rent even if its because they got sick or lost their job or had other bills to pay. Tenant has a legal obligation to fulfill the terms of the lease.

Strategy:

The tenant can **try** to negotiate with the landlord for more time. If the landlord agrees, ask for the agreement in writing.

Do not leave possessions behind. The landlord can charge the tenant a storage fee if items are left behind.

If the tenant cannot find a place to live, contact family or friends.

Contact local shelter or transitional housing or check into a motel.



Eviction Process

District Magistrate Court

Landlord must appear at the hearing and present testimony as to why tenant should be evicted.

If tenant is late or does not appear, judgement will be entered against tenant.

Strategy :

- Tenant has right to appear before Judge with any witnesses or other evidence.
- If landlord fails to appear, tenants can ask for the case to be dismissed.
- If the notice was not given properly, the tenant should bring this up in court and ask that the landlord be required to restart the process and give proper notice.



Eviction Process: Judgment

Judgment

After the hearing, the Magisterial District Judge will either make a decision that day or within 3 days. The Judge will issue a written **Notice of Judgment**.

If the judgment is in the tenant's favor, the landlord will be required to do what the Judge ordered—such as not evicting the tenant from the rental unit.

If the Magisterial District Judge finds in favor of the landlord, the judgment will be entered against the tenant. The Notice will indicate what type of judgment has been entered.

- Possession Granted if Money Judgment Not Satisfied
- Possession Granted
- Possession Not Granted
- Money Judgment



Eviction Process: Appeal

There are often two parts to a Judge's decision:

Possession (eviction) and **Money Judgment**.

Strategy:

- The tenant has the right to appeal a judgment entered against them. Appeals are filed with the Prothonotary at the Court of Common Pleas.
- To appeal a decision by a Magisterial District Court, the tenant will need to bring a copy of the Judgment with them to the Prothonotary's Office.
- It is advised that tenants seek the counsel of an attorney if they chose to file an Appeal, as the process at this court level is more complicated. Most likely, the landlord will have an attorney.



Eviction Process: Appeal

Judgment for Possession:

Tenant has 10 days to file an appeal for Judgement for Possession:

Strategy:

- Tenant must mention that they want to file a Supercedeas if they want to stop a physical eviction.
- Must pay filing fess and a bond- either the amount of rent in the judgement or 3 months rent (whichever is less, unless tenant can establish that they are low income in which case tenant will only be required to pay 1/3 of monthly rent to the Court.

Money Judgment:

Tenant has 30 days to file an appeal for a Money Judgment. No bond required.



Recovering Personal Property After Eviction

If the tenant does not contact the landlord within the first 10 days after being evicted or receiving a notice from the landlord that personal property was left behind, the landlord can dispose of all the personal property.

Strategy:

If a tenant is evicted or moves out of a rental property, they have **10** days to contact their landlord and let their landlord know that they intend to retrieve the personal property left behind.

The tenant should notify the landlord within 10 days of their intent to retrieve any personal property left behind by calling the landlord and by sending the landlord a letter. The tenant should keep a copy of the letter sent to the landlord.



Resources



Legal Aid

[Homepage | Pennsylvania Legal Aid Network \(palegalaid.net\)](#)

[SeniorLAW Center - Pennsylvania Elderly Law Services](#)

[Resources | Tenants' Rights \(equalhousing.org\)](#)



Resources – Utility Shut-Offs

- PULP Hotline
<https://www.pautilitylawproject.org/>
- Are you facing an utility shut off? Are you already without service?
- Pennsylvania residents may be eligible for free legal help.
- **Call: 1-844-645-2500**
- or
- **Email:**
utilityhotline@pautilitylawproject.org

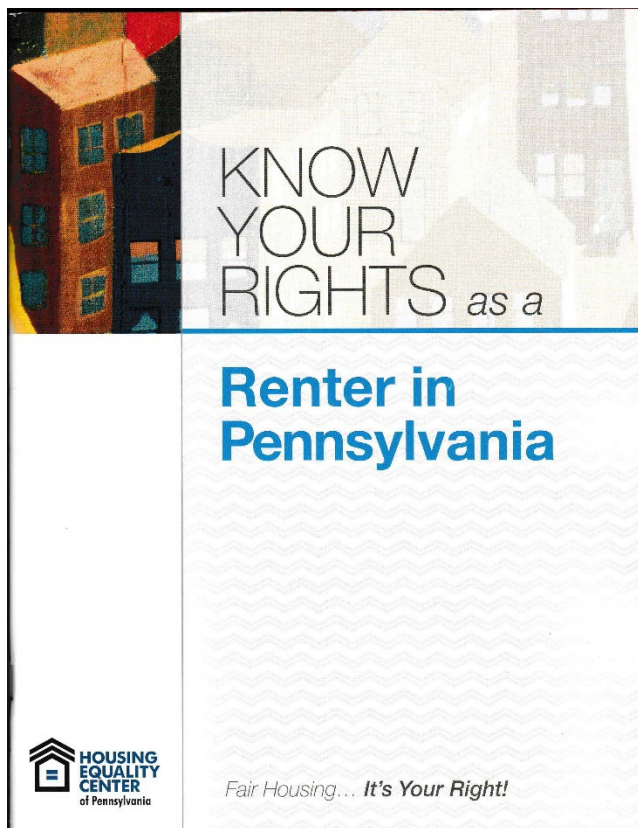


For more information on a variety of legal issues including Landlord Tenant Law, Children and Families, Employment, Health Law, Housing and Shelter, Public Benefits, Disability, Elder Law, Immigration Issues, Migrant Issues, and Veterans and Military, visit the website:

www.PALawHELP.org



Know Your Rights as a Renter in Pennsylvania



ENGLISH:

<https://www.equalhousing.org/wp-content/uploads/2018/11/11.18-digital-copy-of-Know-Your-Rights-as-a-Renter-in-PA-3.pdf>

SPANISH:

[Conozca-sus-Derechos-Como-Inquilino-en-Pennsilvania Spanish 2023 DIGITAL.pdf \(equalhousing.org\)](#)

Renters.equalhousing.org



- ✓ Learn about fair housing laws
- ✓ Learn about the rights of renters in PA
- ✓ Download sample letters to landlord
- ✓ Request assistance with requesting a reasonable accommodation or modification
- ✓ Report discrimination online

Landlords.equalhousing.org

Know Your Responsibilities as a Landlord or Property Manager in Pennsylvania

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It is our hope that this site will help to guide you through a successful experience as a landlord by providing general information and self-help resources regarding state and federal fair housing laws and Pennsylvania Landlord Tenant Law as it pertains to the rental of private residential property.

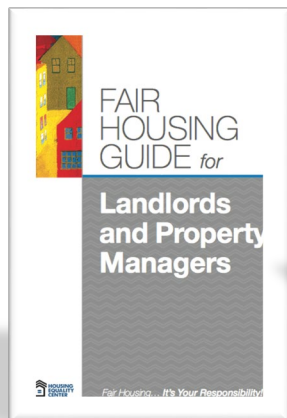
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- ✓ Report discrimination online





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