



Fair Housing Beyond the Basics

Framework Strategies

April 21, 2026



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Agenda

Section 1

Fair Housing Overview

- Fair Housing Act
- Disability Issues
 - Reasonable Accommodations
 - Assistance Animals,
 - Direct Threat
- HUD Guidance Harassment
- Common Mistakes and Best Practices
- Program Policies

Section 2

Using Fair Housing to Assist Clients in Navigating a Successful Rental Experience

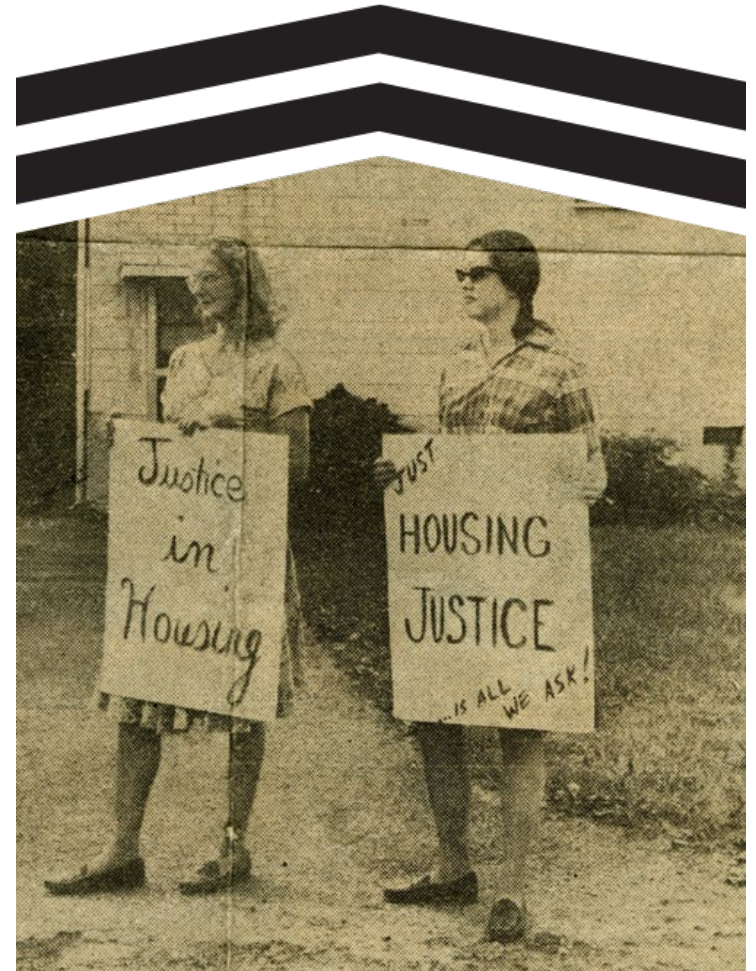
- Overcoming Obstacles to Housing
- Lease Terms
- Preventing Eviction
- Resources



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

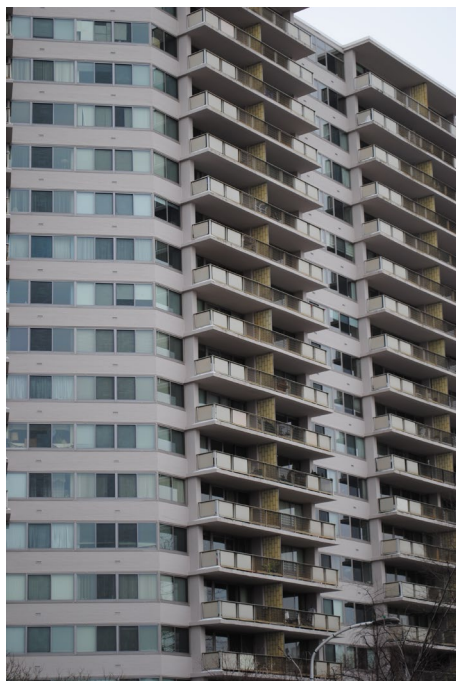
Familial Status*

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



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 – race, color, religious creed, ancestry, **age (40 and over)**, sex*, national origin, familial status (in housing), disability, and the **use, handling, or training of support or guide animals for disability**.
- Local ordinances may prohibit discrimination based on marital status, veteran status, source of income, and/or other additional protected classes – 75+ 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*



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

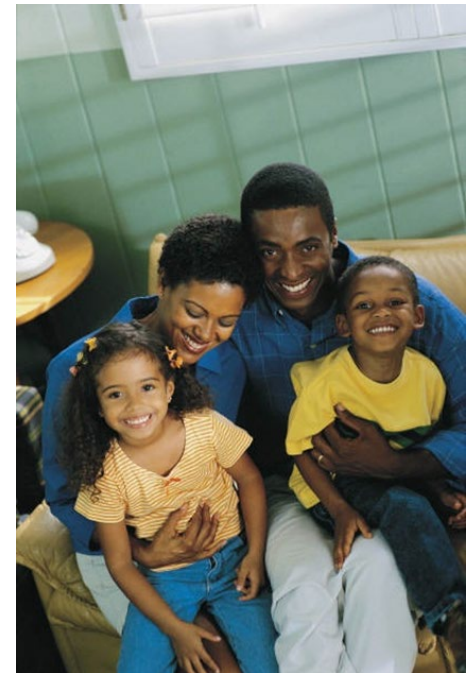
- Discrimination based on sex is prohibited by the Fair Housing Act. *
- Providers and housing programs may not segregate residents by gender, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.
- Rules that prohibit boys and girls from sharing a sleeping 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 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.

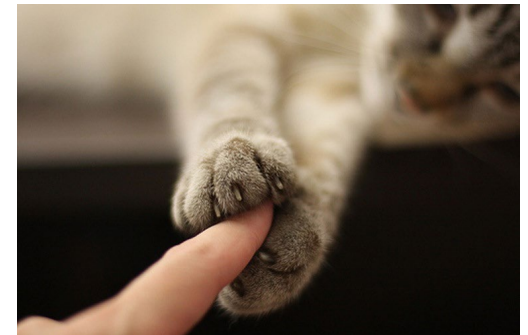
ASSISTANCE ANIMALS do **NOT** need to be trained or certified.

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 at all times
- 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



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

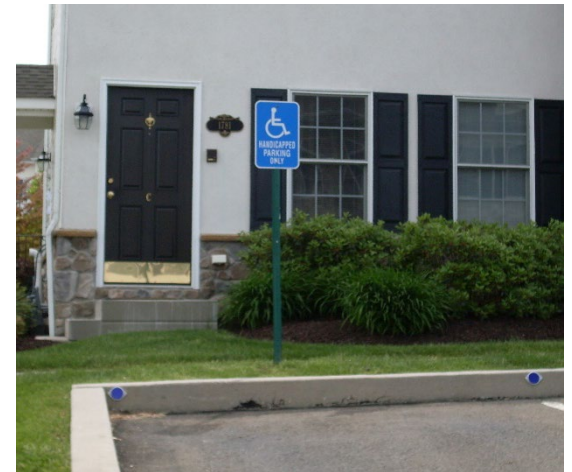


Accessibility Requirements for New Construction

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



Criminal Records



Criminal Records

- 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 may 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

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

Title VI of the Civil Rights Act requires no discrimination based on national origin which courts and agencies have long interpreted to include language access.

HUD funding obligations require “meaningful access” for people with Limited English Proficiency. Recipients must take reasonable steps to ensure meaningful access to LEP persons

Lack of English proficiency is often used as a proxy for national origin discrimination.



Best Practices



Best Practices

- Does your agency have an anti-discrimination policy?
- 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.

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.



Essential Program Policies

- **Fair Housing / Nondiscrimination Policy**
 - Includes all federal + state protected classes
 - Applies to staff, volunteers, and contractors
- **Reasonable Accommodation & Modification Policy**
 - Clear process for requesting, reviewing, and responding
 - Includes interactive process steps
- **Assistance Animal Policy**
 - Difference between pets vs. Assistance Animals vs. Service Dogs
 - Verification process + resident responsibilities



Essential Program Policies

- **Admissions & Screening Policy**
 - Written criteria (credit, criminal history, income, etc.)
 - No blanket bans
 - Individualized assessment required
- **Program Rules / Community Rules**
 - Written, standardized, and applied consistently
 - Do not target protected classes (ex. Curfew applying only to families with children).
 - Exceptions to rules as a reasonable accommodation must be documented
 - Drug and Alcohol Policy



Essential Program Policies

- **Termination / Eviction Policy**
 - Based on conduct, not status
 - Includes direct threat assessment
 - Includes reasonable accommodation review before termination
 - Based on documented violation of program or community rules
- **Direct Threat Assessment Procedure**
 - Requires objective evidence
 - Considers severity, likelihood, and mitigation
- **Grievance / Appeal Process**
 - Allows residents to challenge decisions
 - Clear timeline and process



Essential Program Policies

- **Confidentiality Policy**
 - Protects disability and medical information
 - Limits access to sensitive records
- **Recordkeeping & Documentation Policy**
 - Tracks decisions, accommodations, and enforcement
 - Retains records (recommended minimum: 2 years)
- **Disability Verification Guidelines**
 - What can and cannot be requested
 - No medical records or diagnosis required
- **Interactive Process Procedure**
 - Step-by-step internal workflow for staff
- **Accessibility & Communication Policy**
 - LEP (Limited English Proficiency) access
 - Auxiliary aids (interpreters, materials, etc.)



Essential Program Policies

- **VAWA Policy (Domestic Violence Protections)**
 - Emergency transfer plan
 - Protections from denial/termination
- **Equal Access Policy (Gender Identity & Sexual Orientation)**
 - Placement consistent with gender identity
 - Inclusive intake practices
- **Occupancy Standards Policy**
 - Based on health/safety codes (not stereotypes)
- **Staff Fair Housing Training Plan**
 - Initial + ongoing training
 - Documentation of attendance
- **Monitoring & Compliance Review Process**
 - Internal audits of policies and decisions
 - Correction of inconsistent practices



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

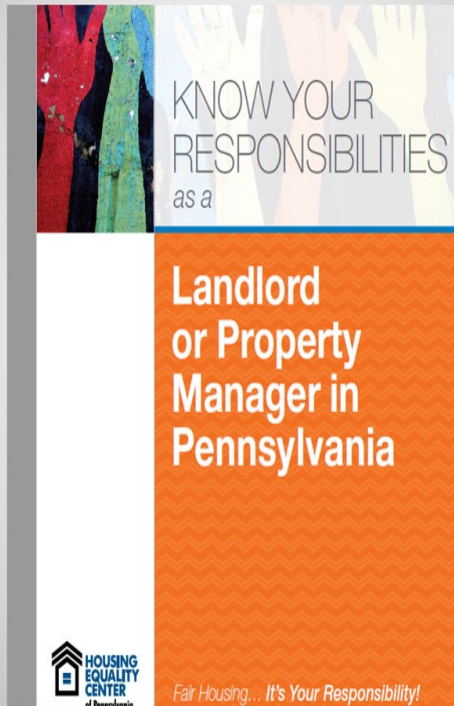
To file a complaint with the **U.S. Department of Housing and Urban Development**, call HUD's Housing Discrimination Hotline at 1-800-669-9777 or visit www.hud.gov. Complaint must be filed within **one year** from the date of the incident.

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

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Advancing Fair And Equal Access To Housing Opportunities

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I'm interested in...

- ✓ 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 training or print materials
- ✓ Report discrimination online

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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](#)



Assisting Clients to Navigate a Successful Rental Experience

The rights and responsibilities of both landlords and tenants are regulated by Fair Housing laws and Pennsylvania Landlord Tenant law.

Knowledge of these sets of rules and how they interact throughout a client's housing search and tenancy is essential to helping a client succeed as a renter.



Strategies for

- Overcoming Obstacles to Housing
- Lease Terms
- Effectively Addressing Common L-T Issues
- Preventing Eviction
- Resources



Applying to Rent



The Application to Rent

Consider:

The application fee may be non-refundable!!

Tenant may have to pay first month's rent, plus a security deposit with the application.

Strategy: Ask if deposits are non-refundable.

Be sure to get a receipt for all monies paid!

Make sure the application is read carefully so that the prospective tenant is aware of the possible consequences should they decide not to take the rental unit.

Ask to read the lease before the rental application is signed since the tenant may be bound to the lease as it is without the possibility of negotiating of its terms.



The Application to Rent

Reasons a prospective tenant **can** be rejected:

- They do not meet the financial qualification standards.
- Poor credit score.
- Bad landlord references.
- Prior judgments entered by a Court.
- Refusal or inability to comply with the rules that apply to all tenants.
- Landlord has credible information that a tenancy would pose a direct physical threat to the health or safety of others.



Overcoming Obstacles to Housing



Overcoming Obstacles to Housing: Criminal Background

Can a landlord refuse to rent to someone with a criminal background?

Yes—but it depends on the circumstances. The U.S. Department of Housing and Urban Development (HUD) has issued guidance stating that because of the racial disparities in the criminal justice system, blanket bans (or refusing to rent to anyone with any type of criminal history, regardless of circumstances) would most likely have a greater impact on Black or Latino applicants, and as such, could violate the Fair Housing Act.

HUD's guidance states that housing providers need to consider the **nature** and **severity** of a crime and the **amount of time** that has passed to determine if the person would pose a direct threat to the health and safety of other residents.



Overcoming Obstacles to Housing: Criminal Background

The guidance issued by HUD states that a mere arrest does not indicate guilt and a person should not be denied housing based on an arrest without a conviction. Furthermore, housing providers must apply criteria equally to **all** applicants and tenants, regardless of protected class. Using criminal background as a pretext for discrimination based on a protected class is illegal. **Contact the Housing Equality Center if you believe a client is being denied housing for a discriminatory reason.**

There is an exception to the HUD guidance on criminal backgrounds. If a person possesses a conviction for the manufacture and/or distribution of illegal controlled substances, they can legally be denied housing and the landlord is not in violation of the Fair Housing Act. **Note:** this exception does not include either arrests for drug charges that do not lead to conviction or convictions for possession only.



Overcoming Obstacles to Housing: Criminal Background

Strategy:

- If an individual has a criminal record due to conduct that resulted directly from a mental health disability or addiction and can demonstrate that they have received treatment or medication that has eliminated the behavior that lead to the criminal conduct, the individual can request a reasonable accommodation to make an exception to the provider's ordinary criteria regarding criminal background.
- A case manager can offer to be the contact person for landlord if there is any problem or issue with tenancy.
- References from previous landlords, employers, probation officers, etc. can be helpful. Show rehabilitation efforts, explain mitigating circumstances or how circumstances have changed from when the criminal behavior occurred.



Overcoming Obstacles to Housing: Criminal Background

Strategy:

- Remind housing providers that they need to consider the **nature** and **severity** of a crime and the **amount of time** that has passed to determine if the person would pose a direct threat to the health and safety of other residents.
- If you have doubts about whether criminal background policies are being enforced equally regardless of protected class, contact the Housing Equality Center for investigative services.
- **Report housing providers who have blanket bans on criminal records to the Housing Equality Center.**



Overcoming Obstacles to Housing: Negative Credit

Example:

Person becomes disabled and no longer able to work, then acquires a negative credit record due to late or unpaid bills. The person is granted SSDI and no longer dependent on employment for income. Loss of income due to inability to work is unlikely to reoccur.

Strategy:

- If negative credit can be shown to be directly due to a person's disability, and the person is otherwise financially qualified to rent, a reasonable accommodation can be requested to waive the credit requirement.
- A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
- Consider a co-signor if necessary.



Overcoming Obstacles to Housing: No Previous Rental History

Example:

Person lacks rental history due to a disability and previous long term hospitalization. The person's health is stabilized and they are attempting to move into independent living.

Strategy:

- A reasonable accommodation can be requested to ask the housing provider to consider references from a social worker or employer in lieu of landlord references.
- Get support letters from counselors, employers, or therapists.
- A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.



Overcoming Obstacles to Housing: Negative Landlord References

Example:

Person with mental health disability stopped taking medications and became disruptive at a previous apartment. Supports are now in place, medication is being monitored, and the person is participating in behavioral therapy.

Strategy:

- If the reason for a negative reference is based on disability related behavior, the individual can request a reasonable accommodation to disregard the negative references or to at least consider mitigating circumstances.
- A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
- Get support letters from counselors, employers, or therapists.



Overcoming Obstacles to Housing: No Co-signors Allowed

Example:

An individual with a disability is unable to qualify financially for housing because of their disability (poor credit record, no credit record, insufficient income), and a co-signor is willing to sign the lease but there is a no co-signors policy.

Strategy:

- Tenant can request a reasonable accommodation for the landlord to accept the application even if the landlord has a “no co-signor” policy.

Remember: Must show a nexus between the disability and the need for the accommodation.



Overcoming Obstacles to Housing: Refusal to Accept Section 8 Housing Choice Vouchers

In Pennsylvania, source of income is not a protected class, meaning that a landlord can refuse to rent to individuals who hold a Housing Choice Voucher from the Housing Authority, however....

Several municipalities within Pennsylvania, such as the City of Philadelphia, have added source of income as a protected class.

Strategy: Contact your local government or municipality to find out if source of income is a protected class in your area and what recourse your community offers if someone has been denied housing based on their source of income.

Tenant may be able to request a reasonable accommodation to the policy of not accepting housing vouchers due to a disability. Keep in mind that the landlord may argue that it is an undue administrative burden.

Testing can be performed to see if this policy is being equally enforced with all people without regard to protected class. Contact the Housing Equality Center if you suspect discrimination is occurring.



Overcoming Obstacles to Housing: Lack of Employment

Refusing to approve an application because a prospective tenant is not employed could be unlawful discrimination if the prospective tenant has other verifiable income such as social security, disability, or child support that would financially qualify them to rent. These are verifiable sources of income which are directly related to being a member of a protected class (age over 40, disability, and/or familial status).

Strategy:

Housing providers who require paystubs as proof of income must make reasonable accommodations to their policy for individuals with disabilities who are unable to work due to their disabilities but still have sufficient income to rent. Request a reasonable accommodation to the employment income policy and show alternative verifiable income.



Overcoming Obstacles to Housing: In-Person Application Requirement

Example:

A nursing home resident transitioning to private housing might require ambulance transport and not be able to apply in person.

Strategy:

A requirement for a housing application to be made in person should be waived for individuals with disabilities to whom it would impose a great hardship or who are unable because of their disability to come in person to apply.

Request a reasonable accommodation to the in-person application requirement. Ask for video or phone conferencing. Signatures required on documents can be mailed or scanned and forwarded to the housing provider.



Overcoming Obstacles to Housing: Assistance with Application

Strategy:

- If a person has a disability which makes it difficult to fill out an application form, a reasonable accommodation request would be to ask for assistance from the housing provider in completing the form.
- A case manager can also assist in completing required forms.
- If a disability makes reading an application or lease difficult, a reasonable accommodation request would be to ask for the documents in large print or in an alternative format.



Lease Terms



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**.

Strategy:

- Make sure the lease terms are understood **before signing!**
- All blanks should be crossed out or filled in before a lease is signed.
- Make sure the lease does not contain any unenforceable terms or Fair Housing Act violations.
- Make sure tenant gets a copy of the **entire lease**. A tenant should not accept the landlord saying they will give them a copy later. Tenant can take photos of the signed lease with a smartphone.
- Case manager should keep copy of tenant's lease on file.



Lease Terms

Strategy:

Make sure the lease includes:

- Contact information for the landlord – name, address, and phone for emergencies
- Amount of Rent and the due date. Are there late fees?
- Start and end date of the lease. Month to month or year lease?
- Does it automatically renew for another year or on a month to month basis?
- What is included with the rent – who pays for which utilities?
- Security Deposit – what is required to get it back when tenant moves out
- Maintenance – what are the responsibilities?
- Who to contact when repairs are needed?



Lease Terms

Strategy:

Make sure the lease includes:

- Notice – amount of time tenant gives to cancel or not renew the lease
Is there an early termination clause?
- Notice – amount of time landlord must give to cancel or not renew the lease
- Right to enter the apartment without prior notice?
- Are pets allowed?
- Who are the occupants permitted on the lease?
- Is tenant allowed to sublet?

Remember: The lease should be read carefully before signing it!

Get everything in writing!



Lease Terms: Rental Due Date

Most leases state that rent is due on the first of the month. The tenant has an obligation to make sure that the rent is paid by the due date specified in the lease. Even if the landlord says it is okay if the rent is a few days late, the tenant is still bound by the terms of the lease regarding late fees and other penalties.

Strategy:

- A tenant who receives SSDI may request a reasonable accommodation to be exempt from the late fee when the date they receive their SSDI payments make paying rent on time difficult or impossible. Receiving SSDI should be sufficient proof that a person has a disability. If they can show that they don't receive their payments until after the due date or grace period, that is sufficient proof that there is a disability related need for the accommodation.
- Individuals who requested later rental payment due dates and were previously denied, may be able to claim reimbursement for late fees paid if they can show proof that the request was previously made and denied.



Lease Terms: Rental Due Date

Example:

An individual has a cognitive disability or poor memory, which makes it difficult for them to remember when the rent is due.

Strategy:

The tenant can make a request accommodation request that that the housing provider call or provide a reminder note monthly to remind them to make a rental payment before the rental due date.



Lease Terms

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.

Strategy:

Read the lease to make sure the landlord has complied with the requirements of the lease. If landlord has not complied with the terms of the lease, it can be challenged.



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 himself/herself in a court of law.
- The tenant cannot be made to agree that if he/she 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 or her rights to a hearing or confession of judgment.



Before Moving In



Document Damages Before Move-In

Damages which exist before a tenant moves in should not be charged to the tenant when they vacate the unit. It is the tenant's right to have the condition of the dwelling in writing.

Strategy:

Tenants should take notes (with the landlord or property manager present) of any defects before moving in.

Photos should be taken to document the condition of the apartment and any existing damages

If the rental unit is in need of repairs, establish in writing a date and time for the repairs to be completed.

If the repairs are numerous and substantial do not accept the apartment.



Lead Based Paint

The landlord is required to provide tenants with information about lead based paint in any property they are renting. However, a landlord also **may not** discriminate against families with children, even if conditions exist which they believe may pose particular harm to children.

An owner or landlord who fails to give proper information regarding the presence of lead based paint can be sued for triple the amount of damages. The owner may also be subject to civil and criminal penalties.

Strategy:

Contact the local municipality or city to see if there are specific requirements regarding lead paint disclosure and remediation. If a tenant incurs damages due to lead paint and they were not properly notified about the presence of lead paint, they have the right to sue the landlord for damages.

If a landlord says they will not rent to families with children due to lead based paint or other hazards, contact the Housing Equality Center.



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's Bureau of Consumer Protection

717-787-9707 or 800-441-2555 (Toll-Free Helpline)

<https://www.attorneygeneral.gov/>

Consult an attorney regarding unfair trade practices.



Overcoming Obstacles: Lease Terms



Overcoming Obstacles: Lease Terms

When a tenant cannot comply with lease terms or needs a change in the lease terms and the reason is due to a disability, the tenant can request a **reasonable accommodation** to give them equal opportunity to use and enjoy a dwelling and to prevent a lease violation:

Examples:

- Reserved parking
- Include case manager on all correspondence from landlord
- Transfer to a more accessible unit
- Early termination of lease
- Permitting a home health aide or live-in personal care attendant
- Advance notice before spraying or painting
- Avoiding secondhand smoke
- Assistance animals or emotional support animals
- Installing extra locks
- Notice before entering apartment



Fair Housing Guide to Reasonable Accommodations and Modifications

The Housing Equality Center offers a comprehensive guide to reasonable accommodations and modifications for consumers with disabilities.

www.equalhousing.org/wp-content/uploads/2020/02/Fair-Housing-Guide-to-Reasonable-Accommodations-and-Modifications.pdf





Avoiding Eviction



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 the tenant gets receipts and saves 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 tenant gets a receipt of the payment.
- Make sure tenant understands that paying utilities on time is essential.



Avoiding Eviction

- Tenant must keep the premises clean.
- Tenant must allow the landlord, landlord's representatives, or local government inspector reasonable access for inspection and repairs.
- Tenant must not allow persons who are not on the lease to live in the rental unit.
- Tenant must not engage or allow anyone to engage in criminal activity, including illegal drugs or allowing underage drinking on the premises. Any of these items could result in eviction.
- If the tenant changes the locks, they should make sure to get permission from the landlord first and then give them copies of the keys. The landlord is legally allowed to have a full set of keys for any locks the tenant installs.

Strategy: Review these basic rules of tenancy with your clients to be sure they understand the rules and possible consequences of violating the lease.



Harassment

If a tenant or a tenant's guests harasses or threatens to harm others in the building or neighborhood, the landlord may have a responsibility under fair housing laws or municipal ordinances to evict the tenant in order to protect the safety of the neighbors and/or other tenants.

Strategy:

- Make sure your clients understand that they can be held responsible for their guest's behavior.
- If a tenant is experiencing problems with other tenants, the problem should be reported to the landlord. Under the Fair Housing Act, if a tenant harasses another tenant based on their race, national origin, disability, or other protected class, a landlord is required by law to address the issue and prevent the harassment from continuing.



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 the tenant wants to have someone move in or stay for an extended period of time, they 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.



Covenant of Quiet Enjoyment



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.



Tenant's Right to Privacy

Example:

A landlord entering the apartment is exacerbating a client's disability, such as tenant with PTSD who experiences extreme stress when maintenance enters the apartment for service calls or inspections.

Strategy:

- Tenant can request a reasonable accommodation if landlord is entering without notice or with little notice and it is exacerbating a person's disability or disability related symptoms
- A reasonable accommodation would be to request 24 hour advance notice in a non-emergency, providing the tenant with a window of time to expect the visit.
- Tenant can also request that maintenance personnel do not simply knock and enter but that they knock and wait several minutes for the tenant to open the door.



Implied Warranty of Habitability



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 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 him or her 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 he/she has 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, the tenant 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.

Tenant should 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.

Strategy: 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:

Tenant will need to show that they gave ample time/opportunity to correct the problem so they can demonstrate that the landlord failed to correct the problem and tenant 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 tenant. Be prepared.



Security Deposit



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. Given 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



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.



Utility Shut-Offs



Utility Shut-Offs

If a tenant receives notice that their utilities will be shut off, they will need to act quickly. It is more difficult to get service turned back on after shut off. No matter who is responsible to pay for the utilities, a utility company cannot cut off service without the following:

- A 10-day written notice before shut-off.
- An attempt to contact an adult in the household personally at least 3 days before the shut-off.
- An attempt to contact an adult in the household at the time of the shut-off.

Prior notice must be given before the utility company shuts off utilities. If the utility company turned off service without prior notice, it has broken the law.

Public Utility Commission Consumer Hotline 800-692-7380

PA Utility Law Project 844-645-2500



Utility Shut-Offs

Strategy:

If the tenant is a **victim of domestic violence** and has a valid **Protection from Abuse Order (PFA)**, there are special procedures and protections for handling the utility service. Call the utility company to inform them of the PFA so these special procedures and protections can be put in place for the tenant. Tenant may be required to provide a copy of the PFA to the utility company.

If the tenant lives in a **low income household**, there may be special arrangements to help – a number of programs exist that help low income customers.



PA Utility Law Project of Regional Housing Legal Services

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

Make sure to include the following in your voicemail or email message:

- (1) Your first and last name.
- (2) Your telephone number.
- (3) The best time to reach you.
- (4) A brief description of what utility problem you are having, including whether your service is currently on or shut off.



Eviction



Preventing Eviction

Some reasons eviction can occur:

- Failure to pay rent
- Continual late payment of rent
- Violating lease terms – pets, unauthorized residents, not paying utility bills, disturbing neighbors
- Engaging in criminal activity
- Failure to maintain the unit in a sanitary condition
- Failing to dispose of trash as required
- Failing to move out at the end of the lease term



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.



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 it's 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.



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!



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, judgment 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 Judgment 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 judgment or 3 months rent (whichever is less, unless tenant can establish that he/she is indigent 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.



Preventing Eviction

**Reasonable accommodations
may be requested at any time,
including during
the eviction process!**



Preventing Eviction: Poor Housekeeping or Hoarding

A compulsive hoarder meets the definition of a person with a disability under the Fair Housing Act and has a right to request a reasonable accommodation in an effort to preserve housing.

Strategy:

- A reasonable accommodation can be requested to ask for more time to clean up the rental unit and to delay the eviction process to allow time to clean up and dispose of excess clutter.
- The tenant can request an extension within reasonable limits to bring the unit into a safe, satisfactory condition.
- Services may need to be put into place to assist the client who is a hoarder.



Preventing Eviction: Damages to the Rental Unit

Strategy:

- If a person's disability caused them to damage an apartment unit violating the lease, a reasonable accommodation can be requested asking the housing provider to postpone eviction proceedings while the tenant undergoes treatment and counseling.
- As with any reasonable accommodation request, each case is decided on a case by case basis and would have to take into account:
 - the extent of the damages caused,
 - if any other tenants were disrupted by the behavior, and
 - if steps will be taken to repair any damages caused by the tenant



Preventing Eviction: Tenant Conduct

Example: A tenant with a psychiatric disability stops taking their medication and threatens another resident. Management has a policy of evicting residents who engage in violent or disruptive behavior.

Strategy:

- The tenant can request a reasonable accommodation to this policy if the tenant is able to show that treatment and medication monitoring will eliminate the direct threat.
- If the tenant is not willing to undergo medication monitoring and treatment or continues to pose a direct threat to the health and safety of other residents, then management can proceed with an eviction.



Preventing Eviction: Tenant Conduct

Strategy:

- If a non-renewal of lease, notice to quit, or eviction is issued because of a tenant's behavior, which was directly related to a disability, the tenant can request a reasonable accommodation to rescind a notice to quit or eviction notice or to reconsider a decision to not renew a lease and to consider mitigating circumstances.
- It is helpful if a case manager or other support services professional can write a letter explaining mitigating circumstances as well as steps that will be taken to ensure that the behavior does not recur (medication, therapy, counseling, supervision, etc.).
- A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.



Preventing Eviction: Noise Violations

Example: At times a person's disability may cause noise violations. An example would be the presence of a child with autism who occasionally screams or makes loud noises. This can lead to complaints from neighbors about noise or even an eviction notice.

Strategy:

- Attempts should be made to mitigate any noise which is disruptive.
- If an eviction notice has been issued, a reasonable accommodation request can be made asking for a second chance to mitigate any noise disturbances.
- Sound proofing could be installed by the tenant (a reasonable modification request), behavioral therapy can be commenced or increased, and any number of intervening tactics could be employed to help mitigate any ongoing noise disruptions.
- If the noise disturbances continue unabated, the accommodation may no longer be reasonable.



Resources



Legal Aid

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

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

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

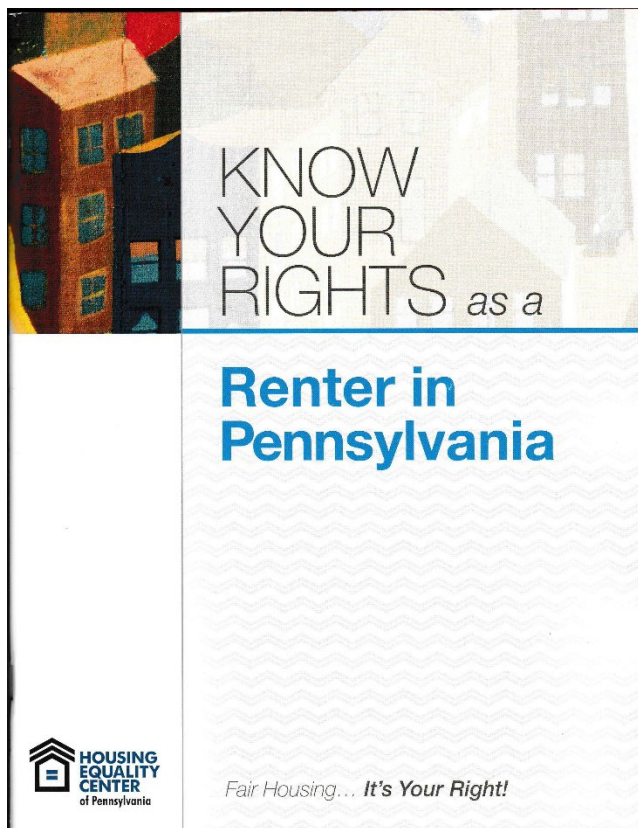


For more information on a variety of legal issues including Landlord Tenant Law, Children and Families, Employment, Health Law, Housing and Shelter, Public Benefits, Disability, Elder Law, Immigration Issues, Migrant Issues, and Veterans and Military, visit the website:

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
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- ✓ Report discrimination online

Landlords.equalhousing.org

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Fair Housing Questions?
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