

Delaware Valley Fair Housing News

Newsletter of the Fair Housing Council of Suburban Philadelphia
Serving Bucks, Chester, Delaware, and Montgomery Counties

January 2005

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What is Fair Housing?

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968)

§ 3601. Declaration of policy: It is the policy of the United States to provide, within constitutional limitations, for Fair Housing throughout the United States.

Title VIII of the Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. The Fair housing Act makes it illegal to discriminate in the sale, rental, financing, or insurance of a dwelling, or in any other type of housing related transaction on the basis of race, sex, religion, national origin, color, disability, or familial status (the presence of children under the age of 18 in the household). In addition, certain multifamily dwellings, constructed after 1991, are required to be accessible to persons with disabilities.

Exemptions to the Act

Rental of units where the building contains four or fewer units and the owner resides on the property or single family homes where the owner owns or benefits from three or fewer single family dwellings are exempt from the Fair Housing Act. These exemptions only apply when the services of real estate brokers or rental agents are not used, and the housing is not advertised in a discriminatory way (including verbal discriminatory statements).

Housing for older persons is exempt from the familial status provisions of the Fair Housing Act. To qualify for this exemption, either 100% of the units must be occupied by persons 62 years of age or older or 80% of the units must be occupied by at least one person 55 years of age or older.

Religious organizations that own and rent dwellings for non-commercial purposes to persons of the same religion are exempt, provided that membership in that religion is not restricted by race, color, or national origin.

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

- ◆ Refuse to rent or sell housing
- ◆ Refuse to negotiate for housing

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- ◆ Make housing unavailable or deny that housing is available
- ◆ Set different terms, conditions, or privileges for the sale or rental of housing
- ◆ Refuse to allow reasonable accommodations or modifications for people with disabilities
- ◆ Advertise in a discriminatory way
- ◆ Deny or make different terms or conditions for a mortgage, home loan, home insurance, or other real estate related transaction
- ◆ Threaten, coerce, or intimidate anyone exercising a fair housing right or assisting others in exercising those rights
- ◆ Construct new multifamily housing in an inaccessible manner
- ◆ Create zoning ordinances that attempt to prevent the construction of housing that will serve minorities, families with children, or people with disabilities or that place restrictions on the location of group homes

Permissible Activities Under the Fair Housing Act

Landlords, real estate professionals, and other housing providers may inquire about prospective home seekers' income, perform a credit check and evaluate their credit worthiness, contact their previous and current landlords for references, and check if they have a criminal background. These standards are perfectly legal—as long as they are applied to every applicant for housing.

The Fair Housing Council of Suburban Philadelphia

Founded in 1956, the Fair Housing Council of Suburban Philadelphia (FHCSP) is the oldest fair housing council in the nation and serves Bucks, Chester, Delaware and Montgomery Counties in Pennsylvania. FHCSP has been serving Delaware County since 1956, and Bucks, Chester, and Montgomery Counties since 1989. HUD has designated the FHCSP as a Qualified Fair Housing Organization. FHCSP is the only Qualified Fair Housing Enforcement Organization, as designated by HUD, that serves all four suburban Philadelphia Counties.

HUD provides FHCSP, through the Fair Housing Initiatives Program (FHIP), with funding for testing and investigations in the rental, sale, financing and insuring of housing. This testing helps persons who believe that they were victims of housing discrimination to determine if their suspicion is valid or not. In addition, FHCSP is able to investigate allegations by communities who suspect that their homes have been “redlined” by members of the financial and insurance industry. Funding through the FHIP program also helps support litigation to empower individuals to confront and eradicate housing discrimination and to ensure that communities have equal access to homeowners insurance and mortgage products.

In addition, FHCSP provides educational seminars and publications to consumers, housing providers, housing counselors, social service agencies, and other housing industry affiliates. A current HUD grant has allowed FHCSP to expand the distribution of its newsletter to include organizations throughout the entire Delaware Valley. The *Delaware Valley Fair Housing News* will be published twice yearly and distributed to government staff, apartment managers, local elected officials, homebuilders, zoning boards, planning commissions, housing counselors, and social service agencies.

HUD and DOJ Issue Joint Statement Clarifying Reasonable Accommodations Under the Fair Housing Act

The portion of the Fair Housing Act that protects persons with disabilities often causes the most confusion for both consumers and housing providers. The Fair Housing Council of Suburban Philadelphia receives numerous phone calls from disabled home seekers wanting to know about their rights and from housing providers unsure about their responsibilities under the law. While most people understand the basics of the Fair Housing Act, such as the fact that housing providers cannot deny housing to members of protected classes, the issue of reasonable accommodations for people with disabilities is much more complicated. Due to confusion surrounding this issue, the Department of Housing and Urban Development and the Department of Justice have issued a joint statement clarifying reasonable accommodations under the Fair Housing Act.

The joint statement clarifies housing providers' responsibilities under the Fair Housing Act as it relates to people with disabilities, provides examples of situations that housing providers may face in dealing with disabled consumers, and answers the following questions:

- What types of discrimination against persons with disabilities does the Act prohibit?
- Who must comply with the Fair Housing Act's reasonable accommodation requirements?
- Who qualifies as a person with a disability under the Act?
- Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?
- How can a housing provider determine if an individual poses a direct threat?
- What is a "reasonable accommodation" for purposes of the Act?
- Are there any instances when a housing provider can deny a request for a reasonable accommodation without violating the Act?
- What is a "fundamental alteration"?
- What happens if providing a reasonable accommodation involves some costs on the part of the housing provider?
- What happens if no agreement can be reached through interactive process?
- May a housing provider charge an extra fee or require an extra deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?
- When and how should an individual request and accommodation?
- Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?
- Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

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Fair Housing Educational Materials Available

The Fair Housing Council of Suburban Philadelphia has a full array of educational materials available free of charge to Delaware County residents and organizations. In addition, we are available to do seminars or workshops on any of these topics for your staff and clients. If you are interested in receiving any of these materials or arranging to have us come and speak to your group, contact the Council at (610) 604-4411. Materials are also available online at www.fhcsp.com.

Fair Housing: It's Your Right!

This is a general guide that would be helpful for anyone in the housing market. Much discrimination today is subtle and happens "with a smile and a handshake." This guide describes many of the subtle ways discrimination can occur in rental housing, real estate sales, mortgage loans, rental and homeowners insurance, home appraisals and advertising.

Non-Discriminatory Rental Practices: A Fair Housing Guide for Apartment Management

This guide was developed to assist housing providers and landlords in understanding their responsibilities under the Fair Housing Act. In addition to a general description of fair housing laws, the guide also discusses various technical fair housing issues, including: disability issues, occupancy issues and standards, per capita charges and fees, lead-based paint hazards and other "unsafe" living conditions, and advertising guidelines. The guide also describes recommendations for developing standard procedures to avoid discriminatory practices in the rental business.

A Fair Housing Guide to Homeowners Insurance

This guide gives helpful hints on how to compare insurance companies. It also gives descriptions about the different types of policies and what these policies cover, which will help individuals determine what type of policy is best for their family and what things are not covered under a given type of policy. In addition to the helpful insurance information found in this guide, there are also examples of discrimination encountered by the testers in the Chester insurance study. The inclusion of these anecdotes should help individuals get a better understanding of the subtle ways that discrimination can occur in the homeowners insurance industry and therefore be able to recognize it should it happen to them.

Need a Loan? Would you like some extra money? Don't Lose Your Home!

This is the Council's guide about sub-prime and predatory lending. Consumers in black or low-income neighborhoods are much more likely to receive high-cost home loans than consumers in predominantly white or moderate-income neighborhoods. Predatory lending is a term that represents the unconscionable actions of lenders typically operating within the sub-prime market. This guide is designed to help consumers understand the difference between a prime and a sub-prime loan and to recognize potential predatory behaviors of individuals and companies offering them a loan. The guide also gives suggestions that may help the homeowner avoid getting trapped into a predatory loan.

A Fair Housing Guide for Persons With Disabilities

This guide is designed specifically to assist persons with disabilities understand their rights under the law. This guide describes how the Fair Housing Act defines a disability and the differences between the Fair Housing Act and the Americans with Disabilities Act (ADA). It also describes the terms "reasonable accommodation" and "reasonable modification." Included in the guide is a sample letter that persons can use as a guide to request accommodations and modifications.

Fair Lending: A Fair Lending Compliance Program for Mortgage Lenders

This guide was developed to assist mortgage lenders with basic information about their requirements and potential liability under the Fair Housing Act. It also gives an idea about how FHCSP can help lenders minimize the risk of having a complaint filed against them.

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- What if a housing provider fails to act promptly on a reasonable accommodation request?
- What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?
- What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?
- ♦ If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

The complete text of this statement may be obtained at:

http://www.usdoj.gov/crt/housing/jointstatement_ra.htm

Quakertown Mobile Home Park Pays \$32,500 to Settle Housing Discrimination Complaint

The Fair Housing Council of Suburban Philadelphia (FHCSF) and Frank and Laura Mercon settled an administrative complaint with the United States Department of Housing and Urban Development's Office of Housing and Equal Opportunity, naming Rennels Property Management in violation of the Fair Housing Act.

Marlin Court, a mobile home park at 2361 Old Bethlehem Pike, Quakertown, PA, owned by Rennels Property Management and operated by Cyril Rennels asserted an openly restrictive policy against prospective mobile homebuyers with children from purchasing homes in Marlin Court Mobile Home Park.

Frank and Laura Mercon had an agreement of sale on their mobile home in Marlin Court in April of 2003. Rennels Property Management informed the Mercons that the Park was an adult-only community. As a result of the new policy, the Mercons lost the sale of their mobile home as well as the home they had contracted to buy with the proceeds.

Housing discrimination based on familial status is illegal and protected by the Fair Housing Act. The act provides, "equal opportunity to all persons without regard to race, color, religion, national origin, disability, gender, and familial status."

FHCSF conducted tests that confirmed the Mercon's experience that Rennels Property Management had a policy that no children were permitted to live in the Park. Cyril Rennels denied a tester representing a family with children, but did not deny a family of the same size without children. "Despite the fact that the Fair Housing Act was amended over sixteen years ago to prohibit housing discrimination against children, families with children are still being treated unfairly and shut out of housing due to ignorance of the law". Executive Director, Jim Berry stated.

Rennels Property Management paid the Mercons \$22,500, FHCSF \$10,000, and agreed to change its policy to be in compliance with the law. Rennels also agreed to attend Fair Housing education programs as part of the agreement.

Ridley Mews Apartments in Prospect Park Pays \$2,000 to Settle Housing Discrimination Complaint

The Fair Housing Council of Suburban Philadelphia (FHCSF) settled an administrative complaint with the United States Department of Housing and Urban Development and the Pennsylvania Human Relations Commission naming Ridley Mews Apartments in violation of the Fair Housing Act and the Pennsylvania Human Relations Act. FHCSF determined, through testing, that Ridley Mews was discriminating against single women and families with children in the terms and conditions of rental and steering.

In November, 2001 through February, 2002, seven testers posing as prospective renters with varying size families visited Ridley Mews apartments. Single women and single women with children were directed to consider only designated areas of the complex for each type of family. Single males were not old of any preferences for men. The Pennsylvania Human Relations Commission conducted an investigation of FHCSF's complaint and on July 17, 2003 made a Finding of Probable Cause to credit the allegations.

Housing discrimination based on familial status and gender is illegal and protected by the Fair Housing Act. The Act provides, "equal opportunity to all persons without regard to race, color, religion, national origin, disability, gender, and familial status." "Despite the fact that discrimination based on sex was made illegal when the Fair Housing Act was passed in 1968 and amended in 1988 to protect housing discrimination against children, there are still far too many incidents of discrimination to say that we have eliminated the problem". Executive Director, Jim Berry stated.

Ridley Mews Apartments is located at 1628 Lincoln Avenue, Prospect Park, Delaware County, PA and was owned by REI Associates, Russell Morgan, General Partner at the time the FHCSF conducted tests there. REI no longer owns Ridley Mews and is no longer engaged in the real estate business. REI agreed to pay the FHCSF \$2,000 for costs and damages, and will fully comply with the law if and when they reenter the real estate business.

Online Resources for Information About Fair Housing

www.hud.gov—U.S. Department of Housing and Urban Development

www.usdoj.gov/crt/—U.S. Department of Justice Civil Rights Division

www.fairhousing.com—The National Fair Housing Advocate

www.nationalfairhousing.org—National Fair Housing Alliance

www.ncrc.org—The National Community Reinvestment Coalition

www.bazelon.org—The Bazelon Center for Mental Health Law

www.housingalliancepa.org—The Housing Alliance of Pennsylvania

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At the time of the application, John Giebler's only income resulted from Social Security Disability Insurance, housing assistance from the Housing Opportunities for People with AIDS, and financial assistance from his mother. When Giebler applied to Park Branham, he had an established record of consistent and prompt rent payment during six years of rental at another complex, and his credit was more than adequate. Shortly after submitting his application, Branham Park's resident manager Jan Duffus informed him that his lack of "actual income" disqualified him for tenancy at the complex.

Due to Park Branham's reaction to her son's finances, Ms. Giebler applied to rent the same apartment for her son. Ms. Giebler also met Park Branham's income requirements and had good credit. The application was denied for a second time, because Ms. Giebler was considered a cosigner and M & B had a policy forbidding co-signers on lease agreements.

Following the second denial, Giebler contacted AIDS legal Services for assistance. John Doherty, attorney for the organization, wrote a letter to Park Branham stating Giebler was disabled and entitled to a reasonable accommodation under the Fair Housing Amendments Act.

Park Branham's attorney responded to Doherty's letter denying obligation to reasonably accommodate Giebler under federal law.

In February 1998, Giebler sued Branham Park's owners and managers under the Fair housing Act, the California Fair Housing and Employment Act, common law negligence, and other California laws.

The district court determined Giebler had established a prima facie case in regards to intentional discrimination. However, summary judgment was awarded to the Defendants on Giebler's claim that reasonable accommodation was not made for his disability, and the case was subsequently dismissed.

Housing providers must be flexible in policies

Giebler appealed the case to the Ninth Circuit Court. The court held that housing providers must make reasonable accommodations in income requirements by individually assessing the risk of nonpayment rather than inflexibly applying a rental policy forbidding co-signers.

An opinion statement by Judge Marsha Berzon, a Ninth Circuit panel judge, offered the reason for the court's findings. The panel stated, "Giebler's request that he be permitted to reside in an apartment rented by his financially qualified mother is a request for an accommodation that he was entitled to receive if it was reasonable and necessary to afford him an equal opportunity to use and enjoy a dwelling."

Giebler v. M & B Associates
Case No. 00-17508 (9th Cir.)
Appeal argued: February 12, 2002
Opinion filed: September 15, 2003

This article was reprinted with permission from the March/April 2004 issue of the *National Fair Housing Advocate*. This publication detailing fair housing cases nationwide can be obtained by writing to the Kentucky Fair Housing Council, Inc. at 436 South 7th Street, #201, Louisville, KY 40203. Back issues may be viewed online at www.fairhousing.com.



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The Nation's Oldest Fair Housing Council

Ninth Circuit Court of Appeals Rules That Economic Accommodations are Required for Disabled Renters

After nearly seven years of legal wrangling, a California man with HIV/AIDS has won the right to live in an apartment complex near his mother. The Ninth Circuit Court of Appeals ruled last September that housing providers must make reasonable accommodations to income requirements if such accommodations would allow disabled persons to exercise their right to fair housing choice.

Reasonable accommodations are required if an individual's income is related to his or her disability

The Court of Appeals ruled that because John Giebler's income was directly related to his disability, and because Giebler's mother had offered to co-sign the lease for him, the Defendant housing provider should have allowed him to move in. The court found the refusal was an illegal denial of a reasonable accommodation.

A federal district court in California ruled against Giebler, but with the help of civil rights attorney, Elizabeth Brancart, his appeal to the Ninth Circuit was successful, completely reversing the lower court's decision. In May 1997, Giebler applied to rent an available one-bedroom unit at the Park Branham, owned by M & B Associates. The apartment, located closer to Anne Giebler, John's mother, would have allowed Ms. Geibler to visit her son and administer care.

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