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Nondiscriminatory Rental and Sales Practices

A Fair Housing Guide for Landlords, Real Estate Professionals and Other Housing Providers



Fair housing law makes it illegal to discriminate in any type of housing related transaction on the basis of race, color, religion, national origin, gender, familial status, disability and age.

This guide was developed to assist landlords, real estate professionals and other housing providers in understanding their requirements under the law. Regardless of its cause, discrimination in housing is both illegal and bad business practice.

If you have further questions or would like to learn more about compliance, contact the Council at 610-604-4411 or visit our website at www.fhcsp.com.

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psychological injuries may be levied and are in addition to out-of-pocket losses.

- In cases tried before an ALJ, a civil penalty of up to \$16,000 for a first violation, increasing to \$65,000 for third violations, may be imposed. In cases brought by the Justice Department, civil penalties up to \$100,000 may be imposed.
- The federal court may award punitive damages. Punitive damages do not reimburse the plaintiff for losses actually suffered; instead, they punish the wrongdoer. Punitive damages are awarded only if the plaintiff shows "willful, wanton, or malicious" conduct, by the defendant, specifically motivated by intent to exclude the plaintiff for discriminatory reasons.
- Attorney's fees may be awarded to the prevailing party.
- Courts may issue injunctions if they feel prompt action is necessary to prevent immediate and irreparable harm.

Further Reading

- **The Fair Housing Act:**
<http://www.usdoj.gov/crt/housing/title8.htm>
- **Advertising Guidelines Under the Fair Housing Act:**
<http://www.hud.gov/offices/fheo/library/sect804achtenberg.pdf>
- **HUD/DOJ Joint Memo on Reasonable Accommodations Under the Fair Housing Act:**
http://www.usdoj.gov/crt/housing/jointstatement_ra.htm
- **Occupancy Standards Under the Fair Housing Act—The Keating Memo:**
<http://www.hud.gov/offices/fheo/library/occupancystds.pdf>
- **Housing for Older Persons Act:**
<http://www.fairhousing.com/include/media/pdf/conversiontohousingforolderpersons.pdf>

protected classes, and display an equal opportunity statement or logo

- Maintain a list of available housing units to ensure that all applicants are given the same information, and include on this list such things as the apartment number, the rent, utilities, security deposit, date of availability, and deposit required

Penalties for Violating Fair Housing Laws

Legal Remedies Available to Complainants

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. In addition, suit can be filed in Federal Court for up to two years from the incident.

If HUD processes the complaint:

- HUD will initiate an investigation to find evidence of discrimination or will attempt to conciliate the complaint with both parties. If conciliation fails, HUD will determine whether “reasonable cause” exists to believe that a discriminatory housing practice has taken place. If HUD finds “no reasonable cause”, the Department dismisses the complaint.
- HUD will file a charge if the investigation finds “reasonable cause”, or evidence of discrimination, and a hearing will be scheduled before a HUD Administrative Law Judge (ALJ).
- If either party elects to proceed with the case in federal court, then the U.S. Department of Justice will pursue the case on behalf of the complainant. The decisions of the ALJ and the federal district court are subject to review by the U.S. Court of Appeals.
- The complainant may be awarded compensatory damages. These may include any out-of-pocket costs the plaintiff spent while obtaining alternative housing and any additional costs, including rent, associated with that housing. Non-economic damages such as humiliation, mental anguish or other

Fair Housing Law

The Fair Housing Act

Title VIII of the federal Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. The Fair Housing Act makes it illegal to discriminate in any type of housing related transaction on the basis of:

- Race
- Color
- Religion
- National Origin
- Gender
- Familial Status (the presence of children under the age of 18 in the household)
- Disability

The Pennsylvania Human Relations Act

The Pennsylvania Human Relations Act is a state law that also makes it illegal to discriminate in any type of housing related transaction on the basis of age, above the age of 40.

Advertising Guidelines

Section 804(c) of the Fair Housing Act addresses advertising guidelines. It is illegal to print or publish a discriminatory advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on any of the protected classes mentioned above.

Generally, a housing advertisement should describe the property itself, and not the potential occupant. For example, an advertisement for a housing unit stating “no children” would be considered discriminatory, as it limits families from children from occupying that unit and therefore violates the familial status provision of the Fair Housing Act. If it is found that an advertisement is indeed discriminatory, both the publisher and the advertiser can be held liable.

Illegal Activities under the Law

It is against the law to do any of the following because of race color, national origin, religion, gender, familial status, disability or age:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable or deny that housing is available
- Set different terms, conditions or privileges for the sale or rental of housing, a mortgage, home loan, home insurance or any other real estate transaction
- Advertise in a discriminatory way
- Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights

Permissible Standards and Activities under the Law

- Fair Housing Laws do not guarantee any person a right to housing they cannot afford
- Property owners may set rents at whatever the market will bear
- An agent or property owner can adopt and apply uniform, objective and nondiscriminatory criteria designed to evaluate a prospective occupant's credit worthiness, such as setting income standards, imposing a credit check or criminal background check
- An agent or property owner is not required to rent to users and dealers of illegal drugs

Exemptions

- "Mrs. Murphy's exemption": If the dwelling has four or less units, the owner lives in one of the units and does not use the services of a real estate agent
- Qualified senior housing, which is exempt only from the familial status provision of the Act. To be a qualified senior community you must meet the following standards:

Develop Standard Procedures

To avoid discrimination in the form of differential treatment, you should develop standard procedures for dealing with all consumers. Train any employees to follow the procedures your company establishes and to obey the fair housing laws, and make sure employees and the public are aware of the non-discrimination policy. Determine exactly how your employees will deal with prospective tenants. The crucial requirement is that all persons who inquire about available housing, mortgage products or insurance be treated in the same manner and that the sequence in which they are told about availability, shown available housing, asked for credit references, etc. be identical for all, and that the information given by the employee be the same in every case.

Your own procedures may vary from this example, provided you use them uniformly for all applicants. All decisions on whether to accept or reject applicants must be based on identical criteria. Therefore, it is important to establish written criteria by which you will qualify prospective tenants and be available to all applicants. Applicants who are rejected should be notified within a reasonable period of time and should be told why they have been rejected. The Equal Credit Opportunity Act (ECOA) states that if you deny an applicant for a credit related transaction, they must be informed why.

Make It Known That You Obey Fair Housing Laws

- Display a fair housing poster in a clearly visible location in the room where rental business occurs. Standard Fair Housing posters can be acquired by calling the HUD Distribution Center at (800) 767-7468 and requesting publication HUD-928.1.
- Use an equal opportunity logo or statement on all brochures and pamphlets.
- Use an equal opportunity statement on all applications
- Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any of the

Per-Capita Charges and Fees

The Fair Housing Act requires an examination of “the totality of the circumstances” to determine a discriminatory impact against a protected class. Per capita charges more readily affect families with children since, in the typical case, differences in the number of individuals in a household will be related to the number of children in the family. Thus, in most cases, a per capita charge will have a disparate impact on families with children and therefore violate the Fair Housing Act. However, if a housing provider can offer a legitimate non-discriminatory justification for the policy, then it may be permissible.

Lead-Based Paint Hazards and Other “Unsafe” Living Conditions

So what is a housing provider’s responsibility regarding this issue? First, it is illegal under the Fair Housing Act to not rent to families with children. Case law has stated that a landlord cannot discourage a potential tenant or determine for them that a property is safe or unsafe for their children. Examples include: steep stairways, steep balconies, busy streets and the presence of dangerous equipment. Case law has determined that it is up to the parent to determine if a situation is appropriate for their children, not for the landlord to make that determination for them. The presence of lead based paint is a similar situation.

Recommendations for Avoiding Discriminatory Treatment

Any person involved in a housing transaction is responsible for following and upholding the fair housing laws. This includes such people as owners of property, on site managers, rental agents, mortgage lenders, real estate brokers, and agents. In addition, neighbors who harass and providers who do not ensure a safe living environment may also be liable. As a housing provider, you should establish a program to ensure equal opportunity for all.

- o 100% of the community is 62 years or older, or
- o 80% of the households have at least one resident 55 years or older
- Housing run by religious organizations and private clubs that limit occupancy solely to members, as long as the organization does not discriminate based on race

In addition, no housing is exempt from section 804(c) of the Act, which states that you cannot make, print or publish a discriminatory statement. Any exempt housing that violates 804(c) has lost that exemption and can be held liable under the Act.

Technical Fair Housing Issues

Disability Issues

Under the law, a disability is defined as a physical or mental impairment that substantially limits one or more of a person’s major life activities. This includes wheelchair users, those who are visually impaired, those limited by emotional problems, mental illness, or retardation, recovering alcoholics, recovering drug addicts, difficulties associated with aging, or those suffering from HIV/AIDS. It does not apply to the illegal use of drugs, but does protect those who are currently in or have successfully completed a recovery program.

The Act requires housing providers to make reasonable accommodations, which are changes in the “rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” A simple example of a reasonable accommodation would be to waive a “no pet” policy for a visually impaired person who has a guide dog.

The Act also requires housing providers to allow a tenant to make reasonable modifications to their housing unit. Housing

modifications are made *at the tenant's expense*. A housing provider may require a tenant to escrow the cost of returning the property to its original condition as well as require that alterations be made by a certified contractor. One example of a modification would be to allow a tenant to build a ramp or widen the doorways for wheelchair access.

What is Reasonable?

According to fair housing law, "reasonable" means that the action requested by the individual with the disability:

- Does not cause an undue financial or 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

When a current or potential tenant raises a disability issue, the housing provider has a duty to attempt to accommodate the request. Typically, accommodations will be a matter of negotiating what will serve both the housing provider and the disabled person best. Since every disabled person's needs and abilities vary substantially, it is impossible to list all the possible examples of accommodations in this booklet. If a situation arises in which you have a question or concern, do not hesitate to contact us for assistance.

Accessibility and New Construction

Under the Fair Housing Act, single story units in new multifamily housing built for first occupancy after March 13, 1991 must be built in an accessible manner if the buildings contain four or more dwelling units and if the units are either located on the first floor or are served by an elevator. To comply with the accessibility requirements of the Fair Housing Act, the housing must include the following features:

- An accessible building entrance on an accessible route

- Accessible public and common-use areas
- Doors that allow passage by a person in a wheelchair
- Accessible route into and through the dwelling unit
- Light switches, power outlets and environmental controls in accessible locations
- Reinforcements in bathroom walls for future installation of grab bars
- Kitchens and bathrooms that allow a wheelchair to maneuver about the space

Familial Status Issues

Under the Fair Housing Act, it is illegal to discriminate against families with children. Examples of illegal practices include: policies that state "no children" or segregating housing so that children are only allowed in particular areas. It is also illegal to attempt to restrict children because of "unsafe conditions," state that parents and children cannot share a bedroom, or force children of opposite sexes to have separate bedrooms. These types of decisions are the parent's choice to make and cannot be a housing provider's imposition.

The U.S. Department of Housing & Urban Development (HUD) states that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. However, reasonableness of any occupancy policy is disputable, implying that each case may be evaluated individually and also be based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. Other factors HUD will consider include the configuration of the unit (for example the presence of a den or small extra room), the overall size of the dwelling, capacity of septic, sewer or other building systems, or the existence of state or local zoning laws.