

FAIR HOUSING TRAINING



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WHO ARE WE?

IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all people. The IFHC's purpose is to advance equal access to housing for all persons without regard to race, color, sex, religion, national origin, familial status, gender identity, sexual orientation, source of income, or disability. The

IFHC attempts to eradicate discrimination through education of the fair housing laws, housing information and referrals, housing counseling and enforcement including filing complaints under the Fair Housing Act.

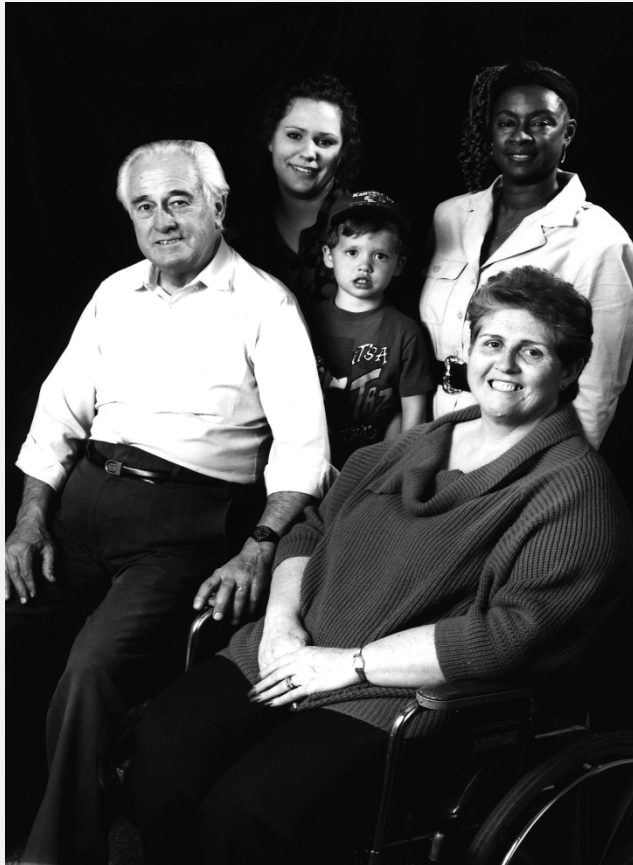


Housing Justice For All

FAIR HOUSING BASICS

- What is the Fair Housing Act?
- Elements of a Fair Housing case
- Discriminatory Acts
- Covered housing provider
- What are the protected classes?

WHAT IS THE FAIR HOUSING ACT?



The Fair Housing Act, Title VIII of the Civil Rights Acts, prohibits discrimination in housing.

1968 – Fair Housing Act is initially passed including Race, Color, Religion and National Origin

1974 – Sex is added as a protected class

1988 – Disability and Familial Status are added as protected classes



ELEMENTS OF A FAIR HOUSING CASE

When a complaint is filed, one must show:

- (1) that a member of a protected class was discriminated against
- (2) (a) the dwelling is covered (4 or more units/property/in business of housing) by (b) a person/entity in the business of housing
- (3) within the time limitations (Statute of Limitations)
- (4) a discriminatory act occurred such as:
 - During application or screening
 - Denial of reasonable accommodation
 - Different policies, charges, treatment

WHAT DOES THE FAIR HOUSING ACT PROHIBIT?

- Discriminatory housing practices based on seven protected classes.
- Exceptions exist, but you don't need to worry about them because you're in the business of housing, and therefore aren't exempt. 42 U.S.C. sec. 3603(c)



WHY FAIR HOUSING?

Where you live determines:

- Where your children go to school
- Ease of getting to work, healthcare, recreation
- What kind of physical danger you may be exposed to

It is good for the community:

- Ensures it is a good place for future businesses to locate
- Promotes economic growth and welfare for all

THE PROTECTED CLASSES:



- Race
 - Color
 - Sex
 - Includes sexual orientation/gender identity
- <http://portal.hud.gov/hudportal/documents/huddoc?id=LGBTPR.PDF>
- Religion
 - National Origin
 - Disability
 - Familial Status (presence of children under 18 yrs. old)



HOUSING COVERED UNDER THE FAIR HOUSING ACT INCLUDES BUT IS NOT LIMITED TO:

- Condominiums
- Duplexes
- Multi-unit dwellings (apartments) with 4 or more units
- Manufactured homes
- Group homes for the recovery of drug addicts and alcoholics
- Seasonal bungalows
- Private homes
- Vacant land
- Homeless shelters
- Shelters for victims of domestic violence
- Hospice
- Nursing Home
- Assisted Living

FAIR HOUSING ACT APPLIES TO MANY DIFFERENT HOUSING TRANSACTORS:

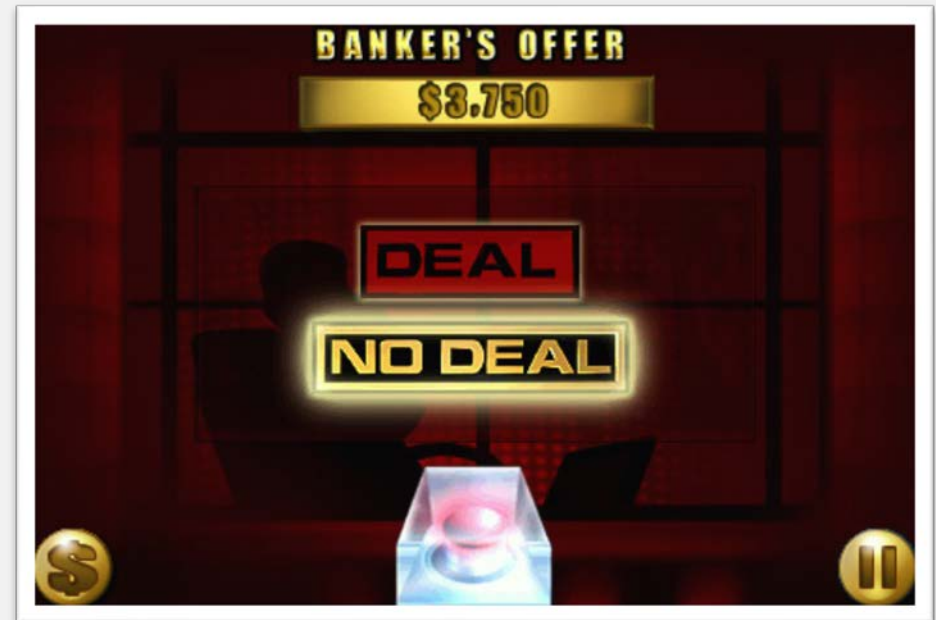
- Advertising media
- Residential landlords
- Rental agents
- Housing Agents/Managers
- Real Estate Brokers and Salespersons
- Homeowners
- Homebuilders
- Refugee Agencies
- Banks, Savings and Loan Associations, Mortgage Lenders or other financial institutions
- Developers and contractors
- Landowners
- Condominium developers or owners
- Home Owner and Condo Owner Associations

DISCRIMINATORY HOUSING PRACTICES

Or, “Why Non-Lawyers Should Read
the Code of Federal Regulations”

**MAKING HOUSING UNAVAILABLE
42 U.S.C. SEC. 3604(A); EXAMPLES AT 24 CFR
SEC. 100.60**

- Failing to accept a bona fide offer
- Refusing to negotiate with someone
- Imposing different sales prices or rental charges
- Using different qualification criteria or applications
- Evicting someone
- Conditioning availability on response to harassment
- Harassing someone until they leave
- Using planning and zoning regulations to prohibit certain uses based on a protected class(es)



DISCRIMINATORY TERMS AND CONDITIONS

42 U.S.C. SEC. 3604(B); EXAMPLES AT 24 CFR SEC. 100.65

- Using different provisions in a lease or contract of sale
- Failing to make repairs
- Failing to process an offer
- Limiting use of privileges and facilities
- Tying services to sexual favors
- Conditioning services on response to harassment
- Harassing people when they use services



An extremely common discriminatory limitation on use of facilities

DISCRIMINATORY STATEMENTS

42 U.S.C. SEC. 3604(C); EXAMPLES AT 24 CFR SEC. 100.75

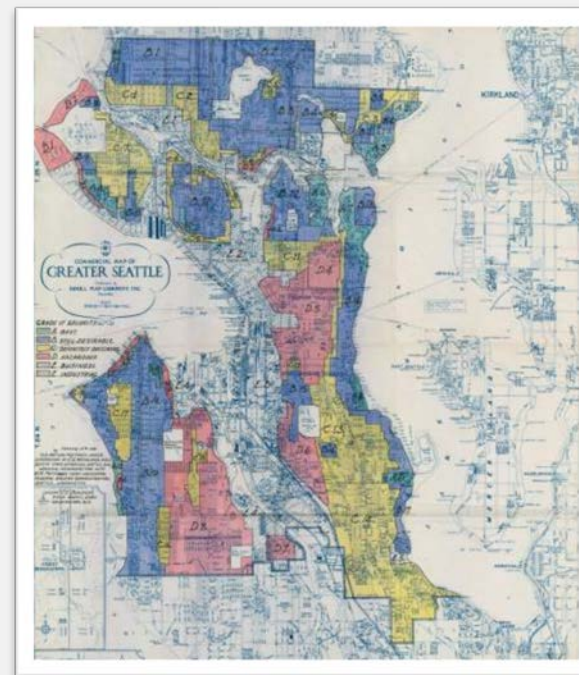
- Using words or pictures hinting or implying a place is available or unavailable to groups of people
- Telling people a place is available or unavailable to groups of people
- Changing terms in advertising



Human models in advertising are bad news if they aren't diverse

STEERING

- 42 U.S.C. sec. 3604(d); examples at 24 CFR sec. 100.80
- Lying about availability
- Lying about conditions of rental or sale
- Enforcing restrictive covenants
- Failing to offer places
- Lying in response to harassment



Redlining in Seattle

OTHER COMMON VIOLATIONS

- **Blockbusting, 42 U.S.C. sec. 3604(e)**
 - Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.
- **Coercion and retaliation, 42 U.S.C. sec. 3617**
 - It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

ENFORCING YOUR RULES WHEN PEOPLE COMPLAIN

Or, “A Lesson in Documentation”

WHEN RULES GET YOU IN TROUBLE

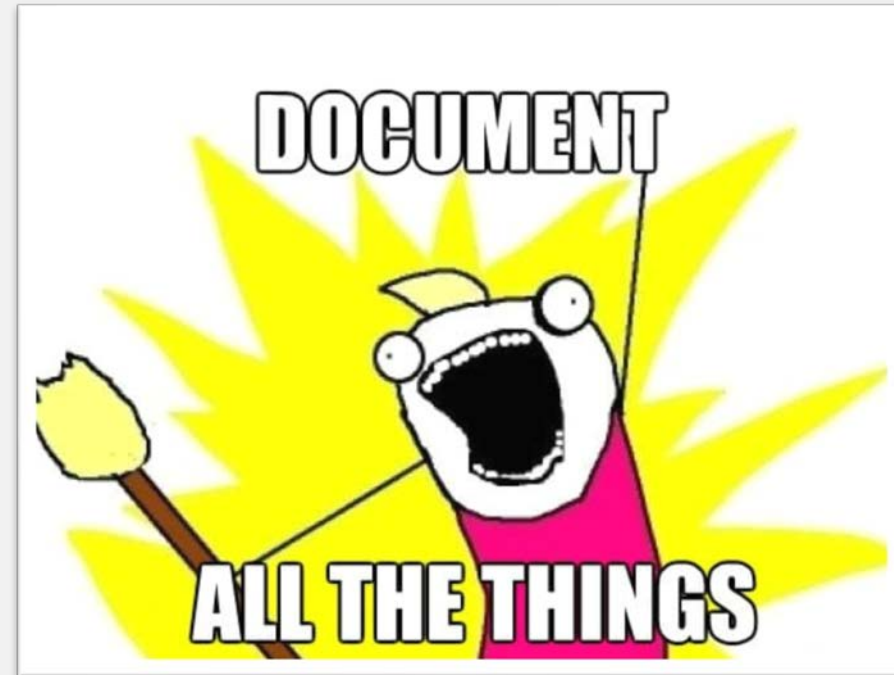
- When a rule is selectively enforced against some people, but not against others
- When a rule looks neutral, but it hits one protected class a lot more harshly than others (disparate impact)



Anyone *could* be a BYU graduate, but banning BYU graduates would affect some religions more than others

HANDLING DISCRIMINATORY ENFORCEMENT CLAIMS

- *Document everything at the time it occurred—contemporaneous notes!*
- If you get a complaint and you let it slide, *explain why in your notes*
- If you get a complaint and you don't let it slide, *explain why not in your notes*
- If you get a complaint that someone got away with something, *reference your notes*



HANDLING DISPARATE IMPACT CLAIMS

- Do you really need the rule?
- Can you re-write it so that it doesn't hurt some groups of people more than others?



How would you re-write this dress code?

IF YOU ARE A VICTIM OF DISCRIMINATION, IFHC CAN HELP YOU FILE A COMPLAINT WITH HUD

1. Complaints must be filed through the HUD administration process within one (1) year of the date of discrimination.
2. If HUD finds there is reasonable cause (there was discrimination), then a charge will be issued and may:
 - Go to trial before an administrative law judge
 - Go to court where the complaint will be represented by the Justice Department

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint



OR YOU CAN HELP YOU FILE IN COURT

- Private attorneys may file a suit within two (2) years of the alleged violation
- Can be filed at the same time as a complaint filed with HUD
- Can file a suit even if HUD did not take action on the complaint
- May include more monetary damages

QUESTIONS?



HOT TOPICS SECTION ONE

An in depth look at each protected class and what issues we commonly see

RACE, COLOR, RELIGION

Race is group of people identified as distinct from other groups because of physical or genetic traits shared by the group.

Color refers to the color of your skin.

Religion refers to the belief in a faith or system of worship or Non-Religious: no practice of a faith.

HOT TOPICS

- Addressing harassment (tenant-on-tenant harassment, housing provider-tenant) and hate;
- Criminal background (HUD guidance)
- Treating people differently or worse because of their race, color, religion/no religion!

GUIDANCE ON HARASSMENT AND HATE

- HUD's Guidance
- <https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-21868.pdf>



HARASSMENT RULE: QUID PRO QUO

Quid Pro Quo Harassment occurs when:

A person is subjected to an unwelcome request or demand because of his or her protected characteristic, i.e., of sex, race, color, religion, national origin, familial status, or disability, AND

Submission to the request or demand is, either explicitly or implicitly, made a condition related to housing or a residential real estate-related transaction.

A person's conduct may constitute quid pro quo harassment whether or not the victim submits to the unwelcome request or demand. One incident is enough; there need not be physical contact



HARASSMENT RULE: HOSTILE ENVIRONMENT

- **Hostile environment harassment occurs when a person is subjected to unwelcome conduct that is sufficiently severe or pervasive as to interfere with the availability, terms, conditions or services of his or her housing or a residential real estate-related transaction because of a protected characteristic.**

DIRECT LIABILITY

- **A person can be found directly liable for his/her own conduct as well as:**
 - **Failing to take prompt action to correct and end discriminatory conduct by an agent/employee of which the person knew or should have known.**
 - **Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it.**

VICARIOUS LIABILITY

- **The rule makes clear that a person is vicariously liable for the actions of their agents or employees, *regardless* of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice.**

QUESTIONS?



CRIMINAL HISTORY

Or “Wait, That’s Not a Protected Class, Is It?”

INTRODUCTION

- Studies have shown that the first month after release is a vulnerable period during which the risk of becoming homeless and/or returning to criminal justice involvement is high.
- In most jurisdictions, affordable housing is in short supply including Idaho.

CRIMINAL JUSTICE STATS

- Approximately 30% of the nation's adult population has a criminal record.
- There are 13 million released felons in the U.S.
 - 6.5% of the entire adult population
 - 11% of the adult male population
 - Bureau of Justice Statistics, US Dept. of Justice
 - Idaho has the 11th highest incarceration rate in U.S. despite having a low crime rate, 7th lowest in the nation

EX-OFFENDERS BOXED OUT OF HOUSING

- Nationally, more than 10% of offenders are homeless at the time of their release from prisons and jails— it may be up to 30% or more in large urban centers (Black and Cho, 2004).
- There are approximately 850,000 homeless people in the U.S. (probably more now). BJA, Reentry Policy Council, 2007
- Stable and appropriate housing has always been a critical concern for returning offenders, criminal justice organizations, and local communities.

COMMUNITY COSTS

- In most states, it costs more than \$30,000 per year to serve a single person who stays in homeless shelters and returns to prison. Hospitalizations and child welfare involvement drive this price tag even higher.
- Prison and jail are among the most expensive housing settings to serve people who are homeless: one nine-city study calculated median daily costs for prison and jail at \$59.43 and \$70.00 respectively, compared with \$30.48 for supportive housing.

HOUSING OPTIONS– WHAT DO WE HAVE IN PLACE?



Options for a returning offender:

- Own a home/live with family
- Live with friends
- Private market rental housing
- Non-profit housing options
- Half-way houses
- Supportive housing
- Shared living arrangements
- Specialized reentry housing

“CONCERNS” REGARDING RENTING TO THOSE WITH A PRIOR CRIMINAL HISTORY

- Higher Turnover
- Lease Violations
- Community Reputation
 - Fighting NIMBY (may exist already in affordable housing)
- Damage Collections Against Tenant
- Risk of Injury to Residents/Staff
- Landlord Liability for Known/Preventable Action

THE PROBLEM WITH CRIMINAL HISTORY CHECKS

- Analyzed in an April 4, 2016 memo by HUD lawyers
- Because people of some racial and ethnic backgrounds are more likely to be arrested, convicted, and imprisoned, the Fair Housing Act applies
- That means that the policy needs to have a legitimate, nondiscriminatory purpose
- Some housing providers were going way too far, imposing policies that couldn't be justified
- Convictions for drug manufacturing or distribution aren't covered by this memo
- The memo doesn't mention sex offenders, but people on the lifetime registry are banned from public housing

HUD CRIMINAL BACKGROUND GUIDANCE

- http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCG_uidAppFHASandCR.pdf



HOUSING PROVIDERS MAY:

- Check references
- Check ability to pay rent
- Inquire on how best to make reasonable accommodations for prospective tenant
- Create rules for benefit of entire community
 - Given rules are not discriminatory

SCREENING FOR CRIMINAL HISTORY

- Landlords cannot screen and deny for all criminal history
 - Likely violation of fair housing laws
 - 42 U.S.C. sec. 3604(a); examples at 24 CFR sec. 100.60 – Refusal to Rent
 - May be disproportionate impact on some groups given disproportionate incarceration rates of those groups
- Consider screening only for convictions that pose threat to tenants or property
 - Murder vs. trespassing (Look at nature, age of crime and whether reoffended)
- Criteria typically establishes timeline based on conviction
 - How old is it?
 - What has history been since that time?

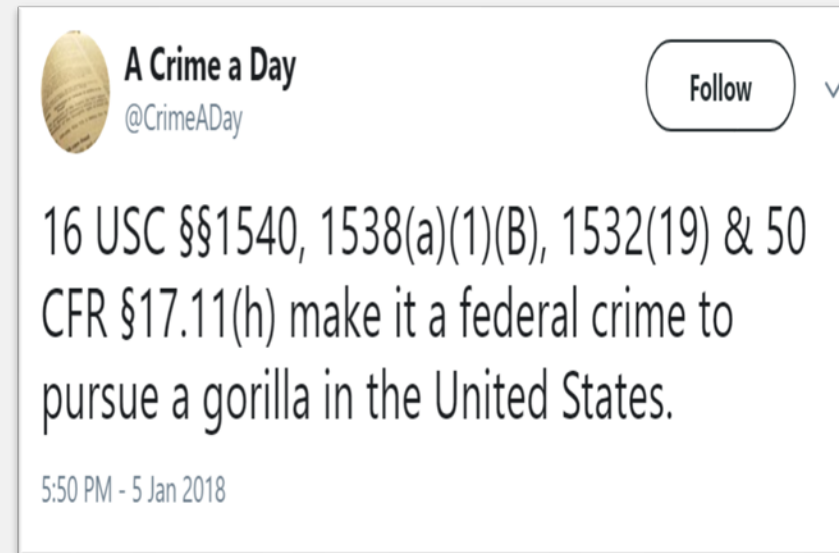
EXAMPLES OF POLICIES THAT GO TOO FAR

- Banning people based on arrests, not on convictions: arrests don't prove anything unless you're convicted



EXAMPLES OF POLICIES THAT GO TOO FAR

- Banning people based on crimes that don't pose a threat to neighbors



EXAMPLES OF POLICIES THAT GO TOO FAR

- Banning people based on very old offenses
- Someone who hasn't committed a crime in seven years has the same odds of re-offending as someone who's never committed a crime in the first place



Would you ban him based on his offenses from fifteen years ago?

RECOMMENDATIONS

- Don't ban people based on anything other than convictions
- Don't ban people based on offenses that are more than seven years old
- Don't blindly follow your background check service's report: they can be inaccurate
- Allow people to submit evidence to show that they'll still be a good tenant, such as proof of good behavior
- If you deny someone, put the reason in writing so they don't think it was for an improper reason (you have to do this for credit anyway)
- People with disabilities may ask for an exception or reasonable accommodation to a housing providers' criminal history policy

BEST PRACTICES

- Have a reasonable conviction screening policy
- Determine the legitimate interests of the policy: pays bills on time, maintains property, respects other residents/staff, complies with rules, policies and furthers community safety.
- No automatic conviction exclusions
- Ignore arrests
- Apply policy equally and consistently
- Individually assess records and conduct
- Narrowly tailored inquiries
- Train staff
- Monitor the impacts of the policy



QUESTIONS?



NATIONAL ORIGIN

National Origin refers to one's ancestor's, place of **origin**; or because an individual has the physical, cultural or linguistic characteristics of a **national origin** group.

- ⌋ Difference in treatment or in impact
 - ⌋ Harassment
 - ⌋ Bans on smells, foods, language
 - ⌋ Policies involving criminal background, arrests, etc.
 - ⌋ Marketing to diverse groups
 - ⌋ Limited English Proficiency
 - ⌋ Applicant screening



TITLE VI: LANGUAGE ACCESS

- Title VI of the 1964 Civil Rights Act
- U.S. Supreme Court—Lau v. Nichols (1974)
- Executive Order 13166 (2000)
- Federal Agency Guidelines
HUD – 2007
- **HUD Guidance:**
<http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>



FAIR HOUSING AND LEP

- LEP refers to a person's limited ability to read, write, speak, or understand English.
- People with limited English proficiency are not a protected class under the Fair Housing Act.
- However, the Fair Housing Act prohibits discrimination based on national origin, which is closely linked to the ability to communicate proficiently in English (LEP).



NATIONAL ORIGIN DISCRIMINATION

- Failure to provide interpretation when persons are LEP
- If federally funded, have a Language Access Plan
- Whether federally funded or not, do not treat differently or worse when someone is LEP

LANGUAGE ACCESS PLAN

If federally assisted:

- Have a Language Access Policy
- Have Procedures
- Provide interpretation
 - I Speak Card
- Translation—vital docs
- Staff training
- Engage in affirmative marketing
- Monitor and Evaluate



RESOURCES

- U.S. Department of Justice: www.lep.gov
- Court House or Boise Interpreters
- Universities, Agencies, Community Groups
- IFHC
- Apps
- Gary Hanes at www.gehanes.com
 - Offers to Interpret
 - Langwij Finder



RESIDENT QUALIFICATION AND NATIONAL ORIGIN

THE PROBLEM WITH COMMERCIAL BACKGROUND CHECK SERVICES

- Many commercial background check services require a Social Security number to search for someone
- People who aren't U.S. citizens don't have SSNs
- Also implicates the Civil Rights Act of 1866, which says everyone has the same right to enter a contract as a “white citizen” does



THE SOLUTION

- If your background check service doesn't allow you to search without a Social Security number, *complain*. If they don't add that feature, *replace them*.
- *I cannot stress this enough.*

SCREENING ALTERNATIVES: IDENTITY

- Resident aliens, including refugees, have “A-numbers,” as shown on the right
- Recent refugees may have a DHS Refugee Travel Document
- Refugee agencies have already screened new arrivals



SCREENING ALTERNATIVES: RENTAL HISTORY AND CREDIT

RENTAL HISTORY

- Utility records
- Endorsement from previous landlord
- Copy of lease from former residence

CREDIT

- Income verification from employer
- Contracts for purchases
- Sponsorship letters
- Pay stubs
- Benefit award letters
- Paid bills

These aren't exclusive: you can make a reasonable judgment call on other documents—be inclusive!

QUESTIONS?



SEX

Sex

Gender (male, female, gender fluid) into which humans and most other living things are divided on the basis of their reproductive functions or biological constructs.

Harassment—HUD guidance

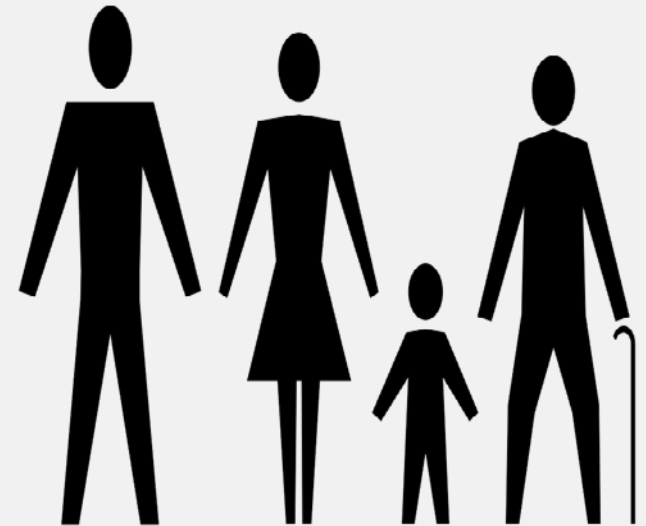
Domestic Violence

Sexual Orientation

Gender Identity

SEX

- Difference in treatment
- Sexual harassment
 - Quid Pro Quo
 - Hostile Environment
- Rules that have a disparate impact
 - Domestic Violence
 - Women/women of color disproportionately affected
 - Review VAWA
 - Nuisance Ordinance
 - Crime Free Lease Rules



DOMESTIC VIOLENCE

- HUD Guidance: <http://www.hud.gov/offices/fheo/library/II-domestic-violence-memo-with-attachment.pdf>
- **Rules that outright discriminate based on sex or that have disparate impact**
 - **Zero Tolerance or evictions based on DV**
 - **Adopt Policy of not evicting Victims of DV**
 - **Cities/Counties/States Watch Nuisance Ordinances based on DV**

SEXUAL ORIENTATION/GENDER IDENTITY

- Sexual Orientation refers to who you love/like/attracted to
- Gender Identity refers to which gender you identify or gender fluid
 - Pronoun offer—I use the pronoun she or her
 - Others use they/them/their

SEX ORIENTATION/GENDER IDENTITY

If the housing denial is because of the prospective tenant's non-conformity with gender stereotypes, it may constitute illegal discrimination on the basis of sex under the Fair Housing Act.



HUD RULE: EQUAL ACCESS

- HUD Rule Adopted March 2012
 - Equal Access
 - Definitions
 - Sexual Orientation: Homosexuality, Heterosexuality, Bisexuality
 - Gender Identity: Actual or perceived gender related characteristics
 - Inquiries—can't inquire into one's sexual orientation/gender identity
 - Applies to HUD programs: FHA insured loans, Section 8, public housing, CDBG

CITY ORDINANCES

- The following Idaho cities have [ordinances](#) prohibiting discrimination on the basis of sexual orientation and gender identity: [Boise](#), [Coeur d'Alene](#), [Driggs](#), [Idaho Falls](#), [Ketchum](#), [Lewiston](#), [Moscow](#), [Meridian](#), [Pocatello](#), [Sandpoint](#), [Bellevue](#), [Hailey](#), and [Victor](#).
- The city of [Twin Falls](#) has an ordinance prohibiting discrimination on the basis of sexual orientation only. [Latah County](#) bans discrimination against county employees on account of their sexual orientation and gender identity.

QUESTIONS?



FAMILIAL STATUS

Refers to the presence of children under the age of 18

Rules regarding children

Safety yes, but don't segregate, be overly restrictive, prohibit children's play structures, fences, or tell people where to sleep

Don't refuse to take families with children or segregate them by building/complex

HOPA-Housing for Older Persons Act

Exception—55+ and 62+ housing

Must start out as HOPA housing cannot evict families to become HOPA housing or use rules, housing practices, etc. to become senior housing.

OCCUPANCY

- Two (2) per bedroom plus one, don't count children 2 and under—better yet, don't count children under 5
- Keating with caution; Read the Keating Memo https://www.hud.gov/sites/documents/DOC_7780.PDF

- *Connecticut Fair Housing Center et. al v. TGM Associates*

Respondents (who own and/or operate multi-family housing complexes throughout the United States) maintained a strict “two-person per bedroom” maximum occupancy policy at a number of its properties located in Indiana, Ohio, and Connecticut.

Respondents blindly enforced their occupancy policy without regard to the size or configuration of the apartment unit or the size of the unit's bedrooms and/or habitable sleeping areas.

Further, Respondents' maximum occupancy policy is more restrictive than occupancy limitations imposed by applicable local law.

Respondents' unduly restrictive maximum occupancy policy operated both to exclude and limit the number of families with children who could live in Respondents' communities and, accordingly, discriminates against and has a discriminatory adverse impact on families with children.

FAMILIAL STATUS

Connecticut Fair Housing Center et. al v. TGM Associates Continued

Although HUD has advised that a “two-person per bedroom” occupancy policy may be okay, HUD directs housing providers to develop “reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.”

Further, HUD has warned that any “nongovernmental restriction” on occupancy (such as Respondents’ occupancy policy) will be carefully scrutinized “to determine whether [the policy] operates unreasonably to limit or exclude families with children.” In this case, TGM conciliated with three fair housing groups and created a more inclusive occupancy policy.

HUD has instructed housing providers to consider—such as the size of the unit, the configuration of the unit, or any limitations imposed by the local occupancy code.

Other concerns

Affordable housing NIMBYism, regulatory barriers (may include other protected classes), CC&Rs that restrict fencing, play structures, zoning ordinances that restrict foster homes/group homes

QUESTIONS?



DISABILITY, REASONABLE
ACCOMMODATION/MODIFICATION
REQUESTS AND ASSISTANCE ANIMALS

WHO IS DISABLED AS DEFINED BY THE FAIR HOUSING ACT?

A person who (42 U.S.C. 3602 (h)(1)-(3)):

- has a physical or mental impairment that substantially limits one or more major life activities
- has a record of such impairment
- is regarded as having such an impairment
- broadly defined

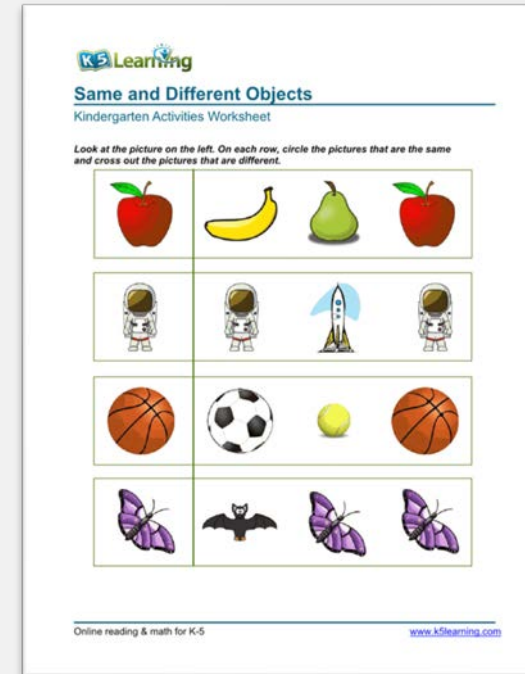


REASONABLE ACCOMMODATIONS AND MODIFICATIONS

Or, “Avoiding Discrimination by Treating People Differently”

WHY IT'S DIFFERENT

- Most of the time, Fair Housing requires you to treat everyone **the same way**
- Reasonable accommodations and modifications require you to treat people **differently**
- Only available based on disability, not on other protected classes



“EQUALITY” / “EQUITY”

Let's Buy Everybody a 10-speed bike

DOJ-HUD JOINT STATEMENT

- Reasonable Accommodations Under the Fair Housing Act, May 17, 2004
- <https://www.justice.gov/crt/us-department-housing-and-urban-development>
- Includes examples
- A federal agency's interpretation of its own regulations is given great weight

ACCOMMODATIONS VS. MODIFICATIONS

ACCOMMODATIONS

- Changes in rules, policies, practices, or services, that are necessary because of someone's disability
- Housing provider bears any costs involved

MODIFICATIONS

- Changes to the premises
- Resident bears costs (unless the cost is really cheap or it's federally subsidized housing)
- Landlords can require tenant to remove interior modifications upon leaving unless it benefits everyone or was required to be constructed accessibly

REQUESTING AN ACCOMMODATION OR MODIFICATION

- Doesn't have to be in writing, but it's recommended
- No specific HUD form
- Request should state:
 - That the person has a disability (doesn't need to say which one)
 - That the person needs the accommodation or modification because of their disability
 - That the accommodation or modification is necessary to give them equal use of their housing

REQUEST FOR A REASONABLE ACCOMMODATION

Dear _____ [name of housing provider]:

As a person with a disability, I am hereby requesting a reasonable accommodation for _____ [address of housing for which you wish to be accommodated] pursuant to the Fair Housing Act, 42 U.S.C. § 3604, which requires housing providers to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

The accommodation I am requesting is _____

[describe accommodation requested].

I need this accommodation because _____

[explain why you need the accommodation without disclosing the nature or severity of your disability].

Please respond to this reasonable accommodation request within ten business days.

Sincerely,

_____ [your signature]
_____ [date]
_____ [print your name]
_____ [your address]
_____ [your telephone number]

IFHC's sample RA request form

HOW DO I KNOW IF THEY REALLY HAVE A DISABILITY?

- Sometimes it's obvious. If it's obvious, you **can't** ask for proof.



AND IF IT ISN'T OBVIOUS?

- You can ask for a letter from “reliable third party who is in a position to know about the individual’s disability”
 - Doctor, social worker, counselor, case worker, or a family member
- Letter verifies:
 - Existence of the disability
 - Reason for the accommodation or modification
 - The person needs the accommodation or modification to have equal use of their housing

PROOF OF NEED FOR A REASONABLE ACCOMMODATION
(to be provided directly to verifier by resident)

have been contacted by _____ (name of resident) regarding his/her need for a reasonable accommodation. I have been informed that the accommodation he/she has requested is: _____ (describe accommodation requested)

My relationship to the person requesting the accommodation is: _____ (describe the nature of our relationship to the resident, i.e. "doctor", "social worker", "therapist", etc.)

verify that he/she is disabled (or "handicapped," as defined below) (circle one): YES NO

understand the reasons for the requested accommodation (circle one): YES NO

verify that he/she needs the requested accommodation because of his/her disability; and that such an accommodation may be necessary to afford him/her the equal opportunity to use and enjoy his/her dwelling (circle one): YES NO

Signature _____ Date _____

Print name _____

"HANDICAP" IS DEFINED BY FEDERAL REGULATIONS (24 CFR 51.90.291) AS FOLLOWS:

Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

- 1) "Physical or mental impairment" includes:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemat and lymphatic; skin; and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.
- 2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- 3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- 4) "Is regarded as having an impairment" means:
 - (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation.
 - (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
 - (3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

IFHC's sample Proof of Need

PLEASE DON'T

- **Don't** ask about the diagnosis, or any other questions about the nature or severity of the disability
- **Don't** directly contact the person who fills out the Proof of Need form
- **Don't** ask for a HIPAA release
- **Don't** dilly-dally: delays can be treated as denials
- **Don't** charge a fee for an accommodation

WHEN CAN YOU TURN DOWN A REQUEST?

ACCOMMODATIONS

- The person doesn't have a disability
- The accommodation they're asking for isn't related to their disability
- They're asking you to act as a service provider
- It's unreasonable, considering
 - Cost of accommodation
 - Housing provider's resources
 - Benefits of accommodation
 - Availability of other accommodations

MODIFICATIONS

- The person doesn't have a disability
- The modification they're asking for isn't related to their disability
- The person didn't get required permits or did a shoddy job

DON'T JUST SAY NO!

- Housing providers are required to have an interactive process: if you can't give them what they initially ask for, ask if there are other accommodations or modifications that might work



COMMONLY REQUESTED ACCOMMODATIONS

- Additional time to move out for people with mobility impairments
- Waive a “no cosigners” rule for someone whose only source of income is disability
- Assigned parking spaces for people with parking cards
- Overlook a previous eviction or arrest if they happened during a period of untreated mental illness if the individual taken steps to eliminate the previous threat:
 - If individual has received intervening treatment of medication
- Allow a group home for people with disabilities to operate in a neighborhood that tries to prohibit them
- And, of course, animals.

ASSISTANCE ANIMALS

Or, “Animal Plans for an Animal Planet”

ANIMALS AS TREATMENT

- Not just for people who are blind any more: research shows benefits for people with PTSD, anxiety, diabetes, and other disabilities



Assistance dog for Marine veteran

KNOW THE DIFFERENCE

SERVICE ANIMAL

- Rules apply to public spaces under Americans with Disabilities Act
- Must be dog or miniature horse
- Must be trained (either at home or professionally) to do something that an ordinary animal can't do

ASSISTANCE ANIMAL

- Rules apply to homes under the Fair Housing Act
 - No species, breed, age restrictions
 - Can be more than one
 - Don't need more training than an ordinary animal
- **also called assistive animals, emotional support animals, or therapy animals.

SERVICE ANIMAL? SUPPORT ANIMAL?
COMFORT ANIMAL?

- There is no distinction between any of these different types of animals when an individual requests that they be permitted to have one as a reasonable accommodation in housing.
- Courts have repeatedly held that assistance animals are service animals and must be considered as reasonable accommodations for disabled individuals.

ASSISTANCE ANIMAL NO-NOS

- **Don't** charge a deposit or pet rent (remember, no fees for accommodations)
- **Don't** restrict species, breed, size, or age
- **Don't** put unreasonable restrictions on the animal
- **Don't** require the proof of need to come from a particular provider
- **Don't** call the proof of need provider
- **Don't** put an unreasonably small cap on the number of animals (we know two birds and two cats are OK); case-by-case basis
- **Don't** treat people with disabilities differently or worse — meaning don't use black lighting, DNA testing, roommate vetoes, inspections, carpet cleaning fees—to single out people with disabilities because of their assistance animals.



Assistance lizards: every bit as valid as assistance dogs

REASONABLE ACCOMMODATION CASES

- *Fair Hous. Of the Dakotas v. Goldmark Property Management, Inc.*, 778 F. Supp.2d 1028, 1036 (D.N.D. 2011)
 - There is no per se training requirement for service animals and the FHA protects the right to have all types of service animals
- *Assoc. of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F.Supp.2d 1268 (D. Haw. 2012)
 - Courts have held that some individuals requesting to have a service animal as a reasonable accommodation in housing may have a disability that requires a service animal to have some type of training and that in other cases no training is necessary
 - Inquiry focuses on individual requesting the reasonable accommodation and the accommodation necessary to ameliorate the effects of the disability

REASONABLE ACCOMMODATION CASES

- *Overlook Mutual Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 861 (S.D. Ohio 2009)
 - Service animals which are for emotional support to ameliorate the effects of a mental or emotional disability need not be individually trained
- *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2:10-cv-00346-BLW (D. Idaho 2011)
 - A housing provider that imposes a deposit on a service animal is in violation of the FHA
 - 24 C.F.R. 100.65(b)(1) – a housing provider may not require different rent or impose a security deposit or other lease terms because of an individual's disability

ASSISTANCE ANIMAL OKS

- It's **OK** to bill someone for damages caused by an animal
- It's **OK** to require the resident to have a plan for dealing with animal waste
- It's **OK** to require an animal to be well-behaved



...they don't have to be *this* well-behaved, though

WHAT IF I THINK IT'S A SCAM?



- Scams do exist, but your resident is as much a victim as you are
- Be able to document particular reasons why you think the proof of need is untrustworthy
- If the proof of need turns out to be untrustworthy, give the resident the chance to check with another proof of need provider

I'D LOVE TO ALLOW THE ANIMAL, BUT...

- HOAs, cities, and insurance companies are also subject to the Fair Housing Act
- If an HOA rule, city ordinance, or insurance policy is standing between your resident and their animal, you can request an accommodation from them, too



MAY A PROVIDER IMPOSE RESTRICTIONS?

- A housing provider may not impose blanket breed, size or weight restrictions on assistance animals (even when there is a municipal ordinance banning a breed)
- A housing provider must approve an assistance animal as a reasonable accommodation if keeping the particular animal is “feasible” and “practical”
- A reasonable accommodation request can be denied if the specific animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation or if the specific animal would cause substantial physical damage to the property or others that cannot be reduced or eliminated by another reasonable accommodation



MAY A PROVIDER RESTRICT WHERE AN ESA MAY BE PRESENT

- An individual with a disability who has an assistance animal can take the animal in all areas of the premises where persons are normally allowed to go unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services
- Cannot prohibit individual with disability from taking assistance animal into the common areas of the property



BEST PRACTICES



- We are not their doctor or counselor
- Doctors and counselors know their patients
- Doctors and counselors get to decide whether particular patients need particular animals not us
- If visitors/guests need assistance animals, they get to visit
- Don't dilly-dally, outright say no, or ignore
- Engage in an interactive dialogue
- Document, document

EDUCATION

- Education and training truly are the best way for housing providers, consumers and advocates to understand reasonable accommodations.
- Fair housing education and training may prevent costly fair housing violations.
- The cost of discrimination in fair housing cases is high and may lead to loss of much needed community planning and development funds and or huge damage awards.

WHERE WE CAN HELP YOU

- Fighting discrimination by buyers, sellers, landlords, HOAs, cities, insurance companies, and neighbors
- Sample forms and position statements
- Resources on building housing for people at all levels of income
- Preventing and alleviating homelessness
- Promoting new and inclusive housing
- Providing training opportunities for landlords, property managers, government agencies, homeowners' associations, real estate agents, and residents

Intermountain Fair Housing Council

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QUESTIONS?

