

Landlords, Tenants & Fair Housing



Mid Penn
LEGAL SERVICES

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Special thanks to North Penn Legal Services for the use of their materials.

FAIR HOUSING ACT

Overview

- Enacted following assassination of Dr. Martin Luther King, Jr. to address inequities in housing (Title VII of Civil Rights Act of 1968)
- Laws that protect certain individuals (protected classes) from discrimination in housing transactions
- The laws apply to “dwellings;” structures designed or occupied as residences or land offered for sale where a residence will be built



WHO IS PROTECTED?

WHERE ARE THEY PROTECTED?

WHAT BEHAVIOR IS PROHIBITED?

- IS THIS A CASE OF DISCRIMINATION?

Protected Classes

- **RACE**
- **COLOR**
- **NATIONAL ORIGIN**
- **RELIGION**
- **SEX (1974)**
- **FAMILIAL STATUS (1988)**
- **DISABILITY (1988)**





Dwellings: What is considered a dwelling?



- Rental properties
private & subsidized
- Homes for sale
- Manufactured home communities
- Group homes
- Rooming or boarding houses
- Nursing homes and assisted living centers
- Residential D&A treatment centers
- Homeless shelters
case-by-case basis
- University housing (dorms)
- Vacant land offered for sale or lease

Dwelling Exemptions

- Buildings with 4 or fewer units, if owner lives in one of the units (in PA, 2 or fewer units)
- Single-family housing sold or rented without the use of a broker, if owner does not own more than 3 single family homes
- Housing operated by religious organizations and private clubs can give preference to members, but can't discriminate in their membership
- Senior housing, if complies with specific rules of older communities (exempt from familial status ban)

Coverage



- Fair Housing Act (federal)
sets the minimum protection
- HUD's Equal Access Rule (federal)
recipients of federal funding
- Executive Order (federal), 2021
- Section 504 of the Rehabilitation Act (federal)
recipients of federal funding
- Pennsylvania Human Relations Act (state)
- Cities, municipalities, etc. can also have laws

Laws & Regulations Specific to Federally Funded Housing

- SECTION 504 OF THE REHABILITATION ACT
- (DHHS §504 45 CFR PART 84)
 - Prohibits discrimination on the basis of disability in programs & activities conducted by HUD or receipt of financial assistance from HUD
 - Enforces the right of individuals to live in federally subsidized housing free from discrimination on the basis of disability.
 - Covers all HUD programs except for its mortgage insurance and loan guarantee programs.
 - Forbids organizations from excluding or denying individuals with disabilities equal opportunity to receive program benefits and services

HUD'S EQUAL ACCESS RULE

- Requires equal access to HUD programs without regard to actual or perceived sexual orientation or gender identity or marital status in:
 - **HUD assisted housing**
 - Public housing
 - Section 8 Housing Choice Vouchers
 - Project-based Section 8
 - **Housing whose financing is insured by HUD**
 - **FHA-insured mortgage financing**



State and Local Protections



States, cities, municipalities can offer additional protections

PENNSYLVANIA HUMAN RELATIONS ACT

- Illegal to discriminate on the basis of age (above age of 40)
- Protects handlers & trainers of support or guide animals
- Protects tenants associated with individuals with disabilities
- Gives guidance on sex discrimination

ALLENTOWN, BETHLEHEM & EASTON

- Cannot discriminate on the basis of sexual orientation, gender identity and gender expression
- Cannot discriminate on the basis of marital status

How Is The FHA Enforced?



- Negotiating with landlords
- Raising the issue at an eviction hearing
- Filing a complaint with:
 - Federal, HUD – 1 year to file
 - State, PHRC – 6 months to file
 - City, HRC - depends on city
- Filing a lawsuit in State or Federal Court: 2 years

RACE, COLOR, NATIONAL ORIGIN:

Who is Protected?

People of a minority race or perceived to be a member of a minority race based on skin color

People from a country or culture outside of the US, or people with ancestors who originated outside of the US. This category includes new immigrants.

Examples of Discrimination:

- Applying different sale, rental or occupancy terms
- Lying or misrepresenting the availability of housing
- Refusing to rent or charging higher rents
- imposed more stringent underwriting standards on home loans or made loans on less favorable terms for borrowers based on race, color or national origin

RELIGION:

Who is Protected?

Prohibits instances of overt discrimination against members of any particular religion as well less direct actions, such as zoning ordinances designed to:

- Place unjustifiable burdens on religious exercise,**
- Limit the use of private homes as a places of worship**
- Totally or unreasonably exclude religious assemblies and institutions from a particular municipality or county.**
- Otherwise treat religious assemblies and institutions worse than nonreligious assemblies and institutions.**

The Act does contain a limited exception that allows non-commercial housing operated by a religious organization to reserve such housing to persons of the same religion.

SEX, GENDER AND SEXUAL HARASSMENT

Who is Protected?

Women, particularly those who are lower income and with limited housing options, often have little recourse but to tolerate the humiliation and degradation of sexual harassment or risk having their families and themselves removed from their homes.

HUD and the DOJ have enforcement programs aimed at landlords, property managers, maintenance workers, loan officers and any other people who have control over housing and who create an untenable living environment.

Examples of Discrimination:

- Demanding sexual favors from tenants
- Creating a sexually hostile environment, engaging in unwelcome sexual conduct that makes it hard to keep living in or feel comfortable in your home
- Pricing discrimination in mortgage lending.

Executive Order

Gender Identity or Sexual Orientation

Issued following a decision by the Supreme Court, Bostock v. Clayton County, 590 U.S. _____ (2020).

Decision held that Title VII of the Civil Rights Act, which prohibits discrimination based on sex, applies to discrimination based on gender identify and sexual orientation.

The Executive Order applies the reasoning of this decision to other laws that prohibit sex discrimination, including the Fair Housing Act.

Order states that agencies must review policies to ensure that they are consistent with Executive Order

- Revise if not consistent
- Consider whether there are additional actions they could take to ensure policies are implemented

Executive Order

Gender Identity or Sexual Orientation

HUD Interpretation

Based on Executive Order, HUD's Office of Fair Housing and Equal Opportunity (FHEO) issued a memo stating that HUD interprets the Fair Housing Act to bar discrimination on the basis of sexual orientation and gender identity

Memo directs HUD offices and recipients of HUD funds to enforce the act accordingly

FAMILIAL STATUS: Who is Protected?

- Families with children under the age of 18,
- Pregnant persons, and
- Any person in the process of securing legal custody of a minor child (including adoptive or foster parents).
- Persons with written permission of the parent or legal guardian

EXEMPTION: Housing for Older Persons



FAMILIAL STATUS: Who is Protected?

Examples of Discriminatory Actions:

- Refusing to rent a 2nd floor apartment to families
- Saying “no children”
- Telling a family they can only live in a certain area of the complex
- Telling a family there are not enough bedrooms
Default rule, 2 per bedroom
- Charging per person versus per unit



Disability



- Individual with a physical or mental impairment that substantially limits one or more major life activities, or
- ...is regarded as having such an impairment, or
- ...has a record of such an impairment
- Additional protections:
 - can make requests for changes if such changes are needed to allow them the same full use and enjoyment of the premises as an individual without a disability
 - changes requested must be directly related to the disability (there must be a “nexus”)

What are those requests for changes called?

Requests for...

• REASONABLE MODIFICATIONS

- Structural change to
 - Interior
 - Exterior
 - Common areas
 - (Costs paid by housing provider if receives federal funding, Section 504)

REASONABLE ACCOMMODATIONS

- Change, exception, or adjustment to a rule, practice, service or lease policy
- Can be requested at any time prior to actually being evicted



What information can the housing provider request?

- Can ask tenant, medical provider or social service provider to confirm tenant has a disability and that request is related to the disability
- Can't ask for tenant's diagnosis
- Can't ask tenant for more information or medical verification if:
 - Disability is obvious, or
 - Housing provider already knows tenant has a disability and need for request is clear

Reasonable Modifications Examples

- Individual with mobility impairment can request:

Installation of a ramp or stair glide, replacement of carpeting with tiles, accessible bathroom, stove with knobs in front

- Individual with cognitive or memory impairment can request:

Installation of automatic faucet, replacement of stove with microwave

Reasonable Modifications Examples

Individual with vision impairment can request:

Special lighting, color contrasting , tactile assistance system, extension of side rails of stairs, replacement of curtains with blinds, grab bars, additional lighting installed, slip-resistant flooring, removal of “lips” between rooms

Individual with hearing impairment can request:

Installation of a peep hole in door, installation of flashing lights for doorbell and smoke alarm

Reasonable Modifications Examples

- Housing provider allows for early termination of lease so tenant with disability can move to an apartment that can accommodate them
- Housing provider notifies tenant with chemical sensitivities in advance of painting and exterminations
- Housing provided allows tenant to pay rent according to when they receive Social Security disability payment
- Housing provider provides a handicapped parking space for tenant

Reasonable Modifications Examples

- Housing provider stops an eviction action to allow tenant time to fix lease violation
 - Time to clean
 - Time to get services in place to address behavior that is causing eviction
- Housing provider allows caregiver to move into apartment
- Housing provider allows tenant more time to move than allowed by the lease
- Housing provider allows assistance animal

What counts as a RA/RM request?

- Any request asking for modification or accommodation because of a disability
 - E.g. Lease says tenant must pay rent in person. Tenant tells housing provider: *“Sometimes I get really anxious about leaving my apartment. Can I pay my rent another way? Can I mail a money order?”*
- Does not have to use the magic words “reasonable accommodation”
- May be oral or in writing
- Does not have to use housing provider’s request form

When can you request a RA\RM?

Tenant can request a reasonable accommodation at any time prior to actually being evicted, including:

- During application process,
- While living in unit,
- When housing provider changes a rule or policy,
- In response to housing provider's complaint or adverse action,
- At informal hearing,
- At eviction hearing,
- Appeal to a higher court.

Request Process

- Individual gives the housing provider the request (we advise all requests in writing)
- Housing provider must respond in a reasonable amount of time (7-10 days)
- If housing provider denies request, they must state a reason and discuss alternative options
- A unreasonable delay in responding is viewed as a denial
- A denial without reason is a violation of the Fair Housing Act

Reasons for denying a request

(burden on landlord)

- Undue financial **and** administrative burden on housing provider
 - Burden determined by scope of operation
- Fundamental alteration of housing provider's operations
- Tenant poses a direct threat to the health or safety of other residents or housing provider's staff
- Tenant would cause substantial physical damage to another person's property

Open a Dialogue

- Tenant's request should open a dialogue between the housing provider and the tenant about the tenant's needs.
- If the request is denied, that is not the end.
- Even if housing provider denies request alleging that it is unreasonable or that tenant is a direct threat or would cause substantial damage, they must talk to the requester about options.

Assistance Animals

(Service & Emotional Support Animals) RA request as exception to no-pet policy

- Service and emotional support animals are not pets
- Must show relationship between needing animal for disability (letter from doctor, social worker, etc.)
- Cannot charge pet deposit or extra monthly rent
- No training or certification required
- No breed or weight restrictions
- All domestic animals allowed
- Animal can access all housing property



COVID Emergency Rental Assistance

- Agencies given money by the government to pay landlords
- Tenant contacts agency and completes application

THINGS TO REMEMBER:

- **Agencies can accept certain factors as proof of eligibility**
- **No requirement that money go to landlords** (if landlord refuses to accept money, it can go to the tenant to pay the rent)
 - **Landlords cannot evict during period paid for by the funds**
- **If tenant receives subsidy, they qualify for their portion of rent**
 - **You do not need to be behind on rent to apply**
 - **Assistance can be given to people evicted and moving to new housing**

COVID Emergency Rental Assistance Eligibility requirements

(1) One or more people in the household have qualified for unemployment benefits or

experienced a reduction in household income, incurred significant costs or

experienced other financial hardship during the pandemic or due, directly or indirectly to the pandemic;

(2) One or more people in the household can demonstrate a risk of experiencing homelessness or housing instability AND

(3) The household is a low-income family as defined under federal regulations

Emergency Rental Assistance

Schuylkill County:

Schuylkill Community Action

<https://schuylkillcommunityaction.com/services/erap>

200 N. 2nd Street, Pottsville, PA 17901

570-622-1995

Lebanon County:

Community Action

www.lebanoncountyrentalhelp.com

503 Oak Street, Lebanon, PA 17042

717-273-9328

Apply for Help

Call: 1-800-326-9177
Monday – Friday
8:30 a.m. to 3:30 p.m.

Apply online: apply.midpenn.org

For More Information About MidPenn Legal Services:

1-800-326-9177



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