



FAIR HOUSING GUIDE *for*

Landlords and Property Managers



Fair Housing... It's Your Responsibility!



QUESTIONS?
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Fair Housing... It's Your Responsibility!

This guide was developed to assist landlords, real estate professionals and property managers in understanding their requirements under fair housing laws. It's meant for information purposes only and shouldn't be relied upon as a source of legal advice with respect to any individual circumstances.

Fair Housing Act: Know Your Responsibilities

Federal Fair Housing Act

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 any type of housing related transaction on the basis of:

- Race
- Color
- Religion
- Sex
- National Origin
- Disability
- Familial Status*

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

State and Local Fair Housing Laws

The Pennsylvania Human Relations Act makes it illegal to discriminate in a housing related transaction on the basis of age, above the age of 40. Local fair housing ordinances may expand protections based on sexual orientation, gender identity, marital status or source of income so it's important to stay current on local anti-discrimination ordinances in the communities where you operate housing. Housing programs funded by the U.S. Department of Housing and Urban Development (HUD) must comply with the Equal Access Rule, which prohibits discrimination on the basis of gender identity, marital status and sexual orientation.

Illegal Activities

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

- 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, homeowners 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 Activities

Fair Housing laws do not guarantee any person a right to housing they cannot afford and property owners may set the rent at whatever the market will bear. A landlord is free to adopt and apply uniform, objective and nondiscriminatory criteria designed to evaluate a prospective occupant's credit worthiness. A landlord is not required to rent to current users and dealers of illegal drugs.

Exemptions

All single family homes are covered by fair housing laws when they are owned by private persons and a real estate broker is used, and all single family homes owned by corporations or partnerships regardless of whether a broker is used. All multifamily dwellings are covered by the Act, including townhouse and condominium communities. There are three exceptions to this rule:

- 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 is only exempt from the familial status provision of the Act and must meet the following standards: 100% of the community is 62 years or older; or 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, but the organization cannot 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 the advertising provision has lost the exemption and can be held liable under the Act.

Discriminatory Advertising

Generally, a housing advertisement should describe the property itself, and not the potential occupants. For example, an advertisement for a housing unit stating “no children” or “no wheelchairs allowed” would be considered discriminatory and both the publisher and the advertiser could be held liable. If used in advertising, human models should portray persons in equal settings and indicate to the general public that housing is open to all. An advertising campaign that selectively advertises available housing to one race or national origin population could also be in violation of the discriminatory advertising provision of the Fair Housing Act.

Reasonable Accommodations and Modifications for People with Disabilities

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 physical disabilities, 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 person with a disability who requires an assistance animal.

The Act also requires housing providers to allow a tenant to make reasonable modifications to a dwelling. In general, 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 a certified contractor make alterations. One example of a modification would be to allow a tenant to build a ramp or widen the doorways for wheelchair access.

Fair Housing and Families with Children

It's illegal to discriminate against families with children. Examples of illegal practices include “no children” policies, rejecting families based on the presence of lead based paint, or segregating housing so that children are only allowed in particular areas. It's also illegal to discriminate because of “unsafe conditions,” state that parents and children cannot share a bedroom, or force children of the opposite sex to have separate bedrooms. These types of decisions are the parent's choice to make.

HUD states that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable. However, reasonableness of any occupancy policy is disputable and each case may be evaluated individually and also be based on factors such as 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 local zoning laws.

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 nondiscriminatory justification for the policy, then it may be permissible.

Best Practices for Fair Housing Compliance

Any person involved in a housing transaction is responsible for following and upholding fair housing laws. This includes owners of property, on site managers, rental agents, mortgage lenders, real estate brokers and agents. Train any employee or agent to follow these procedures and to obey fair housing laws.

Penalties for Fair Housing Violations

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, a lawsuit can be filed in federal court for up to two years. Discrimination victims can be awarded

out-of-pocket costs spent while obtaining alternative housing and any additional costs associated with that housing. Non-economic damages such as humiliation, mental anguish or other psychological injuries may also be levied. In cases tried before a HUD Administrative Law Judge, civil penalties of up to \$16,000 for a first violation, increasing to \$65,000 for third violations, may be imposed. In cases brought by the United States Department of Justice, the civil penalties can be up to \$150,000. Punitive damages have been awarded in cases involving “willful, wanton, or malicious” conduct. In addition, attorney’s fees may be awarded to the prevailing party and courts may issue injunctions if they feel prompt action is necessary to prevent immediate and irreparable harm.

Fair Housing Practices are Good Business Practices!

- Treat all persons who inquire about available housing in the same manner.
- Allow reasonable accommodations and permit reasonable modifications for people with disabilities.
- Maintain a list of available housing units to ensure that all applicants are given the same information (apartment number, rent, utilities, security deposit, date of availability, required deposits, etc).
- Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any of the protected classes, and display an equal opportunity statement or logo.
- Develop written standard procedures.
- Establish written criteria to qualify prospective tenants and make it available to all applicants. Applicants who are rejected should be notified within a reasonable period of time and informed why they have been rejected.
- Make all decisions based on identical criteria. Any changes or deviations from the criteria should be documented.
- Train employees to obey fair housing laws.
- Document consistently.

The **Housing Equality Center** is a nonprofit organization leading the effort to eliminate housing discrimination in Pennsylvania through education, advocacy and enforcement of fair housing laws. We provide victims of discrimination with legal help, perform testing to determine the existence of discrimination, educate the public, consult with and train housing providers, and work with housing and related service providers to ensure compliance with anti-discrimination laws. The Housing Equality Center provides fair housing counseling, testing, and investigations services for victims of discrimination in Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia Counties in Pennsylvania.



Housing Equality Center

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