Fair Housing for Landlords and Property Managers

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The Housing Equality Center of Pennsylvania is America’s oldest fair housing council. HECP’s service area includes the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia. HECP’s education and technical assistance programs support housing professionals throughout Pennsylvania.
Housing Equality Center

The Housing Equality Center provides:

• Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.

• Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.

• Publications, fact sheets and resources to educate the public and housing professionals about fair housing.
Fair Housing Laws:

- Protected classes, Covered Entities
- Examples of Discrimination, Penalties
- Sex Discrimination
- Victims of Domestic Violence
- Families with Children
- Religious Discrimination
- National Origin and Immigration Status
- Disability and Reasonable Accommodation and Modification Requests
- COVID-19
- Filing a Discrimination Complaint
Federal Fair Housing Act

The Civil Rights Act of 1968 was passed 7 days after the assassination of Martin Luther King, Jr. and prohibits discrimination in housing related transactions based on race, color, national origin, and religion.
Federal Fair Housing Act

Amended in 1974 to prohibit discrimination based on sex and again in 1988 to outlaw disability and familial status discrimination.

The 1988 amendments also added an administrative enforcement mechanism through HUD’s Office of Fair Housing and Equal Opportunity. Prior to 1988 the FHA was only enforceable through private lawsuits, making it very difficult and costly for individual consumers to assert their rights.
Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

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

*Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.
It is against the law, because of a protected class, to:

- Refuse to rent housing
- Refuse to negotiate for housing
- Make housing unavailable or deny housing is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way
- Threaten, coerce, or intimidate anyone exercising their fair housing rights or assisting others in exercising those rights
Federal Fair Housing Act

Covered Transactions:

• Rental
• Sales
• Lending
• Homeowners insurance
• Appraisals
• Zoning and land use
• Housing programs offering rental assistance, housing counseling, etc.

Covered Properties:

• Apartments and condos
• Public housing
• Private housing
• Dormitories
• Nursing homes
• Homeless shelters
• Transitional housing
• Group homes
• Addiction recovery homes

OPENING DOORS SINCE 1956
Who Must Abide by Fair Housing Laws?

Landlords
Property Managers
Nonprofit Housing
Subsidized Housing
Portfolio Managers
Maintenance Crews and Contractors
Housing Industry Trade Associations
Property Owners and Sellers

Sales Agents and Brokerage Offices
Listing Services
Builders and Developers
Architects
Condo and Homeowner Associations
Mortgage Lenders, Appraisers, and Servicers
Homeowners Insurance Companies

Long Term Care Facilities
Governmental Jurisdictions
Employees of Housing Providers
Other Residents or Neighbors Acting as Agents of Housing Providers
Housing Counselors
Basically Everyone!
Penalties for Violating the FHA

Administrative complaint or federal lawsuit
Economic and non-economic damages
Relief in the public interest
Punitive damages
Civil penalties
Government monitoring
Attorneys fees
Injunctions
Loss of tax credits
Other Laws and Rules

- Civil Rights Act of 1866 – all persons born in the United States, without regard to race, can make and enforce contracts, sue and be sued, and inherit, purchase, lease, sell, hold, and convey real and personal property.

- PA Human Relations Act – illegal to discriminate based on age (40 and over) or users, handlers, or trainers of assistance animals for persons with disabilities.

- Local ordinances may prohibit discrimination based on sexual orientation and gender identity, source of income, and/or other additional protected classes – at least 45 municipalities in PA have ordinances which include additional protected classes.
Other Laws and Rules

- HUD Equal Access Rule – prohibits discrimination on the basis of sexual orientation, gender identity, or marital status in all HUD programs. Housing providers that receive HUD funding and/or have loans insured by the Federal Housing Administration (FHA), must comply with these rules.

- National Association of Realtors® Code of Ethics prohibits Realtors® from discriminating based on sexual orientation
The Fair Housing Act does 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 may refuse to rent to a person if they have reliable information that the person has a recent history of violent, disruptive, or destructive behavior.
Fair Housing Act
Permissible Activities

• An agent or property owner can adopt and apply uniform, objective, and nondiscriminatory qualification criteria designed to evaluate a prospective tenant or buyer’s credit worthiness, income level, or criminal history.

• An agent or property owner is not required to rent to users and dealer of illegal drugs.

• In Pennsylvania, landlords may chose whether or not to participate in the housing choice voucher program (Section 8) as long as source of income is not protected under local law. NOTE: Source of Income IS a protected class in the City of Philadelphia.
Fair Housing Act Exemptions

- Mrs. Murphy's Exemption: Owner occupied buildings with
  - four or less rental units (Federal Fair Housing Act)
  - two or less rental units (PA Human Relations Act)

- For Sale By Owner - single family housing sold without the use of a broker and if the private individual owner does not own more than three such single family homes at one time. Must be sold without the use of discriminatory advertising. NOTE: PA Human Relations Act does not contain this exemption.

- Housing operated by religious organizations and private clubs may limit occupancy to members

- There is NEVER an exemption for discriminatory statements and/or advertising
Housing for Older Persons

Exempt from the prohibition on familial status discrimination if:

• It is occupied solely by persons who are 62 or older or

• Houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

• A provider seeking to operate housing for older persons must adopt a policy to continually ensure that the housing meets the requirements of the exemption. If the housing fails to meet HOPA requirements, the provider violates the FHA.
Discriminatory Treatment

Individuals who are similarly situated or qualified are treated differently based on their membership in a protected class. For example:

- Discrimination during the application process
- Different terms and conditions or rules
- Failure to make reasonable accommodations/modifications
- Inquiries into nature or severity of a participant’s disability
- Harassment, intimidation, coercion, retaliation (including retaliatory terminations)
Advertising

- It is unlawful to print or publish discriminatory advertisements for the sale or rental of housing units that indicate any preference on the basis of the protected classes.
- Advertisements for housing and programs should describe the property, NOT potential occupants.
- If it is found that an advertisement is discriminatory, both the publisher and the advertiser can be held liable.
Examples of local discriminatory ads:

3 BR apt. $1450/mo. w/d, heat/hw included. **Mature adults** preferred.

Large second floor 1BR unit in a 6 unit complex. $750/mo + utilities. **Not ideal for families with kids** due to the stairs.

1 BR third floor apartment in quiet complex near shopping and transportation. $750 a month, utilities separate. **Prefer single female.**

1BR, 2BA Bi-level Unit. Kitchen, Dining/Living Rm, Large Bedroom, Extra room/office/den/ or guest room. **Great for retired couple or young professional.** $1600/mo +utils
Advertising

In reviewing compliance with the Fair Housing Act in advertising, HUD will consider:

1. The use of words, phrases, or symbols that convey either overt or tacit discriminatory preferences or limitations (for example, the use of religious terms in naming or describing housing complexes, terms describing the characteristics of desired occupants, references to real estate location or directions made in terms of racial, national origin, or religiously significant landmarks, areas, or institutions, etc.)

2. Selective use of type of media, geography of distribution of advertising, or human models in advertising

3. Other policies or practices (for example, use of the Equal Opportunity Logo)
Sex Discrimination

• Discrimination based on sex is prohibited by the Fair Housing Act.
• Providers and housing programs may not segregate residents by gender, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.
• Rules that prohibit boys and girls from sharing a sleeping area are not permissible.
• Sexual harassment in housing is recognized as discrimination under the Fair Housing Act.
Victims of Domestic Violence

• It is illegal to discriminate against someone due to a history of experiencing domestic violence.
• Refusing to rent to someone because they have been a victim of domestic violence violates the Fair Housing Act.
• A zero tolerance policy for crime that applies to victims of domestic violence violates the Fair Housing Act. (Example: A landlord has a zero tolerance policy for crime committed on the property. A tenant is a victim of domestic violence and she calls the police when her abuser shows up at her apartment in violation of a protection from abuse order. It would violate the Fair Housing Act for the landlord to evict the tenant because of the zero tolerance policy.)
• Domestic and sexual violence victim status is a protected class in the City of Philadelphia.
Nuisance Ordinances

In 2016 HUD released Guidance on Application of FHA Standards to the Enforcement of Local Nuisance and Crime-free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services.

• Norristown case example
• PA law now prohibits municipalities from enforcing nuisance ordinances against victims of abuse or crime or individuals in an emergency
Illegal discrimination against families with children includes:

- Denying housing to families with children—only senior housing (under HOPA) can restrict families with children
- Segregating housing so the families with children are only permitted in certain buildings or on certain floors
- Restricting children because of “unsafe conditions”
Families with Children

Illegal discrimination against families with children includes:

• Rules that prohibit parents and children or boys and girls from sharing a bedroom

• Charging a higher rent or security deposit to families with children

• Rules and regulations that treat children under 18 differently from adults in the use of housing facilities
Occupancy Limits

• Per capita charges (per person fees) and occupancy restrictions can have a disparate impact on families with children

• Consider layout, square footage, and code requirements including means of egress – check with your local municipality

• Section 404.4.1 2018 IPMC states each bedroom must have at least 70 sq ft and every bedroom occupied by more than one person must have at least 50 sq ft of floor area for each additional occupant.
1. My rental property has very steep steps and I do not feel it will be safe for young children, can I refuse to rent to families with small children?

2. There are elderly neighbors who do not want to be disturbed by children. What can I do to protect their rights?

3. Are babies considered an occupant? Can I insist that a pregnant couple rent a 2 bedroom unit instead of a 1 bedroom unit?
Religious Discrimination

- A provider may retain religious terms in their name, mission, governing documents, etc.—but they should not contain an explicit preference, limitation or discrimination based on religion. Advertising containing a religious reference or symbol should be accompanied by a disclaimer.

- HUD forbids recipients of federal money from requiring residents to participate in religious services as a condition of tenancy. Religious activities must be offered separately in time or location from the HUD funded programs, activities or services and participation must be voluntary.
National Origin and Immigration Status

• National origin discrimination includes discrimination because an individual has physical, cultural, or linguistic characteristics associated with a foreign geographic area.
• Immigration status does not affect fair housing rights.
• Housing discrimination based on any protected class is illegal regardless of the victim’s immigration status.
• Different terms and conditions based on national origin are illegal.
• It is illegal to coerce, intimidate, threaten, or interfere with a person’s exercise of rights protected by the Fair Housing Act. This includes threats to report a person to U.S. Immigration and Customs Enforcement if they report housing discrimination to HUD.
National Origin and Immigration Status

• Requiring tenants or applicants to be citizens or to have a particular lawful status is direct evidence of discrimination.

• Housing providers are allowed to request identity documentation and conduct inquiries to determine whether a potential resident meets the criteria for occupancy, so long as the same procedure is applied to all potential residents.

• Requiring that all applicants, or all adult applicants, have a social security number disproportionately excludes families who come from another country (recent case law that requiring a SSN has a disparate impact based on national origin.)
DISABILITY DEFINED

A physical or mental impairment that substantially limits one or more of a person’s major life activities.

Includes people having a history of an impairment and people being perceived as having an impairment.
Reasonable Accommodation and Modification Requests

A reasonable accommodation is a change in rules, policies, practices, or services that enables a person with a disability equal opportunity to use and enjoy a dwelling. Example accommodations include:

- Assistance animal with no fees, lease application in large print, permitting live-in personal care attendant, transfer to a more accessible unit/community, reserved marked handicapped parking space
A **reasonable modification** is a change in the physical structure of a dwelling that enables a person with a disability equal opportunity to use and enjoy that dwelling. Example modifications include:

- Widened doorways in unit, grab bars in bathroom or at entrance into unit, removal of below-counter cabinets, installation of wheelchair ramp at entrance to building/unit, installation of fence or awning, replacing door handles with levers, installation of visual and tactile alert devices
How should an RA or RM request be made?

• It is the responsibility of the person with a disability to make the request.
• It is not the responsibility of a housing provider to offer or suggest an accommodation or modification to a resident or prospective resident, even if they are aware of the disability or disability related need.
• Requests can be made verbally.
• A request can be made by someone on behalf of a person with a disability.
• There must be a connection between the disability and the need for the accommodation or modification.
• A person can ask for a reasonable accommodation at any time including when applying for housing, when moving in or moving out, while living in the unit, or even during an eviction hearing at Court.
When must a provider allow an RA or RM?

A housing provider must grant a request for a reasonable accommodation or modification if:

• The person making the request fits the Fair Housing Act definition of a person with a disability;

• Due to their disability, the person needs the requested accommodation or modification in order to use and enjoy their dwelling; and

• The request is “reasonable”.
A request for an accommodation or modification is considered reasonable if that request:

- Does not cause an undue financial and 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
What if a housing provider believes a request is unreasonable?

• Each reasonable accommodation/modification request is individual and must be evaluated on a case by case basis.

• If the request proposed by a tenant is unreasonable, the housing provider must engage in an interactive dialogue with the tenant to determine if there is an alternative accommodation that will meet the tenant’s needs.

• A housing provider may not stall or delay in responding to a request for reasonable accommodation.
Can a housing provider charge extra fees or deposits or require conditions?

• Housing providers cannot place any financial conditions upon a reasonable accommodation or modification or require some action or condition before granting a request.

• For example, a housing provider cannot require a resident with a disability to purchase insurance to protect the landlord should someone be injured by a wheelchair ramp.

• Housing providers are not permitted to charge a fee for a reasonable accommodation and must forego collecting pet deposits or pet fees for assistance animals.
Examples of Reasonable Accommodations

• Exception to application criteria when poor credit or rental history or negative references are due to a disability
• Extra time to remedy sanitary or fire hazards for individuals who engage in compulsive hoarding
• Revised rental due dates or waiver of late fees for individuals receiving SSDI payments mid-month
• Including a case manager or other professional support service on all correspondence
• Permitting a home health aide or live-in personal care attendant
Examples of Reasonable Accommodations

• Notice before entering an apartment or additional locks for individuals with PTSD
• Rescind a notice to quit or eviction notice for lease or program violations when an individual can demonstrate that a reasonable accommodation will mitigate the disability-related behavior that led to the violations
• Rent due date or maintenance or inspection reminders if an individual has a cognitive disability
Examples of Reasonable Accommodations

• Assigning a person with a disability a reserved parking spot near their unit even though parking is generally on a first come, first served basis
• Allowing a person with a disability to keep an assistance animal despite a “no pets” policy
• Providing a lease application in large print
• Allowing a transfer to a first floor or a more accessible unit or community
Reasonable Modifications

What rights does the landlord have?

• Can require that the work be performed in a professional manner with a certified contractor.

• Can require the tenant to restore the unit to original condition when moving out if the modification interfere with the next tenant’s use and enjoyment of the property. (Common use areas may be beneficial to future tenants and you cannot require restoration).

• Can require tenant to place money in an escrow account to pay for the restoration when they move out.
  • Accessible units are highly marketable.
Reserved Parking

• General handicapped parking available to all with a handicapped parking placard vs. privately reserved parking space – case by case basis.
• Cost of installation is borne by the housing provider – including painting lines, installing signage, enforcement, etc.
Assistance animals come in many species, breeds and sizes
Americans with Disabilities Act of 1990 – prohibits discrimination based on disability in programs and activities provided by public entities (including housing related programs) and in goods, services, facilities, and privileges of places of public accommodation owned or operated by private entities.

SERVICE DOGS under the ADA are individually trained to do work or perform tasks for people with disabilities.
Pa State Human Relations Act and the federal Fair Housing Amendments Act apply to DWELLINGS and have a broader definition of assistance animal.

ASSISTANCE ANIMALS do NOT need to be trained or certified.

ASSISTANCE ANIMALS serve a disability related need and allow a person with a disability equal opportunity to use and enjoy a dwelling.
A housing provider cannot:

• Refuse to allow someone with a disability the right to an assistance animal when it’s reasonable
• Deny occupancy, or evict a person with a disability because they request an assistance animal
• Charge extra fees or deposits
• Stall or delay on responding to a request
• Require training or certification for an assistance animal
Assistance Animals

Does a provider have to accept an online “Emotional Support Animal” certificate?

- No official registration or certification for emotional support animals or assistance animals exists.
- Housing providers can request a letter from a medical professional who is familiar with the patient or client making the request, their disability and the disability related need for the animal.
What are my rights if my insurance policy will go up due to the presence of a certain breed?

- Could pose an undue financial or administrative burden on the housing provider.
- Be able to show that comparable insurance without the breed restriction is unavailable.
- If an insurance provider has a policy of refusing to insure any housing that has animals without an exception for assistance animals, the insurance provider may be held liable for discriminating against individuals with disabilities.
Pennsylvania Assistance and Service Animal Integrity Act

Makes it a third degree misdemeanor to:

• misrepresent an animal as an assistance or service animal
• intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing
• provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing
• fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates it is an assistance animal for use in housing
A housing provider may not ask:

• Questions about the nature or severity of a disability or about a specific diagnosis

• If an individual is able to live independently

• Questions that would require an individual to waive their rights to confidentiality regarding their medical condition or history

• To see medical records
If disability is obvious and need for accommodation or modification is clear – No additional documentation may be required

If disability is known, but need for accommodation or modification is not clear – Only information to evaluate disability-related need may be required

If disability and need are not known – Provider may request documentation that tenant has a disability and a disability-related need
Common Accommodation and Modification Mistakes

• Requiring forms ALWAYS
• Being rigid with rules, policies and procedures
• Not responding timely to requests
• Not engaging in an interactive process
• Not training all employees who deal with tenants/prospective tenants
• Not being sensitive
DOJ and HUD have provided joint statements on **Reasonable Accommodations Under the Fair Housing Act** and **Reasonable Modifications Under the Fair Housing Act**

- Clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act

- Available at:
Criminal Records
In April 2016 HUD’s Office of General Counsel released Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transactions

Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics.

The Fair Housing Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, however arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification.

Thus, a discriminatory effect resulting from a policy or practice that denies housing to a anyone with a prior arrest of any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

HUD Guidance on Criminal Records, April, 2016
Exemption from Fair Housing Act Liability

Section 8097 (b) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted…of the illegal manufacture or distribution of a controlled substance…”

Housing providers will NOT BE LIABLE under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

Limitation: Conviction for drug manufacturing and distribution only. Does not include arrest for such offenses or conviction for possession.
Exclusions Because of Prior Arrest

HUD Guidance for Public Housing Agencies and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (HUD PIH Notice 2015 -19): *Arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants from public and other federally-assisted housing.*

Supreme Court: “the mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person and was apprehended of an offense.” *Shware v Bd. Of Bar Examiners,* 353 US 232, 241 (1957)

“A mere arrest especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct” *United States v. Zapete-Garcia,* 447 F. 3rd 57, 60 (1st Circ, 2006)

**HUD:** Exclusions because of prior arrest cannot prove that the exclusion actually assists in protecting resident safety and/or property.
Blanket bans no matter when conviction occurred, with no consideration of what underlying conduct entailed or what the convicted person has done since then will be unable to meet the burden of proving a substantial, legitimate, nondiscriminatory interest.

Decisions must be made on a case by case basis

- Must consider nature and severity of conviction.
- Must consider amount of time that has passed since the criminal conduct occurred.

HUD Guidance on Criminal Records, April, 2016
Disparate Treatment Liability

Treating individuals with comparable criminal history differently because of their race, national origin or other protected characteristic:

• ex. Telling only African American applicants about credit check and criminal record checks while not mentioning it to White applicants.

• ex. Applying application standards more harshly to minority applicants than White applicants (Allen vs. Muriello, 217 F. 3rd at 522)

• ex. Using criminal records as a pretext for discrimination
Individualized assessment of relevant mitigation information beyond that contained in an individual’s criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account.

- Facts or circumstances surrounding the criminal conduct
- The age of the individual at the time of the conduct
- Evidence that the individual has maintained a good tenant history before/after the conviction or conduct
- Evidence of rehabilitation efforts

HUD Guidance on Criminal Records, April, 2016
Consider financial and other qualifications first

By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individuals assessment might add to the application screening process.

HUD Guidance on Criminal Records, April, 2016
**Case Example**

*The Fortune Society vs. Sandcastle Towers Housing Development Fund, Inc.*

- Filed October, 2014 in the U.S. District Court for the Eastern District of New York.
- Sandcastle Towers refused to rent to Fortune Society’s clients when they learned that Fortune Society was a nonprofit which served formerly incarcerated people. Sandcastle stated that they enforced a policy of prohibiting anyone with a criminal records from renting an apartment or living at the Sandcastle.
- Precedent setting $1.1875 million settlement and landmark federal civil rights case.
- Lawsuits can be brought against private landlords who impose blanket bans on renting apartments to people with criminal records.
Case Example

Housing Opportunities Made Equal (HOME) vs. Sterling Glen Apartments in Chesterfield, Virginia

- Sterling Glen had a policy of rejecting applicants with criminal backgrounds, including a blanket ban of anyone with a felony conviction.

- Part of the settlement included Sterling Glen revamping their criminal record screening to assure individualized consideration, an opportunity to share additional information as part of application review including the facts or circumstances surrounding the conviction, proof of rehabilitation efforts, and evidence of good tenant or employment history.

- New criminal records screening policy stands as a model for how housing providers can screen applicants fairly and avoid discrimination.
Harassment
In September 2016 HUD released published a new final rule entitled *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*. This rule formalized standards for evaluating claims of hostile environment and quid pro quo harassment in the fair housing context. The rule also clarified housing providers’ liability for harassment or discrimination by agents and third parties.

- **Quid Pro Quo Harassment** involves subjecting a person to an unwelcome request or demand and making submission to the request or demand a condition related to the person's housing.
- **Hostile Environment Harassment** involves subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person of the right to use and enjoy the housing.
• An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces to the request or demand.
• Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the housing related services transaction.
• Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.
• Harassment can be written, verbal, or other conduct, and does not require physical contact.
• A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment or evidences a quid pro quo.
Not only does the housing provider or other covered entity have liability for its own conduct, it is also liable for:

• Failing to take prompt action to correct and end discriminatory housing practice by its employee or agent, where it knew or should have known of the discriminatory conduct;

• Failing to take prompt action to correct and end a discriminatory housing practice by a third party, where it knew or should have known of the conduct and had the power to correct it; and

• Vicarious liability for a discriminatory housing practice by its agent or employee, regardless of whether the housing provider knew or should have known of the discriminatory housing practice.
FAQ Harassment

What if a Tenant is harassing another tenant?

Consider:

- Covenant of Quiet Enjoyment
- Is harassment based on a protected class?
- Does lease address harassment or disruptive behavior?
- Document steps you’ve taken to warn tenants to stop the behavior
- Call the police if the situation warrants and ask for a police report.
- Make sure your tenants understand that they are responsible for the actions of their guests.
Limited English Proficiency
Limited English Proficiency

In September 2016 HUD released Guidance on Application of Fair Housing Act Protections for **Persons with Limited English Proficiency**.

- LEP, race, and national origin are so intrinsically linked as to be almost indiscernible from each other, therefore discrimination based on LEP will be treated as national origin discrimination.

- Lack of English proficiency is often used as a proxy for national origin discrimination.

- Some courts have recognized as legitimate the needs of employers to require that employees speak English, however the new HUD guidance states that these reasons are inapplicable with regards to housing, lending, or other real estate related transactions covered by the Act.
Avoid Discrimination Complaints

- Understand local, state, and federal fair housing laws
- Train employees and representatives on fair housing
- Make sure employees and representatives understand the consequences for violating fair housing laws
- Adopt and apply uniform, consistent, non-discriminatory evaluation criteria to evaluate credit, criminal history, and rental history
- Respond promptly to all reasonable accommodation and modification requests
- Become familiar with your local fair housing group and feel free to reach out for free technical assistance.
COVID-19
Physical or mental impairment that substantially limits a major life activity, a record of having such an impairment, or being regarded as having such impairment.
The Fair Housing Act prohibits housing providers from asking whether an individual has a disability or asking about the nature or severity of a disability.

Housing providers cannot ask tenant, homeowners or borrowers to disclose medical conditions, including underlying medical conditions that might make them at increased risk of COVID infection.

Asking about exposure to the virus or test results, will generally violate the Fair Housing Act.
Ex. Evicting or refusing housing to a health care worker because of the fear that they worker may have been exposed to or contracted the virus

Ex. Refusing to provide housing to someone transferring from a nursing home based on the assumption that regarding the prevalence of COVID-19 in nursing homes.

Ex. Treating people from China differently because of the perception that they may have COVID-19.
Housing providers can encourage tenants and homeowners to adopt infection-control practices such as regular hand washing, wearing cloth face coverings, and physical distancing.

Consistently applying policies and practices recommended by the Centers for Disease Control to prevent spread of the virus are justified, and these policies and practices are designed to assume that everyone may have the virus.

NFAH COVID-19 UPDATE April 9, 2020
The Fair Housing Act provides that housing need not be made available to people “whose tenancy would constitute a direct threat to the health or safety of other individuals.”

COVID-19 is a highly contagious disease, raising the question of whether this “direct threat” exception would preclude Fair Housing Act protections in particular circumstances.
Direct Threat Exception

Application of this exception must be based on an individualized evaluation of the individual and informed by the reasonable medical judgments of the Centers for Disease Control or state or local health authorities. If the threat can be reduced or eliminated by making a reasonable accommodation, an accommodation should be offered.
At a time when the public is advised to apply physical distancing measures by staying home, evicting someone with COVID-19 is antithetical to the recommendations of public officials.

For a person with symptoms who is regarded as a potential direct threat, offering self-quarantine procedures may be regarded as an appropriate reasonable accommodation that must be considered to alleviate the threat.

NFAH COVID-19 UPDATE April 9, 2020
Alternatively, someone who has a record of having a communicable disease but who has recovered may be protected because their tenancy no longer poses a threat of infection.

A conclusion about whether the tenancy of an individual constitutes a direct threat to the health or safety of others may not be based on stereotypes or assumptions but on objective factual evidence.
Any person involved in a housing transaction is responsible for following and upholding the fair housing laws.

Train employees to follow the procedures your office establishes and to obey the fair housing laws. Provide all employees with a written non-discrimination policy.

Make sure employees and the public are aware of the apartment’s non-discrimination policy. – Use Equal Housing Opportunity Logo on all rental applications, and brochures and in all advertising.

Regular fair housing training for all your staff. – assure that they follow the same process and obey fair housing laws

Display a fair housing poster in a visible location
Employee Training

- Written policy to avoid claims for harassment, including sexual harassment
- New employee = training meeting about fair housing laws and compliance
  - include copies of all memos regarding policies
  - What can happen to the landlord if there is a violation
  - What can happen to the employee who violates fair housing law
- Importance of record keeping
- Consistent equal treatment and experience for all
Develop Standard Procedures

Determine exactly how your rental agents will deal with prospective tenants.

***ALL PERSONS who inquire about rentals should be treated in the same manner and the information they are given should be the same every time.***

- Put application procedures in writing and establish financial qualification formulas.
- All decisions whether to reject or accept an applicant must be based on identical qualification criteria.
- Adopt and apply uniform, objective and nondiscriminatory criteria designed to evaluate a prospective tenant’s credit worthiness, income level, and criminal history.
Fair Housing is Good Business

Record Keeping

• Maintain records on all prospective residents in addition to current/past residents
• Records regrading available properties need to be kept and updated every time there is a change in availability.
• All applications should be retained
• Being able to produce consistent records showing nondiscriminatory application of written screening criteria in every case can usually successfully defend a Fair Housing claim.
Fair Housing is Good Business

Steering

Directing a resident for whatever reason, to a specific area of the property or community:
  - Ex. Only allowing only families with children in first floor units
  - Ex. Grouping people by “type” – assuming similar people want to live near each other

Best Practices to Avoid a Fair Housing Complaint

• Show all available properties to prospects
• Have a list of available units so everyone given the same information
• Let the prospect decide what to see and what to skip
• Present only facts about the property and the community, not about other residents or neighbors
For more information on a variety of legal issues including Landlord Tenant Law, Children and Families, Employment, Health Law, Housing and Shelter, Public Benefits, Disability, Elder Law, Immigration Issues, Migrant Issues, and Veterans and Military, visit the website:

www.PALawHELP.org
Consumers, providers and advocates should contact the **Housing Equality Center of Pennsylvania** to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

[www.equalhousing.org](http://www.equalhousing.org)

Fair housing complaints can be filed with HUD for up to **one year** from the incident, [www.hud.gov](http://www.hud.gov)

with the Pennsylvania Human Relations Commission for up to **180 days** from the incident. [www.phrc.pa.gov](http://www.phrc.pa.gov)

A lawsuit may be filed in Federal Court up to **two years** from the incident.
equalhousing.org

- Sign up for fair housing news
- Register for an upcoming fair housing event or meeting
- Learn about fair housing laws
- Download guides, resources, fact sheets and fair housing guidance
- Request fair housing training or publications for your clients, colleagues or offices
- Report discrimination online
Technical Assistance
(267) 419-8918

Contact HECP for a confidential review and assessment of specific circumstances or for technical assistance regarding Fair Housing compliance.

(267)-419-8918 or (866)540-FAIR (3247)
www.equalhousing.org

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