Using Fair Housing to Assist Clients in Navigating a Successful Rental Experience

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

The Housing Equality Center provides:
- Counseling and conduct testing investigations to help housing discrimination victims.
- Education and training programs for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.
- Publications and resources to educate the public and housing professionals about fair housing.
Agenda

Fair Housing Laws:

• Sex Discrimination
• Victims of Domestic Violence
• Families with Children
• Religious Discrimination
• National Origin and Immigration Status
• Disability and Reasonable Accommodation and Modification Requests
• Filing a Discrimination Complaint
Assisting Clients to Navigate a Successful Rental Experience:

- Applying to Rent and Overcoming Obstacles To Housing
- Lease Terms and Unenforceable Lease Provisions
- Right to Privacy
- Repairs and the Implied Warranty of Habitability
- Security Deposit
- Utility Shut-Offs
- Eviction
- Resources
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.
An Executive Order 13988 issued on January 20, 2021 states: “Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love…All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

Executive Order 13988 directed the heads of all federal agencies to develop agency actions to fully implement existing statutes that prohibit sex discrimination. HUD’s Office of Fair Housing and Equal Opportunity responded by stating on February 11, 2021 that will begin enforcing the Fair Housing Act to prohibit housing discrimination based on sex to include

Sexual Orientation and Gender Identity
Federal Fair Housing Act

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
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 source of income, marital status, and/or other additional protected classes – at least 45 municipalities in PA have ordinances which include additional protected classes
City of Philadelphia Protected Classes

- Race
- Ethnicity
- Color
- Sex
- Sexual Orientation
- Gender Identity
- Religion
- National Origin

- Ancestry
- Disability
- Marital Status
- Age
- Source of Income
- Familial Status
- Domestic or Sexual Violence Victim Status
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

- Owner occupied buildings with four or fewer rental units *(two or fewer units under PA state law)*

- For Sale By Owner - single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time. **NOTE: PA does not contain this exemption.**

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

- Housing for Older Persons - must comply with the HOPA definition - either 80% of households with a resident age 55+ or 100% of residents age 62+

- No exemption for discriminatory statements and/or advertising
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.
- Sexual Orientation and Gender Identity is covered under sex discrimination.
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 is applied to victims of domestic violence violates the Fair Housing Act. (Example: A landlord has a zero tolerance policy for crime committed on the property. One of the tenants 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.
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”

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

Illegal discrimination against families with children includes:

• 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

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

• Immigration status does not affect fair housing rights
• Housing discrimination based on any protected class is illegal regardless of the victim’s immigration status
• It has been HUD’s practice not to ask about immigration status when people file fair housing complaints
• 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.
• 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
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
What 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
How should the 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.
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.
Fair Housing Law

- 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
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

If the accommodation or modification proposed is unreasonable, is there another solution?
The Fair Housing Act does **not** require that housing providers rent to anyone who constitutes a “direct threat” to the health or safety of others or a risk of substantial damage to the property of others.

However, housing providers **may not** deny housing to people with disabilities based on fear, speculation, or stereotypes about a particular disability or stereotypes about disabilities in general.

Denying an individual housing or evicting an individual because of a direct threat must be based on reliable and objective evidence.
The direct threat assessment must take into account the nature and severity of the risk of injury as well as the probability that an injury will occur and whether there are any reasonable accommodations that would eliminate the direct threat.

Even in cases of tenants who do in fact present a “direct threat” due to their disabilities, these tenants are entitled to a determination whether any reasonable accommodation would mitigate any risk posed by their disability-related behaviors prior to eviction.
What To Do If You Have Experienced Housing Discrimination

**Strategy:** Maintain all records and documentation with names, dates, and details regarding the incident to help prove the case. It is helpful to write a narrative account and timeline of the incident as soon as possible when it is fresh in mind.

If you live in Philadelphia or in Bucks, Chester, Delaware, Lehigh, Montgomery, or Northampton Counties in Pennsylvania, call the Housing Equality Center of Pennsylvania for counseling, investigation, and options for enforcement based on the circumstances of the case.

Call us at 267-419-8918 or email info@equalhousing.org or visit equalhousing.org
What To Do If You Have Experienced Housing Discrimination

To file a complaint with the U.S. Department of Housing and Urban Development, call HUD’s Housing Discrimination Hotline at 1-800-669-9777 or visit www.hud.gov. Complaint must be filed within one year from the date of the incident.

To file a complaint with the Pennsylvania Human Relations Commission, call 215-560-2496 or visit www.phrc.pa.gov. Complaints must be filed within 180 days from the date of the incident.

A lawsuit can be filed in federal court up to two years from the date of the incident.

To file a complaint with the Philadelphia Commission on Human Relations, call 215-686-4670 within 300 days unless you have valid legal justification for not filing within that time period.

Assisting Clients to Navigate a Successful Rental Experience

The rights and responsibilities of both landlords and tenants are regulated by Fair Housing laws and Pennsylvania Landlord Tenant law.

Knowledge of these sets of rules and how they interact throughout a clients’ housing search and tenancy is essential to helping a client succeed as a renter.
Applying to Rent
Consider:

The application fee may be non-refundable!!

Tenant may have to pay first month’s rent, plus a security deposit with the application.

**Strategy:** Ask if deposits are non-refundable.

Be sure to get a receipt for all monies paid!

Make sure the application is read carefully so that the prospective tenant is aware of the possible consequences should they decide not to take the rental unit.

Ask to read the lease before the rental application is signed since the tenant may be bound to the lease as it is without the possibility of negotiating its terms.
Reasons a prospective tenant can be rejected:

- They do not meet the financial qualification standards.
- Poor credit score.
- Bad landlord references.
- Prior judgments entered by a Court.
- Refusal or inability to comply with the rules that apply to all tenants.
- Landlord has credible information that a tenancy would pose a direct physical threat to the health or safety of others.
Overcoming Obstacles to Housing
Can a landlord refuse to rent to someone with a criminal background?

Yes—but it depends on the circumstances. The U.S. Department of Housing and Urban Development (HUD) has issued guidance stating that because of the racial disparities in the criminal justice system, blanket bans (or refusing to rent to anyone with any type of criminal history, regardless of circumstances) would most likely have a greater impact on Black or Latino applicants, and as such, could violate the Fair Housing Act.

HUD’s guidance states that housing providers need to consider the nature and severity of a crime and the amount of time that has passed to determine if the person would pose a direct threat to the health and safety of other residents.
The guidance issued by HUD states that a mere arrest does not indicate guilt and a person should not be denied housing based on an arrest without a conviction. Furthermore, housing providers must apply criteria equally to all applicants and tenants, regardless of protected class. Using criminal background as a pretext for discrimination based on a protected class is illegal. Contact the Housing Equality Center if you believe a client is being denied housing for a discriminatory reason.

There is an exception to the HUD guidance on criminal backgrounds. If a person possesses a conviction for the manufacture and/or distribution of illegal controlled substances, they can legally be denied housing and the landlord is not in violation of the Fair Housing Act. Note: this exception does not include either arrests for drug charges that do not lead to conviction or convictions for possession only.
Strategy:

• If an individual has a criminal record due to conduct that resulted directly from a mental health disability or addiction and can demonstrate that they have received treatment or medication that has eliminated the behavior that lead to the criminal conduct, the individual can request a reasonable accommodation to make an exception to the provider’s ordinary criteria regarding criminal background.

• A case manager can offer to be the contact person for landlord if there is any problem or issue with tenancy.

• References from previous landlords, employers, probation officers, etc. can be helpful. Show rehabilitation efforts, explain mitigating circumstances or how circumstances have changed from when the criminal behavior occurred.
Overcoming Obstacles to Housing: Criminal Background

Strategy:

- Remind housing providers that they need to consider the **nature** and **severity** of a crime and the **amount of time** that has passed to determine if the person would pose a direct threat to the health and safety of other residents.

- If you have doubts about whether criminal background policies are being enforced equally regardless of protected class, contact the Housing Equality Center for investigative services.

- **Report housing providers who have blanket bans on criminal records** to the Housing Equality Center.
Overcoming Obstacles to Housing: Negative Credit

Example:

Person becomes disabled and no longer able to work, then acquires a negative credit record due to late or unpaid bills. The person is granted SSDI and no longer dependent on employment for income. Loss of income due to inability to work is unlikely to reoccur.

Strategy:

- If negative credit can be shown to be directly due to a person’s disability, and the person is otherwise financially qualified to rent, a reasonable accommodation can be requested to waive the credit requirement.

- A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.

- Consider a co-signor if necessary.
Overcoming Obstacles to Housing: No Previous Rental History

Example:

Person lacks rental history due to a disability and previous long term hospitalization. The person’s health is stabilized and they are attempting to move into independent living.

Strategy:

• A reasonable accommodation can be requested to ask the housing provider to consider references from a social worker or employer in lieu of landlord references.

• Get support letters from counselors, employers, or therapists.

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
Example:

Person with mental health disability stopped taking medications and became disruptive at a previous apartment. Supports are now in place, medication is being monitored, and the person is participating in behavioral therapy.

Strategy:

• If the reason for a negative reference is based on disability related behavior, the individual can request a reasonable accommodation to disregard the negative references or to at least consider mitigating circumstances.

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.

• Get support letters from counselors, employers, or therapists.
Overcoming Obstacles to Housing: No Co-signors Allowed

Example:
An individual with a disability is unable to qualify financially for housing because of their disability (poor credit record, no credit record, insufficient income), and a co-signor is willing to sign the lease but there is a no co-signors policy.

Strategy:
- Tenant can request a reasonable accommodation for the landlord to accept the application even if the landlord has a “no co-signor” policy.

Remember: Must show a nexus between the disability and the need for the accommodation.
In Pennsylvania, source of income is not a protected class, meaning that a landlord can refuse to rent to individuals who hold a Housing Choice Voucher from the Housing Authority, however....

several municipalities within Pennsylvania, such as the City of Philadelphia, have added source of income as a protected class.

**Strategy:** Contact your local government or municipality to find out if source of income is a protected class in your area and what recourse your community offers if someone has been denied housing based on their source of income.

Tenant may be able to request a reasonable accommodation to the policy of not accepting housing vouchers due to a disability. Keep in mind that the landlord may argue that it is an undue administrative burden.

**Testing** can be performed to see if this policy is being equally enforced with all people without regard to protected class. Contact the Housing Equality Center if you suspect discrimination is occurring.
Refusing to approve an application because a prospective tenant is not employed could be unlawful discrimination if the prospective tenant has other verifiable income such as social security, disability, or child support that would financially qualify them to rent. These are verifiable sources of income which are directly related to being a member of a protected class (age over 40, disability, and/or familial status).

Strategy:
Housing providers who require paystubs as proof of income must make reasonable accommodations to their policy for individuals with disabilities who are unable to work due to their disabilities but still have sufficient income to rent. Request a reasonable accommodation to the employment income policy and show alternative verifiable income.
Example:
A nursing home resident transitioning to private housing might require ambulance transport and not be able to apply in person.

Strategy:
A requirement for a housing application to be made in person should be waived for individuals with disabilities to whom it would impose a great hardship or who are unable because of their disability to come in person to apply.

Request a reasonable accommodation to the in-person application requirement. Ask for video or phone conferencing. Signatures required on documents can be mailed or scanned and forwarded to the housing provider.
Overcoming Obstacles to Housing: Assistance with Application

Strategy:
• If a person has a disability which makes it difficult to fill out an application form, a reasonable accommodation request would be to ask for assistance from the housing provider in completing the form.

• A case manager can also assist in completing required forms.

• If a disability makes reading an application or lease difficult, a reasonable accommodation request would be to ask for the documents in large print or in an alternative format.
Lease Terms
A lease is a binding legal contract – for example, an agreement to pay the landlord $12,000 in $1,000 monthly installments. Leases can be either **verbal** or **written**.

**Strategy:**

- Make sure the lease terms are understood **before signing**!
- All blanks should be crossed out or filled in before a lease is signed.
- Make sure the lease does not contain any unenforceable terms or Fair Housing Act violations.
- Make sure tenant gets a copy of the **entire lease**. A tenant should not accept the landlord saying they will give them a copy later. Tenant can take photos of the signed lease with a smartphone.
- Case manager should keep copy of tenant’s lease on file.
Strategy:
Make sure the lease includes:

• Contact information for the landlord – name, address, and phone for emergencies
• Amount of Rent and the due date. Are there late fees?
• Start and end date of the lease. Month to month or year lease?
• Does it automatically renew for another year or on a month to month basis?
• What is included with the rent – who pays for which utilities?
• Security Deposit – what is required to get it back when tenant moves out
• Maintenance – what are the responsibilities?
• Who to contact when repairs are needed?
Strategy:
Make sure the lease includes:
• Notice – amount of time tenant gives to cancel or not renew the lease
  Is there an early termination clause?
• Notice – amount of time landlord must give to cancel or not renew the lease
• Right to enter the apartment without prior notice?
• Are pets allowed?
• Who are the occupants permitted on the lease?
• Is tenant allowed to sublet?

Remember: The lease should be read carefully before signing it!
Get everything in writing!
Most leases state that rent is due on the first of the month. The tenant has an obligation to make sure that the rent is paid by the due date specified in the lease. Even if the landlord says it is okay if the rent is a few days late, the tenant is still bound by the terms of the lease regarding late fees and other penalties.

Strategy:
• A tenant who receives SSDI may request a reasonable accommodation to be exempt from the late fee when the date they receive their SSDI payments make paying rent on time difficult or impossible. Receiving SSDI should be sufficient proof that a person has a disability. If they can show that they don’t receive their payments until after the due date or grace period, that is sufficient proof that there is a disability related need for the accommodation.

• Individuals who requested later rental payment due dates and were previously denied, may be able to claim reimbursement for late fees paid if they can show proof that the request was previously made and denied.
Example:
An individual has a cognitive disability or poor memory, which makes it difficult for them to remember when the rent is due.

Strategy:
The tenant can make a request accommodation request that the housing provider call or provide a reminder note monthly to remind them to make a rental payment before the rental due date.
Changes to the Lease
Any changes to the lease should not be made until the beginning of a new rental period, which is when the tenant and the landlord renew the lease, unless both parties agree to a proposed change before the end of the lease term. Unless the lease specifies how changes are to be made, the landlord will be required to give one full rental period before the change is to take place.

Strategy:
Read the lease to make sure the landlord has complied with the requirements of the lease. If landlord has not complied with the terms of the lease, it can be challenged.
Tenants are usually bound by the terms and conditions of the lease they sign, however some terms and conditions are legally unenforceable in court. **Examples of unenforceable lease terms and conditions include:**

- While tenants can be held liable for damages to an apartment, they cannot be made responsible for all normal maintenance and repairs, or all repairs under a certain dollar amount.
- The tenant cannot be made to accept the house or apartment “as is.” Under the Implied Warranty of Habitability, the facilities and services provided at the leased premises must allow the unit to be occupied for its reasonably intended purpose as a dwelling unit.
Examples of unenforceable lease terms and conditions include:

• The tenant cannot waive the right to represent himself/herself in a court of law.
• The tenant cannot be made to agree that if he/she breaks any promise in the lease, the landlord has the right to break into the apartment, change the locks, and seize the tenant’s possessions.
• The landlord cannot make the tenant agree to waive his or her rights to a hearing or confession of judgment.
Before Moving In
Damages which exist before a tenant moves in should not be charged to the tenant when the vacate the unit. It is the tenant’s right to have the condition of the dwelling in writing.

**Strategy:**
Tenants should take notes (with the landlord or property manager present) of any defects before moving in.

**Photos should be taken to document the condition of the apartment and any existing damages**

If the rental unit is in need of repairs, establish in writing a date and time for the repairs to be completed.

If the repairs are numerous and substantial do not accept the apartment.
The landlord is required to provide tenants with information about lead based paint in any property they are renting. However, a landlord also may not discriminate against families with children, even if conditions exist which they believe may pose particular harm to children.

An owner or landlord who fails to give proper information regarding the presence of lead based paint can be sued for triple the amount of damages. The owner may also be subject to civil and criminal penalties.

**Strategy:**
Contact the local municipality or city to see if there are specific requirements regarding lead paint disclosure and remediation. If a tenant incurs damages due to lead paint and they were not properly notified about the presence of lead paint, they have the right to sue the landlord for damages.

If a landlord says they will not rent to families with children due to lead based paint or other hazards, contact the Housing Equality Center.
Landlord Fraud

- Landlord promises apartment will be ready at a certain date but it is not
- The property has been rented to another party
- There is no heat or water
- The utility services are in someone else’s name and you are required to pay it
- You are being asked to pay rent to someone who you do not think is the landlord or who does not own the property.

PA Attorney General’s Bureau of Consumer Protection
717-787-9707 or 800-441-2555 (Toll-Free Helpline)

Consult an attorney. Unfair Trade Practices.
Overcoming Obstacles: Lease Terms
When a tenant cannot comply with lease terms or needs a change in the lease terms and the reason is due to a disability, the tenant can request a reasonable accommodation to give them equal opportunity to use and enjoy a dwelling and to prevent a lease violation:

Examples:
- Reserved parking
- Include case manager on all correspondence from landlord
- Transfer to a more accessible unit
- Early termination of lease
- Permitting a home health aide or live-in personal care attendant
- Advance notice before spraying or painting
- Avoiding secondhand smoke
- Assistance animals or emotional support animals
- Installing extra locks
- Notice before entering apartment
The Housing Equality Center of PA offers a comprehensive guide to reasonable accommodations and modifications for consumers with disabilities.

Avoiding Eviction
The tenant is legally responsible to pay the **full amount of rent on time** in accordance with the lease agreement unless another agreement has been made (this should be in writing).

If the tenant is responsible for any utilities, they must be paid on time. If not, this could result in an eviction.

**Strategy:**

- **Make sure the tenant gets receipts and saves receipts for all payments to the landlord!**
- Paying the rent by check is preferable - a canceled check provides a record that rent was paid.
- If rent is paid by cash or money order, make sure tenant gets a receipt of the payment.
- Make sure tenant understands that paying utilities on time is essential.
Avoiding Eviction

- Tenant must keep the premises clean.
- Tenant must allow the landlord, landlord’s representatives, or local government inspector reasonable access for inspection and repairs.
- Tenant must not allow persons who are not on the lease to live in the rental unit.
- Tenant must not engage or allow anyone to engage in criminal activity, including illegal drugs or allowing underage drinking on the premises. Any of these items could result in eviction.
- If the tenant changes the locks, they should make sure to get permission from the landlord first and then give them copies of the keys. The landlord is legally allowed to have a full set of keys for any locks the tenant installs.

**Strategy:** Review these basic rules of tenancy with your clients to be sure they understand the rules and possible consequences of violating the lease.
If a tenant or a tenant’s guests harasses or threatens to harm others in the building or neighborhood, the landlord may have a responsibility under fair housing laws or municipal ordinances to evict the tenant in order to protect the safety of the neighbors and/or other tenants.

**Strategy:**
- Make sure your clients understand that they can be held responsible for their guest’s behavior.
- If a tenant is experiencing problems with other tenants, the problem should be reported to the landlord. Under the Fair Housing Act, if a tenant harasses another tenant based on their race, national origin, disability, or other protected class, a landlord is required by law to address the issue and prevent the harassment from continuing.
Tenants have the right to invite social guests for reasonable periods of time without the interference of the landlord.

Guests must comply with all rules that apply to tenants.

The lease will specify who is allowed to occupy the rental property.

The landlord might want to perform background checks on the new tenant, raise the rent, or require that they be added to the lease.

**Strategy:**

- If the tenant wants to have someone move in or stay for an extended period of time, they will need to ask the landlord’s permission.
- Make sure that any agreement allowing others to move into the rental unit is in writing.
- Charging extra rent for either minor children or live-in aides for tenants with disabilities may be a violation of the Fair Housing Act.
Covenant of Quiet Enjoyment
Pennsylvania Law states that in every lease (whether written or verbal), there is a promise that the landlord will not unreasonably interfere with the right to possess the leased premises. This **Covenant of Quiet Enjoyment** also includes the right to privacy.

- Tenants have the right to enjoy the premises without unreasonable and excessive intrusions by the landlord.
- Landlords only have the right to reasonable access to the leased premises.
- If the landlord enters the rental unit for no reason or disturbs tenants at night, they may be breaching the lease.
Tenant’s Right to Privacy

• The landlord does have the right to enter rental premises occasionally for reasonable purpose including inspection and maintenance, repairs, or to show the property to potential buyers or renters.

• The landlord should come at a reasonable time, give the tenant advance notice first, and should knock first—unless there is an emergency.

• If there is an emergency such as broken water pipes or smoke detectors activated, then the landlord has the right to enter immediately without prior notice.
Tenant’s Right to Privacy

Example:
A landlord entering the apartment is exacerbating a client’s disability, such as tenant with PTSD who experiences extreme stress when maintenance enters the apartment for service calls or inspections.

Strategy:
• Tenant can request a reasonable accommodation if landlord is entering without notice or with little notice and it is exacerbating a person’s disability or disability related symptoms
• A reasonable accommodation would be to request 24 hour advance notice in a non-emergency, providing the tenant with a window of time to expect the visit.
• Tenant can also request that maintenance personnel do not simply knock and enter but that they knock and wait several minutes for the tenant to open the door.
Implied Warranty of Habitability
Pennsylvania state law states that a rental unit must be "safe, sanitary and fit for human habitation."

A landlord's obligations under the Warranty of Habitability cannot be away even if the tenant signs a lease that says they are renting the property "as is" or that the tenant is responsible for all repairs. Any lease clause attempting to give away that right is unenforceable.

The Supreme Court decision says a tenant can only use the Warranty of Habitability for serious problems. The tenant must tell the landlord about the problems and give him or her a chance to fix them.

A serious problem is one that causes a large amount of discomfort or creates a realistic danger of harm.

PA Supreme Court [Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979)]
Essential for basic health and safety:

**Adequate Heat.** International Property Maintenance Code 602.2: Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68 degrees in all habitable rooms and bathrooms. (local Ordinances may differ)

**Hot and Cold Running Water**

**Electricity** – absence of frayed wiring, adequate service

**Sewer** – must be in good working order

**Infestation** – rodent or insect

**Structural Safety** – Doors and windows that secure and lock. Roof that doesn’t leak. Absence of unsafe structural components that make it dangerous to occupy the premises (unsafe floors, stairs, porches, handrails).
The Implied Warranty of Habitability does not require the landlord to make nonessential/cosmetic repairs or upgrades/improvements unless he/she has agreed to do so.

If landlord has agreed to cosmetic repairs, tenant should get it in writing and completed preferably before moving in.

Examples of nonessential/cosmetic repairs:

- Paint
- Carpet
- Broken cabinets
- Broken tiles
Does the defect interfere with your ability to inhabit the unit? Remember, a serious problem is one that causes a **large amount of discomfort or creates a realistic danger of harm**.

Tenants, **must** take specific steps to establish and protect their rights!

**Strategy:** First, the tenant must **notify landlord in writing** about the problems and give the landlord a **reasonable** amount of time to make the repair.

Document the problem – a picture is worth a thousand words.

**Tenant should keep a copy of all letters, emails, and text messages!**
Strategically Handling Habitability Issues

Before undertaking a remedy option, the tenant will need to make sure that they can show that they gave the landlord ample time/opportunity to correct the problem and the landlord failed to correct it and the tenant had no choice but to remedy the situation.

Remedy Options

1. Terminate the lease and move out.
2. Withhold all or part of the rent. Put in escrow account.
4. File legal action to recover cost of repairs or to force landlord to make repairs.

Strategy: Establish and protect your rights and be fully prepared before proceeding. Proper legal advice is invaluable.
Pennsylvania Law prevents landlords from evicting tenants because they raised a habitability issue.

If tenant improperly withhold rent, they can be evicted.

If tenant has broken the lease, landlord may try to evict.

**Strategy:**
Tenant will need to show that they gave ample time/opportunity to correct the problem so they can demonstrate that the landlord failed to correct the problem and tenant had no choice but to remedy the situation.

Think ahead – what would a judge want to see if this goes to court? Lease, written notices, receipts, photos etc.

Keep in mind – landlord might try to evict tenant. Be prepared.
Security Deposit
Security Deposits

Limits on amounts of security deposit that can be held:

- **1st year** – 2 months rent
- **2nd year and thereafter** – no more than 1 months rent
- After the first year, tenant can request return of money held that is greater than 1 months rent.
- If rent increases, landlord can increase amount of security deposit held.
- Security deposit cannot be used for the last months rent.
Security Deposits

- Landlord should **not** use security deposit to pay for ordinary wear and tear.
- What is considered ordinary wear and tear vs. damages?
- Length of time in the apartment should be considered

**Damages:**
- Carpet is burned or heavily stained
- Walls are damaged with holes
- Broken windows
- Filthy fridge or oven
- Debris or belongings left behind

**Ordinary Wear and Tear:**
- Carpet is old or worn down
- Walls have some scuff marks
Strategy: Moving out – think ahead!

Tenant should make sure to do these things when moving out:

1. Give proper **written** notice in accordance with lease (30, 60, 90 days)
2. Given landlord a written notice with your forwarding address - where to return security deposit!
   
   **Certified Mail, Return Receipt Requested**
3. Clean the apartment unit. Clean inside fridge and oven too.
4. Make sure no rent is owed
5. Take **photos** of the condition
6. Return the keys. Get a receipt for return of keys.

Keep a copy of all letters and receipts!

   If a carpet cleaner was rented, keep the receipt. Hold onto receipt for return of the keys.
Within **thirty (30) days** after the termination of the lease, the landlord must give the tenant:

- A written list of any damages for which the landlord claims the tenant is responsible, with payment of the remainder of the security deposit (if any)
- A check for the entire amount of the security deposit.

If the landlord fails to do either one of the above within 30 days, on the 31st day, the tenant can sue the landlord for **double** the amount of the security deposit held in escrow plus interest (if any). Note that if the tenant did not provide a forwarding address or returned the keys, the landlord cannot be held to the 30-day deadline.

**Contesting Damages Charged to Your Security Deposit**

The landlord should not charge the tenant for ordinary wear and tear. For example, if a landlord decided the apartment needed to be repainted at the end of a lease, a tenant should not be charged for the repainting unless the tenant caused more than normal wear.
Rent Increases
Pennsylvania has no rent-control law.

Landlords may raise the rent as much as they want. However, changes must be made in accordance with the contract (lease).

- The rent increase must follow the proper notice procedures outlined in the written or verbal lease.
- The landlord may not raise the rent in the middle of the lease term unless the tenant agrees to the rent increase.
Utility Shut-Offs
Utility Shut-Offs

If a tenant receives notice that their utilities will be shut off, they will need to act quickly. It is more difficult to get service turned back on after shut off. No matter who is responsible to pay for the utilities, a utility company cannot cut off service without the following:

• A 10-day written notice before shut-off.
• An attempt to contact an adult in the household personally at least 3 days before the shut-off.
• An attempt to contact an adult in the household at the time of the shut-off.

Prior notice must be given before the utility company shuts off utilities. If the utility company turned off service without prior notice, it has broken the law. PA

Public Utility Commission Consumer Hotline 800-692-7380
PA Utility Law Project  844-645-2500
Utility Shut-Offs

Strategy:

If the tenant is a **victim of domestic violence** and has a valid **Protection from Abuse Order (PFA)**, there are special procedures and protections for handling the utility service. Call the utility company to inform them of the PFA so these special procedures and protections can put in place for the tenant. Tenant may be required to provide a copy of the PFA to the utility company.

If the tenant lives in a **low income household**, there may be special arrangements to help – a number of programs exist that help low income customers.
Are you facing an utility shut off? Are you already without service?

Pennsylvania residents may be eligible for free legal help.

Call: 1-844-645-2500 Or Email: utilityhotline@pautilitylawproject.org

Make sure to include the following in your voicemail or email message:
(1) Your first and last name.
(2) Your telephone number.
(3) The best time to reach you.
(4) A brief description of what utility problem you are having, including whether your service is currently on or shut off.
Eviction
Some reasons eviction can occur:

- Failure to pay rent
- Continual late payment of rent
- Violating lease terms – pets, unauthorized residents, not paying utility bills, disturbing neighbors
- Engaging in criminal activity
- Failure to maintain the unit in a sanitary condition
- Failing to dispose of trash as required
- Failing to move out at the end of the lease term
Preventing Eviction: Falling Behind on Rent

Strategy:

1. Rent is still due and must be paid! Talk to the landlord as soon as possible. Do not wait until the due date or after the due date. Explain why and try to make a payment agreement. Get it in writing and keep a copy.

2. Investigate local programs that may offer emergency rental assistance.

3. Keep the utilities on.

4. Go on COMPASS.state.pa.us to see if tenant qualifies for benefits.

5. The landlord is not legally allowed to interfere with utility services even if the tenant falls behind in rent.

6. The landlord is not legally allowed to lock a tenant out of the rental unit even if they have fallen behind in rent. The landlord must go through the proper eviction process.
But I Need More Time!!!

- The tenant does not have the right to demand more time to find a new place to move. It does not matter if the tenant is a senior citizen or if they have children – the landlord can still evict the tenant.
- The landlord can evict the tenant if they fall behind on rent even if it's because they got sick or lost their job or had other bills to pay. Tenant has a legal obligation to fulfill the terms of the lease.

Strategy:
The tenant can try to negotiate with the landlord for more time. If the landlord agrees, ask for the agreement in writing.

Do not leave possessions behind. The landlord can charge the tenant a storage fee if items are left behind.

If the tenant cannot find a place to live, contact family or friends. Contact local shelter or transitional housing or check into a motel.
Self-Help Evictions are Illegal

If the tenant is not out of the apartment by deadline given by the Landlord, the tenant legally cannot be locked out with a “Self-Help Eviction.” The landlord must file an eviction complaint with the Magistrate Court and go through the proper legal procedure. Only a constable with an order of possession can legally lock a tenant out of a rental unit.

Self help evictions – landlord changes the locks, blocks access to the unit, removes the door or windows, turns off the water or electricity, threatens tenant by force or threat of injury or violence, or otherwise renders a dwelling unit or any part of a unit inaccessible to a tenant.
Self Help Eviction Strategy

• Call the Police.
• Show you have the right to occupy the premises. Show your ID and have copy of lease or other documents (such as utility bills) somewhere outside the home
• If necessary, ask to speak to a Sergeant or Supervisor. Unless the landlord can produce an Order of Possession, the police should allow the tenant to regain possession of the premises immediately. Ask for a police report to be filed.
Notice to Quit

Unless the lease says otherwise, the landlord must give tenant **written notice** before filing an eviction case. This is called a **Notice to Quit**.

The amount of time the landlord must give you depends on length of lease and reason you are being asked to move.

- Non payment of rent – 10 days
- Any other reason and lease does not specify how much notice is required -15 days for lease of one year or less, 30 days notice for lease of more than one year.

**REMEMBER:** Lease can require longer or shorter notice, or no notice at all!
Eviction Process

District Magistrate Court

Landlord must appear at the hearing and present testimony as to why tenant should be evicted.

If tenant is late or does not appear, judgment will be entered against tenant.

Strategy:

• Tenant has right to appear before Judge with any witnesses or other evidence.
• If landlord fails to appear, tenants can ask for the case to be dismissed.
• If the notice was not given properly, the tenant should bring this up in court and ask that the landlord be required to restart the process and give proper notice.
Eviction Process: Judgment

**Judgment**

After the hearing, the Magisterial District Judge will either make a decision that day or within 3 days. The Judge will issue a written **Notice of Judgment**.

If the judgment is in the tenant’s favor, the landlord will be required to do what the Judge ordered—such as not evicting the tenant from the rental unit.

If the Magisterial District Judge finds in favor of the landlord, the judgment will be entered against the tenant. The Notice will indicate what type of judgment has been entered.

- Possession Granted if Money Judgment Not Satisfied
- Possession Granted
- Possession Not Granted
- Money Judgment
There are often two parts to a Judge’s decision:

**Possession** (eviction) and **Money Judgment**.

**Strategy:**

- The tenant has the right to appeal a judgment entered against them. Appeals are filed with the Prothonotary at the Court of Common Pleas.

- To appeal a decision by a Magisterial District Court, the tenant will need to bring a copy of the Judgment with them to the Prothonotary’s Office.

- It is advised that tenants seek the counsel of an attorney if they chose to file an Appeal, as the process at this court level is more complicated. Most likely, the landlord will have an attorney.
Eviction Process: Appeal

Judgment for Possession:
Tenant has 10 days to file an appeal for Judgment for Possession:

Strategy:
• Tenant must mention that they want to file a Supercedeas if they want to stop a physical eviction.
• Must pay filing fess and a bond—either the amount of rent in the judgment or 3 months rent (whichever is less, unless tenant can establish that he/she is indigent in which case tenant will only be required to pay 1/3 of monthly rent to the Court.

Money Judgment:
Tenant has 30 days to file an appeal for a Money Judgment. No bond required.
If the tenant does not contact the landlord within the first 10 days after being evicted or receiving a notice from the landlord that personal property was left behind, the landlord can dispose of all the personal property.

**Strategy:**
If a tenant is evicted or moves out of a rental property, they have 10 days to contact the landlord and let the landlord know that they intend to retrieve the personal property left behind.

The tenant should notify the landlord within 10 days of their intent to retrieve any personal property left behind by calling the landlord and by sending the landlord a letter. The tenant should keep a copy of the letter sent to the landlord.
Reasonable accommodations may be requested at any time, including during the eviction process!
A compulsive hoarder meets the definition of a person with a disability under the Fair Housing Act and has a right to request a reasonable accommodation in an effort to preserve housing.

**Strategy:**
- A reasonable accommodation can be requested to ask for more time to clean up the rental unit and to delay the eviction process to allow time to clean up and dispose of excess clutter.
- The tenant can request an extension within reasonable limits to bring the unit into a safe, satisfactory condition.
- Services may need to be put into place to assist the client who is a hoarder.
Preventing Eviction:
Damages to the Rental Unit

Strategy:
• If a person’s disability caused them to damage an apartment unit violating the lease, a reasonable accommodation can be requested asking the housing provider to postpone eviction proceedings while the tenant undergoes treatment and counseling.

• As with any reasonable accommodation request, each case is decided on a case by case basis and would have to take into account:
  • the extent of the damages caused,
  • if any other tenants were disrupted by the behavior, and
  • if steps will be taken to repair any damages caused by the tenant
Example: A tenant with a psychiatric disability stops taking their mediation and threatens another resident. Management has a policy of evicting residents who engage in violent or disruptive behavior.

Strategy:
• The tenant can request a reasonable accommodation to this policy if the tenant is able to show that treatment and medication monitoring will eliminate the direct threat.

• If the tenant is not willing to undergo medication monitoring and treatment or continues to pose a direct threat to the health and safety of other residents, than management can proceed with an eviction.
Preventing Eviction: Tenant Conduct

Strategy:

• If a non-renewal of lease, notice to quit, or eviction is issued because of a tenant’s behavior, which was directly related to a disability, the tenant can request a reasonable accommodation to rescind a notice to quit or eviction notice or to reconsider a decision to not renew a lease and to consider mitigating circumstances.

• It is helpful if a case manager or other support services professional can write a letter explaining mitigating circumstances as well as steps that will be taken to ensure that the behavior does not recur (medication, therapy, counseling, supervision, etc.).

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
Example: At times a person’s disability may cause noise violations. An example would be the presence of a child with autism who occasionally screams or makes loud noises. This can lead to complaints from neighbors about noise or even an eviction notice.

Strategy:
• Attempts should be made to mitigate any noise which is disruptive.
• If an eviction notice has been issued, a reasonable accommodation request can be made asking for a second chance to mitigate any noise disturbances.
• Sound proofing could be installed by the tenant (a reasonable modification request), behavioral therapy can be commenced or increased, and any number of intervening tactics could be employed to help mitigate any ongoing noise disruptions.
• If the noise disturbances continue unabated, the accommodation may no longer be reasonable.
Resources
Community Legal Services of Philadelphia  
215-981-3700

Legal Aid of Southeastern PA 877-429-5994  
(Chester, Delaware, Montgomery and Bucks counties)

North Penn Legal Services 610-317-8757  
(Northeastern PA counties)

Mid Penn Legal Services 610-376-8656  
(Central PA counties)
Philadelphia Resources

PHILLYTENANT.ORG
Your Resource for Tenant Rights in Philadelphia

CALL 267-443-2500 FOR THE TENANT HOTLINE
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
Know Your Rights as a Renter in Pennsylvania

Available in English and Spanish

Know Your Rights as a Renter in Pennsylvania

Conozca sus Derechos como Inquilino en Pensilvania
The Housing Equality Center of PA offers a comprehensive guide to reasonable accommodations and modifications for consumers with disabilities.

96 page comprehensive manual - available for FREE in print or digital format

Guidance on state and federal Fair Housing Law compliance

PA Landlord Tenant Law
What To Do If You Have Experienced Housing Discrimination

If you live in Philadelphia or in Bucks, Chester, Delaware, Lehigh, Montgomery, or Northampton Counties in Pennsylvania, call the Housing Equality Center of Pennsylvania for counseling, investigation, and options for enforcement based on the circumstances of the case.

Call us at 267-419-8918 or email info@equalhousing.org or visit equalhousing.org
What To Do If You Have Experienced Housing Discrimination

To file a complaint with the U.S. Department of Housing and Urban Development, call HUD’s Housing Discrimination Hotline at 1-800-669-9777 or visit www.hud.gov. Complaint must be filed within one year from the date of the incident.

To file a complaint with the Pennsylvania Human Relations Commission, call 215-560-2496 or visit www.phrc.pa.gov. Complaints must be filed within 180 days from the date of the incident.

A lawsuit can be filed in federal court up to two years from the date of the incident.

To file a complaint with the Philadelphia Commission on Human Relations, call 215-686-4670 within 300 days unless you have valid legal justification for not filing within that time period. https://www.phila.gov/humanrelations/pages/default.aspx
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
Renters.equalhousing.org

- Learn about fair housing laws
- Learn about the rights of renters in PA
- Download sample letters to landlord
- Request assistance with requesting a reasonable accommodation or modification
- Report discrimination online
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