Fair Housing: Familial Status and Families

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Agenda

- Fair Housing Act Review
- Sex Discrimination
- Equal Access Rule
- Victims of Domestic Violence
- Familial Status Discrimination
- Best Practices
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.
The Fair Housing Act (FHA), makes it illegal to discriminate against individuals in housing transactions based on:

- **Race**
- **Color**
- **Religion**
- **National Origin**
- **Sex** (including sexual orientation and gender identity as of Feb. 2021)
- **Disability**
- **Familial Status** (the presence of children under 18, pregnant individual, or anyone securing legal custody of a child)
It is against the law to treat members of the protected classes less favorably than other consumers. This can include:

- Denying access to housing
- Setting different terms, conditions or privileges in housing
- Making discriminatory statements or stating discriminatory preferences
- Retaliating against anyone exercising their fair housing rights or assisting others in exercising those rights
Federal Fair Housing Act: Covered Transactions

In addition to private rentals and sales and housing-related financial transactions, the Fair Housing Act also applies to a variety of nonprofit housing programs.

• Housing counseling
• Rental assistance
• Subsidized housing
• Transitional housing
• Supportive housing
• Group homes for people with disabilities
• Addiction recovery homes
• Nursing and personal care homes

• Some types of shelters
• Housing vouchers
• First time homebuyer programs
Definition of “Dwelling”

What is a Dwelling under the Fair Housing Act?

Defined by the law as:
“any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”

What factors determine if a shelter or housing program is “intended for occupancy as a residence”?

• Length of stay
• Intent to return each night
• Existence and terms of occupancy agreement
• Existence of a rent payment, fee, or in-kind exchange or requirements
• Whether a resident has another current dwelling and whether they intend to return to that dwelling
• Whether the primary purpose of the program is to provide housing
Federal Fair Housing Act

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
Punitive damages
Civil penalties
Government monitoring
Attorney’s fees
Injunctions
Loss of tax credits
Ineligibility for other types of federal funding
PA Human Relations Act
Local Ordinances

• PA Human Relations Act makes it 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 marital status, veteran status, source of income, and/or other additional protected classes – 50+ municipalities in PA have ordinances which include additional protected classes.
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.
In September 2016 HUD published a new final rule entitled *Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs*. 

- Equal access is to be provided in all HUD assisted programs.
- Individuals are to be placed in accordance with their gender identity.
- No requirement for individuals to “prove” gender identity (no invasive questions or medical verification are permitted).
- Providers must update their policies and procedures to reflect requirements.
- Non-discriminatory steps must be taken to address safety/privacy concerns of transgender participants, however participants must not be required to accept accommodations.
In February 2012 HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.

This 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 this rule.
Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

• A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or,

• A group of persons residing together, and such group includes, but is not limited to:

• A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

• An elderly family; A near-elderly family;

• A disabled family; A displaced family; and, the remaining member of a tenant family.
Are shelters allowed to segregate residents by gender?
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Housing programs and shelters may not segregate residents by sex, with the exception of housing which contains shared sleeping areas, bathing areas, and/or bathrooms.
Are shelters allowed to prohibit boys and girls of opposite sex from sharing a sleeping area?
Sex/Gender

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Rules that prohibit boys and girls or opposite sex from sharing a sleeping area are not permissible.
Can a housing provider refuse to rent a one bedroom apartment to a single father with a young daughter because they feel it is inappropriate?
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No. Please contact HECP.
Can a shelter refuse to enroll a trans woman “because they would make other participants feel uncomfortable or unsafe”?
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No. Please contact HECP. We can provide targeted training on Gender Identity including technical assistance and guidance.
Can a shelter refuse to allow a person who has experienced domestic violence stay at a shelter due to security concerns or the belief that the shelter is not equipped with the resources to deal with this type of trauma?
Under the Violence Against Women Act, individuals who have experienced domestic violence, sexual assault, or stalking:

• Cannot be denied assistance under a HUD funded program or have services terminated due to the violence or abuse committed against them.

• Cannot be denied assistance due to secondary factors resulting from violence or abuse, such as an eviction record, poor credit, or criminal history, or due to criminal activity directly related to the violence or abuse.

• Can request emergency transfer from their current housing, with continued assistance, for safety reasons related to the violence or abuse.

• Discrimination based on domestic violence is typically also considered a violation of the FHA.
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
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
A housing locator is assisting a family with a boy and a girl who are unable to find a three-bedroom apartment that will accept their Housing Choice Voucher. They told they may not reside in a two-bedroom because “HUD doesn’t allow it”. What is the housing locator’s responsibility?
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Contact HECP. We can assist with testing and enforcement actions.
A housing locator is assisting a family with children to find a rental unit. The housing locator is aware that a particular landlord does not want to rent to families with children. Should the housing locator omit those listings from the list of rental units that they give the consumer?
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No. Omitting those units would limit housing choice for the family and violate fair housing laws prohibiting discrimination against families with children.
- Report discrimination to HECP for investigation
Can a shelter have different rules regarding curfews and noise for the family section vs the adult section?
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No. Housing providers cannot have different terms and conditions based on familial status. Community rules should apply to everyone and not single out families with children.

Consult with HECP regarding your community rules for fair housing compliance.
How does a housing provider determine safe occupancy? Is ‘two people per bedroom’ a reasonable occupancy policy?
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Overly restrictive occupancy limits can be challenged as having a disparate impact on families with children and may result in a legal challenge.

Housing providers must take into consideration layout, square footage, and code requirements such as existing means of egress (required exits for living and sleeping areas).

What are the local municipality’s occupancy regulations?
How does a housing provider determine safe occupancy?

International Property Maintenance Code (IPMC). Section 404.4.1 of the 2021 IPMC establishes that every bedroom must contain at least 70 square feet of floor area and every bedroom occupied by more than one person must contain at least 50 square feet for each occupant. Following the guidelines of the 2021 IPMC a “2 person per bedroom” limitation may or may not be reasonable depending on the size of the bedroom.

Consult with HECP to establish fair housing compliant occupancy policies.
Recent Fair Housing Case – Familial Status Discrimination

$3 Million Settlement with California Housing Providers Resolving Allegations of Housing Discrimination Against Families with Children

Vasona Management, Inc., a California property management company, and more than thirty apartment complex owners discriminated against families with children at more than forty-eight apartment complexes throughout the Bay Area by prohibiting any outdoor play activities and requiring parents to supervise children under the age of 14 in all common areas.

• Click [here](#) to read more.
San Francisco Bay Area Apartment Building Charged with Discriminating Against Family with Minor Children

HUD’s Charge of Discrimination alleges that when the couple first rented the one-bedroom apartment, they were pregnant with their first child. They later had a second child. The Charge asserts that even before the couple moved into the apartment, the landlord expressed displeasure that a child would be living in the unit and suggested that the couple rent a larger, more expensive unit instead. From then on, the landlord made repeated efforts to convince the couple to move to a larger unit, although the couple made clear they could not afford it. After learning that the couple was expecting a second child, the landlord allegedly increased her efforts, repeatedly telling the couple that their children would cause damage to the apartment. Feeling harassed and at risk of imminent eviction, the family moved out of the apartment.

• Click [here](#) to read more
HECP and a Bucks County couple entered into an agreement resolving allegations against CM Bucks Landing 120, LLC, Residential Management (NY), Inc., and Aspen Grove Apartment Homes Discrimination based on national origin, race, and familial status. Residential Management’s policies and procedures contained occupancy standards at some complexes which had an unlawful and discriminatory impact on families which children. The Aspen Grove policy limited occupancy of a two bedroom apartment to three people and occupancy of a three bedroom apartment by four people. These stringent limitations were not justified by local property maintenance codes and limited the housing opportunities available to families in violation of the Fair Housing Act.
Best Practices
Best Practices

Understand the Complexities of Complying with both Program Rules and Fair Housing

• In many cases a lack of clarity exists regarding balancing program compliance with fair housing.

• Some housing programs have rules involving either preferences or limitations based on such factors as types of disability, immigration status, familial status, or age. If you have any questions regarding implementing these rules without violating the Fair Housing Act, contact your program monitor and HECP for guidance.

• Contact HECP and County/HUD program monitors for technical assistance as fair housing issues and questions arise.
Review Policies, Procedures, and Training

• Review all rules, policies, procedures, and eligibility standards to ensure that they are not intentionally discriminatory and do not have a discriminatory effect on members of protected classes. Implement a nondiscrimination policy if one does not exist.

• Establish a process for responding in a timely manner to reasonable accommodation requests.

• Make sure all staff receive regular fair housing compliance training.

• Contact HECP for technical assistance as fair housing issues and questions arrive.
Clear and Consistent Application Process

- Develop consistent and transparent admissions criteria and application process and apply equally to all applicants.
- Qualify applicants based on factual, specific, objective, and verifiable criteria.
- Adopt standardized and written intake and application process and forms.
- Retain application, documentation, and reasons for rejection for at least two years.
- Permit reasonable accommodations during the application process when necessary.
Clear and Consistent Application Process

• If a funding source requires specific preferences (such as for persons with specific types of disabilities), the funder should be consulted to assist with developing policies and record keeping to document compliance with Fair Housing laws.

• Any prioritization of applicants must not discriminate against members of protected classes.

• Applicants should not be accepted or rejected for assumptions or subjective reasons, either positive or negative (for example, a perception of odd behavior or an intuitive sense about an applicant).
Best Practices

Nondiscriminatory Community and Program Rules

• Community rules should be standardized, written, and communicated to all residents.

• Rules should not single out or target protected class (for example, quiet times or curfews should apply to everyone, not just children).

• Rules should be enforced consistently. Avoid the appearance of discrimination by not showing favoritism among participants.

• Reasonable accommodation requests involving exceptions to rules and policies should be documented.
Best Practices

Procedures for Termination of Residents

• Evictions or terminations from a housing program or shelter should be based on documented violations of the occupancy or program agreement or the community rules (for example, nonpayment of rent, destruction of property, harassment of other residents, etc.).

• Process and reasons for termination should be standardized, written, and communicated to all residents and should be applied consistently.

• Retain documentation and reasons for terminations or evictions for at least two years.
Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America’s oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia.
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.
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.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.
96-page comprehensive manual, available for FREE in print or digital format

Guidance on Fair Housing compliance and Pennsylvania Landlord Tenant Law

Designed for all rental housing providers, but most of the information is applicable to nonprofit or subsidized rental housing
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
Information and self-advocacy resources for renters in PA

Learn about fair housing rights

Learn about tenant rights and responsibilities

Guidance on how to deal with common landlord tenant problems

Customizable letters to download for a variety of situations

Know Your Rights

as a Renter in Pennsylvania

renters.equalhousing.org
Learn about how Pennsylvania Landlord Tenant and federal and state fair housing laws apply to providers of rental housing

Avoid common and costly fair housing violations

Download sample letters, forms, posters, and other resources

landlords.equalhousing.org

Know Your Responsibilities as a Landlord or Property Manager in Pennsylvania
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