

**HOUSING
EQUALITY
CENTER**
of Pennsylvania

Fair Housing Forum: Understanding and Enforcing Fair Housing

April 21, 2017



Current Local Issues in Fair Housing

- Design and Construction
- Disability Issues in Senior Housing
- Homeowners Insurance
- National Origin and Immigration Status
- Advertising
- Zoning and Land Use
- Recent HUD Guidance
 - Land Use
 - Criminal Records
 - Harassment
 - Nuisance Ordinances
 - Limited English Proficiency
 - Gender Identity



Federal Fair Housing Act

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.*

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



Federal Fair Housing Act

Covered Transactions

- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use

Covered Properties

- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Mobile home parks
- Homeless shelters
- Nursing homes
- Group Homes

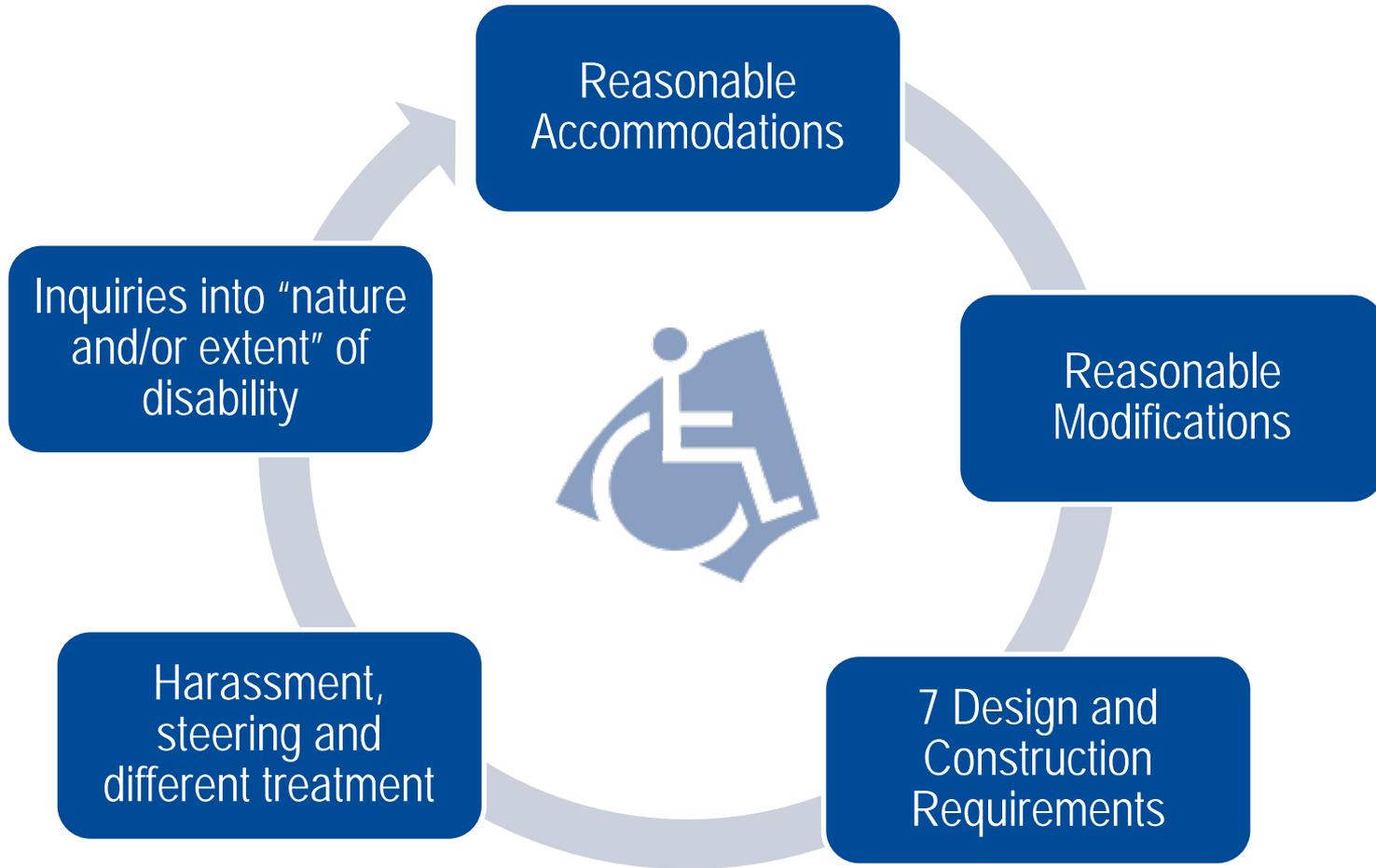


DISABILITY DEFINED

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.

Disability Issues





Accessibility Requirements for New Construction

The FHA new construction accessibility requirements apply to “covered multifamily dwellings” designed and constructed “for first occupancy” after March 13, 1991.

This includes housing that is for rent or for sale and applies whether housing is publicly or privately funded. The following multi-family buildings must comply:

- All buildings containing 4 or more dwelling units if the buildings have one or more elevators; and
- All ground floor units in buildings containing four or more units, without an elevator.
- Both condominiums and apartment buildings are covered



Accessibility Requirements for New Construction



Macungie Township

OPENING DOORS SINCE 1956



Accessibility Requirements for New Construction



Bethlehem Township

OPENING DOORS SINCE 1956



Seven FHA Design and Construction Requirements:

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors – allow passage by people using wheelchairs
4. Accessible route in and through covered units
5. Light switches and other environmental controls must be in accessible locations
6. Reinforcements in bathroom walls must be installed so that grab bars can be added when needed
7. Usable kitchens and bathrooms



Disability Discrimination in Senior Housing

Many older adults whose mental or physical impairments make them unable to care for themselves without daily assistance have various personal care or other special needs.

“Retirement”, “senior living”, “active adult”, or “independent living” communities are those that fall under the housing for older persons exemption under the Fair Housing Act, but provide no special medical or other supportive services.

- Disability related needs do not dictate a particular housing choice, and can generally be met in an independent living community as well as in an assisted-living facility or a nursing home.
- It is a violation of the Fair Housing Act to restrict residence only to individuals who can live there without assistance.
- Resident selection criteria may not discriminate on the basis of disability.



Disability Discrimination in Senior Housing

Advertising and Senior Housing

- Based on HUD's view that property and service descriptions are generally permitted "independent living" is an acceptable descriptor if its only function is to describe the nature of the services offered by a housing complex. "Independent living" may not be used to describe the type of people who would be welcome as residents or as a criterion for residency.
- The use of the word "active" to describe the clientele sought in a senior housing community may indicate a preference for nondisabled residents.



Disability Discrimination in Senior Housing

Examples from recent HECP testing:

A tester with non-disabled parents was recommended a building for “younger and more active” residents.

A tester with a disabled mother was told that the community required a medical assessment that showed a resident could live independently for four years.

A tester with a disabled mother was told that the entrance fee may be higher for her parents because her mother had MS.

A tester was told that the community could reject prospective residents with dementia or Parkinson’s disease.



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
- HUD does not 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



Homeowners Insurance Discrimination

The Fair Housing Act makes it unlawful to discriminate in connection to any housing related transactions, including homeowners insurance.

Discrimination in homeowners insurance occurs when an insurance company or agent unlawfully treats current or prospective homeowners' differently because of their membership in a protected class.

Homeowners insurance discrimination may include such practices as:

- Charging higher rates to members of protected classes
- Offering policies with inferior coverage to members of protected classes
- Not returning calls for information to members of protected classes
- Denying coverage to members of protected classes altogether



Homeowners Insurance Discrimination

Homeowners insurance “redlining” is a form of discrimination where an insurance company or agent treats homeowners’ differently because of the race or national origin of residents in the neighborhood where their home is located.

Insurance redlining may include such practices as:

- Imposing different terms and conditions for coverage for homes in minority neighborhoods
- Refusing to write policies for homes in minority neighborhoods
- Offering inferior or more expensive policies in minority neighborhoods



Homeowners Insurance Discrimination

Examples from recent HECP testing:

African American and Hispanic testers were told that in order to receive a quote for insurance they must provide their social security number, while white testers were not required to provide this information prior to receiving a written quote.

An African-American tester left several messages for an insurance agent over a five day period before finally getting a return call, whereas a white tester received a return call on the same day as leaving the initial message.

African American testers were told that only a verbal quote for insurance could be given, whereas the white testers were able to get written quotes for insurance coverage from these same agents.



Homeowners Insurance Discrimination

Examples from recent HECP testing:

African American testers were told that in order to receive a quote for insurance, they must have both an internal and external inspection of the home. White testers were not required to have an inspection prior to receiving a quote.

An African American tester was told that his property did not qualify for a replacement cost policy, and would only qualify for a market value policy. The quote the African American tester received for inferior coverage was three times higher than a quote a white tester received with a home in a white neighborhood for a replacement cost policy.



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)



Advertising

Advertisements on Craigslist for April 17, 2017:

Easton Available for immediate rent a 1 bedroom, 1 bath apartment with amazing city view. The apartment is on the 3rd floor and has a huge deck with great city view. Gas heating, refrigerator, oven range, new carpet, nice bathroom. Very private and great for adults or couples. Not suitable for small kids.

Bethlehem 2 bedroom apartment on 1st floor, near historic district of Bethlehem. Apartment is spacious with open concept, has 2 walk through bedrooms, which would be perfect for single person or couple.

Slatington Unique opportunity to rent a free standing home for less than an apartment in Slatington. This is not a trailer it is a framed home with a full basement. This is a perfect home for a couple or a family with one small child. I will not rent to families above three.



Zoning and Land Use

- A dwelling includes “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.” Fair Housing Act Sec. 802. [42 U.S.C. 3602]
- “These changes confirm that an ordinance is one type of land-use decision that is covered by the Act, under a theory of intentional discrimination or discriminatory effect, and that land-use decisions may discriminate from the moment of enactment.” HUD Final Rule on Implementation of the Fair Housing Act’s Discriminatory Effects Standard



Zoning and Land Use

- “City governments are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of a reasonable modification.” U.S. Department of Justice – www.ada.gov/comprob.pdf
- “A public entity shall make reasonable modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program or activity.” ADA, Title II, 28 C.F.R § 35.130(b)(7)



Zoning and Land Use

- Decisions may not be based upon the race, sex, religion, national origin, color, disability, or familial status of the residents or potential residents who may live in the dwelling.
- A municipality may not make zoning or land use decisions based on neighbors' fears that a dwelling would be occupied by members of these protected classes.
- Protected classes commonly affected by discriminatory zoning laws or land use decisions:
 - People with disabilities
 - Residents of group homes for people with disabilities or people recovering from substance abuse
 - Low to moderate income residents
 - Families with children
 - Racial and ethnic minorities



Under the Fair Housing Act, it is unlawful to:

- Utilize land use policies/actions that treat housing that may be occupied by protected classes less favorably than housing occupied by other residents
- Block a group home or reject multifamily or affordable housing in response to neighbors' fears or prejudices about persons with disabilities or racial and ethnic minorities
- Refuse to make reasonable accommodations in land use and zoning policies and procedures
- Require additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the protected classes



Common Zoning Issues

- Requiring community approval or notification prior to granting permits for the development of low-moderate income housing
- Restricting the development of multi-family affordable housing to areas that perpetuate racial segregation of a community
- Language expressing an explicit intent to limit impact on the number of children in the school district
- Different use and/or dimensional regulations for age restricted and family housing in the same district (*municipalities may designate a zoning district as age restricted, but district must comply with the HOPA definition - either 80% of households with a resident age 55+ or 100% of residents age 62+*)
- Failure to make reasonable accommodations for residents with disabilities



Group Homes

Zoning ordinances may not contain provisions that treat uses for people with disabilities differently than other similar uses. Generally, group homes for small numbers of residents housed in single family homes should be treated as single family residences.

Common zoning and land use issue regarding group homes:

- Requiring group homes to be spaced a certain distance from each other
- Rules that place greater procedural or other burdens on group homes than other residential uses (conditional use permits, sprinklers, inspections, etc.)
- Enforcing ordinance provisions more strictly against group homes
Definitions of family can affect group home situations by restricting the number of unrelated individuals that can occupy a single family home—group homes for persons with disabilities are entitled to exceptions to definitions of family as a reasonable accommodation
- Licensing requirements and registration requirements
- Exclusion of addiction recovery homes



Updated HUD Guidance—Land Use

On November 10, 2016 DOJ and HUD released updated guidance on **Local Land Use Laws and Practices and the Application of the Fair Housing Act**

- Designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities
- Clearer Q&A format outlining what could constitute housing discrimination by municipalities under the Fair Housing Act



Whitehall Township Settlement

Agreement settled allegations that Whitehall discriminated because of race, national origin, family status, and disability when it denied a proposal to construct 49 units of affordable multifamily housing in the Township

- Residents opposed the project complaining that an apartment building would crowd and change the makeup of the neighborhood
- Whitehall Zoning Hearing Board denied the project on the basis that there was inadequate parking
- Township paid \$375,000 in developer's legal fees, must actively promote project, and must revise zoning ordinance, removing barriers to affordable housing



New HUD Guidance—Criminal Records

In April 2016 HUD 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.
- A discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.



New HUD Guidance—Criminal Records

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics always violates the Act.

While having a criminal record is not a protected class, 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 cases by case basis.
- Providers must consider nature and severity of conviction.
- Providers must consider amount of time that has passed since the criminal conduct occurred.



New HUD Guidance—Criminal Records

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.



New HUD Guidance—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.



New HUD Guidance—Harassment

- 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.



New HUD Guidance—Harassment

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.



New HUD Guidance—Nuisance Ordinances

In September 2016 HUD released Guidance on Application of Fair Housing Act 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.**

- Addresses ordinances that penalize residents for 911 calls, even when a person is in need of protection from domestic violence or another crime
- These types of ordinances violate the Fair Housing Act when they have an unjustified discriminatory effect or are enacted or enforced to intentionally discriminate because of a protected characteristic



New HUD Guidance—LEP

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

- The relationship between LEP, race, and national origin are so intrinsically linked as to be almost indiscernible from each other.
- 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.



New HUD Guidance—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 gender identity
- No requirement for individuals to “prove” gender identity (no invasive questions or medical verification)
- Providers must update 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



Report Discrimination

(267) 419-8918

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.



Formerly, Fair Housing Council of Suburban Philadelphia
equalhousing.org

Established in 1956, we are the oldest fair housing agency in the country. We are leading the effort to eliminate housing discrimination in Pennsylvania through education, advocacy and enforcement of fair housing laws.

Enforcement

- Fair housing counseling
- Investigation and enforcement

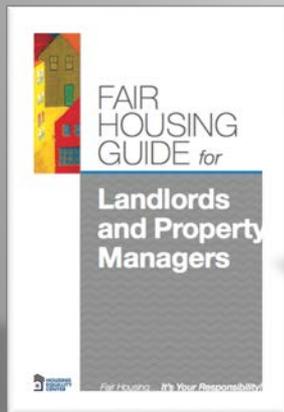
Education

- Compliance training
- Technical assistance

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





Fair Housing Questions? Technical Assistance?

Rachel Wentworth

Executive Director

267.419.8918 x5

wentworth@equalhousing.org

Carolyn Capistrano

Outreach and Communications

267.419.8918 x2

capistrano@equalhousing.org