

FAIR HOUSING AND REASONABLE ACCOMMODATION

Fair Housing

As a part of the property management team, it is important for Service Coordinators to know the rights and obligations residents and housing providers have under federal and state laws regarding discrimination. Under U.S. and/or Pennsylvania civil rights and fair-housing laws, people in protected classes cannot be denied housing or services – or be treated differently or separately - on the basis of: race, color, national origin, sex, religion, genetic information, disability, families with children, marital status, age, receipt of public assistance, veteran status or membership in the armed services, sexual orientation and gender identity. Local laws may also include additional protected classes. Service Coordinators need to know who is protected under civil rights and fair-housing laws because these laws cover the kinds of questions applicants and residents can and cannot be asked, and how information received from applicants and residents must be treated.

The Fair Housing Act

The Fair Housing Act prohibits discrimination in housing because of:

- race or color
- national origin
- religion
- sex
- familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- disability

What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

What Is Prohibited?

No one may take any of the following actions based on race, religion, sex, disability, familial status, or national origin:

- refuse to rent or sell housing
- refuse to negotiate for housing
- make housing unavailable
- deny a dwelling
- set different terms, conditions, or privileges for sale or rental of a dwelling
- provide different housing services or facilities
- falsely deny that housing is available for inspection, sale, or rental
- for profit, persuade, or try to persuade homeowners to sell or rent dwellings by suggesting that people of a particular race, etc. have moved, or are about to move into the neighborhood (blockbusting)
- deny any person access to, membership or participation in, any organization, facility, or service (such as a multiple listing service) related to the sale or rental of dwellings; or, discriminates against any person in the terms or conditions of such access, membership, or participation

Additional Protection If You Have a Disability

If you or someone associated with you:

- has a physical or mental disability (including hearing, mobility and visual impairments, cancer, chronic mental illness, HIV/AIDS, or mental retardation) that substantially limits one or more major life activities
- has a record of such a disability
- is regarded as having such a disability

A housing provider may not:

- refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if it may be necessary for you to fully use the housing (Where reasonable, a landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- refuse to make reasonable accommodations in rules, policies, practices or services if it may be necessary for you to use the housing on an equal basis with nondisabled persons

However, the Fair Housing Act does not protect a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

Accessibility Requirements for New Multifamily Buildings

In buildings with four or more units that were first occupied after March 13, 1991, and that have an elevator:

- public and common use areas must be accessible to persons with disabilities
- all doors and hallways must be wide enough for wheelchairs
- all units must have:
 - an accessible route into and through the unit
 - accessible light switches, electrical outlets, thermostats and other environmental controls
 - reinforced bathroom walls to allow later installation of grab bars
 - kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and was first occupied after March 13, 1991, these standards apply to ground floor units only.

These accessibility requirements for new multifamily buildings do not replace more stringent accessibility standards required under State or local law.

Housing Opportunities for Families

The Fair Housing Act makes it unlawful to discriminate against a person whose household includes one or more children who are under 18 years of age (familial status). Familial status protection covers households in which one or more minor children live with:

- a parent
- a person who has legal custody (including guardianship) of the minor child or children
- the designee of the parent or legal custodian, with the written permission of the parent or legal custodian

Familial status protection also extends to pregnant women and any person in the process of securing legal custody of a minor child (including adoptive or foster parents).

The “Housing for Older Persons” Exemption:

The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. In order to qualify for the “housing for older persons” exemption, a facility or community must prove that its housing is:

- provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program)
- intended for, and solely occupied by persons 62 years of age or older
- intended and operated for occupancy by persons 55 years of age or older

In order to qualify for the “55 or older” housing exemption, a facility or community must satisfy each of the following requirements:

- at least 80 percent of the units must have at least one occupant who is 55 years of age or older; and the facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as “55 or older” housing
- the facility or community must comply with HUD’s regulatory requirements for age verification of residents

The “housing for older persons” exemption does not protect senior housing facilities or communities from liability for housing discrimination based on race, color, religion, sex, disability or national origin.

If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, you may file a complaint online, write a letter, or telephone the HUD Office nearest you. You have one year after an alleged discrimination occurred or ended to file a complaint with HUD, but you should file it as soon as possible.

What to Tell HUD:

- your name and address
- the name and address of the person your complaint is against (the respondent)
- the address or other identification to the housing involved
- a short description to the alleged violation (the event that caused you to believe your rights were violated)
- the date(s) to the alleged violation

Where to Write or Call:

File a complaint online, send letter to the HUD Office nearest you or you if you wish, you may call that office directly. Persons, who are deaf or hard of hearing and use a TTY, may call those offices through the toll-free Federal Information Relay Service at 1-800-877-8339.

If You Are Disabled:

HUD also provides:

- a TTY phone for the deaf/hard of hearing users hearing impaired:
1.800.799.2085
- interpreters, Tapes and Braille materials
- assistance in reading and completing forms

What Happens When You File A Complaint?

HUD will notify you in writing when your complaint is accepted for filing under the Fair Housing Act. HUD also will:

- notify the alleged violator (respondent) of the filing of your complaint, and allow the respondent time to submit a written answer to the complaint
- investigate your complaint, and determine whether or not there is reasonable cause to believe that the respondent violated the Fair Housing Act
- notify you and the respondent if HUD cannot complete its investigation within 100 days of filing your complaint, and provide reason for the delay

Fair Housing Act Conciliation:

During the complaint investigation, HUD is required to offer you and the respondent the opportunity to voluntarily resolve your complaint with a Conciliation Agreement. A Conciliation Agreement provides individual relief to you, and protects the public interest by deterring future discrimination by the respondent. Once you and the respondent sign a Conciliation Agreement, and HUD approves the Agreement, HUD will cease investigating your complaint. If you believe that the respondent has violated breached your Conciliation Agreement, you should promptly notify the HUD Office that investigated your complaint. If HUD determines that there is reasonable cause to believe that the respondent violated the Agreement, HUD will ask the U.S. Department of Justice to file suit against the respondent in Federal District Court to enforce the terms of the Agreement.

Complaint Referrals to State or Local Public Fair Housing Agencies:

If HUD has certified that your State or local public fair housing agency enforces a civil rights law or ordinance that provides rights, remedies and protections that are “substantially equivalent” to the Fair Housing Act, HUD must promptly refer your complaint to that agency for investigation, and must promptly notify you of the referral. The State or local agency will investigate your complaint under the “substantially equivalent” State or local civil rights law or ordinance. The State or local public fair housing agency must start investigating your complaint within 30 days of HUD’s referral, or HUD may retrieve (“reactivate”) the complaint for investigation under the Fair Housing Act.

Determination of Reasonable Cause, Charge of Discrimination, and Election

When your complaint investigation is complete, HUD will prepare a Final Investigative Report summarizing the evidence gathered during the investigation. If HUD determines that there is reasonable cause to believe that the respondent(s) discriminated against you, HUD will issue a Determination of Reasonable Cause and a Charge of Discrimination against the respondent(s). You and the respondent(s) have twenty (20) days after receiving notice of the Charge to decide whether to have your case heard by a HUD Administrative Law Judge (ALJ) or to have a civil trial in Federal District Court.

HUD Administrative Law Judge Hearing

If neither you nor the respondent elects to have a Federal civil trial before the 20-day Election Period expires, HUD will promptly schedule a Hearing for your case before a HUD ALJ. The ALJ Hearing will be conducted in the locality where the discrimination allegedly occurred. During the ALJ Hearing, you and the respondent(s) have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses and to request subpoenas in aid of discovery of evidence. HUD attorneys will represent you during the ALJ Hearing at no cost to you; however, you may also choose to intervene in the case and retain your own attorney. At the conclusion of the Hearing, the HUD ALJ will issue a Decision based on findings of fact and conclusions of law. If the HUD ALJ concludes that the respondent(s) violated the Fair Housing Act, the respondent(s) can be ordered to:

- compensate you for actual damages, including out-of-pocket expenses and emotional distress damages
- provide permanent injunctive relief
- provide appropriate equitable relief (for example, make the housing available to you)

- pay your reasonable attorney's fees
- pay a civil penalty to HUD to vindicate the public interest. The maximum civil penalties are: \$16,000, for a first violation of the Act; \$37,500 if a previous violation has occurred within the preceding five-year period; and \$65,000 if two or more previous violations have occurred within the preceding seven-year period

Civil Trial in Federal District Court

If either you or the respondent elects to have a Federal civil trial for your complaint, HUD must refer your case to the U.S. Department of Justice for enforcement. The U.S. Department of Justice will file a civil lawsuit on your behalf in the U.S. District Court in the district in which the discrimination allegedly occurred. You also may choose to intervene in the case and retain your own attorney. Either you or the respondent may request a jury trial, and you each have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses, and to request subpoenas in aid of discovery of evidence. If the Federal Court decides in your favor, a Judge or jury may order the respondent(s) to:

- compensate you for actual damages, including out-of-pocket expenses and emotional distress damages
- provide permanent injunctive relief
- provide appropriate equitable relief (for example, make the housing available to you)
- pay your reasonable attorney's fees
- pay punitive damages to you

Determination of No Reasonable Cause and Dismissal

If HUD finds that there is no reasonable cause to believe that the respondent(s) violated the Act, HUD will dismiss your complaint with a Determination of No Reasonable Cause. HUD will notify you and the respondent(s) of the dismissal by mail, and you may request a copy of the Final Investigative Report.

Reconsiderations of No Reasonable Cause Determinations

The Fair Housing Act provides no formal appeal process for complaints dismissed by HUD. However, if your complaint is dismissed with a Determination of No Reasonable Cause, you may submit a written request for a reconsideration review to: Director, FHEO Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 5206, Washington, DC 20410-2000.

In Addition

File a Private Lawsuit

You may file a private civil lawsuit without first filing a complaint with HUD. You must file your lawsuit within two (2) years of the most recent date of alleged discriminatory action.

If you do file a complaint with HUD and even if HUD dismisses your complaint, the Fair Housing Act gives you the right to file a private civil lawsuit against the respondent(s) in Federal District.

Court. The time during which HUD was processing your complaint is not counted in the 2-year filing period. You must file your lawsuit at your own expense; however, if you cannot afford an attorney, the Court may appoint one for you.

Even if HUD is still processing your complaint, you may file a private civil lawsuit against the respondent, unless (1) you have already signed a HUD Conciliation Agreement to resolve your HUD complaint; or (2) a HUD Administrative Law Judge has commenced an Administrative Hearing for your complaint.

Other Tools to Combat Housing Discrimination:

- If there is noncompliance with the order of an Administrative Law Judge, HUD may seek temporary relief, enforcement of the order or a restraining order in a United States Court of Appeals.
- The Attorney General may file a suit in Federal District Court if there is reasonable cause to believe a pattern or practice of housing discrimination is occurring.

For additional information, go to the HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, chapter 2, Civil Rights and Nondiscrimination Requirements at <http://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf>.

Reasonable Accommodations

Service Coordinators need to know about reasonable accommodations because often it is the Service Coordinator who first learns of the resident's need for an accommodation.

The Owner or the Management Agent of any property with subsidy must have a written reasonable accommodation policy. Residents must be provided a notice of nondiscrimination and the right to reasonable accommodation for persons with disabilities.

Service Coordinators must be sure that written material (e.g., the newsletter), meetings, programs, activities and trips are accessible to people with disabilities, including, but not limited to people with visual, hearing and mobility impairments.

Service Coordinators are advised to do training in fair housing and reasonable accommodation.

Reasonable Accommodations Procedure¹

General Provisions

It is [management's] policy to comply with all Fair Housing regulations, including Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination against persons with disabilities in any program or activity receiving Federal financial assistance. [Management] provides "reasonable accommodation" to clients if they or any household member(s) have a disability and if the reasonable accommodation is necessary to provide an equal opportunity to live in the apartment complex and use its services.

A reasonable accommodation is a modification or change management can make to its facilities, policies, or procedures that will assist an otherwise eligible client with a disability to take advantage of management's programs, provided that the change does not pose an undue financial and administrative burden to management or require a fundamental change in its program.

A resident's household that has a member with a disability must still be able to meet essential obligations of tenancy – they must be able to pay rent, to care for their apartment, to report required information to management, to avoid disturbing their neighbors, etc.

Management will thoroughly and promptly consider any request for reasonable accommodation, and will explain the basis for any denial as well as the right to appeal such denial, to the individual who has made such a request. This dialog will also include discussions relating to problem solving for the client.

Accessibility

The process for requesting a reasonable accommodation will be accessible to all persons. All communications that are a part of the process should be in plain language that the client can understand, in a format that meets the needs of the person with a disability. If necessary, a format other than written documentation should be used in

¹ Resources include ADA, Inc. (Pittsburgh), Fair Housing Institute (Georgia), Boston Housing Authority, HUD.

certain cases. Any meetings concerning a client's request for reasonable accommodation shall be held in a location accessible to the client.

Notification

All clients, whether applying for residency or a current resident, are notified of the option to request a reasonable accommodation. Persons who request an apartment application and those who sign a lease are given a copy of the HUD brochure fair housing – it's your right and Resident Request for a Reasonable Accommodation.

These procedures are available for review by clients upon request.

For much more

information: <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

Processing a Request for Reasonable Accommodation

When a resident makes a request for a reasonable accommodation, follow the procedure outlined below.

Table 1: Responsibility of and Action taken

RESPONSIBILITY OF:	ACTION:
Manager or SC	<ul style="list-style-type: none"> • Give residents copies of: <ul style="list-style-type: none"> ○ the HUD brochure, Fair Housing – It’s your Right ○ the Request for a Reasonable Accommodation • Review with resident how to complete the Request, including requirement that the Request must be signed by a qualified medical professional. • Instruct the resident to return the completed Request to either the site manager or service coordinator
Resident	<ul style="list-style-type: none"> • Have the Request completed by qualified medical professional. • Return completed Request to site manager or service coordinator.
Manager or SC	<ul style="list-style-type: none"> • Date stamp the completed Request as soon as resident turns it in. • Verify address and phone number. • Copy to site manager, property manager, and/or service coordinator. • Place original Request in resident file. • Log the Request for a Reasonable Accommodation. Include date received, name of resident, and accommodation requested.
Assigned to make determination on requests for reasonable accommodation	<ul style="list-style-type: none"> • Review Request. • Meet and/or discuss Request with resident, if necessary. • If additional information is necessary to make a decision, obtain a signed Release of Information. The resident should provide the requested information, or otherwise respond within a reasonable time period. • Research options/alternatives with appropriate agencies, e.g. CIL. • Discuss recommendation and plan for implementation with manager. • Respond to the resident in writing within 30 days after the date on which the completed Request was received by manager or SC. If the request is denied, explain the basis for the decision and the reasons for the denial in writing. • Place a copy of response in resident file.
Manager or SC if the request is related to SC functions	<ul style="list-style-type: none"> • If the Request was approved, implement the approved accommodation. • Log decision, date of resident notification, and date of implementation (if approved) in the Reasonable Accommodations log. • Keep written record in resident file of decision to grant or deny Request for at least seven (7) years from the date of the request.