

COMPLIANCE WITH FEDERAL FAIR HOUSING REQUIREMENTS

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June 28, 2018

**2018 PHFA Housing Services
Conference**

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Introduction

There are many obstacles to obtaining decent housing in America, most related to affordability. However, for many, discrimination presents another impediment.

Fair Housing Requirements for Multifamily Housing

Fair Housing Timeline

- 1788: **US Constitution** – Slaves are considered 3/5 of a person with regard to state representation in the House & tax distribution;
- 1856: **Dred Scott Decision** – Blacks have privileges only as granted by the whites, regardless of whether they live in slave-free states;
- 1865: **13th Amendment** – Abolition of Slavery;
- 1866: **Civil Rights Act of 1866** – Racial discrimination (to include all races considered non-white) made illegal;
- 1868: **14th Amendment** – All citizens granted “due process” (government must respect all granted rights that are allowed to a person to include real estate transactions);
- 1917: **Buchanan v. Warley** – Segregation based on race prohibited in the purchase of homes, but does allow cities wide latitude in protecting “racial purity,” preserving racial peace, and maintaining property values;
- 1962: **Executive Order 11063** – Racial discrimination prohibited in the sale, rental, or use of all housing owned, operated, or financed by the US Government;
- 1964: **Civil Rights Act of 1964 (Title VI)** – Prohibits discrimination & segregation in public places on the basis of race, color, religion, or national origin, but does NOT address housing;
- 1968: **Civil Rights Act of 1968 (Title VIII)** – Provided for fair housing for all;
- 1974: **Housing & Community Development Act** – Sex added as a protected class;
- 1988: **Fair Housing Amendments Act of 1988** – Handicapped and familial status added to protected classes – enforcement strengthened;
- 1995: **Housing for Older Persons Act of 1995 (HOPA)** – Requirements for “55 & older” relaxed. Significant medical facilities or services designed for the elderly are no longer required

Title VIII of the Civil Rights Act of 1968 begins by declaring “*it is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States.*”

What about the “Americans with Disabilities Act?” (ADA)

Title II of the ADA prohibits discrimination on the basis of disability by public entities.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and commercial facilities, including the rental office or public child care center of a housing complex. *This training will focus on the Fair Housing Act, but what does the ADA mean for the leasing office?*

- Ensure that there are no barriers to the leasing office entrance.
- Adequate accessible parking in the leasing office parking lot.
 - Including van accessible parking.
- Bathrooms must be accessible for people who are using wheelchairs or other mobility devices.

ADA guidelines took effect on January 26, 1990. Properties in existence prior to that date have different requirements than those in existence after that date.

- Pre-ADA apartment communities must remove barriers to access of their public areas when the removal is technically feasible and readily achievable.
 - Generally, “readily achievable” means “accomplishable without much difficulty or expense.”
- Post-ADA communities must have fully accessible public areas.

Training Agenda

- I. Exemptions
- II. Protected Classes
- III. Prohibited Activities
- IV. Discrimination based on Race or Color
- V. Religious Discrimination
- VI. Sexual discrimination
- VII. Discrimination based on National Origin
- VIII. Familial Status Discrimination
- IX. a. Housing for Older Persons
- IX. a. Discrimination against the Disabled
 - a. Reasonable Modifications
 - b. Reasonable Accommodations
 - c. Design and Construction Requirements

Who Should Receive Fair Housing Training?

- Leasing staff
- Maintenance staff
- Housekeeping
- Landscaping crew

New employees should never be allowed to interact with the public without at least a basic understanding of fair housing law.

All new employees should be required to sign an acknowledgement agreeing to abide by fair housing laws and that they understand that they may be monitored and recorded for training and compliance purposes.

Exemptions from the Fair Housing Act

1. People who sell or rent single family homes, if
 - a. The home is sold or rented by the owner;
 - b. Does not own more than three single family homes; and
 - c. Sells no more than one home every 24 months, unless the home is a principal residence.
2. “Mrs. Murphy” Exemption
 - a. People who rent rooms in rooming houses or small apartments if
 - i. No more than four rooms or apartments in the building; and
 - ii. The owner occupies one of the units.

Note: *Persons in the real estate business are never exempt.*

No one may place a discriminatory ad! If an ad is placed, the law must be followed.

Note: ads with a sex-based preference are permitted in shared living situations where residents will share a bathroom, kitchen, or other common area.

In addition to the exception for “small-scale rental activity,” federal fair housing law also provides a few other narrowly defined exceptions to who is subject to the requirements of federal fair housing law:

- Religious Exemption: 42 U.S.C.A. §3607 allows a religious organization that owns residential rental property to engage in some religious-based discrimination that the FHA otherwise prohibits. This reflects the portion of the First Amendment in the U.S. Constitution that prohibits Congress from enacting a law that prohibits the free exercise of religion.
- Private Club Exemption: A private club that is not open to the public and that offers lodging as a minor part of the club’s purpose may limit “the rental or occupancy of such lodging to its members.” An example would be a country club.

Federally Protected Characteristics (Classes)

1. Race
2. Color
3. Religion
4. Sex
5. National Origin (*country where individual or ancestors came from*)
6. Familial Status (Children Under 18)
7. Handicap (disability)

Most fair housing complaints are filed based on disability (55%). This is followed by race (28%), familial status (14%), national origin (12%) and sex (12%).

State or local laws may add other categories

Pennsylvania: Ancestry, age (40+), use of guide or support animal, status as handler or trainer of guide or support animal.

Recommendation: Companies with properties in multiple localities should develop one policy based on the most stringent requirements.

Not Every Characteristic is Protected

- Students (in most places), although some cities do offer protection;
- Smokers;
- Income Status (in most places – e.g., an Oregon law passed in 2014 makes it illegal for landlords to refuse to rent to a household based solely on possession of a housing choice voucher as the source of earnings);
- Marital status
- Age
- Criminals

Disparate Impact

Disparate impact occurs when a housing provider implements an apparently neutral policy or procedure (i.e., one that appears to apply to all persons equally) yet can be shown to have a disproportionately negative effect upon members of a protected class.

In analyzing cases under the FHA, courts often distinguish between two types of discrimination claims:

1. Disparate Treatment (intentional discrimination); and
2. Disparate Impact – seemingly neutral policies or practices that have a disproportionately ill effect on a protected group.

>In 2015, the Supreme Court ruled that disparate impact claims may be brought under the FHA.

>>In 2017, the U. S. District Court for D.C. issued an opinion finding that the National Fair Housing Alliance has standing to bring a discrimination claim against Travelers Insurance for race, sex, and source of income discrimination.

- *Travelers refused to provide insurance to apartment owners who rent to tenants with Housing Choice Vouchers (HCV).*
- *The complaint alleges a disparate impact based on race (African Americans) and sex (women).*
 - 92% of HCV users in DC are African American and 81% are female-headed households.

HUD challenged the fairness of the method used by the Maryland Department of Housing & Community Development (DHCD) in the awarding of low-income housing tax credits.

- The state maintained a policy requiring local jurisdictions to approve proposed affordable housing projects prior to consideration or allocation of tax credits. *This was effectively a local veto.*
- This prevented the placement of LIHTC properties in predominantly white areas, thereby limiting housing opportunities for African-Americans and Hispanic families in communities of opportunity.
- In October 2017, the state agreed to:
 - Not require local project approval;
 - Ensure that at least 1,500 units of family housing are developed in Communities of Opportunity in the Baltimore area;
 - Award extra points to any proposal to develop family housing in a Community of Opportunity and give a preference to projects with two or more bedroom units;
 - Increase outreach to PHAs, voucher administrators and mobility counseling programs; and
 - Pay \$225,000 to the Baltimore Regional Housing Campaign (BRHC) to assist in sustaining the Agency's fair housing mission.

Prohibited Activities (THESE ACTIVITIES ARE PROHIBITED IF DONE DUE TO MEMBERSHIP IN A PROTECTED CLASS)

1. Refusal to sell or rent;
2. Refusing to negotiate;
3. Establishing different terms & Conditions; *of the approximately 10,000 complaints filed with HUD each year, more than 25% alleged a discriminatory refusal to rent.*
**E.g., Landlord in WV required additional renters insurance due to presence of autistic resident – had to pay \$34,000.*
4. Discriminatory Advertising;
5. Blockbusting;
 - a. Inducing or attempting to induce a person to sell or rent by indicating that persons from a protected class are moving into a neighborhood, resulting in a negative consequence, such as reduction in values, increase in crime, etc.
6. Discriminatory Financing (*Consumer Financial Protection Bureau and United States v. Hudson City Savings Bank*):
 - a. September 25, 2015 – the CFPB and DOJ sued Hudson City Savings for “redlining.” The government is asking Hudson to pay more than \$30 million in direct loans, programs and outreach and penalties for cutting off opportunities in predominately black and Hispanic neighborhoods. Hudson is accused of:
 - b. Avoiding locating branches and loan officers in majority Black and Hispanic communities;
 - c. Avoiding the use of mortgage brokers in majority Black and Hispanic communities;
 - d. Excluding majority Black and Hispanic communities from its marketing strategy; and
 - e. Excluding majority Black and Hispanic neighborhoods from its credit assessment areas; and
7. Discriminatory Brokerage Services

It is also illegal for one tenant to engage in discriminatory behavior against another tenant.

HUD Secretary v. Applewood of Cross Plains, LLC, 2015

- ❖ HUD charged the owners and managers of a 55+ senior housing community in Wisconsin for failure to take action to stop several neighbors from harassing a resident with cerebral palsy, and her daughter, with Down’s syndrome.
- ❖ Mother alleged that several neighbors repeatedly following them and make offensive comments.
 - One resident told the daughter, “You don’t belong here... You belong in an institution.”
 - Another resident referred to the daughter as “mentally retarded,” and told her, “You shouldn’t be out of your apartment during the day.”
- ❖ Local police warned the offending neighbors, but the harassment continued.
- ❖ The Mother reported the harassment to management, but one manager pressured her to move, stating that he did not believe the daughter was capable of living independently and that the two of them were causing too much trouble.

- ❖ The residents moved when their lease was not renewed.
- ❖ *A HUD Administrative Law Judge will hear this case, unless either party requests a trial in federal court.*

Dealing with Tenant-on-Tenant Harassment

- Get the complaint in writing
- Identify – to the degree possible – the persons who are believed to be engaging in the harassment.
- When possible, include dates, times, places, and witnesses (if any).

Discrimination Based on Race or Color

****HUD recognizes five races for fair housing purposes: (1) Black/African-American; (2) White; (3) Asian; (4) Native American/Alaskan Native; and (5) Native Hawaiian/other Pacific Islander.**

“Hispanic/Latino” are ethnic categories that include all races.

***In 2007, for the first time since passage of the Civil Rights Act of 1968, “race” was not the major category for fair housing complaints. In all years since 2007, discrimination against the disabled has been the leader (55%), with race in second and familial status in third. However, racial discrimination is still a major problem.

Relevant Case Law

U.S. v. Bossier City Housing Authority

The Bossier City, La., Housing Authority (BCHA) agreed to pay \$120,000 and adopt new policies to settle a lawsuit alleging discrimination based on race and disability under fair housing law.

The complaint alleged that from 2007 to 2014, BCHA assigned elderly residents to housing on the basis of race, rather than by their place on the waiting list, and restricted residents with disabilities primarily to one of its seven apartment complexes. Allegedly, white elderly residents were assigned to one of two complexes that were reserved for elderly persons, but African-American elderly residents were assigned to one of its other five complexes, all of which were at least 90 percent African American. The complaint also alleged that BCHA primarily assigned residents with disabilities to one complex and didn’t consider them for vacancies at BCHA’s six other properties.

Under the settlement, BCHA agreed to pay \$120,000 to compensate individuals who were allegedly passed over on the waiting list or otherwise denied the right to move into the apartment of their choice because of race or disability. The BCHA also agreed to implement non-discriminatory policies and procedures to ensure that its housing units are made available for rent based on an applicant’s position on its waiting list, regardless of race or disability.

One of the central objectives of the Fair Housing Act, when Congress enacted it in 1968, was to prohibit race discrimination in sales and rentals of housing. Nevertheless, nearly 50 years later, race discrimination in housing continues to be a problem. The majority of the Justice Department's pattern or practice cases involve claims of race discrimination.

Sometimes, housing providers try to disguise their discrimination by giving false information about availability of housing, either saying that nothing was available or steering home seekers to certain areas based on race.

- ✚ Individuals who receive such false information or misdirection may have no knowledge that they have been victims of discrimination.
- ✚ The Department of Justice has brought many cases alleging this kind of discrimination based on race or color. In addition, the Department's Fair Housing Testing Program seeks to uncover this kind of hidden discrimination and hold those responsible accountable.
 - Recent trend – profiling based on names used in emails –
 - Testers used birth certificates to identify “black names” and “white names” – those statistically used more often for African-American and Caucasian males born in the mid-70s.
 - Fictional prospects sent emails with the names.
 - Finding: landlords favored whites by responding quicker, writing emails that are longer, and using more positive language in their replies.

Difference between “race” and “color:”

- *No matter what the race of a person may be, there are people in every race who have many different skin colors.*
- *Race - generally related to ethnicity and based on geographic factors like geographic ancestry.*
- *Color - the color of one's skin varies greatly among different races as well as people of the same race. Every race has people with different colored skin.*

**It is never a good idea to mention the racial make-up of a community in a written report (e.g., Hispanic) unless required to do so by a government agency.

Discrimination Based on Religious Preference

May not discriminate based on one's religious beliefs (or absence of religious beliefs). **The FHA does not require that housing providers “reasonably accommodate” religious beliefs, observances, or practices.**

Religion was one of the original 1968 protected characteristics.

Fair housing claims based on religion make up around 2% of all fair housing complaints.

*Examples of Religions that may be practiced by apartment residents:

- Islam;
- Judaism;
- Buddhism;
- Animism (central belief is that souls exist in all forms of life, including plants and animals);
- Christianity;
- Hinduism
- Afro-Caribbean Syncretic
 - Santeria
 - Candomble
 - Voodoo
 - Umbanda
- Norse-Pagan (Asatru);
- Baha'i (World's most widespread religion, with 5-6 million followers);
- Cao Dai (Vietnamese);
- Deism (Deists generally reject the notion of supernatural revelation as a basis of truth or religious dogma);
- Druid;
- Druze;
- Falun Gong;
- Gnostic;
- Greek Revival;
- Jainism (one of the oldest religions that originated in India. Jains believe that every soul is divine and has the potential to achieve God-consciousness);
- Rastafarianism;
- Ritual Magick;
- Satanism;
- Shamanism (similar to Animism); and
- Wicca (Witchcraft)

Note: *Almost 70% of the U.S. population identified themselves as Protestant in the 1960's; it was 53% in 2007, and is now 48%.*

❖ *23% of Americans now claim no religious identity, which is the second largest group after Catholics.*

Relevant Case Law

Religious Discrimination Case Against Colorado City, AZ and Hildale, UT

*On March 7, 2016, a federal jury in Phoenix found the towns of Colorado City, AZ and Hildale, UT - as well as their joint water company - systematically discriminated against individuals who are not members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS) in the provision of housing, utility, and policing services in violation of the Fair Housing Act. Prior to the jury verdict, the parties reached an agreement that the defendants will pay **\$1.6 million** to resolve the monetary claim under the Fair Housing Act.*

The jury also issued an advisory verdict on the DOJ claims under Section 14141 of the Violent Crime Control and Law Enforcement Act.

- *In this advisory verdict, the jury found that the Colorado City Marshal's Office, the cities' joint police department, operated as an arm of the FLDS church in violation of the First Amendment to the Constitution (separation of church and state).*
- *The department engaged in discriminatory policing, and subjected individuals to unlawful stops, seizures and arrests in violation of the Fourth Amendment.*

>>*United States v. San Francisco Housing Authority*: The Civil Rights Division brought suit in this case based on a number of claims, including the Housing Authority's failure to take measures to stop threats and violence against Muslim tenants following the September 11, 2001 terrorist attacks. The Division obtained a consent decree that included compensation for the victims (\$200,000), implementation of new policies to address civil rights complaints in public housing in San Francisco, and training for employees.

Note: HUD has ruled that in cases where the name of a housing community, or use of a religious symbol such as a cross in an ad could indicate a religious preference. However, HUD says that it will not be considered a fair housing violation if the ad includes a disclaimer to indicate that the housing community does not discriminate on the basis of race, religion, and other protected characteristics.

One of the most common areas for complaints regarding discrimination based on religion is religious holidays and decorations.

Recommendations for Holiday Decorations

- Don't refer to the holidays of a particular religion:
 - Avoid nativity scenes or other overtly religious symbols (e.g., Star of David, Pentagram (Wicca), Wheel of Dharma (Buddhism), Flaming Chalice (Unitarian Universalism). *The use of secularized terms or symbols such as Santa Claus, Easter Bunny, or St. Valentine's Day images, or phrases such as "Merry Christmas", "Happy Easter", or the like does not constitute a violation of the Act.*

- Use non-religious decorations
 - Signs such as “Happy Holidays” or “ Enjoy the Season.”
 - Christmas trees and menorahs are not considered religious symbols for fair housing purposes.
- If religious decorations are used, give all religions equal billing.
- Throw non-religious holiday parties.
- Offer equal access to all religions in the use of community rooms.
 - Federal court has ruled that owners may ban the use of community rooms for religious services as long as the ban applies to all religions. *Savannah Club Worship Service v. Savannah Club Homeowners Association.*
 - DOJ has indicated that if you allow use of a community room for any private activity (e.g., bingo, birthday parties), you must make it available for all religious activities.
- Allow tenants to decorate unit doors in any reasonable way
 - Court ruling in Washington State affirmed that unless a lease provides otherwise, doors opening to a tenancy pass to the resident’s control. Signs placed on doors are resident material and protected free speech.
- Don’t distribute religious cards or gifts.

Avoid having bibles or other religious materials in leasing office or common areas and do not have religious pictures on the walls.

Don’t express religious preferences in advertisements.

Train staff to avoid using religious preferences when discussing the community.

Note: Under the *Freedom to Display the American Flag Act of 2005*, condo or co-op owners have the right to display the American flag from their individual units in areas where residents have exclusive use, such as their windows, terraces, or doors. *It is unclear whether this applies to apartments, but such a ban is not recommended.*

Sexual Discrimination

Federal law did not prohibit discrimination based on sex until 1974.

An exception to sex discrimination is provided when there are shared living areas.

Fair Housing Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3rd 1216 (9th Cir. 2012).

Court ruled that FHA does not apply to shared living units because of the constitutional privacy concerns that would be raised.

According to the court, the application of the FHA within the unit would allow government restriction of the right to choose roommates that are compatible with us and would thus constitute an invasion of privacy.

Basic Tips on Avoiding Discrimination Based on Sex (Issues Other than Sexual Harassment)

- Don't screen applicants based on gender.
 - E.g., don't refuse to rent to three male roommates because males party more than females.
 - Don't refuse to rent to single women or "working mothers" while being willing to rent to single men or working fathers.
- Apply reasonable screening criteria to applicants, regardless of gender.
 - *U.S. v. Kelly, November 2016* – DOJ filed a complaint against an owner of a three-unit rental community in South Dakota for sex and familial status discrimination.
 - *Owner refused to rent a unit to a woman and her 17-year old daughter because she would be concerned about any woman being alone in the area and had "always rented to bachelors."*
- Don't express a preference for or against applicants based on gender.

Sexual Harassment

The Fair Housing Act makes it illegal to discriminate against a person because of that person's sex.

The first fair housing decision relating to sexual harassment was *Shellhamer v. Lewallen* in 1983. The plaintiffs were a married couple who were evicted because the wife refused to pose for nude pictures and have sex with the landlord.

- Having no real guidance on how to proceed, the Magistrate in the case turned to employment decisions under Title VII, which already recognized “quid pro quo” and “hostile environment” theories of liability.
- The landlord had made two sexual requests over a three to four month period; the magistrate determined that this did not rise to the level of a hostile environment claim.
- However, since a *quid pro quo* claim does not require persistent conduct, this test was met. This was due to the fact that the decision to evict was based on Mrs. Shellhamer's refusal to give in to the requests.

This case established the precedent for applying Title VII concepts to fair housing cases of sexual harassment.

Important Cases

- *U.S. v. Wesley, July 2015*: DOJ announced a \$2.7 million settlement in a sexual harassment case against a NC Public Housing Agency (*Southeastern Community & Family Services, Inc.*) and two of its employees in Scotland County, NC.
 - **This is the largest amount ever recovered in a fair housing sexual harassment case.**
 - The two former employees (John Wesley, Section 8 Coordinator, and Eric Pender, Housing Inspector) sexually harassed female voucher holders through unwanted sexual comments, sexual touching, and other sexual acts. The two also took adverse actions against women who refused the sexual advances.
 - The complaint alleged that the employees undertook these activities while exercising their authority as agency employees and that the agency failed to take reasonable preventive or corrective measures.
 - The two employees were banned from real estate activities for life.

The penalties for sexual harassment can be severe, including heavy fines and being banned from working in the apartment industry.

A *quid pro quo* claim requires the loss of a tangible housing benefit as the result of refusing to accede to sexual demands, but may be established by only a single incident of harassment.

Hostile environment claims do not require the loss of a tangible housing benefit, but require that the defendant's behavior be "severe or pervasive" enough to alter the terms or conditions of the plaintiff's residency. This "pattern" of severe and persistent harassment is a critical test for hostile environment claims, and courts have ruled in favor of defendants when inappropriate behavior did not meet this standard.

- In *Hall v. Meadowood Limited Partnership* (2001), the court ruled that though the conduct was "arguably...crude or inappropriate," the fact that it occurred "only occasionally and was not severe [and therefore] did not rise to the level of actionable sexual harassment."

Some provisions of the FHA may make sexual harassment in housing more far reaching than harassment as defined in Title VII. For example, §3604(c) of the FHA bans housing related statements that indicate "any preference, limitation, or discrimination based on ...sex." This goes well beyond Title VII and indicates that *even a single unwelcome sexual comment by a landlord to a tenant could violate the law*. However, most courts have not taken this position.

*Conditional Tenancy Claim ("quid pro quo" – "this for that"): demanding sex in return for something else.

- *U.S. vs. Barnason*, May 2012: *Owners and managers of three Manhattan apartment buildings agreed to pay more than \$2 million to six women who were subjected to severe, unwelcome, and pervasive sexual harassment by the Superintendent of the properties (who was a Level 3 Registered sex offender).*
 - *He attempted to enter their apartments while drunk, demanding sex;*
 - *He engaged in unwelcome groping and fondling;*
 - *Subjected the women to unwanted verbal sexual advances;*
 - *Demanded sex in return for rent reductions; and*
 - *Took adverse action against the women who refused his demands.*
 - *The owner's son was also charged with creating a hostile environment for female residents due to vulgar language, threats, and intimidating behavior.*
 - ***In addition to the monetary awards, the Superintendent was banned for life from involvement in the management or maintenance of occupied rental housing properties.***

>This is the most serious form of sexual harassment, and requires only a single incident.

*Hostile Housing Environment Claim: occurs when unwelcome behavior of a sexual nature creates an intimidating or hostile environment. Trivial or isolated incidents are not enough to show harassment – it has to be severe and pervasive. To determine whether an environment was illegally hostile or abusive, courts look at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it was physically threatening or humiliating, or a mere utterance; and whether it unreasonably interfered with the use and enjoyment of the home.

In November 2017, HUD charged the owner and landlord of several rental properties in Wichita, KS, and his wife, who co-owned one of the properties with discrimination after the landlord sexually harassed two female tenants at his properties.

- The landlord subjected one of the women, who was working as a property manager, to a hostile environment, including entering her apartment uninvited, sexually harassing her, and requesting sex in exchange for allowing her to stay in the unit;
- He told her he could be her “sugar daddy,” grabbed her buttocks, and made comments about her body to others; and
- On one occasion, she awoke to find him in her bedroom on her bed.
- He subjected the second women to “conditional tenancy” harassment:
 - He made numerous requests for sex when picking up her rent payments;
 - Once, when she was late paying a portion of her rent, he asked her if she wanted to have sex with him instead of paying the \$150 she owed. When she refused, he gave her a three-day notice to vacate.

This case has not yet been heard.

Basic Rules for Avoiding Sexual Harassment Complaints

1. Establish a Zero-Tolerance Policy Against Sexual Harassment
 - a. Have a clear, written policy that sexual harassment of any kind will not be tolerated and will result in prompt disciplinary action;
 - b. Offer examples of prohibited conduct, such as:
 - i. Explicitly or implicitly suggesting sex in return for living in the community, receipt of services, or otherwise related to the terms and conditions of the tenancy;
 - ii. Suggesting or implying that failure to accept a date or sex would adversely affect a resident’s tenancy;
 - iii. Initiating unwanted physical contact, such as touching, grabbing or pinching;
 - iv. Making sexually suggestive or obscene comments, jokes or propositions; and
 - v. Displaying sexually suggestive photos, cartoons, videos or objects.
 - c. Policy should encourage anyone who feels they have been sexually harassed to file a complaint, and provide details on how to do so.

2. Focus on Employee Hiring & Training
 - a. Make sure all employees are trained with regard to the rules.
 - b. Check references on new employees, including criminal record checks.
 - c. Require all employees – from leasing agents to maintenance workers (full or part-time) to receive fair housing training, including the sexual harassment policies.
 - d. Explain what sexual harassment is, including examples, and include a record of all training.
 - e. Adopt property wide code of conduct (see below)
3. Don't Ignore Sexual Harassment Complaints
 - a. Investigate all complaints as soon as possible.
 - b. Consult with your attorney and take detailed notes of all interviews.
 - c. Interview all parties – both the accuser and the accused (don't assume guilt).
 - d. Never ignore such complaints:
4. Take Prompt Action to Halt Harassment
 - a. If you find that a sexual harassment complaint is justified, take action to end the harassment.
 - b. If the harasser is an employee, take appropriate disciplinary action, such as reprimand, suspension or termination – whatever is warranted.
 - c. Get legal advice if the complaint is about a vendor or other resident.
5. Don't Retaliate Against Anyone Complaining About Sexual Harassment
 - a. Under FHA, it is unlawful to “coerce, intimidate, threaten, or interfere with” anyone who exercises their rights under fair housing law.

As stated in the original Fair Housing Act, which was part of the Civil Rights Act of 1968, “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” Similarly, it is the policy of (Name of Owner) to provide equal housing opportunity for all persons seeking to reside in properties operated by (Name of Owner).

All officers, staff, and employees of (Name of Owner) are expected to perform their responsibilities in a manner that furthers this corporate fair housing goal. Therefore, it is required that all officers, staff, and employees of (Name of Owner) acknowledge and abide by this Fair Housing Code of Conduct.

The Fair Housing Act (FHA) makes it unlawful to discriminate in housing – including the provision of leasing and maintenance services – based on race, color, religion, sex, national origin, familial status (that is, families with children), or disability. Further, it is the policy of (Name of Owner) that there shall also be no discrimination based on marital status, age, or sexual orientation or identity.

All officers, staff and employees of (Name of Owner) must abide by this Code of Conduct when interacting with all prospective and current residents, as well as the guests of residents.

The following Code of Conduct instructs employees on how to interact with prospects and residents and provides examples of how the policies work in practice. In addition to all employees being required to attend professional fair housing training at least once per year, all employees must follow the requirements of the Code of Conduct.

SAMPLE CODE OF CONDUCT FOR APARTMENT COMMUNITIES

1. **Treat all prospective residents and current residents the same way.** Avoid giving preferential treatment to anyone. Residents who are not favored by staff may interpret that as being discriminatory behavior. For example, a maintenance staffer makes repairs for residents that he/she knows well without requiring them to complete work orders, but asks residents that he/she does not know well to complete the required work orders. Because some residents have been treated differently, it could open the property up to a charge of discrimination.
2. **Don't fraternize or socialize with residents.** All employees must be aware that a staff member who becomes overly involved with a resident or residents may cross the line between friendly service and harassment or favoritism. For example, you frequently see a particular resident around the community and often talk about the weather or current events. You ask the resident out to lunch. But, if they interpret this as a request for a date and become uncomfortable, he or she could sue both you and (Name of Owner) for sexual harassment.
 - a. (Name of Owner) has a zero-tolerance policy against sexual harassment. Examples of conduct on the part of staff that will not be tolerated include:
 - i. Explicitly or implicitly suggesting sex in return for living in the community, receipt of services, or otherwise related to the terms and conditions of tenancy;
 - ii. Suggesting or implying that failure to accept a date or sex would adversely affect a resident's tenancy;
 - iii. Initiating unwanted physical contact, such as touching, grabbing or pinching;
 - iv. Making sexually suggestive or obscene comments, jokes or propositions; and
 - v. Displaying sexually suggestive photos, cartoons, videos or objects.
3. **Don't enter a unit unless the resident lets you in.** No leasing or management staff may enter the unit of a resident that is home unless the resident invites them in. If a resident is surprised by an unknown employee or is found in an embarrassing situation when he/she thought they were alone, the resident could complain that he or she was harassed. For example, after knocking on the door to a unit and getting no answer, you let yourself in to make requested repairs. A member of the household, wrapped in a towel, walks into the room you are in. She had been in the shower but did not hear you knock. The intrusion was an accident, but she may think that you acted inappropriately and file a sexual harassment lawsuit.

If there is no answer after multiple attempts at knocking and/or ringing the doorbell, staff should unlock the door, step to where you can be heard and loudly announce yourself (e.g., “maintenance – here to complete a work order.) The announcement should be repeated at least three times. At that point, listen carefully for any sounds coming from the apartment, and if it appears that someone is home, exit the unit and close the door.

4. **Don't be alone in a unit with a minor child.** Unless it is an emergency, no staff member is to ever enter a unit if the only person(s) home is a minor (under 18) child. A parent may later claim that something inappropriate took place and, because children are susceptible to parental pressure, the child may confirm a claim that is not true. Instead, staff should immediately notify a supervisor of the situation, and the supervisor should make a written record of what happened, including why the staff member refused to enter the unit. The staff appointment should be rescheduled for a time when an adult will be at home or the unit will be empty.
 - a. For example, you knock on a resident's door for a scheduled unit inspection. The resident's young son is the only one home and invites you to conduct the inspection. Even though the inspection had been previously scheduled and you've been invited in, *do not go inside!* That's because someone may later claim that something inappropriate took place and file a lawsuit or make a complaint to the police. Although this may not be a fair housing-related claim, it could still put you and (Name of Owner) at serious risk, so – there are no exceptions to this rule.
 - b. If it is an emergency, you should either attempt to relocate the child to a safe and supervised location, or enter the unit with additional staff members (see #6 below).
5. **Respect residents' privacy.** Do not comment on resident's possessions or make any comments relative to their personal property. For example, you tell a resident that a piece of art in his unit strikes you as odd. If the artwork has religious, cultural, or personal significance, you might offend the resident and inadvertently commit a fair housing violation.
6. **Enter units as a team for emergency service when the resident is away.** Security is a big issue with residents who are concerned that property staff could damage or steal their belongings if they are in the unit when no one is home. But, if emergency repairs are needed in a unit and the resident cannot be there, there is a solution. Two staff members should enter a unit together, if possible, to avoid or minimize later allegations of damage or theft.
 - a. For example, you answer a call to fix a plumbing problem that could flood a unit. The resident is not home, but you let yourself in because it is urgent and the repair must be made. Later, the resident claims that some jewelry is missing from the unit and files a police report or lawsuit asserting that she should be able to keep valuables without fear of property employees taking them. Again, while such a claim may not involve fair housing laws, it can expose both the property and staff member to liability.

- b. This same procedure should be followed anytime a unit is entered when the resident is not home – even if it is not an emergency.

All officers, staff, and employees of (Name of Owner) are expected to follow all fair housing requirements, including adherence to this Code of Conduct. In addition, all employees will be required to sign a statement that they have read and understand the Code of Conduct, and that they will abide by its requirements.

Discrimination Based on National Origin

The *Fair Housing Act* prohibits discrimination on the basis of nationality. Diversity is reality, and owners/managers must learn to deal with it. **By 2043, minorities will make up a majority of the U.S. population.**

- Hispanic population will triple, from 46.7 million in 2008 to 132.8 million in 2050;
 - Share of U.S. population will go from 15 to 30%.
- Asian population will climb from 15.5 million to 40.6 million;
 - Share of population will go from 5.1% to 9.2%.

In 2013, 12% of fair housing complaints were based on national origin – more than ½ of these involved Hispanic or Latino individuals. This percentage has been consistent for a number of years.

Case Examples

- *Lozano v. City of Hazleton, July 26, 2013* - Federal court ruled that the City of Hazleton, PA could not regulate residence based solely on immigration status.
 - City ordinance required legal immigration status of anyone as a precondition of seeking rental housing within the city.
 - Occupants of rental housing age 18+ were required to obtain an occupancy permit indicating “proof of legal citizenship and/or residency.”
 - Landlords faced fines or prison if they permitted violations of the occupancy permit.
 - The court held – “Congress has not banned persons who lack lawful status or proper documentation from obtaining rental or any other type of housing in the United States. Hazleton’s decision to impose this ‘distinct, unusual and extraordinary burden...upon aliens’ impermissibly intrudes into the realm of federal authority.”

- *Salwasser Group, Inc (dba Income Property Specialists) and property owners Gary and Mary Drieger have been accused by HUD of discrimination against prospective renters by refusing to accept Mexican forms of identification, while encouraging a Canadian passport holder to apply for an apartment.*
 - A fair housing testing organization, Project Sentinel, says the firm and owners informed testers who offered a Mexican passport and a Mexican consular identification that such identification would not be accepted. However, testers using a Canadian passport were encouraged to apply.
 - The owners and management company paid Project Sentinel \$10,000, obtained fair housing training, and implement a HUD-approved non-discrimination policy.

Photo I.D Policies

Any policy relating to photo identification should be posted and applied consistently.

Requiring a photo ID is a reasonable and effective safety precaution

Don't necessarily require a U. S. issued photo ID or driver's license. Require a "government issued" photo ID.

If photocopies of ID's are kept it is not a violation of the law; just keep copies of all and make sure rental decisions are not being made on the basis of membership in a protected class.

Note: from a fair housing standpoint, it is still best not to keep the copies once the person has left.

Important – do not make copies of U.S. Military ID cards.

With fraud and identity theft a growing problem, obtaining a social security number or Individual Tax ID Number is a sound policy. It is often a good idea to confirm the social security number with a second document, such as W2 or paycheck stub.

Tip: Make enlarged photocopies of original social security cards to examine security features.

*All cards issued since 1983 have been printed with raised printing and the signature line consists of micro-line printing of the words "Social Security Administration" in a repeating pattern.

*Newer cards have a "hologram" type screen in the marble background with the word "void," repeated many times.

The Basic Rules to Avoid Discrimination on the Basis of National Origin

1. Promote Policies to Treat Everyone Equally – Regardless of Where They Come From.
 - a. Beware of linguistic profiling.
 - i. Phone testing in Napa Valley, CA showed that callers with identifiable Spanish accents were discriminated against 50% of the time.
 - b. Avoid stereotypes.
 - i. Do not judge based on names, appearance, clothing, etc.
 - c. Encourage cultural sensitivity.
 - i. E.g., do not ask applicants why they wear head coverings or garb related to their cultural or religious customs.
 - ii. Train staff who may go into resident units that in many cultures, it's necessary to remove one's shoes when entering a home (e.g., Japan, Korea, Turkey, and some Scandinavian countries.)
2. Consistently Apply Screening Standards for Legal Residency Status.
 - a. Discrimination based on citizenship is not a federal fair housing violation.
 - i. Check state and local law – in CA, it is illegal for a landlord to screen for immigration status.
 - b. Federal law does not prohibit landlords from renting, in the normal course of business, to persons lacking lawful immigration status – but, if you know a person is illegal, check with your attorney before renting to them.
 - i. **Note on “harboring”** – *the federal law regarding harboring has never been interpreted so broadly as to encompass the typical landlord/tenant relationship. Several courts have ruled that harboring requires some conduct that helps conceal the alien from authorities. Renting a unit in the normal course of business is not in and of itself conduct that prevents the government from detecting an alien's presence.*
3. Don't Steer Based on National Origin
4. Enforce Reasonable Occupancy Standards Regardless of National Origin
 - a. The increase in multi-generational households could lead to a disparate impact based on National Origin.
 - i. Only 3.7% of non-Hispanic white households are multi-generational, but
 1. 10% of Hispanic and American Indian;
 2. 9% of black and Asian
5. Watch Out for Resident Relations
 - a. Investigate complaints about harassment based on national origin (or any other reason.)

Familial Status Discrimination

The law protects one or more individuals under the age of 18 being domiciled with a parent, a person having legal custody of such individual(s), or the designee of such parent or legal custodian. The law also protects any person who is pregnant or who is about to secure legal custody of someone under the age of 18.

- With respect to situations where a person under 18 is domiciled with the “designee” of a parent or other person having legal custody of that child, the written permission of the parent or legal guardian is required [§3604(k)(2)]. Courts have ruled that the FHA bars a policy of requiring legal, court-ordered guardianship [Ortega vs. Housing Authority of City of Brownsville, TX.].

Families with children under age 18 have the same protection as any other protected class.

*Unborn children and those in the process of being adopted are also protected.

Reasonable health and safety rules (including supervision) are permitted.

Children may be excluded from a community only if it meets the test as “Housing for Older Persons.”

Tips to Avoid Familial Status Violations

1. Don’t deny housing to households with children.
 - a. Unless the property qualifies as senior housing, families with children cannot – under any circumstances – be refused.
2. Don’t claim the senior housing exemption unless you qualify.
3. Don’t treat prospects differently because they have children.
 - a. *HUD v. Breckenridge Plaza, Inc., March 2012* – owner of a PA property agreed to pay \$15,000 for charging higher rent and indicating a preference against families with children.
 - i. Testers found that the landlord charged up to \$775 if children were present, but \$740 if there were no children.
 - ii. Online ads placed by the landlord were also deemed discriminatory (“Winter special price for two adults”).
4. Don’t express unlawful preferences in statements or advertising. Even unintentionally misleading statements could lead to a claim.
 - a. *Miami Valley Fair Housing Center, Inc. v. The Connor Group, August 2013.*
 - iii. Ohio community placed this ad for a one-bedroom unit: “Our 1-BR apartments are a great bachelor pad for any single man looking to hook up”.
 - iv. A jury found that the ad does violate the law, but could not agree on damages. A court has ordered a third trial for the purpose of determining any damages.

Appeals court ruled that an ordinary reader could be discouraged if they had a child or were married.

5. Don't engage in unlawful steering. Even if you believe it is in the best interest of the children (e.g., keeping them away from water or upper floors), steering families with children is illegal.
 - a. *U.S. v. MSM Brothers, Inc., May 2017*
 - Owner of 192-unit apartment complex (*White Cliffs at Dover*) in Dover, NH would not rent units to children on upper floors.
 - Case is pending.
6. Don't unfairly target children in community rules. Safety rules are fine, but avoid rules that target the behavior of children.
 - a. *Concerns about outdoor play activities that could damage property or disturb neighbors are reasonable. However, any rules should not unreasonably interfere with the ability of families with children to live at the community.*
7. Do not discriminate against residents for adding a child.
 - *HUD v. Keating, July 2013*
 - NH property began eviction against a family of four (two children) in two-bedroom unit when the resident became pregnant.

Discrimination Against the Disabled

Most Commons Complaints by the Disabled

- Disparate treatment
- Design & Construction
- Failure to make reasonable accommodation

Relevant Case Law

- *HUD v. Hillcrest East Building No. 22, Inc. and Donald Berger*
 - *Homeowner Association (HOA) of a Florida property refused on two occasions to allow the guest of a resident to have her emotional support animal when visiting a resident.*
 - In order to permit assistance animals, the HOA required the following verifications from a licensed health care provider:
 - Medical diagnosis and length of time the person had been disabled;
 - Nature of the disability and how it impaired one or more major life activities;
 - Prior treatment for the disability, including any prior hospitalizations, prescribed medications, etc.;
 - Statement describing why the animal is necessary;
 - Documents showing that the animal has been individually trained;
 - Vet certificate showing all required shots and that the animal was in good physical condition; and
 - A photo of the animal standing next to the person seeking the accommodation.
 - When seeking to come to Thanksgiving dinner, the guest provided two letters from a geriatric psychiatrist documenting the need for the animal and the National Service Animal Registry identification care for the animal.
 - The request was denied, with no interactive process to discuss possible alternative accommodations.
 - Shortly thereafter, the guest's attorney notified the HOA that they were in violation of the FHA and the guest attempted to visit the premises with her dog on Thanksgiving. She was denied access and she and her friend were forced to relocate for Thanksgiving dinner.
 - Three months later, the guest sent a note to the HOA informing them that she again intended to visit her friend and the Board responding with a handwritten note stating, "BOD accepted dog visiting, but dog must be contained."

- The HOA later published a set of rules for visiting assistance animals, which among other things required:
 - The animal could only go to the unit being visited and could not be in any of the property common areas;
 - A designated elevator for “animal transport” must be used;
 - No overnight stays were permitted; and
 - Any visits after the first visit required medical evidence of the disability and how the animal is part of a treatment plan.
- HUD is seeking to enjoin the HOA from such a policy and is asking for civil penalties and damages.

December 16, 2016 - The Southern Nevada Regional Housing Authority in Las Vegas agreed to settle a complaint alleging discrimination for refusing to grant a reasonable accommodation.

- A mother with a son filed the complaint stating that her request to be transferred to a three-bedroom unit in order to accommodate medical equipment her son required.
- The PHA agreed, but failed to do so in a timely manner.
- The PHA will pay the woman \$50,000, exempt her from paying rent for six and a half years (worth \$40,170), provide fair housing training for its staff, and submit a reasonable accommodation policy and procedure to HUD for approval.

Definition of a disabled person:

- Anyone having a physical or mental impairment that substantially limits one or more major life activities (*defined by courts as any activity that is of central importance to most persons daily lives*), has a record of having such impairment, or is regarded as having such impairment.
 - Examples of “regarded as:
 - A person with a disfiguring birthmark, or severe burns, may be regarded as disabled even though the condition does not limit their ability to perform major life activities;
 - A person who does not have AIDS, but is HIV positive.

- Examples of “major life activity:”
 - Driving;
 - Answering a door;
 - Communicating;
 - Performing manual tasks;
 - Caring for oneself;
 - Learning;
 - Thinking;
 - Concentrating;
 - Interacting with others; and
 - Sleeping
- Activities that are important only for a person’s job and have no application outside of that job – such as operating a lathe – are not considered major life activities.
- Examples of disability:
 - Visually impaired
 - Accommodate during the application process;
 - Always offer an apartment tour;
 - Don't steer;
 - Allow guide dogs; and
 - Be prepared to make other reasonable modifications & accommodations, if requested.
 - Mobility impairments
 - No separate lease terms;
 - Don't treat differently;
 - Don't steer; and
 - Be prepared to make other reasonable modifications & accommodations, if requested.
 - *A Maryland owner refused to show units to a wheel chair bound applicant because the owner did not think the units were suitable. The result: a rent-free apartment for life (\$340,000) plus \$160,000 in damages.*
 - Mentally disabled (*Based on a report by the U.S. Surgeon General, roughly 20% of Americans will suffer a mental health disorder. At this time, between 12 million and 20 million people meet the fair housing definition of having a mental disability. (About 15 million older Americans have a hoarding problem that could be a symptom of an underlying mental disorder).*)
 - Never deny prospects due to mental disability;
 - Always respond to requests for reasonable accommodations and have a policy for doing so;
 - Establish procedures for handling complaints and lease violations; and
 - Always consider accommodation requests prior to starting eviction proceedings.

Hoarding

Mental health experts say that about 15 million Americans suffer from the mental health problem of hoarding.

- In May 2013, the American Psychiatric Association (APA) confirmed that *Compulsive Hoarding is a mental disability and a protected class.*

Clinical hoarding is defined as:

- The acquisition of, and failure to discard, a large number of possessions that appear to be useless or of limited value;
- Living spaces that are cluttered enough that they can't be used for the activities for which they were designed; and
- Significant distress or impairment in functioning caused by the hoarding.

Most often, hoarding involves a mental impairment- such as obsessive-compulsive disorder, or chronic depression.

Potential Hazards from Hoarding

1. Increased risk of fire.
 - a. Combustible materials, when ignited, create extremely hot, fast spreading fires.
 - b. Escape routes may be blocked.
 - c. Access to the unit by fire personnel may be blocked.
2. Increased risk of structural damage.
 - a. Sagging floors and ceilings;
 - b. Cracked floor joists or roof trusses;
 - c. Compromised bearing walls; and
 - d. In extreme cases, partial structural collapse.
3. Increased risk of disease, injury, and infestation.
 - a. Lack of regular maintenance can result in the lack of running water, heat or refrigeration;
 - b. Toilets or sinks may be unusable or inaccessible;
 - c. Stacked items are a falling or tripping hazard, which can injure occupants or public safety personnel; and
 - d. Accumulated garbage can lead to rat and insect infestation.

When dealing with a hoarding problem, stay alert for hints of a hoarding problem, don't put off looking into suspected hoarding, investigate potential hoarding problems, listen for and promptly respond to reasonable accommodation requests, engage in an interactive process to resolve the problem, and proceed with eviction if the interactive process fails.

Keep in mind - a landlord has no obligation to make an accommodation that a tenant actively resists.

- HIV or AIDS
 - Never reject prospects with AIDS/HIV;
 - Don't harass residents with AIDS/HIV;
 - Don't treat differently than other residents; and
 - Be prepared to make other reasonable modifications & accommodations, if requested.
- Hearing Impaired
 - Permit hearing assistance dog if needed
 - Courts have ruled that a hearing impaired prospect's or resident's request to keep a service animal is assumed to be reasonable unless the community can prove otherwise [Bronk v. Ineichen]
 - A Michigan property owner refused to waive a no-pet policy for a disabled woman's service animal and had to pay \$314,000 in damages (U.S. v. Royalwood).
- Wheelchair Users
 - Allow reasonable modifications
 - Widening doors;
 - Installing grab bars;
 - Lowering kitchen cabinets
 - Remove barriers that keep wheelchair users out of common areas;
 - Don't ask about disability;
 - Don't steer;
 - Don't give preference to wheelchair users over other disabled;
 - Don't make residents who use wheelchairs pay for damage caused by normal wheelchair use;
 - Don't require residents who use motorized wheelchairs to get extra liability insurance; and
 - Don't disallow motorized wheelchairs.

Key Points Relating to the Disabled:

1. Disabled have the right to make reasonable modifications to the interior, exterior, or common areas of their housing;
2. Housing providers must change their rules, policies, or practices to reasonably accommodate people with disabilities.

Reasonable Modifications

Must be allowed if needed for full use of the premises

- Properties with Federal Assistance (e.g., HUD, RHS) must follow Section 504 of the Rehabilitation Act of 1973. Owners must both furnish and pay for reasonable modifications requested by disabled residents.
- Also applies to projects with five or more total dwelling units – not five or more HOME units.
- Under the Fair Housing Act, modifications must be allowed, but at resident’s expense.
 - *A mobility impaired prospect wanted to rent an apartment at a Connecticut community, but the community refused due to her wheelchair use. The community has ground floor apartments and the prospect had offered to have her roommate build a ramp at her own expense. Management still refused and the prospect sued.*
 - *An appeals court ruled that the community had violated fair housing law and ordered it to pay the prospect \$10,000 in damages, plus a \$1,000 penalty. (CHRO v. Brookstone CT, LLC)*

Examples of common modifications include (but are not limited to):

- A lift on the outside of a building;
- Installation of bathroom grab bars;
- Lowering or removing kitchen cabinets;
- Installation of a visual doorbell or fire alarm;
- Removing a bathtub to install a roll in shower; and
- Widening a doorway to a laundry room.

Reasonable Accommodations

These are changes in policies, rules, and practices in order to accommodate the needs of a disabled resident so that they may have full use of the property.

- E.g., reserved parking spaces; allowing rent to be mailed to leasing office; allowing rent to be paid after the 5th of the month; permitting assistance animals with a “no pets” policy;
- **Note:** allowing a resident to smoke medically prescribed marijuana in states where it is legal is not a required accommodation since it violates federal drug laws. (*Currently 28 states and DC: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, DC, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, **Pennsylvania**, Rhode Island, Vermont, and Washington.*) – *Note: Seven states and D.C. allow recreational use of marijuana (Maine [not yet in effect], Massachusetts [not yet in effect], Colorado, Nevada [not yet in effect], California, Oregon, and Washington.*

- Requests for accommodation may be denied if
 - Person is not disabled;
 - No disability related need; or
 - Accommodation is not reasonable
 - Undue financial/administrative burden;
 - Case by case basis;
 - Cost of requested accommodation;
 - Financial resources of provider;
 - Benefits of accommodation;
 - Availability of alternative
 - The provider's operation is fundamentally altered.
 - E.g., tenant with severe mobility impairment requests transportation to grocery store and shopping assistance.
 - *Prior to rejecting a request, owners should engage in an "interactive process" with the person requesting the accommodation.*

Verification of Need for Accommodation

- If disability is obvious and need for accommodation apparent, no additional information may be requested.
 - E.g., Obvious mobility impairment and request for parking space
- If disability is obvious but need for accommodation is not, information needed to evaluate need may be requested.
 - E.g., Obvious mobility impairment and request to pay rent late each month.

There is no legal dispute that the plaintiff bears the burden of proving the need for a requested accommodation. However, courts are split as to which party has the burden as to reasonableness.

Assistance/Service Animals
Definition & Verification of Need

Case Law:

- ***U.S. v. Swanson, March 2013***
 - In March 2013, a PA landlord agreed to pay \$6,000 to settle allegations that he refused to rent to a woman with a mental disability who had two cats as emotional assistance animals. Justice Department alleged that the landlord refused to look at a letter from the woman's psychiatrist requesting to allow her to keep her cats as a reasonable accommodation and indicating that the cats were therapeutic.
- ***Gill Terrace Retirement Apartments v. Johnson, October 2017***
 - Owner approved a resident's request for an assistance animal, but because of the proven aggressive nature of the animal, did not approve the current dog.
 - The dog lunged at other residents, flared up on its hind legs and bared its teeth.
 - The resident sued and the court sided with the owner, stating that in the case of a specific service animal, a reasonable accommodation may be denied in two circumstances:
 1. the specific animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
 2. if the specific animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

An "assistance animal" means an animal that does work or performs tasks for the benefit of a person with a physical disability or that ameliorates the effects of a mental or emotional disability.

Examples of animals recognized as assistance animals include capuchin monkeys (trained to assist individuals who are paralyzed or have severe mobility impairments) and miniature horses (guides for individuals with visual impairments).

A "licensed health professional" means a person licensed by a public regulatory authority to provide medical care, therapy, or counseling to persons with mental or emotional disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers. **The need for an assistance/service animal, and the abilities of that animal, generally must come from person in this category of professional.**

In the case of an assistance animal that ameliorates the effects of a mental or emotional disability, the policy may be conditioned upon the need for a statement from a licensed health professional indicating: (1) That the applicant has a mental or emotional disability, and (2) that the designated animal would ameliorate the effects of the disability.

In the case of an assistance animal that does work or performs tasks for the benefit of a person with a physical disability, the policy may be conditioned upon the need for documentation:

- 1) That the animal has been individually trained to do work or perform tasks for the benefit of an individual with a disability, or
- 2) That the animal, despite lack of individual training, is able to do work or perform tasks for the benefit of an individual with a disability.

In the case of an assistance animal that both ameliorates the effects of a mental or emotional disability and does work or performs tasks for the benefit of a person with a physical disability, the policy may require compliance with either of the policies stated above, but not both.

- State or local bans on breeds may be enforced, **but owners should ask the locality to waive the rule as an accommodation.**
 - Over 700 cities have some form of breed-specific legislation. Examples include:
 - Bridgeville, DE: Pit bulls declared “dangerous,” but has not banned them;
 - Port Deposit, MD: Pit bulls are banned;
 - Prince George’s County, MD: Pit bulls are banned;
 - Ridgely, MD: Pit bulls declared “dangerous,” but has not banned them;
 - Larchmont, NY: bans pit bulls and a number of NY towns have declared pit bulls (and in one case Rottweilers) to be dangerous;
 - Edenton, NC: Pit bulls, Rottweilers, and Chows declared “potentially vicious;”
 - *Bessemer, Glenolden, and Marple Township, PA: dangerous designation for pit bulls and Rottweilers.*
- In 2006, HUD indicated that if a community’s insurance carrier would cancel, substantially increase the cost of coverage, or adversely change the policy terms of a policy if certain breeds are allowed on the property, this could be determined an undue financial or administrative burden. *However, HUD also noted that consideration should be given as to whether comparable coverage, without the restriction, could be obtained in the market.*

Rights of Owners Relative to Service/Assistance Animals

- **Damages:** The resident should be required to pay for any damages caused by the service/assistance animal. Because a “pet deposit” may not be charged, the damage provision should be included in the lease.
- **Neighbor Complaints:** If residents complain about the behavior of the animal, address the issue with the disabled resident. However, before beginning eviction proceedings or taking steps to remove the animal, management should attempt to resolve the problem. *Any complaint by a neighbor must be substantiated.*
- **Bad Behavior:** If a service/assistance animal bites or otherwise threatens other residents or staff, check local animal control laws before taking action. It may need to be reported to local officials, but some localities have special provisions for service animals (e.g., not quarantined if the animal has had its rabies shots).
- **Health:** All animals should be properly vaccinated and owners should properly dispose of all waste and observe leash laws. Local laws regarding spaying/neutering should be followed.
- **Allergies:** The request for a service animal cannot be denied based on the potential for a future issue involving other resident’s allergies.
 - However, if there is an actual allergy, case-by-case decisions should be made. If documentation shows actual harm to another resident, or that they would have to move out, allowing the animal may be unreasonable.
- **Recommendation:** implement a policy reserving the right of a community to check with former housing providers about the history of **all** animals, regardless of breed. Apply to policy to all animals, including assistance animals.

Parking as a Reasonable Accommodation

A HUD report in July 2005 found that nearly 20% of housing providers with on-site parking *refused* to provide an accessible parking space for wheelchair users.

A California owner who refused a resident’s request for a parking space settled a suit filed by the State Department of Fair Employment and Housing for \$1 million [DFEH v. 2001 Cal. St. Apts: No. CGC-03-423255, Ca. Superior Court, November 2005].

Calderon-Grau v. Parques de Las Flores Condo Association, August 2008: ALJ decision made clear that while an owner may not be required to take away a space reserved for another resident, they may have to permit a disabled resident to exchange a space for a handicapped visitor space, as long as the minimum number of unreserved handicapped spaces is maintained. (*Under the Fair Housing Amendments Act of 1988, at least 2% of spaces must be accessible.*)

Seven Recommendations for Handling Requests for Parking Spaces

1. Set a policy for handling special parking space requests;
2. Apply policy consistently;
3. Wait for disabled resident to request a parking space – never offer one. *A resident may ‘request’ a parking space without specifically asking for one. A casual remark of need will most likely meet the definition of a request;*
4. If the disability is not obvious, or if the need for the parking space is not obvious, obtain written verification of the disability and the need. *Written verification can come from a health care provider, professional service worker (such as a social worker), a peer support group, a nonmedical service agency, or another credible third party. Written proof that the resident receives SSI (if under age 65) or disability insurance is adequate proof of disability. So are handicapped license plates on the car, which will also usually demonstrate the need for the space.*
5. If the resident proves the need for the space, provide it unless doing so is unreasonable. *If unreasonable, offer alternatives;*
6. Keep records of all requests and responses; and
7. Enforce special parking restrictions without exception.

Design & Construction Requirements

Applies to “Covered units” built for first occupancy on or after March 13, 1991 or if the last building permit was issued after June 15, 1990 (unless occupied prior to March 13, 1991).

- “Covered Units” are those in buildings with four or more units. In these buildings, all ground floor units are covered if there is no elevator; if there is an elevator, all units are covered.
- Townhomes, duplexes, triplexes are not covered.
- Basic Requirements:
 1. Must be at least one building entrance on an accessible route;
 2. Common and public use areas must be accessible and usable;
 3. Building must have usable doors;
 4. Must be an accessible route into and through covered apartments;
 5. Light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations in covered apartments;
 6. Bathroom walls in covered apartments must be reinforced for possible installation of grab bars; and
 7. Kitchens & bathrooms in covered apartments must be usable.

Compliance testing of new or existing housing for accessibility is on the increase. In March 2012, Vermont Legal Aid, Inc. released results of testing showing that 83% of 18 properties reviewed were noncompliant with the accessibility requirements of the law.