# *Fair Housing*
# *The Basics and Beyond*

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# Board Members

Learning about our Nation's Fair Housing Laws is critical for many reasons. Those laws even take on more of a "need to know" when we are dealing with the housing of any kind. There is that old saying, "if you build it, the public will come." So, if you have a property built to serve the public, then you must also make sure that you are there to qualify people under a set of "Tenant Selection Criteria" that has nothing to do with the Fair Housing Act and those protected classes that fall under that act.
Let us take a brief walk-through of history:

*The Civil Rights Act of 1964* was the most significant civil rights legislation passed since 1866. Although it did not specifically make provisions for integrated housing, it indirectly included the Department of Housing and Urban Development by prohibiting discrimination in all housing programs assisted by federal funds (Title VI)

*The Civil Rights Act of 1968* was signed in the week following the assassination of Dr. Martin Luther King, Jr. (April 11) (signed by President Lyndon Johnson). It was an attempt to achieve a goal of national residential integration and devoted an entire section (Title VIII) to fair housing. Known as the *Fair Housing Act (FHA), Title VIII,* with a purpose to "provide within constitutional limitations, for fair housing throughout the United States.
*Title VIII* originally prohibited housing discrimination, both in rental and sales practices, based on race, color, religion, and/or national origin. (The big 4)

The Fair Housing Act Amendments of 1974 adding sex (gender) and 1988 (FHAA) was passed in response to the criticism that the FHA failed to provide sufficient protection to ensure fair housing and equal opportunity to other important groups who have been historically been targets of discrimination by adding protections for *handicapped/disabled* persons and *families with children* to the categories of race, color, religion, national origin, and sex. (The big 7)

The following acronym is an easy way to remember the federally protected classes:

| | |
|---|---|
| Renters | (Race; Caucasian, Black, Hispanic, etc.) |
| Can | (Color; skin color or pigmentation) |
| Really | (Religion; Catholic, Muslim, etc.) |
| Sue | (Sex; gender; sexual harassment) |
| Now | (National origin; immigrant origin) |
| For | (Familial status; children or pregnancy) |
| Housing violations | (Handicap; physical or mental disability) |

**FEDERAL LAW:**

Protects people in these categories…..Race, Color, Religion, Sex (including sexual harassment and domestic violence), National Origin, Disability and Familial Status (Children under the age of 18)

**STATE LAW:**

Part of your diligence for this class will be for you to determine what the protected classes are in the state your cooperative is located in and know what those protected are.

**LOCAL LAW:**

Same as above!!!!

The most important thing to remember here is that "you are responsible to know and follow the most stringent" fair housing protected classes in your area.

The Fair Housing Act makes it unlawful to refuse to rent, to refuse to negotiate rental, or to 'otherwise make unavailable or deny" a housing unit because a person or persons are members of a protected class. This includes the membership to a Cooperative and covers the way the Cooperative operates for approvals such as having a "membership committee" or if your Board of Directors is acting as the body that signs off on applications you must know and practice the law. As well, Cooperatives generally should do an Orientation before approval or after approval to new members.

The bottom line here is that not only the staff you hire to market and process applicants but those members of the Cooperative that are on a committee that volunteer their time, "including the board," should have Fair Housing Training. Awareness of what and how the public is treated flows to all of those that are involved in interacting with potential and new members. So have in place a procedure for all Board Members and all committee members to take some Fair Housing Training and have that certificate so awareness and education are sought and given to all those who interact with the membership.

Behavior that is not on its “face” discriminatory but, in some situations may be “perceived” as such. Being aware of your behavior and how it comes across is the first step in realizing” subtle discrimination”.

A good way to deal with this is to ask yourself: “If I was the other person, would I want to be treated like that?”

States and some municipalities have different laws dealing with fair housing. These laws may provide greater protections than federal laws, so it is imperative that you familiarize yourself with the legislation applicable to your state, city, county, and property.

The state and local codes for fair housing protection are dynamic and more subject to change than legislation at the federal level. It is essential to continually monitor state websites and sources of local code information for that pending or changing legislation.
Let’s go back and define the big seven a little more. There are pages of documents under the actual law, and we are certainly not going to try to cover all of the small nuances but will only discuss in a broad way the protected classes.

**RACE:**

ALL recognized races are covered under this category. Although complaints brought by whites are frequently called “reverse discrimination” cases, the law does not recognize that distinction. Even when “exceptions” to the protected classes under certain types of built housing, such as 55 and older and 62 and older, race is not one of those and can never be violated.

**COLOR:**

Although the same individual may claim discrimination based on both race and color, color means exactly that-the color or shade of one’s complexion and not one’s race. Cases involving color only typically include individuals of the same race. For example, a light-skinned African American landlord rejects the application of a darker-skinned African-American.

**NATIONAL ORIGIN:**

National origin refers to the country where one was born and where one's ancestors come from. Included in this category are those persons who do not speak English as their primary language or who have a limited ability to read, write, speak, or understand English.

**RELIGION:**

This protected class includes those individuals who observe a particular set of religious practices that may differ from that of the housing provider or those who do not have any spiritual training. This class can reach as far as the example of a landlord who refuses to rent to an unmarried couple because of their strong fundament Christian beliefs.

**SEX:**

Landlords refusing to rent to women or men because of preconceived notions of the law fall into this category. As well, cases involving sexual harassment are becoming much more common. Sexual harassment cases involve two distinct types of behavior:

Quid Pro Quo….this for that. Where sex is made a condition of tenancy or continued tenancy.

Hostile Environment…where a tenant is harassed (perceived as harassed) by neighbors, employees, contractors, etc. to the point where continued contact and tenancy is made unbearable.

**DISABILITY:**

According to the National Fair Housing Alliance, disability cases now account formostf reported complaints. This category includes:

A person with a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment or being regarded as having such an impairment" is disabled under the Fair Housing Act and the 504 Rehabilitation Act. Major life activities can include being able to care for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. It can also include persons with diagnoses of high blood pressure, multiple sclerosis, cancer, emotional disorders, and alcoholism, former or recovered illegal drug user, and a person who is thought or perceived to have HIV. Persons who are "associated" with a disabled person, such as a family member or friend, can also be covered.

Coverage under the Section 504 of the Rehabilitation Act of 1973 is virtually identical to coverage under the Fair Housing Act, with one exception. Section 504 refers to persons with disabilities who are "otherwise qualified" for the program, service, or activity in the issue. To be otherwise qualified means the individual must meet the essential eligibility requirements of the program or service in question, including requirements of the tenancy. More on disability later!!!

**FAMILIAL STATUS:**

Familial status means one or more individuals who have not attained the age of 18 years of age being domiciled with….A. A parent or another person having legal custody of such individual or individuals; or B. the designee of such parent or other person having such control, with the written permission of a such parent or another person.

It also protects any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Under this protection comes up something called the "Keating Memo," which is the closest thing to a national occupancy standard today. This memorandum is an internal HUD document that contains the most widely accepted guidance on occupancy standards; however, states or local governments may have guidelines that allow for more excellent occupancy.

Congress instructed HUD to publish the Keating Memo in the Federal Register in 1988 as public guidance to housing providers on what HUD would use for enforcement purposes. It states that the two-persons per bedroom policy can be considered reasonable unless there are exceptional circumstances that apply to the apartment. Regarding occupancy standards, instead of counting "families with children," just count "heartbeats" with a consistent policy of minimum and maximum occupants. This includes the notion that children of the opposite sex "must" have separate bedrooms. As far as occupants meet the occupancy levels established, is it anybody's business where anybody sleeps? The Fair Housing Act nor HUD mandates that housing providers adopt any particular occupancy policy, so long as the policy is "reasonable". Unfortunately, the word "reasonable" is not defined anywhere. Check with your attorney in your state to avoid a familial status complaint based on occupancy standards.

The interpretation of the protections against discrimination based on familial status reaches beyond occupancy requirements. For example, children that have been denied access to pool facilities or refusal to rent upstairs apartments to families with children fall under this protection. These violations are based on giving families with children different terms and conditions and the use of amenities than those residents without children. The exception to the rule for housing that does not discriminate against families with children is housing that was built or designed for older persons. These programs include housing built for "age 62 and older" and "55 and older," in which at least 80% of occupants are occupied by someone age 55 and older.

The final exception is for the rental of owner-occupied buildings, commonly known as *Mrs. Murphy's Exemption*. To qualify for this exemption, the property must have four or fewer rooms or units, and the owner must live in one of the units. This exemption also applies to owners who are selling or leasing a single-family home, whether the owner occupies the home or not, without the use of a broker. Remember that even if the owner-occupied building is exempt under FHA; an owner can still be sued for racial discrimination under the Civil Right Act of 1866.

## TERMS AND ACTIONS TO KNOW AND UNDERSTAND

Let's now talk about some terms that come under the Fair Housing Law and are frequently used when discrimination occurs.

> *Differential treatment means that when under the conditions of renting or purchasing, people from protected classes were treated differently—intentionally or unintentionally.*

Unfortunately, those who are discriminating are not always aware of their behavior. Only when the behavior is pointed out to them will they notice that what they are doing is actually discriminatory. For example, a leasing professional may tell a Jewish prospect that the community has a large Jewish population, so the prospect may have a lot in common with other residents.

> *Disparate impact means that a neutral-appearing action or policy that applied equally to everyone results in a negative impact on some classes.*

A very neutral-appearing action that has no variation in treatment but still has a negative effect on some people could be the fact that you require an additional security deposit of $50.00 per person for over two people in a unit….this could affect families with children.

A good test is to ask, "Would I treat this person differently if he or she were from a different protected class?" Consider these things as possible problems:

A new manager took over the community in a Latino neighborhood and designed a new advertising campaign and signage that featured images of white couples.

A community rule that says that all visitors that want to take a tour of the community must have a valid U. S. Driver's license.

A prospect in the leasing center shares that his or her credit is bad. The leasing professional discourages the resident from applying, even if it is on the benign intention of saving the prospect the nonrefundable application fee.

A leasing professional requires a complete credit analysis and rental history of a recent immigrant from Mexico, as well as evidence he/she has lived and worked in the U. S. for the last four years but does not require the same from U. S. or European applicants.

A professional tells a person with AIDS not to use the swimming pool.

A leasing professional suggests that a Korean or Hispanic resident might not be happy in a specific apartment building because there are many African American residents. This is called "steering" and is expressly prohibited by the FHA.

A leasing professional tells a disabled applicant that the apartment community has a lot of stairs and uneven areas and fails to point out available ramps. This is another form of steering.

A Board of Director tells the manager that the property is trying to limit the number of families in the community in order to appeal to another market. Or they tell them that they want to limit the buildings that families with children can live in.

**AFFIRMATIVE MARKETING:**
In most Properties, this is seen as two definitions.

1. In Affordable Housing, we must fill out, maintain, and follow an Affirmative Marketing Plan designed by HUD and approved by HUD. Any property having a subsidy or a mortgage with HUD financing has to have this on file and approved by HUD. All employees involved with the marketing of the property should have seen and followed this plan. The plan, along with a lot of other things, is to identify the "least likely to apply" and to find a way to attract these groups to your property.

2. In the market of offering shareholders a propriety lease (occupancy agreement), "affirmative marketing" becomes part of the entire marketing plan to attract and sell to your target market. The program must identify all cultures and how you will reach out to them to attract them to your property.

Do you know if you have one, and do you know what it says?

**MARKETING**
Cooperative properties, as a rule, have a diverse population of residents. To be sure you do not discriminate in marketing, pay attention to all advertisements in the area of

a. Language
b. Location landmarks
c. Models (people)

As with ALL aspects of fair housing compliance, documentation of marketing efforts is vital.

a. How and what media do you choose to advertise in.
b. Does your media draw people from all over the city/region?
c. Do you ask prospective residents how they heard of you?
d. Written records of all prospects.
e. Do you have waiting and how is it maintained?
f. Do you have a written selection procedure that is followed when approving or disapproving applicants?
g. Document, document, document.

The leasing/sales office is the area most vulnerable concerning fair housing. Most complaints are about something that happened while a person was looking for accommodation. Although, once residents are preparing or have moved in, all staff that is involved with these residents needs to be aware of how to treat people regarding fair housing. Yes, this includes maintenance! Regard to fair housing. Yes, this includes maintenance!

a. Train every employee/board member/committee member on fair housing.

b. Treat every prospective/resident consistently.

c. Let Prospects tell you what they want in the form of housing.

d. Steering is illegal.

e. Adhere to guidelines for every applicant (make no exception)

f. Be consistent in communicating approvals and denials and any work performed.

g. Make sure rules and regulations are non-discriminatory.

h. Be consistent in providing maintenance service, parking privileges, increases, pool rules, fitness center rules, etc.

i. Document any potential problems and put a copy in the resident's file and report as directed.

j. Display the fair housing posters in the office.

k. All applications should be reviewed by your attorney for any changes to ensure language and questions are not discriminatory.

l. Let your actions set an example for the entire staff. Patterns count

m. Keep all applications for at least two years. Keep your selection policy at hand, in writing, and signed as to the date it became effective.

**THE TEST**

**Different treatment:**
Would I treat this person differently if he or she were different in any way?

**Different impact:**
An action or policy that involves no variation in treatment but still has a different impact on some minorities.

**ENFORCEMENT**
(The scariest thing!)
A complaint can be filed against any person engaged in or about to be engaged in discrimination.

The statute of limitations for a complaint filed with HUD is one year from the date of the alleged discrimination. In some areas, locally, this can be two years. Know your area!

Violators can be assessed civil penalties of $10,000 for the first and up to $50,000 for repeated offenses. If a pattern is discerned, fines can range from $50,000 to $100,000.

Victims can also receive actual and punitive damages!
Today complaints take an average of 400 days to resolve; who wants to go through that?

Remember that if you receive a complaint, generally, not just the "person named" will be the responsible party. Let us say a Board Member is named in a Fair Housing Complaint. The entire Board will be liable; the Property will be liable; the Property Management Company or, if self-managed, your Executive Director, and anyone else they can attach as having liability or culpability in this complaint.

WE COULD GO ON AND ON, BUT WE THINK YOU HAVE THE IDEA!

Under the *theory of vicarious liability,* it is vital to understand that every employee, every Board Director, every Committee member, and anyone interacting with the public and the membership should receive Fair Housing Training. If a discrimination complaint is filed, the liability extends up the ladder! All the way to the top! Therefore, a property owner is liable for the actions of a manager, leasing professional, maintenance personnel, etc. Even if the client or the supervisors of the staff are unaware of the discriminatory activity, they can still be named in the complaint.
*Ignorance is a liability!*

Zero tolerance and awareness training should be mandatory for all parties involved. By taking a highly visible approach to fair housing compliance, property team members emphasize to residents and the general public that there is a commitment to providing equal opportunity in housing and set the example for other team members to follow.

***The Equal Opportunity Logo and Fair Housing Poster***
should be displayed in all your offices and should be at least 11 inches by 14 inches and it should be in a prominent area. This poster is required by any property that is Federally Funded in any way. It is available in English and Spanish from your local and regional HUD offices. Although the Spanish version is not required, it is recommended to display posters in both languages for marketing and outreach purposes. Yes, market rate properties are also required to display the fair housing poster, but their use of the Equal Opportunity Logo is voluntary where in the Federal Assisted properties it is required. HUD will look favorably on any private market property that uses the logo as well for positive evidence of their compliance with the Fair Housing Act.

We promised we would go back the "disability protection" and here is where we want to do, as it presents a few very important key terms and actions. Under the protected class of Disability, we offer the following:

Today nearly 40% of all Fair Housing complaints are concerning discrimination under the disability guidelines. We are going to touch on some of those most common subjects.

There was a joint statement made of the Department of Housing and Urban Development and the Department of Justice on March 5, 2008 that made both departments jointly responsible for enforcing the federal Fair Housing Act. The statement of March 5, 2008 provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the act relating to *reasonable modification.*

*A reasonable modification* is a structural change made to existing premises, occupied or to be occupied by a person with a disability in order to afford such person full enjoyment of the premises. The Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification. Housing receiving federal financial assistance is covered by the Fair Housing Act and Section 504 of the Rehabilitation act of 1973. Even though the Section 504 of this portion is very lengthy the most important distinction in this area is that the cost of providing any such accommodation or modification be borne by the property not the tenant.

Even in those properties where no federal assistance exists and the tenant is solely responsible for the modification, many properties have adopted a policy of financial assistance to a certain amount. Regardless how you do it, it must be done consistently either by item request or dollar amount.

*A reasonable accommodation*
is a change, exception, or adjustment to a rule, policy, practice, or service.

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden.

Let's look at some examples that help clarify the difference between the two:

> <u>Example 1:</u>
> A tenant who uses a wheelchair and lives in privately owned housing needs a roll-in shower to bathe independently. The tenant is asking for a modification and would be responsible for the costs.
>
> <u>Example 2:</u>
> A tenant who uses a wheelchair and lives in housing that receives federal financial assistance needs a roll-in shower. Under Section 504 of the act, the housing provider would be obligated to pay for this modification and install the roll-in shower unless doing so was an undue financial and administrative burden.

Let's explore "other areas that are considered Accommodations."

> <u>Example 1:</u>
> A request for a parking space because of a physical disability has been requested. Courts have treated requests for parking spaces as a reasonable "accommodation" and placed the responsibility on the housing provider, even if it results in some cost to the provider. Courts have required a housing provider to provide an assigned space even if the policy does not assign parking spaces or there is a waiting list for available parking. Parking accommodations could include creating signage, repainting markings, redistributing parking spaces, and creating curb cuts, and this list is not exhaustive.
>
> On the horizon is the possibility of "visitable" accommodations for persons who visit residents or help care for residents, and they need an assigned parking space. This is not a law yet but is being discussed.

Example 2:
A request for an assistance animal has been made even though the property does not allow animals. Besides, in this case, the animal is a cat, and the person has no recorded disability. First of all, this is a reasonable accommodation, and HUD made a final ruling on October 2,, 2009, that includes pet ownership for assisted and multifamily projects for the elderly and persons with disabilities.

The rule amends that pet ownership requirement be consistent with the regulations for HUD's other assisted properties. Both regulations now provide that pet rules do not apply to "animals that assist, support, or provide service to persons with disabilities." This rule applies to both animals owned by tenants as well as animals that visit the property. The key in the new law is the requirement that a tenant certifies in writing that the animal has "been trained" to assist with a specific disability is removed.

HUD and the DOJ are actively pursuing enforcement actions on this position, whether it is assistance housing or not.

Such animals are often referred to as
"assistance animals",
"service anima,"",
"support animals,"
"therapy animals," or
"emotional support animals."
All are covered by reasonable accommodation law.

Question:
When must the landlord allow a service animal"?

Answer:
The requester must have

1. A disability and

2. The accommodation must be necessary to afford a person an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation is needed, there must be an identifiable relationship, or nexus, between the requested accommodation and the person's need.

Question:
What verification can a landlord require?

Answer:
Housing providers are entitled to verify the existence of a disability and the need for the accommodation if either is not readily apparent. Persons seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the "existing disability."

Question:
When can a request be denied?

Answer:

1. A direct threat to the health and safety of others would be posed
2. A result in substantial physical damage to the property or others
3. Pose an undue financial or administrative burden or
4. Fundamentally alter the nature of the provider's operations.
5. If a housing provider's insurance would be canceled, adversely change the policy terms, or substantially increase the costs of the policy because of the presence of a particular breed of dog or a particular animal, HUD can find that this imposes an undue burden on the housing provider.

Question:
What are the animal owner's responsibilities?

Answer:
The person is responsible for the care and maintenance of the animal. Any reasonable rules must be followed. Even though the housing provider cannot charge a deposit on an assistance animal, any damage caused to the unit, the common areas, or others can be charged back to the resident and taken from the regular deposit on file.

Example 3:
Alcohol, drugs, and a reasonable accommodation………

Current alcohol abuse and drug addiction are treated differently under fair housing laws. The laws do protect an alcoholic currently using alcohol. They do not protect someone presently using an illegal controlled substance.

Former addicts are protected by fair housing laws whether they are addicted to alcohol or an illegal substance.

For alcoholics, conduct is the crucial element to be considered. The key is "disruptive behavior." Someone high on illegal drugs, on the other hand, can be asked to leave because they are breaking the law. The tricky part is what is defined as "current user. Is it one month ago or one year ago"?

However, for the housing provider, generally, this person will have a defined disability in some other physical manner or will be actively involved in an additional recovery program and can provide documentation.

Example 4:
Medical Marijuana and the rights of the housing owners and the Residents………..

This is a very new and touchy subject, but we will try to summarize what we know and include this big disclaimer of "having your attorney on speed dial as necessary." The information we are providing here came from a piece done by Jim Bergman, J. D. Smoke-Free Environments Law Project in Ann Arbor, Michigan. His article first touches on the right of multi-family and any owner to create a "smoke-free property" or "building." He speaks to how in 2000, there were virtually no smoke-free units. In 2010, there are now hundreds of thousands of housing units across Michigan that were smoke-free.

Why consider smoke-free? Secondhand smoke spreads throughout multi-unit dwellings. Smoking of medical marijuana brings this problem back even if you have been declared a smoke-free property.

As HUD as stated in letters:
"The right to smoke or not to smoke is not a right that is protected under the Civil Rights Act of 1964 because smokers are not a protected class under federal law. So what about medical marijuana in multi-unit housing?

Marijuana is classified as a "schedule 1" drug by the Federal Controlled Substances Act. Federal Law supersedes state law where there is a direct conflict of laws. As well the Fair Housing Act states that a disability "does not include illegal use of or addiction to a controlled substance" as defined by the Controlled Substances Act.

Further, even if the requested "reasonable accommodation" to use marijuana for medical purposes were granted, such accommodation need not, and should not, result in the exposure of other residents to secondhand marijuana smoke since such an outcome should render the accommodation unreasonable. If "reasonable accommodation" is deemed warranted, one should argue that a compromise can only be reasonable if it avoids other residents' exposure to secondhand smoke. One such option could be identifying and utilizing other non-smoking methods of using marijuana.

In any HUD subsidized housing, federal law and HUD policies are clear: the possession or use of marijuana is prohibited. Also, a number of market apartment owners have or are amending their leases to explicitly prohibit the use or smoking of marijuana in their buildings.

<u>Example 5:</u>

Illness diagnosed and related to chemical sensitivity in an area covered under reasonable accommodation. If a resident has this, it may be necessary to change paint, cleaners, carpet, etc., to meet the needs of the chemical sensitivity.

<u>Example 6:</u>

A resident requested that a person be added to their lease as a "live-in aide." Live-in aides can occupy the apartment for the express need outlined in the reasonable accommodation form. But they are not "added" to the lease; they are not considered part of the household as far as income or privileges are given to all other leaseholders. The apartment owner does not have to provide them with a key, they are not guaranteed a parking space, and they cannot stay in the unit if it should become vacant from the original lease-holding resident. They do not enjoy the fundamental rights of the lease and are not obligated to the rules of the lease. A housing provider can request that a resident who is requesting the services of a live-in aide verify that the resident is not able to perform the daily living tasks necessary to meet the terms of the lease. Similarly, landlords are permitted to screen live-in aides for criminal background and rental history. However, the screening for rental payment history would not be permissible because the live-in aide is not responsible for making the rental payments.

Example 7:

An applicant applies and indicates on the application or the screening that there is an eviction on their record. The applicant explains that the eviction was due to “domestic violence” and that they were the victim; therefore, this eviction should not be reflected on their record. Victims of domestic violence can fall under the Fair Housing Act under the 1974 added protected class of sex. In 2001, an important fair housing precedent was established when a lawsuit by the DOJ and HUD ruled on behalf of resident Tiffani Alvera. Her landlord had moved to evict her due to domestic violence. Before the case was decided, the resident’s legal defense had swelled to include the ACLU and NOW. The ruling, in this case, was that the landlord’s case to evict Alvera represented a disparate impact on the resident based on the protected class of sex because the majority of domestic violence victims are women. The Violence Against Women (VAWA) is currently in effect for federally assisted housing and some states. If the applicant was the victim of domestic violence, the eviction on the credit or application report could not be used as a reason not to rent to the applicant.

Example 8:

Limited English Proficiency (LEP) is covered under the Fair Housing Law under National Origin. In January 2007, HUD published “final guidance” and that limited English proficiency is protected under the national origin of the Fair Housing Act. This means persons who are unable to communicate effectively in English because their primary language is not English, and they have not developed fluency in the English Language must be allowed to understand any and all documents that are in English. An LEP person could benefit from an interpreter and may also need documents translated into his or her primary language. There are many ways to accomplish this. Family, friends, staff, non-profit agencies, cultural agencies, flashcards, etc., will help with this situation. The point is that you must find a way to communicate!

Example 9:

The concerns over 9/11 and other future terrorist attacks have led many housing providers to reevaluate their application and screening process. Screening applicants "solely" based on their citizenship status (not a federally protected category) is permissible. Asking applicants to provide documentation of their citizenship or immigration status does not violate the Fair Housing Act as long as the same criteria are applied equally to all applicants. If you require this of one applicant, you must need the same information from all applicants. This standard would become one of the pieces asked of all applicants regardless of nationality.

Example 10:

Looking ahead to the landscape of the law, it is felt by many that a blanket policy of rejecting prospects based on a felony conviction may create some liability, especially if exceptions are made for residents who may qualify in other areas. Further, FHA only mentions two convictions not protected under Fair Housing Laws, convictions for the manufacture and/or distribution of illegal controlled substances. It also allows the owner to deny housing they believe to be a "direct threat" to the residents or the property. Beyond that, no other felonies are mentioned. Although this has not been challenged, the point here is not to blanket your criminal background criteria and to ensure you follow them without exceptions. An example would be if you say, "no felony convictions forever," and an applicant applies that had a felony conviction for too much marijuana in their jacket back in college 30 years ago but otherwise is clear, would you or could you accept that applicant?

Example 11:

Threatening, intimidating, or interfering with residents, visitors, or associates of residents in their enjoyment of their homes can be a violation of the Fair Housing Act. An example would be an apartment community employee making insulting comments about Vietnamese guests. They are attending an apartment community event, so the residents feel compelled to leave the event.

We are showing you a sample copy of an "accommodation/modification request form. Note that there are different acceptable verifiers for a request. On this form, a healthcare provider is listed, but verification may be acceptable from another credible. You can use this form, or you can create one of your own to be used. The point is you should have one, and you should have every accommodation/modification request on this form and in the resident file, whether it happened or not.

A brief look at section 504 of the rehabilitation act of 1973

The Americans with Disabilities Act of 1990 is the civil rights legislation for persons with disabilities that falls under the Section 504 act. It outlines the guidelines for both residential and commercial properties as far as equal access in the following:

Employment
Public service
Public accommodations
Telecommunications

Title III of the ADA addresses accessibility of areas of accommodations that are open to the public for people with disabilities and therefore impacts most properties. It requires that all buildings open to public commerce be accessible to the maximum extent.

Note that small rental properties may not have an office and, therefore, would not be subject to the ADA. However, if the office is in the manager's apartment, the ADA requirements apply to that apartment.

Under the language of the ADA, facilities are required, among other things, to make public restrooms, drinking fountains, pay telephones, rental office, handicapped parking for the public, curb cuts, ramps to the office, easy-to-open doors, gate openers to the office, etc. Management may also need to include a TDD telecommunication devise for hearing-impaired residents. Public areas that are allowed to be used by guests, such as community rooms, pools, fitness centers, laundry rooms, etc., must be fully accessible.

Section 504 of the act requires that federally funded or assisted housing to have a conducted self-evaluation of the property and prepare a transition plan that removes any and all structural barriers.
Property Operations

Communication protocols should be analyzed from the perspective of how to respond to resident needs. Remember that we are inviting the public to the property, and all operations should be considered from the standpoint of good customer service.

If the community has a waiting list, the community should establish a procedure that identifies expiration dates, updates, etc. This procedure should be declared to persons on the waiting list. Information should always be straightforward and honest.

If the community does not have a waiting list, a procedure should be established to work with and communicate with the public. A lot of market properties use a "guest card" for walk-in and telephone traffic. If this is the case, remember that whatever is done must be done consistently. Use the same procedures for all phases of the selling process, from greeting to qualifying documents when units complete the make-ready process and become available for leasing or showing.

Offices must know what is or will be available for vacant units. This sounds simple, but some complaints have been filed because one person was told there is nothing available when others are told there is. Either way can cause people to distrust staff and wonder why or if they were singled out.

Most fair housing complaints are filed by "in place" residents. Hence, it is the job of all involved to ensure that the resident's experience in the community is as satisfying as possible. Residents that feel valued rarely file complaints! Equal treatment does not mean the signing of the lease. Structure your rules and regulations to avoid any potential discrimination. Any policies you implement should be for the safety and well-being of all.

Establish a written policy for responding consistently to resident complaints about other residents who are harassing or creating other problems, possibly because of the resident's protected class. Always get complaints in writing. Always respond to any written objections. Always document and follow up and consult legal counsel as necessary for proper response. Thorough, consistent documentation is the best defense in the event of a fair housing complaint.

The maintenance service request form and procedure is one of the aspects of the customer interface that should be thoroughly reviewed to ensure it is non-discriminatory. Residents that perceive a bias in either the timeliness and/or perceived quality of maintenance service responses may pursue a fair housing complaint. The maintenance team should be aware that even their demeanor may affect how the resident feels values. Examine the forms used for service requests. Is a written form required? If so, how are vision-impaired or other disabled residents accommodated? Make sure residents understand what you consider to be an emergency versus a routine repair.

The maintenance service procedure should be consistent. Only by following the same process for every resident is equal treatment ensured. Every maintenance request should be dated and time-stamped to help ensure they are kept in the order they are received. The policy should be to document when the maintenance service work was begun, the name of the technician, if the resident refused entry if work was interrupted (parts, etc.) and when the work was completed. Follow up with the resident to ensure the work was done to his/her satisfaction.

Leasing, screening, resident selection guidelines
The leasing center is a very vulnerable area concerning fair housing. Many complaints involve something that happened while a person was looking for an apartment.

Every prospective resident should receive equal treatment, fill out the same forms, and be selected on the same objective criteria. Complaints have been filed on something as seemingly harmless as offering a brochure to one prospect and not to another. To ensure consistent treatment, establish and follow written procedures for every type of contact with a chance—whether over the phone or in person. A written screening policy may be posted in the leasing office and/or available to applicants.

Advertising guidelines should be followed, and FHA has an entire section on housing subsidized in any manner as to the size of ads, etc., should be followed. The Roberta Achtenberg Memo of 1995, known as the "Advertising Guidance" memo, is still the most current guidance on fair housing advertising. As well, any property receiving assistance will have an "affirmative marketing plan" in place with HUD. This plan is designed to "attract the least likely to apply" to your property and tells how you will do that. But even is not HUD affiliated, the property should be aware that if it has been successful in attracting a particular group of people from a source, there may be a tendency to direct future marketing efforts toward that group only. This should be avoided if possible. Something as innocuous as stating directions to the property's location can imply a preference. If your advertising refers to a religious landmark (turn right at the Jewish synagogue), this could mean that Jewish residents are preferred. Be aware of the types of pictures and symbols in your advertising. By only using photographs of white people in your copy, you may be implying that these are the only residents you seek. HUD's guidance also recommends not using specific "catch" words or phrases in any brochures, such as "restricted, exclusive, private, integrated, traditional, board approval, or membership approval."

Every property should have a "screening procedure" that is consistent for all prospective residents. Things like criminal background, credit history, landlord history, job history, income requirements, and occupancy standards should all be included if they are considered. The selection criteria should always be dated and signed by someone in authority and used by all staff. Can it be changed? Of course! But the changes should create new criteria signed and dated and used from that date. Things like lowering credit scores or changing landlord history can be done, but document, document, and document! If you have a fair housing issue, one of the first things you ask for is your selection criteria, and if you have changed it, you have to be able to produce each one and what changes were made and when.

## Equal Opportunity Logo and Fair Housing Poster

In this case, HUD's fair housing legislation and market rate are different. Federally funded properties are required to use the Equal Opportunity Logo in ALL print. They are required to display a fair housing poster that is 11 inches by 14 inches in a prominent place. They are available in both English and Spanish and may be obtained along with other areas from local and regional HUD offices. Although Spanish is not required, it is encouraged to display as well.

Market rate properties are also required to display a fair housing poster, but using the Equal Opportunity Logo is voluntary. That said, HUD will look favorably on market-rate properties that use the logo as positive evidence of their compliance with the Fair Housing Act.

## The Statue of Limitations and Local Ordinances

Although the federal statute of limitations is one year for fair housing claims, it is generally advisable to keep records for at least three years. Some states and cities allow claims to be filed differently. If the state you work in has laws substantially equivalent to federal law, the statute of limitations will also be one year. If the claimant is pursuing rights and remedies under a state or municipal protected class, the relevant statute of limitations will apply. Therefore, it is essential that the community understand what exists in your locality.

HUD's administrative enforcement under the Fair Housing Act begins when an "aggrieved person" files a housing discrimination complaint. We have included a print-off that helps individuals fill out a complaint and how they can fill it out online.

After HUD reviews the complaint to ensure requirements are met, the case is assigned to an investigator. The investigation is designed to determine whether or not there is “reasonable cause” for HUD to believe that an act of housing discrimination occurred. The Fair Housing Act allows, and in some cases requires, HUD to delegate its investigatory and enforcement authority to state and local fair housing agencies.

The investigation is intended to be a full, fair, and impartial gathering of the facts necessary to make a reasoned judgment about whether discrimination occurred. Investigators will interview the parties and any witnesses and gather relevant documents.

Once the investigation is complete, one of two things can happen:
If HUD determines a reasonable cause to believe that an act of housing discrimination occurred, HUD will issue a “reasonable cause determination” and a “charge of discrimination.”

If, on the other hand, HUD determines there is “no reasonable cause” to believe that an act of housing discrimination occurred, HUD will dismiss the complaint and close its file.

Settlement (which HUD calls conciliation) is always encouraged. Indeed, the Act requires that HUD make a good faith attempt to conciliate each and every complaint. If conciliation does not occur, a final investigative report is then completed. If a case decision is rendered by HUD, then a Charge of Discrimination is filed. This is like a complaint filed in court. It sets forth the essential facts and the legal basis for HUD’s reasonable cause finding.

After a charge is issued, any party named in the complaint has the right to “elect” to have the merits of the case decided in federal court rather than in the HUD’s administrative law system. It takes only one party to elect. HUD then transfers all information to the DOJ, which will prosecute the case on behalf of the complainant in the local federal district court. These cases are decided by a judge and a jury if a jury trial is demanded by one of the parties.

If the judge finds that the respondent violated the Act, the judge will likely order the respondent to pay “damages” for out-of-pocket losses and intangible or emotional injuries caused by the discrimination. The amount depends on the nature and severity. They range from actual, punitive, and civil penalties.

*Actual damages may include moving expenses, rent differentials, loss of wages, etc.

*In virtually all cases, damages awarded for the emotional distress caused by the discrimination dwarf any out-of-pocket damages.

*Administrative law judges may also assess a fine or civil penalty against the respondent, ranging from $11,000 for the first offense to $55,000 for repeated violations.

*Additional awards frequently include record-keeping and reporting requirements.

*Additionally, respondents are ordered to attend fair housing training.

*Attorney fees and costs can also be awarded.
Lastly, Fair Housing organizations and the federal government can legally send tests to any residential property.  Testers are people who are trained to portray prospective residents.  The tester's job is to act as a prospect and report objectively on his/her experience.  They are often used when there has been a discrimination complaint alleged against a property.
The courts have ruled that a tester or organization may file a fair housing complaint if discrimination occurs.

In summary, your purpose should be to provide everyone with a clear understanding of the Fair Housing Law about every aspect of housing management.  Regardless of where protection originates from, it is the law!

Discrimination does not need to be deliberate or premeditated.  Often, discrimination is felt by an unbending policy that intends the best for all residents but negatively impacts a protected class.  The only way to ensure continuing compliance is through education and training.  Also, every property should accept nothing less than zero tolerance for discrimination.

In summary, this class is very much an "overview" of the fundamental law and new changes in the law or the way the law is perceived and challenged.  There is a lot more material and information that can be derived from each protected class in many forms.  If you have questions about any procedure or policy or happening that you think needs clarification when it comes to the Fair Housing Law, know where and how to get the answers before you make a decision that may affect you, your cooperative, other employees, your management agent and its employees and the shareholders of the property.

The Fair Housing Law does not allow ignorance of the law as a defense against any action which may violate any protected class.

# THE TEST

1. One way to comply with fair housing regulations is to
   a. Market your property to all the protected classes
   b. Set up and adhere to a compliance program
   c. Post the FHA poster in leasing offices
   d. All of the above ***

2. Affirmative marketing…
   a. Is costly
   b. Can help your property get exposure into new markets ***
   c. May be unconstitutional
   d. None of the above

3. Which of the following questions is appropriate to ask a prospective resident?
   a. How old are the persons occupying the unit?
   b. May I speak to your doctor to ensure you will be safe living here without supervision?
   c. What type of housing are you seeking ***
   d. How was your injury/disability incurred?

4. When people feel discriminated against under the Fair Housing Act, who may prosecute their complaint?
   a. The police
   b. Department of real estate
   c. Department of housing and urban development ***
   d. None of the above

5. Which of the following is one of the definitions of handicap in the federal Fair Housing Amendments Act?
   a. It is limited to those who are mobility-impaired
   b. It refers to families with children under the age of 18
   c. It excludes all males
   d. d. It is a physical or mental impairment that substantially limits one or more major life activities ***

6. Which of the following are examples of discriminatory activity?
   a. Asking residents about their interests and hobbies
   b. Performing credit checks on prospective residents
   c. Branding your property with images of young Caucasian professionals ***
   d. Using prospect or guest cards to gather information on a prospect's needs

7. The underlying intent of fair housing legislation is to:
    a. Establish rules and regulations restricting the number of children who may occupy a rental unit.
    b. Ensure that everyone is given equal opportunity concerning housing ***
    c. Provide housing only for persons aged 62 and older
    d. Protect property owners who are seeking tax credits

8. Which of the following is not a protected class under the federal Fair Housing Act?
    a. Religion
    b. Familial status
    c. National origin
    d. Sexual preference ***

9. What is the most effective way to reduce the possibility of a fair housing complaint?
    a. Leading prospects to the apartment you think they want
    b. Training all staff hon ow to avoid discrimination ***
    c. Collect applications and rent to the best one
    d. Rent only to people from protected classes

10. At the beginning of this class, it was indicated that part of the homework/testing would be for you to seek out what Fair Housing Laws in your area show as protected classes. Please indicate:
    a. Your city and state that you manage property
    b. List the protected classes below