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Fair Housing Basics: Disability Focus

Rights and Responsibilities

www.highplainsfhc.org



Who Are We?

High Plains Fair Housing Center is a private, non-profit organization (501(c)(3)) founded to promote fair housing rights established by the Fair Housing Act (42 USC § 3601 et seq.) and its state and local analogues.

Mission

- strengthen communities and ensure equal access to fair housing in the region through training, education, enforcement, and advocacy.



Disclaimer

I am not a lawyer. Nothing in this presentation is legal advice.

For legal advice, please contact an attorney.



Fair Housing is a Civil Right

The right to obtain housing of one's choice, free from illegal discrimination.

Fair housing is a right protected by federal and state laws. Fair housing means you may freely choose a place to live without regard to your race, color, religion, sex, national origin, or because you are disabled or have children in your family.

States can provide additional protections..



Fair Housing Act (April 11, 1968)

Public Policy (Federal Register 100.05, p. 3283)

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the country.

No person shall be discriminated against because of race, color, religion, sex, disability, familial status or national origin.



Dual Purpose of the Fair Housing Act

1) Eliminate Housing Discrimination

2) Promote Residential Integration

- Replace segregated communities with truly integrated communities.
 - “It shall be unlawful to restrict the choices of a person by word or conduct in connection with buying or renting a dwelling so as to perpetuate segregated housing patterns or to discourage or obstruct choices in a community, neighborhood, or development. “ -42 U.S.C. § 3601, et seq.



What is Housing Discrimination?

Housing discrimination includes:

- blocking someone's access to housing
- treating one renter or buyer differently
- or denying someone the right to buy or rent a home even though they can afford the property, all because that person is a member of a group the law protects.



The Broad Reach of Fair Housing Law

- Covered Transactions
- Covered Dwellings
- Protected Classes
- Exceptions



Federally Protected Categories

Title VIII of the Civil Rights Act of 1968 & the Fair Housing Amendments Act of 1988
42 U.S.C. 3601 et. seq.



Race

Color

National Origin

Religion

Sex

Familial Status

Disability



Additional State Protected Classes

The North Dakota Housing Discrimination Act

- Additional “ceiling” protections in ND:
 - Public Assistance
 - Age - 40 and over
 - Marital Status
 - Domestic Violence
 - All of federal bases

ND Department of Labor and Human Rights

- Certified by HUD as operating to provide enforcement of rights, procedures, remedies, and judicial review that are substantially equivalent to the federal Fair Housing Act.



National Origin

National origin discrimination is different treatment because of a person's ancestry, ethnicity, birthplace, culture, or language.



Familial Status

The Fair Housing Act, with few exceptions, prohibits discrimination in housing against families with children under 18.

Definition - A family in which one or more children under age 18 live with:

- A parent
- A person who has legal custody of the child/children or
- The designee of the parent or legal custodian with the parent or custodian's permission
- Also applies to pregnant women and anyone securing legal custody of a child under 18



Familial Status Continued

- The Fair Housing Act, with few exceptions, prohibits discrimination in housing against families with children under 18.
- In addition to prohibiting an outright denial of housing to families with children, the Act also prevents housing providers from imposing any special requirements or conditions on tenants with custody of children.
- For example, landlords **may not** locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants.



Discrimination Based on Sex

- Quid Pro Quo and Hostile Environment Harassment Rule
Quid Pro Quo (“This for That”) and Hostile Environment Liability for Discriminatory Housing Practices under the Fair Housing Act (Harassment Rule)
- VAWA and Disparate Impact
- Sexual Orientation
- Gender Identity



Bostock Decision June 15, 2020

- The Supreme Court ruled in a **6–3 decision** covering all three cases that discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination "because of sex" as prohibited by Title VII
- **“Enforcing the Fair Housing Act to combat housing discrimination based on sexual orientation and gender identity isn’t just the right thing to do-it’s the correct reading of the law after *Bostock*,”** said Damon Y. Smith, Principal Deputy General Counsel. **“We are simply saying that the same discrimination that the Supreme Court has said is illegal in the workplace is also illegal in the housing market.”**



Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

- HUD will accept and investigate all jurisdictional complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, and enforce the Fair Housing Act where it finds such discrimination occurred.
- HUD will conduct all activities involving the application, interpretation, and enforcement of the Fair Housing Act's prohibition on sex discrimination consistent with its conclusion that such discrimination includes discrimination because of sexual orientation and gender identity.
- State and local jurisdictions funded by HUD's Fair Housing Assistance Program (FHAP) that enforce the Fair Housing Act through their HUD-certified substantially equivalent laws will be required to administer those laws to prohibit discrimination because of gender identity and sexual orientation.



FHA - Prohibited Practices

To refuse to sell or rent

To refuse to negotiate for sale or rent

To otherwise make unavailable or deny a dwelling

Because of status in a protected class

42 U.S.C. § 3604(a)



FHA - Prohibited Practices

**“You want me
to fix
your stove?
...how bad do
you want it,
honey?”**

If a landlord has other “ideas” about making needed repairs, we have a few “ideas” of our own. You can hit him where it hurts by reporting him for sexual harassment under the Federal Fair Housing Act.

If you suspect unfair housing practices, contact HUD or your local Fair Housing Center. Everyone deserves a fair chance.

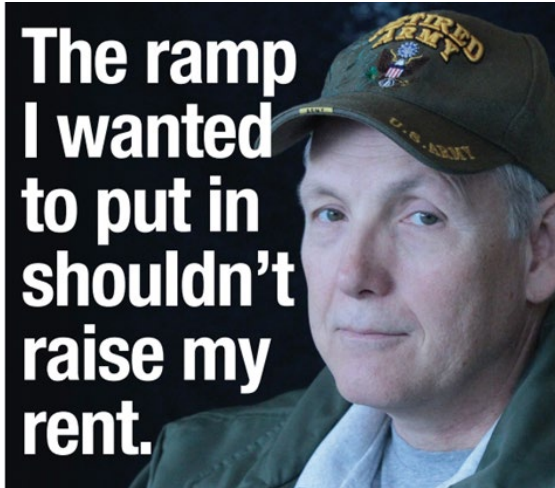


EQUAL HOUSING
OPPORTUNITY

FAIR HOUSING IS THE LAW!

U.S. Department of Housing and Urban Development • 1-800-669-9777 • TDD 1-800-927-9275

**The ramp
I wanted
to put in
shouldn't
raise my
rent.**



To discriminate in terms, conditions, privileges in sale/rental of dwelling

To discriminate in the provision of services or facilities in connection with sale/rental of dwelling

42 U.S.C. § 3604(b)



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FHA - Prohibited Practices: Retaliation

“It shall be **UNLAWFUL** to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.”

42 U.S.C. § 3617



FHA - Prohibited Practices

To represent to any person [because of status in protected class] that any dwelling is not available for inspection, sale, or rental when it is actually available.

42 U.S.C. § 3604(d)



The Waiting Game

“WILL THE APARTMENT
STILL BE AVAILABLE
WHEN THEY
MEET ME
IN PERSON?”

“I MADE ARRANGEMENTS
TO LOOK AT AN APARTMENT,
BUT WHEN THE LANDLORD
SAW MY SON AND ME, HE
WALKED AWAY. WHEN WE
CAUGHT UP WITH HIM,
HE SAID THE APARTMENT
WAS ALREADY RENTED.”



What Can You Consider?



Objective Facts: not influenced by personal feelings, interpretations, or prejudice; based on facts; unbiased



Housing Laws for People with Disabilities

Housing that receives federal money: Section 504 of the Rehabilitation Act of 1973

Public entities: Title II of the Americans with Disabilities Act, as amended (ADA)

Federal Fair Housing Act - Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq.



Why Add Disability to Fair Housing Protections?

Individuals with disabilities "have been denied housing because of **misperceptions, ignorance, and outright prejudice.**"

"[A] clear pronouncement of a national commitment **to end the unnecessary exclusion** of persons with disabilities from the American mainstream."

"[E]ssential to the goal of independent living."



Purpose of Protections Against Disability Discrimination in Housing

The Fair Housing Act "repudiates the use of stereotypes and ignorance, and mandates that persons with disabilities be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion."



Purpose of Protections Against Disability Discrimination in Housing



Remember, it's about equal access to and benefit from housing by affirmatively enhancing the quality of life for persons with disabilities.

Provides an equal opportunity to use and enjoy a dwelling, including public and common use spaces.



Who is a Person with a Disability for FHA Purposes?

Federal laws define a person with a disability as “[a]ny person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.”

42 U.S.C. § 3602(h)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/inhousing



Housing Discrimination and HIV Status

- A person living with HIV need not be symptomatic in order to file a complaint of discrimination under the Fair Housing Act.
- These laws also prohibit disability discrimination because a person has a record of having HIV/AIDS or is regarded as having the disease regardless of the accuracy of the record or belief of the discriminator.
- In addition, it is important to note that housing discrimination because of HIV or AIDS can affect persons other than the person living with HIV.
 - For example, if a person living with HIV is denied housing because of HIV/AIDS, the entire household can be affected. T



Examples of Unlawful Discrimination Based on Disability

Deny housing based on disability

Ask about disability or medication during application process

- 42 U.S.C.A. § 3604(f), 24 CFR § 100.202(c)

Evict based on disability

Misrepresent availability because of disability

Intimidation and harassment



Examples of Unlawful Discrimination Based on Disability (continued)

Indicate a preference based on disability

Enact zoning ordinances based on disability stereotypes

Discourage or steer based on disability

Provide different terms and conditions based on disability

Refuse to make reasonable accommodations and modifications



Accommodation vs. Modification

Reasonable Accommodation

- Relates to the alteration or change of a rule, policy, practice, or service
- Costs paid by landlord (public or private)
- Exception: undue administrative and financial burden (both)

Reasonable Modification

- Relates to the removal of physical barriers
- Costs paid by tenant (private)
- Costs paid by landlord (federally supported programs)

Requests for either need not be in writing or use magic words



What is Reasonable?

Does not impose an undue financial and administrative burden on housing provider.

Does not fundamentally alter the nature of the housing provider's operations.

- The determination is made on a case-by case basis.

For an accommodation to be reasonable, **there must be an identifiable relationship or nexus between the requested accommodation and the individual's disability.**

- The requested accommodation must be necessary to ameliorate the effects of the disability and provide the person with a disability an equal opportunity to use and enjoy a dwelling.



Accommodations That MIGHT BE Reasonable if based on a disability related need:

- Waiving a rule against non-tenants using the laundry room to allow a family member to do a tenant's laundry
- Allowing a tenant with a disability to have a live-in aide
- Waiving late charges and penalties when a disability requires early termination of a lease
- Waiving a requirement for prior rental history



Requesting an Accommodation

- A reasonable accommodation must be requested.
- A request can be made at any time by the person with a disability, a family member, or someone else who is acting on behalf of the person with a disability.
- Request does not have to be in writing. It can be oral or by any other effective method.
- Good practice: place the request in writing and document the outcome.



Verifying Reasonable Accommodations

- Apparent vs. non-apparent disabilities.
- May request documentation of the need – only to the extent necessary to verify the disability and if an accommodation is needed.
- **Verification of disability and need for accommodation can be from:** medical provider; licensed health provider; professional representing social service agency, disability agency or clinic, a peer support group, a non-medical service agency; or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.



Verifying Reasonable Accommodations

- May not acquire confidential medical records or inquire into the nature or severity of a person's disability.
- May not require health care provider to testify in court or sign a statement under penalty of perjury.



Assistance Animals and Fair Housing

- Assistance animals are often referred to as service animals, emotional support animals, therapy animals, and comfort animals.
- Assistance animals are not pets.
- Are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more symptoms or effects of a person's disability.
- Are not just dogs and may include cats, birds, guinea pigs, miniature horses, capuchin monkeys, snakes, etc.



Assistance Animal Conditions (continued)

HOUSING PROVIDERS MAY NOT...

- charge a pet deposit, security deposit, fee.
- require verification of licensure or inoculations as a condition of approval.
- deny access to housing or indoor and outdoor public and common use areas associated with housing.
- impose breed, weight, or size limitations



A HOUSING PROVIDER MAY DENY A REQUEST FOR AN ASSISTANCE ANIMAL IF...

- A **specific animal** poses a direct threat to the health or safety of others or would result in substantial physical damage to the property.
 - An individualized assessment must be based on recent credible, objective evidence related to the specific animal's actual conduct, not speculation about the type or breed of the animal.
- The housing provider can demonstrate there is an undue financial and administrative burden.
 - This is a very high standard to meet and generally is not applicable.
- It would create a fundamental alteration.
 - This is also a very high standard and typically is not applicable.



Filing a Discrimination Complaint

- North Dakota Dept. of Labor and Human Rights
 - They are our state enforcement agency (an impartial entity)
 - You can file a complaint directly with them or through us
 - If you file through us, we are your advocates throughout the process
 - After filing, the DOL investigates your complaint
 - May work towards conciliation
 - If no conciliation is reached, the DOL will determine if there is “reasonable cause” to believe discrimination took place
 - DOL will make a *charge of discrimination* or *no charge of discrimination* determination



If You Suspect Discrimination

- Contact the High Plains Fair Housing Center
 - Call us at (701) 203-1077
 - You can ask for an interpreter
 - Or fill out our online complaint form:
<http://www.highplainsfhc.org/complaint>

Our intake specialists will talk through your case, determine if there is evidence of a fair housing issue, and recommend how to proceed.



What is Testing?

- Testing is evidence.
 - Objective gathering of data (not a conclusion looking for a set of facts).
- Testers investigate to see whether people experience different treatment based on protected characteristics.
- Testers who experience discrimination have standing to pursue a complaint.



Types of Testing by HPFHC

Complaint-Based Testing

- Designed with a specific scenario in mind.
- Corroborate claims against a specific housing provider.

Systemic Testing

- Designed to test for a specific kind of discrimination.
- Uncover systemic patterns of discrimination by providing data on the housing market as a whole.





**If something does not seem right,
contact us. We are here to help!**

High Plains Fair Housing Center

(701) 203-1077

info@highplainsfhc.org



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