




INTRO TO FAIR HOUSING
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Go To Webinar Control Panel



About COHHIO & the Presenter

Coalition on Homelessness and Housing in Ohio

- www.cohhio.org
- Mission of ending homelessness and promoting affordable housing through public policy advocacy, training and technical assistance, research, hotline advice, and public education
- 20th Anniversary in 2014

Joe Maskovyak

- Affordable and Fair Housing Coordinator
- Former Legal Services attorney

Overview

Training will provide a basic introduction to:

- Fair Housing Act: Terms and definitions
- Section 504 of the Rehabilitation Act of 1973
- Reasonable Accommodations & Modifications
- Selected Fair Housing Topics

Training will NOT cover:

- Landlord Tenant Law
- Numerous other fair housing laws

Agenda Details

1. **Fair Housing 101**
 - What is fair housing?
 - Protected Classes (Emphasis on Disability)
 - Discrimination in Rental Housing
2. **Reasonable Accommodations & Modifications**
 - Terms, Definitions, and Examples
3. **Section 504 of the 1973 Rehabilitation Act**
4. **Steps of requesting a RA/RM**

PART 1: FAIR HOUSING 101

Fair Housing History

Fair Housing Act passed in 1968

- Title VIII of Civil Rights Act of 1968
- One week after assassination of MLK, Jr.



Sources of Law

- Title VI of the Civil Rights Act of 1964
- **Title VIII of the Civil Rights Act of 1968 (FHA)**
(as amended)
- **Fair Housing Act Amendments of 1988 (FHAA)**
- **Section 504 of the Rehabilitation Act of 1973**
- Section 109 of the Housing and Community Development Act of 1974
- Architectural Barriers Act of 1968
- Age Discrimination Act of 1975
- Section 3: Housing and Urban Development Act of 1968
- Title II of the Americans with Disabilities Act of 1990 (ADA)
- Housing for Older Persons Act of 1995 (HOPA)

Simple Definition of Fair Housing Act

- Prohibits discrimination in the, rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes
- ***VERY BROAD & intended to be broad***

Fair Housing Act Basics

- **Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions...**
- Applies to Landlords, Realtors, Mortgage Brokers, Insurance Agents, Zoning Codes, etc.

Fair Housing Act Basics

- **...based on membership in protected classes**
- Characteristic of a person which cannot be targeted for discrimination
- Can be determined by documented patterns of treatment

7 Federal Protected Classes

Race



(Skin) Color



Familial Status



Religion



Sex/Gender



National Origin



7th Federal Protected Class

Disability

- Fair Housing Act amended in 1988 to include disability and familial status
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- 1999 Olmstead Decision



Fair Housing Basics

- **F**amilial Status
- **R**ace
- **S**ex
- **H**andicap (Disability)
- **C**olor
- **R**eligion
- **N**ational Origin

Ohio Protected Classes

Ancestry

(1965)



Military Status

(2008)



Ohio Revised Code 4112.02(H)

LGBT and Source of Income

- **Sexual Orientation and Gender Identity**
 - **Not** Federal or State Protected Class
 - May be a Local Protected Class (Columbus City Code 2331.02(A)(1))
 - HUD Equal Access Housing Rule
- **Source of Income**
 - Housing Choice Voucher/Section 8
 - Not a Protected Class in Ohio or USA
 - Has been adopted as protected class in other states/municipalities

Discrimination in Rental Housing

Landlord-Tenant Level

- Advertising
 - Language
 - Location
- Application process
 - Unusual screening criteria
 - Refusal to rent/sell
 - “Don’t bother to apply”
 - Misrepresenting availability
 - Separate waiting lists
- Extra fees or deposit amount

Discrimination in Rental Housing

- Steering towards other units or other parts of town
- Segregation, safety, “You’ll enjoy this unit more”
- Difference in treatment during tenancy
 - Inspections, maintenance, enforcement of rules
- Not renewing the rental agreement
- Disparate Impact
 - Seemingly neutral policy that has the effect of discriminating against members of a protected class

Discrimination in Rental Housing

Community Level

- Concentrating Affordable Housing development in certain areas
 - Tests Disparate Impact in FH in court
 - Some debate within FH community
- Codes or policies that unfairly restrict housing for protected classes
 - Supportive Housing, Group Homes, Recovery or “Halfway Houses”
 - Ex: Requiring business permits for group homes but not other landlords, unfair spacing requirements (could depend on community), “one lease per single family home”

Exceptions to FHA

- Any single family home sold or rented by an owner
- Rooms or units in dwellings with less than 4 units
- Religious organizations
- Private Clubs
- Emergency shelter
- Having an exemption under the FHA does not prevent one from being sued pursuant to other non-discrimination statutes (Section 504, ADA)

Americans with Disabilities Act (ADA)

- Covers places of **public** accommodation
- Those areas of a housing development which are open to the public:
 - Rental office
 - Pools
 - Club house/party room
 - Gym

Part 1: Fair Housing Summary

- **Fair Housing Act**
 - **Prohibits discrimination in housing transactions**
 - Based on membership in Protected Classes
 - Broadly interpreted and applied
- **Protected Classes**
 - **Federal**
 - Race, Color, National Origin, Religion, Sex/Gender, Familial Status, Disability
 - **State**
 - Ancestry, Military Status
 - **Local**
 - May include sexual orientation and/or gender identity
 - **Source of Income not a protected class in Ohio**

PART 2: REASONABLE ACCOMMODATIONS & MODIFICATIONS

Disability Definition

- A individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities
- Person who has a record of such impairment
- Person regarded as having such an impairment

Physical or Mental Impairment

- Visual or Hearing Impairment
- Mobility Impairment
- Mental Illness
- Emotional Illness
- Intellectual Disability
- Alcoholism & Past Substance Abuse
- Chronic Disease: muscular dystrophy, multiple sclerosis, HIV, Cancer, Autism, ADHD, asthma, etc.
- **Can be temporary**



Major Life Activities

Including, but not limited to:

Seeing
Hearing
Walking
Breathing
Performing Manual Tasks
Caring for One's Self
Speaking
Thinking

Why Focus on Disability

According to the US Census Bureau:

- 49.7 Million people in the US experience a disability (19%)
- 5.2 Million were between the ages of 5-20 (8%)
- 30.6 Million were between the ages of 21-64 and **57% were employed**
- 14 Million were 65 and over.

Why Focus on Disability

According to HUD:

- Approximately 40% of all cases filed in 2009 were disability related
- In 2013 the # of disability related cases was more than 50%
- That % climbs every year

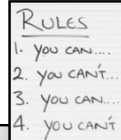
Reasonable Accommodations & Reasonable Modifications

Fair Housing Act requires that:

- A landlord *may not unreasonably refuse to provide a reasonable accommodation* of a rule, policy, or procedure to address the needs of a person with a disability
- A landlord *may not unreasonably deny permission to a tenant to make a modification* of the premises to address the needs of a person with a disability

Accommodation

A change in
rules, policies,
practices, or
services



Accommodation Example #1



Accommodation Example #2



Accommodation Example #3



Modification

A structural change (interior or exterior) made to existing premises, occupied or to be occupied by a person with a disability



Modification Example # 1

Adding Grab Bars in the Shower



Modification Example #2

Door Knob



Door Handle



Modification Example # 3

Removing Carpet



“Reasonable” Definition

1. Economically and architecturally feasible
2. Does not alter the fundamental nature of the program
3. Each request considered on “case by case” basis



PART 3: SECTION 504 OF THE 1973 REHABILITATION ACT

Section 504

States:

“No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity **receiving federal financial assistance... .”**

Fair Housing Modifications

Landlord **may not unreasonably deny permission to a tenant to make a modification** of the premise to address the needs of a person with a disability



Tenant's wallet ↑

Section 504 and Fair Housing

Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., **providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas**), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504.

Paying for Section 504

504 requires that programs that receive **FEDERAL FUNDING** must make accommodations and modifications to permit full participation by people with disabilities



Landlord's wallet ↑

504? Landlord has to pay. Modification = Accommodation

Who is covered under 504?

YES:

- Owned by Public Housing Authority
- Project-based Section 8
- 202/811 – senior/disabled
- USDA Rural Development properties
- Section 236 (with a mortgage subsidy)
- Other federal funding (CDBG, HOME, etc.)

NO:

- Housing Choice Vouchers (aka METRO)
- All other privately owned/financed property
- LIHTC properties without federal gap financing

504 Requirements

- If a recipient has 15 or more employees:
 - Must appoint someone to coordinate efforts to comply with Section 504 (504 Coordinator)
 - Must establish a grievance procedure that can be used by tenants and employees who believe their rights under the law have been violated
 - Must notify applicants for housing and employment, tenants and employees, that it does not discriminate on the basis of disability

How do I find if 504 applies?

www.ohiopreservationcompact.org



Using OPC Database

Conduct A Search:

- City or Town
- County
- Zip Code
- Project Name
- Project Street

ohio preservation compact

Affordable Housing Database

the affordable housing database was created by: Community Research Partners

Area:

City or Town

County

Zip Code

School District

Ohio Senate

Ohio House

U.S. House

Attributes:

Project Name

Total Units

REMS ID (rev. 8/2007/7634)

Project Street

OHFA Tracking ID (rev. 01-0099)

Demographic

Using OPC Database

Example: Seton House, Zanesville, Ohio

| Project Name | Owner | Total units | Address | City | County | Zip code | School district name | Ohio Senate | Ohio House | U.S. House | Latitude | Longitude | Pop. served | OHFA ID | Tax Credit units | Tax Credit Start |
|-------------------------------|--------------------------------------|-------------|------------------|------------|------------|----------|----------------------|-------------|------------|------------|----------|-----------|-------------|---------|------------------|------------------|
| SETON HOUSE INC. (ZANESVILLE) | NEW SETON SQUARE LIMITED PARTNERSHIP | 45 | 516 SHERIDAN AVE | Zanesville | MUSKINGHAM | 43701 | Zanesville City | 620 | 094 | 18 | 39.95591 | -82.00804 | | | | |

| Tax Credit | | USDA | USDA | USDA | REMS ID | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 | Sec. 8 |
|------------|--|-------|-------|------|----------|--------|------------|------------|--------|------------|------------|------------|------------|------------|------------|------------|------------|
| End | | units | Start | End | | units | Start | End | units | Start | End | units | Start | End | units | Start | End |
| | | | | | 80017239 | 45 | 09/26/2006 | 09/25/2011 | 45 | 09/26/2006 | 09/25/2011 | 09/26/2006 | 09/25/2011 | 09/26/2006 | 09/25/2011 | 09/26/2006 | 09/25/2011 |

PART 4: SUBMITTING A FHA OR 504 REASONABLE ACCOMMODATION

Preparing a RA/RM

Before submitting, make sure:

- Person is considered disabled under FHA
 - Not obvious? May need documentation
- Major Life Activity impaired in housing
 - Strong “nexus”
- 504 eligible?

Documentation: Disability

Landlord allowed to ask for documentation of an individual's disability related to the request

- NOT entire medical history
- Sources: Doctor, therapist, peer support group, non-medical service agency, individual, etc.

Nexus

Nexus = Link between Disability and RA/RM request



Given the person's disability and the resulting impairment, is the RA/RM necessary?

Nexus: Paint a Picture

- Nexus may not always be obvious
- Landlord allowed to ask for documentation
 - Medical records, Treatment Sources, Witnesses
- Interviewing the tenant or someone who knows them well may help illustrate the nexus



Submitting a RA/RM

- Get the details together:
 - Disability and Major Life Activity
 - Request for Accommodation or Modification is clear and reasonable
 - Solid nexus
- Give written notice to landlord or property manager
 - Not required, but INVALUABLE to document in practice
- Wait a reasonable amount of time



Submitting a RA/RM

- The basic 4-part test to determine reasonableness:
 - 1. Is the applicant/tenant disabled?
 - 2. Is there a nexus between the disability and the problem?
 - 3. Will accommodation/modification fix the problem?
 - 4. Is it an undue burden?

Submitting a RA/RM



1. Accepted
2. Interactive Process
3. Ignored
4. Denied

Interactive Process

"...Both sides must communicate directly, exchange essential information and neither side can delay or obstruct the process..."

—Marilyn Tobocman,
Assistant Attorney General for Civil Rights Issues



- Landlord has affirmative duty to participate in Interactive Process
 - Skepticism ≠ Intrusiveness
- Tenant's duty to show the accommodation is necessary and reasonable

Request Ignored or Denied?

VIOLATION ALERT!

- Document the details
- File a complaint with HUD or OCRC
- HUD/OCRC conducts investigation
- Mediation-allows for creative remedies
- Decision: NO Cause or FOR Cause
- Remedies: Injunctions, damages, civil penalties, court costs, and attorney fees
- Can always go to court

Cost of Non-Compliance with Fair Housing

- “Basically no one pays attention to the rights of people with disabilities unless a lawsuit is filed or when money is on the table.”

How to stay in touch:

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Thank you!