

Fair Housing 101 pt. 2

Tuesday, October 8,
2019


Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

About COHHIO




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Webinar Information




All participants lines are muted.



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This webinar is being recorded.

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Topics in Fair Housing



Understanding Fair Housing 101 Pt. 2
 Joe Maskovyak, *Affordable and Fair Housing Coordinator*
 October 8, 2019

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Part 3: Section 504 of the 1973 Rehabilitation Act

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Section 504

“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...**”

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Section 504 & Fair Housing

Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing **and paying for** reasonable modifications 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.

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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 (Section 8) Vouchers
- All other privately owned/financed property
- LIHTC properties **without federal gap financing**

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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

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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

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Documentation

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.

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Nexus

Nexus = Link between Disability and RA/RM request



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

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Submitting a RA/RM

The basic 4-part test to determine reasonableness:

1. Does the applicant/tenant have a disability? Yes
2. Is there a nexus between the disability and the problem? Yes
3. Will accommodation/modification fix the problem? Yes
4. Is it an undue burden? No

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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
- Tenant has duty to show the accommodation is necessary and reasonable


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Request is Ignored or Denied?

VIOLATION ALERT!

- Document the details
- A complaint is filed with HUD or OCRC
- HUD/OCRC conducts investigation
- If Mediation – prepare for creative remedies
- Decision: NO Cause or FOR Cause
- Remedies: Injunctions, damages, civil penalties, court costs, and attorney fees
- Tenant can always go to court


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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.”


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Part 4: LGBT Housing Issues and Case Law



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Poll

What is your understanding of the Equal Access Rule?

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LGBT+

- Sexual Orientation and Gender Identity
 - Not Federal or State Protected Class*
 - *Senate Bill 11 was introduced on 2/12/19 in the Ohio Legislature, which would prohibit discrimination on the basis of sexual orientation or gender identity or expression
 - *In the Senate Judiciary Committee
 - May be a Local Protected Class (Columbus City Code 2331.02(A)(1), lots of cities in Cuyahoga County.
 - HUD Equal Access Housing Rule
 - Recent cases may signal a change

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Recent Case Law

- Circuit courts addressing FHA discrimination look at Title VII discrimination cases for guidance
 - *Hivley v. Ivy Tech Community College* (7th Circuit, April 2017)
 - *Smith v. Avanti* (District of Colorado, April 2017)
 - *Christiansen v. Omnicom Grp., Inc.* (2nd Circuit, March 2017)
 - *Zarda v. Altitude Express* (2nd Circuit 2018; this might repeal Christiansen)

Sexual Orientation Discrimination = **Sex Discrimination

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LGBT+ as Local Protected Classes

- Columbus:
 - It shall be an unlawful discriminatory practice for any person to recklessly: Refuse to sell, transfer, assign, rent, lease, sublease, finance or otherwise deny or withhold housing accommodations from any person because of the race, sex, **sexual orientation, gender identity or expression**, color, religion, ancestry, national origin, age, disability, familial status or military status of any prospective owner, occupant, or user of such housing accommodations. Columbus City Code 2331.02(A)(1).
- Cleveland:
 - "Protected group" or "protected class" refers to persons who are or may be discriminated against on the basis of race, religion, color, sex, **sexual orientation, gender identity or expression**, national origin, age, disability, ethnic group, Vietnam-era or disabled veteran status, familial status, marital status or ancestry. Cleveland City Code 665.02(I)

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Penalties for Violating Columbus Housing Code

Columbus City Code 4509.99

-(A): "Whoever violates any provision of this Housing Code is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars or imprisoned for not more than one hundred eighty days or both. Each day that any such person continues to violate any of the provisions of this Housing Code shall constitute a separate and complete offense."

-(C): "[A]n organization convicted of a violation of the Columbus Housing Code, a misdemeanor of the first degree, shall be fined not more than five thousand dollars."

-(D): "Strict liability is intended to be imposed for a violation of the Columbus Housing Code. This penalty is in addition to and separate from any civil or administrative penalties or remedies provided for by this code or pursuant to Ohio law."

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HUD Press Release Announcing Equal Access Rule

"The Obama Administration has viewed the fight for equality on behalf of the LGBT community as a priority and I'm proud that HUD has been a leader in that fight," said Secretary Shaun Donovan. "With this historic rule, the Administration is saying you cannot use taxpayer dollars to prevent Americans from choosing where they want live on the basis sexual orientation or gender identity - ensuring that HUD's housing programs are open, not to some, not to most, but to all."

HUD Secretary Shaun Donovan, Jan. 30, 2012
<https://archives.hud.gov/news/2012/pr12-014.cfm>

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HUD Equal Access Rule (2012)

- Makes certain that housing assisted or insured by HUD is open to all eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status.
- Prohibits the housing provider from even asking an applicant's or occupant's sexual orientation and gender identity.
- Rule provided a limited exception in cases involving single-sex emergency shelters with shared sleeping areas or bathrooms. At that time, HUD decided not to set national policy regarding how transgender persons would be accommodated in in these facilities, but instead decided to monitor and review its programs to determine if additional guidance or a national policy was warranted.

77 Fed. Reg. 5662 (Feb. 3, 2012)

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HUD "Gender Identity Rule" (2016)

- Providers that operate single-sex projects using funds awarded through the Department's Office of Community Planning and Development (CPD) are now required to provide all individuals, including transgender individuals and other individuals who do not identify with the sex they were assigned at birth, with access to programs, benefits, services, and accommodations **in accordance with their gender identity without being subjected to intrusive questioning or being asked to provide documentation.**
- HUD's new rule requires a recipient, subrecipient, or provider to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures (including policies and procedures to protect individuals' privacy and security), so that equal access is provided to individuals based on their gender identity. This requirement includes tenant selection and admission preferences.

81 Fed. Reg. 64763 (Sept. 21, 2016)

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Equal Access, Gender Identity, and the Trump Administration

- In 2017, HUD removed documents from their website that guided emergency shelters on how to best serve transgender people facing homelessness.
- The Equal Access and Gender Identity Rules can still be found on the HUD website under LGBTQ resources, but **NO resources** for shelters can be found there.
- In May of 2019, there were talks about HUD trying to change the Gender Identity rule to allow shelters to consider an individual's sex (whether that be how they identify or what is on official government documents) when determining accommodation in sex-segregated shelters. HUD never formally published this proposed change.

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Trump Administration, Cont.

- The 2019 Notice of Funding Availability (NOFA) for the Continuum of Care program removes incentives for housing providers to utilize the Housing First model.
- **The 2019 NOFA also excluded incentives that encouraged service providers to follow the 2016 Equal Access rule**
- Representatives Jennifer Wexton (D-VA) and Ayanna Pressley (D-MA) and 59 other Democratic lawmakers sent a letter on September 19 to HUD Secretary Ben Carson opposing these changes:
 - "These changes invite discrimination and could result in trans people being denied access to critical homeless services, forcing them to remain on the street and putting them at further risk of physical violence and abuse."

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Why do we need these rules?

- Among homeless LGBT+ youth (up to age 24), the average age of being homeless the first time is 15 years old.
- Nearly two thirds of homeless shelters in a recent study failed to enroll a person properly once they identified as transgender.
- Nearly a quarter of homeless transgender residents report being assaulted by other residents or staff at homeless shelters.

*See HUD, **Equal Access for Transgender People: Supporting Inclusive Housing and Shelters***

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What Discrimination Looks Like

- A shelter employee hanging up immediately after caller reveals she is transgender.
- A shelter employee making references to genitalia or to surgery as requirements for appropriate housing.
- A shelter employee refusing to enroll a participant "because they would make other participants uncomfortable or feel unsafe."

See <https://www.hudexchange.info/course-content/equal-access-and-gender-identity-rules-training/implementing-HUDs-Equal-Access-and-Gender-Identity-Rules-Slides-2016-11-17.pdf>

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What Discrimination Looks Like

- Management of housing projects or facilities failing to address complaints from LGBT+ individuals regarding harassment by other residents. *See Wetzel v. Glen St. Andrew Living Community, LLC (7th Cir. 2018).*
- Project staff revealing an individual's status as transgender and requiring special procedures for households with a transgender person.
- Project staff excluding individuals based on family composition.

See <https://www.hudexchange.info/course-content/equal-access-and-gender-identity-rules-training/implementing-HUDs-Equal-Access-and-Gender-Identity-Rules-Slides-2016-11-17.pdf>

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“Bathroom Rule”

- The person being sheltered gets to choose.

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Which Programs Must Follow These Rules?

- **All** HUD programs, including shelter programs, are required to comply with the Equal Access and Gender Identity Rules.

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Where to Get Help

- Fair Housing Advocates
 - 330-253-2450
 - Located in Akron but serve outside this area
- Fair Housing Resource Center
 - 440-392-0147
 - www.fhrc.org
 - Lake, Geauga, Ashtabula Counties (far Northeastern counties of OH)
- Fair Housing Contact Service
 - 330-907-8473
 - www.fairhousingakron.org
 - Summit, Portage, Medina, Stark Counties (and others where a private fair housing group does not exist)

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Where to Get Help

- Housing Research and Advocacy Center
 - 216-361-9241
 - www.thehousingcenter.org
 - Cuyahoga & Lorain Counties (Cleveland area)
- Toledo Fair Housing Center
 - 419-243-6163;
 - www.toledofhc.org
 - Lucas & Wood Counties
- Miami Valley Fair Housing Center
 - 937-223-6035
 - www.mvfairhousing.com
 - Montgomery & Green Counties (Dayton area)

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Where to Get Help

- Housing Opportunities Made Equal (HOME) Cincinnati
 - 513-721-4663
 - www.cincyfairhousing.com
 - Greater Cincinnati area, including Hamilton County

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Where to Get Help

- Legal Aid
 - 866-LAW-OHIO (866-529-6446)
- Disability Rights Ohio
 - 800-282-9181
- COHHIO
 - Housing Information Line: 888-485-7999
 - rentinfo@cohhio.org
- Ohio Civil Rights Commission (OCRC)
 - 888-278-7101

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Questions



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How to stay in touch:

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Thank you!

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