

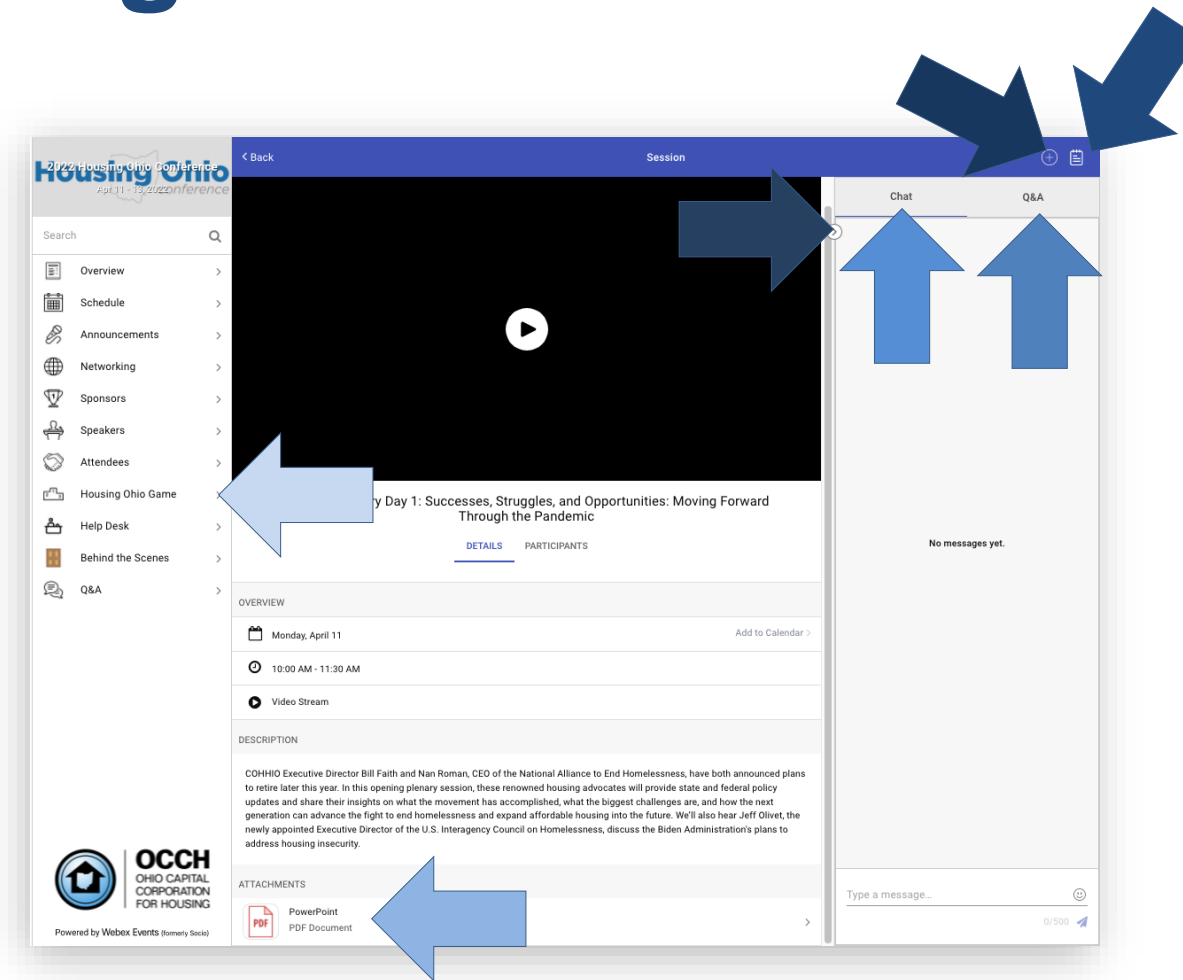
Fair Housing 101: What Everyone Needs to Know

Wednesday, April 12th, 2023





Session Logistics



Fair Housing Fundamentals

COHHIO's 2023 Housing Ohio Conference

Miami Valley Fair Housing Center, Inc.

505 Riverside Drive, Dayton, OH 45405

Visit www.mvfairhousing.com and write: info@mvfhc.com

937-223-6035

Presented by Jim McCarthy

Resources

www.mvfhc.com

www.mvfhc.com/rental

www.mvfhc.com/realtor

www.mvfhc.com/lender

Section 1: Fair Housing Fundamentals– the basics

- Protected Classes
- Prohibitions based on a protected class
- Who can file a complaint
- Exemptions
- Fair Housing Logo, displays,
- Recent Fair Housing Stats

Introduction

The Fair Housing Act applies to virtually all types of housing,
public and private

The Fair Housing Act applies to all Dwellings

Dwelling means

Any building, structure, or portion thereof which is occupied as, or
designed or intended for occupancy as a residence ...

24 CFR 100.20

It is illegal to discriminate based on:

Federal Fair Housing Act, as amended

- Race
- Color
- Religion
- National Origin
- Sex
 - Sexual Orientation
 - Gender Identity/Expression
- Handicap (Disability)
- Familial Status

As a result of the June 15, 2020, U.S. Supreme Court Decision in *Bostock v. Clayton County*

It is illegal to discriminate based on:

- Race • Color • Religion • National Origin • Sex • Sexual Orientation
- Disability • Familial Status • Gender Identity/Expression

State and local level protections

- Ancestry & Military Status – State of Ohio
- Age and Marital Status – Dayton and other cities across the state
- Source Of Income – Ohio cities of Akron, Bexley, Cincinnati, Columbus, Dayton, Linndale, South Euclid, Toledo, University Heights, Warrensville Heights, Wickliffe, and Yellow Springs

Prohibitions are based on the protected class affiliation of an individual, group, or neighborhood composition – a housing provider cannot:

- Refuse to sell or rent
- Discriminate in the terms, conditions
- Discriminate in advertising
- Misrepresent the availability of housing
- Engage in steering someone towards or away from a unit

Prohibitions are based on the protected class affiliation of an individual, group, or neighborhood composition – you cannot

- Refuse people with disabilities reasonable modifications or reasonable accommodations when requested
- Discriminate in making loans, insurance policies, appraisals, & other real estate transactions
- To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of a fair housing right

Who can file a fair housing complaint?

Any aggrieved person, including real estate professionals and testers, who believes that a discriminatory housing practice has injured them.

State and Federal Fair Housing Resources for filing a complaint



- Ohio Civil Rights Commission (OCRC)
- Visit <https://civ.ohio.gov/>
- Email: PACE@civ.ohio.gov
- Phone: [\(888\) 278-7101](tel:(888)278-7101)
- Department of Housing and Urban Renewal (HUD) contact The Office of Fair Housing and Equal Opportunity (FHEO)
- Visit <https://www.hud.gov/fairhousing>
- You can speak with an FHEO intake specialist by calling 1-800-669-9777 or TTY: 1-800-877-8339.

Ohio Private Fair Housing Organizations



- Fair Housing Advocates Association -Akron-
<https://www.housingassistanceonline.com>
- Fair Housing Contact Service, Inc. –Akron- <https://fairhousingakron.org/>
- Fair Housing Resource Center, Inc. –Painesville- <https://fhrc.org/>
- Housing Opportunities Made Equal, Inc. –Cincinnati-
<https://homecincy.org/>
- Fair Housing Center for Rights & Research –Cleveland-
<https://www.thehousingcenter.org/>

Ohio Private Fair Housing Organizations

- Miami Valley Fair Housing Center, Inc. –Dayton- www.mvfhc.com
- Toledo Fair Housing Center –Toledo- <https://www.toledofhc.org/>



Exemptions

- Religious Groups and Private Clubs
- Advertising for gender specific roommates
- Senior Complexes
- Commercial Zoned Land/Dwellings
- owner-occupied buildings with fewer than four rental units – federal only but are not exempt from the State of Ohio law, which does not allow for such an exemption. This is sometimes referred to as Mrs. Murphy's exemption.

Make It Known That You Obey Fair Housing Laws

1. Display a fair housing poster in a visible location in the room where rental business occurs. (You can find it at www.mvfhc.com, right side of homepage)
2. Use an equal opportunity logo or statement on all brochures and pamphlets.
3. Use an equal opportunity statement on rental applications.

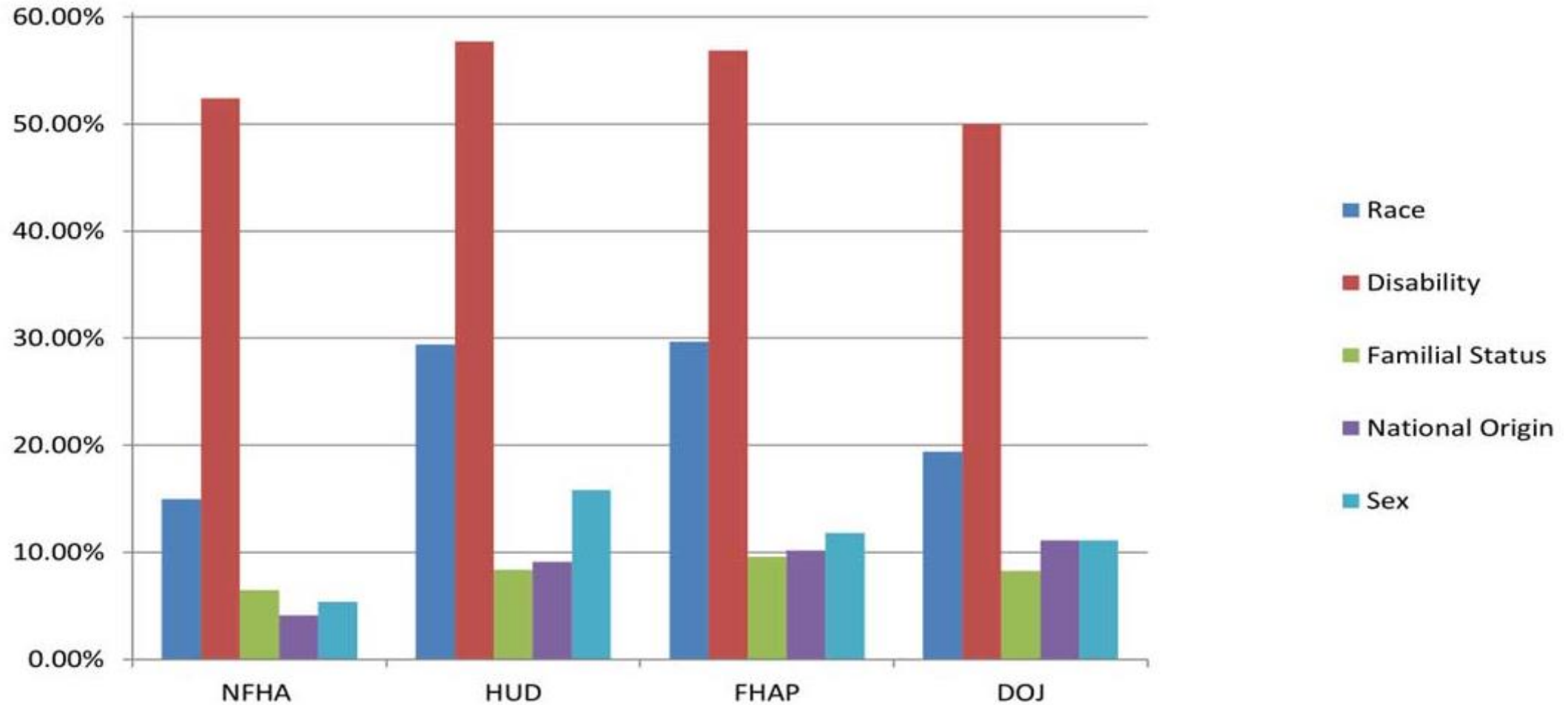
Sample EHO Nondiscrimination statement:

We do (or *name of company* does) “not discriminate based on ancestry, race, color, religion, sex, disability, familial status, national origin or military status.” (Federal and Ohio protected classes – *may opt to add local*)

4. Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any of the protected classes.



Current Trends Report based on 2021 Collected Data



Notes from the 2021 Report

- Complaints alleging discrimination because of

1. **Disability:** 53.68% or 16, 758
2. **Race:** 18.97% or 5,922 (up over 2% from prior year)
3. **Sex:** 7.40% or 2,309 (from 5th place in 2020 to now 3rd most complaints)
4. **Familial status:** 7.24% or 2,261
5. **National Origin:** 5.68% or 1,774

The “other” category of complaints:

3,744 complaints in 2020 increased to 4,276 in 2021 which is 13.7% of all complaints.

These areas were of special concern:

- Source of income - California, New York City and Virginia, have added protections for SOI)
- Criminal background - increased almost **fivefold** from 66 in 2020 to 314 in 2021, > 248
- Domestic violence complaints **doubled** from 86 in 2020 to 172 in 2021 >85
- Retaliation complaints **increased sixfold** from 22 in 2020 to 127 in 2021 > 105

Complaints by industry segment

	Rental	Sales	Lending	Insurance	Harassment	Advertising	HOA/Condo	Other	Total
NFHA Members	20,085	653	188	31	882	271	150	414	22,674
HUD	1,304	199	114	3	0	0	0	476	2,093
FHAPs	4,090	556	92	2	0	0	0	1,675	6,413
DOJ	22	0	1	0	4	0	0	9	36
Total	25,501	1,408	395	36	886	271	150	2,574	31,216
Percent of Total	81.69%	4.51%	1.27%	0.12%	2.84%	0.87%	0.48%	8.25%	100.00%

73% of all complaints handled in 2000 were handled by private fair housing organizations that are Operating Members of the National Fair Housing Alliance

Complaints by industry segment

Rental Market — 20,860 Complaints - 72.65% of complaints in 2020 increased to 25,501 complaints in 2021 or 89.61% of all complaints



Most numerous.



Rental transactions is the most frequent type of housing transaction, the simplicity of the transaction can make it easier to identify discrimination.

Section 2: Fair Housing Basics in Specific Areas

Racial bias

Steering

Screening Best Practices & the Use of Criminal History in the Screening Process

Welcoming People With Disabilities & Assistance Animals

Familial Status and the Keating Memo

Harassment – 2016 Rule application

Let's take a look at Studies on Steering based on Protected Class

National Fair Housing
Alliance Trends Report

HUD Housing
Discrimination Against
Racial and Ethnic
Minorities 2012.

Trends Report overall Conclusion:

Two distinct results:

“racially-motivated steering” and

“unequal treatment of African-American and Latino home seekers are commonplace practices by some realty agents.”

Results of the study by the National Fair Housing Alliance

- Whites were shown more homes -- a total of 1,144 or 8 homes per test,
- while minority testers were shown 732 homes in total, an average of 5 homes per test.

2012 HUD Report Overall Conclusion:

Two distinct results:

**white home seekers are more likely to be favored than minorities and
minority home seekers are told about and shown fewer
homes and apartments than whites.**

Both studies suggest

That Steering still exists and that:

A small part of it is intentional

Most of it is through **implicit bias** and unintentional

How does it happen that Blacks are shown over 17% less homes?

- Implicit biases are pervasive.
- The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- Retrieved from <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

Screening Best Practices



- Businesses should decide what their acceptance criteria is PRIOR to advertising the unit for rent and
- Share the acceptance criteria with all callers and people who actually view the unit giving them a notice “to be heard” and “policy of applying reasonable accommodations” to your screening process.
- You can use a *Notice to be Heard*; this type of notice stresses that your prospects will be treated like individuals and if they have special circumstances, they will have the opportunity “to be heard.”

Screening Best practices



- When completed applications are received, a manager/staff person should write the date & time received on each application,
- Process the applications in the order that applications are received,
- and offer the unit to the applicant(s) who meet the pre-established acceptance criteria in the same order that the completed applications were returned to the manager/staff.

HUD issues guidance criminal history-based restrictions in housing

- “ While having a criminal record is not a protected characteristic under the Fair Housing Act, **criminal history-based restrictions** on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).
- Additionally, intentional discrimination in violation of the Act occurs **if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic** (i.e., disparate treatment liability)."





Advice from HUD's Guidance

- By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.
- Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and **take into consideration** such factors as the type of the crime and the length of the time since conviction.

Relevant individualized considerations might include:

the facts or circumstances surrounding the criminal conduct;

the age of the individual at the time of the conduct;

evidence that the individual has maintained a good tenant history before and/or after the conviction;

Relevant **individualized** considerations might include:

evidence of rehabilitation efforts (drug/alcohol treatment, community supervision completion);

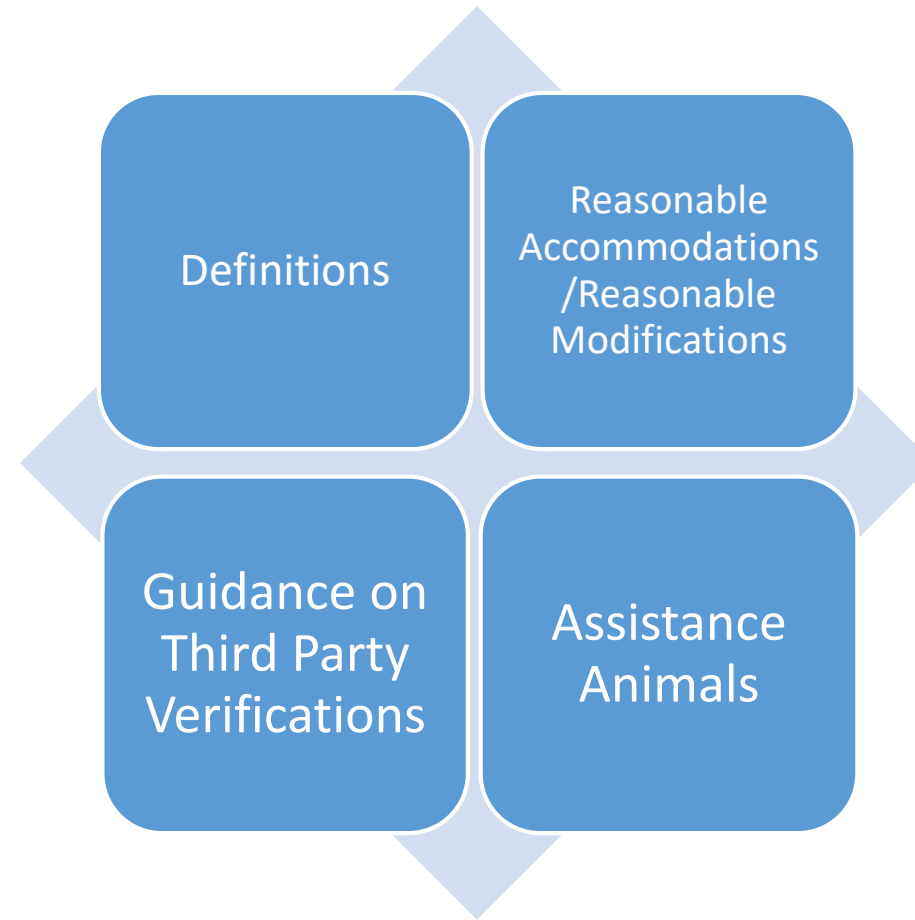
community ties/support (is an applicant in a family re-unification project or a re-entry program?);

employment/training history.

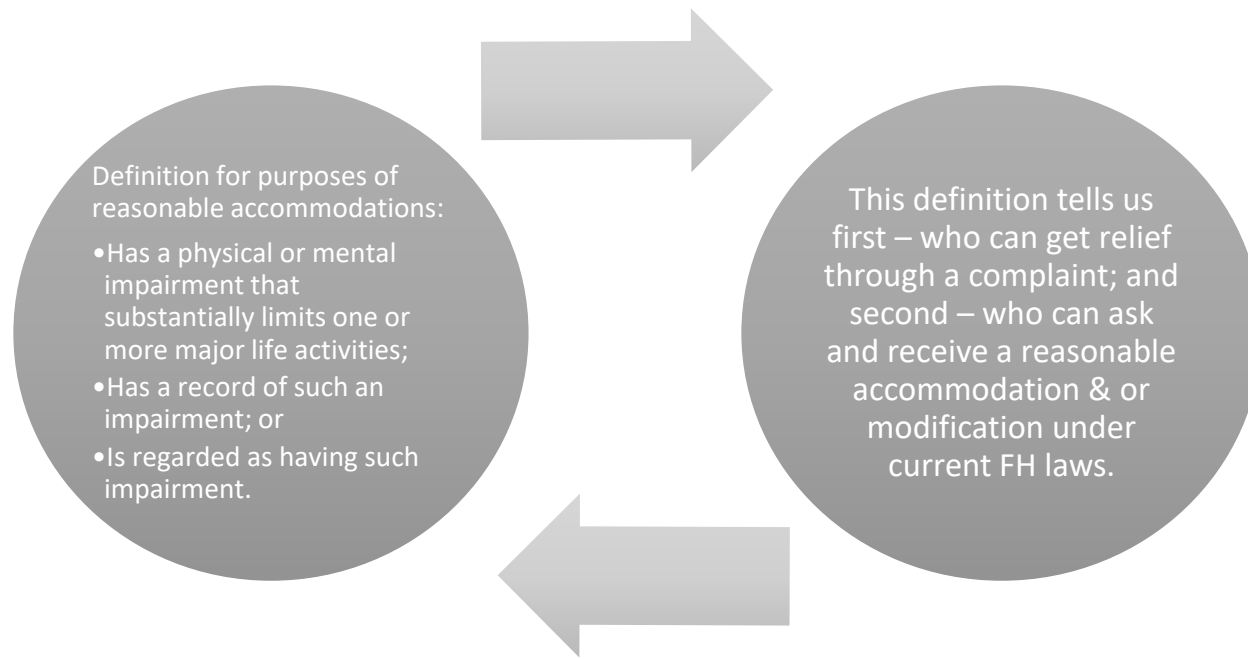
Best Practices include but are not limited to:

- Abandoning a blanket policy that a “business does not accept felons” or “refuses an applicant based solely on an arrest record.”
- Implement a policy that your business conducts criminal background checks in order to make **informed decisions** about applicants suitability.
- Keep this policy: Management reserves the right to refuse any applicant who poses a health or safety threat to other residents
- Never change policies on this (or most anything) without checking with your attorney.

Welcoming People with Disabilities



Use the correct definition, for the correct situation



- Definition for Eligibility in most federal housing programs designated for people with disabilities:
- **A person with disabilities** is a person who is disabled as defined in 42 U.S.C. 423 (the Social Security definition);
 - is determined to have a physical, mental or emotional impairment that is expected to be of long-continued and indefinite duration;
 - is substantially impeded in his or her ability to live independently;
 - is of such nature that the ability to live independently could be improved by more suitable housing conditions; or
 - has a developmental disability as defined in 42 U.S.C. 6001.

Physical impairment includes:

- any physiological disorder or condition
- cosmetic disfigurement
- anatomical loss affecting specific body systems.

Mental impairment includes:

any mental or psychological disorder
mental retardation
organic brain syndrome
emotional or mental illness
specific learning difficulties

Major life activities means:

- Speaking
- Breathing
- Learning
- Working
- Attending School



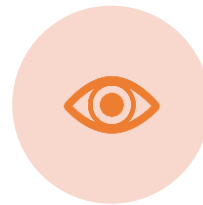
CARING FOR
ONE'S SELF



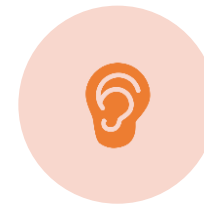
PERFORMING
MANUAL TASKS



WALKING



SEEING



HEARING

Affirmative Steps to Increase access

- Accommodations are **changes in the rules, services, practices or policies** that allow individuals with disabilities equal enjoyment of housing, but do not change the nature of the program.
- Modifications are **changes to the physical characteristics** of a residence or to the common areas of a building.

Reasonable Modification



- A change to the physical characteristics of a residence or to the common areas of a building including:
 - Installing a ramp.
 - Installing grab bars.
 - Widening doorways.
 - Installing a lift.

Reasonable Accommodation

- Changes in rules, services, practices or policy that do not change the nature of the program such as:
 - Allowing a working or therapy animal.
 - Providing a payment reminder.
 - Providing reserved accessible parking.
 - Using oral presentation or providing large print written material for the vision impaired.
 - Providing an interpreter or having closed caption available for the hearing impaired.

Requests for Assistive Animals

- An assistive animal is not to be viewed as a “pet.”
- An assistive animal is not necessarily a dog. It may be a cat, bird, pony, monkey, or a guinea pig, to name a few.
- An assistive animal may be a trained service animal, or it may be an untrained therapy or companion animal. Both types are “assistive animals” and can be a reasonable accommodation to a person with a disability.
- Review Assistance Animal Guidelines for staff at www.mvfairhousing.com.

Areas of concern - service animals

- Third party verification from a “reliable source,”
- Size, weight, and type of pets allowed do not apply to service animals unless, for example, a local ordinance bans certain exotic animals
- Fees and Deposits do not apply
- Review Awareness Training with new staff
- Animal Care and Supervision
- Removal of an Assistance Animal
- Areas Off Limits to Assistance Animals

Best Practices

- Allow an assistance animal to accompany the tenant at all times
- Do not pet or touch an assistance animal.
- Do not feed an assistance animal.
- Do not deliberately startle an assistance animal.
- Do not separate or attempt to separate a tenant/handler from her or his assistance animal.
- Avoid initiating a conversation about the assistance animal, the tenant's disabilities, or other assistance animals one has known.
 - You are not entitled to inquire about details of a person's disability.

Best Practices

- Assistance animals do not need to wear any special identifying gear such as tags, harnesses or capes.
- Assistance animal owners/handlers are not required to carry any paperwork documenting the animal as an assistance animal.
- A tenant may train his or her own assistance animal and is not required to provide any information about training or the specific tasks the animal performs.

Guidance on Third Party Verification Source for Reasonable Accommodation Requests

2004 General Guidance for RA's

1. “Doctor/Medical professional
2. Non-Medical Service Provider
3. Peer Support Group or
4. “a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.”

When does a situation warrant a 3rd party Verifier?

- “If a person's **disability is obvious**, or otherwise known to the provider, and if the **need** for the requested accommodation **is** also readily **apparent** or known, then the provider **may not request** any additional information about the requester's disability or the disability-related need for the accommodation.
- If the requester's disability is known or readily apparent to the provider, but the need for the accommodation **is not readily apparent** or known, the provider **may request** only information that is necessary to evaluate the disability-related need for the accommodation.”

Processing a Request for RA/RM

Developing a standard procedure is a best practice

Keep in mind what needs to be clear:

- You are happy to process the request for a disability-related need
- Forms that can be used to facilitate the request
- What exactly is being requested?
- Does request warrant a third-party verification?
- Who pays
- When a decision will be made if not made at time of request

Other allowable requirements particular to your process

- E.g. your firm prefers to do construction to keep costs down

DOJ/HUD Joint Statement says:



A provider has an obligation to provide **prompt responses** to reasonable accommodation requests.



An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

Making the Request for an accommodation /modification both say:



Fair Housing Act does not require that a request be made in a particular manner or at a particular time.



Request does not need to mention the Act or use the words "reasonable accommodation."



Can be made by requester or third-party requester can be made orally or in writing, (does not have to use provider's preferred forms)



"Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception,"

Questions?

Familial Status Defined

Households containing one or more people under the age of 18 who live with a parent or guardian

Pregnant women

Foster families

People in the process of adopting a child under the age of 18

Households in the process of acquiring legal custody of a child under the age of 18

The Keating Memorandum

- The Keating Memorandum states that **2 persons per bedroom** can be considered a reasonable policy, unless there are special circumstances that apply to the apartment.
- The Keating Memo then illustrates hypothetical examples of when the two person per room rule may not be reasonable.
- *The guidance says: The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or the special circumstances would make a occupancy policy unreasonable.*



Examples from Keating memo

- configuration of the unit
 - Example: In the case of a family of five wishing to rent a unit of two bedrooms plus den, a strict two person per bedroom occupancy standard could be regarded as over-restrictive if the rooms are spacious and the den is a separate room.



Examples from Keating memo

- Size of bedrooms and unit
 - Example: If a mobile home is advertised as a “two bedroom” home, but one bedroom is extremely small, it could be reasonable for the property manager to limit occupancy to two people.



Examples from Keating memo

- Age of children
 - Example: It may be an acceptable standard to allow two adult parents to rent a one-bedroom apartment with their infant child, but not if the child is a teenager.



Examples from Keating memo

- State and local laws
 - Example Local Laws: In Delaware, for example, four unrelated persons in a unit is the maximum limit. Be careful of the advice you receive from Municipalities on this —*if an old rule such as two or three unrelated persons in a unit is the maximum limit is in effect, it might violate the Fair Housing Amendments Act of 1988.*



Multifamily Housing Council and National Apartment Association have lots to say about familial status

- They issued a joint ‘white paper’ on this topic in 2016 and it can be found at
- https://www.nmhc.org/uploadedFiles/Articles/External_Resources/Fair%20Housing%20White%20Paper%202016-03%20FINAL.pdf
- This guidance has topics about situations that ended in complaints that courts found violated fair housing laws.
 - The following slides in this presentation will give notes on the 18 page guidance.

Best Practices on Occupancy policy



Rigid and blanket occupancy restrictions should be avoided, especially if the size of units varies within a housing complex.



Consider the size and configuration of a particular unit in determining the maximum number of occupants per room.



Businesses should be deliberate in drafting an occupancy policy.

For example, Units with significantly larger bedrooms than units with smaller ones should have occupancy limits that reflect such differences.

Best practices on Occupancy policy

- The other Keating Memo factors such as the age of the occupants and the physical limitations of the building (e.g., sewer capacity) should also be considered in forming occupancy policies.
- Just as the word “children” should be avoided in amenities policies, so too should that term be avoided here.
- As the Keating Memo itself states,
 - **“An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.”**

Examples of pool rules that courts have deemed unlawfully discriminatory include:

“Children under the age of 18 are not allowed in the pool or pool area at any time unless accompanied by their parents or legal guardian.”

“Under no circumstances may a child under the age of 18 be in the pool or in the pool area without a parent.”

Children must leave the pool by 6:30 pm and must be supervised by a resident relative at all times when using the pool.

Best Practices

- Rules that broadly target all children will be facially discriminatory, therefore efforts should be made to construct rules that specify their basis (safety) and narrowly target the subgroup of children to which the rule applies.
- Consult local state law on swimming age supervision. Rules that specifically require parental guardian supervision, as opposed to supervision by any competent swimmer or adult, should be avoided.
- Courts reject “adult only time” rules that limit children from swimming in the pools during certain hours.

Curfew rules that likewise broadly target all children can discriminate against familial status, e.g.

“When the building lights come on all children are to be in their apartments. This is for the protection of the children and respect of your neighbors. Knott Village Apartments is a quiet complex and we must insist the children play in a place more suitable for them.”

“[P]ersons under the age of 18 must be in their home or on their patio after sunset.”

“Persons under the age of 18 must abide by the set curfew of 10:00 P.M.”

Explanation

- Because these rules treat children differently than adults, they are facially discriminatory and are subject to the heightened “compelling business necessity through the least restrictive means” defense.
- The defendants in *Sonoma* asserted safety and crime prevention in defense of the rule confining children to their homes at night. The court deemed this defense unpersuasive because it could not evaluate the legitimacy of the “intangible goal of general crime prevention” without any specific evidence that children in this area were so heavily disposed to criminal activity that such a broad rule was warranted.

Permissible Playing Rules

- In contrast, a rule that does not discriminate against children, but still ensures orderly premises with respect to playing with toys, is the rule in *Fair Housing Congress v. Weber* that stated:
 - “Bikes, carriages, strollers, tricycles, wagons, etc. must be kept inside apartments or in garage areas and not left outside.”
- This rule was not facially discriminatory, despite specifying common children’s toys, because it also included objects used by adults.
- Further, the defendant had a compelling safety reason in that the sidewalks were narrow and objects left on them would present a danger.

Summary of Best Practices

Wording Matters: Rules that specifically single out and restrict children are facially discriminatory.

The word “children” should be avoided in all rules. One must think of children the same way as the other categories of protected groups (race, religion, gender, national origin).

Just as a rule could not lawfully prohibit all Italians from being outside after dark, or all Christians from making loud noises, so too can rules not prohibit children in these ways.

Rules must be generally applicable.

Questions?

Thank You
for attending!

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