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Fair Housing – It’s The Law!!

A Fair Housing Guide



A HUD Certified and Approved Agency:

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Within this Guide You Will Learn:

- What are Fair Housing laws?
- Who is protected under the Fair Housing Act?
- What are reasonable modifications/accommodations?
- What type of housing is covered?
- Who can file a complaint?
- “Best Practices” for housing providers



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INTRODUCTION

The Fair Housing Council of the Capital Region, Inc. is a non-profit organization created to address the problem of housing discrimination. The mission of the agency:

To provide, safe decent, affordable housing free of discrimination and to educate and empower all citizens in the area of Homeownership, Landlord/Tenant Rights, and to enhance their opportunities through effective Housing, Budget, and Credit Counseling.

To achieve its mission, the agency educates the public on fair housing laws, provides assistance to individuals who have experienced housing discrimination, and offers information and counseling on housing related issues.

- Landlord/Tenant Counseling
- Rental Counseling
- Credit, Debt, and Budget Counseling
- First-time Home Buyers Counseling
- Pre and Post Purchase Housing Counseling



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Overview of Fair Housing and Other Related Laws:

Civil Rights Act of 1866

Passed by Congress on April 9, 1866; the Civil Rights Act declared that all persons born in the United States were to be citizens, without regard to race, color, or previous condition. In addition, full property rights were granted regardless of race or previous conditions.

The Fair Housing Act Title VIII of the Civil Rights Act of 1968

To ensure that discrimination did not occur in residential housing-related transactions on the basis of race, color, religion or national origin; it also gave and clarified enforcement rights of the civil rights and local commissions. The Act ensures remedies for violations of the law.

Fair Housing Amendments Act of 1988 (FHA)

Effective March 1989, introduced new protection for persons with disabilities as well as persons with children under the age of 18 in the household (familial status).

Pennsylvania Human Relations Act (PHRA)

The Pennsylvania Legislature's implementation of the PA Human Relations Act of 1955 as amended gives additional protection to the Fair Housing Act including those over the age of 40 and ancestry.

Section 504 of the Rehabilitation Act of 1973

Section 504 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected



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to discrimination under any program or activity receiving Federal financial assistance.

American with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) was passed in 1990 to broaden laws already in effect. In general, the ADA prohibits discrimination against people with disabilities by employers and government agencies, and with respect to public transportation, telecommunications, and public accommodations.



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Fair Housing – It's The Law!! **What is Fair Housing and who is protected?**

There are both federal and state fair housing laws that protect people against housing discrimination. Both the federal Fair Housing Act and the Pennsylvania Human Relations Act prohibit discrimination based on race, color, gender, national origin, religion, familial status (having children under 18 in the home or pregnant women), physical or mental disability (including HIV/AIDS, recovering drug and alcoholics or individuals perceived as having a disability). The PHRA also protects people over the age of 40. In addition, the City of Philadelphia has added protection for source of income, sexual orientation, and marital status.

Under the Fair Housing Act, if an individual is targeted due to belonging to a protected class, it is against the law to:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable or deny that housing is available
- Set different terms, conditions, or privileges for sale or rent of housing
- Advertise in a discriminatory way
- For profit, persuade owners to sell or rent (blockbusting)
- Deny or make different terms or conditions in any real estate transaction
- Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights.



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What type of housing is covered?

Under fair housing laws all multifamily housing with four or more units are covered by the Act, including condominiums, homeowners associations, homeless shelters, time shares, nursing homes, transitional housing, and town home communities. The PHRA has a more stringent definition of covered dwelling and basically only personal residences are exempt from the Act. However, there is never an exemption for discriminatory statements.



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Fair Housing – It’s The Law!!

“Protected Classes” Covered by Fair Housing Laws

Race

Discrimination in housing against someone due to their race is illegal under the Fair Housing Act. Denial of housing, giving false information, steering or differential treatment in terms or conditions due to race is prohibited by the Fair Housing Acts.

Color

It is illegal to discriminate based upon the color of a person’s skin.

Religion

Showing a preference or discriminating against an individual or group of individuals due to their religion is illegal. Advertising, making oral or written statements, such as “Christians preferred”, or enforcing practices that show a preference or an exclusion of people of a certain religion is considered discriminatory.



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National Origin/Ancestry/Ethnicity

Included in this class are individuals whose country of origin or ethnic heritage is the basis for discriminatory conduct. In 2001, HUD released a memo reiterating that it is illegal to screen applicants and tenants based on their national origin. It reinforced that the application process and terms must be applied equally to all tenants.

Gender/Sex

Includes both men and women, examples would be not renting to a “single women”, discounting alimony or child support payments received by a divorced woman.

Age

Under the PHRA, it is illegal to discriminate based upon age, defined as age 40 or above.

Familial Status

Included in this class are households in which one or more individuals have not attained the age of 18. Also protected are individuals who are pregnant or seeking legal custody or written permission for legal guardianship of an individual under the age of 18. A landlord cannot deny housing to an individual based upon familial status.



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Examples of familial status discrimination include but are not limited to:

- Flat out refusal to rent to families with children- having a “No Children” Policy;
- Requiring families to live in specific buildings of an apartment complex, in specific sections of a building, or on the first floor of a building;
- Demanding that children of opposite sex have separate bedrooms;
- Refusing to rent based on perceived risks and dangers of the property (such as lead paint, steep steps, located near train tracks)
- Inquiring about the ages of the occupants and/or how many will be children;
- Charging extra for children;
- Imposing special curfews or rules just for children.



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- **“Opposite Sex/Separate Bedroom” Policies:**

Mandating that boys and girls have separate bedrooms violates fair housing laws. The result of opposite sex/separate bedrooms policies can be devastating for families with children forcing them into larger apartments at a greater expense or limiting the field of available apartments. Decisions about where family members sleep is a choice left to the family, not a housing provider.

- **Occupancy Limitations:**

Occupancy limits are the maximum number of persons, either related or not related, legally allowed to live in a single dwelling. The federal Fair Housing Act allows housing providers to create “any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.” 42 U.S.C. sec.3607 (b) (1). While HUD’s guidance states that an occupancy policy of two persons per bedroom is reasonable under the Fair Housing Act, it is also recommended that occupancy be based on size and number of sleeping area and the overall size of the dwelling and its configuration, i.e. presence of den or extra room, as well as state and local laws.

- **Segregation and Steering of Families**

Steering of families with children to certain floors or areas of a complex is prohibited under fair housing laws. Often apartment complexes and buildings have designated areas set aside for families. Advocates for such policies argue that the policies are



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nurturing and benefiting to the family community by having other families nearby and child-friendly facilities at hand. They argue as well that policies are based on the safety and welfare of the children. Nonetheless, segregation policies greatly affect families with children because they limit the housing that is available to families. They deny families from all the housing opportunities that are available. Such limitations have the possible effect of forcing families into substandard housing, or homelessness. Policies that restrict families' choices violate fair housing laws.

- **Surcharges and Fees**

In most cases a per-capita surcharge will have a disparate impact on families with children since the difference in the number of individuals in a household will be related to the number of children in the family. Some court decisions have allowed housing providers to add surcharges if they can justify that they are a business necessity i.e., providing data that justifies the per person cost of expenses such as utilities.



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- **Lead-Based Paint**

Lead poisoning can be lethal, particularly to children under the age of six years. However, like steep stairs or railroad tracks, a housing provider may not use lead-based paint as a tool to discourage families with children from living in the unit. Landlords must disclose known information about the presence of lead paint but may not reject an applicant due to the presence of children.

Disability

“Disability” is defined as:

- a) A physical or mental impairment which substantially limits one or more of such person’s major life activities,
- b) A record of having such an impairment, or
- c) Being regarded as having such an impairment, but does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

This protection extends to persons with physical and mental disabilities as well as HIV status or AIDS and alcoholics. Individuals who are recovering from a prior drug addiction are also protected in this class; however, this protection does not extend to individuals who are currently using illegal drugs or controlled substances.



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- **Reasonable Accommodations**

Reasonable accommodations are changes in rules, policies, and practices or a change in the way services are provided so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. However, modifying rules does not mean that the terms of the lease can be broken. Examples of accommodations include waiving a “no pets” rule for someone with a service animal, giving a monthly reminder to pay rent to someone who has a disability that affects their memory, reserving a parking space in front of the entrance for someone who has mobility impairment, or providing information in accessible formats. There are typically little or no costs associated with reasonable accommodations and any cost must be borne by the housing provider.

- **Reasonable Modifications**

Reasonable modifications are physical changes made to a dwelling or common area to make the space usable for a person with a disability. Examples of reasonable modifications would be the installation of a ramp in front of the building, adding a grab bar in the shower, or installing color coded signs for someone who has a disability that affects their cognitive ability. Responsibility for payment of modifications is determined on a case by case basis, depending on if the landlord receives federal funds and when the house was built to be first occupied.



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“Tips” on Reasonable Accommodations

- ⇒ A tenant has the responsibility for requesting a reasonable accommodation.
- ⇒ The request must disclose that the person has a covered disability, describe the accommodation, and explain why it is necessary.
- ⇒ A housing provider can ask for proof of disability and evidence that an accommodation is necessary but tenants are not required to provide medical records or specific details of their disability.
- ⇒ An accommodation can be requested at any point—in the application phase or during tenancy and there is no limit on the number of accommodations a person may request.
- ⇒ An accommodation must be “reasonable” and “necessary”.
- ⇒ An accommodation request can be denied if it is an “undue administrative or financial burden” or “fundamentally alters” the way housing is delivered.



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- **Accessibility Guidelines**

The Fair Housing Act requires that all multi-family dwellings designed and constructed for first occupancy after March 13, 1991 meet certain basic accessibility requirements. This requirement applies to all new construction, regardless of the presence of federal financial assistance. Therefore, if a tenant in such a property requests modifications to a unit that should have been made at the time of construction, the owner has an affirmative obligation to make and pay for those modifications as part of its original obligation to conform to the seven Fair Housing Act design and construction requirements:

- At least one building entrance must be on an accessible route.
- All public and common use areas must be readily accessible.
- All doors into and within all premises must be wide enough to allow passage by persons in wheelchairs.
- All premises must contain an accessible route into and through the dwelling unit.
- All light switches, electrical outlets, thermostats, and environmental controls must be placed in an accessible location.



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- Reinforcements in the bathroom walls for later installation of grab bars around toilet, tub, and shower must be provided.
- Usable kitchens and bathrooms must be provided so that a person who uses a wheelchair can maneuver about the space.

Providers of subsidized housing are also required to follow Section 504 of the Rehabilitation Act of 1973. This prohibits discrimination based upon disability in all programs or activities operated by recipients of federal financial assistance. Although Section 504 often overlaps with the disability discrimination prohibitions of the Fair Housing Act, it differs in that it also imposes broader affirmative obligations on owners to make their programs as a whole, accessible to persons with disabilities.

Furthermore, the Section 504 regulations establish affirmative accessibility requirements for newly constructed or rehabilitated housing, including providing a minimum percentage of accessible units. In order to be considered accessible, it must meet the requirements of the Uniform Federal Accessibility Standards (UFAS).

The Americans with Disabilities Act is also fundamental in understanding accessibility guidelines. Title II of the ADA prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD



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enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.

Other Areas Covered by Fair Housing Laws

Hate Crimes

Hate crimes become a fair housing issue when one suffers from intimidation, harassment, coercion, or any type of interference designed to prevent certain protected groups from living peacefully in the community or home of their choice. This includes ethnic intimidation. Examples of hate crimes could be vandalism, personal attacks, damaged property, intimidating letters, terrorist threats, and cross burning.

Sexual harassment

Sexual harassment is a violation of both the Fair Housing Act and the PHRA, and is any unwelcome sexual advance, request for sexual favor, or other verbal or physical contact of a sexual nature. Sexual harassment is illegal in a landlord tenant relationship. Sexual harassment in housing is sex/gender discrimination under the law.

Predatory Lending

Predatory lending is a fraudulent loaning process characterized by lending practices that have unfair and abusive terms and are aimed to take advantage of certain individuals, such as the elderly, minorities, people with low incomes and less education.



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Homeowners need to be careful when borrowing money based upon their home equity.

High interest rates, repeated refinancing of your loan, prepayment penalties, excessive fees on settlement sheet, balloon payments, fraudulent signatures on loan documents and monthly payments that are not based on a person's ability to repay are some possible indicators of a predatory loan.



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Advertising

What constitutes discriminatory advertising?

Discriminatory advertising are statements or advertisements that: indicate a preference; indicate a limitation; indicate discrimination; or indicate an intention to discriminate. Advertising includes television, radio, or newspaper ads, fliers, emails, websites, or any statement made, even if it is orally communicated over the phone, in person, or to another person, party.

Other types of discriminatory advertising include advertising in selective geographic areas, being selective with the use of the equal opportunity slogan or logo, selective of human models which show preference to a specific race or group of people when conducting an advertising campaign.



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Exemptions to the Fair Housing Act

The Fair Housing Act contains certain exemptions:

- 1) Religious organizations can show preference to members of the same religion when offering non-commercial dwelling operated by a religious organization, only if the membership is not restricted on account of race, color, or national origin.
- 2) The act does not prohibit a private club not open to the public from limiting the rental or occupancy of noncommercial lodgings to members. (Note that this does not address the issue of whether a private club may discriminate when admitting members based on race. That type of claim falls under the Civil Rights Act.)
- 3) Discrimination based on familial status will not apply to housing qualifying for exempt status as housing for older persons. “Housing for older persons” is housing:
 - ⇒ provided under any federal or state program that is specifically designed and operated to assist elderly persons as defined in the federal or state program;
 - ⇒ intended for and solely occupied by persons 62 years of age or older;



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- ⇒ or, houses at least one person 55 years of age or older in at least 80% of the occupied units and adheres to a policy that demonstrates an intent to house persons who are 55 and older.
- 4) The sale or rental of a single-family house by the owner will be exempt from coverage, providing that specific conditions are met.
 - 5) The FHA exempts owner occupied buildings that have no more than four units (the so-called “Mrs. Murphy’s Exemption”). However, the PHRA has a more stringent definition and only offers exemption for personal residences, defined as “a building or structure containing living quarters occupied or intended to be occupied by more than two individuals, two groups or two families living independently of each other and used by the owner or lessee thereof as a bona fide residence for himself and any members of his family forming his household.”
 - 6) The FHA allows housing providers to adhere to “reasonable” occupancy standards concerning the maximum number of people who may live in a dwelling.
 - 7) A final provision, added in 1988, exempts from Title VIII protection, people who have been convicted of manufacturing or distributing a controlled substance.



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Who Can File A Complaint?

Anyone who has standing can file a complaint. This means that any aggrieved person, any person who has been injured or will be injured. Examples of who can file a complaint include:

- Any aggrieved person who feels they have been discriminated against
- Leasing professionals who are reprimanded for refusing to discriminate
- Fair Housing advocacy groups
- Civil Rights groups
- HUD
- State or local Human Relations Commissions
- Attorney General

Who Can Be Held Liable for Fair Housing Violations?

Virtually everyone involved in the ownership or leasing of a property can potentially be held liable for a fair housing violation – from leasing consultants to the owners of the management company and the owner of the property.



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What are some remedies to a Fair Housing Complaint?

When an individual believes that he or she has been harmed by an unlawful discriminatory housing practice, three alternative legal options are available. The following is a brief overview:

Private Suit: An aggrieved individual may institute a private lawsuit in federal, state, or local court. The statute of limitations is two (2) years from the alleged discriminatory practice. The following types of relief may be awarded to an aggrieved party—monetary relief, including damages for humiliation and embarrassment, injunctive relief, and attorney’s fees.

Federal/HUD: The federal government provides that a complaint may be filed with the Office of Housing & Urban Development. HUD is authorized to investigate and conciliate complaints but can refer complaints to states or localities that have rights and remedies. Damages may include the same elements of damages as in a private suit but an ALJ may also include a civil penalty.

State/PHRC: A complaint may be filed with the Pennsylvania Human Relations Commission (PHRC) within 180 days of the alleged discriminatory action. Currently, the PHRC is a substantially equivalent agency to HUD, which means that individual cases may be referred to the Commission by HUD. If discrimination is found the Commission may order an award for actual damages, damages for humiliation and embarrassment, and assess a civil penalty.



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Equal Housing Opportunity

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons.

In addition, if a property owner receives federal funds, it must display a HUD equal housing opportunity logo and slogan.



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Recommendations for “Best Practices” on Creating a Fair Housing Environment

Housing providers are responsible for understanding the Fair Housing Act and its relevance to housing policies. To ensure compliance with fair housing laws we recommend the following “best practices”:

A) Develop Standard Procedures and Clear Policies

- ⇒ Review existing policies
- ⇒ Check your community for compliance with accessibility features required by the ADA and the FHA
- ⇒ Perform a familial status review of rules and policies and remove references to children on all forms, advertising, applications, and signage in the community
- ⇒ Establish firm policies for responding to telephone, in-person and electronic requests
- ⇒ Establish a routine of recording all visits, calls and emails from prospective residents
- ⇒ Show each applicant all apartments in which he or she has expressed an interest, provide applicants the same information about the amenities in the community



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- ⇒ Tell applicant the rent for each unit; whether or not utilities are included; what is required to apply, such as information about security deposits and incentives
- ⇒ Develop policies about background checks, credit references, giving out applications and business cards
- ⇒ Document the selection criteria used to approve applicants
- ⇒ Have leasing staff made aware of accessibility features in the community, such as location of curb cuts and accessible parking spaces
- ⇒ Do not permit insensitive or offensive jokes, pictures or slogans to be used anywhere in the property
- ⇒ Treat all residents and applicants fairly and courteously!

Your own procedures may vary from this example. This is all right, provided you uniformly apply policies and procedures in the same manner for all applicants. Therefore, it is important to establish written criteria by which you will qualify prospective tenants. These criteria should be made available to all applicants, preferably in writing. Applicants who are rejected should be notified within a reasonable period of time and should be told why they have been rejected. The Equal Credit Opportunity Act (ECOA) states that if



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you deny an applicant for a credit related transaction, they must be informed as to the reason for the denial.

B) Educate All Employees

- ⇒ Review standardized policies and procedures regularly
- ⇒ Train staff to be prepared for difficult questions
- ⇒ Provide fair housing training for all employees, including maintenance personnel
- ⇒ Have employees sign a memorandum of understanding that states your intention to terminate employment of any employee who violates fair housing laws.
- ⇒ Ensure vendors are aware of your non-discrimination policies

C) Make It Known That You Obey Fair Housing Laws

- ⇒ Hang a fair housing poster in a clearly visible location in the room where rental business occurs. Standard Fair Housing posters can be acquired by calling the HUD Distribution Center at (800) 767-7468 and requesting publication HUD-928.1.
- ⇒ Use an equal opportunity logo or statement on all brochures, applications, and pamphlets.



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- ⇒ Address complaints by tenants and establish procedures to deal with violators.
- ⇒ Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any of the protected class.



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Suggested Resources

What “Fair Housing” Means for People with Disabilities. Bazelon Center for Mental Health Law, Washington D.C. April 2011.

<https://www.bazelon.org/wp-content/uploads/2017/01/What-Fair-Housing-Means.pdf>

Assistance Animals

https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals#_Additional_Resources

Fair Housing Act Design Manual. US Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Act

<https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>

Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation under the Fair Housing Act. Washington D.C., May 17, 2004.

https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

Pennsylvania Human Relations Commission.

<https://www.phrc.pa.gov/LegalResources/Policy-and-Law/Pages/default.aspx>.

[www.fairhousingfirst](http://www.fairhousingfirst.org), website with comprehensive accessibility guidance, on-line resources and 800# hotline for technical assistance