

FAIR HOUSING COMPLIANCE:

Hot Topics

PART I



**APRIL IS
FAIR HOUSING MONTH**

SHARED OPPORTUNITY
IN EVERY COMMUNITY



Presented by:

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“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”
- Dr. Martin Luther King Jr.



AGENDA

- Overview of Fair Housing Laws
- Familial Status Discrimination
- Limited English Proficiency
- Affirmative Civil Rights Obligations for HUD Recipients under Title VI and Section 109
- Current Trends
- Recent Legal Developments and Emerging Issues, including:
 - Affirmatively Furthering Fair Housing (AFFH) Final Rule Overview
 - Equal Access Rule Overview
 - Disparate Impact Final Rule and Supreme Court Decision
 - Proposed Harassment Rule
 - Sex Stereotyping and LGBTQ Issues in Fair Housing
- Q&A
- *Please complete training evaluations!*

What do fair housing laws mean?

- Fair Housing Act: “to provide, within constitutional limitations, for fair housing throughout the United States.”
- Promotion of freedom of choice = increase in diversity.
- Fed & local agencies administer programs & activities to affirmatively further fair housing.
 - Affirmatively: positively or in a proactive way

Fair Housing Laws

- 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.
- Recipients of federal money:
 - **Title VI of the Civil Rights Act of 1964.**
 - **Section 504 of the Rehabilitation Act of 1973.**
 - **Section 109** of the Housing and Community Development Act of 1974.
 - **Title II** and Title III of the Americans with Disabilities Act.
 - Age Discrimination Act of 1975.



Fair Housing Act:

Title VIII of the Civil Rights Act of 1968 & the Fair Housing Amendments Act of 1988

42 U.S.C. § 3601, et seq.

Protects against discrimination based on:

- Race
- Color
- Religion
- Sex
- Familial Status
- National Origin
- Handicap (Disability in Colorado law)

Fair Housing Protections

Federal Law

- Race
- Color
- Religion
- Sex
- Handicap
- Familial Status
- National Origin

State or Local Laws

- Race
- Color
- Religion/*Creed
- Sex
- Disability (*physical or mental)
- Familial Status
- National Origin/Ancestry
- Marital Status
- Sexual Orientation
- Transgender Status/Gender Identity
- Source of Income

FAIR HOUSING ACT

UNLAWFUL PRACTICES:

- Refusal to Rent, Sell, or Otherwise Make Housing Available
- Discriminatory Terms and Conditions
- Discriminatory Advertising
- Steering/Segregation
- Refusal to Make Reasonable Accommodations
- Refusal to Permit Reasonable Modifications
- Failure to Design and Construct Accessible/Adaptable Housing (after March 13, 1991)
- Retaliation: Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right

FAIR HOUSING ACT EXEMPTIONS

WHO IS NOT COVERED?

- “Mrs. Murphy:”
 - Dwellings with no more than four units if the owner resides inside the dwelling (still subject to prohibitions against discriminatory advertising)
- Single family housing sold or rented without the use of a broker, realtor, or property manager
- Housing for Older Persons Act (HOPA) Housing – Exempt from most elements of coverage based on familial status – may exclude families with children (still subject to prohibitions against discriminatory advertising)
 - Must meet HOPA regulations to qualify for this exemption!
 - Generally, housing that receives federal financial assistance MAY NOT claim a HOPA exemption and must house otherwise qualified families with children, even in the case of senior/elderly housing.

Trends in Fair Housing Complaints

Most Common Fair Housing Complaints Filed in FY2015

BASES

Of 8,126 fair housing complaints filed nationally, the most common basis was **disability**, which represented 56% of filed cases, followed by **race** at 28% of filed cases, **familial status** at 12% of filed cases, and **national origin** at 11%. The most common basis of complaints filed at HUD in our region was disability at 53% with familial status in second place at 16%.

ISSUES

Nationally, the most common issue in complaints is **discriminatory terms, conditions, privileges, services, and facilities in the rental or sale of property**. More than 68% of individuals filing fair housing complaints complained about this issue. The second most common type of complaint was the failure to make a reasonable accommodation at 30%.



Familial Status

Covers:

- Families with children under 18 years of age who are living with a parent or a legal guardian or another adult with the consent of the parent
- A pregnant woman
- Someone seeking custody of children under 18 years of age

Discrimination Based on Familial Status

- 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.

Recent Familial Status Case in Our Region

STEERING

- Paired testing revealed the respondent was steering families with children in an attempt to segregate them within the “rear building” of the apartment complex.
- In so doing, the housing provider violated the Fair Housing Act by making the units in the front of the complex unavailable to families with children.
- The Department charged the case and issued a cause determination.

Recent Familial Status Case in Our Region

DIFFERENT TERMS AND CONDITIONS

- Owners and managers of a Denver-area apartment complex refused to allow children to play outside.
- The settlement agreement required the respondent to construct an accessible playground on the property. The agreement specified a monetary expenditure of up to \$15,000. The actual cost was about \$12,500.



Recent Familial Status Case Making National Headlines

DIFFERENT TERMS AND CONDITIONS

- The on-site manager at Meadowbrook Mobile Home Park in West Palm Beach, Florida imposed a set of rules that dramatically limited the ability of children living there to freely play and required families to pay fines when rules were broken.
- The conciliation agreement required the owners to establish a \$99,000 victim's compensation fund and to pay \$7,000 to each family that was a party to the complaint. In addition, the owners fired the on-site manager and agreed to develop written non-discriminatory policies and procedures, and to provide fair housing training for its agents and employees.

Limited English Proficiency (LEP)

- The U.S. Census Bureau defines Limited English Proficiency as speaking English “less than very well.”
- The entire LEP population grew by 52% between 1990 and 2000, from 14 million people to 21.3 million people.
- LEP population growth is fastest in states with the greatest immigrant population growth.

LEP and The Fair Housing Act

The Fair Housing Act makes it unlawful to discriminate because of race, color, religion, national origin, sex, disability, and familial status in the sale, rental, or advertising of housing.

- ❖ Discrimination against LEP persons can violate the Fair Housing Act when LEP results from a person's national origin.



Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

24 C.F.R. Part I

LEP and Title VI of the Civil Rights Act of 1964

- HUD LEP Guidance issued in 2007 pursuant to Executive Order 13166 and Title VI applies to recipients of federal financial assistance.
- Provides four factors to assess the needs of LEP persons:
 - The number or proportion of LEP persons served or encountered in the eligible service area
 - The frequency with which LEP individuals come into contact with program
 - The nature and importance of the program, activity, or service provided by the program
 - The resources available to the recipient

Title VI *Affirmative* Obligations

Title VI Civil Rights-Related Program Requirements (CRRPRs) for HUD Recipients

- Benefits, Services, and Methods of Administration: Analysis of Participation (24 C.F.R. § 1.4)
- Citizen Participation (24 C.F.R. § 1.4 and §§ 570.506 and 91.105)
- Limited English Proficiency (LEP) (24 C.F.R. Part 1.4(b) and Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons)
- Title VI Recordkeeping (24 C.F.R §§ 1.6(b) and 121)
- Affirmative Fair Housing Marketing
 - Form HUD-935.2A required for HUD-insured, subsidized and unsubsidized. (24 C.F.R. Part 200, Subpart M)



Section 109 of Title I of the Housing and Community Development Act of 1974

Section 109 prohibits discrimination on the bases of race, color, national origin, religion, and sex in any program or activity funded in whole or in part with federal financial assistance from Community Planning and Development programs. (24 C.F.R. Part 6)

- CDBG
- HOME
- ESG
- HOPWA
- CDBG-DR

Section 109 Affirmative Obligations

◦ **Section 109 CRRPRs for HUD Recipients**

- Benefits, Services, and Methods of Administration: Analysis of Participation (24 C.F.R. § 6.4)
- Citizen Participation (24 C.F.R. § 6.6 and §§ 570.506 and 91.105)
- Section 109 Recordkeeping (24 C.F.R §§ 6.6(a), 6.10(c), and 121)
- Affirmative Fair Housing Marketing
 - Form HUD-935.2A only required for HUD-insured, subsidized and unsubsidized. (24 C.F.R. Part 200, Subpart M)

Section 3 of the HUD Act of 1968

- The **Section 3** program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities to low- or very-low income residents in connection with projects and activities in their neighborhoods.

Current Section 3 Requirements

24 C.F.R. § 135

- Notifying Section 3 Residents and Business Concerns about Opportunities
- Notifying Potential Contractors about Section 3 and Incorporating the Section 3 Clause
- Facilitating Training and Employment of Section 3 Residents and the Award of Contracts to Section 3 Business Concerns
- Obtaining the Compliance of Contractors and Subcontractors with Section 3
- Documenting Actions Taken to Comply with Section 3 Requirements
 - Completing and submitting Section 3 reports, HUD form 60002

National Section 3 Business Registry

- A national registry of businesses that have self-certified to HUD that they meet one or more definitions of a Section 3 business.
- Businesses can sign up for the Section 3 Business Registry at:
www.hud.gov/sec3biz

Section 3 Proposed Rule

- See

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3 for information about the Section 3 proposed rule and the new Section 3 reporting system called SPEARS (FHEO Section 3 Performance Evaluation and Registry System)

WHAT IS



Sizzling Hot

The text "Sizzling Hot" is rendered in a bold, 3D, metallic gold font with a red-to-orange gradient. The letters are surrounded by a dynamic, flame-like effect of yellow and orange fire, giving the impression of heat and intensity.

IN FAIR HOUSING AND
CIVIL RIGHTS?



Disparate Impact

- Under the Fair Housing Act: Intent is NOT required to establish liability.
 - Liability can be established by a showing of disparate impact or discriminatory effect.
 - Acts, conduct, or policies that have the effect of excluding persons who are members of a protected class.
 - HUD issued final rule on discriminatory effect/disparate impact in 2013.
 - <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>
- Similar analysis under compliance and application of civil rights laws as applied to federal recipients.
- June 15, 2015: The Supreme Court upheld disparate impact under the FHA in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*. (Between this decision and the AFFH Final Rule released in July, this has been a very big year for fair housing and civil rights. Some have said that these two decisions together have the biggest civil rights implications since *Brown v. Board*.)

Affirmatively Furthering Fair Housing (AFFH)

Section 808(d) of the Fair Housing Act

Provides that all executive departments and agencies shall administer their programs and activities related to housing and urban development in a manner affirmatively to further the purposes of the Act and shall cooperate with the Secretary of HUD to further such purposes.

Section 808(e)(5) of the Fair Housing Act

Requires the Secretary of HUD to ensure that all HUD programs affirmatively further fair housing and affirmatively further the policies of the Fair Housing Act.

Affirmatively Furthering Fair Housing (AFFH), Continued

The purpose of the Fair Housing Act is to achieve “truly integrated and balanced living patterns.”

~ Senator Mondale
(114 Cong. Rec. 3422 (1968))

- Segregation was institutionalized affirmatively and must be removed affirmatively. (The energy that creates the solution must be equal to the energy that creates the problem.)
- The Fair Housing Act imposes upon HUD an obligation to do more than simply refrain from discriminating.

AFFH Final Rule: 47 Years in the Making

- Until this year, there was no formalized regulation, rule, or process to fully implement the AFFH provisions of the Fair Housing Act.
- Published in the Federal Register July 16, 2015 at 24 C.F.R. Parts 5, 91, 92, *et al.*
- Provides a framework for local governments, states, and public housing agencies to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities free from discrimination.

Introduction to the AFFH Rule

- The AFFH Rule is about fair housing planning, which includes an Assessment of Fair Housing (AFH) that provides a mechanism to identify fair housing issues and to determine what contributes to those fair housing issues.
- The AFFH Rule links fair housing goals to subsequent planning and implementation processes.
- HUD is providing program participants with guidance, data, and an assessment tool they will use to conduct and submit an AFH.



Introduction to the AFFH Rule, Continued

Addressing Key Fair Housing Issues

- Improve integrated living patterns and overcome historic patterns of segregation.
- Transform racially and ethnically concentrated areas of poverty (R/ECAPs) into areas with greater access to opportunity.
- Reduce disparities in access to opportunity experienced by protected class groups.
- Respond to disproportionate housing needs experienced by protected class groups.

AFFH Rule Highlights

Program participants must:

- Engage the community in fair housing planning and adhere to specific community participation requirements.
- Use the assessment tool provided by HUD.
- Analyze fair housing issues and contributing factors in their programs, jurisdictions, or regions.
- Set goals to address identified significant contributing factors and related fair housing issues and follow through on these goals in the Consolidated Plan and/or PHA Plan.
- Take meaningful actions that affirmatively further fair housing and not take any action that is inconsistent with the duty to affirmatively further fair housing.
- Look back and make adjustments to previously established fair housing goals to ensure the progress occurs.

Key Fair Housing Issues

- Local or regional segregation
- Racially or ethnically concentrated areas of poverty (R/ECAPs)
- Disparities in access to opportunity
- Disproportionate housing needs
- Evidence of systemic discrimination or violations of civil rights laws or regulations
- Under-representation by protected class groups in housing



Fair Housing Contributing Factor

A factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issue.

Possible Contributing Factors

- Exclusionary zoning laws
- Restrictive land use ordinances
- Economic pressures, such as increased rents or land and development costs
- A lack of investment in R/ECAPs
- Community opposition/NIMBYism
- Designations, preference systems, or Admissions and Continued Occupancy Policy (ACOP)/tenant selection policies that disproportionately impact protected class groups

What are Meaningful AFFH Actions?

“ ‘Meaningful actions’ means significant actions that are designed and can be reasonably expected to achieve material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in opportunity.”



The AFFH Final Rule: A Balanced Approach to AFFH

The AFFH Rule emphasizes the importance of a balanced approach to AFFH:

“A program participant’s strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing and removing barriers to the development of such housing. In areas of high opportunity: strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment and transportation.”

- A balanced approach means investing resources into areas that lack opportunity and investing in opportunities to move to areas of higher opportunity.
- “Gentrification” has negative connotations but does not necessarily interfere with the goals of AFFH.

Who is Subject to the AFFH Rule?

Generally...

- Recipients of CDBG, HOME, ESG, HOPWA, or other financial assistance granted through HUD's Office of Community Planning and Development.
- PHAs receiving assistance under sections 8 or 9 of the United States Housing Act of 1937.
- The duty to affirmatively further fair housing extends to all of a program participant's activities and programs related to housing and urban development.

HUD Equal Access Rule

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (24 C.F.R. 5)

- Effective March 5, 2012
- Applies to all HUD programs



HUD Equal Access Rule, Continued

DEFINITIONS:

- Sexual Orientation – Homosexuality, heterosexuality, or bisexuality.
- Gender Identity – Actual or perceived gender-related characteristics.



HUD Equal Access Rule, Continued

THREE COMPONENTS:

- 1) General equal access provision: Housing assisted by HUD or insured by FHA must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- 2) Definition of family: Must include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.
- 3) Inquiries: Prohibits inquiries about an applicant's or occupant's sexual orientation or gender identity for the purposes of determining eligibility or otherwise making housing available.





LET'S TALK ABOUT SEX!

(and gender)



Sex Stereotyping and the Fair Housing Act

- The Fair Housing Act does not explicitly prohibit discrimination based on sexual orientation or gender identity.

BUT

- A violation of the Equal Access Rule may still be covered by the Fair Housing Act.
- Since 2012, legal precedents have trended that the sex discrimination prohibitions of civil rights laws also cover sexual orientation and gender identity when sex stereotyping/failure to conform to gender stereotypes is the issue.
- Discrimination based on gender identity, gender expression, or transgender status frequently involves sex stereotyping.
- In 2015, a federal judge affirmed that sexual orientation or gender identity is jurisdictional under the Fair Housing Act when the allegations involve gender non-conformity/sex stereotyping.

Sex Discrimination and the Violence Against Women Act (VAWA)

VAWA Quick Facts:

- Originally passed in 1994
- Holds offenders to a greater level of accountability through strengthened enforcement measures AND provides services and protections to victims of domestic violence
- Despite its title, VAWA is sex-neutral and also provides coverage to male victims.

Sex Discrimination and VAWA

VAWA Quick Facts, Continued:

- Amended in 2013: Expanded coverage to tribal lands, to LGBT survivors of domestic violence, and to immigrant victims
- Now includes specific housing protections for victims of domestic violence, dating violence, sexual assault, and stalking
- VAWA covers all HUD-assisted programs and housing assisted through Low-Income Housing Tax Credits.

Sex Discrimination and VAWA

VAWA Housing Protections

- VAWA prohibits denial of admittance or assistance OR termination of assistance because someone is a victim of domestic violence, dating violence, sexual assault, or stalking.
- Housing providers must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit if the tenant expressly requests the transfer AND the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit.

Sex Discrimination and VAWA

The Fair Housing Act and VAWA

- The Fair Housing Act prohibits discrimination in housing by refusing to rent, otherwise making housing unavailable, or subjecting someone to different terms and conditions on the basis of sex.
- Women are overwhelmingly over-represented amongst those who experience domestic violence.
- Therefore, in many instances, violating VAWA by denying admittance to housing or terminating housing assistance is also sex discrimination under the Fair Housing Act.

Fair Housing Act/VAWA Case in our Region

- A boyfriend and girlfriend were co-tenants on a lease.
- The boyfriend assaulted his girlfriend, resulting in his arrest and a guilty plea to a misdemeanor.
- The female roommate informed management of her status as a victim of domestic violence and provided a protection order requesting that management remove the male tenant from the lease.
- When the female tenant qualified for the housing on her own, management initially offered her a new lease as the sole tenant.
- Management ultimately denied the female tenant the opportunity to renew her lease when the male roommate refused to release himself from the lease.
- The case settled for \$45,000 and relief in the public interest.

Proposed Harassment Rule

Quid Pro Quo and Hostile Environment Liability for Discriminatory Housing Practices under the Fair Housing Act (Proposed Harassment Rule)

Published in the Federal Register October 21, 2015 with a public comment period ending December 21, 2015

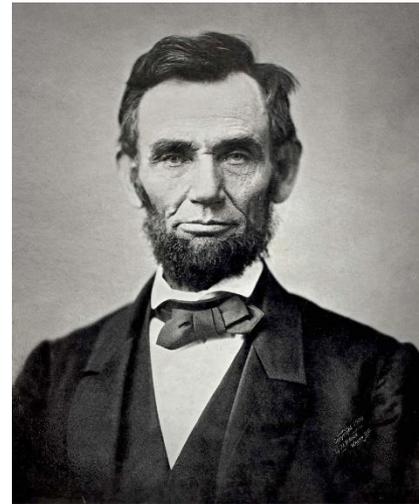
<https://www.federalregister.gov/articles/2015/10/21/2015-26587/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices>

Proposed Harassment Rule, Continued

- While no formal regulation has been in place, HUD and courts have long held that harassment in housing based on one of the seven protected classes violates the Fair Housing Act.
- The proposed rule offers uniform standards for evaluating claims of hostile environment and quid pro quo harassment in the housing context.
- Hostile Environment Harassment involves subjecting a person to unwelcome conduct that is sufficiently severe and pervasive such that it interferes with or deprives the person the right to use and enjoy the dwelling.
- Quid Pro Quo Harassment involves subjecting a person to an unwelcome request or demanding a condition related to the person's housing.
- Sexual harassment is the most common form of harassment complaints received by HUD.

ENFORCEMENT

**“Laws without enforcement
are just good advice.”**



~ Abraham Lincoln, 16th U.S. President

What Questions Do You Have?





FAIR HOUSING COMPLIANCE:

Hot Topics

PART II



**APRIL IS
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Equal Housing Opportunity for People with Disabilities:

HOTTEST TOPICS



AGENDA

- Hot Topics for People with Disabilities:
- Overview of Fair Housing Laws for People with Disabilities
- Affirmative Civil Rights Obligations for HUD Recipients under Section 504
- Overview of Physical Accessibility Requirements
- Reasonable Accommodations and Modifications
- Assistance Animals
- Q&A
- *Please complete training evaluations!*





Trends in Fair Housing Complaints

Most Common Fair Housing Complaints Filed in FY2015

BASES

Of 8,126 fair housing complaints filed nationally, the most common basis was **disability**, which represented 56% of filed cases, followed by **race** at 28% of filed cases, **familial status** at 12% of filed cases, and **national origin** at 11%. The most common basis of complaints filed at HUD in our region was disability at 53% with familial status in second place at 16%.

ISSUES

Nationally, the most common issue in complaints is **discriminatory terms, conditions, privileges, services, and facilities in the rental or sale of property**. More than 68% of individuals filing fair housing complaints complained about this issue. The second most common type of complaint was the failure to make a reasonable accommodation at 30%.

***KEY TAKEAWAY:** Trending over the past several years, the most common basis for fair housing complaint is **disability** with **failure to make a reasonable accommodation** as the most predominant issue.

Fair Housing Laws for People with Disabilities



- 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.
- 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**)



Section 504 of the Rehabilitation Act of 1973

Section 504 Prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

ACCESS, ACCESS, ACCESS!

24 C.F.R. Part 8

Section 504 Affirmative Obligations

Section 504 CRRPRs for HUD Recipients

- Benefits, Services, and Methods of Administration: Analysis of Participation (24 C.F.R. § 8.4(b))
- Citizen Participation (24 C.F.R. § 8.4 and §§ 570.506 and 91.105)
- Effective Communication (24 C.F.R. § 8.6)
- Section 504 Recordkeeping (24 C.F.R §§ 8.55(b) and 121)
- Reasonable Accommodation/Modification Policy
 - Must pay for RAs and RMs.
- Affirmative Fair Housing Marketing

Section 504 *Affirmative* Obligations, Cont.

- **Section 504 CRRPRs for HUD Recipients with 15 or More Employees**
 - Section 504 Coordinator (24 C.F.R. § 8.53(a))
 - Grievance Procedure (24 C.F.R. § 8.53(b))
 - Section 504 Non-Non-Discrimination Notice (24 C.F.R. § 8.54(b))

Section 504 Accessibility Requirements

24 C.F.R. §§ 8.22 and 8.32

New Construction Projects Built after July 10, 1988:

- Must be physically accessible in accordance with the Uniform Federal Accessibility Standards (UFAS).
- Must provide a *minimum* of 5% of the total number of dwelling units that are fully accessible for mobility impaired persons in accordance with UFAS.
- Must provide a *minimum* of 2% of the total number of dwelling units that are accessible to persons with visual or hearing impairments.

Section 504 Accessibility Requirements, Cont.

° 24 C.F.R. §§ 8.22 and 8.32

Substantial Alterations:

- If a projects undergoes substantial alterations costing 75% more of the replacement cost of the completed facility, the new construction provisions apply.

Maximum Extent Practicable Standard:

- For projects constructed prior to July 11, 1988, the housing must comply with the Section 504 accessibility requirements using UFAS as the design and construction standard to the maximum extent practicable.

Fair Housing Act Accessibility Requirements

24 C.F.R. § 100.205 Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual

Applies to all privately or federally assisted housing with four or more dwelling units constructed for first occupancy after March 13, 1991

SEVEN BASIC REQUIREMENTS (SEVEN SAFE HARBORS):

- (1) An accessible building entrance on an accessible route
- (2) Accessible and usable common and public use areas
- (3) Usable Doors
- (4) An accessible route into and through dwelling units
- (5) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- (6) Reinforced walls in bathrooms for later installation of grab bars
- (7) Usable kitchens and bathrooms

Title II of the Americans with Disabilities Act, as amended

- Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance, and housing referrals.
- KEY TAKEAWAY: The Fair Housing Act and Section 504 are the applicable regulations for housing, NOT ADA.

Definition of a Disability under the Fair Housing Act and Section 504

- The term “disability” means, with respect to an individual:
 - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment.

Reasonable Accommodations

- One type of disability discrimination prohibited is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.
 - Under 504, reasonable accommodations include reasonable modifications.

Reasonable Accommodations

- 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.

What is Reasonable?

- The requested accommodation must be 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.

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 by 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.**
- Housing provider should **always** place the request in writing and document the outcome.

Verifying Reasonable Accommodations

- May request documentation of the need – only to the extent necessary to verify the disability and if an accommodation is needed.
- **May not acquire confidential medical records or inquire into the nature or severity of a person's disability.**
- 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.
- May not require health care provider to testify in court or sign a statement under penalty of perjury.

Reasonable Accommodations

- Common Reasonable Accommodation Requests:
 - Waiving a no pets policy to allow a service or companion animal
 - **No requirement the animal must be certified or trained**
 - Waiving guest fees for live-in-aides
 - Accessible Parking
 - Removal of snow and ice for residents in a wheel chair

Reasonable Accommodations

- When can a housing provider deny a reasonable accommodation request?
 - The request was not made on or on the behalf of a person with a disability.
 - There is no disability related need for the accommodation.
 - The accommodation is not reasonable:
 - Imposes an undue financial **and** administrative burden
 - Causes a fundamental alteration to the nature of the program
 - Tenancy of the resident poses a direct threat to the health or safety of other individuals, unless that threat can be eliminated or reduced significantly by a reasonable accommodation

Reasonable Accommodations

- Disability Related Need
 - Must be a **nexus** between the requested accommodation and the disability of the requester
 - Necessity, at a minimum, means the accommodation will affirmatively enhance the individual's quality of life by ameliorating the effects of the disability.

Reasonable Accommodations

- Undue Financial ***and*** Administrative Burden
 - An action that requires significant difficulty or expense
 - Must balance the burden to the housing provider with the benefits to the resident
 - Factors to Consider:
 - Cost of the accommodation
 - Financial resources of the housing provider
 - Administrative responsibilities imposed on the housing provider because of the requested accommodation
 - Documentation and records needed to support an alleged burden

Reasonable Accommodations

- Fundamental Program Alteration
 - A change that would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change
 - Examples of Fundamental Alterations:
 - Evicting or breaking the lease of another tenant to create a vacant apartment for a person with a disability
 - Soundproofing an apartment for a tenant with schizophrenia
 - Requesting maintenance staff take out the garbage for a tenant who uses a wheelchair on a daily basis when maintenance staff is only onsite two days per week.
 - Again, documentation important.

Reasonable Accommodations

- What do you do if you believe a reasonable accommodation request is unreasonable?
 - **Start an interactive process.**
 - Discuss alternative accommodations with the requester.
- What if you cannot reach an agreement through the interactive process?
 - The accommodation has effectively been denied. The requester has the right to file a fair housing complaint and have the Department conduct an investigation.

Reasonable Accommodations

- What do we look for in cases of alleged denial of reasonable accommodations?
 - The Department analyzes the request utilizing the following elements:
 - The complainant is a person with a disability under the Law.
 - The respondent knew that the complainant has a disability.
 - The complainant specifically requested an accommodation in respondent's housing-related rules, policies, practices, or services because of a disability.
 - The requested accommodation was necessary to afford the complainant an equal opportunity to use and enjoy the subject property.
 - The respondent denied or **unreasonably delayed** the accommodation request.

Reasonable Accommodations

- Reasonable Accommodation Safe Zone
 - Implement formal policies and procedures for reviewing reasonable accommodation requests.
 - Inform residents about the availability of reasonable accommodations as a standard part of the application process.
 - If a requested accommodation is believed to be unreasonable, enter into an interactive process with the requester.
 - Ensure your policies and procedures are adaptable to accept alternative forms of requests.



KEY TAKEAWAY:

Section 504 requires federally financed housing providers to pay any costs associated with reasonable accommodations or modifications.

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- HUD Notice Issued April 25, 2013;
- Discusses Fair Housing Act, Section 504, and the ADA;
- Located at http://portal.hud.gov/hudportal/documents/huddoc?id=se_rvanimals_ntcfheo2013-01.pdf



Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504

- Assistance animals are not pets.
- Assistance animals include service animals and emotional support/therapy and comfort animals.



Assistance Animals...

- 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 Animals...

- Must be permitted for individuals with disabilities, as defined by the Fair Housing Act and Section 504 when...
- There is a relationship between a person's disability and the assistance provided by the animal.



Assistance Animal Conditions

- Pet policies must clearly state that the policy does not apply to assistance animals.

HOUSING PROVIDERS...

- Must not charge a pet deposit or fee.
- May encourage licensing in accordance with any local laws.
- Must not require verification of licensure or inoculations as a condition of approval.
- May apply reasonable health and safety concerns, including ensuring that INDIVIDUAL animals are not a threat or nuisance.
- May require owners to clean-up after animals and maintain control of animals.

Assistance Animal Conditions

HOUSING PROVIDERS MAY NOT...

- Deny access to housing or indoor and outdoor public and common use areas associated with housing.

OR

- Impose breed, weight, or size limitations.



Lawful Bases for Denial or Exclusion

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 animals 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.)

Visiting Service Animals

Housing providers must allow visiting service animals.

In Reno, NV, a housing provider was charged with repeated harassing and attempted eviction of a couple who had a friend visit with a service animal. The tenant provided the landlord with documentation showing the friend's dog was a service animal. But the landlord would not make an exception to the property's "no pet" policy. After the eviction was dismissed in court, the landlord continued to harass the tenant and posted a sign by the tenants' door.



“Service Animals” under the ADA

Americans with Disabilities Act (ADA) Application

- Title II of the ADA applies to public entities that provide housing (e.g. public housing agencies, state and local government housing, housing provided at state universities and other places of education.)
- Title II of the ADA applies to places of public accommodation, such as rental offices, shelters, some types of multifamily housing, assisted living facilities, and housing at places of education.



ADA Definition of a “Service Animal”

- DOJ’s revised ADA regulations define “service animal” narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or mental disability.
- In some cases, the ADA definition also includes miniature horses.
- The provision of emotional support, well-being, comfort, or companionship does not constitute work under this ADA definition.



ADA Inquiries

The ADA has different requirements than the Fair Housing Act/Section 504.

Entities covered by the ADA may only make two inquiries to assess requests under the ADA:

- 1) “Is this a service animal that is required because of a disability?”
- 2) “What work or tasks is the animal trained to perform?”

ADA Inquiries, Continued

- Covered entities may not ask about the “nature or extent of a person’s disability.”
- Covered entities may not require documentation or proof.
- Covered entities may not ask the two questions if it is “readily apparent that the animal is trained to do work or perform tasks for a person with a disability.” (EXAMPLE: A dog seen guiding a person with a visual impairment.)

Bases for Denial or Exclusion under the ADA

- The animal is out of control and its handler does not take effective action to control it.
- The animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination).
- The animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices, and procedures.

ADA Not Applicable in Housing

- Recent amendments to ADA regulations do not impact reasonable accommodation requests under the Fair Housing Act and Section 504.
- Under the Fair Housing Act and Section 504, individuals with disabilities may request assistance animals as reasonable accommodations, including all animals, NOT just dogs or miniature horses.



ADA Not Applicable in Housing, Continued

- Housing providers must meet broader Fair Housing Act/Section 504 standard in evaluating requests for assistance animals as reasonable accommodations.
- Under the Fair Housing Act/Section 504, assistance animals include companion/therapy/comfort animals and do not require any specialized training.



Section 504 and *Olmstead*

The *Olmstead* Decision

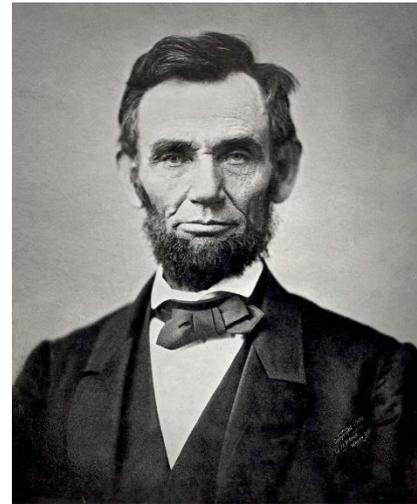
- In June 1999, the Supreme Court ruled on a case, *Olmstead v. LC*, that unjustified institutionalization of people with disabilities is a form of unlawful discrimination under Title II of the ADA.

The *Olmstead* Mandate

- States must administer their services, programs, and activities in a manner to provide the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- Both Title II and Section 504 regulations contain “integration mandates.”

ENFORCEMENT

**“Laws without enforcement
are just good advice.”**



~ Abraham Lincoln, 16th U.S. President

Case Processing and Legal Remedies under the Fair Housing Act

- Filing a complaint
- Intake interview
- Determining jurisdiction
- Substantially equivalent local or state agencies
Fair Housing Assistance Programs – FHAPs
- Complaint processing (steps and timeframes, etc.)
- Complainant responsibilities within the process
- Conciliation
- Determination
- Request for reconsideration
- Administrative law judge hearing or election to federal court
- Civil penalties and relief
- Appeals process

Fair Housing is Your Right: Use It!

[http://portal.hud.gov/hudportal/HUD?src=/
program_offices/fair_housing_equal_opp/F
HLaws/yourrights](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FLaws/yourrights)

What Questions Do You Have?

