

FAIR HOUSING: WHAT YOU NEED TO KNOW



FairHousing
SOUTH DAKOTA

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Introduction

Fair Housing South Dakota has developed this guidebook to assist you in understanding and complying with fair housing laws. We hope you will find this information helpful in your efforts to answer your questions about fair housing discrimination.

Fair Housing South Dakota provides fair housing information to residents of the State of South Dakota. This information is provided in a three-pronged approach. The first approach is a robust website that has current information and links to other fair housing resources. The second approach consists of teaching seminars and presentations to various groups in South Dakota. The third approach is that of an ombudsman. There is a toll-free number for anyone, who feels they have been discriminated, to call and visit with the ombudsman. The ombudsman will try to resolve the issue, refer it to other agencies who can help or if it is a clear fair housing violation refer the case to HUD.

To share your comments about this guidebook, please contact Fair Housing South Dakota.

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This information does not constitute legal advice. The fair housing laws are subject to change. Please consult with your attorney if you have further questions.

Portions of this booklet have been adapted from King County, Washington publication for Property Owners and Managers

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Fair Housing Basics

A Brief History

The Civil Rights Act of 1866 guaranteed property rights to all, regardless of race. It was another hundred years before any real change in fair housing came about, with the passage of the federal Fair Housing Act – Title VIII of the Civil Rights Act of 1968, which added color, national origin, religion and sex. The Fair Housing Act represented the culmination of years of congressional consideration of housing discrimination legislation. Its legislative history spanned the urban riots of 1967, the release of the Report of the National Advisory Commission on Civil Disorders (the Kerner Commission Report, which concluded that America was moving toward two societies, separate and unequal), and the assassination of Dr. Martin Luther King, Jr.

In 1988, President Reagan signed the Fair Housing Amendments Act, adding two more protected classes – families with children and people with disabilities, strengthening the administrative and judicial enforcement process for U.S. Department of Housing and Urban Development (HUD) complaints, and providing monetary penalties in cases where housing discrimination is found to have occurred.

Fair Housing Laws

What fair housing laws apply in South Dakota and who enforces them?

The federal Fair Housing Act and its 1988 amendments protect people from negative housing actions that occur because of their race, color, national origin, religion, sex, disability, or family status, which are “protected classes” under the Fair Housing Act. They are enforced by HUD’s office of Fair Housing and Equal Opportunity (FHEO).

Which laws apply to our property?

The Fair Housing Act covers most housing rental properties.

Most types of housing properties are subject to the Fair Housing Act – leased or rented apartments; houses or condominiums that are sold, leased, or rented; homeowners' associations, rooming houses; cooperatives; transitional housing; temporary shelters; mobile home parks; roommate situations (except a renter can specify a roommate’s sex); construction sites; and even empty lots. If uncertain whether your property is covered, contact any local fair housing agency. See the Glossary in Appendix B for a list of exemptions.

What housing actions are prohibited by fair housing laws?

Fair housing laws prohibit the following housing actions:

- Refusing to rent to someone or telling someone that a rental is not available even though it is, because of his or her protected class.
- Discriminating in the terms and conditions of rental because of a resident's protected class. [Examples: Sending violation notices to an Asian resident who breaks a rule, but not to a Caucasian resident who breaks the same rule. Charging additional deposits to families with children or to wheelchair users. Allowing Russian residents but not Saudis to use the community center.]
- Making, printing or publishing a notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class. [Examples: Newspaper ad states "Apartment available for single person." Manager tells a Vietnamese applicant he'd be more comfortable in another community that has people like him.]
- Failing to provide reasonable accommodations to a person with a disability, refusing to allow a disabled resident to make reasonable modifications, or failing to meet access requirements. [Examples: Refusing to let a blind resident live with a guide dog or not permitting a disabled person to install bathroom grab bars. Having an on-site leasing office that is inaccessible.]
- Enforcing a neutral rule or policy that has a disproportionately adverse effect on a protected class, unless there is a valid business reason for the rule or policy, and the housing provider can show that there is no less discriminatory means of achieving the same result. [Example: Management has a rule that applicants must have an income of at least three times the monthly rent. Because people with Section 8 vouchers are low income, virtually all voucher holders would be denied tenancy under such a rule. It is appropriate to apply a different standard – for example, to require Section 8 applicants have an income three times their portion of the rent.]
- Retaliating against a resident or applicant because he or she has asserted fair housing rights or has been a witness in a fair housing investigation. [Examples: Refusing to make prompt repairs because a resident filed a fair housing complaint. Evicting a resident because he was a witness in a civil rights investigation.] This applies for informal verbal complaints to management as well as formal discrimination cases filed with a civil rights agency.

Even though the original allegation might turn out to be unfounded, if a housing provider takes retaliatory action, a retaliation complaint can be supported. [Example: A resident complains of racial harassment. A week later, the manager issues her a parking violation notice, but does not give notices to other residents for the same offense. The resident files a harassment and retaliation complaint. The civil rights office finds no evidence of

harassment; however, the investigation shows that the manager retaliated against the resident for the harassment complaint by issuing the parking notice.]

Who can file a fair housing complaint?

Anyone who has been harmed by a housing action may file a complaint. Fair housing laws also protect anyone who is harmed because of association with guests, relatives, friends, roommates, subtenants or others in any of the protected categories. [Example: A housing provider treats a resident badly because he has Mexican guests. The resident and the guests could file fair housing complaints.]

How long do people have to file fair housing complaints?

Generally, a person must file a fair housing complaint within one year of the harmful housing action. For a housing provider it is important to keep applications, resident files and other housing related records on file for a long enough period to be able to respond to housing complaints and/or lawsuits.

Who may be held responsible for fair housing violations?

Fair housing complaints generally name all parties related to the property, including the property owner, property management company, individual property management staff, housing developers and contractors, advertising media, screening companies, housing authorities, condominium associations/boards, homeowner associations, mobile home park management, and in some cases, other residents. Each party named in a complaint has a responsibility to respond to the allegations, to produce documentation, and to make themselves available for interviews.

What is the relationship between fair housing laws and the state landlord-tenant laws?

Fair housing issues often overlap with requirements of the South Dakota's Landlord-Tenant Act SDCL 27-43-32. Landlord-tenant laws cover rental agreements and leases, deposits and other fees, landlord and tenant responsibilities, a landlord's access to the rental housing unit, repairs, moving out and return of deposits, evictions, etc.

Fair housing agencies do not investigate violations of the landlord-tenant laws; however, they investigate inconsistent application of tenancy rules based on protected class. [Example: A fair housing agency won't investigate a situation where a deposit is not returned (a landlord-tenant issue). The agency will investigate an allegation that an African American family's deposit is withheld for carpet damage, when a Caucasian resident's deposit is returned despite similar damage.]

We just received a complaint from HUD'S Office of Fair Housing and Equal Opportunity. What happens now?

Housing providers often work hard to ensure compliance with the requirements of fair housing laws. But despite your best efforts, you may be faced with a fair housing complaint and an investigation. Take the complaint seriously and consider obtaining legal advice if necessary.

Most housing complaints are filed with HUD. They will send paperwork with the original complaint information and the investigation begins. HUD expects a written response to the complaint within 30 days. This is an opportunity to present your side of the story.

The investigation may include a "request for information" – such as asking you to provide information about other residents or copies of documents from tenant files, to show that you treat all residents in a similar way. Be sure to share all relevant information, including your list of potential witnesses.

Before you respond to the complaint, gather all the documents related to the incident or policy at issue. If you have maintained written resident files, and have established and adhered to consistent operating policies, this should not be a difficult task. Identify employees or other residents who might have some knowledge of the complaint issues. Don't start interrogating folks -- just make a list of potential witnesses and what they might know.

Many housing providers decide to deal directly with HUD. If this is your option, take all the material you've put together and provide it to the investigator. Some landlords or managers prefer to have their attorney handle the preparation of an answer to the complaint. If you opt to work through an attorney, it is recommended that you use one who is familiar with fair housing laws.

While the investigation may seem intrusive, and your inclination may be to hold back, little can be accomplished by being evasive. Fair housing agencies have subpoena power, meaning they can compel you and your company to turn over records and be interviewed by the investigator.

If an investigation finds insufficient evidence to support the complaint issues, the case is closed with a "no cause" finding. The complaining party may appeal or request a reconsideration, and the respondent has an opportunity to respond to the appeal.

HUD has a standard procedure for investigating complaints. They will attempt conciliation and offer opportunities to resolve the case throughout the investigation. They use a mediation-style dispute resolution process to attempt a voluntary settlement of cases.

They gather and evaluate documentation, interview relevant witnesses, conduct on-site visits, etc. The resident and housing providers have an opportunity to respond to each other's positions, the material and relevant evidence available to the agency is reviewed, and then the agency writes a final written report.

If there is sufficient evidence to support the complaint allegations, a “reasonable cause” finding is issued, the agency assists the parties in conciliating the matter, and the parties sign a settlement agreement. If the parties do not settle, the case is usually referred to the HUD’s legal department and there is an administrative process or a hearing.

Advertising

What advertising is covered under fair housing laws?

Fair housing laws cover all types of statements, advertising or marketing used in the rental process, including a flyer or brochure, an ad in a newspaper, on the radio, in magazines, on television, or on the Internet, a little note at the neighborhood laundromat, a vacancy sign in the window, your business cards and word-of-mouth.

Fair housing laws prohibit making, printing or publishing any notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class. These laws also prohibit making any verbal statement indicating a preference or limiting housing based on someone’s protected class. [Example: A manager cannot tell a family with children that they’d prefer a rental community with a playground.]

Who is responsible for nondiscriminatory advertising?

Everyone involved in the advertising process is responsible for ensuring that no statements or notices show preference for or limitation against any protected class. The prohibition against discriminatory advertising applies to all housing transactions, including single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Ensure that everyone involved in advertising rentals is aware of the nondiscriminatory advertising requirements. Inform the on-site leasing agents, off-site property management company, and any advertising media that they should follow nondiscriminatory advertising standards.

To expand marketing options, consider advertising sources such as minority newspapers, social services agencies and organizations for people with disabilities.

What are the requirements for using fair housing logos and posters?



Using the fair housing logo is a great way to show a commitment to fair housing. Many housing providers use the Equal Housing Opportunity logo in their ads and on their written materials to

show that they do business in compliance with fair housing laws. The logo graphic (sample above) is available in various sizes online at:

<https://www.hud.gov/library/bookshelf11/hudgraphics/fheologo>.

HUD requires that owners and managers display a fair housing poster with this logo at rental offices. This applies to rentals covered by the federal Fair Housing Act, and to dwellings rented through a real estate broker/agent. (see 24 CFR 100)

Free posters with this logo are available from the HUD website. Post them in the rental office and in common areas to alert applicants and residents that fair housing is valued in your rental community.

What can our advertising say?

The language used to advertise can pose fair housing problems. Avoid using words or phrases that show a preference or discourage anyone because of protected class. [Examples: Don't use phrases such as "Christians only" or "perfect for mature professionals."]

It's a best practice for an ad to describe the property and its desirable features (size, location, price, amenities), rather than some target audience.

Can we affirmatively market to any protected class?

Fair housing laws permit marketing for certain protected classes. It's okay to advertise:

- that rentals are accessible for people with disabilities.
- that families are welcome or emphasizing amenities such as a playground.
- that applications from those who have Section 8 Housing Choice Vouchers are accepted.
- that veterans and members of the military and their families are welcome.
- that this is a HOPA property for seniors, if the property meets HOPA requirements.

Indicating that these groups are welcome in a community does not deny any other protected class the opportunity to apply for housing.

What about ads with human models or drawings?

Avoid using pictures or images that show a preference or discourage anyone because of protected class. [Example: Don't use a series of newspaper ads publicizing vacancies using only young white models.] For advertising with photographs or drawings of people, portray a variety of individuals who reflect the population as a whole – men, women, children, people with disabilities, and people of various races and ages.

Application and Screening

How do fair housing laws affect application and screening?

Housing providers have the right to determine if an applicant has the income and rental history necessary to be a good tenant. Be certain to screen applicants in a manner that complies with fair housing laws.

It is best to have clear criteria for rental of a dwelling that does not take into account an applicant's protected class. Ensure that all employees involved in the rental process are familiar with and follow each policy consistently with all applicants. The screening agency should also be aware of fair housing requirements.

Although consistency is important, some applicants may require special consideration:

- People with disabilities may need reasonable accommodations during the application and screening process.
- It's okay to refuse rental to individuals who have a history of criminal convictions.
- New immigrants to the U.S. can present challenging screening issues. You may use the following documents as acceptable forms of verification:
 - Birth Certificate
 - Baptismal Certificate
 - Military discharge papers
 - Valid passport
 - Census document showing age
 - Naturalization certificate
 - Social Security Administration Benefits printout
 - Utility bill
 - Bank or credit card statement
 - ✦ This is a list of effective alternative documents that help determine whether these applicants meet rental criteria. If they cannot provide one form of this documentation, they will not be allowed occupancy.

If several applicants want the same rental, can we choose who we think is best, based on our experience?

While experience is invaluable, be careful not to take possible discriminatory actions based on unconscious biases. Some applicants look okay, then turn out to be bad residents, and a housing provider working on assumptions may not know that until after they sign a lease. A fair screening

process that is applied equally to all applicants will get results that are more consistent (and result in fewer fair housing complaints).

If several applicants are interested in the same rental, it's best to screen them on a first-come, first-served basis, using objective criteria, and then offer the rental to the first qualified applicant. It helps to date and time-stamp applications. Pre-printed documents help to ensure that consistent information is gathered.

If we feel an applicant won't be a good resident, can we say that a rental is not available when it actually is?

It is a violation of fair housing laws to state that a rental is not available when it actually is. It is best to rely on an objective screening process, not assumptions, to determine if applicants meet your criteria. It is easier to avoid fair housing complaints when you provide applicants with clear and consistent information about all housing options, including waiting lists.

Ever heard of the "Secret Shopper" program, where someone visits rental communities to observe customer service? HUD uses a similar testing process to assess a specific complaint or to check a random market for fair housing compliance. Any applicant could be a fair housing tester!

Do we have to respond to all rental inquiries?

From a business standpoint, it makes sense to respond to all inquiries. That person asking about a rental could make a terrific resident! Here are some tips:

- Telecommunications Relay Service – People who are deaf, hard of hearing, deaf-blind or have speech disabilities may make telephone contact via the state's Relay Service. It is a reasonable accommodation to communicate with them by using this service. Anyone can make calls through this service – just dial 711.
- Linguistic Profiling – Under fair housing laws, it is not legal to consider an applicant's race, national origin or ancestry when making rental decisions. Sometimes an applicant suspects that an accent was the reason for not getting a call-back, for being told no rental was available, or for being given minimal rental information on the telephone. Although some people believe they can't tell a caller's race, research shows that most people can accurately determine race just by hearing someone's voice. These studies indicate that "linguistic profiling" occurs when people use speech characteristics or dialect to identify a speaker's race, national origin or ancestry. It would be discriminatory not to call back, to lie about rental availability, or to withhold rental information because of a caller's perceived race, national origin, ancestry or other protected class.
- Name Discrimination – This happens when a housing provider takes a negative rental action based on names alone. Many respond negatively to an email from someone with a "black" sounding name, or a person with an Middle Eastern-sounding name. Names may disclose our religious affiliation, sex, social position, ethnic background, tribal affiliation

and even age. It would violate fair housing laws to refuse rental because of perceived national origin, religion, race or other protected class based on an applicant's name.

Is it legal to request to see photo ID from applicants?

Some housing providers request identification from applicants for safety reasons or to verify identity. This is okay as long as the request is not based on an applicant's protected class. [Example: Require ID from all applicants, not just from people who are Latino.] Be aware that requiring a specific form of photo ID, such as a driver's license, may have an effect on members of certain protected classes, because some people with disabilities or new immigrants may not have driver's licenses (but they have other government-issued photo IDs).

What if someone who doesn't speak English applies for a rental?

People with an accent or limited English proficiency are protected under the national origin or ancestry protections of fair housing laws. An applicant cannot be refused rental because communication is a bit challenging. Make reasonable efforts to lead these applicants through the normal rental procedures in English.

Housing providers are not expected to translate their promotional materials, applications, or rental agreements to meet the language needs of all applicants. However, from a marketing standpoint, it makes business sense to translate some basic forms for a property that is located in a community with many foreign language speakers. [Example: Translate application form, lease and rules into Spanish.]

Can we verify that someone is legally in the U.S.?

Employers are held responsible if they hire someone who may not legally work in the U.S., but housing providers have no similar responsibilities in our state, and are not held accountable if any of their residents are in the U.S. without status.

Don't ask an applicant for proof of legal status just because he or she has an accent, speaks English poorly, or just "looks foreign" – that risks a fair housing complaint based on national origin or ancestry. Under fair housing laws, asking applicants if they are in the country legally is only acceptable if every applicant is asked for proof of legal residency. [Example: It is discriminatory for a manager to ask an Asian- looking applicant for legal status, but not to ask all other applicants.]

Some federal housing programs require citizenship to qualify and if an applicant applies for housing under that program, it is acceptable to ask for verification of citizenship.

What if an applicant is a recent immigrant with no social security number, and with little or no employment or rental history in the U.S.?

Many housing providers use screening criteria that depend on information such as a social security number, past employment and rental history. Alternative documents are available to determine if a recent immigrant is able to pay the rent and follow the rules. The following website taken from the HUD Handbook 4350.3 has a complete list of acceptable forms of verifications in many instances of property management that will assist in determining an applicant's identity, rental history, and credit history or ability to pay rent. The site is:
<https://www.hud.gov/sites/documents/43503A3HSGH.PDF>

Is it okay to offer rental "specials" to increase applications?

This is a common marketing practice. Unfortunately, sometimes a prospective renter may notice differences in specials that seem related to protected class, and that can lead to fair housing complaints. To minimize this risk:

- Put all special offers in writing and ensure that all staff are aware of them.
- Advise all applicants about every rent special.
- Document all exceptions made to regular rental rates. If two residents are charged different rates for apparently identical rentals, note why.
- If the intent is to increase the number of good residents, then consider alternatives, such as offering a rebate to those who pay promptly and incur no rule violations within their first year of rental.

Can we refuse applicants because of their criminal history?

Having a criminal record is not a protected class under fair housing laws. Housing providers can establish screening criteria that rejects applicants with certain criminal records. However, do not confuse arrests with convictions. Patterns of arrest have been viewed as discriminatory against some protected classes, so arrest records are inappropriate to use as a screening criteria.

It is discriminatory to perform criminal background checks only on certain applicants, or to distinguish between applicants with criminal records based on protected class. [Examples: A manager should not conduct criminal checks only on African American applicants. A landlord cannot accept a woman with an assault conviction and reject male applicants with similar convictions.] The key is to ensure that the process is fair, and neither directly nor indirectly discriminates based on any protected class.

In April 2016, HUD issued guidance targeted at all housing providers, including private landlords. This guidance states that blanket bans on renting to people with criminal records are in violation of the Fair Housing Act and that landlords can be sued and face penalties for discrimination. The guidance clarifies that "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."

How do fair housing laws affect income and employment requirements?

Housing providers can use income and employment requirements as long as they apply them consistently, without regard to an applicant's protected class. Here are some issues to consider:

- For Section 8 Housing Choice Voucher Program participants, Housing Authorities have already made a determination that the resident can afford their portion of the rent. The housing subsidy is a mechanism for ensuring that a low-income family can afford a rental in the private market. For those who use income screening criteria (such as "income must equal three times the rent"), calculate only the voucher holder's portion of the rent.
- Most credit decisions utilize gross income as the basis for calculating the income to housing cost ratio. "Gross up" non-taxed income such as social security. [Example: Calculate the fixed income of a person with a disability to reflect the taxable income a nondisabled person would have to earn to net the same amount.]
- Requiring that a person's income be garnishable may violate fair housing laws, especially for people on social security disability income (SSDI). As a disability accommodation, waive a garnishable income requirement for SSDI.
- As a reasonable accommodation, an applicant with a disability may ask to use a co-signer, guarantor or third-party payee.
- Consider aggregating the income of all adult household members to calculate the ratio. To calculate income, include verifiable employment, public assistance, social security, retirement/pension, asset/interest income, child support, adoption assistance, foster child support, food stamps, veteran's benefits, student employment, and other types of cash income.
- Income stability may be as relevant as employment history. Keep in mind that a requirement that applicants have employment could have a discriminatory effect on certain protected classes, such as people with disabilities or families with children.

Policies and Rules

What do we need to know about creating policies and enforcing tenancy rules, from a fair housing perspective?

Fair housing laws require that policies and rules do not single out residents based on their protected class. Rules should not be enforced differently because of a resident's protected class. To minimize the risk of violating fair housing laws, review each policy for protected class language and for unintended discriminatory bias.

Good business practices often are good fair housing practices too. Put rules and policies in writing to ensure that all residents are aware of them. Apply the rules and policies equally, regardless of a resident's protected class. Treat residents similarly when they don't follow rules. Finally, keep thorough written records of all actions taken when enforcing resident rules and regulations.

Fair housing laws do not prevent a housing provider from warning residents who break the rules, disturb others, create a nuisance, or fail to pay rent. Fair housing laws simply require that a resident's protected class doesn't enter into the equation.

What policies or rules will help us comply with fair housing laws?

Most rental housing communities have general tenancy rules that outline expected actions and behaviors, such as making timely payments, observing quiet hours, parking in assigned spaces, etc. Review these rules or policies to make certain they do not target any protected class group. [Example: Don't state "children cannot ride bikes in the parking lot" – instead, say "bicycle riding is not allowed in the parking lot."]

Many housing communities have adopted antiharassment and antidiscrimination policies. Be certain any such policy includes mention of all the protected classes of individuals for the area where the rental housing is located. See Appendix B for a complete list of protected classes in each jurisdiction.

One of our residents is a good friend, so we let her pay her rent late. Will that get us into trouble?

Giving a friend more favorable treatment might leave management vulnerable to accusations of discrimination. Playing favorites may cause other residents to feel that the different treatment is based on their protected class. [Example: A resident gets a \$20 rent increase, but other residents get no increase that month. The resident suspects her increase is because she has children. The real reason is that management is increasing rent for all residents at the end of their lease terms but haven't communicated this to the residents.]

Can we establish rules that prohibit smoking, cooking of certain foods, or making other unpleasant smells?

Being a smoker is not a protected class under fair housing laws, so housing owners and managers can set and enforce any rules they like about smoking (including having no-smoking buildings or no-smoking areas).

In many rental communities, the aromas of the residents cooking can escape into the common areas. An occasional food odor, such as fish, garlic or curry, is inevitable and should be tolerated by other residents. A housing provider should not deny residents the full use and enjoyment of their apartment by asking them to stop cooking their choice of foods.

Housing providers have a right to establish reasonable rules and regulations for the comfort and peaceful enjoyment of all residents. If any resident creates strong objectionable smells that pervade common areas such as hallways, the cause of the smells doesn't matter. If a situation involves offensive smells that go beyond normal odors, a housing provider can request that the household stop creating the odor.

What fair housing issues should we be aware of in processing maintenance requests?

Maintenance employees are very visible and frequently interact with residents. When they treat residents fairly and professionally, it goes a long way toward preventing fair housing complaints. Housing providers are responsible for the actions of all employees, so it is very important to train maintenance staff on fair housing issues.

A common complaint that HUD receives is that members of one protected class get their maintenance requests handled more quickly than do members of another protected class. To avoid this type of allegation, consider establishing a clear maintenance response policy and document requests for repairs. Keep thorough documentation of work requests and maintenance actions taken, for one year or longer. It is best to stay in communication with residents about their repair requests, especially if there are delays.

What sorts of evictions could violate fair housing laws?

The eviction process is a costly part of doing business, so be sure not to make it more costly by evicting for discriminatory reasons. When a resident breaks rules that call for an eviction, know how to evict lawfully, and follow eviction laws consistently and fairly. An eviction will comply with fair housing laws if the resident's protected class is not a factor in the decision to evict.

Here are examples of situations that could violate fair housing laws:

- a female resident is given approval for her partner to move in, and then is evicted when management learns that her partner is of a different race than the resident.
- a couple in a large one-bedroom apartment is told to vacate after having a child.
- a resident who associates with trans people is treated negatively by management.

How can we evict residents without violating fair housing laws?

A housing provider can evict a resident for valid, nondiscriminatory reasons such as breaking the rules after being warned, repeatedly being late with rent, failing to pay rent, damaging the rental property or breaking public laws on the property. The resident's protected class should not be considered in any decision to evict. Remember to be consistent and keep thorough written records.

When can we make an exception to the rules?

Whenever an exception is needed and appropriate. [Example: A late fee is charged for residents who pay rent late during their first year of residency, but no fee is charged for a long-term resident who previously made timely payments and pays late once.] Analyze situations on a case-by-case basis when making exceptions to a rule. Never make policy exceptions based on someone's protected class. Document the reasons for the exceptions thoroughly.

Remember, an applicant or resident who is a person with a disability may need a reasonable accommodation in order to use and enjoy rental housing. A housing provider is required to make needed accommodations, even if they may constitute an exception to the usual rules.

What records should we keep documenting our management actions?

It's best to keep all written records concerning resident payments, complaints from other residents, warnings issued, both verbal and written and documentation leading to an eviction.

People can file fair housing complaints up to a year after the alleged discriminatory action (and longer to file a lawsuit). Keeping thorough records will help in responding to discrimination allegations. Also, keep all applications, resident files and prior policies on file for a reasonable length of time to be able to respond to any fair housing complaint or lawsuit.

Harassment

What constitutes harassment under fair housing laws?

Fair housing laws prohibit housing providers from harassing residents because of their protected class. Housing providers are responsible for the behavior of their employees and vendors. Harassment includes various negative actions that are taken because of someone's protected class – sexual harassment, selective enforcement of rules, derogatory statements, ignored maintenance requests, etc.

A housing provider can be found liable if the harassing treatment rises to the level of "severe or pervasive" conduct that creates a hostile living environment. One or two incidents will rarely constitute harassment. However, in situations where behavior was egregious, courts have determined that the "severe or pervasive" standard was met when there was a single incident.

The best prevention strategy is to write and periodically distribute a non-harassment policy to all residents, employees and contractors, and to train employees on how to prevent and remedy all forms of harassment. If a resident reports harassment, respond quickly and effectively, and follow up to ensure that the problem does not recur. Finally, remember to document everything.

What types of conduct are considered to be sexual harassment?

Sexually harassing conduct can be:

- verbal (derogatory remarks, slurs, jokes, intimidation, and even threats of violence).
- physical (body gestures, whistling, ogling, unwelcome touching or physical violence).
- visual (inappropriate sexually-oriented written materials or pictures).

Sexual harassment also occurs when a resident's housing is conditioned on agreeing to sexual favors. [Example: An owner demands a date in exchange for a rent reduction. A manager knows of, but ignores a derogatory religious comic posted on a bulletin board.] The treatment is considered harassment if it rises to the level of "severe or pervasive" conduct.

A resident said our maintenance worker told her she'd get a quicker repair if she'd join him on a date. What should we do?

This is an example of "quid pro quo" harassment. Owners and property management companies are responsible for the behavior of their employees and vendors who work on-site. If a resident complains of sexual harassment, take prompt action to remedy the situation and prevent harassment in the future. Follow up with the resident and document everything. This type of situation can be handled more effectively if there is a written harassment policy. The policy should clearly outline who to contact if harassment occurs.

A resident complained that her neighbor harassed her. What should we do?

The word "harassment" means different things to different people. When someone reports harassment, gather specific information about what words and behaviors were involved. If the behavior appears based on the resident's protected class, take affirmative steps to remedy the harassment.

How should we deal with a harassment complaint?

If a resident reports threats of violence or actual physical violence, call 911 or urge the resident to do so. For non-emergency situations, tell the complaining resident that complaints are taken seriously and an investigation will be conducted.

Start an investigation right away – Interview the complaining resident and any witnesses who might have observed the incident. Interview the alleged harasser. Let the person know that harassment based on protected class will not be tolerated. Document the complaint and the investigation results in both tenants' files.

If harassment cannot be verified – Remind everyone involved that management has made a serious commitment to a housing environment free of harassment. Promptly inform the complaining resident of the investigation results and the actions taken. Remind everyone that retaliation against the complaining resident or witnesses will not be tolerated. Monitor for

retaliation. For ongoing resident conflict that appears not to be associated with protected class, refer residents to other mediation services, or consider hiring an outside consultant/mediator.

If the investigation verifies the alleged harassment – Proceed with progressive disciplinary action against the harasser, up to and including eviction if necessary for ongoing or serious violations. Promptly inform the complaining resident of the investigation results and the actions taken. Remind everyone that retaliation against the complaining resident or witnesses will not be tolerated. Monitor for retaliation.

We don't get involved in private resident disputes. A resident claims a neighbor called him a negative racial name. Should we do anything?

When a housing provider is aware that a resident may be experiencing harassment because of his protected class, the provider has a legal responsibility to investigate, to take action to stop any harassing behavior, and to ensure that it does not recur. If a housing provider fails to take effective action, a fair housing complaint can be filed.

We issued a vacate notice to a household that had a domestic violence incident. Is this okay under fair housing laws?

Fair housing cases have been filed when management took action against the entire household after a woman was a victim of domestic violence. [Example: A husband is arrested after beating his wife, who then obtains a protection order. Management sends the household an eviction notice under its “zero tolerance for violence policy.” Although the policy is applied equally to all households where violence occurs, it has a disproportionate adverse impact on women, who are the victims of domestic violence much of the time.] In a situation where a female is the domestic violence victim but is capable of maintaining her tenancy, such a policy should not be used to evict her.

Can we refuse to rent to someone who has been involved in a domestic violence incident?

Fair housing laws do not protect individuals who have a criminal record or rental history of being a perpetrator of domestic violence, so it is not discriminatory to refuse them rental. When a woman's screening report shows a domestic violence incident, ask her to provide information confirming that she was the victim. If she was and she otherwise qualifies for rental, process her application just like for other applicants. Do not generalize that she will bring trouble to the rental – look at her circumstances individually.

What is retaliation under fair housing laws?

Retaliation is an act of harm by a housing provider against an applicant or resident because he or she has asserted fair housing rights or has been a witness in a fair housing situation. The fair housing complaint can be formal (a civil rights complaint) or informal (a verbal complaint to

management). [Examples: After a resident complains of harassment, the manager won't make repairs for her. Or a resident is a witness in an investigation, and then the manager tells her he's watching her more closely for rule violations.]

A retaliation complaint can be supported even when the underlying complaint is not proven. [Example: After a resident gets a notice for noise, she files a harassment complaint with a civil rights agency. The manager gets upset about the complaint, so he issues a notice to vacate to the resident, who then files a retaliation complaint. An investigation shows that there was no harassment. However, the resident wins the retaliation case, because the manager gave her the vacate notice only because she filed the harassment complaint.]

After receiving a fair housing complaint, a housing provider can still take appropriate actions when that resident violates the rules. Be consistent – issue rule violation notices throughout a person's tenancy and for all residents similarly, so that management actions can be supported. Inconsistency can look like possible discrimination.

Disability Law

What disability laws apply to housing?

Fair Housing Act, state and local fair housing laws

- Prohibit discrimination against people with disabilities and against those who associate with them.
- Require provision of "reasonable accommodations" as necessary to afford such person(s) equal opportunity to use and enjoy a dwelling.
- Require housing providers to allow residents with disabilities to make "reasonable modifications" to rentals and common areas.
- Require accessibility design and construction for covered multifamily housing.

Section 504 of the Rehabilitation Act of 1973

- Prohibits discrimination based on disability in any housing, program or activity receiving federal financial assistance.

Americans with Disabilities Act (ADA)

- Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities (state and local public housing, housing authorities, housing assistance and housing referrals).
- Title III covers housing community areas that are open to the public (such as a rental office) or available for use by the public (such as a clubhouse rented to non-residents).

Who is considered a person with a disability?

Various fair housing laws use the terms “handicap” and “disability” interchangeably. Disability is the preferred term when referring to this group.

Federal law defines a person with a disability as:

- a person who has a physical or mental impairment that substantially limits one or more major life activities (“major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking).
- someone who is regarded as having such an impairment.
- individuals with a record of such an impairment.

Who does not have a disability?

Under fair housing laws, the definition does not include:

- sex offenders
- current illegal drug users (however, fair housing laws do protect people who are recovering from substance abuse)
- those with convictions for the illegal manufacture or distribution of a controlled substance

What questions can we ask applicants about disabilities, and what questions should we avoid?

It is usually unlawful to ask if an applicant or resident has a disability, or to ask about the nature or severity of the person’s disabilities. When the housing property is a recipient of federal subsidies such as low-income housing tax credits, HOME funds, Housing Trust Funds and the like or is designed to provide housing for people with a certain type of disability, the following inquiries may be made of all applicants:

- Can you meet the requirements of tenancy?
- Do you qualify for a dwelling legally available only to persons with a disability or to persons with a particular type of disability?
- Do you qualify for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability?

Do not ask questions such as:

- How did you become disabled?
- Do you take medication?
- Why are you getting SSI?
- What does that service animal do?

- Can I see your medical records?
- Have you ever been hospitalized for mental illness?
- Have you ever been in drug or alcohol rehab?
- Are you capable of living independently?

What if an applicant or resident voluntarily shares information about a disabling condition?

Whether in casual conversation, or in the process of requesting a reasonable accommodation, sometimes a person will reveal information about a disability, medical treatment, or details about what tasks a service animal does. Management must keep this information confidential and should not share it except –

- with management employees who need information to assess or make a decision to grant or deny a reasonable accommodation request, or
- disclosure required by law (for example, a court-issued subpoena).

It is not appropriate to discuss a resident’s disability with another resident. [Example: A resident in a “no pets” community who wants a dog asks why another resident has one. The manager, who knows the dog is a service animal, should not disclose that the resident with the animal is disabled. Instead, the manager can say “Federal and local fair housing laws require our community to make exceptions to the ‘no pets’ rule under certain circumstances. If you believe you may qualify for an exception, management would be pleased to schedule a confidential meeting to discuss this matter.”]

Reasonable Accommodations & Modifications

What are accommodations and modifications?

Fair housing laws require similar treatment for all applicants and residents. However, these laws also require reasonable accommodations and reasonable modifications for people with disabilities.

A **reasonable accommodation** is a change made to a policy, program or service that allows a person with a disability to use and enjoy a dwelling, including public and common use areas. Examples include:

- providing rental forms in large print.
- providing a reserved accessible parking space near a resident's rental.
- allowing a resident to have a service animal in a "no pets" building
- permitting a resident who has developed mobility limitations to move to the ground floor.

A **reasonable modification** is a physical change made to a resident's living space or to the common areas of a community, which is necessary to enable a resident with a disability to have full enjoyment of the housing. Examples include:

- adding bathroom grab bars.
- lowering closet rods.
- installation of a ramp.

When do we know that an accommodation or modification is needed?

The duty to accommodate arises when the housing provider has knowledge that a disability exists and that an accommodation or modification may be required for the disabled person to use and enjoy the housing. Here are key points:

- The applicant or resident must make a request for an accommodation or modification.
- The request does not need to mention fair housing or use the words "reasonable accommodation" or "reasonable modification."
- The request should describe the accommodation or modification and explain the disability-related need for the requested action. [Example: A resident who becomes disabled may request a transfer to a ground floor apartment because climbing the stairs has become difficult.]
- The request does not need to be in writing. Although management may use a specific form, an accommodation or modification cannot be refused just because the person requesting it did not use the form. It is important for management to document these requests.
- Reasonable accommodations or modifications can be requested whenever they are needed. A person may make requests when applying for housing, when entering into a rental agreement, during tenancy, and even during an eviction process.
- An individual with a disability may make multiple requests for accommodations, as the need arises.

Evaluate each request on a case-by-case basis, in a timely and professional manner, and document interactions with the resident. A housing provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a request may be viewed as a failure to provide a reasonable accommodation. If in doubt about whether accommodation policies and rules comply with fair housing laws, ask a fair housing agency to review them and suggest rephrasing if necessary.

Are we required to have a formal procedure for processing accommodation or modification requests?

No. Fair housing laws do not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid people with

disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request. Also, in the event of later disputes, documentation of actions taken will provide records to show that the requests received proper consideration.

Can we require documentation of a disability or the need for a requested accommodation or modification?

Whether to request documentation and what documentation to request depends on how obvious the person's disability is, and whether there is a connection between the disability and the requested accommodation or modification.

- If the person's disability is obvious or otherwise known, and the need for the accommodation is clear, do not request information about the person's disability or the need for the accommodation. [Example: An obviously blind applicant asks for rental documents in large print – no verification of the disability or the need is necessary.]
- If the disability is known, but the need for the accommodation is not readily apparent or known, request only information necessary to evaluate the disability-related need for the accommodation. [Example: Management knows a resident has seizures. The resident wants to get an assistance dog – request that he document the disability-related need for the dog.]
- If neither the disability nor the need is clear, ask for proof of both. [Example: Someone with no obvious disability asks for an accessible parking space – request that he document both that he has a disability and his disability-related need for the parking.]

Who can provide disability verification?

HUD and the U.S. Department of Justice have stated that the documentation that can be requested is a letter of verification from a doctor or other medical professional, or other qualified third party who, in their professional capacity, has knowledge about the person's disability and the need for reasonable accommodation. The provider must have a "therapeutic relationship" with the person requesting the accommodation.

As for assistance animals, internet documentation that the requested animal is listed on a registry of assistance animals is bogus. There is no recognized national registry of assistance animals. These internet verifications are a fraud and you do not have to accept it as verification. You can ask for additional verification.

Do not ask for specific information about the disability or for medical records!

Interactive Process – The accommodation/modification process should be an interactive discussion between the housing provider and the applicant or resident. In most cases, the person with a disability knows best what accommodation or modification will meet his or her needs. If

the person's proposal is not feasible, the housing provider can suggest alternative accommodations that may meet the resident's needs.

How do we know if an accommodation or modification request is "reasonable"? When can we refuse a request?

An accommodation or modification is reasonable if:

- it is related to the resident's disability needs.
- is not an undue administrative and financial burden for the housing provider.
- does not fundamentally alter the nature of the provider's operations.

Undue Burden – The request must not impose an undue financial and administrative burden on the housing provider. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs. [Example: An applicant who uses a walker prefers a third-story rental in a older walk-up building – the housing provider does not have to install an elevator if such a modification is cost-prohibitive.]

Fundamental Alteration – The requested accommodation or modification must not require the housing provider to make a fundamental alteration in the essential nature of the provider's operations. [Example: A resident with a disability cannot do his own housekeeping and the housing provider does not supply housekeeping for residents. A request for such services is not reasonable.]

Refusing a request – When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether an alternative accommodation would effectively address the person's disability-related needs. If an alternative accommodation would effectively meet the person's needs and is reasonable, the provider must grant it.

A housing provider's undue delay in providing a feasible accommodation can be construed as a decision not to grant the requested accommodation. Someone who was denied an accommodation may file a fair housing complaint to challenge that decision.

Direct Threat – Fair housing laws do not provide protection for a person with a disability whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others, unless the threat can be eliminated or significantly reduced by reasonable accommodation.

To establish direct threat, a housing provider needs recent, objective evidence of behavior that puts others at risk of harm. Even someone who is considered a direct threat or who has caused substantial property damage may request a reasonable accommodation during the eviction

process by presenting information that he or she has taken steps to prevent future harm. The housing provider has a duty to consider the reasonable accommodation before acting.

Do we have to provide accessible parking spaces?

Resident parking – When parking is provided for residents, it is a reasonable accommodation to provide reserved accessible spaces for disabled residents who request them.

- Use the standard accommodations process for accessible parking requests. If a resident has a state disabled parking permit, this is generally sufficient proof of the need for a reserved accessible parking space.
- Many people who need a reserved parking space don't need an extra-wide space with an access aisle – they often need only a regular-size parking space nearest to their front door or on the most accessible route to the front door. Discuss specific parking needs with the resident.
- Even if individual parking spaces are not normally assigned, provide a reserved parking space to a resident with a disability as necessary.
- Post a sign at the head of the parking space saying the spot is reserved, to warn other people not to park there.
- Strictly enforce a resident's reserved accessible parking space and be prompt in responding to complaints when others park there. Alert vendors that these spaces are off limits.

Guest parking – If parking is provided near the rental office or for guests, some of those spaces must be accessible.

- Locate at least one accessible guest parking space near an on-site rental office, with an accessible route from the parking to the office.
- Guest parking is subject to ADA Title III rules, which require that at least 2% of all guest spaces in each lot meet access requirements and be designated with appropriate signage. These spaces must be at least 96" wide and must have an adjacent access aisle at least 60" wide. An access aisle can be shared between two accessible parking spaces. At least one of these spaces must be van accessible, with a 96" access aisle.
- Strictly enforce accessible guest parking spaces and be prompt in responding to complaints when others park there. Let vendors know these spaces are off limits.

Cooperative housing and condominiums – Sometimes a governing board or owners group has only limited control over parking spaces. Within their ability, boards should assist the person seeking a parking accommodation. If another resident owns the desired space, the two owners can negotiate a swap.

Service/Assistance Animals

What do we need to know about service / assistive animals?

When an applicant or resident who has a disability requests to live with a service animal, follow the usual accommodation process. It is a reasonable accommodation to allow residents to live with service animals that meet their disability-related needs.

Neither the Fair Housing Act, Section 504, nor HUD's implementing regulations contain a specific definition of the term "service animal." However, species other than dogs, with or without training, and animals that provide psychiatric or emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the Fair Housing Act and Section 504. Thus, "emotional support," "therapeutic companion," or "assistance animals" that provide necessary support for the benefit of an individual with a disability are considered to be assistance animals.

- While the most common animals are dogs, they may be other species, such as cats, birds, reptiles, or other animals. [Note: Wild animals are not considered to be service animals.]
- Service animals may be any breed, size or weight. Do not apply pet size or weight limitations to service animals.
- Service animals are not pets. A person with a disability uses a service /assistance animal as an auxiliary aid – similar to the use of a cane, crutches or wheelchair. Fair housing laws require that service/assistance animals be permitted despite "no pet" rules.
- Owners of service/assistance animals should not be charged pet deposits or fees. General cleaning or damage deposits can be charged, if all residents are similarly charged. A resident with a service/assistance animal is liable for any damage the animal causes.
- Service animals need no special license or visible identification. Some owners of service animals choose to put special collars or harnesses on their animals. If city or county laws require pet licenses for dogs and cats, rental management can require service dogs or cats to be licensed. In some cases, such licenses are free or discounted for service animals. [Note: If management does not require licenses for pet dogs and cats, then licenses cannot be required for dogs or cats that are service animals.]
- Service animals need no "certification." There are no state or national standards for certifying assistance animals, and no government agencies provide certification.
- A person may train his or her own service/assistance animal.
- Because service animals provide different types of assistance, in some cases a person with a disability may require more than one service animal.
- The service animal's owner is responsible for the animal's care, conduct, should observe leash laws, properly dispose of animal waste, and ensure the animal behaves around others and does not break tenancy rules (such as noise rules).
- Breaking tenancy rules would be cause for eviction.

What about other residents or staff who are afraid of or allergic to animals?

If a staff member or another resident has a fear of or a minor allergy to dogs or other animals, this is not a disability, and they have no right to an accommodation.

In rare situations, a person's allergy is so severe that contact with an animal may cause respiratory distress or other serious medical problems. That person may request an accommodation, which must be provided, if reasonable. [Example: It may be necessary to move the allergic person or the animal owner elsewhere.]

What else should we know about reasonable modifications?

Where it is reasonable, permission for a modification may be conditioned on the following:

- The resident provides a reasonable description of the proposed modification(s), reasonable assurances that the construction will be done in a workmanlike manner and agrees to obtain any required building permits.
- The resident agrees to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted. Restoration is not needed when the modification would not interfere with the next resident's use and enjoyment of the premises. [Example: A narrow door is widened, and a closet clothes rod is lowered. Upon move-out, the rod should be replaced to its original height, but the widened door can remain.]

Do not charge an increased security deposit for residents who wish to make modifications. If it is necessary to ensure that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate that the resident pay into an interest-bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of the restorations. The interest in the account accrues to the benefit of the resident.

Who pays for disability accommodations and modifications?

The housing provider is responsible for ensuring general access to the facility and meeting minimum accessibility standards. Under fair housing laws, a housing provider is required to bear accommodation costs that do not amount to an undue financial and administrative burden. Most reasonable accommodations are no or low cost; however, a housing provider may need to spend money to provide legally required accommodations. Housing providers may not require people with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation or modification.

Generally, the resident will bear the expenses of making reasonable structural modifications to a property. However, if the property receives any federal funds, the housing provider usually pays, unless there is financial and administrative hardship. When the tenant moves out the property must be restored to its original condition as it was at time of move in.

Accessibility Requirements

What building codes comply with HUD access guidelines?

HUD recognizes ten “safe harbors” for compliance with the Fair Housing Act's design and construction requirements. See www.fairhousingfirst.org. For more information about these safe harbors as well as HUD's policy for their use.

What are the accessibility standards for rental housing?

Housing built before 1976 – Title III of the ADA applies to public areas at the community (parking lots, rental offices, community rooms rented to the public, and routes of travel from public transportation to those areas). Under this law, housing providers should remove barriers that impede the access or use of these areas for disabled people where such removal is “readily achievable” – easily accomplishable and able to be carried out without much difficulty or expense. Whether an action is readily achievable is determined on a case-by-case basis, considering the nature and cost of the action needed, and the overall financial resources of the housing provider. If additions or alterations to the community are planned, refer to state and federal codes for new construction.

Housing with four or more units, constructed for first occupancy on or after March 13, 1991 – Rentals must meet the accessibility requirements of the Fair Housing Act:

These buildings must have:

- an accessible entrance on an accessible route.
- accessible public and common use areas, including parking areas, curb ramps, passenger loading areas, building lobbies, lounges, halls and corridors, elevators, public restrooms, rental or sales offices, drinking fountains or water coolers, mailboxes, laundry rooms, community and exercise rooms, swimming pools, playgrounds, recreation facilities, nature trails, etc..
- usable doors.
- accessible routes into and through the dwelling unit.
- accessible light switches, electrical outlets, and environmental controls.
- reinforced walls in the bathroom to allow later installation of grab bars and
- usable kitchens and bathrooms.

Families with Children

Families with children include:

- households that have one or more children under the age of 18.
- a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child.
- a pregnant woman or someone in the process of acquiring legal custody of a child.

Families with children are a protected class under fair housing laws, which refer to this group as “familial status” or “parental status.” Fair housing laws make it illegal to refuse to rent or sell to a family because they have children. These laws also make it illegal to subject families with children to different terms and conditions of tenancy, harsher rules, or restrictions on the use of common areas.

Can we say “Families Welcome” in our advertising and on our community signage? Should we avoid certain words or phrases?

It is okay to market to families with children. Indicating that families are welcome in a community does not deny any other protected class the opportunity to apply for housing.

In print advertising, do not use words or phrases such as “adult community” or “perfect for mature professionals,” which reflect a preference for residents without children. When discussing a rental with an applicant family, do not point out that there is no on-site play area or that the community is on a busy street, unless this information is given to all applicants.

Communities that qualify under the “Housing for Older Persons Act” (HOPA) are exempt from the requirement to rent to families with children. If they choose to do so, they can advertise that children under 18 are not allowed as residents.

Can we discourage a family with kids from renting if our second floor apartments have unsafe balconies and no window screens?

No. Safety concerns are not a valid reason to deny housing to families with children. If an unsafe condition exists on the property, consider making it safe for all residents to avoid general liability for injuries. If that is not feasible, point out safety concerns to every applicant, not just families with children.

Also, HUD guidance states that it violates the Fair Housing Act for a housing provider to deny a family the opportunity to live in a dwelling that has not undergone lead hazard control.

We've had problems with teenagers causing property damage. Can we refuse to rent to families with teens or charge them a higher damage deposit?

No. Familial status protections apply to all children under the age of 18. Don't single out a certain age group of children, such as teens. Under some local fair housing laws, this would be age discrimination as well. Making a generalization based on the actions of some residents (in this case teenagers) and creating a blanket rule based on that generalization will likely violate fair housing laws.

Is it okay to refer families with kids to a building near the playground and to have another quiet building for residents without children?

No. This type of segregation is called "steering" and it is illegal. If a housing provider were to designate certain buildings as "non-family" housing, a family might be denied a place to live until a rental became available in the "family" building. All applicants should be shown any available rentals at the community. Let them decide where they would like to live.

If a resident asks that a nearby apartment not be rented to a household with children because they might be too noisy, explain that rental decisions are not made based on protected class, such as familial status. Remember, families with children may be held to the same noise rules as other residents.

Is it okay to tell a couple with a teenage son and daughter that they must rent a three- bedroom apartment, so their kids don't share the same bedroom?

No. Denying a two-bedroom rental to a family because they have children of opposite sexes, or requiring them to rent a larger apartment, is a direct violation of fair housing laws based on both familial status and sex.

Occupancy Standards

What is an occupancy standard? Do we need one?

Fair housing laws allow housing providers to establish reasonable limits on the number of occupants allowed in each rental. However, when a housing provider sets a policy that unreasonably limits the number of occupants, it affects families with children more severely than households without children. Establishing appropriate occupancy standards can reduce the risk of violating fair housing laws.

We heard that an occupancy standard of two-per-bedroom or "two plus one" is okay. Is that true?

HUD has stated that a two-person-per-bedroom occupancy standard is generally reasonable. However, this standard is not absolute, and other considerations should be kept in mind. It is

best to review a number of factors to determine whether an occupancy standard is overly restrictive, such as the size of bedrooms and the rental unit, the configuration of the unit, the age of children, other physical limitations of the housing, and local zoning codes or laws.

How can we establish a reasonable occupancy standard?

One critical factor in establishing an occupancy standard is the zoning or building occupancy code that applies to the housing community. Measure the rooms in each rental unit and apply the local building code. If a restrictive occupancy standard is set, be prepared to substantiate legitimate business-related factors that led to the standard, such as the age or condition of the dwelling and its accompanying systems (sewer, septic, electric, water, etc.).

Is it okay to charge a base rent for up to three residents, plus \$50 per month for each additional occupant?

Fees or surcharges for extra occupants have a greater negative effect on families with children than on households without children. If an extra amount is charged, it must be based on actual increased utilities use or other legitimate business costs. Many communities have installed individual utility meters to monitor costs directly.

Housing for Older Persons

What is the Housing for Older Persons Act? What kinds of housing does HOPA cover?

The Housing for Older Persons Act (HOPA) is an amendment to the federal Fair Housing Act. Under this law, a community that qualifies for the housing for older persons exemption can refuse to rent to families with children, provided it meets certain requirements. Three types of housing qualify under HOPA:

- HUD Secretary designated elderly housing.
- housing for residents who are 62 or older, whether private or assisted
- housing intended and operated for occupancy by residents who are 55 years of age or older. For 55 or older housing, the following criteria must be met:
 - At least 80% of the occupied rentals are occupied by at least one person who is 55 years of age or older.
 - The owner or management of the housing facility/community must publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons 55 or older and
 - The facility/community complies with rules issued by the HUD Secretary for verification of occupancy through reliable surveys and affidavits.

HOPA covers housing communities or facilities that are governed by a common set of rules, regulations or restrictions. Typical examples include: a condominium association, a cooperative, a property governed by homeowners or resident association, a municipally zoned area, a leased property under common private ownership, a manufactured housing community, a mobile home park.

The following are not covered by HOPA:

- a portion of a single building.
- a duplex.
- a group of single family houses dispersed throughout a geographical area.

How can we show our intent to operate as a 55+ property?

It should be clear to anyone driving by, calling about, or living at the community that it is a 55 or older property.

- Any signage or printed material should include HOPA language stating that it is a “55+ Community” or an “Age 55 or Older Housing Community” or similar language.
- When advertising or describing the community to applicants, be certain they know that it is intended for occupancy by at least one person age 55 or older per unit. Avoid using phrases such as “adult living” or “adult community” or telling applicants that it is an “adult only” property.
- Ensure the lease provisions, rules, regulations and any written materials referring to the community indicate that it is a 55 or older property.

A housing provider should not use the word “adult” or “adult community” in advertising or when describing the community to prospective renters.

How do we calculate the 80% occupancy requirement?

HOPA requires that at least 80% of the occupied units must be occupied by at least one person 55 or older. The remaining 20% of the units may be occupied by persons under 55, if the facility/community so chooses. When calculating the 80% occupancy requirement, housing providers do not need to include:

- units that have been continuously occupied by the same household since September 13, 1988, that did not and do not currently contain at least one person over the age of 55.
- units occupied by employees under 55 years old, who provide substantial management and maintenance services to the community.
- units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents
- unoccupied units.

A 55 or older owner or tenant might be temporarily absent from the housing without affecting the exemption status. [Example: The occupant is on vacation, hospitalized, or absent for a season without affecting the community's exempt status. The occupant may allow a relative or house sitter under 55 to live in the unit during this absence.] The unit would still be counted as part of the 80% as long as the housing is not rented out, the owner/tenant returns on a periodic basis, and maintains legal and financial responsibility for the upkeep of the dwelling.

How should we obtain age verification?

HOPA requires that a housing community compile a list of occupants and verify the ages of the occupants. Reliable age verification documentation includes a birth certificate, a driver's license, a passport, immigration card, military identification, or any other state, local, national or international documentation, provided it contains current information about the age or birth of the person. Some other documentation is considered reliable, such as a self-certification signed by an adult member of the household asserting that at least one occupant in the unit is 55 years of age or older.

HOPA requires that a housing community survey its resident lists every two years to ensure that it meets the 80% requirement. A community's failure to survey or resurvey its list of occupants does not demonstrate intent to provide housing for older persons and could jeopardize the community's status as 55+ housing.

May we impose an age limitation more restrictive than that required by HOPA and qualify for the 55 or older exemption?

Yes. For example, a housing facility/community may require:

- that at least 80% of the units be occupied by at least one person 60 years of age or older
- that 100% of the units are occupied by at least one person 55 or older
- that 80% of the units be occupied exclusively by persons aged 55 or older.

However, before establishing more restrictive occupancy policies, check on state and local laws that may prohibit discrimination based on age.

We meet HOPA requirements, and permit families with children to occupy up to 20% of our rentals. Can our rules say children under 18 are not allowed in certain areas?

Yes. If a 55+ property qualifies under HOPA, it is exempt from the Fair Housing Act's prohibition against discrimination based on familial status. The community may restrict children under 18 from benefits of the community, or otherwise treat their households differently than senior households. However, the community cannot discriminate against any resident or potential resident based on other protected classes, such as race, color, religion, national origin, sex, disability, etc.

If the community is a project-based Section 8 elderly or elderly/disabled property, management may not exclude otherwise eligible families with children.

Our housing community does not meet the 80% occupancy requirement. How can we qualify for HOPA status?

There are two ways to establish housing for older persons – new construction and conversion.

- Newly constructed housing” is that which has been entirely unoccupied for at least 90 days prior to reoccupancy, due to renovation or rehabilitation. Once the housing reopens and can meet all three HOPA requirements covered on the previous slide, it is HOPA housing.

The housing community is permitted to discriminate against families with children until 25% of its units are occupied. If, at that time, the community does not have a resident 55 year or older in at least 80% of occupied units, then the community may not discriminate against families with children.

- An existing community can convert to housing for older persons if 80% of its units become occupied by at least one person 55 or older. A community cannot reserve unoccupied units for older persons, or advertise itself as housing for older persons, or evict families with children in order to reach the 80% threshold. If a qualified family with children seeks to occupy a vacant unit before the facility has met all of the requirements needed to become housing for older persons, the family must be allowed to live there. The facility may not make existing families with children feel unwelcome or otherwise discourage them from continuing to reside there.

However, nothing prevents the offering of positive incentives that might lead some families to seek housing elsewhere. If the community achieves the 80% threshold without discriminating against families with children, it may then be considered a HOPA community.

Fair housing laws are subject to change. The federal Fair Housing Act, state and local fair housing laws are updated with new guidance and regulations on a regular basis. Please check the HUD - FHEO website at www.HUD.gov for the latest information.

APPENDIX A

COMMON DISABILITY ACCOMMODATIONS & MODIFICATIONS

Under fair housing laws, housing providers must accommodate the needs of applicants and residents who have disabilities. A reasonable accommodation is an adjustment in rules, procedures or services that gives a person with a disability an equal opportunity to use and enjoy their dwelling and common areas. A reasonable modification is a change in a dwelling or common areas (usually at the resident’s expense) that is needed to live comfortably and safely. Do not ask applicants or residents if they have a disability, for details about the condition, or to see medical records. For an accommodation or modification, it is okay to ask for third-party verification that the person has a disability and that the request will address the person’s disability needs.

Vision Disabilities	Hearing Disabilities
Allow a guide dog	Provide a visual doorbell signal
Provide ample interior and exterior lighting	Provide a visual smoke alarm system
Read notices aloud or provide them in large print or Braille	Add voice amplification to common area telephones
Provide large print or Braille numbers on doors	Install a TTY in the rental office
Remove objects that protrude into hallways and pathways	Provide sign language interpreters for important meetings
Put non-slip, color-contrast strips on stairs	Allow a service animal
Physical Disabilities	Cognitive Disabilities
Make sure on-site rental office is accessible	Explain the rental agreement and tenancy rules
Allow a live in personal care assistant	Write rental documents and notices in clear, simple terms
Provide lever door handles and adjust automatic door closers	Show how to use appliances
Clear shrubs from pathways and trim to low height	Provide simple door locks or security systems
Insulate exposed kitchen and bathroom pipes and install anti-skid tape on floors and stairs	Provide monthly reminders that rent is due
Move resident to a lower floor, upon request	Show location of water shutoff valve and explain how to use it
Allow modifications to be made: <ul style="list-style-type: none"> • Wider doorways • Grab bar installation • Lower closet rods • Lower thermostat 	

Psychiatric Disabilities	HIV or AIDS	Environmental Disabilities
If a deadline is missed because of a disability, return the applicant to the waiting list upon request	Allow a live- in personal care attendant	Use non-toxic cleaning products and fertilizers
Allow a service/assistive animal	Move a resident to another floor upon request	Allow removal of carpet from the rental unit. Remove the ballast or fluorescent lights
Move resident to a quieter unit upon request	Allow a community person to come in and educate residents about HIV/AIDS	Post no smoking signs in common areas and consider a no smoking policy for entire building

APPENDIX B

GLOSSARY

FEDERAL PROTECTED CLASSES

The Fair Housing Act has seven protected classes:

- RACE
- COLOR
- RELIGION
- NATIONAL ORIGIN
- DISABILITY
- FAMILIAL STATUS
- SEX

SOUTH DAKOTA ADDITIONAL PROTECTED CLASSES

- ANCESTRY
- CREED

age – includes individuals of any age (in some jurisdictions, only those over 18 are covered).

ancestry – means the country where one’s parents, grandparents or forebears were born (in some jurisdictions ancestry is included in national origin).

accessibility standards – Fair Housing Act uses Fair Housing Act Accessibility Guidelines (FHAAG), Section 504 uses the Uniform Federal Accessibility Standards (UFAS) and the Americans With Disability Act uses ADA Accessibility Guidelines (ADAAG).

color – refers to the color of one’s skin.

creed – a religious belief or a set of beliefs or aims that guides someone’s actions.

disability – includes physical, mental and sensory conditions (in Washington state, this definition includes both permanent and temporary disabilities). Includes the use of service or assistance animals – for which the definition varies among local laws.

familial status or parental status – the presence of one or more children under the age of 18 in the household. Includes being a parent, step-parent, adoptive parent, guardian, foster parent or

custodian of a minor child, as well as any person who is pregnant or who is in the process of acquiring legal custody of a child.

gender identity – means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a person's attitudes, preferences, beliefs, and practices pertaining thereto.

marital status – includes being single, married, separated, engaged, widowed, divorced (and in some jurisdiction, includes co-habiting).

national origin – means the country where one was born (in some jurisdictions ancestry is included in national origin).

race – refers to a person's physical characteristics resulting from genetic ancestry which includes all races (African-American, Asian, Caucasian, etc.).

religion and/or creed – includes one's membership (or lack thereof) in an organized religious group, and one's spiritual ideas or beliefs. Agnostics are also protected under this definition.

Section 8 – includes individuals who participate in the Section 8 Housing Choice Program.

sex/gender – includes male and female sexual orientation – means actual or perceived male or female heterosexuality, bisexuality, or homosexuality, and includes a person's attitudes, preferences, beliefs and practices pertaining thereto (in some jurisdictions, sexual orientation includes gender identity).

veteran/military status – includes honorably discharged veterans or active or reserve members in any branch of the armed forces of the United States, including the National Guard, Coast Guard, and Armed Forces Reserves.

CIVIL RIGHTS ACRONYMS

FHA – federal Fair Housing Act

FHEO – Fair Housing and Equal Opportunity (HUD)

HOPA – Housing for Older Persons Act

HUD – U.S. Department of Housing and Urban Development

ADA – Americans with Disabilities Act

EXEMPTIONS TO FAIR HOUSING LAWS

Some types of properties, individuals and actions are exempted from coverage by fair housing laws. The Fair Housing Act and most local fair housing laws do not apply to:

- religious organizations, associations, or societies, or any nonprofit institution or organization operated, supervised, or controlled by one, which can limit the sale, rental, or occupancy of dwellings which they own or operate for other than a commercial purpose to persons of the same religion, and can give preference to such persons (but cannot restrict on account of race, color or national origin).
- a private club not open to the public which as an incident to its primary purpose provides lodgings which it owns or operates for other than a commercial purpose, which can limit the rental or occupancy of such lodgings to its members and can give preference to its members.
- rental actions against someone who was convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

Note about advertising – The nondiscriminatory advertising requirements apply even to single-family dwellings and to housing where the owner maintains a residence that might otherwise be exempt from the FHA.

APPENDIX C

OTHER RESOURCES

United States Department of Housing and Urban Development (HUD)

1670 Broadway, Denver, Colorado 80202

303.672.5440

South Dakota HUD Office

2400 W. 49th Street, # 201, Sioux Falls, SD 57105

605.330.4223

Office of Attorney General

Division of Consumer Protection

1302 E. Hwy 14, Suite 3

Pierre, SD 57501

605.773.440

800.300.1986 (in state only)

Division of Human Rights (Labor & Management)

South Dakota Department of Labor and Regulation

123 W. Missouri Ave.

Pierre, SD 57501

Phone: 605.773.3681

Fax: 605.773.4211

Free Legal Aid:

Dakota Plains Legal Services

528 Kansas City Street, P. O. Box 1500

Rapid City, SD 57709

Phone: 605.342.7171

Fax: 605.348.5874

East River Legal Services

335 North Nain Avenue, Suite 300

Sioux Falls, SD 57102

Phone: 605.336.9230

Fax: 605.336.6919

Toll Free: 800.952.3015