

FAIR HOUSING 101

2018 Congress and Expo

Las Vegas, Nevada

April 26, 2018



The History

Title VIII of the Civil Rights Act of 1968 makes it illegal to discriminate in any type of housing based upon race, color, religion, sex, national origin, disability or familial status.



The History

The Civil Rights Act of 1968 also interplays with:

the American's with Disabilities Act (1990 as amended 2009) – building specs, reasonable accommodations/modifications, etc.

Housing for Older Person's Act – 55+ communities
80% occupied units 55+



Federal

Title VIII of the Civil Rights Act of 1968 makes it illegal to discriminate in any type of housing based upon race, color, religion, sex, national origin, disability or familial status.



States, Counties and Cities

All over the board – adding things like:
gender identity and expression, source of
income, age, ancestry, military service or
veterans status, marital status ...



States

2017-18 state legislative initiatives
MHI Tracked nearly 200 bills

AK, AZ, CA CO, FL, GA, HI, IA, ID, IL, KS, KY, MA, MD, MN, MO, NC, NE, NH,
NJ, NM, NY, OH, PA, RI, SC, TN, TX, UT, VA, VT, WA, WV AND WY

Washington State – people who dress like bikers
Lance Armstrong or Dennis Hopper?



Protected Class - DON'T

- Refuse to rent or sell
- Steering or misrepresent availability
- Refuse to negotiate
- Make housing unavailable
- Limit use of facility
- Change terms
- Advertise in a discriminatory way
- Fail to make reasonable accommodations
- Threaten or retaliate



You can

Set rent at market rates

Set and uniformly apply rental criteria

Set and uniformly apply occupancy criteria

Refuse to rent based on your criteria

Advertise to a protected class

Evict



Testing

7. On or about April 28, 1999, Tester 1 telephoned Respondent and inquired about purchasing a mobile home at the subject property. Respondent told Tester 1 that he prefers that everyone be 55, or older, but that there are some younger couples in the park, but no children. Tester 1 asked about credit checks and approval. Respondent replied that he neither conducts credit checks nor relies on any other formal screening, but that “he can tell just by looking at you.”

8. On or about April 29, 1999, Tester 2 telephoned Respondent to inquire about the availability of mobile homes in the park. Tester 2 stated that she and her husband were interested in purchasing a mobile home for themselves and their two children. Respondent told her that there were mobile homes for sale in the park, but that children were not allowed to live in the park.

9. On or about April 30, 1999, Tester 3 telephoned Respondent telling him that she was looking for a space to rent for herself and her husband. Respondent told her that his property was an “adult” park which meant that residents were over the age of 55 and that no children were allowed. Respondent asked Tester 3's age. She replied that she was 45 and retired, but that her husband, also 45, was still employed. Respondent stated that he could make an exception which depended on whether they were “respectable.”



Don't Ask – You Can't Afford It

Ft Myers, FL - \$40,000

Crown Point, IN - \$130,000

Ft Myers, FL - \$60,000

Along with Corporate liability, individuals are liable for their own discriminatory behavior



Best Practices – 4 Policies

General anti-discrimination

Reasonable accommodation/modification

Occupancy Standards

Rental screening



General Fair Housing Policy

Simple to read

We abide by all federal state and local fair
housing laws

If it takes a lawyer to understand -- start over

Post it in your front office in multiple languages



Reasonable Accommodations Policy

A reasonable accommodation is a change made to a policy, program or service allowing a person with a disability to use the dwelling, such as:

- a rental form in large print
- allowing caregiver
- moving monthly residents meeting to an accessible location
- reading notices to tenants
- and
- of course
- service animals



Service Animals

Same accommodation rules apply. You're allowed to request proof of the renters disability and documentation that the renter's Burmese Python is something more than a beloved pet.

Service Animals versus Assistance Animals

Local animal laws still apply.



Denials

Make your process interactive

Give basis for denial:

No disability exists

Undue influence or administrative burden

Alters the nature of your business



Screening Policy

You can:

Determine if an applicant has the income and rental history to meet your criteria

Request identification

Run credit checks (denials)

You Can't:

Discriminate!

Say a rental is unavailable when it actually is



Criminal Background Checks

April 4, 2016 – HUD issued a “guidance” on how the Fair Housing Act applies to the use of criminal history checks by housing providers.

Specifically the document “addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual’s criminal history.”

Criminals are not a “protected class.”



Occupancy Policy

What does your local jurisdiction say?

HUD says 2 per bedroom.

Tricky one – Avoid Family Status
Discrimination Catch 22.



Advertising

“Perfect for mature professionals”

Target your advertising toward what makes the property desirable – size, location, price, amenities, etc.

Except — you can target to one of the classes:

“Accessible to persons with disabilities”

“Family playground”

Display the HUD Fair Housing logo



Testing

Right now, someone in the state is in the field testing for discrimination in housing

Two people

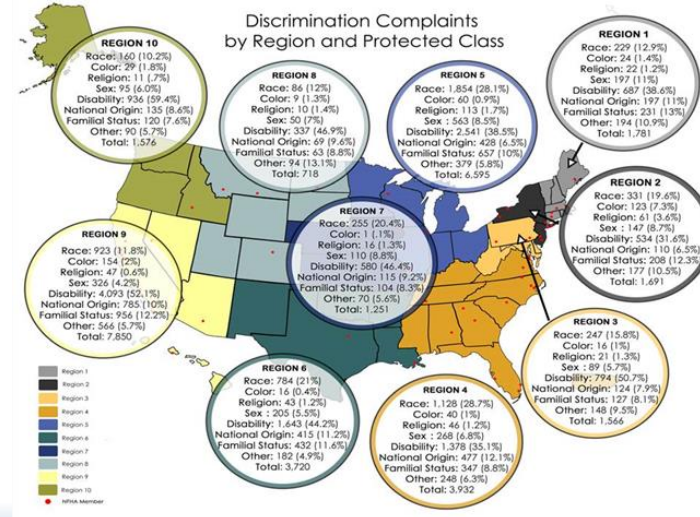
One in a protected class

And one middle-aged white guy

They are trying to isolate any differences in the way
your facility treats the two potential tenants.



Claims by Region



Best Practices

- Post a brief written policy that complies with federal, state and local laws
- Follow written complaint process. Don't ignore a complaint.
- Educate employees about the policy and the need to obey fair housing laws. Train all employees. Sanction noncompliance.
- Adopt a written incident report for property managers. Consider a checklist. DOCUMENT. DOCUMENT. DOCUMENT.
- Include fair housing language in the lease.



Best Practices (continued)

- Advertise the property (not the tenants).
- Use the Equal Housing Opportunity logo on your advertisements.
- Maintain a current list of available units, so all are given the same information.
- Keep a copy of everything in LARGE PRINT.
- Treat everyone the same and self-test.



American with Disabilities Act (ADA) Federal

New buildings must comply with accessibility standards of 2010 required by Department of Justice regulations and any applicable state law building code.



American with Disabilities Act (ADA) Federal

Violation is to the public in general but enforcement may be by any affected person.

Implemented and enforced by U.S. Department of Justice.



ADA: Why So Many Problems?

- Civil Rights Law
- Private “aggrieved” party can institute enforcement proceeding



ADA Remedies

- Enforcement Mechanism
 - ADA Provides for Injunctive Relief
 - Penalties and attorney fees?
 - Not nationally, but based on state law

Fix It NOW!



Things to Watch Out For:

- Top “Claims” of ADA Violations for MHC’s:
 - 1. Parking Spaces
 - No accessible parking – existing parking space(s) are not compliant.
 - 2. Passenger Loading Zones
 - Passenger loading zones/van access aisles are not compliant.



Things to Watch Out For:

- Top “Claims” of ADA Violations for MHC’s:
 - 3. Number of Spaces
 - Parking lot does not contain minimum number of accessible parking spaces.
 - 4. Ground Surfaces
 - Routes to and from parking lot are not accessible.



Things to Watch Out For:

- Top “Claims” of ADA Violations for MHC’s:
 - 5. Signage
 - Signage in parking lot is not compliant. E.g., parking spaces need to be designated as a reserved by a sign showing the symbol of accessibility.
 - 6. Accessible Path of Travel
 - Must have an accessible path from accessibility parking to office



Things to Watch Out For:

- Top “Claims” of ADA Violations for MHC’s:
 - 7. Grab Bars
 - Grab bars in public access bathroom are non-existent, or existing grab bars are not compliant.
 - 8. Entry Doors
 - Entry doors are not accessible.



Thank You

To sign up a free monthly update on
Fair Housing:

Rick Robinson
rrobinson@mfgghome.org

or

give me your card



Thank you



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