

A Guide to Fair Housing



For Nonprofit Housing and Shelter Providers

Washington State Edition



First Edition – 2013



Introduction

This guidebook was developed to address the most common questions about fair housing as it applies to organizations that provide shelter, non-profit housing, and related support services. We hope you will find this information helpful in your efforts to provide fair housing for all.

THIS IS NOT A STAND-ALONE GUIDEBOOK!

As a transitional housing, shelter, homeless prevention, or other nonprofit housing provider, you'll also need to review and become familiar with the following materials developed by the Fair Housing Partners of Washington State, available in print or CD format –

Fair Housing in Washington State – Top 100 Most Frequently Asked Questions for Housing Providers and Managers

Sample Policies and Guidebooks:

- *Harassment and Retaliation*
 - *Reasonable Accommodations and Modifications for People with Disabilities*
 - *Service Animals*
 - *Domestic Violence and Fair Housing*
- Fair housing posters (specific to each fair housing agency)*

FAIR HOUSING PARTNERS OF WASHINGTON STATE

Washington State Human Rights Commission
King County Office of Civil Rights
Seattle Office for Civil Rights
Tacoma Human Rights
Fair Housing Center of Washington

AVAILABLE IN ALTERNATE FORMATS UPON REQUEST

To share your comments about this guidebook, or for alternate formats, contact the King County Office of Civil Rights & Open Government:
206-263-2446, TTY Relay: 711, Civil-Rights.OCR@kingcounty.gov

This information does not constitute legal advice. The fair housing laws are subject to change. Please contact HUD or one of the fair housing agencies if you have questions about this topic.

ACKNOWLEDGEMENTS

We thank the **Fair Housing Council of Oregon** for sharing the "*Oregon Guidebook for Nonprofit Housing and Shelter Providers*" from which this guidebook is adapted. Many thanks to the following agencies which contributed to this publication:

Building Changes

Catholic Community Services - Family Housing Connection
King County Department of Community and Human Services
King County Family Homelessness Initiative
King County Housing Authority
King County Office of Civil Rights
Seattle Housing Authority
Seattle Human Services Department
Seattle Office for Civil Rights
Seattle Office of Housing
Washington State Human Rights Commission



**EQUAL HOUSING
OPPORTUNITY**

Table of Contents

CHAPTER 1: FAIR HOUSING BASICS	4
Section A: Fair Housing Laws	4
Section B: What are Protected Classes?	7
Section C: Under Fair Housing Laws, What is a "Dwelling"?	8
Section D: What is Discrimination?	9
CHAPTER 2: SCREENING AND ADMISSIONS	11
Section A: Establishing and Applying Admission Criteria	12
Section B: Disability Preferences	14
CHAPTER 3: FAIR HOUSING ISSUES IN HOMELESS, CLEAN AND SOBER, AND TRANSITIONAL HOUSING PROGRAMS	16
Section A: Protecting Residents From Harassment or a "Hostile Living Environment" Based on Protected Class	16
Section B: Retaliation	19
Section C: Religious Organizations Providing Housing	20
Section D: Clean and Sober Housing	21
Section E: Rule Enforcement	22
Section F: Terminating Residential Client Participation	24
CHAPTER 4: FAIR HOUSING ISSUES RELATED TO PEOPLE WITH DISABILITIES	26
Section A: Definition of Disability	26
Section B: Accessible Facilities	27
Section C: Reasonable Accommodations and Modifications	28
Section D: Group Living Arrangements	31
Section E: Confidentiality	32
CHAPTER 5: PROMOTING FAIR HOUSING	34
APPENDIX: List of Fair Housing Agencies in Washington	35



Chapter 1: Fair Housing Basics

Section A: Fair Housing Laws

What fair housing laws apply in Washington and who enforces them?

The federal Fair Housing Act and its 1988 amendments (FHA) protect people from negative housing actions that occur because of race, color, national origin, religion, sex, disability, or family status, which are “protected classes” under the FHA. State and local fair housing laws cover additional groups, such as marital status, sexual orientation, gender identity, age, participation in the Section 8 Program, etc.

HUD enforces the FHA. The Washington State Human Rights Commission enforces the Washington Law Against Discrimination, RCW 49.60. Three local agencies enforce fair housing ordinances – King County Office of Civil Rights & Open Government (OCR), Seattle Office for Civil Rights (SOCR), and the Tacoma Neighborhood and Community Services Department (TNCS). The state and local laws are considered “substantially equivalent” to the FHA, and HUD contracts with these agencies to handle most fair housing investigations in Washington.

Fair housing advocacy organizations that spend resources substantiating fair housing violations also may file complaints; however, these organizations do not conduct enforcement activities. The Fair Housing Center of Washington in Tacoma and the Northwest Fair Housing Alliance in Spokane provide fair housing advocacy services in our state. The Appendix lists the fair housing agencies and their contact information.



Which fair housing laws apply to our programs?

The Fair Housing Act and the state fair housing law cover most housing rental properties, including non-profit housing, shelters and transitional housing programs. WSHRC has jurisdiction over housing anywhere in Washington. For properties located in unincorporated King County, OCR has jurisdiction. SOCR and TNCS handle complaints within the city limits of Seattle and Tacoma. The City of Bellevue Code Compliance office investigates Section 8 cases in that city (WSHRC handles all other fair housing cases in Bellevue). If uncertain whether your housing or shelter property is covered, contact any local fair housing agency.

Fair housing laws also apply to any other person or entity whose actions could “make housing unavailable.” This means a wide range of entities are covered, including for-profit and non-profit:

- organizations offering rental assistance, such as vouchers or subsidies
- agencies operating housing counseling and placement programs
- temporary or longer-term shelters
- clean and sober housing
- transitional housing
- motels that function as primary housing rather than vacation lodging

All such programs are prohibited from discriminating on the basis of protected class and are required to follow fair housing laws.

Who may be held responsible for fair housing violations?

Fair housing complaints generally name all parties related to the transaction, including the property owner, non-profit sponsor, individual housing program staff, 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.

Funders of nonprofit housing and shelter programs that are found to be in violation of fair housing laws could potentially be liable as well. We advise any entities providing funding to nonprofit housing and shelter providers to be aware of the contents of this guide and to implement funding and monitoring criteria to prevent discrimination.

Who can file a fair housing complaint?

Anyone who has been harmed by a housing action may file a complaint, including applicants, clients, residents or tenants, program participants, and staff. Fair housing laws also protect anyone who is harmed because of association with guests, relatives, friends, roommates, or others in any of the protected categories. [Example: A housing provider treats a resident badly because he has guests who are Latino. Both the resident and the guests could file complaints.]

How long does a person have to file a fair housing complaint?

A person must file a fair housing complaint within one year of the harmful housing action. It is important for non-profit housing and shelter providers 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 (two years).

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

Fair housing issues often overlap with requirements of the state’s Residential Landlord-Tenant Act (RLTA, RCW 59.18) and the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA, RCW 59.20). Landlord-tenant laws cover rental agreements and leases, deposits and other fees, landlord and tenant responsibilities, a landlord’s access to the

rental, repairs, moving out and return of deposits, evictions, etc. The definition of retaliation under landlord-tenant laws is different from the fair housing law definition.

Fair housing laws will sometimes apply when the landlord-tenant laws do not. For example, a homeless shelter may be subject to fair housing laws but not landlord-tenant laws.

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 Asian family's deposit is withheld for carpet damage, when a Caucasian resident's deposit is returned despite similar damage.]

We just received a civil rights complaint. What happens now?



Fair housing enforcement agencies do not represent either the person who files a discrimination complaint (Complainant) or the person/agency/business against which the complaint is filed (Respondent). They investigate and resolve cases as a neutral and impartial fact-finder. Fair housing agencies cannot offer personal or legal advice, though they can provide technical assistance about fair housing laws and how to comply with them. Any party to a fair housing complaint may choose to be represented by an attorney.

Fair housing agencies follow similar procedures for investigating complaints. The Respondents are required to respond to the complaint within a brief time. Fair housing agencies attempt conciliation within 30 days, 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.

These agencies gather and evaluate documentation, interview relevant witnesses, conduct on-site visits, etc. The resident and housing provider(s) 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 makes a final written report.

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

If there is sufficient evidence to support the allegations, a "reasonable cause" finding is issued, the agency will work to conciliate the matter, and the parties sign a settlement agreement. If the parties do not settle, the case is usually referred to the agency's legal department (state cases are referred to the Attorney General's office), and there is an administrative process or a hearing.



It is important that non-profit housing and shelter providers be aware of their responsibilities under fair housing laws, educate all relevant staff, and have an internal process in place in case a resident or applicant brings up a fair housing concern or files a fair housing complaint. We recommend every provider has a staff person identified as a fair housing specialist.

Section B: What are Protected Classes?

“Protected class” is a legal term which means a group of people who are protected by law from being discriminated against because of their characteristics or attributes.

Federal fair housing laws cover alleged discrimination because of race, color, national origin, religion, sex, familial status or disability (and in some federal programs, age).

Washington state fair housing laws cover the federal protected classes and also marital status, military/veteran status, sexual orientation and gender identity. Local fair housing laws include additional protected classes, such as participation in a Section 8 program, age, or political ideology. The fair housing agency chart in the Appendix lists the protected class groups covered by each agency.



It is important to remember that everyone is a member of a several protected classes. Whatever one's race, gender, sexual orientation or sexual identity, religious affiliation, national origin, whether you have children, or have a disability – everyone is protected by these laws.

Note: Juvenile offenders and sex offenders, by virtue of that status, are not people with disabilities protected by the fair housing laws. Similarly, while these laws do protect people who are recovering from substance abuse, it does not protect those who are currently engaging in the current illegal use of controlled substances. Additionally, these laws do not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

Association

Fair housing laws also protect applicants and residents are associated with people in any protected groups. This includes situations where a housing provider may discriminate because someone has relatives, friends, roommates, or visitors in any protected categories. An example is a situation where a transitional housing provider treats a resident negatively because he has guests who are not American-born.

Section C: Under Fair Housing Laws, What is a "Dwelling"?



The Fair Housing laws define a dwelling as any building or portion thereof designed or intended for occupancy as a residence by one or more families.

What does “Intended for occupancy as a residence” mean?

An investigation would determine if the program is a dwelling on a case-by-case basis, reviewing the criteria below. It may also consider the provider’s mission, relevant licensing, funding sources, the level of time and resources allocated to services in relation to housing.

- Length of stay.
- Intent and right to return each night to a particular abode.
- Amenities included.
- How property is marketed.
- The written terms of the occupancy agreement between the provider and resident. This could be a signed rental agreement, a residency agreement or a set of rules that a resident agrees to follow.
- If there is a rent payment, a program fee, an in-kind exchange such as performing chores, or requirements such as attending meetings or support groups.
- Whether the individual has another current residence that he or she intends to return to. In the case of domestic violence shelters, a resident may officially still have another address, but it is unlikely that she intends to return to it, so the shelter would most likely be considered a dwelling under fair housing laws.
- If the primary purpose of a program is treatment (for example, a drug treatment facility) and the actual housing provided is incidental to the program, it most likely will not be considered a dwelling. But if the residents have no other housing to return to, the facility may be considered a dwelling under fair housing laws.



To protect against liability in a fair housing violation, housing and shelter providers should assume their programs involve “dwellings” and comply with the requirements of fair housing laws.

Public Accommodations Laws May Apply (when fair housing laws do not)

Please note that in situations where emergency (first come, first served) one-night shelters might not be covered by Fair Housing laws, they are still covered by Public Accommodations laws, which require nondiscrimination and disability access.

Public Accommodations laws (such as ADA Title III, state and local laws) prohibit discrimination based on disability in programs, services, and activities provided or made available by nonprofit service providers that are places of public accommodations, including homeless shelters.

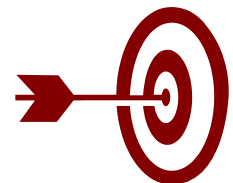
Places of public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment based on a list of protected classes similar to that covered by fair housing laws. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Section D: What is Discrimination?

Intentional Discrimination

Intentional discrimination occurs when people who are similarly situated are treated differently because of their protected status, or when there is an overt act of discrimination. If a fair housing complaint is filed, the housing provider may present a non-discriminatory reason for the difference in treatment, which the investigation will examine to determine if it is valid.

- **Discrimination during the application process:** Denial of housing based on protected class status, providing false information, steering people to facilities based on their protected status, assigning or segregating occupancy based on protected status, expressing or publishing a discriminatory preference or limitation. Applicant screening decisions must be based on consistent fact-based criteria.
- **Establishing policies or rules that "target" specific protected classes:** Instead of a rule that "children may not run in the facility", set a rule stating "running is not allowed in the facility."
- **Not treating all residents similarly:** Targeting certain protected class members for different treatment in terms of procedures, rules, rental criteria, fees or charges, repairs, access to common facilities, or other aspects of daily life.
- **Disability discrimination:** Generally, housing and shelter providers may not inquire about the existence or the severity of an applicant's or resident's disability, and they



may not require applicants or residents to waive the confidentiality of medical records. Housing providers must provide reasonable accommodations and provide or allow reasonable modifications for people with disabilities. However, in some situations, a funding source may require specific preferences (for example, housing only for people with HIV/AIDS) – check with your funding source before setting any disability preferences. For more information, see Chapter 2, Section B.

- **Harassment, intimidation, threats and coercion:** Providers have a legal responsibility not only to refrain from these activities themselves, but to protect their residents from harassment by other residents.
- **Termination of housing for discriminatory reasons:** Terminations that are not based on factual violations of the residency agreement could be construed as discriminatory, regardless of whether that was the provider's intent. Termination should always be based on objective fact-based behavior.
- **Retaliation:** Providers may not retaliate against applicants, clients, or residents for exercising their fair housing rights. Exercising fair housing rights includes filing complaints of discrimination. It is also prohibited to retaliate against neighbors, staff, or other residents who participate in a fair housing complaint investigation.

Discriminatory Effects

Under fair housing laws, a policy or practice can be discriminatory even if the provider did not intend it to be. A policy that appears to be neutral and does not single out residents of a protected class could be considered discriminatory if it has a harsher impact on people who are in a protected class. For example, requiring participants to work or to look for work would have a disproportionate impact on people with disabilities.



It is very important that housing and shelter providers review all of their policies, rules, procedures, eligibility criteria, etc. to determine if there are policies and practices, however unintentional, which could result in members of a protected class being treated differently. For example, consider the following rules:

- No curry permitted in apartments (disproportionate impact on South Asians)
- No one can play outside (disproportionate impact on families with children)
- No rental to domestic violence survivors (disproportionate impact on women)
- No rental to people with criminal backgrounds (disproportionate impact on race or national origin)

If the housing provider advances a valid business necessity for the policy or practice, an examination will be made as to whether:

- The policy, practice, or rule is a valid predictor of future conduct.
- A demonstrated health or safety reason exists.
- There is a less discriminatory alternative that serves the same purpose.

Fair Housing laws are broad and inclusive. While some aspects of these laws are very clear, housing providers need to be aware that fair housing laws continue to be clarified over time through court cases.

In developing policies, procedures, rules, eligibility and termination criteria, etc., please seek legal advice from an attorney and reach out to the Fair Housing Partners of Washington for technical guidance.





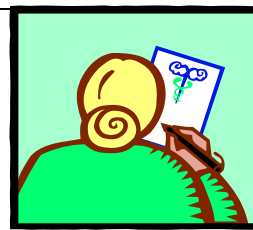
Chapter 2: Screening and Admissions

Section A: Establishing and Applying Admission Criteria

It is strongly recommended that transitional housing and shelter programs establish clear, objective and consistent written admissions criteria for new applicants. These criteria must be based on facts and not assumptions made about applicants. Examples of fact-based criteria include:

- **Rental history** -- Including stays in shelters, hospitals and other alternative housing arrangements.
- **Amount of income** -- Providers cannot discriminate against applicants based on their source of income, such as SSDI or child support, so long as the income is not derived from illegal activity.
- **Observable behavior** -- An applicant can be rejected for acting in a violent manner towards a staff person handling the screening/intake.
- **Recommendations by identified referral agencies programs** -- Such as social services, mental health, law enforcement, etc., so long as these programs do not have discriminatory practices and the recommendations are based on objective criteria.

- ✓ Put standardized screening/intake criteria in writing and use them to evaluate all applicants.
- ✓ Use standardized forms.
- ✓ Train staff in how to conduct a screening interview.



Can we prioritize applicants, and if so, how?

In general, all applicants should be screened, evaluated and selected in chronological order. For example, if there is a single vacancy, the first individual who meets the requirements should be accepted. Screening paperwork should be kept on file for at least two years and include the information gleaned in the screening and any reasons for rejection.

Providers can devise their own screening criteria as long as it is not discriminatory and is applied consistently. For example, a provider might decide to give priority to clients of certain social services programs or graduates of rehabilitation programs as long as those programs are inclusive of all protected classes. Providers should still accept the first applicant meeting their criteria or prioritization policy.

Note: Some funding sources require that providers offer specific preferences. The funding documentation will identify the prioritization policy and how the records are to be maintained to ensure that the provider does not violate fair housing laws. See Section B below.

Housing and shelter providers should be extremely careful about targeting their programs to a particular ethnic group. There should be a clear programmatic reason for marketing to a group, backed up by community needs assessments. Even in these situations, providers should not turn away an applicant seeking housing or services because he or she is not a member of the target group.

It is generally not acceptable for providers to require their residents be able to “live independently.” While the housing provider is not expected to provide services they do not routinely offer (housekeeping, showering assistance, meals, transportation, assistance with pushing a wheelchair, etc.), they cannot reject a resident solely for having such needs. Some disabled individuals use care attendants or other outside services. The provider cannot make housing contingent on the applicant verifying that they have such help; however, they can notify all applicants that they do not provide these services.

Requiring residents to have been in recovery or clean and sober for a specified period of time is problematic. Fair housing laws do not protect people who are current users of illegal drugs. The courts have not set hard and fast rules about clean and sober criteria, but it is generally accepted that participation in a formal drug rehabilitation program and abstinence from drug use means that an individual is no longer a “current user,” even if the last incidence of use was only weeks in the past. Providers using specified time frames for clean and sober status should be prepared to be flexible and take individual circumstances into account.

Housing and shelter providers should never rate applicants using subjective assumptions such as:

- “Odd” behaviors (as opposed to behaviors that present a threat to others).
- An “intuitive sense” of an applicant’s willingness to commit to a program, get along with others, etc. Such an assessment must be based on objective facts. For example, don’t assume someone who doesn’t look you in the eye is “shady” or untrustworthy. An applicant cannot be rejected based on a “gut feeling” that the individual might become violent if the person has not exhibited any behavior to suggest this. People from different cultures or with various disabilities may have behaviors that uninformed staff could interpret incorrectly. All providers should consider awareness training in these areas.

- An individual with a particular disability or gender identity will create a problem with other residents. If a problem does develop after the person moves in, it should be addressed at that time.

Be very cautious if using a lottery approach for screening to make sure the procedure doesn't discriminate against individuals with disabilities by requiring them to appear at a certain location and/or a certain time.

Extenuating Circumstances

HUD has recognized that people with disabilities face additional challenges during screening procedures and has issued guidance to housing authorities (and to other federally funded housing programs) that discretion can and should be applied when determining admissions and occupancy policies to consider extenuating circumstances when screening applicants with disabilities. The failure to consider "extenuating circumstances," especially involving federally funded programs, may constitute a failure to provide reasonable accommodations in violation of the ADA, Section 504, and the Fair Housing Act.

Section B: Disability Preferences

Only certain housing programs explicitly authorized to grant preferences to people who have specific disabilities, pursuant to federal statute or executive order (such as HOPWA, Section 811, McKinney Act Shelter Plus Care, etc.).

The fact that a funder may permit specific disability preferences may not provide sufficient legal authorization to permit limiting admission or showing a preference in admission for people with specific disabilities. If you are unsure whether a disability preference is permitted, contact your agency's funder(s) for details.

NOTE: Absent statutory or regulatory authority, or an executive order, it is unlawful to limit housing or program opportunities to people with diagnosis-specific disabilities.

Shelter Plus Care

Recipients may establish a preference as part of their admissions procedures for one or more of the statutorily targeted populations (i.e., seriously mentally ill, alcohol or substance abusers, or people with AIDS and related conditions). However, other eligible disabled homeless people must be considered for housing designed for the target population unless the recipient can demonstrate that there is sufficient demand by the target population for the units, and other eligible disabled homeless people would not benefit from the primary supportive services provided.

Section 8 Project Based Assistance

Housing authorities may give preference to disabled families who need services offered at a particular project. This preference is limited to people whose disabilities significantly interfere with their ability to obtain and maintain themselves in housing without appropriate services and for whom services cannot be provided in an integrated setting. The owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible people with disabilities who may benefit from those services.

Housing Choice Vouchers

Housing authorities may adopt a preference for admission of families that include a person with a disability. However, the housing authority may not adopt a preference for admission of people with a specific disability.



Chapter 3: Fair Housing Issues in Homeless, Clean and Sober, and Transitional Housing Programs

Section A: Protecting Residents From Harassment or a "Hostile Living Environment" Based on Protected Class

It is strongly recommended that housing and shelter providers have rules and policies prohibiting residents from harassing, intimidating, threatening or coercing other residents because of their race, religion, national origin, disability, or other protected class.

Under fair housing laws, "harassment" includes abusive, foul or threatening language or conduct directed at a resident or guest by anyone because of protected class (such as race, national origin, religion, sex, disability, familial status, sexual orientation, etc.). Harassment is conduct that is sufficiently severe and/or pervasive to affect someone's ability to use and enjoy housing. Harassing conduct includes:

- Coercing a person, orally, in writing, or by other means, to deny or limit that person's benefits in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of protected class. Examples:
 - A housing manager advises staff not to offer housing to people who are transgender.
 - A program manager tells applicants that they cannot have housing unless they participate in Christian religious services.
 - A nondisabled resident deliberately parks in a reserved accessible space.
- Threatening, intimidating or interfering with people in their enjoyment of a dwelling because of their protected class, or that of their visitors or associates. Examples:
 - A manager warns a resident that he will be evicted if he continues to have visitors who are transgender.
 - A manager takes no action after hearing a staff person tell a negative joke about Mexicans.
 - A resident calls another resident racial names.

If a housing provider observes harassment of this nature or if a resident reports such harassment, the provider is legally required to take action to remedy the situation. All providers should have policies prohibiting harassment and procedures in place to

respond to violations. All efforts to remedy such situations and their outcomes should be documented. Providers who have failed to remedy harassment have been found liable under fair housing laws for perpetuating a hostile housing environment.

Families with Children

“Familial status” (also called “parental status”) is defined as the presence of at least one child under 18 in a household. This also includes protection from discrimination that targets pregnant women, particular ages of children (teenagers, toddlers, etc.), single parents with children, foster families, children raised by grandparents or other guardians, and parents with shared custody arrangements.

Housing cannot be denied to families with children unless:

- The size of the individual unit or sleeping area is only sufficient for a single individual, such as a Single-Room Occupancy apartment or a cot in a dormitory shelter.
- The housing is designated only for older individuals. The Housing for Older Persons Act has an exemption for housing where 100% of the residents are over 62, or where at least 80% of the units have at least one resident who is 55 or older. (Be aware that specific funding requirements of various HUD programs may be relevant here. HUD programs for 62+ permit those who have legal child custody to live with children in this housing.)
- Housing targeted at individuals being released from correctional institutions are covered by fair housing laws. Housing designated for sexual offenders may be able to discriminate against families with children. Because cases are reviewed on a case-by-case basis, providers wishing to exclude families with children should check with their legal counsel.

Rules should be the same for all residents and should address specific behaviors, not the type of individuals violating the rules. Having rules solely for children is generally illegal. For example, just as a provider wouldn’t set a curfew for African American residents, they cannot set a curfew just for children.



If common areas are available for resident use or recreation, children should be able to use them too. Housing rules can outline usage times or quiet hours for everyone, and should apply to everyone equally.

The best strategy for protecting housing providers against accident-related lawsuits is ensuring properties don’t have maintenance or safety hazards (such as open ditches or rickety banisters). If that is not feasible, point out safety concerns to every applicant, not just families with children. 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.

Housing and shelter staff should not replace functions that belong to parents. For example:

- Parents determine bed times, recreational activities, etc. These cannot be mandated by a housing or shelter provider, unless the rules apply to everyone (for example, the provider can establish "lights out" times, or prohibit any loud noises after 10:00 p.m.).
- Providers can offer parenting classes or hand out materials addressing parenting skills, but it must be clear that these are resources being offered, as opposed to required behaviors.
- Parents choose school or day care providers. Shelter providers cannot, for example, force parents to enroll children in special schools provided for homeless children instead of the schools they choose. However, parents should not homeschool children in homeless shelters or transitional housing programs. Federal and state law clearly state that these programs do not qualify as a "home" for purposes of homeschooling.
- Avoid rules that say "adults must supervise children at all times". Remember, "children" includes everyone from birth to 17 years old, and it's not appropriate to require supervision of older teens. Teenagers commonly babysit and it is unreasonable to require child care providers to be over 18. Housing providers can offer informational handouts on how to select a babysitter. It is acceptable for a provider to require the child caregiver to sign a Childcare Notification Form.



- Residents are responsible for any damage caused by their household or their guests, so no rules are needed that say "parents are responsible for damage done by their children." If a child or a guest behaves in a manner that violates the house or community rules (for example, destroys property or harasses other residents), that behavior and the consequences of it remains the resident's responsibility.
- If staff suspect child neglect or other abuse, they should contact the local Child Protective Services or follow rules applicable to facility licensing requirements.

Marital Status and Sexual Orientation

Housing and shelter providers who discriminate on the basis of marital status are at risk of being in violation of state and local fair housing laws. We recommend that shelters do not, for example, require couples to present proof of marriage or question unmarried couples about how long they have been together unless they are also asking married couples. Similarly, same sex couples and individuals are protected from discrimination based on their sexual orientation in Washington.



Transgender Individuals



Washington law protects people from discrimination based on their gender identity. A transgender person is someone who identifies as, or expresses, a gender different from his or her sex at birth. This can involve aspects of his or her appearance and/or behaviors that differ from those typically associated with birth gender. These persons may or may not have had sex reassignment surgery or be taking hormones to alter their sexual characteristics.

Housing and shelter providers should treat applicants or residents as the gender they present themselves as, and use appropriate terms (he, she, him, her, etc.) Whether a transgender individual has had sex-reassignment surgery or takes sex hormones should not be a consideration in determining a person's gender or what services will be provided.

Providers should ensure safe bathroom and shower options. Transgender people should be welcome to use the bathrooms and showers that correspond to their self-identified gender or to use the facilities that feel safest for them. The possible discomfort of others is not a valid reason to deny access to facilities. If possible, providers should offer at least one gender-neutral bathroom and one private shower stall.

Ideally, all bathroom stalls and showers should have doors or, at least, curtains. If there is absolutely no possibility for shower privacy, the provider should at least permit someone to shower at an alternate time. Providing an option for privacy in the bathroom or shower benefits not only transgender individuals, but others who may have particular medical conditions or personal needs that require privacy.

In a dormitory-type shelter, a transgender individual may be afraid of harassment. Providers should be prepared to locate beds for such individuals in areas that allow for increased security.

In general, fair housing laws dictate that provider decisions be based on facts and not assumptions. Do not assume that just because a male-to-female transgender resident may have male genitals that she will be a threat to other residents. If harassment does occur (and statistics reveal that it is far more commonly directed at transgender residents), prompt action must be taken to stop it.

Providers should keep a resident's transgender status confidential unless the resident instructs otherwise, to help minimize the risk of harassment.

Section B: Retaliation

Fair housing laws define retaliation as unlawful coercion, intimidation, threats, or interference with anyone who exercises or enjoys fair housing rights. These laws also include protection against retaliation because a person aided or encouraged someone else to exercise or enjoy any fair housing right. Conduct considered retaliation includes:

- Taking negative actions against anyone because that person has made a complaint about possible discrimination to management. Examples:
 - A provider issues a termination notice to a resident because she complained that maintenance staff made sexually explicit comments to her.
 - An assistant manager rarely issues notices for noise, but begins issuing them to a resident who has complained about a neighbor making racial comments.

- Program management fails to notify an employee about a required training meeting because the employee reported to management that a resident had experienced disability discrimination.
- Taking negative actions against someone because that person engages in activities to help others become aware of, or encouraging others to exercise, rights granted or protected by fair housing laws. Examples:
 - After a staff member learns a resident handed out fair housing brochures, he denies the resident’s request to use the community room.
 - A manager fires a maintenance worker who told a resident with a disability that he could request installation of grab bars in the bathroom as a reasonable modification.
- Taking negative actions against someone because that person has testified, assisted, or participated in an investigation under fair housing laws. Examples:
 - A manager tells an employee he will be “watching her closely” because she gave a witness statement in a housing discrimination complaint filed against the property.
 - After a resident advocates for a neighbor who was experiencing sexual orientation harassment from a staff person, the manager denies the resident’s request to transfer to another room.
- Threatening or taking an adverse employment action against an employee who assisted someone seeking to rent, buy or sell, because of the person’s protected class, because the person associated with others in a protected class, or because the person was involved in a fair housing investigation. Examples:
 - A manager tells the assistant manager she’ll get a negative performance evaluation if she continues encouraging families with kids to apply for rental housing.
 - A board tells its property managers that their contract will be cancelled if they allow a resident to keep a therapeutic assistance animal.

For more detailed information, see the Sample Policy on Harassment and Retaliation available from the Fair Housing Partners of Washington.

Section C: Religious Organizations Providing Housing

Religious Organizations

Religious organizations and nonprofits operated by them are permitted to reserve housing or shelter to members of the same religion or to give preference to their members. This does not mean a religious entity can discriminate against any other protected class. For example, it would not be permissible to discriminate against housing applicants or residents on the basis of their marital status, disability (including individuals who are HIV positive or recovering addicts, etc.) sexual orientation or gender identity.

Religious Services

Requiring residents to attend religious services may violate fair housing laws. Providers should consult with their legal counsel. If the provider receives federal funding, they are not permitted to provide housing or shelter contingent on attendance at religious services. Even if there is no federal funding involved, there is the risk that anything related to proselytizing could be considered "coercion," which is prohibited by fair housing. At the very least, an individual resident should have the option of obtaining a waiver from attending services if it conflicts with his or her religious beliefs or lack of such beliefs.

Section D: Clean and Sober Housing

Alcoholism is considered a protected disability, and it is not a basis to exclude a person from housing. It is illegal under landlord-tenant common law for a landlord to direct his residents' lifestyle choices. Just as a landlord cannot tell residents how to dress or what to eat, he cannot tell them what they can or cannot drink. That said, a program with a "clean and sober" requirement may require that its residents not have drugs or alcohol in the house, or may have rules that prohibit being under the influence.



Current illegal drug abuse, however, is not considered a disability. Therefore, it is legal to deny someone housing on the basis of his current illicit drug use, even if he is an addict. However, fair housing laws do protect former drug addicts, so housing should never be denied to a person because of his history of former addiction.

Many transitional housing programs have a clean and sober requirement. This practice has not been challenged in any published legal opinion, nor has there been any significant movement in the legal community to challenge it. Fair housing attorneys recommend having rules based on residents' behavior instead of blanket abstinence rules, to avoid legal challenges.

A transitional housing program will have an easier time defending its clean and sober requirement in the event that it is challenged if the program holds itself out as a clean and sober rehabilitative program. Thus, when a resident with alcoholism violates the rule and requests that it be waived as a reasonable accommodation, the program operator can deny the request as unreasonable because it would fundamentally alter the nature of the program.

Mandatory Recovery Requirements

It is acceptable for a housing or shelter program for individuals in recovery from alcoholism or drug addiction to require participation in recovery-related services or groups. However, if they require participation in a 12-step program that includes the concept of a "higher power" and an individual resident feels uncomfortable with the program



for religious (or lack of religion) reasons, the resident should be able to obtain a waiver from attendance if he or she can verify participation in another equivalent recovery program.

Drug Testing

It is not illegal under fair housing laws to administer drug testing at housing and shelter programs, provided every applicant or resident is tested. Random drug testing in transitional housing is currently unchallenged. However, drug testing by publicly-funded entities raises the issue of a resident's constitutional right to privacy. This means that should the practice be challenged in court, it would be upheld by a court only if it were shown that the government (or program receiving government funding) had an overriding interest in doing the testing, such as public safety.

Providers doing random testing should be very cautious that whatever procedure they use (such as testing every 12th individual or testing every week, etc.) has no risk of possible discrimination, however unintended. Providers performing such tests should give applicants and residents opportunities to share information about any prescription medication they are taking that could influence the test results, such as narcotics or medical marijuana.

A program that receives only private funding does not face the same legal dilemma. Regardless of whether the housing in question is publicly or privately funded, any transitional housing program that wishes to perform random drug testing should inform residents before they move in that random drug testing is part of the program. Residents should not be charged for the tests. Residents should be specifically informed as to what substances will be tested for, and the samples should be used only to test for the presence of those specific substances. Because of the high rate of false positives, any specimen that tests positive should be sent out for additional testing to confirm results. It is also recommended that any individual whose housing is threatened by a positive result should be permitted an informal hearing before any formal eviction process is commenced, in order for him to hear the evidence and have a chance to refute it.

Section E: Rule Enforcement

In general, community or house rules must be enforced consistently among all residents. Housing providers should never discriminate by protected class. They should also be very careful not to show favoritism among residents. This type of inconsistency can be perceived as discrimination, whether or not that is the intent. Be aware that if you do something special for a particular resident (for example, take them to the store, clean their house, walk their dog, etc.), other residents may request the same service. If you don't provide it to them as well, it could be interpreted as discrimination.

If there are times when a provider would like to make exceptions to standardized rules or to grant additional services, there should be a written policy explaining what those circumstances are. Please note that reasonable accommodation requests from residents with disabilities may also come into consideration here (See Chapter 4).

Occupancy Standards

Occupancy standards that are too restrictive and permit too few people in an individual unit may have the effect of discriminating against families with children, regardless of the provider's intent.

A good rule for minimum occupancy in a standard unit is two people per bedroom (some housing providers permit one additional person). Refer to the local code enforcement requirements.

Mandatory Case Management

Providers should be very cautious about requiring their residents to utilize case management, support groups, etc., as this may violate fair housing laws. Providers committed to such requirements should, at the very least, match services to the individual needs of their residents. For example, it is not acceptable to put a resident at risk of losing her job because her transitional housing program requires her to attend a support group at the same time she is required to be at work. It is similarly not acceptable to require a resident living on a disability income to attend job search classes or spend time searching for employment.

Gender Discrimination

Sex discrimination in housing is illegal. This means providers are not permitted to segregate residents by gender unless they have shared sleeping areas, bathing areas and/or bathrooms, which would negatively influence the residents' right to privacy.

Providers should also not mandate sleeping arrangements within individual units. For example, restricting a boy and girl from sharing a bed is not allowed; HUD's direction is clear that these decisions belong with the parents.

In specific instances, providers have expressed their concerns about possible sexual abuse in shared sleeping arrangements. Fair housing laws do not allow a provider to dictate sleeping arrangements because they presume it will result in inappropriate conduct. If a provider has concerns about possible child abuse in a specific situation, they should contact the local Child Protective Services office.

Domestic Violence Housing Programs

Housing and shelter providers who house domestic violence survivors and their children, or other women and children, should not refuse to house women with sons under 18. If there are no shared sleeping or bathing areas or shared bathrooms, such policies are probably illegal. Even in environments where there are shared sleeping or bathing areas, providers should consider if there is any way to modify floor plans or usage times to provide privacy. Funding sources may want to consider providing resources to providers to increase privacy.



Refusing to house teenaged sons is an especially risky policy in smaller communities where few housing or shelter resources are available. If a family is turned away because they have teenaged sons and they are not provided with alternative lodging and necessary services, that family would be considered a victim of discrimination.

Some providers have expressed concerns that teenage boys may have had past arrests or other run-ins with the criminal justice system. A housing or shelter provider could screen teenagers for past arrests, just as they screen adults, as long as the screening criteria is used consistently for both males and females.

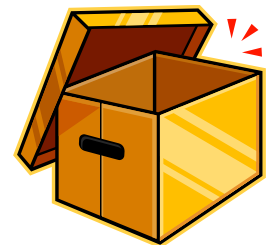
Remember, gender is a protected class under fair housing laws, and male domestic violence survivors need housing services similar to female survivors. There may be privacy reasons and compelling programmatic reasons for excluding adult men from domestic violence shelters that serve women, but communities and funders should have a mechanism in place for serving male domestic violence survivors in an alternative fashion (for example, a separate facility for males or providing motel vouchers with counseling services).

Transgender domestic violence survivors may have particular housing needs that should be addressed. See Section A of this chapter for more information.

Section F: Terminating Residential Client Participation

Evicting or terminating a resident from a housing or shelter program must be based on an objective or fact-based violation of the written and signed rental agreement, house rules, essential program requirements, etc. Objective reasons could include:

- Nonpayment of rent or program fees
- Threatening, harassing or intimidating other residents
- Destruction of property
- Noncompliance with chores or other required services unless there is justification for a waiver
- Violations of rules related to noise, weapons, pets, curfew, etc.
- Not having been truthful with essential eligibility information
- Becoming ineligible for the housing based on a change in circumstances (for example, income increasing to a level above the eligibility limit)
- Deliberate or ongoing violations of the confidentiality of another resident or residents



A housing or shelter provider cannot terminate an individual for behavior that is “odd” but does not damage property, harm other residents, or interfere with residents’ peaceful enjoyment of their housing. Residents should not be terminated for vague reasons such as “conflict with staff.” Instead, specific behaviors should be referenced, such as threats of violence.

Similarly, if staff of a housing or shelter program maintain a list of individuals they will not serve in the future (a "blacklist"), this must be based on objective criteria. Usually this is limited to violent behavior or threatened violent behavior. The length of time an individual is refused re-entry should also be reasonable and applied in a consistent manner.

A provider's policies and procedures with respect to terminating client participation should anticipate reasonable accommodation requests. As discussed below, a reasonable accommodation may be necessary in the course of client terminations.



Chapter 4: Fair Housing Issues Related to People with Disabilities

Section A: Definition of Disability

Washington law and most local laws define disability more broadly than federal law for the purpose of requesting a reasonable accommodation or modification in housing. In Washington, disability is defined as “the presence of a sensory, mental, or physical impairment that:

- (i) is medically cognizable or diagnosable or
- (ii) exists as a record or history or
- (iii) is perceived to exist whether or not it exists in fact.”

Additionally, Washington law states “a disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity....”

This civil rights definition of disability is much broader than the definition used by the Social Security Administration (SSA) or similar state agencies that administer cash or medical benefits for people with disabilities. While approximately 10.5 million Americans received benefits from SSA, as many as 55 million people enjoy protection against discrimination based on disability.

Disability protection includes, but is not limited to:

- Mental and emotional disabilities
- Developmental disabilities
- Cognitive disabilities (stroke, brain injury, etc.)
- Sensory disabilities (blindness, deafness, etc.)
- Long-term systemic conditions (cerebral palsy, diabetes, heart disease, multiple sclerosis, spinal cord injury, arthritis, HIV/AIDS, cancer, etc.)
- Alcoholism
- Drug addiction (provided that there is no current use of illegal drugs)



In addition to protecting people who currently have disabilities, fair housing laws also prohibit discrimination based on:

- A history of having a disability. It is prohibited to apply differential treatment because of a disability in a person's past (such as mental illness, cancer or addiction), even if that person is in good health when the discrimination occurs.
- Being regarded, incorrectly, as a person with a disability. This protection extends to people who have physical or mental conditions which are not substantial enough to limit a major life activity, and also to people who have no disability at all, but are mistakenly thought to have one, and are treated negatively.

Section B: Accessible Facilities

Dwelling Accessibility

Housing and shelter providers have an affirmative responsibility to help their disabled residents overcome barriers to obtaining or maintaining housing. This includes constructing housing and shelter that is physically accessible.



Funders should be aware that a fair housing complaint might be filed against them for providing funds for a building that is not accessible, particularly when any federal funds are involved.

This may also include motels utilized as emergency housing. Funders should consider assisting providers to make housing and shelter units accessible or, at a minimum, to insure alternative options are available.

What are the accessibility standards?

Under the Fair Housing Act, housing with four or more units, constructed for first occupancy on or after March 13, 1991, in an elevator building must be accessible and all ground floor rentals in a non-elevator building must meet specific accessibility standards. For more information, see the sample policy titled "Reasonable Accommodations and Modifications for People with Disabilities".

For more HUD information about disability access, see:

- Fair Housing Accessibility First, www.fairhousingfirst.org
(a HUD-funded education program that helps home builders and architects design and construct housing that meets the FHA accessibility requirements)
- "Fair Housing Act Design Manual,"
www.huduser.org/publications/destech/fairhousing.html
- "Accessibility Requirements for Buildings,"
www.hud.gov/offices/fheo/disabilities/accessibilityR.cfm

Alternative Arrangements

If housing or shelter is not accessible, providers should be prepared to access alternative arrangements when unable to accommodate an individual with a disability. For example, a privately funded transitional housing program may have one vacant room without accessible features and another room with accessible features, which is currently occupied by a resident who does not require them. An alternative to turning away the individual with disabilities would be to move the resident currently occupying the accessible room to the vacant room. Other acceptable options may include offering motel vouchers for an accessible room or linking the individual with an alternate placement in an accessible building.

Section C: Reasonable 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.

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, or installation of a ramp.

Service animals (sometimes known as assistance animals) are a reasonable accommodation for people with disabilities, so long as there is a disability-related need for the animal. "Companion animals" for individuals with mental health issues or cognitive disabilities are one type of service animal, regardless of whether the animal is trained to perform any tasks. For further information, see the sample policy titled "Service Animals".

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:

- Notify applicants and residents that the program accepts and grants reasonable accommodations for people with disabilities. Including such a statement on application form and house rules will alert participants that they can make requests.

- 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 mobility disabled may request a transfer to a ground floor room.
- While management should document these requests, the request does not need to be in writing. Management may use a specific form, but cannot refuse an accommodation or modification because the person making a request did not use the form.
- Reasonable accommodations or modifications can be requested whenever they are needed, and may make multiple requests over time. A person may make requests when applying for housing, when entering into a housing agreement, during residency, and even during an eviction process. .

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 considered 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.

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 clear 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 verification of the person's disability or the need for the accommodation. Example: An obviously blind applicant asks for housing 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. If the resident wants to use 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: If someone with no obvious disability asks for an accessible parking space, request verification both that she has a disability and a disability-related need for the parking.

The general spirit of the law requires that barriers be removed for individuals with disabilities, not that more barriers be created by excessive demands to meet verification standards. For example, a shelter program should fax an out-of-state medical professional to obtain a verification for a homeless disabled applicant who just arrived in town instead of requiring the applicant to see a new medical professional in the area.

Indigent individuals who have no verification letter can be referred to a local public health or mental health service provider to obtain a verification letter without incurring any fees.

According to HUD and the U.S. Department of Justice, 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. Do not ask for specific information about the disability or for medical records!

**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
- it poses a direct threat to the health or safety of others, or would result in substantial physical damage to the property of others.

For more detailed information about accommodations and modifications, including guidance about the interactive process, accessible parking, service animals, and who pays for accommodations/modifications, see the sample policy titled "Reasonable Accommodations and Modifications for People with Disabilities."

For more information about disability rights and responsibilities, see:

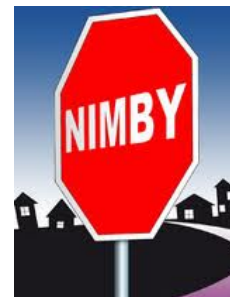
- HUD Disability Rights and Resources, www.hud.gov/offices/fheo/disabilities
- Joint Statement of the U.S. Dept. of HUD and the Dept. of Justice, “Reasonable Accommodations Under the Fair Housing Act”, www.hud.gov/offices/fheo/library/huddojstatement.pdf
- Joint Statement of the U.S. Dept. of HUD and the Dept. of Justice, “Reasonable Modifications Under the Fair Housing Act”, www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf
- HUD, “Disability Rights in Housing”, www.hud.gov/offices/fheo/disabilities/inhousing.cfm
- HUD, “Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation”, www.fairhousing.com/include/media/pdf/insuranceguidance.pdf

Section D: Group Living Arrangements

The fair housing laws and numerous court decisions across the United States protect group dwellings for the homeless, recovering alcoholics and substance abusers, people with disabilities, people with criminal histories, domestic violence survivors, veterans, and families. Municipalities which refuse or place undue burdens on group living arrangements based on irrational fears or subjective criterion risk violating fair housing laws.

Not In My Back Yard! (NIMBY)

Sometimes the biggest opponents of special needs housing are neighbors. For example, in 2004, Triumph Treatment Services submitted an application to the City of Yakima requesting approval to establish a residential group home to provide housing as part of a chemical dependency recovery program.



Although the City of Yakima approved Triumph's proposal, a group of local neighbors twice appealed the decision. Neighbors expressed concerns that the group home could pose "a threat to community safety due to the high recidivism rate of chemically dependent people; because of increased crime, vandalism and possible injury or loss of life due to an element of society involved in drug trafficking that would be drawn to the area" and "because of lower property values that would result from all of said negative impacts to the area."

The Hearing Examiner upheld the City of Yakima's approval of the project and noted:

- The Washington Supreme Court "has refused to allow unsubstantiated subjective fears as to an adverse effect on property values or the lack of safety to constitute a basis for denial of a special use permit for a group home." [*Sunderland Family Treatment Services v. The City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995)]
- Washington's Growth Management Act provides: "No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy or administrative practice which treats a residential structure occupied by people with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals..." [RCW 36.70A.410]

The Hearing Examiner concluded that "there is an affirmative obligation on the part of the City to reasonably accommodate the establishment of group homes in residential areas to facilitate the total and permanent recovery of the residents of such homes."

HUD and the U.S. Department of Justice have issued guidance on these issues in the form of a Joint Statement entitled "Group Homes, Local Land Use, and the Fair Housing Act," online at www.justice.gov/crt/about/hce/final8_1.php.

In another case (*City of Edmonds v. Oxford House*, 514 US 725, 115 S. Ct. 1776), the City of Edmonds, Washington, cited an Oxford House group home for recovering alcoholics and drug addicts for violating the City's zoning ordinance which defined family as not more than five unrelated people. Without challenging the underlying ordinance, Oxford House requested a reasonable accommodation to allow up to 12 unrelated residents. The City denied the request and amended its zoning code to allow such facilities in multifamily and commercial zones and to prohibit them in single-family residential zones. The United States Supreme Court affirmed the Ninth Circuit's judgment holding that Edmonds' definition of family was invalid and unenforceable. This case firmly established that municipalities must consider granting exceptions to such requirements as a reasonable accommodation under the Fair Housing Act.

Fair Housing and Insurance for Residential Group Dwellings

Similar to municipalities, home insurance providers which refuse to insure group home providers based on irrational fears or subjective criterion risk violating fair housing laws. In 2006, the Fair Housing Center of Washington and the Fair Housing Council of Oregon settled a lawsuit involving alleged discrimination on the basis of disability in the provision of homeowners insurance. The lawsuit alleged that between January 2002 and May 2004, Western World took adverse insurance actions associated with licensed adult residential care facilities designated as serving residents with mental illness, including approximately 150 group homes in Washington. The settlement provided \$2 million in monetary relief.

Section E: Confidentiality

Confidentiality Requirements for Individuals with Disabilities

Fair housing laws prohibit housing and shelter providers from requiring their applicants or residents to disclose information related to "the nature and/or extent" of a disability. Any information about an applicant's disability may only be shared with a housing or shelter provider on a voluntary basis and not as a condition for acceptance into the program. This includes information related to medical problems, mental health issues and medications collected during the screening process. Information about a resident's disability should never be shared with other residents.

Any questions regarding a resident's medical or mental health history must be identified as voluntary. It should be clear that sharing such information is not a requirement for acceptance or continued tenancy in the housing program.



The provider may have the capacity to directly offer medical or mental health services or provide linkage to relevant services. If so, they can preface questions related to disability by saying something like the following (using the same wording for all residents):

“I'd like to ask you some questions regarding physical and mental disabilities. Your answers are voluntary and if you don't answer, we will still provide you assistance. If you do answer, it may help us to serve you better.”

If the housing or shelter provider does not offer any medical or mental health services, directly or through a partner agency, and provides only basic referrals, they should not ask these types of questions at all.

Grant Data Collection Requirements

If data regarding the nature and extent of residents' disabilities is required for statistical purposes by a funder, that information should be tracked separately. If someone refuses to provide that information, there may be a way to leave that part of the form blank or note that there was a refusal. As a way to prevent duplication, establish a mechanism to substitute alternate identifying information if the individual refuses to give their name. The homeless data-gathering systems authorized by HUD all have means of addressing this.

Housing and shelter providers should not require residents to share information about their medications, as that could convey the nature and/or extent of their disability. Providers can require residents to keep medications in a central storage area, but need to ensure that the contents will remain confidential. This could mean individual locked or sealed containers, drawers or lockers, where the labeling is not visible, but the medication is easily accessible by the residents when needed.

Applicants or residents can be asked for the names of disability-related service providers they are working with if all residents are asked for the names of their service providers and it is clear that providing the information is voluntary, not required.

A provider's housing staff are permitted to share information about residents with social service staff to create an opportunity for the staff to assist residents in maintaining housing in a contract/rule compliant manner, or to offer specific program services to residents. However, it is illegal for the service staff to share information about a resident's disability with housing staff or other agencies without permission from the resident. A release of information form should be used any time a resident wishes to have information about his or her disability disclosed to housing staff. It is recommended that a separate release be signed for each event of disclosure.

If a provider uses a centralized data base, any resident information related to a disability should be accessible only to relevant clinical or service staff. The release of information form should be used (filling out a release of information must be voluntary, not a requirement)



Chapter 5: Promoting Fair Housing

Many housing and shelter providers have only recently learned that fair housing laws relate to their programs. This guide is a general overview of fair housing laws as they relate to nonprofit housing and shelter providers. These situations have not yet been specifically addressed by the courts.

The most effective way for nonprofit housing and shelter providers to protect themselves and to affirmatively further fair housing are to establish "best practices", such as:

- Review all policies, procedures, rules and application criteria for unintended discrimination and to make sure that they are not discriminatory on their face. Develop new policies and procedures as needed.
- Base admission to a program on very clear requirements that do not discriminate against a protected class.
- Establish a consistent referral protocol. Don't assume knowledge of what people need or what would be "best for them."
- Develop a clear process on how to handle reasonable accommodation requests at every stage of the process, from admissions through termination.
- Assess the facility's accessibility – which should be done anyway if it receives any federal funds. Make whatever needed improvements that are affordable.
- Make sure employees know how to document any issues related to fair housing problems that come up and document the time spent addressing them. Documentation should be clear and legible. Individuals can file fair housing lawsuits up to two years after an alleged act of discrimination, so thorough documentation is extremely important.
- Identify a staff person to be the fair housing "specialist." This person should keep abreast of fair housing issues, address any concerns, and be the point person for handling a fair housing complaint.
- Ensure employees obtain regular fair housing training. Rulings are frequently being made in the courts that can impact the responsibilities of service providers.
- Seek technical assistance as issues arise.

FAIR HOUSING AGENCIES IN WASHINGTON STATE

FAIR HOUSING ENFORCEMENT AGENCIES

U.S. Dept. of Housing & Urban Development Fair Housing 909 First Avenue Suite 205 Seattle, WA 98104-1000	Washington State Human Rights Commission 711 S. Capitol Way Suite 402 Olympia, WA 98504-2490	King County Office of Civil Rights Chinook Building 401 Fifth Avenue Suite 215 Seattle, WA 98104-1818	Seattle Office for Civil Rights 810 Third Avenue Suite 750 Seattle, WA 98104-1627	Tacoma Human Rights 747 Market Street Room 836 Tacoma, WA 98402-3779
206-220-5170 800-877-0246 TTY 206-220-5185 Fax 206-220-5447	360-753-6770 800-233-3247 in WA TTY 800-300-7525 Fax 360-586-2282	206-263-2446 TTY Relay: 711 Fax 206-296-4329	206-684-4500 TTY 206-684-4503 Fax 206-684-0332	253-591-5151 TTY 253-591-5153 Fax 253-591-5050
www.hud.gov/local/sea/seafhome.html	www.hum.wa.gov	www.kingcounty.gov/civilrights	www.seattle.gov/civilrights	www.cityoftacoma.org/humanrights
<u>Protected Classes</u> Race Color National Origin Religion Sex Disability Familial Status	<u>Protected Classes</u> Race Color National Origin Creed Sex Disability Familial Status Marital Status Sexual Orientation (incl. gender identity) Veteran/Military Status	<u>Protected Classes</u> Race Color National Origin Religion Gender Disability Familial Status Marital Status Sexual Orientation (incl. gender identity) Age Section 8 Ancestry Use of a Service or Assistive Animal	<u>Protected Classes</u> Race Color National Origin Religion/Creed Sex Disability Parental Status Marital Status Sexual Orientation Gender Identity Age Section 8 Political Ideology Veteran/Military Status	<u>Protected Classes</u> Race Color National Origin Religion Sex Disability Familial Status Marital Status Sexual Orientation Gender Identity Age Ancestry Veteran/Military Status
File within 1 year <u>Jurisdiction:</u> United States	File within 1 year <u>Jurisdiction:</u> Washington	File within 365 days <u>Jurisdiction:</u> Unincorporated King County	File within 1 year <u>Jurisdiction:</u> City of Seattle	File within 1 year <u>Jurisdiction:</u> City of Tacoma

FAIR HOUSING ADVOCACY, EDUCATION & OUTREACH ORGANIZATIONS

In Western Washington:

Fair Housing Center of Washington

1517 S. Fawcett Avenue, Suite 250
 Tacoma, WA 98402

253-274-9523, 888-766-8800 (toll free),
 Fax 253-274-8220 www.fhcwashington.org

In Eastern Washington:

Northwest Fair Housing Alliance

35 West Main Avenue, Suite 250
 Spokane, WA 99201

509-325-2665, 800-200-FAIR (in 509 area code),
 Fax 509-325-2716 www.nwfairhouse.org

RETALIATION: Fair housing laws prohibit retaliation – an act of harm by anyone against a person who has asserted fair housing rights (by making an informal discrimination complaint, filing a civil rights complaint, or being otherwise involved in an investigation).

Fair housing laws are subject to change. The federal Fair Housing Act, state and local fair housing laws exempt certain housing from coverage. For questions, contact each agency concerning the laws that agency enforces.



SECTION 8 ORDINANCE ENFORCEMENT

In addition to the City of Seattle and unincorporated King County, the following cities enforce local ordinances prohibiting housing discrimination based on participation in the Section 8 Program:

- **City of Bellevue** -- To file a complaint, contact Code Compliance, 425-452-4570
email: codecompliance@ci.bellevue.wa.us
web: www.ci.bellevue.wa.us/reportproblem.htm
- **City of Kirkland** -- To file a complaint, contact Code Compliance, 425-587-3225
email: codecompliance@ci.bellevue.wa.us
web: www.kirklandwa.gov/depart/planning/Code_Enforcement.htm
- **City of Redmond** -- To file a complaint, contact Code Compliance, 425-556-2474
email: codeenforcement@redmond.gov
web: www.redmond.gov/Residents/CodeEnforcement/