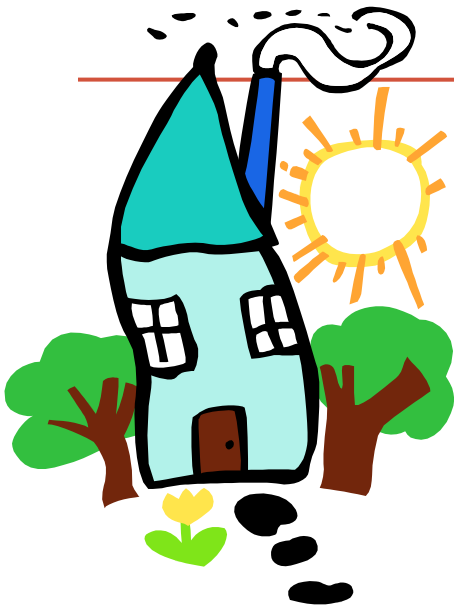


FAIR HOUSING FOR HOMELESS SHELTERS AND TRANSITIONAL HOUSING

Presented By:

Marley Hochendoner Executive Director

Northwest Fair Housing Alliance



RECIPIENTS OF FEDERAL FUNDING

Title VI of the Civil Rights Act of 1964

- Prohibits discrimination on the basis of
 - race,
 - color, or
 - national originin programs and activities receiving federal financial assistance.

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

- Prohibits discrimination on the basis of

- race,
- color,
- national origin,
- sex or
- religion

in programs and activities receiving financial assistance from HUD's **Community Development and Block Grant** Program.

Section 504 of the Rehabilitation Act of 1973

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

Section 504

- Requires “**reasonable modifications**” to **policy and practice for people with disabilities.**
- Programs must be **physically accessible** for persons with disabilities
- Programs must be **programmatically accessible** for persons with disabilities
- Housing providers must provide **reasonable accommodations in all rules, policies and procedures** when needed by persons with disabilities to ensure equal access to their programs

What is covered under 504?

- Owned by Public Housing Authority
- Project based Section 8
- 202/811 senior/disabled
- USDA Rural Development properties
- Section 236(with a mortgage subsidy)
- Other federal funding (CDBG, HOME, etc.)
- VOCA, FVPSA, VAWA RPE, or STOP funds, even though they pass through a state agency, are federal dollars.

Section 504

- Not covered:
 - Housing Choice Vouchers
 - All other privately owned/financed property
 - LIHTC properties without federal gap financing

Title II of the Americans with Disabilities Act of 1990 (ADA)

- Title II prohibits discrimination based on **disability** in programs, services, and activities provided or made available by **public entities**.
- Extends protections of Section 504 to all state and local government funded programs
- **Applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government**
- Covered programs cannot discriminate against persons with disabilities, TM must make reasonable accommodations in policies and practices,TM and make reasonable modifications in physical structures to ensure equal access.

LAWS THAT APPLY REGARDLESS OF FEDERAL FUNDING

Laws that apply to Shelters without public funding

- Title III of the Americans with Disabilities Act
- Fair Housing Amendments Act
- Washington Law Against Discrimination

The Americans with disabilities aCt of 1990, Title III. 28 CFR Part 36

- Prohibits discrimination against persons with disabilities or those affiliated with persons with disabilities
- **in any privately owned “public accommodations” including homeless / emergency shelters**
- Privately owned businesses that serve the public are prohibited from discriminating against individuals with disabilities.
- Requires programs to provide reasonable accommodations in policies and practices and to remove physical barriers to the extent readily achievable

The Americans with disabilities aCt of 1990, Title III. 28 CFR Part 36

- If you operate an emergency shelter, it is likely that you are considered to be a public accommodation and covered by Title III.

The Fair Housing Act

- The Fair Housing Act applies to “**dwelling**s,” which are broadly defined as:
 - any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence.

What is “intended for residency?”

- Length of stay
- Intent & right to return each night to a particular abode
- Amenities included
- How property is marketed
- Written terms of occupancy
- Rent payment, program fee, an in-kind exchange (chores, attending meetings/groups)
- Does person have another current residence intended to be return to? DV victim not likely intending to return so DV shelter would be considered dwelling.
- IF primary purpose is treatment & housing is incidental, most likely not a “dwelling,” unless resident has no other housing to return to it may be considered a dwelling

Hunter v. The District of Columbia (D.D.C.), Aug. 2014

- Action by a family, including a minor daughter w/ severe mobility impairments, who reside in the D.C. homeless shelter system. They alleged the District, and the contractor which runs its shelters, failed to respond adequately to requests for accommodations to address her disabilities, in violation of the FHA, Title II of the ADA, and Sec 504 of the Rehabilitation Act.
- Defendants moved to dismiss the complaint for failure to state a claim. On August 18, 2014, the court [issued a favorable decision](#), denying the motion to dismiss the ADA and Sec. 504 claims in its entirety, holding among other things that the district is liable for discrimination by its contractor.
 - With respect to the FHA, the court concludes:
 - that shelters are covered "dwellings" under the FHA.
 - even though section 804(f)(1) of the FHA, which prohibits refusal to make a dwelling available, does not apply to protect the plaintiffs because they are not "buyers or renters," section 804(f)(2), which forbids discrimination in the "terms or conditions of a rental," does protect plaintiffs even though they do not pay directly for their shelter.
 - Other claims are dismissed in part and sustained in part.

Fair Housing Amendments Act (FHA)

- The Fair Housing Act covers most housing rental properties, including non-profit housing, shelters and transitional housing programs.
- The FHA also apply to any other person or entity whose actions could “make housing unavailable”:
 - 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

Title III v. FHA

- If shelter is for transient or short term stay, Title III applies
- If shelter is intended and used for long-term stay, Fair Housing laws likely apply

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

- Emergency (first come, first served) one-night shelters might not be covered by FHA, but are still covered by Public Accommodations laws (ADA Title III, etc.)
- To protect against liability housing and shelter providers should assume their programs involve “dwellings” and comply with the requirements of FHA

Public Accommodations

- Must comply with nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment
- 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.
- Must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Required for people with disabilities

- Equal Access
- Reasonable Accommodations
- Reasonable Modifications
- Under the ADA, services must be provided in the most integrated setting appropriate to the needs of the individual with a disability

Equal Access

- Eliminate eligibility criteria that tends to screen out persons with disabilities, unless necessary to the provision of services
- Ensure programs are physically accessible
- Provide auxiliary aids and services to ensure effective communication with persons with disabilities, w/o charge

Reasonable accommodations

- Providers *must* make reasonable accommodations in rules, policies, practices or services, when necessary to afford a person with a disability equal access to services, programs, or activities.
- Refers to the removal of administrative barriers

Reasonable Modifications

- Providers *must* provide reasonable modifications to the premises if necessary to afford a person with a disability equal access to services, programs or activities
- Refer to the removal of physical barriers to equal access

Who Is Disabled?



- Individuals with a mental or physical impairment that substantially limits one or more major life activities
- Individuals regarded as having such an impairment
- Individuals with a record of such impairment

WLAD: DISABILITY DEFINITION

- RCW 49.60.040(25). "Disability" means 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.

SSI Recipients



- FHA definition is broader than the definition used to qualify for Social Security disability benefits
- A person may be protected under the FHA but still not be eligible for disability or supplemental security income (SSI).

DANGER!



Individuals Who Are Not protected:

- ◎ Sex offenders / Current illegal drug users
- ◎ Individuals whose tenancy would
 - constitute a **direct threat to the health or safety of others**, or
 - result in substantial physical damage to the property of others,
 - Unless, in the case of a person w/ a disability, the threat can be eliminated or significantly reduced by reasonable accommodation.
 - Don't assume – need factual evidence

Requirements for ra/rm

- Individual with a disability must ask for RA or RM
- Request does not have to be in writing
- Does not have to use words “accommodation” or “modification”
- Request should be granted if:
 - Person meets definition of disability)
 - Necessary
 - Nexus/connection between the requested accommodation/modification and the person’s disability

Fha: Information that can be requested

- Information verifying person is disabled
 - Doctor, medical professional, peer support group, non-medical service agency, or reliable 3rd party who is in position to know
- Description of needed accommodation
- Explanation of relationship between disability and need for the accommodation
- **It is unlawful to** ask if applicant has a disability or inquire about nature or severity of disabilities.

Fha: Allowed verification



- Housing providers are entitled to verify the existence of a disability, and need for accommodation--if either is not readily apparent.
- Persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.

Exceptions to ra requirement

- Undue administrative or financial burden
- Fundamental alteration in the nature of the program
- If the person with a disability seeks an accommodation/modification that is not reasonable, the shelter has a responsibility to work with the individual to find a reasonable alternate accommodation

US v. City Rescue Mission (W.D. Pa.), Aug. 20 2014

- Court entered a [consent order](#), an election referral from HUD.
- The [complaint](#) alleged a pattern or practice of FHA and ADA violations, including that defendants discriminated on the basis of disability by refusing to allow the complainant to stay in the homeless shelter w/ his guide dog.

US v. City Rescue Mission (W.D. Pa.)

Continued

- The consent order requires defendants to obtain civil rights training and to adopt a new RA policy, including allowing occupants w/ assistance animals to reside anywhere in the shelter, and not just in the infirmary. The decree also contains a \$5,000 civil penalty and refers to a separate monetary agreement between the HUD complainant and the defendants

Housing Rights Center V LA Homeless Services Authority

- On 7/15/09, HRC sued LAHSA and several shelters it funds.
- Defendants were allegedly discriminating against homeless people with disabilities who use service animals by denying them entrance into their facilities.
- Claims were raised under the ADA, Rehabilitation Act, and FHA.
- Settlement directed all LAHSA-funded agencies to provide reasonable modifications to their policies and facilities for homeless people with service animals.

ADMISSIONS / PRIORITIES / POLICIES

Discrimination can occur....

- During **application process** (steering, segregating, expressing or publishing preferences or limits)
- **Different terms or treatment:** procedures, rules, rent criteria, fees, charges, repairs access to common facilities, etc.
- Establishing rules or policies that “target” specific protected classes.
- Harassment, threats, coercion
- Termination
- Retaliation

Have written admissions criteria

- Clear,
- Objective
- Consistent
- Standardized forms and screening
- Based on facts
 - Rental History
 - Income
 - Observable behavior
 - Recommendations by identified referral agencies

PRIORITIZING APPLICANTS

- In general, screen and select in chronological order.
- Apply consistently.
- Ok 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. Accept the first applicant meeting their criteria or prioritization policy.
- Some funding sources require that providers offer specific preferences.

PREFERENCES

- **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).
- 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.

HMIS vs Anti-Discrimination Laws

- Questions about presence of a disability or that might reveal the presence of a disability are prohibited unless program is specifically designated for persons with disabilities
- After the initial intake process is complete and applicant admitted into shelter, staff should explain purpose of HMIS service assessment questions and that answering questions is voluntary.
- **SERVICE ASSESSMENT HMIS QUESTIONS IN APPLICATION PROCESS IS VIOLATION OF FEDERAL ANTI-DISCRIMINATION LAWS**
-

FAMILIES WITH CHILDREN

Families with Children

- Presence of at least one child under 18 in household
- Housing cannot be denied unless:
 - Room/Sleeping area is only sufficient for a single individual such as a SRO or a cot in a dorm shelter
 - The housing is designated for Older persons
- NOTE: Parents/caregiver determines bed time, daycare, parenting, rec activities etc.

Familial Status

- Avoid rules that say “adults must supervise children at all times”
- Not appropriate to require supervision of older teens.
- Teenagers commonly babysit and it is unreasonable to require child care providers to be over 18

HUD v. Salvation Army – Pregnancy

Nov. 2014

- Secretary-initiated complaint that HUD filed against the Salvation Army
- Allegations that SA wrongfully 4 women from its transitional housing center in Washington, DC, because they became pregnant.
- The rules unlawfully discriminated against residents on the basis of sex and familial status.
- The center accepted pregnant women and women with children, but evicted women who became pregnant during their residency.
- The Salvation Army maintained a policy that said “there are to be no additions to a resident’s family while she is enrolled in the Turning Point Program. Pregnancy, regardless of outcome, will be grounds for dismissal from the program.”
- Conciliation Agreement:
 - Salvation Army will pay \$48k to four women (\$12,000 each)
 - Salvation Army agreed to set aside \$24,000 for a housing case manager
 - revise its residency policies to allow women who become pregnant after entering the program to complete their stay.

TRANSGENDER RESIDENTS

- Notice CPD-15-02: *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities*, 2/20/15
- From HUD, Office of Community Planning and Development
- Special Attention of: ESG recipients and subrecipients, CoC recipients and subrecipients, and HOPWA Grantees

Equal Access Rule

- On February 3, 2012, HUD published the *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity final rule* (Equal Access Rule) (77 FR 21 5662).
- Requires HUD's housing programs be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status.
- The rule defines "gender identity" to mean "actual or perceived gender-related characteristics." 24 CFR 5.100; 77 FR at 5665.
- The final rule prohibits owners and administrators of HUD-assisted or HUD-insured housing, approved lenders in an FHA mortgage insurance program, and any other recipients or subrecipients of HUD funds from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing.
- The rule does not prohibit voluntary self-identification of sexual orientation or gender identity, and it provides a limited exception for inquiries about the sex of an individual to determine eligibility for temporary, emergency shelters with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled. 24 CFR 5.105(a)(2).

Assignments

- HUD assumes that a recipient or subrecipient (“provider”) that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities will place a potential client (or current client seeking a new assignment) in a shelter or facility that corresponds to the gender with which the person identifies, taking health and safety concerns into consideration. A client’s or potential client’s own views with respect to personal health and safety should be given serious consideration in making the placement. For instance, if the potential client requests to be placed based on his or her sex assigned at birth, HUD assumes that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns. HUD assumes that a provider will not make an assignment or re-assignment based on complaints of another person when the sole stated basis of the complaint is a client or potential client’s non-conformance with gender stereotypes.

Appropriate and Inappropriate Inquiries Related to Sex

- For temporary, emergency shelters with shared sleeping areas or bathrooms, the Equal Access Rule permits shelter providers to ask potential clients and current clients seeking a new assignment their sex. Best practices suggest that where the provider is uncertain of the client's sex or gender identity, the provider simply informs the client or potential client that the agency provides shelter based on the gender with which the individual identifies. There generally is no legitimate reason in this context for the provider to request documentation of a person's sex in order to determine appropriate placement, nor should the provider have any basis to deny access to a single-sex emergency shelter or facility solely because the provider possesses identity documents indicating a sex different than the gender with which the client or potential client identifies. The provider may not ask questions or otherwise seek information or documentation concerning the person's anatomy or medical history. Nor may the provider consider the client or potential client ineligible for an emergency shelter or other facility because his or her appearance or behavior does not conform to gender stereotypes.

Privacy

- If a client expresses safety or privacy concerns, or if the provider otherwise becomes aware of privacy or safety concerns, the provider must take reasonable steps to address those concerns. This may include, for example: responding to the requests of the client expressing concern through the addition of a privacy partition or curtain; provision to use a nearby private restroom or office; or a separate changing schedule. The provider must, at a minimum, permit any clients expressing concern to use bathrooms and dressing areas at a separate time from others in the facility. The provider should, to the extent feasible, work with the layout of the facility to provide for privacy in bathrooms and dressing areas. For example, toilet stalls should have doors and locks and there should be separate showers stalls to allow for privacy. Note: ESG and HOPWA funds may be used to renovate an emergency shelter to maximize privacy and safety. The provider should ensure that its policies do not isolate or segregate clients based upon gender identity.

Training

- It is the responsibility of the recipient to ensure that it and its subrecipients comply with the Equal Access Rule. In furtherance of such, recipients and subrecipients should provide this Notice to staff members and contractors so as to ensure that employees and contractors who interact directly with potential clients and current clients are aware of it and take prompt corrective action to address noncompliance. Moreover, they should provide training to staff on completing intakes consistent with this guidance. If HUD finds a recipient or subrecipient has failed to meet program requirements, HUD may take actions such as those described in 24 CFR 41 576.501 or 24 CFR 574.540.

Transgender Individuals

- WA 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.

Transgender Individuals

- 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.
- 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. If possible, providers should offer at least one gender-neutral bathroom and one private shower stall.

RELIGIOUS DISCRIMINATION

Establishment Clause

What if the homeless shelter is conducts religious activities and is publically financed?

- The Establishment Clause provides that “Congress shall make no law respecting an establishment of religion.”

FHA

RELIGIOUS EXEMPTION

- If a shelter is owned or operated for other than a commercial purpose,
- by a religious organization..., and
- does not restrict membership in its religion on account of race, color, or national origin,
- it is exempt from religious discrimination prohibitions of the Fair Housing Act.

- 42 U.S.C. § 3607(a) provides: (a) Nothing in [the FHA] shall prohibit a religious organization . . . from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

IFHC *v.* *Boise Rescue Mission Ministries* (9th Cir. 2011)

- 9th Circuit concluded that § 3607(a) exempted the religious practices challenged.
- No one disputed that Defendant was a bona fide Christian organization that does not restrict its membership on account of race, color, or national origin.
- No one disputed that Defendant operated its homeless shelters for other than a commercial purpose.

Defiore v. City Rescue Mission of New Castle,

- Defendants contended that it was a Christian ministry that operates as a privately owned and operated shelter, independent from any government funding or assistance. Defendants cited to its use of an Ichthys logo, crosses that adorn its building and the organization's one hundred year history in the New Castle community as a Christian ministry that seeks to commune with other Christians and spread the word of God.
- The Court found this evidence insufficient to determine whether Defendant's structure and purpose was primarily religious.

Religious organization exemption only allows limiting of occupancy to members of the same religion

- It does not exempt other types of discrimination prohibited by the Fair Housing Act.
- The FHA exemption allows religious entities to limit occupancy to members of the same religion. It is not clear if Plaintiff was turned away because of Crossroad's desire to provide preferential treatment to members of its own religion, or, as the record suggests, Plaintiff was turned away based on his need to have a service dog.

ENFORCEMENT

- ADA – individual can file a complaint with the Department of Justice
- FHAA – individual can file a complaint with the Department of Housing and Urban Development (HUD)
- Individual can file a civil lawsuit against the shelter provider

THANK YOU!!

- For more information contact NWFHA at:

- 509-325-2665



- 35 W Main, Suite 250, Spokane

- www.nwfairhouse.org