

General Fair Housing Law

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- I. Fair Housing Basics
- II. Fair Housing: National Origin and LEP Compliance
- III. Fair Housing and Sexual Orientation/Gender Identity
- IV. Reasonable Accommodation and Service/Companion Animals
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What is the Fair Housing Act?

The Fair Housing Act, Title VIII of the Civil Rights Acts, prohibits discrimination in housing.



Why Fair Housing?

Where you live determines:

- Where your children go to school
- Ease of getting to work, healthcare, recreation
- What kind of physical danger you may be exposed to

It is good for the community:

- Ensures it is a good place for future businesses to locate
- Promotes economic growth and welfare for all

Elements of a Fair Housing Case

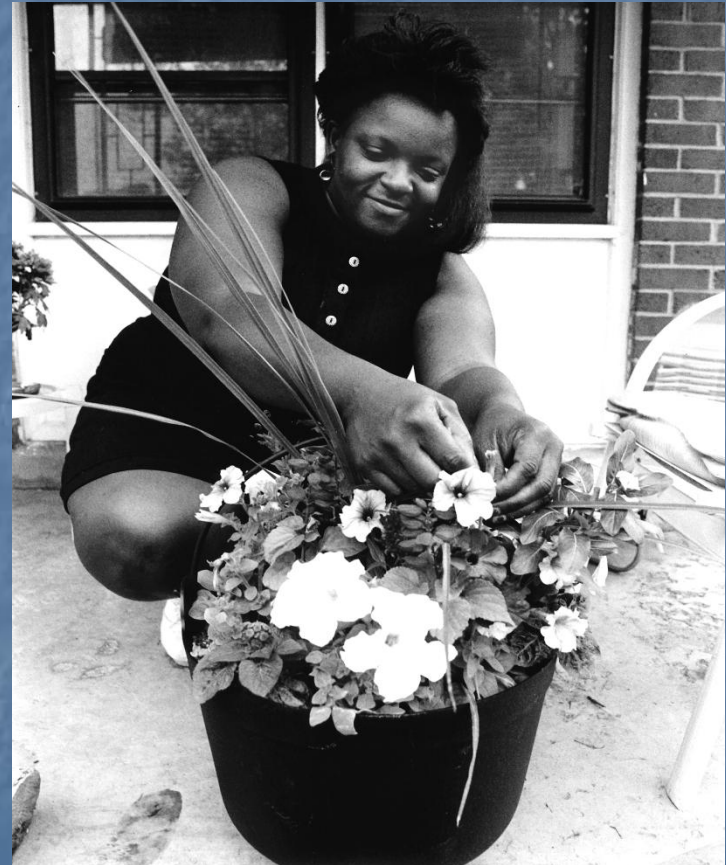
When a complaint is filed, one must show:

- (1) that a member of a protected class was discriminated against
- (2) (a) the dwelling is covered (4 or more units/property/in business of housing) by (b) a person/entity in the business of housing
- (3) within the time limitations (Statute of Limitations)
- (4) a discriminatory act occurred such as:
 - During application or screening
 - Denial of reasonable accommodation/modification
 - Inner-tenancy harassment
 - Different policies, charges, treatment

First, the Fair Housing Act Prohibits Discrimination in the Sale and Rental of Housing Based on a Person's Protected Class:

- Race
- Color
- Sex
- Religion
- National Origin
- Disability
- Familial Status (presence of children under 18 yrs. old)
- Sexual Orientation/Gender Identity in HUD-Funded Housing

<http://portal.hud.gov/hudportal/documents/huddoc?id=LGBTPR.PDF>



Second, Part A: What is Housing?

A “dwelling” ...

- Any building, structure, or portion of a building that is occupied or intended to be occupied
- Any of the above where a person intends to return

Housing Covered under the Fair Housing Act

includes but is not limited to:

- Condominiums
- Duplexes
- Multi-unit dwellings (apartments) with 4 or more units
- Manufactured homes
- Group homes for the recovery of drug addicts and alcoholics
- Seasonal bungalows
- Private homes
- Vacant land
- Homeless shelters
- Shelters for victims of domestic violence
- Hospice
- Nursing Home
- Assisted Living

Second, Part B, Fair Housing Act Applies to Many Different Housing Transactors:

- Advertising media
- Residential landlords
- Rental agents
- Housing Agents/Managers
- Real Estate Brokers and Salespersons
- Homeowners
- Homebuilders
- Refugee Agencies
- Banks, Savings and Loan Associations, Mortgage Lenders or other financial institutions
- Developers and contractors
- Landowners
- Condominium developers or owners
- Home Owner and Condo Owner Associations

Third, Statute of Limitations

- In general, the statute of limitations to file a FHA complaint with HUD is one year from the date of the discriminatory event.
- The statute of limitation to file a FHA complaint in court is two years from the date of the discriminatory event.

Four, Discriminatory Act--

A housing provider may not:

- Refuse to rent, sell, or deal with a person of a protected class
- Discriminate in terms or conditions of sale
- Force tenant to provide information about extent of disability
 - Unless determining eligibility for a program with priority status
- Refuse to design and construct covered multifamily dwellings that are accessible to and usable by persons with disabilities

A housing provider may not:

- State that housing is not available when it actually is available
- Threaten, intimidate or interfere with a protected class member or someone that has filed a complaint
- Assign different policies, conditions, or terms
- Steer or encourage a person's choice based on race, familial status, color, disability status, etc.



Fair Housing Laws Prohibit:

- Channeling or sending a person into a neighborhood, or not showing some neighborhood, based on ethnic identity
- Segregating and/or separating people in housing
- Aiding and abetting in unfair housing practices
- Preventing any person from complying with fair housing practices



The Fair Housing Act Prohibits Discriminatory Statements

- It is illegal to make, print, or publish advertisements relating to the sale, rental, or financing of a dwelling that indicates a preference, limitation, or discrimination



Advertising Examples

- “Christian only” or “female only”
- “empty nesters” or “# children only”
- “adults only” or “mature couple”
- “near ... Church”
- “no disabled” or “able-bodied only”
- “religious reference”
- “must be employed”
- “no Español”

Advertising Exception?

Per HUD/case law say roommates may advertise for gender only. (This may be challenged so be careful!)

For example: “female roommate wanted”

However, you can still not show a preference based on any of the other protected classes: race, religion, color, national origin, familial status, or disability

HUD's Advertising Guidance

<http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf>

Housing Providers May:

- Check references
- Check ability to pay rent
- Inquire on how best to make reasonable accommodations for prospective tenant
- Create rules for benefit of entire community
 - Given rules are not discriminatory

A person or entity may have a fair housing complaint when:

The person or party:

- Believes he or she is about to be injured by a discriminatory housing practice
- Is a member of a protected class
 - Acts on behalf of a disabled person residing or intending to reside in the dwelling after it is sold, rented, or made available
- Is a member in a group that is statistically affected by a policy

Parties Who May Take Action Against A Discriminating Party



- Individuals
- Testers
- Fair Housing Organizations
- Neighbors
- Community groups
- Municipalities
- Housing Providers/HP Employees

Reporting Discrimination

- Document the incident:
 - Write down the date of the incident
 - Time it occurred
 - Any witnesses
 - Summary of the incident
 - Any response or action taken
- Discuss and report it

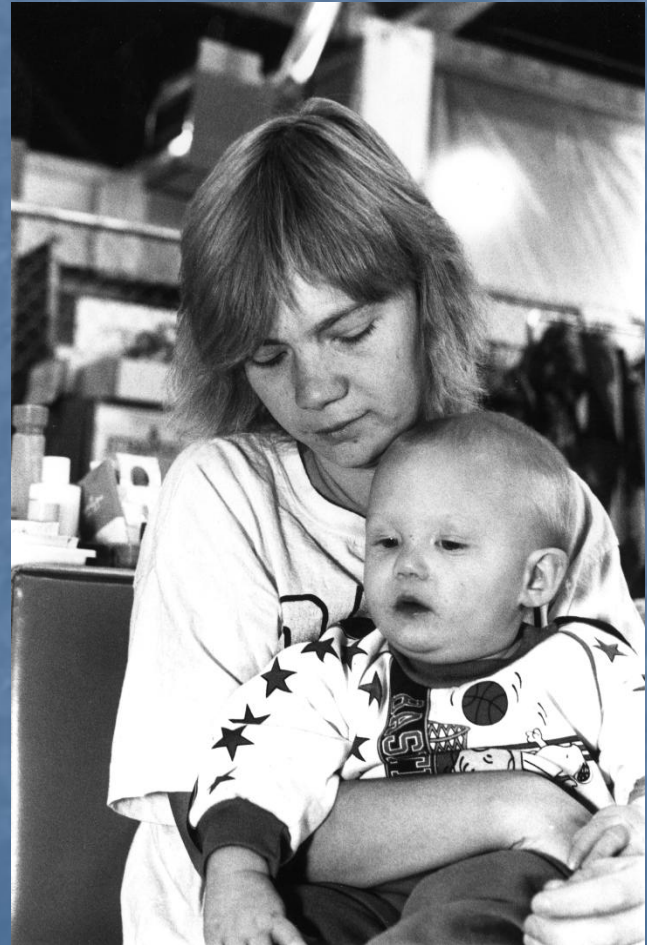
Discuss and Report Where?

- HUD(the US Department of Housing and Urban Development)
 - Online, www.hud.gov
 - Toll Free: 1-800-669-9777
 - TDD/TTY: 1-800-927-9275 (TDD)
- Intermountain Fair Housing Council
 - (208) 383-0695 in Boise
 - Toll Free: 1-800-717-0695

Filing a Complaint with HUD

1. Complaints must be filed through the HUD administration process within one (1) year of discrimination
2. HUD will either complete an investigation of the complaint within one hundred (100) days or provide a reason it failed to do so.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint



Further Action

- If HUD finds that there is reasonable cause, then a charge will be issued and may:
 - Go to trial before an administrative law judge
 - Go to court where the complaint will be represented by the Justice Department

Filing in Court

- Private attorneys/individuals may file a suit within two (2) years of the alleged violation
- Can be filed at the same time as a complaint filed with HUD
- Can file a suit even if HUD did not take action on the complaint
- May include more monetary damages

Ignorance of the Law



- Ignorance of the law is no defense
 - A defendant may not claim that s/he was not properly informed regarding the law
 - It is the housing provider's responsibility to be educated on housing laws

II. Fair Housing: National Origin and LEP Compliance

Title VI: Language Access

- Title VI of the 1964 Civil Rights Act
- U.S. Supreme Court—Lau v. Nichols (1974)
- Executive Order 13166 (2000)
- Federal Agency Guidelines
 - HUD – 2007**
 - Providing services to persons with LEP

National Origin Discrimination

- Failure to provide interpretation when persons are LEP
- Treating people differently or worse because they are LEP

Resources

- U.S. Department of Justice: www.lep.gov
- Court House or Boise Interpreters
- Universities, Agencies
- Apps
- www.gehanes.com
 - Offers to Interpret
 - Langwij Finder

III. Fair Housing and Sexual Orientation/Gender Identity

HUD RULE: Equal Access

- HUD Rule Adopted March 2012
 - Equal Access
 - Definitions
 - Sexual Orientation: Homosexuality, Heterosexuality, Bisexuality
 - Gender Identity: Actual or perceived gender related characteristics
 - Inquiries—can't inquire into one's sexual orientation/gender identity
 - Applies to HUD programs: FHA insured loans, Section 8, public housing, CDBG

IV. Reasonable Accommodations and Service/Companion Animals

Who Is Disabled As Defined by the Fair Housing Act?

A person who:

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

Physical or Mental Impairment

Includes, but is not limited to:

- Orthopedic, visual, speech, hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Cancer
- Heart disease
- Diabetes
- HIV/AIDS
- Mental disabilities
- Emotional illness
- Learning disabilities
- Alcoholism
- Prior drug addiction (current users not covered)

What Is a Major Life Activity?

Functions or activities that are of central importance to daily life such as:

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

What is “reasonable modification and accommodation”?

- A reasonable modification is an alteration (change) to the physical premises
- A reasonable accommodation is some exception or change to the rules, policies, services, or regulations

HUD Guidance on Reasonable Modifications and Accommodations

Modifications:

http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

Accommodations:

<http://www.hud.gov/offices/fheo/library/hud/dojstatement.pdf>

What does a Reasonable Accommodation/Modification Request look like?

Sample Forms:

- <http://www.ifhcidaho.org/index.php/resources/guide-reasonable-accom> (Sample IFHC Ken Nagy Document)
- <http://www.idaholegalaid.org/node/2266/about-reasonable-accommodations-andor-modifications> (ILAS Interactive Self-Help Form)

Examples of Reasonable Modifications:



- Building a ramp to enter dwelling
- Widening kitchen, bathroom, and/or bedroom doors
- Installing grab bars in the bathrooms

Who Pays?

- Housing providers, if federal funds are received
- Person requesting modification, when provider receives no federal funds, may be responsible for:
 - costs to make modification
 - cost to restore modification back to original condition

Examples of Reasonable Accommodations

- Permitting a service or companion animal in “no-pet” community
 - Not charging pet deposit
- Permitting an outside agency to assist a resident with a disability to meet the terms of lease
- Permitting a Live-in Personal Care Attendant
- Change in communication devices, such as increasing font size of typed documents

RA or RM Process

- Request
- If obvious, no proof needed
- If not obvious, proof of need
- Tenant or Consumer gets proof of need from qualified professional or person in the position to know
- Tenant gives it to Housing Provider
- Housing Provider and Tenant engage in the interactive process

A Housing Provider Can Request Proof of Need When

- There is a non-obvious disability or an obvious disability with a non-obvious need, a housing provider may request that a tenant provide proof showing that the modifications or accommodations requested will provide the tenant with an equal opportunity to use and enjoy place of residence.
- See the HUD/DOJ Statement on Reasonable Accommodations at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

A Housing Provider Cannot Request Proof of Need When

There is an obvious disability with an obvious need for a reasonable accommodation.

Example: A person with a sight impairment requests a waiver to "a no pet policy" for his seeing-eye dog. No reasonable accommodation request or proof of need required. In fact, it would violate the Fair Housing Act to require one.

Proof of Disability and Need

- By a “qualified professional or person in the position to know”

Some examples are:

- Vocational rehabilitation counselor
 - Case manager
 - Physician’s Assistant, RN
 - Therapist, Physician
- The proof of need should never disclose the severity or nature of the disability
 - Must show the relationship between disability, the accommodation, and how it will affect housing

Housing Providers can:

- Confirm that a verifiable disability exists through a qualified professional or person who is in a position to know
- Verify that the resident with a disability can still meet essential obligations of tenancy:
 - Pay rent
 - Care for the apartment
 - Report required information to the landlord

Housing Providers *Cannot*:

- Ask about the nature or severity of a person's disability
- Directly ask the qualified professional or person in a position to know for the proof
- Charge an extra fee or additional deposit
- Deny modifications and/or accommodations if:
 - proof of necessity is presented
 - suggested modifications are reasonable

A request is reasonable when it is not an:

- **undue financial or administrative burden** - evaluate the financial impact the accommodation would have on the budget or resources
- **fundamental alteration to the nature of the operation** - evaluate whether you are being asked to provide a service not normally provided in your business and doing so would change your operations or business

Housing Providers Should Never:

- Delay
- Outright Deny
- Ignore a Reasonable Accommodation

Housing Providers Should ALWAYS:

- Engage in an interactive dialogue with the tenant, consumer, participant
- Document actions

Example

- Requesting a reasonable accommodation for a service or companion animal under the Fair Housing Act.

Definition Support Animal under FHA

Support Animals Are Assistive Devices, Not Pets!!!

- **An assistive device** like a wheelchair, cane, crutches.
- **The term support animal is the same as** service animal, companion animal, emotional support animal, assistance animal. They are interchangeable.
- They help persons with disabilities use and enjoy their dwellings and ameliorate the effects of their disability.

When can one ask for a service animal?

- Before and during a tenancy in a rental unit, housing program, etc. Anytime!
- If a person is applying for a unit, it is best to notify the housing provider of the service animal when the tenant applies. If the housing provider denies the request or says you have to apply first, ask for help from the IFHC to educate the provider.
- During a person's tenancy, if s/he needs a service animal, make the request before getting the animal. Remember the housing provider should NOT outright deny, delay or ignore the request. If the qualified professional says the person needs one, and the person has a pet that can address the need for the disability, notify the housing provider.

Support animals can be any age, breed, size, weight, and species!!!!

- Except State/County/City may impose limits on exotic animals and vicious breeds. However, a reasonable accommodation may be appropriate in some circumstances. These regulations should not apply to support/companion/service animals under FHA.
- See HUD's Insurance Policy Restrictions as a Defense for Refusals to Make Reasonable Accommodations:
- <http://servicedogcentral.org/content/files/2006-06-12%20HUD%20memo%20on%20insurance%20policy%20restrictions%20related%20to%20reasonable%20accommodations.PDF> . Be Careful!

How many service animals can a person have?

- There is no limit on the number of service animals a person and or family can have.
- A housing provider can request a proof of need for each support animal for the person with the disability that is obvious but has a nonobvious need for an animal or whose disability is not obvious and there is not an obvious need for the animal.
- The qualified professional or person in the position to know should say that the person needs an animal for each disabling condition.
- **Attention:** Some advocacy groups might argue that a person with a disability with multiple service animals which have a symbiotic relationship that helps one condition should not have to show a connection for each animal to each condition. Examine each request on a case-by-case basis and get help when you need it to properly address a request.

What if my service animal has a litter/babies?

- The litter is rarely considered service animals if ever.
- A housing provider might give you a violation of the rules notice and request you remove the litter once weaned and or may charge you a pet deposit if pets are allowed, or waive it, if the tenant agrees to remove the litter once weaned.
- Housing providers should never force the person to get rid of the service animal and litter until the puppies, kittens etc. are weaned.
- Any damage caused by the litter may be charged to the tenant.

Can a housing provider require service animals to...

Have shots and a license?

- If the State, city, or county requires animals to be licensed and or receive certain shots, you can require it. You can also request a reasonable accommodation from the regulating government body if needed.

Insurance?

- No. In unusual situations in which the support animal is an exotic pet or “vicious” breed and the housing provider’s insurance prohibits them or puts restrictions, then the housing provider should request a reasonable accommodation from the regulating government body or insurance company if needed.

Can a housing provider require service animals to...

Be spayed/neutered?

- No. While it may be great idea because of overpopulation, do NOT require it as it may be financial barrier to the person with the disability or cause harm to the service animal.

Declawing?

- No, as it may cause harm to the service animal.

Be on a leash?

- It depends. If city or county ordinance requires an animal to be leashed, then it may be required, unless an animal cannot perform its work, such as alerting a person with Epilepsy that s/he is going to have a seizure and then keeping the person safe. You can also request a reasonable accommodation from the regulating government body if necessary. Don't require cats to be leashed.

What if the reasonable accommodation or proof of need letter looks questionable or comes from an online source?

What if the proof of need provider writes proof of need letters for everyone?

What if the proof of need doesn't say the person has a disability or needs the accommodation or doesn't provide a connection to the disabling condition?

Best Practice:

- Because persons with disabilities need service animals and accommodations, we don't want anyone misusing the law so that the law is amended to harm of the person with the disability.
- Housing providers should engage in an interactive dialogue and get the tenant help from a fair housing organization or an organization that helps persons with disabilities.
- Let the organization get the tenant/homeowner help clarifying the reasonable accommodation and or proof of need.
- As a Housing Provider, do NOT contact the qualified professional/person in position to know directly or outright deny, delay or ignore a request.

Does the tenant have to ask for a reasonable accommodation for a visitor's companion animal before the animal visits?

If the visitor was in the common areas there is no need to ask for an RA. If they are going to go into the unit, it might depend, presuming there is a no pets policy. In an example of visitors to the property, the tenant would request the RA on behalf of the person with a disability; generally, no documentation is required, unless they come regularly and the need is not obvious. Please keep in mind, however, that as with any FH situation, specific fact patterns can vary greatly, thereby changing the FH implications and requirements of any situation.

- Note: In Idaho, it is misdemeanor to interfere with a ADA defined service animal and there is immediate remedy for those individuals.

Please contact the following with any questions and/or concerns:

U.S. Department of Housing and
Urban Development (HUD)

1-800-669-9777

-or-

1-800-927-9275 (TDD)

www.hud.gov

Intermountain Fair Housing Council
(208) 383-0695 in Boise

-or-

1-800-717-0695 (toll-free)

Web Resources:

- www.fairhousinglaw.org
- www.nationalfairhousing.org
- <http://fairhousing.jmls.edu/>
- <http://www.usdoj.gov/crt/housing/>
- www2.state.id.us/ihrc/about.htm
- www.hud.gov
- www.bazelon.org
- www.idaholegalaid.org
- www.ifhcidaho.org

Questions?