



*Building Communities,
Changing Lives*

FAIR HOUSING AND THE CTI FAIR HOUSING PROGRAM

AN INTRODUCTION FOR HOUSING PROVIDERS ON HOUSING
DISCRIMINATION AND THE CTI FAIR HOUSING PROGRAM



HUD FAIR HOUSING GRANT RECIPIENT

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TRAINING GOALS

- Understand who is protected and common forms of housing discrimination.
- Understand basic best practices and how to avoid discrimination.
- Understand what the CTI Fair Housing Program is, what it does, and how it can help housing providers.



INSTITUTIONAL AND SOCIAL HOUSING DISCRIMINATION

- Housing Discrimination has existed in this country at all levels of government and social institutions.
- Systematic steps have been taken to fight housing discrimination, but it remains a significant problem.
- The effects of governmental discrimination remain in zoning laws and administration and distribution of housing resources and benefits and incentives.
- There are fewer overt discriminatory acts by housing providers, but it remains an issue. Subtle, pretextual, and inadvertent discrimination remains prevalent.



THE WIDE REACHING EFFECTS OF HOUSING DISCRIMINATION

- Housing affects all parts of life
 - Family
 - Community
 - Neighborhood
- Housing affects our health
 - Access to healthcare
 - Healthy environments
 - Stability and safety
- Housing affects access to resources
 - schools
 - Jobs
 - Transportation
 - Community resources (parks, recreation, goods and services)
- Housing access has generational effects



THE FAIR HOUSING PROGRAM AT CTI

- To promote and increase fair housing opportunities
- Key functions
 - Tenant complaints
 - Fair housing trainings
 - Promote awareness through media engagement
 - Provide online resource library for fair housing
- Who the Fair Housing Program works with
 - Any tenant
 - Any housing provider
 - Any social services advocate or other person helping with housing
- The Fair Housing Program does NOT provide legal advice.



THE FAIR HOUSING PROGRAM FOR HOUSING PROVIDERS

Why contact the CTI fair housing program?

- Housing providers want to get it right
 - Learn about the law
 - Learn about best practices
 - Have happy tenants
 - Get help with specific issues or concerns
- Reduce liability
 - Knowing the law reduces liability
 - Following the law reduces liability
 - Honest and best efforts reduces liability and generates goodwill
- Receive information on trainings, educational materials, and resources



THE FAIR HOUSING ACT – HOW IT WORKS

Prohibits discrimination in housing when:

- The person belongs to a protected class;
- The person has suffered a housing related harm or unequal treatment; and
- The harm suffered is connected to membership in a protected class.



WHEN CAN DISCRIMINATION HAPPEN

Housing Discrimination can happen anytime

- Anytime during a tenancy
 - Application
 - Lease execution
 - During the lease
 - Renewal
 - Termination or eviction
- Anytime during sale and ownership of property
 - Property search
 - Sale
 - Lending
 - During ownership



WHO MUST COMPLY WITH THE LAW

Everyone providing housing services must comply with the Fair Housing Act and related state laws. Housing providers include:

- Landlords
- Property managers
- Maintenance
- Condominium boards
- Home owner associations
- Service providers
- Local governments
- Realtors
- Mortgage lenders



COVERED PROPERTIES

- All residential properties are covered under fair housing laws unless explicitly exempted.
- Federal exemption:
 - Owner occupied apartments with 4 or fewer units; and
 - Owner occupied apartment with 3 or fewer units, one of which is occupied by an elderly or infirm individual when the presence of young children would be a hardship (exemption limited to family status).
- Massachusetts exemption:
 - Owner occupied apartment with 2 units.
- NOTE: there are no exemptions for race or receipt of a subsidy; and no exemption for advertisements or statements. (Lead removal law also have no exemption.)



CATEGORIES OF DISCRIMINATORY CONDUCT

Discriminatory conduct can happen in many different ways:

- Refusal to rent or sell
- Otherwise make unavailable
 - False information on availability
 - Steering
- Different terms or conditions
- Discriminatory Statements (oral or written)
- Threatening, intimidating, or coercing
- Retaliation
- Denial of reasonable accommodations and modifications



HOW CONDUCT MAY VIOLATE HOUSING LAW

There are two primary theories of housing discrimination

- Disparate treatment
 - A policy or practice motivated by a persons protected class status
 - Examples
 - Refusing to rent to immigrants
 - Fees for wheelchairs or assistance animals
- Disparate impact
 - A facially neutral policy, procedure, or practice that has a disproportionate affect on a protected class
 - Examples
 - Criminal records
 - CORI
 - NOTE – blanket or broadly applied rules are red flags



PROTECTED CLASSES UNDER STATE AND FEDERAL FAIR HOUSING LAWS

- Race
- Color
- National Origin
- Religion
- Sex
- Family Status
- Disability
- Sexual Orientation
- Gender Identity/Expression
- Marital Status
- Age
- Housing Subsidy
- Public Assistance
- Veteran/Military Status
- Ancestry
- Genetic Information

RACE, COLOR, NATIONAL ORIGIN, AND RELIGION

- Race, Color, National Origin, and Religious discrimination affect many people.
- The Fair Housing Act was passed in 1968 in reaction to systemic and pervasive race discrimination in housing.
- Institutional race discrimination in housing has taken many forms:
 - racial zoning codes;
 - Restrictive covenants;
 - Single family zoning;
 - Discriminatory lending/mortgage practices/governmental policies'
 - Redlining;
 - Steering; and
 - Appraisal bias.
- Zoning and governmental resource distribution remain critical Fair Housing issues.



RACE, COLOR, NATIONAL ORIGIN, AND RELIGION

- Refusal to rent or sell, otherwise make unavailable, statements
 - Denial of rental housing, refusing applications (only English speakers)
 - Discriminatory statements (“not right for you”)
 - Different standards or treatment when evaluation applicants
- Discriminatory terms and conditions
 - Different rental and sale prices
 - Different implementation of practices (religious decorations)
 - Different benefits of quality or service (not doing repairs or as quickly)
- Threats, Coercion, abuse
 - Threats of eviction, reporting to ICE
- Disparate impact
 - Certain use of criminal records
 - Certain rental or credit history requirements



RACE, COLOR, NATIONAL ORIGIN, AND RELIGION BEST PRACTICES – DISPARATE TREATMENT

- Reduce the opportunity to discriminate
- Don't ask:
 - Where are you from, what is your religion
- Define what you want in a tenant on neutral terms
 - Evaluate only those terms
 - Large housing providers can set application policies and procedures
 - Small housing providers can make a checklist (examples, arrives on time, follows-up, organized)
- Give every tenant the same process
 - If you run an eviction history for one client, do so for each
- Apply the same criteria
 - If you require a credit check, decide what you will accept first, and be consistent



RACE, COLOR, NATIONAL ORIGIN, AND RELIGION BEST PRACTICES – DISPARATE IMPACT

- Disparate Impact – common areas of concern in leasing
 - Criminal records, eviction history, credit or rental history
- Reduce the chance of a policy or practice having a disparate impact
 - Avoid blanket policies or overinclusive policies
 - Tailor the policy to a very specific need
 - Use an individualized assessment only if necessary
- Applied to criminal records
 - Just don't check (HUD indicates it is not effective)
 - Use other screens – ask about background
 - Only consider recent safety, fraud, or property damage (narrow purpose)
 - Individualized assessment, only when necessary (applied consistently)
 - How recent, how old, intervening circumstances



DISABILITY DISCRIMINATION

- Who is protected:
 - Has a physical or mental impairment that substantially limits a major life activity (major life activity is broadly defined);
 - Has a history of having such an impairment; and
 - Is regarded as having such an impairment.
- What protections are available:
 - Same protections as all other protected classes under the FHA; and
 - The right to a reasonable accommodation or modification
- Common examples of disability discrimination:
 - Refusing assistance animals because pets are not allowed
 - Not making an accommodation to a parking policy



DISABILITY DISCRIMINATION

REASONABLE ACCOMMODATIONS

- A reasonable accommodation is a change in a rule, policy, procedure, or service to afford an equal opportunity to use and enjoy a dwelling.
- An accommodation is reasonable when:
 - The person has a disability
 - There is a nexus or connection between the request and impairment
 - Then the request is reasonable unless it imposes:
 - An undue administrative or financial burden (based on housing provider facts);
 - A fundamental alteration to the service provided; and
 - Direct threats – but must be demonstrated by individual assessment, not a perceived concern or stereotype



DISABILITY DISCRIMINATION

REASONABLE ACCOMMODATIONS

THE PROCESS

- Housing providers bear the cost of reasonable accommodations
- The reasonable accommodation process is interactive
- Initial step – a request is made
 - No special form or magic words required
- Housing providers must work with the tenant to find an appropriate accommodation
 - May inquire about effects of impairment
 - May inquire about how the accommodation would help
 - Can offer other accommodations if request unreasonable



DISABILITY DISCRIMINATION REASONABLE ACCOMMODATIONS BEST PRACTICES

- A tenant request is received
 - Large housing providers should have a policy
 - Oral and written requests of any form should be accepted
- The interactive process
 - Unreasonable delays/non-responsive = denial
 - Inquire only when impairment or connection is not obvious
 - You can ask for supporting documentation when need is not apparent – doctors letters or medical records cannot be required
- Denying a request
 - Remain engaged, offer another accommodation if appropriate
 - Defenses are housing provider specific, large providers can endure greater burdens
 - Direct threats – individualized assessment, consider ameliorative effects of an accommodation
- Takeaway – try hard to get it right – it shows and creates goodwill
- Takeaway – granting the requested accommodation is the gold standard



DISABILITY DISCRIMINATION

REASONABLE MODIFICATIONS

- A reasonable modification is a physical change to the dwelling to allow full enjoyment
- Housing providers must allow reasonable modifications
- who pays?
 - Public housing – housing provider pays
 - Private housing with 10+ units – housing provider pays
 - Private housing with <10 units – tenant pays
- Returning the dwelling to original condition - end of tenancy
 - Cost to tenant, but only when the change is necessary for future use
 - Example – if a doorway needed to be widened, do not return it to narrow

DISABILITY DISCRIMINATION REASONABLE MODIFICATIONS BEST PRACTICES

- Reasonable modifications are similar to reasonable accommodations
- Have a process to receive requests
- Use an interactive process
 - Tenants have a right to an effective modification, and the modification of their choice. In common areas, housing provider may offer more expensive modification if assuming the additional cost.
 - No unreasonable delays.
 - Housing providers can only require work be competently completed.
- Consult an expert
 - Accessibility and building codes are complicated – get it right



SEX AND SEXUAL HARASSMENT

- Fair Housing protections for people based on sex include:
 - Gender, gender identity and expression;
 - Survivors of domestic violence; and
 - Sexual harassment.
- Gender, gender identity and expression
 - Protections against harmful or different treatment because of gender, how they choose to express themselves, or who they choose to have relationships with.
- Survivors of domestic violence (Fair Housing and VAWA)
 - Allow breaking a lease
 - Enhanced protections against eviction
 - Lock changing protections
 - Protections against rental applicant denial based on factors related to status as a victim of domestic violence.

SEX AND SEXUAL HARASSMENT

Sexual Harassment (and harassment generally)

- Who must comply
 - Owners, landlords, property managers
 - Any agent of the owner, landlord, or property manager
 - Maintenance staff
 - Independent contractors (housing provider may be liable)
 - Other tenants (housing provider may be liable)
- What can sexual harassment look like
 - Quid pro quo – this for that – conditioning rental or services on sex
 - Hostile environments – unwanted advances, unauthorized entry



SEX AND SEXUAL HARASSMENT BEST PRACTICES

- The application process
 - Do not inquire about orientation or gender expression.
 - Do not ask if they are single or have a partner.
 - Do not deny an applicant for the use of their rights as a victim of domestic violence.
- During a tenancy
 - Train property managers and staff on sexual harassment.
 - Do not make or allow persistent or intrusive advances on a tenant.
 - Have a process or policy for receiving complaints (follow it).
 - Record and timely respond to all complaints of harassment including by
 - Property management/staff and contractors,
 - Other tenants.



FAMILY STATUS

- Family status discrimination affects many families
 - Families with young children
 - Single parents (in Massachusetts)
 - Marital Status (in Massachusetts)
- Common forms of family status discrimination
 - Noise Concerns
 - Refusal to rent, or limited offerings because of noise concerns (first floor only)
 - Different warnings or termination because of noise
 - Occupancy standards (place not big enough)
 - Lead laws
 - State law requires removal of lead in all dwellings build prior to 1978 where children under six live.
 - Presence of lead, or concern of lead is not a basis to deny a family with young children.



FAMILY STATUS BEST PRACTICES

- Rental applications and rental process
 - Do not ask if the prospective tenant has children, definitely do not ask their ages.
 - Do not deny an application because you would need a lead test or remediation (it is a one time cost of doing business).
 - Do not limit housing options available to families with children.
 - Do not ask about marital status.
 - Young children exception: 3 family or fewer rental where one tenant is elderly/infirm and children would be a hardship; and temporary rental of primary residence.
- Terms of tenancy and enforcing the lease
 - Treat all noise or noise complaints the same, regardless of age.
 - No additional or higher rent/deposits for wear and tear concerns.



SOURCE OF INCOME DISCRIMINATION

- Source of income discrimination is prohibited under state law in all dwellings – no exceptions
- SOI discrimination is treating a tenant unequally because they receive a government subsidy
 - Housing subsidy (section 8/MRVP); RAFT
 - Social security or other assistance
- SOI discrimination includes refusal to rent, different terms and conditions, or different preferences
 - Examples: “Sec. 8 need not apply” or “want a hard working tenant”
- SOI discrimination includes refusal to participate in a type of program or a part of a program
 - Examples: unreasonable delay with paperwork; refusing inspection



SOURCE OF INCOME DISCRIMINATION BEST PRACTICES

Rental applications

- Do not ask about housing subsidies until you have made a decision on whether you will rent to a tenant
- SOI is only relevant to determining if a tenant can afford the rent, not how they can afford it
- There is more paperwork – yes, housing providers have to do it, it is a cost of doing business just like painting
- During the tenancy
 - Comply with inspections, make timely repairs
 - Retaliation/termination based on SIO is real
 - Understand the HAP contract, there are additional tenant protections



QUESTIONS

- The Fair Housing Program for housing providers:
 - We want housing providers to get the law right
 - We want to help housing providers get the law right
 - We want to answer your questions
 - All questions are good questions
- What the Fair Housing program needs from housing providers:
 - We want to know what helps you the most
 - Request a training, suggest a topic, tell us how we can help



RESOURCES

Fair Housing

- HUD Fair Housing Rights
https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_rights_and_obligations
- HUD Q&A
https://www.hud.gov/program_offices/fair_housing_equal_opp/general_faq_housing_providers_and_fair_housing
- Short training guide https://www.fairhousingjustice.org/wp-content/uploads/2021/01/FHJC_TRAINING_GUIDEv4.pdf
- Link to HUD guidance on many Fair Housing topics
https://www.hud.gov/program_offices/fair_housing_equal_opp/fheo_guidance
- Criminal records <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>
- Disability protections
https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals
- Sexual harassment
https://www.hud.gov/program_offices/fair_housing_equal_opp/sexual_harassment



RESOURCES

Housing Provider Rights and Responsibilities

- Landlord Guide by attorney Joseph Ross <http://www.attorneyross.com/landlord.pdf>
- landlord Advocacy <https://vlpnet.org/landlord/>
- Landlord Rights <https://www.mass.gov/doc/consumer-guide-to-landlord-rights-and-responsibilities/download>
- Landlord Responsibilities for Housing Providers
- <https://www.mass.gov/guides/landlord-responsibilities>
- <https://www.mass.gov/eviction-for-landlords>
- <https://www.mass.gov/info-details/learn-about-holding-a-security-deposit>
- Lead Paint
- https://www.hud.gov/program_offices/healthy_homes/healthyhomes/lead
- <https://www.mass.gov/service-details/learn-about-financial-assistance-for-deleading>
- Housing Code:
- <https://www.sec.state.ma.us/cis/cissfsn/sfsnidx.htm>
- [https://www.sec.state.ma.us/cis/cispdf/Safe and Sanitary.pdf](https://www.sec.state.ma.us/cis/cispdf/Safe_and_Sanitary.pdf)



RESOURCES

General

- HCEC

<https://www.masshousinginfo.org/resources?resource=21>

- Sec. 8 Resources

https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord



THANK YOU!



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