



*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](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](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](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](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](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](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.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](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord)



# THANK YOU!



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