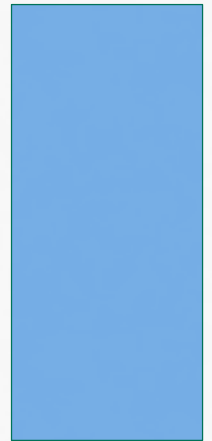




*Building Communities,
Changing Lives*

FAIR HOUSING AND THE CTI FAIR HOUSING PROGRAM

AN INTRODUCTION FOR TENANTS AND ADVOCATES ON HOUSING
DISCRIMINATION AND THE CTI FAIR HOUSING PROGRAM



HUD FAIR HOUSING GRANT RECIPIENT

- The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.

TRAINING GOALS

- Understand who is protected and common forms of housing discrimination.
- Understand how to advocate and enforce your rights or advocate for clients with housing problems
- Understand what the CTI Fair Housing Program is, what it does, and how it can help tenants and homebuyers.



INSTITUTIONAL AND SOCIETAL 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, benefits, and incentives.
- Overt, 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 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.



PROTECTED CLASSES UNDER STATE AND FEDERAL FAIR HOUSING LAWS

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

HOUSING DISCRIMINATION – WHO, WHEN, HOW

- Who must comply
 - Landlords, owners, property managers, condo boards, HOAs
 - Realtors, lenders, service providers, local governments, zoning boards
- When can it happen: Anytime
 - Apartment searching and leasing
 - During the tenancy, and termination
- How does it happen: Overt, subtle, and pretext
 - Discriminatory intent
 - Disparate impact

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 theories of housing discrimination

- Disparate treatment
 - A policy or practice motivated by a person's 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 effect on a protected class
 - Examples
 - Criminal records
 - CORI checks
 - NOTE – blanket or broadly applied rules are red flags

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.)

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

WHAT TO LOOK FOR – DISPARATE TREATMENT

- Refusal to rent or sell/make unavailable/Statements
 - Discriminatory statements (“not right for you” or “English speakers only”)
 - Harsh or different treatment in applicant standards (credit/criminal History)
 - Not offered all rental opportunities
- Discriminatory terms and conditions
 - Different rental and sale prices
 - More rigorous enforcement of lease terms (noise or complaints)
 - Different benefits of quality or service (quality of rental/repairs)
- Threats, Coercion, abuse
 - Threat of eviction or calling police
 - Resolving harassment complaints in favor of offending neighbor

RACE, COLOR, NATIONAL ORIGIN, AND RELIGION

WHAT TO LOOK FOR - DISPARATE IMPACT

- Disparate Impact – common areas of concern in leasing
 - Criminal records or CORI history
- Application/rental policies
 - A blanket rental policy (no criminal record) that disproportionately impacts minorities.
 - Is there a way to tailor more narrowly to meet provider need
 - Housing providers need to take an individualized look at a criminal record and consider nature of offense, when it happened, intervening events.
- Future applications?
 - Rental history or credit scores for recent immigrants that have no credit or rental history; source of income.

FAMILY STATUS

- Family status discrimination affects many families
 - Families with young children
 - Single parents (marital status in Massachusetts)
- Common forms of family status discrimination
 - Refusal to rent to children under six
 - Different warnings or termination because of noise
 - Occupancy standards (how much space/how many people)
 - Lead laws
 - State law requires removal of lead in all dwellings built 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

WHAT TO LOOK FOR

- Rental applications and rental process
 - Did a housing provider ask about children or their ages?
 - Did a housing provider say the unit may have lead and cannot rent it?
 - Did the housing provider bring up a noise concern, or say the unit would not be big enough?
- Terms of tenancy
 - Are children's noises treated differently?
 - No additional or higher rent/deposits for wear and tear concerns.
- Covered housing exception: 3 family or fewer rental where one tenant is elderly/infirm and children would be a hardship; and temporary rental of primary residence.

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, gender expression, or partner choice.
- 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 providers may be liable if they know about the harassment.
 - Other tenants. Housing providers may be liable if they know about the harassment.
- What can sexual harassment look like
 - Quid pro quo – this for that
 - Hostile environments

SEX AND SEXUAL HARASSMENT

WHAT TO LOOK FOR

- The application process
 - Did a housing provider ask about orientation or gender expression.
 - Did a housing provider ask about relationship status?
 - Housing providers cannot deny an applicant for the use of their rights as a victim of domestic violence. (VAWA/gender/disparate impact)
- During a tenancy
 - Conditioning repairs or services on sexual favors.
 - Persistent or intrusive advances on a tenant.
 - Entering an apartment without permission (especially at inappropriate times).
 - Failure to take action on reports of harassment by
 - Property management/staff and contractors,
 - Other tenants.
 - Change in behavior after relationship status change

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:
 - Charging extra fees or deposits for wheelchair use
 - Refusing to rent because some has a disability

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
 - The request is reasonable. A request is reasonable unless it imposes:
 - An undue administrative or financial burden (based on housing provider facts)
 - A fundamental alteration to the service provided
 - A direct threat – but must be demonstrated by individual assessment, not a perceived concern, generalization 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 is unreasonable

DISABILITY DISCRIMINATION

REASONABLE MODIFICATIONS

- A reasonable modification is a physical change to the dwelling necessary 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 (Mass. only)
 - 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

THE PROCESS

- Reasonable modifications are similar to reasonable accommodations
- Initial request is made
- The interactive process
 - Tenants have a right to an effective modification, and the modification of their choice.
 - 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.

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

WHAT TO LOOK FOR

Rental applications

- Exercise caution if a housing provider asks about housing subsidies early during the application.
- Applications require 3X rent, or prevent completion based on earned income.
- SOI questing is only relevant to determining if a tenant can afford the rent, not how they 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 happens frequently.
 - Understand the HAP contract, there are additional tenant protections.

IDENTIFYING DISCRIMINATION

Identifying discrimination can be fact intensive; some housing providers may try and hide prohibited conduct

- What is the timeline?
 - A suspect timeline should raise a red flag
 - Did something happen or did someone say something right before adverse housing provider conduct?
 - Is there a history with your housing provider?
- What did the housing provider say or do?
 - Did the housing provider mention something about a protected class?
 - Are other tenants treated differently?
 - Did the housing provider's reason for an adverse action change make no sense or feel made up?
 - Is there a sudden laundry list of problems/excuses/reasons?

ADVOCACY

- Is it discrimination?
 - You do not need to know with certainty
 - Modest concerns are enough to call the Fair Housing Program
- How do I document it?
 - Save documents, texts, emails, and letters
 - Write oral discrimination down right away
 - Be detailed
 - Follow-up conversations in writing (email is great)
 - Report it - tell a social service provider, the Fair Housing Program, or other Fair Housing organization
 - Social service and healthcare providers keep records
- Raise awareness
 - Talk about concerns with CTI
 - Ask for help

ADVOCACY

REFUSAL TO RENT

- Do not ask for permission – it is your right
 - Are assistance animals ok?
 - Are young children ok?
 - Do you accept housing subsidies?
- You do not need to share your protected class status
 - You do not need to share your protected class status.
 - Wait to raise special needs based on protected class until the housing provider is ready to rent to you.
- Red flags
 - Did the housing provider ask questions about protected class status?
 - Did the housing provider change behavior?
- Track your rental applications
- Get help immediately
 - Tell the Fair Housing Program
 - Connect with legal aid testing programs

ADVOCACY EVICTIONS

- Eviction or threat of eviction may violate Fair Housing Laws
- Legal basis to evict:
 - Tenant with Lease – non-payment, violating lease (if stated), use of apartment for illegal purposes.
 - Tenants at will – may also be evicted for “no fault”
 - Tenants with a subsidy – greater protections under HAP contract
- Legal Rights:
 - Written notice
 - Only a court can make you leave
- Discriminatory evictions:
 - Eviction as retaliation for exercising rights -harassment/accommodation
 - Eviction as different treatment based on protected class status
 - Threat of eviction to coerce tenant because of protected class status

ENFORCEMENT OPTIONS

- File a complaint with the state or federal government
 - The Federal Department of Housing and Urban Development
 - The Massachusetts Commission Against Discrimination
 - The Massachusetts Office of the Attorney General
- File a civil action (go to court)
 - Federal district court
 - State court
 - Housing Court
 - District Court
 - Superior Court

CTI FAIR HOUSING COMPLAINTS PROCESS

- Intake – complaint received
 - Is there a fair housing issue?
 - Is there another issue?
- Available services
 - Information and resources
 - Technical assistance
 - Informal resolution
- Referrals
 - To legal aid services
 - To Enforcement Agency
 - To other social services
- Tracking
 - Track discriminatory conduct
 - Identify egregious offenders

QUESTIONS?

RESOURCES - LEGAL

- Legal aid organizations by region
 - <https://mlac.org/wp-content/uploads/2022/04/MLAC-Legal-Aid-Org-Map-and-Contact-New-Logo.pdf>
- Legal aid and subject matter legal aid organizations
 - <https://mlac.org/help/#lawyer>
- Massachusetts court information
 - Housing Court: <https://www.mass.gov/orgs/housing-court>
 - District Court: <https://www.mass.gov/orgs/district-court>
 - Court Service Centers: <https://www.mass.gov/info-details/learn-about-court-service-centers>
- Filing a Fair Housing Complaint
 - HUD: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint
 - MCAD: <https://www.mass.gov/file-a-complaint-of-discrimination>

RESOURCES – SELF HELP

- MassLegalHelp
 - <https://www.masslegalhelp.org/legal-tactics>
- MADE – complete eviction forms online
 - <https://interviews.gbls.org/run/eviction/#/1>
- Made Up to Code – complete housing code forms online
 - <https://madeuptocode.org/>
- Restraining Orders – complete forms online
 - https://apps.suffolklitlab.org/run/housing_tro/#/1
- Bazelon Guide on Fair Housing for People with Disabilities
 - https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2018/05/Fair-Housing-Guide_2018-Update.pdf

BASICS ON DISABILITY DISCRIMINATION AND REASONABLE ACCOMMODATIONS

- Understanding your rights
 - HUD Overview: https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_main
 - Bazelon Center for Mental Health Law Fair Housing Guide: https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2018/05/Fair-Housing-Guide_2018-Update.pdf
 - Disability Law Center Guide on Emotional Support Animals: <https://www.dlc-ma.org/wp-content/uploads/2018/10/Emotional-Support-Animals-in-Housing.pdf>
 - Disability Law Center Guide on Reasonable Accommodations: <https://www.dlc-ma.org/wp-content/uploads/2018/06/Housing-and-RA.pdf>
- Doctor's letters
 - MassLegalHelp General Tips: <https://www.masslegalhelp.org/health/sickle-cell-disease/housing-doctor-letter-article>
 - Bazelon Sample Service Provider letter: <https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2017/04/ESA-Sample-Letter.pdf>

TECHNICAL GUIDANCE ON ACCOMMODATIONS AND MODIFICATIONS

- HUD/DOJ Joint Statement on Reasonable Accommodations:
https://www.hud.gov/sites/documents/DOC_7502.PDF
- HUD/DOJ Joint Statement on Reasonable Modifications:
https://www.hud.gov/sites/documents/DOC_7502.PDF
- HUD FHEO Assistance Animal Guidance:
https://www.hud.gov/sites/documents/DOC_7502.PDF

HOUSING ASSISTANCE

- Community Action Agencies by region
 - <https://www.masscap.org/agencies/>
- RAFT
 - <https://www.mass.gov/service-details/residential-assistance-for-families-in-transition-raft-program>
- Housing Consumer Education Centers
 - <https://www.masshousinginfo.org/>

STAY CONNECTED

- Email: fairhousing@commteam.org
- Website: www.commteam.org
 - Online Request for Assistance:
<https://www.cognitoforms.com/CommunityTeamwork1/FairHousingRequestForAssistance>
 - Online Training Registration:
<https://www.cognitoforms.com/CommunityTeamwork1/FairHousingTrainingRegistration>
 - Email Listserv
 - Tenant
<https://www.cognitoforms.com/CommunityTeamwork1/FairHousingTenantMailingList>
 - Housing provider
<https://www.cognitoforms.com/CommunityTeamwork1/FairHousingHousingProvidersMailingList>

THANK YOU!



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