

A Guide to Fair Housing



For Nonprofit Housing & Shelter Providers

Washington State Edition



Third Edition – April 2016



Introduction

This guidebook was developed to address the most common questions about fair housing as it applies to organizations that provide shelter, non-profit housing, and related housing support services. We hope you will find this information helpful in your efforts to provide fair housing for all.

THIS IS NOT A STAND-ALONE GUIDEBOOK!

As a transitional housing, shelter, homeless prevention, or other nonprofit housing provider, you should also review and become familiar with the following materials developed by the Fair Housing Partners of Washington State, available in print or CD format –

Fair Housing in Washington State – 100 FAQs for Housing Providers and Managers

Sample Policies and Guidebooks:

- Harassment & Retaliation
- Reasonable Accommodations & Modifications for People with Disabilities
- Service Animals
- Domestic Violence & Fair Housing

Fair housing posters (specific to each fair housing agency)

FAIR HOUSING PARTNERS OF WASHINGTON STATE

Washington State Human Rights Commission
King County Office of Civil Rights & Open Government
Seattle Office for Civil Rights
Tacoma Human Rights
Fair Housing Center of Washington
Northwest Fair Housing Alliance

AVAILABLE IN ALTERNATE FORMATS UPON REQUEST

To share your comments about this guidebook, or for alternate formats, contact the King County Office of Civil Rights & Open Government:
206-263-2446, TTY Relay: 711, Civil-Rights.OCR@kingcounty.gov

This information does not constitute legal advice. The fair housing laws are subject to change. Please contact HUD or a fair housing agency if you have questions about this topic.

ACKNOWLEDGEMENTS

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Building Changes

Catholic Community Services - Family Housing Connection
King County Department of Community and Human Services
King County Family Homelessness Initiative
King County Housing Authority
King County Office of Civil Rights & Open Government
Seattle Housing Authority
Seattle Human Services Department
Seattle Office for Civil Rights
Seattle Office of Housing
Tacoma Human Rights
Washington State Human Rights Commission



**EQUAL HOUSING
OPPORTUNITY**

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Chapter 1: Fair Housing Basics

Section A: Fair Housing Laws

What fair housing laws apply in Washington and who enforces them?

The federal Fair Housing Act (FHA) and its 1988 amendments protect people from negative housing actions that occur because of race, color, national origin, religion, sex, disability, or family status, which are “protected classes” under the FHA. State and local fair housing laws cover additional groups, such as marital status, sexual orientation, gender identity, age, veteran or military status, participation in a Section 8 Program, etc.

HUD enforces the FHA. The Washington State Human Rights Commission enforces the Washington Law Against Discrimination, RCW 49.60. Three local agencies enforce fair housing ordinances – King County Office of Civil Rights & Open Government (OCR), Seattle Office for Civil Rights (SOCR), and Tacoma Human Rights (THR). The state and local laws are considered “substantially equivalent” to the FHA, and HUD contracts with these agencies to handle most fair housing investigations in Washington.

Fair housing advocacy organizations that spend resources substantiating fair housing violations also may file complaints; however, these organizations do not perform enforcement activities. The Fair Housing Center of Washington in Tacoma and the Northwest Fair Housing Alliance in Spokane provide fair housing advocacy services in our state. The chart on page 12 lists these agencies and their contact information.



Which fair housing laws apply to our programs?

The Fair Housing Act and the state fair housing law cover most housing rental properties, including non-profit housing, shelters and transitional housing programs:

- WSHRC has jurisdiction over housing anywhere in Washington.
- OCR has jurisdiction only for properties located in unincorporated King County.
- SOCR and THR handle complaints within the city limits of Seattle and Tacoma.
- The cities of Seattle, Bellevue, Kirkland and Redmond investigate Section 8 cases in their cities, and OCR handles Section 8 cases in unincorporated King County.

If you are uncertain whether your housing or shelter property is covered, contact a local fair housing agency (see page 12).

Fair housing laws also apply to any person or entity whose actions could “make housing unavailable.” This means many entities are covered, including for-profit and non-profit:

- organizations offering rental assistance, such as vouchers or subsidies
- agencies operating housing counseling and placement programs
- temporary or long-term shelters
- clean and sober housing
- transitional housing
- motels that function as primary housing rather than vacation lodging

All such programs are required to follow fair housing laws and may not discriminate on the basis of protected class.

Who may be held responsible for fair housing violations?

Fair housing complaints generally name all parties related to the transaction, including the property owner, non-profit sponsor, individual housing program staff, and in some cases, other residents. Each party named in a complaint has a responsibility to respond to the allegations, to produce documentation, and to be available for interviews.

Funders of nonprofit housing and shelter programs could potentially be liable if they are found to be in violation of fair housing laws. We advise any entities that provide funding to nonprofit housing and shelter providers to be familiar with this guide and to implement funding and monitoring criteria to prevent discrimination.

Who can file a fair housing complaint?

Anyone who has been harmed by a housing action may file a complaint, including applicants, clients, residents or tenants, program participants, and staff. Fair housing laws also protect anyone who is harmed because of association with guests, relatives, friends, roommates, or others in a protected class. (See Section B)

How long does a person have to file a fair housing complaint?

A person must file a fair housing complaint within one year of the harmful housing action. It is important for non-profit housing and shelter providers to keep applications, resident files and other housing-related records on file for a long enough period to be able to respond to housing complaints and/or lawsuits (generally, at least two years).

What is the relationship between fair housing laws and landlord-tenant laws?

Fair housing issues often overlap with requirements of the state’s Residential Landlord-Tenant Act (RLTA, RCW 59.18) and the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA, RCW 59.20). Landlord-tenant laws cover rental agreements and leases, deposits and other fees, landlord and tenant responsibilities, a landlord’s access to the rental, repairs, moving out and return of deposits, evictions, etc. The definition of retaliation under landlord-tenant laws is different from the fair housing law definition.

Fair housing laws will sometimes apply when the landlord-tenant laws do not. For example, a homeless shelter may be subject to fair housing laws but not landlord-tenant laws.

Fair housing agencies do not investigate violations of the landlord-tenant laws; however, they investigate inconsistent application of tenancy rules based on protected class. [Example: A fair housing agency won't investigate a situation where a deposit is not returned (a landlord-tenant issue). The agency will investigate an allegation that an Asian family's deposit is withheld for carpet damage, when non-Asian residents' deposits are returned despite similar damage.]

We just received a civil rights complaint. What happens now?

Fair housing enforcement agencies do not represent either the person who files a discrimination complaint (Complainant) or the person, agency or business against which the complaint is filed (Respondent). These agencies investigate and resolve cases as neutral and impartial fact-finders. Fair housing agencies cannot offer personal or legal advice, though they can provide technical assistance about fair housing laws and how to comply with them. Any party to a fair housing complaint may choose to be represented by an attorney.

Fair housing agencies follow similar procedures for investigating complaints. The Respondents are required to respond to the complaint within a brief time. Fair housing agencies attempt conciliation within 30 days, and offer opportunities to resolve the case throughout the investigation. They may use a mediation-style dispute resolution process to attempt voluntary settlement of cases.



These fair housing agencies gather and evaluate documentation, interview relevant witnesses, conduct on-site visits, etc. The resident and housing provider(s) have an opportunity to respond to each other's positions, the material and relevant evidence available to the agency is reviewed, and then the agency makes a final written report.

If an investigation finds insufficient evidence to support the allegations of discrimination, the case is closed with a "no cause" finding. The complaining party may appeal or request reconsideration, and the respondent has an opportunity to respond to the appeal.

If there is sufficient evidence to support the allegations, a "reasonable cause" finding is issued, the agency will work to conciliate the matter, and the parties sign a settlement agreement that resolves the case. If the parties do not settle, the case is usually referred to the agency's legal department (state cases are referred to the Attorney General's office), and there is an administrative process or a hearing.



Non-profit housing and shelter providers should be aware of their responsibilities under fair housing laws, educate all relevant staff, and have a process in place in case someone brings up a fair housing concern or files a fair housing complaint. We recommend that all providers identify a staff person as a fair housing specialist.

Section B: What are Protected Classes?

“Protected class” is a legal term which means a group of people who are protected by law from being discriminated against because of their characteristics or attributes.

Federal fair housing laws cover alleged discrimination because of race, color, national origin, religion, sex, familial status or disability (and in some federal programs, age or veteran status).

Washington state fair housing laws cover the federal protected classes and also marital status, military/veteran status, sexual orientation and gender identity. Local fair housing laws include additional protected classes, such as participation in a Section 8 program, age, or political ideology. The fair housing agency chart on page 12 lists the protected class groups covered by each agency.

Keep in mind that everyone is a member of a several protected classes. Whatever one's race, gender, sexual orientation or sexual identity, religious affiliation, national origin, whether you have children, or have a disability – everyone is protected by these laws.

Note: Juvenile offenders and sex offenders are not considered to be people with disabilities protected by the fair housing laws. While these laws protect people who are recovering from substance dependency, they do not protect those who are currently engaging in the illegal use of controlled substances. Also, these laws do not protect a person with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

Association

Fair housing laws also protect applicants and residents are associated with people in any protected groups. This includes situations where a housing provider may discriminate because someone has relatives, friends, roommates, or visitors in any protected categories. An example is a situation where a transitional housing provider treats a resident negatively because he has guests who are not born in the U.S.



Section C: Under Fair Housing Laws, What is a "Dwelling"?



The Fair Housing laws define a dwelling as any building or portion thereof designed or intended for occupancy as a residence by one or more families.

What does "Intended for occupancy as a residence" mean?

An investigation would determine if the program is a dwelling on a case-by-case basis, reviewing the criteria below. It may also consider the provider's mission, relevant licensing, funding sources, and the level of time and resources allocated to services in relation to housing.

- Length of stay.
- Intent and right to return each night to a particular abode.
- Amenities included.
- How the housing is marketed.
- The written terms of the occupancy agreement between the provider and resident (a signed rental agreement, a residency agreement or agreed set of rules).
- If there is a rent payment, a program fee, an in-kind exchange such as performing chores, or requirements such as attending meetings or support groups.
- Whether the individual has another current residence that he or she intends to return to. In the case of domestic violence shelters, a resident may officially still have another address, but it is unlikely that she intends to return to it, and the shelter would most likely be considered a dwelling under fair housing laws.
- If the primary purpose of a program is treatment (for example, a drug treatment facility) and the actual housing provided is incidental to the program, it most likely will not be considered a dwelling. But if the residents have no other housing to return to, the facility may be considered a dwelling under fair housing laws.



To protect against liability in a fair housing violation, housing and shelter providers should assume their programs involve "dwellings" and comply with the requirements of fair housing laws.

Public Accommodations Laws May Apply When Fair Housing Laws Do Not)

Please note that in situations where first come, first served one-night shelters might not be covered by Fair Housing laws, they are still covered by Public Accommodations laws, which require nondiscrimination and disability access to social services and places of business.

Public Accommodations laws (such as ADA Title III, state and local laws) prohibit discrimination based on disability in programs, services, and activities provided or made available by nonprofit service providers that are places of public accommodations, including homeless shelters.

Places of public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment based on protected classes similar to those covered by fair housing laws. They must comply with 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. Additionally, places of public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given available resources.

Section D: What is Discrimination?

Intentional Discrimination

Intentional discrimination occurs when people who are similarly situated are treated differently because of their protected status, or when there is an overt act of discrimination. If a fair housing complaint is filed, the housing provider may present a non-discriminatory reason for the difference in treatment, which the investigation will examine to determine if it is valid.

- **Discrimination during the application process:** Denial of housing based on protected class status, providing false information, steering people to certain facilities based on their protected status, assigning or segregating occupancy based on protected status, or expressing or publishing a discriminatory preference or limitation. Base applicant screening decisions on consistent fact-based criteria.
- **Establishing policies or rules that "target" or single out specific protected classes:** Instead of a rule that "children may not run in the facility," set a rule that states "running in the facility is not allowed."
- **Not treating all residents similarly:** Targeting certain protected class members for different treatment in terms of procedures, rules, rental criteria, fees or charges, repairs, access to common facilities, or other aspects of daily life.



- **Disability discrimination:** Generally, housing and shelter providers may not inquire about the existence or the severity of an applicant's or resident's disability, and they may not require applicants or residents to waive the confidentiality of medical records. Housing providers must provide reasonable accommodations and provide or allow reasonable modifications for people with disabilities. However, when a funding source dictates specific preferences (such as housing only for people with HIV/AIDS), check with your funding source before setting any disability preferences. For more information, see Chapter 2, Section B.
- **Harassment, intimidation, threats and coercion:** Providers have a legal responsibility not only to refrain from these activities themselves, but to protect their residents from protected class harassment by other residents.
- **Termination of housing for discriminatory reasons:** Terminations that are not based on factual violations of the residency agreement could be construed as discriminatory, regardless of whether that was the provider's intent. Termination should always be based on objective fact-based behavior.
- **Retaliation:** Providers may not retaliate against applicants, clients, or residents for exercising their fair housing rights. Exercising fair housing rights includes filing complaints of discrimination. No retaliation is permitted against neighbors, staff, or other residents who participate in a fair housing complaint investigation.



Discriminatory Effects



Under fair housing laws, a policy or practice can be discriminatory even if the provider did not intend it to be. A policy that appears to be neutral and does not single out residents of a protected class could be considered discriminatory if it has a harsher impact on people who are in a protected class. For example, requiring participants to work or to look for work may have a disproportionate impact on people with disabilities.

It is very important that housing and shelter providers review all of their policies, rules, procedures, eligibility criteria, etc. to determine if there are policies and practices, however unintentional, which could result in members of a protected class being treated differently. For example, consider the following rules:

- No curry permitted in apartments (disproportionate impact on South Asians)
- No one can play outside (disproportionate impact on families with children)
- No rental to domestic violence survivors (disproportionate impact on women)
- No rental to people with criminal history (disproportionate impact on race or national origin)

If the housing provider advances a valid business necessity for the policy or practice, an examination will be made as to whether:

- The policy, practice, or rule is a valid predictor of future conduct.
- A demonstrated health or safety reason exists.
- There is a less discriminatory alternative that serves the same purpose.

Fair Housing laws are broad and inclusive. While some aspects of these laws are very clear, housing providers need to understand that court cases continue to clarify fair housing laws over time.

When developing policies, procedures, rules, eligibility and termination criteria, etc., please seek legal advice from an attorney and reach out to the Fair Housing Partners of Washington for technical guidance. (see chart on next page)



FAIR HOUSING AGENCIES IN WASHINGTON STATE

FAIR HOUSING ENFORCEMENT AGENCIES				
U.S. Dept. of Housing & Urban Development Fair Housing 909 First Avenue Suite 205 Seattle, WA 98104-1000	Washington State Human Rights Commission 711 S. Capitol Way Suite 402 Olympia, WA 98504-2490	King County Office of Civil Rights & Open Government Chinook Building 401 Fifth Avenue Suite 215 Seattle, WA 98104-1818	Seattle Office for Civil Rights 810 Third Avenue Suite 750 Seattle, WA 98104-1627	Tacoma Human Rights 747 Market Street Room 1044 Tacoma, WA 98402-3779
206-220-5170 800-877-0246 TTY 206-220-5185 Fax 206-220-5447	360-753-6770 800-233-3247 in WA TTY 800-300-7525 Fax 360-586-2282	206-263-2446 TTY Relay: 711 Fax 206-296-4329	206-684-4500 TTY 206-684-4503 Fax 206-684-0332	253-591-5162 TTY Relay: 711 Fax 253-591-5050
www.hud.gov/local/sea/sea/home.html	www.hum.wa.gov	www.kingcounty.gov/civilrights	www.seattle.gov/civilrights	www.cityoftacoma.org/humanrights
<u>Protected Classes</u> Race Color National Origin Religion Sex Disability Familial Status	<u>Protected Classes</u> Race Color National Origin Creed Sex Disability Familial Status Marital Status Sexual Orientation (incl. gender identity) Veteran/Military Status	<u>Protected Classes</u> Race Color National Origin Religion Gender Disability Familial Status Marital Status Sexual Orientation (incl. gender identity) Age Section 8 Ancestry Use of a Service or Assistive Animal	<u>Protected Classes</u> Race Color National Origin Religion/Creed Sex Disability Parental Status Marital Status Sexual Orientation Gender Identity Age Section 8 Political Ideology Veteran/Military Status	<u>Protected Classes</u> Race Color National Origin Religion Sex Disability Familial Status Marital Status Sexual Orientation Gender Identity Age Ancestry Veteran/Military Status
File within 1 year <u>Jurisdiction:</u> United States	File within 1 year <u>Jurisdiction:</u> Washington	File within 365 days <u>Jurisdiction:</u> Unincorporated King County	File within 1 year <u>Jurisdiction:</u> City of Seattle	File within 1 year <u>Jurisdiction:</u> City of Tacoma

FAIR HOUSING ADVOCACY, EDUCATION & OUTREACH ORGANIZATIONS

<u>In Western Washington:</u> Fair Housing Center of Washington 1517 S. Fawcett Avenue, Suite 250 Tacoma, WA 98402 253-274-9523, 888-766-8800 (toll free), Fax 253-274-8220 www.fhcwashington.org	<u>In Eastern Washington:</u> Northwest Fair Housing Alliance 35 West Main Avenue, Suite 250 Spokane, WA 99201 509-325-2665, 800-200-FAIR (in 509 area code), Fax 509-325-2716 www.nwfairhouse.org
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NOTE: Fair housing laws prohibit retaliation – an act of harm by anyone against a person who has asserted fair housing rights (by making an informal discrimination complaint, filing a civil rights complaint, or being otherwise involved in an investigation).

Fair housing laws are subject to change. The federal Fair Housing Act, state and local fair housing laws exempt certain housing from coverage. For questions, contact each agency concerning the laws that agency enforces.



SECTION 8 ORDINANCE ENFORCEMENT

In Washington state, the following local governments enforce local ordinances that prohibit housing discrimination based on participation in the Section 8 Program or similar government-funded housing subsidies:

- **Unincorporated King County** -- Office of Civil Rights & Open Government, 206-263-2446
Civil-Rights.OCR@kingcounty.gov
www.kingcounty.gov/civilrights
- **City of Seattle** -- Seattle Office for Civil Rights, 206-684-4500
www.seattle.gov/civilrights
- **City of Bellevue** -- Code Compliance, 425-452-4570
codecompliance@ci.bellevue.wa.us
www.ci.bellevue.wa.us/reportproblem.htm
- **City of Kirkland** -- Code Compliance, 425-587-3225
codecompliance@ci.bellevue.wa.us
www.kirklandwa.gov/depart/planning/Code_Enforcement.htm
- **City of Redmond** -- Code Compliance, 425-556-2474
codeenforcement@redmond.gov
www.redmond.gov/Residents/CodeEnforcement/



Chapter 2: Screening and Admissions

Section A: Establishing and Applying Admission Criteria

It is strongly recommended that transitional housing and shelter programs establish clear, objective and consistent written admissions criteria for new applicants. These criteria must be based on facts and not assumptions made about applicants. Examples of fact-based criteria include:

- **Rental history** -- Including stays in shelters, hospitals and other alternative housing arrangements.
- **Amount of income** -- Providers cannot discriminate against applicants based on their source of income, such as SSDI or child support, so long as the income is not derived from illegal activity.
- **Observable behavior** -- An applicant can be rejected for acting in a violent manner towards a staff person handling the screening/intake.
- **Recommendations by identified referral agencies programs** -- Such as social services, mental health, law enforcement, etc., so long as these programs do not have discriminatory practices and the recommendations are based on objective criteria.

- ✓ Put standardized screening/intake criteria in writing and use them to evaluate all applicants.
- ✓ Use standardized forms.
- ✓ Train staff in how to conduct a screening interview.



Can we prioritize applicants, and if so, how?

In general, all applicants should be screened, evaluated and selected in chronological order. For example, if there is a single vacancy, the first individual who meets the requirements should be accepted. Screening paperwork should be kept on file for at least two years and include the information gleaned in the screening and any reasons for rejection.

Providers can devise their own screening criteria as long as it is applied consistently and is not discriminatory. For example, a provider might decide 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. Providers should still accept the first applicant who meets the criteria or prioritization policy.

Note: Some funding sources require that providers offer specific preferences. The funding documentation will identify the prioritization policy and how the records are to be maintained to ensure that the provider does not violate fair housing laws. See Section B below.



Housing and shelter providers should be extremely careful about targeting their programs to a particular ethnic group. There should be a clear programmatic reason for marketing to a group, backed up by community needs assessments. Even in these situations, providers should not turn away an applicant seeking housing or services because he or she is not a member of the target group.

It is generally not acceptable for providers to require their residents be able to “live independently.” While the housing provider is not expected to provide services they do not routinely offer (housekeeping, showering assistance, meals, transportation, etc.), they cannot reject a resident solely for having such needs. Some disabled individuals use care caregivers or other outside services. The provider cannot make housing contingent on applicants verifying that they have such help; however, they can notify all applicants that they do not provide these services.

Requiring residents to have been in recovery or to be clean and sober for a specified period of time is problematic. Fair housing laws do not protect people who are current users of illegal drugs. The courts have not set hard and fast rules about clean and sober criteria, but it is generally accepted that participation in a formal drug rehabilitation program and abstinence from drug use means that an individual is no longer a “current user,” even if the last incidence of use was only weeks in the past. Providers using specified time frames for clean and sober status should be prepared to be flexible and to take individual circumstances into account.

Housing and shelter providers should never rate applicants using subjective assumptions such as:

- “Odd” behaviors (as opposed to behaviors that present a threat to others).
- An “intuitive sense” of an applicant’s willingness to commit to a program, get along with others, etc. Such an assessment must be based on objective facts. For example, don’t assume someone who doesn’t look you in the eye is “shady” or untrustworthy. An applicant cannot be rejected based on a “gut feeling” that the individual might become violent if the person has not exhibited any behavior to suggest this. People from different cultures or with various disabilities may have behaviors that uninformed staff could interpret incorrectly. All providers should consider awareness training in these areas.
- Individuals with some disabilities or gender identities may pose some challenging situations, such as the need for private restrooms. If a problem develops after the person moves in, it should be addressed at that time.

Be very cautious if using a lottery approach for screening and make sure the procedure does not discriminate against people with disabilities by requiring them to appear at a certain location and/or a certain time.

Extenuating Circumstances

HUD recognizes that people with disabilities may face additional challenges during screening and has issued guidance to housing authorities (and to other federally funded housing programs) that discretion can and should be applied when determining admissions and occupancy policies to consider extenuating circumstances when screening applicants with disabilities. The failure to consider "extenuating circumstances," especially in federally funded programs, may constitute a failure to provide reasonable accommodations in violation of the ADA, Section 504, and the Fair Housing Act.

Section B: Disability Preferences

Only certain housing programs are explicitly authorized to grant preferences to people who have specific disabilities, pursuant to federal statute or executive order (such as HOPWA, Section 811, McKinney Act Shelter Plus Care, etc.).



The fact that a funder may permit specific disability preferences may not provide sufficient legal authorization to permit limiting admission or showing a preference in admission for people with specific disabilities. If you are unsure whether a disability preference is permitted, contact your agency's funder(s) for details.

NOTE: Absent statutory or regulatory authority, or an executive order, it is unlawful to limit housing or program opportunities to people with diagnosis-specific disabilities.

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., those who are seriously mentally ill, alcohol or substance dependent, or people with AIDS and related conditions). However, 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.

Section 8 Project Based Assistance

Housing authorities may give preference to families that include a disabled person who need services offered at a particular project. This preference is limited to people whose disabilities significantly interfere with their ability to obtain and maintain themselves in housing without appropriate services and for whom services cannot be provided in an integrated setting. The property owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible people with disabilities who may benefit from those services.

Housing Choice Vouchers

Housing authorities may adopt a preference for admission of families that include a person with a disability. However, the housing authority may not adopt a preference for admission of people with a specific disability.





Chapter 3: Fair Housing Issues in Homeless, Clean and Sober, and Transitional Housing Programs

Section A: Protecting Residents From Harassment or a "Hostile Living Environment" Based on Protected Class

We strongly recommend that housing and shelter providers have rules and policies that prohibit staff and residents from harassing, intimidating, threatening or coercing other residents because of their race, religion, national origin, disability, or other protected class.

Under fair housing laws, "harassment" includes abusive, foul or threatening language or conduct directed at a resident or guest by anyone because of protected class (such as race, national origin, religion, sex, disability, familial status, sexual orientation, etc.). Harassment is conduct that is sufficiently severe and/or pervasive to affect someone's ability to use and enjoy housing. Harassing conduct includes:

- Coercing a person, orally, in writing, or by other means, to deny or limit that person's benefits in connection with the sale or rental of a dwelling or with a residential transaction because of protected class. Examples:
 - A housing manager tells staff not to offer housing to people who are transgender.
 - Program staff tell applicants that they cannot have housing unless they participate in Christian religious services.
 - A nondisabled resident frequently parks in a reserved accessible space.
- Threatening, intimidating or interfering with people in their enjoyment of a dwelling because of their protected class, or that of their visitors or associates. Examples:
 - A manager warns a resident that he will be evicted if he has transgender visitors.
 - A manager does nothing after hearing a staff person tell a negative joke about Mexicans.
 - A resident complains that another resident called him racial names, and management takes no action.

If a housing provider observes harassment of this nature or if a resident reports such harassment, fair housing laws require the provider to take action to remedy the situation. All providers should have policies prohibiting harassment and procedures in place to respond to violations. Efforts to remedy such situations and their outcomes should be documented. Providers who have failed to remedy harassment have been found liable under fair housing laws for perpetuating a hostile housing environment.

Families with Children

“Familial status” (also called “parental status”) is defined as the presence of at least one child under 18 in a household. This includes protection from discrimination that targets pregnant women, particular ages of children (teenagers, toddlers, etc.), single parents with children, foster families, children raised by grandparents or other guardians/parents in the process of adopting, and parents with shared custody arrangements.

Housing cannot be denied to families with children unless:

- The size of the individual unit or sleeping area is only sufficient for a single individual, such as a Single-Room Occupancy apartment or a cot in a dormitory shelter.
- The housing is designated only for older individuals. The Housing for Older Persons Act has an exemption for housing where 100% of the residents are over 62, or where at least 80% of the units have at least one resident who is 55 or older. (Specific HUD program funding requirements may be relevant here. HUD programs for 62+ permit those who have legal child custody to live with children in this housing.)
- Fair housing laws cover housing targeted at individuals recently released from correctional institutions. Housing designated for sexual offenders may be able to discriminate against families with children. Because cases are reviewed on a case-by-case basis, providers who wish to exclude families with children should check with their legal counsel.

Rules should be the same for all residents and should address specific behaviors, not the type of individuals violating the rules. Rules solely for children are generally illegal. For example, just as a provider cannot establish a curfew for Black residents, they cannot set a curfew just for children.



If common areas are available for resident use or recreation, children should be able to use them too. Housing rules can outline facility use times or quiet hours for everyone, and should apply to everyone equally.

The best strategy to protect housing providers against accident-related lawsuits is ensuring properties don't have maintenance or safety hazards (such as open ditches or rickety banisters). If that is not feasible, point out safety concerns to every applicant, not just families with children. Also, HUD guidance states that it violates the Fair Housing Act for a housing provider to deny a family the opportunity to live in a dwelling that has not undergone lead hazard control.

Housing and shelter staff should not replace parental functions. For example:

- Parents determine bed times, recreational activities, etc. These cannot be mandated by a housing or shelter provider, unless the rules apply to everyone (for example, the provider can establish "lights out" times, or prohibit loud noise after 10:00 p.m.).
- Providers can offer parenting classes or distribute materials addressing parenting skills, but it must be clear that these are offered, as opposed to required.
- Parents choose school or day care providers. Shelter providers cannot, for example, require parents to enroll children in special schools provided for homeless children instead of the schools they choose. Parents may homeschool children in homeless shelters or transitional housing programs.
- Avoid rules that say "adults must supervise children at all times". Remember, "children" includes everyone from birth to 17 years old, and it's not appropriate to require supervision of older teens. Because teenagers commonly babysit, it is unreasonable to require child care providers to be over 18. Housing providers can offer informational handouts on how to select a babysitter. It is acceptable for a provider to require the child caregiver to sign a Childcare Notification Form.
- Residents are responsible for any damage caused by their household or their guests, so no rules are needed that say "parents are responsible for damage done by their children." If a child or a guest behaves in a manner that violates the house or community rules (for example, destroys property or harasses other residents), that behavior and the consequences of it remains the resident's responsibility.
- If staff suspect child neglect or other abuse, they should contact the local Child Protective Services or follow rules applicable to facility licensing requirements.



Marital Status and Sexual Orientation



Housing and shelter providers who discriminate on the basis of marital status are at risk of being in violation of state and local fair housing laws. We recommend that shelters do not, for example, require couples to present proof of marriage or question unmarried couples about how long they have been together unless they are also asking married couples. In Washington, same sex couples and individuals are protected from discrimination based on their sexual orientation.

Transgender Individuals

Gender identity is a protected class under state and local fair housing laws. These laws define gender identity as a person's self-identification, expression, or physical characteristics, mannerisms and dress, whether or not traditionally associated with one's biological/assigned/designated sex at birth. Gender identity is one's internal sense of being a woman, man, or any other gender. A person's gender identity does not determine a person's sexual orientation, and vice versa.

Housing and shelter providers should treat applicants or residents as the gender they identify, and use the person's preferred name and pronouns (he/him/his, she/her/hers, they/them/theirs, 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. It is not acceptable to inquire about procedures a person may or may not have gone through or ask invasive questions about a transgender person's body.



Housing providers should ensure safe bathroom and shower options. 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. The possible discomfort of others is not a valid reason to deny access to facilities. If possible, providers should offer at least one gender-neutral bathroom and one private shower stall.

Ideally, all bathroom stalls and showers should have doors or, at least, curtains. If there is absolutely no possibility for shower privacy, the provider should permit someone to shower at an alternate time. Providing an option for privacy in the bathroom or shower benefits not only transgender individuals, but others with medical conditions or personal needs that require privacy.

In a dormitory-type shelter, a transgender individual may be afraid of harassment. Providers should be prepared to locate beds for such individuals in areas that allow for increased security.

Management should take steps to ensure that residents do not harass other residents because of their gender identity, expression, or presentation. [Example: Management must take action to remedy a situation when a trans woman resident reports that another resident made verbal slurs or made fun of her transgender identity.] Management should never disclose a resident's gender non-conformity or transgender identity to others without explicit consent.

Section B: Retaliation

Fair housing laws define retaliation as unlawful coercion, intimidation, threats, or interference with anyone who exercises or enjoys fair housing rights. These laws also include protection against retaliation because a person aided or encouraged someone else to exercise or enjoy any fair housing right. Retaliatory conduct includes:

- Taking negative actions because a person has made a complaint about possible discrimination to management. Examples:
 - A provider issues terminates a resident's because she complained that maintenance staff made sexually explicit comments to her.
 - An assistant manager rarely issues notices for noise, but begins issuing them to a resident who has complained about a neighbor making racial comments.

- Program management fails to notify an employee about a training opportunity because the employee reported possible resident discrimination to management.
- Taking negative actions against someone because that person engaged in activities to help others learn about, or encouraged others to exercise fair housing rights. Examples:
 - After a staff member learns a resident handed out fair housing brochures, he denies the resident's request to use the community room.
 - A manager fires a maintenance worker who told a resident with a disability that he could request installation of grab bars in the bathroom as a reasonable modification.
- Taking negative actions against someone because that person has testified, assisted, or participated in an investigation under fair housing laws. Examples:
 - A manager tells an employee he will be "watching her closely" because she gave a witness statement in a housing discrimination complaint filed against the property.
 - After a resident advocates for a neighbor who was experiencing sexual orientation harassment from a staff person, the manager denies the resident's request to transfer to another room.
- Threatening or taking an adverse employment action against an employee who assisted someone seeking to rent or be housed, because of the person's protected class, because the person associated with others in a protected class, or because the person was involved in a fair housing investigation. Examples:
 - A manager tells the assistant manager she'll get a negative performance evaluation if she continues encouraging families with kids to apply for housing.
 - A board tells its property managers that their contract will be cancelled if they allow a resident to keep a therapeutic assistance animal.



For more detailed information, see the Sample Policy on Harassment & Retaliation available from the Fair Housing Partners of Washington.

Section C: Religious Organizations Providing Housing

Religious Organizations

Religious organizations and nonprofits operated by them are permitted to reserve housing or shelter to members of the same religion or to give preference to their members. This does not mean a religious entity can discriminate against any other protected class. For example, it would not be permissible to discriminate against applicants or residents on the basis of their marital status, disability (such as people who are HIV+ or recovering addicts, etc.) sexual orientation or gender identity.

Religious Services

Requiring residents to attend religious services may violate fair housing laws. Providers should consult with their legal counsel. If the provider receives federal funding, they are not permitted to provide housing or shelter contingent on attendance at religious services. Even if there is no federal funding involved, there is the risk that any behavior related to proselytizing could be considered "coercion" and prohibited by fair housing. All residents should have the option to obtain a waiver from attending services if it conflicts with the person's religious beliefs or lack of such beliefs.



Section D: Clean and Sober Housing

Alcoholism is considered a protected disability, and it is not a basis to exclude a person from housing. It is illegal under landlord-tenant law for a landlord to direct his residents' lifestyle choices. Just as a housing provider cannot tell residents how to dress or what to eat, he cannot tell them what they can or cannot drink. That said, a program with a "clean and sober" requirement may require that its residents not have drugs or alcohol in the housing facility, or may have rules that prohibit being under the influence.



However, current illegal drug use is not considered a disability. Therefore, it is legal to deny someone housing on the basis of his current illicit drug use, even if he has a dependency. Fair housing laws do protect former alcoholics and drug users, so housing should never be denied to a person because of his history of former addiction.

Many transitional housing programs have a clean and sober requirement. This practice has not been challenged in any published legal opinion, nor has there been any significant movement in the legal community to challenge it. To avoid legal challenges, fair housing attorneys recommend having rules based on residents' behavior instead of blanket abstinence rules.

A transitional housing program will have an easier time defending a clean and sober requirement in the event that it is challenged if the program holds itself out as a clean and sober rehabilitative program. When a resident with alcoholism violates the rule and requests that it be waived as a disability accommodation, program operator can deny the request as unreasonable because it would fundamentally alter the nature of the program.

Mandatory Recovery Requirements

It is acceptable for a housing or shelter program for individuals in recovery from alcoholism or drug addiction to require participation in recovery-related services or groups. However, if they require participation in a 12-step program that includes the concept of a "higher power" and an individual resident feels uncomfortable with the program for religious (or lack of religion) reasons, the resident should be able to obtain

a waiver from attendance if he or she can verify participation in another equivalent recovery program.

Drug Testing

Under fair housing laws, it is not illegal to administer drug testing in housing and shelter programs, provided every applicant or resident is tested. Random drug testing in transitional housing is currently unchallenged. However, drug testing by publicly-funded entities raises the issue of a resident's constitutional right to privacy. This means that should the practice be challenged in court, it would be upheld only if it were shown that the government (or program receiving government funding) had an overriding interest in doing the testing, such as public safety.

Providers doing random testing should be very cautious that whatever procedure they use (such as testing every 12th individual or testing every week, etc.) has no risk of possible discrimination, however unintended. Providers performing such tests should give applicants and residents opportunities to share information about any prescription medication they are taking that could influence the test results, such as narcotics or medical marijuana. Residents should not be charged for the tests.



A program that receives only private funding does not face the same legal dilemma. Regardless of whether the housing is publicly or privately funded, any transitional housing program that wants to perform random drug testing should inform applicants before move-in that random drug testing is part of the program. Inform residents about what substances will be tested for, and samples should be used only to test for the presence of those specific substances. Because of the high rate of false positives, any specimen that tests positive should undergo additional testing to confirm results. It is also recommended that any individual whose housing is threatened by a positive result should be permitted an informal hearing before beginning a formal eviction process, in order for him to hear the evidence and have a chance to refute it.

Section E: Rule Enforcement

In general, community or house rules must be enforced consistently among all residents. Housing providers should never discriminate by protected class. They should also be very careful not to show favoritism among residents. This type of inconsistency can be perceived as discrimination, regardless of the intent. Be aware that if you do something special for one resident (for example, take them to the store, walk their dog, etc.), other residents may expect the same service, and if you don't provide it to them, they may interpret that as discrimination.

If there are times when a provider wishes to make exceptions to standardized rules or to grant additional services, there should be a written policy explaining what those circumstances are. Please note that reasonable accommodation requests from residents with disabilities may also come into consideration here (See Chapter 4).

Occupancy Standards

Occupancy standards that are too restrictive and permit too few people in an individual unit may have the effect of discriminating against families with children, regardless of the provider's intent.

A good rule for minimum occupancy in a standard unit is two people per bedroom (some housing providers permit one additional person). Refer to the local code enforcement requirements.



Mandatory Case Management

Providers should be very cautious about requiring their residents to utilize case management, support groups, etc., as this may violate fair housing laws. Providers committed to such requirements should, at the very least, match services to the individual needs of their residents. For example, it is not acceptable to put a resident at risk of losing her job because her transitional housing program requires her to attend a support group at the same time she is required to be at work. It is similarly not acceptable to require a resident living on a disability income to attend job search classes or spend time searching for employment.

Gender Discrimination

Sex discrimination in housing is illegal. This means providers are not permitted to segregate residents by gender unless they have shared sleeping areas, bathing areas and/or bathrooms, which would negatively influence the residents' right to privacy.

Providers should also not mandate sleeping arrangements within individual units. For example, restricting a boy and girl from sharing a bed is not allowed; HUD's direction is clear that these decisions belong with the parents.

In some instances, providers have expressed concerns about possible sexual abuse in shared sleeping arrangements. Fair housing laws do not allow a provider to dictate sleeping arrangements because they presume it will result in inappropriate conduct. If a provider has concerns about possible child abuse, they should contact the Child Protective Services office.

Domestic Violence Housing Programs

Housing and shelter providers who house domestic violence survivors and their children, or other women and children, should not refuse to house women with sons under 18. If there are no shared sleeping or bathing areas or shared bathrooms, such policies are likely illegal. Even where there are shared sleeping or bathing areas, providers should consider whether there is a way to modify floor plans or usage times to provide privacy. Funding sources may want to consider providing resources to providers to increase privacy.



Refusing to house teenaged sons is an especially risky policy in smaller communities where few housing or shelter resources are available. It would be discriminatory if a family is not housed because they have teenaged sons and they are not provided with alternative lodging and necessary services.

Some providers have expressed concerns that teenagers may have had past arrests or other run-ins with the criminal justice system. A housing or shelter provider could screen teenagers for past arrests, just as they screen adults, so long as the screening criteria is used consistently for both males and females.

Remember, gender is a protected class under fair housing laws, and male domestic violence survivors need housing services similar to female survivors. There may be privacy reasons and compelling programmatic reasons for excluding adult men from domestic violence shelters that serve women, but communities and funders should have a mechanism in place for serving male domestic violence survivors in an alternative fashion (for example, a separate facility for males or providing motel vouchers with counseling services).

Transgender domestic violence survivors may have particular housing needs that should be addressed. See Section A of this chapter for more information.

Section F: Terminating Residential Client Participation

Evicting or terminating a resident from a housing or shelter program must be based on an objective or fact-based violation of the written and signed rental agreement, house rules, essential program requirements, etc. Objective reasons could include:

- Nonpayment of rent or program fees
- Threatening, harassing or intimidating other residents
- Destruction of property
- Noncompliance with chores or other required services unless there is justification for a waiver
- Violations of rules related to noise, weapons, pets, curfew, etc.
- Not having been truthful with essential eligibility information
- Becoming ineligible for the housing based on a change in circumstances (for example, income increases to a level above the eligibility limit)
- Deliberate or ongoing violations of the confidentiality of other residents

A housing or shelter provider cannot terminate housing for an individual for behavior that is “odd” but does not damage property, harm other residents, or interfere with residents’ peaceful enjoyment of their housing. Resident housing should not be terminated for vague reasons such as “conflict with staff.” Instead, specific behaviors should be referenced, such as threats of violence.

Similarly, if staff of a housing or shelter program maintain a list of individuals they will not serve in the future (a “blacklist”), this must be based on objective criteria, and is usually limited to violent behavior or threatened violent behavior. The length of time an individual is refused re-entry should also be reasonable and applied in a consistent manner.

A provider’s policies and procedures with respect to terminating client participation should anticipate reasonable accommodation requests. As discussed below, a reasonable accommodation may be necessary in the course of client terminations.





Chapter 4: Fair Housing Issues Related to People with Disabilities

Section A: Definition of Disability

Washington law and most local laws define disability more broadly than federal law for the purpose of requesting a reasonable accommodation or modification in housing. In Washington, disability is defined as “the presence of a sensory, mental, or physical impairment that:

- is medically cognizable or diagnosable or
- exists as a record or history or
- is perceived to exist whether or not it exists in fact.”

Additionally, Washington law states “a disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity....”

This civil rights definition of disability is much broader than the definition used by the Social Security Administration (SSA) or similar state agencies that administer cash or medical benefits for people with disabilities. While approximately 10.5 million Americans received benefits from SSA, as many as 55 million people enjoy protection against discrimination based on disability.

Disability protection includes, but is not limited to:

- Developmental disabilities (cerebral palsy, Down syndrome, etc.)
- Physical disabilities (spinal cord injury, amputation, etc.)
- Long-term systemic conditions (diabetes, heart disease, multiple sclerosis, arthritis, HIV/AIDS, cancer, etc.)
- Mental and emotional disabilities (depression, anxiety disorder, etc.)
- Cognitive disabilities (stroke, brain injury, etc.)
- Sensory disabilities (blindness, deafness, etc.)



In addition to protecting people who currently have disabilities, fair housing laws also prohibit discrimination based on:

- A history of having a disability. It is prohibited to apply different treatment because of a disability in a person's past (such as mental illness, cancer or chemical dependency), even if that person is in good health when the discrimination occurs.
- Being incorrectly regarded as a person with a disability. This protection extends to people who have physical or mental conditions which are not substantial enough to limit a major life activity, and also to those who have no disability, but are mistakenly thought to have one, and are treated negatively because of that perception.

Section B: Accessible Facilities

Housing Accessibility

Housing and shelter providers have an affirmative responsibility to help their disabled residents overcome barriers to obtaining or maintaining housing. This includes constructing housing and shelter that is physically accessible.



Funders should be aware that a fair housing complaint might be filed against them for providing funds for a building that is not accessible, particularly when any federal funds are involved.

This may also include motels utilized as emergency housing. Funders should consider assisting providers to make housing and shelter units accessible or, at a minimum, to insure alternative options are available.

What are the accessibility standards?

Under the Fair Housing Act, housing with four or more units, constructed for first occupancy on or after March 13, 1991, in an elevator building must be accessible and all ground floor rentals in a non-elevator building must meet specific accessibility standards. For more information, see the sample policy titled "Reasonable Accommodations & Modifications for People with Disabilities".

For more HUD information about disability access, see:

- Fair Housing Accessibility First, www.fairhousingfirst.org
(a HUD-funded education program that helps home builders and architects design and construct housing that meets the FHA accessibility requirements)
- "Fair Housing Act Design Manual,"
www.huduser.org/publications/destech/fairhousing.html
- "Accessibility Requirements for Buildings,
www.hud.gov/offices/ftheo/disabilities/accessibilityR.cfm

Alternative Arrangements

If housing or shelter is not accessible, providers should be prepared to access alternative arrangements when unable to accommodate an individual with a disability. For example, a privately funded transitional housing program may have one vacant room without accessible features and another room with accessible features, which is currently occupied by a resident who does not require them. An alternative to turning away the individual with disabilities would be to move the resident currently occupying the accessible room to the vacant room. Other acceptable options may include offering vouchers for an accessible motel room or linking the individual with an alternate placement in an accessible building.

Section C: Reasonable Accommodations and Modifications

Fair housing laws require similar treatment for all applicants and residents. However, these laws also require reasonable accommodations and reasonable modifications for people with disabilities.

A **reasonable accommodation** is a change made to a policy, program or service that allows a person with a disability to use and enjoy a dwelling, including public and common use areas.

A **reasonable modification** is a physical change made to a resident's living space or to the common areas of a community, which is necessary to enable a resident with a disability to have full enjoyment of the housing. Examples include adding bathroom grab bars, lowering closet rods, or installation of a ramp.

Service animals (also called assistance animals) are a reasonable accommodation for people with disabilities, so long as there is a disability-related need for the animal. "Companion animals" for people with mental health issues or cognitive disabilities are one type of service animal, regardless of whether the animal is trained to perform any tasks. For more information, see the sample policy titled "Service Animals".

How do we know that an accommodation or modification is needed?

The duty to accommodate arises when the housing provider has knowledge that a disability exists and that an accommodation or modification may be required for the disabled person to use and enjoy the housing. Here are key points:

- Notify applicants and residents that the program accepts and grants reasonable accommodations and modifications for people with disabilities. Include a statement on application form and/or house rules to alert participants that they can make requests.
- The applicant or resident must make a request for an accommodation or modification. The request, which can be verbal, does not need to mention fair housing or use the words "reasonable accommodation" or "reasonable modification."

- The request should describe the accommodation or modification, and explain the disability-related need for the requested action. Example: A second floor resident who becomes mobility disabled may request a transfer to a ground floor room.
- While management should document these requests, the request does not need to be in writing. Management may use a specific form, but cannot refuse an accommodation or modification because the person making a request did not use the form.
- Reasonable accommodations or modifications can be requested whenever they are needed, and multiple requests may be made over time. A person may make requests when applying for housing, when entering into a housing agreement, during residency, and even during an eviction process. .

Evaluate each request on a case-by-case basis, in a timely and professional manner, and document interactions with the resident. A housing provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a request may be construed as a failure to provide a reasonable accommodation. If in doubt about whether accommodation policies and rules comply with fair housing laws, ask a fair housing agency to review them and suggest rephrasing if necessary.

Can we require documentation of a disability or the need for a requested accommodation or modification?

Whether to request documentation and what documentation to request depends on how obvious the person's disability is and whether there is a clear connection between the disability and the requested accommodation or modification.

- If the person's disability is obvious or otherwise known, and the need for the accommodation is clear, do not request verification of the person's disability or the need for the accommodation. Example: An obviously blind applicant asks for housing documents in large print – no verification of the disability or the need is necessary.
- If the disability is known, but the need for the accommodation is not readily apparent or known, request only information necessary to evaluate the disability-related need for the accommodation. Example: Management knows a resident has seizures. If the resident wants to use an assistance dog, request that he document the disability-related need for the dog.
- If neither the disability nor the need is clear, ask for proof of both. Example: If someone with no obvious disability asks for an accessible parking space, request verification both that she has a disability and a disability-related need for the parking.

The general spirit of the law requires that barriers be removed for individuals with disabilities, not that more barriers be created by excessive demands to meet verification standards. For example, a shelter program should fax an out-of-state medical professional to obtain a verification for a homeless disabled applicant who just arrived in town instead of requiring the applicant to see a new medical professional in the area. Indigent individuals who have no verification letter can be referred to a local public health or mental health service provider to obtain a verification letter without incurring any fees.



According to HUD and the U.S. Department of Justice, the documentation that can be requested is a letter of verification from a doctor or other medical professional, or other qualified third party who, in their professional capacity, has knowledge about the person's disability and the need for reasonable accommodation. Do not ask for specific information about the disability or for medical records!

**How do we know if an accommodation or modification request is “reasonable”?
When can we refuse a request?**

An accommodation or modification is reasonable if:

- it is related to the resident's disability needs
- is not an undue administrative and financial burden for the housing provider
- does not fundamentally alter the nature of the provider's operations
- it poses a direct threat to the health or safety of others, or would result in substantial physical damage to the property of others.

For more detailed information about accommodations and modifications, including guidance about the interactive process, accessible parking, service animals, and who pays for accommodations/modifications, see the sample policy "Reasonable Accommodations & Modifications for People with Disabilities."

For more information about disability rights and responsibilities, see:

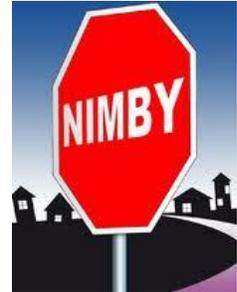
- HUD Disability Rights and Resources, www.hud.gov/offices/ftheo/disabilities
- Joint Statement of the U.S. Dept. of HUD and the Dept. of Justice, “Reasonable Accommodations Under the Fair Housing Act”, www.hud.gov/offices/ftheo/library/huddojstatement.pdf
- Joint Statement of the U.S. Dept. of HUD and the Dept. of Justice, “Reasonable Modifications Under the Fair Housing Act”, www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf
- HUD, “Disability Rights in Housing”, www.hud.gov/offices/ftheo/disabilities/inhousing.cfm
- HUD, “Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation”, www.fairhousing.com/include/media/pdf/insuranceguidance.pdf

Section D: Group Living Arrangements

The fair housing laws and numerous court decisions across the United States protect group dwellings for homeless people, those recovering from substance dependency, people with disabilities, people with criminal histories, domestic violence survivors, veterans, and families with children. It is a violation of fair housing laws for municipalities to refuse or place undue burdens on group living arrangements based on irrational fears or subjective criteria.

Not In My Back Yard! (NIMBY)

Sometimes the biggest opponents of special needs housing are neighbors. For example, in 2004, Triumph Treatment Services submitted an application to the City of Yakima requesting approval to establish a residential group home to provide housing as part of a chemical dependency recovery program.



Although the City of Yakima approved Triumph's proposal, a group of local neighbors twice appealed the decision. Neighbors expressed concerns that the group home could pose "a threat to community safety due to the high recidivism rate of chemically dependent people; because of increased crime, vandalism and possible injury or loss of life due to an element of society involved in drug trafficking that would be drawn to the area" and "because of lower property values that would result from all of said negative impacts to the area."

The Hearing Examiner upheld the City of Yakima's approval of the project and noted:

- The Washington Supreme Court "has refused to allow unsubstantiated subjective fears as to an adverse effect on property values or the lack of safety to constitute a basis for denial of a special use permit for a group home." [*Sunderland Family Treatment Services v. The City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995)]
- Washington's Growth Management Act provides: "No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy or administrative practice which treats a residential structure occupied by people with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals..." [RCW 36.70A.410]

The Hearing Examiner concluded that "there is an affirmative obligation on the part of the City to reasonably accommodate the establishment of group homes in residential areas to facilitate the total and permanent recovery of the residents of such homes."

HUD and the U.S. Department of Justice have issued guidance on these issues in the form of a Joint Statement entitled "Group Homes, Local Land Use, and the Fair Housing Act," online at www.justice.gov/crt/about/hce/final8_1.php.

In another case (*City of Edmonds v. Oxford House*, 514 US 725, 115 S. Ct. 1776), the City of Edmonds, Washington, cited an Oxford House group home for recovering alcoholics and drug addicts for violating the City's zoning ordinance which defined family as not more than five unrelated people. Without challenging the underlying ordinance, Oxford House requested a reasonable accommodation to allow up to 12 unrelated residents. The City denied the request and amended its zoning code to allow such facilities in multifamily and commercial zones and to prohibit them in single-family residential zones. The United States Supreme Court affirmed the Ninth Circuit's judgment, holding that the city's definition of family was invalid and unenforceable. This case firmly established that municipalities must consider granting exceptions to such requirements as a reasonable accommodation under the Fair Housing Act.

Fair Housing and Insurance for Residential Group Dwellings

Home insurance providers which refuse to insure group home providers based on irrational fears or subjective criterion risk violating fair housing laws. In 2006, the Fair Housing Center of Washington and the Fair Housing Council of Oregon settled a lawsuit involving alleged discrimination on the basis of disability in the provision of homeowners insurance. The lawsuit alleged that between January 2002 and May 2004, Western World took adverse insurance actions associated with licensed adult residential care facilities designated as serving residents with mental illness, including approximately 150 group homes in Washington. The settlement provided \$2 million in monetary relief.

Section E: Confidentiality

Confidentiality Requirements for Individuals with Disabilities

Fair housing laws prohibit housing and shelter providers from requiring their applicants or residents to disclose information related to the nature and/or extent of a disability. Information about an applicant's disability may only be shared with a housing or shelter provider on a voluntary basis and not as a condition for acceptance into the program. This includes information collected during the screening process related to medical conditions, mental health issues and medications. Information about a resident's disability should never be shared with other residents.

Any questions regarding a resident's medical or mental health history must be identified as voluntary. It should be clear that sharing such information is not a requirement for acceptance or continued tenancy in the housing program (unless the housing is specified only for people with disabilities, or with a particular disability).



The provider may have the capacity to offer medical or mental health services or provide linkage to relevant services. If so, they can preface questions related to disability by saying something like the following (using the same wording for all residents):

“I'd like to ask you some questions about physical and mental disabilities. Your answers are voluntary and if you don't answer, we will still provide assistance to you. If you do answer, it may help us to serve you better.”

If the housing or shelter provider does not offer any medical or mental health services, directly or through a partner agency, and provides only basic referrals, they should not ask these types of questions at all.

Grant Data Collection Requirements

If data regarding the nature and extent of residents' disabilities is required for statistical purposes by a funder, that information should be tracked separately. If someone refuses to provide that information, there may be a way to leave that part of the form blank or note that there was a refusal. To prevent duplication, establish a mechanism to substitute alternate identifying information if the individual refuses to give a name. The homeless data-gathering systems authorized by HUD all have means of addressing this.

Housing and shelter providers should not require residents to share information about their medications, as that could convey the nature and/or extent of their disability. Providers can require residents to keep medications in a central storage area, but must ensure that the contents will remain confidential. This could mean individual locked or sealed containers, drawers or lockers, where the labeling is not visible, but the medication is easily accessible by the residents when needed.

Applicants or residents can be asked for the names of disability-related service providers they are working with if all residents are asked for the names of their service providers and it is clear that providing the information is voluntary, not required.

A provider's housing staff are permitted to share information about residents with social service staff to create an opportunity for them to assist residents in maintaining housing in a contract/rule compliant manner, or to offer specific program services to residents. However, it is illegal for the service staff to share information about a resident's disability with housing staff or other agencies without permission from the resident. A release of information form should be used any time a resident wishes to have information about his or her disability disclosed to housing staff. It is recommended that a separate release be signed for each event of disclosure.

If a provider uses a centralized data base, any resident information related to a disability should be accessible only to relevant clinical or service staff. The release of information form should be used, and completing a release of information must be voluntary, not a requirement.



Chapter 5: Promoting Fair Housing

Many housing and shelter providers have only recently learned that fair housing laws relate to their programs. This guide is a general overview of fair housing laws as they relate to nonprofit housing and shelter providers. Many of these situations have not yet been specifically addressed by the courts.

The most effective way for nonprofit housing and shelter providers to protect themselves and to affirmatively further fair housing are to establish best practices, such as:

- Review all policies, procedures, rules and application criteria for unintended discrimination and to make sure that they are not discriminatory on their face. Develop new policies and procedures as needed.
- Base admission to a program on very clear requirements that do not discriminate against any protected class.
- Establish a consistent referral protocol. Don't assume knowledge of what people need or what would be "best for them."
- Develop a clear process on how to handle reasonable accommodation requests at every stage of the process, from admissions through termination.
- Assess the facility's accessibility (which should be done anyway if the program receives federal funds). Make any needed improvements that are affordable.
- Make sure employees know how to document any issues related to fair housing problems that come up and document the time spent addressing them. Documentation should be clear and legible. Individuals can file fair housing lawsuits up to two years after an alleged act of discrimination, so thorough documentation is extremely important.
- Identify a staff person to be the fair housing "specialist." This person should keep abreast of fair housing issues, address any concerns, and be the point person for handling a fair housing complaint.
- Ensure employees obtain regular fair housing training. Rulings have frequently been made in the courts that can impact the responsibilities of service providers.
- Seek technical assistance as issues arise, from a fair housing agency or from an attorney skilled in fair housing laws.