



The State of Fair Housing Training Course

Fair Housing Basics

State and federal fair housing laws require that all people have an equal opportunity to buy, rent, and live in housing of their choice. The federal Fair Housing Act makes housing discrimination in the sale, financing, or rental of housing or housing related services unlawful if based upon:

- **Race:** Refers to a family, tribe, or group of people coming from the same common ancestors.
- **Color:** The color of an individual's skin.
- **Religion:** All aspects of religious belief, observance, and practice.
- **National Origin:** The country or geographic region in which a person was born, or from which the person's ancestors came.
- **Gender:** Includes gender (male or female), and gender associated stereotypes. Also includes, but is not limited to, pregnancy, childbirth, or conditions related to pregnancy or childbirth.
- **Familial Status:** Refers to a situation where there is one or more persons under age 18 who reside with a parent, legal guardian, etc. This also applies in the case of pregnancy or for people who are in the process of gaining legal custody of a person under age 18.
- **Disability:** Refers to physical, development, and cognitive disabilities as well as mental illness and chronic disease.

The Colorado Fair Housing Act provides additional protections based upon:

- **Ancestry:** Refers to a person's line of descent or lineage.
- **Creed:** Any system of moral or ethical beliefs, principles, or opinions and the practices and observances associated with the exercise of those beliefs. Creed can include beliefs that fall both within or outside of an organized religion and can

also include negative assumptions associated with your clothing, books you carry, or symbols on your clothing or bags.

- **Marital Status:** Being single, married, divorced, or widowed.
- **Sexual Orientation:** Refers to heterosexuality and LGBTQ communities and includes incorrect assumptions about a person's sexual orientation.

Discrimination based on these protected classes can take place even if the respondent/defendant is mistaken about the victim's identity.

The following are examples of how a housing provider might discriminate:

- Refuse to sell or rent a dwelling.
- Refuse to negotiate for housing.
- Say housing is unavailable when it is in fact available.
- Charge more for the same housing or service.
- Set different terms, conditions or privileges for housing sales, rental, lending, or insurance transactions.
- Refuse to make reasonable accommodations or modifications to allow a disabled person to use a dwelling.
- Advertise in a way that indicates any limitation or preference for one protected class over another.
- Steer or direct prospective renters or buyers to certain neighborhoods or certain areas of a housing property.
- Threaten or interfere with any person in the exercise or enjoyment of a fair housing right.
- Fail to design or construct housing in an accessible manner.
- Providing delayed, incorrect, or misleading communications to deter applicant/tenant.

Housing Professionals Best Practices

Make sure all staff, volunteers, board members, managers, maintenance, etc., understand the importance of consistent implementation and enforcement of all policies, practices, procedures, and rules to protect both the individual and the organization from potential fair housing liability. Documentation of fair housing compliance is crucial to proving a fair housing allegation is nondiscriminatory.

Marketing & Advertising:

- Use the Equal Housing Opportunity Logo.
 - Visible on all print and online materials.
 - Visible in leasing offices, break rooms, and other community spaces.
- Use written disclaimers.
 - “Equal Housing Opportunity.”
 - “We do business in accordance with fair housing law.”
- Consider hanging Fair Housing posters in public areas.
- Make materials available in alternative formats such as large text, braille or translated into multiple languages.
 - “This information is available upon request in alternative formats including large print.”
- Consider translating marketing materials into multiple languages.
- Describe PLACES not PEOPLE: describe the property and amenities rather than the people living within the community.
- All marketing materials featuring people must reflect a diverse makeup of individuals.



Inquiries:

- Establish criteria that focuses on ability to pay rent, maintain the premises, and live in harmony with neighbors.
 - Ensure staff consistently enforce policies to determine qualified applicants and document compliance.
- Create a checklist staff must complete for all potential tenants to document all aspects from inquiry and application to screening and selection.
 - Keep the checklist in the client file.
- Create a flyer outlining the application procedure and selection criteria to give to everyone.
 - Date and timestamp a copy for the client's file to document when you gave each client the information.
- Have protocols for inquiries, tours, applications with documentation standards showing all people are receiving the same consistent, accurate information.

Application, Screening, and Selection:

- Apply policies consistently.
- Give written notice of the reason for denial and provide information on appeal process. Keep copies in the client file.
- Research discrepancy when information provided by screening company and applicant differ.
- Accommodate applicants with disabilities.
 - Use disclaimer: “We provide reasonable accommodations to persons with disabilities upon request.”

During Residency:

- Enforce rules consistently
 - Create protocols for rules violations or citation issuance to ensure consistent enforcement, documenting when and why citations are made.
- Provide services, upgrades, and maintenance equally including timeliness and quality of services.
 - Respond to inquiries in chronological order.
 - Place date, time, and receiving staff initials on all documents

Review policies and procedures for unintended consequences:

- Rules about behavior often target protected classes such as families with children (familial status).
 - Rules should apply to all residents, not just protected classes including curfews, noise, and more
 - Example of discriminatory rule:
 - “Children cannot play games or make loud noises in business centers”
 - Example of non-discriminatory rule:
 - “All residents must refrain from making loud noises in business centers”
- Child safety concerns may also have unintended discriminatory effects based on familial status. These rules often relate to play, pool use, or restricted access.
 - The goal of rule (safety) must be achieved in the least restrictive way possible.
 - Example of discriminatory rule:

- “Children are not allowed to play in the parking lot.”
 - Example of non-discriminatory rule:
 - “Use of the parking lot is restricted to driving, parking or accessing vehicles to ensure the safety of all tenants.”
 - If an unsafe condition exists on the property, consider making it safe for all tenants to avoid general liability (when possible).
- Occupancy Limits also have unintended discriminatory effects on families.
 - Generally, occupancy limits should not be more restrictive than two persons per bedroom, however there are circumstances where more tenants should be permitted.
 - Factors to consider:
 - Size of bedrooms & overall unit
 - Age of occupants
 - Configuration of the unit
 - State & local laws
 - Overly restrictive occupancy standards that unreasonably limit the number of people can be considered discriminatory

Post Residency:

- Be consistent in how policies are applied regarding returning deposits, assessing damage, and initiating evictions.
 - Create protocols for documenting consistent implementation of policies.
- Continue to provide reasonable accommodations.

Miscellaneous:

- Create policy for how to respond to neighbor-to-neighbor harassment or complaints.
 - Consider creating a flyer informing all residents of their fair housing obligations to their neighbors.
- Create protocols for when exceptions can be made and consistently document when and why such exemptions are made.
- Maintain all files for two years to satisfy the federal statute of limitations.

3 Step Discriminatory Effects Liability

1. Evaluate whether policy or practice has a discriminatory effect.
 - a. Burden on the complainant/investigating agency.

2. Analyze whether policy or practice is necessary to achieve a “substantial, legitimate, nondiscriminatory interest”.
 - a. Burden shifts to housing provider to produce reliable evidence and demonstrable risk justifying policy decision.
3. Explore less discriminatory alternatives.
 - a. If housing provider successfully shows the policy is necessary to achieve a “substantial, legitimate, nondiscriminatory interest”, the complainant/investigating agency bears the burden of identifying less discriminatory alternatives to serve such interests.

Other Fair Housing Resources

- DMFHC Newsletter: <http://www.dmfhc.org/newsletter-registration>
- Harassment Rule
 - <https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-21868.pdf>
- Equal Access Rule
 - <https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>
- Criminal Background Guidance
 - https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGUIDAPPFHASTANDCR.PDF
- Nuisance Ordinance/Crime Free Lease Addenda Guidance
 - <https://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>
- LEP Guidance
 - <https://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>
- Design and Construction Accessibility Manual
 - <https://www.huduser.gov/publications/pdf/fairhousing/fairfull.pdf>
- Fair Housing & Equal Opportunity News
 - <https://portal.hud.gov/hudportal/HUD?src=/subscribe/signup&listname=FHEO%20News&list=FHEO-NEWS-L>
- HUD Press Room
 - <https://portal.hud.gov/hudportal/HUD?src=/press>
- HUD Policy Development & Research
 - <https://www.huduser.gov/portal/home.html>

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