

Fair Housing Basics: Sexual Harassment and Disability Focus

Rights and Responsibilities



www.highplainsfhc.org

Who Are We?



- High Plains FHC is a private non-profit civil rights organization
- Mission Statement: *The mission of the High Plains Fair Housing Center is to strengthen communities and to ensure equal access to fair housing in the region through **training, education, enforcement and advocacy.***



Disclaimer



- I am not a lawyer. Nothing in this presentation is legal advice, for legal advice please contact an attorney.



Fair Housing is a Civil Right



The right to obtain housing of one's choice, free from illegal discrimination.

Fair Housing is a right protected by federal and state laws. Fair Housing means you may freely choose a place to live without regard to your race, color, religion, sex, national origin, or because you are disabled or have children in your family or because you are on public assistance.

Fair Housing Act

April 11, 1968



- PUBLIC POLICY (Federal Register 100.05, p3283)

It is the policy of the United States to provide within the constitutional limitations, for fair housing throughout the country. No person shall be discriminated against because of race, color, religion, sex, disability, familial status or national origin.



Dual Purpose of the Fair Housing Act



- Eliminate Housing Discrimination
- Promote Residential Integration
 - (replace segregated communities with truly integrated communities)
 - “It shall be unlawful to restrict the choices of a person by word or conduct in connection with buying or renting a dwelling so as to perpetuate segregated housing patterns or to discourage or obstruct choices in a community, neighborhood, or development. “ -42 U.S.C. § 3601, et seq.

What is housing discrimination?



- Housing discrimination includes:

- blocking someone's access to housing,
- treating one renter or buyer differently,
- or denying someone the right to buy or rent a home even though they can afford the property, all because that person is a member of a group the law protects.

The Broad Reach of Fair Housing Law



- Covered Transactions
- Covered Dwellings
- Protected Classes
- Exceptions

Federally Protected Categories

Title VIII of the Civil Rights Act of 1968 & the Fair Housing Amendments Act of 1988
42 U.S.C. 3601 et. seq.



Race

Color

National Origin

Religion

Sex

Familial Status

Disability



Additional State Protected Classes



- The North Dakota Housing Discrimination Act
- Additional “ceiling” protections in ND:
 - **Public Assistance**
 - **Age** - 40 and over
 - **Marital Status**
 - **Domestic Violence**
 - **All of federal bases**
- ND Department of Labor and Human Rights
 - Certified by HUD as operating to provide enforcement of rights, procedures, remedies, and judicial review that are substantially equivalent to federal Fair Housing Act

FHA - Prohibited Practices



- to refuse to sell or rent
- to refuse to negotiate for sale or rent
- to otherwise make unavailable or deny a dwelling
- because of status in protected class

42 U.S.C. § 3604 (a)



FHA - Prohibited Practices



- to discriminate in terms, conditions, privileges in sale/rental of dwelling
- to discriminate in the provision of services or facilities in connection with sale/rental of dwelling

42 U.S.C. § 3604(b)



"You want me to fix your stove? ...how bad do you want it, honey?"

If a landlord has other "ideas" about making needed repairs, we have a few "ideas" of our own. You can hit him where it hurts by reporting him for sexual harassment under the Federal Fair Housing Act.

If you suspect unfair housing practices, contact HUD or your local Fair Housing Center. Everyone deserves a fair chance.

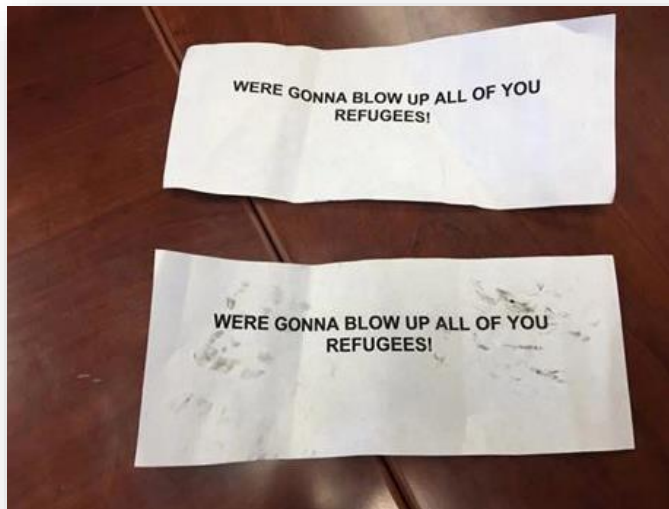

EQUAL HOUSING OPPORTUNITY

FAIR HOUSING IS THE LAW!

U.S. Department of Housing and Urban Development • 1-800-669-9777 • TDD 1-800-927-9271

FHA - Prohibited Practices

“It shall be **UNLAWFUL** to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.”



42 U.S.C. § 3617

FHA - Prohibited Practices



- to represent to any person [because of status in protected class] that any dwelling is not available for inspection, sale, or rental when it is actually available

42 U.S.C. § 3604(d)



FHA - Prohibited Practices



- for profit, to induce or attempt to induce a person to sell or rent a dwelling by “representations regarding the entry or prospective entry into the neighborhood” of persons of a particular [protected class]

42 U.S.C. § 3604(e)



The Waiting Game



**"WILL THE APARTMENT
STILL BE AVAILABLE
WHEN THEY
MEET ME
IN PERSON?"**

**"I MADE ARRANGEMENTS
TO LOOK AT AN APARTMENT,
BUT WHEN THE LANDLORD
SAW MY SON AND ME, HE
WALKED AWAY. WHEN WE
CAUGHT UP WITH HIM,
HE SAID THE APARTMENT
WAS ALREADY RENTED."**



Discrimination because of race or familial status is prohibited under the law. If you believe you may be a victim of housing discrimination, contact HUD or your local Fair Housing Center:

Visit **www.hud.gov/fairhousing** or call the HUD Hotline
1-800-669-9777 (voice) 1-800-927-9275 (TTY)

Your Choice. Your Right. Your Home.



A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit www.hud.gov/fairhousing.

NFHA
National Fair Housing Alliance

What can you consider?

It's okay to consider color

A one-dollar bill from the United States, featuring the portrait of George Washington. The bill is green and white, with the words "THE UNITED STATES OF AMERICA" and "ONE DOLLAR" visible.

...as long as it's green.

Judging you by what you look like instead of your qualifications is discrimination. What matters is your ability to pay for housing. It's illegal to discriminate because of race, color, religion, sex, national origin, disability or familial status in the sale or rental of housing.

If you believe you may be a victim of housing discrimination, contact HUD or your local Fair Housing Center.

Visit www.hud.gov/fairhousing or call the HUD Hotline
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Objective Facts: not influenced by personal feelings, interpretations, or prejudice; based on **facts**; unbiased

A Closer Look



- **Discrimination with regards to disability status**
- **And Sexual Harassment in Housing**

Housing Laws for People with Disabilities



- Housing that Receives Federal Money: Section 504 of the Rehabilitation Act of 1973
- Public Entities: Title II of the Americans with Disabilities Act, as amended (ADA)

Federal Fair Housing Act -Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq.

Why Add Disability to Fair Housing Protections?



- individuals with disabilities "have been denied housing because of **misperceptions, ignorance, and outright prejudice.**"
- "a clear pronouncement of a national commitment **to end the unnecessary exclusion** of persons with Disabilities from the American mainstream."
- "essential to the goal of independent living."

Purpose of Protections Against Disability Discrimination in Housing



Therefore, this law "repudiates the use of stereotypes and ignorance, and mandates that persons with disabilities be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion."

Purpose of Protections Against Disability Discrimination in Housing



- Remember, it's about equal access to and benefit from housing by affirmatively enhancing the quality of life for persons with disabilities.
- Provides an equal opportunity to use and enjoy a dwelling, including public and common use spaces.





Who is a person with a disability for FHA purposes?

- Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."
- *42 U.S.C.A. § 3602(h)*

Examples of Unlawful Discrimination Based on Disability



- Deny housing based on disability
- Ask about disability or medication during application process
 - 42 U.S.C.A. § 3604(f), 24 CFR § 100.202(c),
- Evict based on disability
- Misrepresent availability because of disability
- Intimidation and harassment

Examples of Unlawful Discrimination Based on Disability (continued)



- Indicate a preference based on disability
- Enact zoning ordinances based on disability stereotypes
- Discourage or steer based on disability
- Provide different terms and conditions based on disability
- Refuse to make Reasonable Accommodations and Modifications

Accommodation vs. Modification



- **Reasonable Accommodation**

- Relates to the alteration or change of a rule, policy, practice, or service
- Costs paid by landlord (public or private)
- *-Exception undue administrative and financial burden (both)*

- **Reasonable Modification**

- Relates to the removal of physical barriers
 - Costs paid by tenant (private)
 - Costs paid by landlord (federally supported programs)
-
- Requests for either need not be in writing or use magic words

What is Reasonable?



- Does not impose an undue financial and administrative burden on housing provider.
- Does not fundamentally alter the nature of the housing provider's operations.

****The determination is made on a case-by case basis.*

For an accommodation to be reasonable, there must be an identifiable relationship or nexus between the requested accommodation and the individual's disability.

- The requested accommodation must be necessary to ameliorate the effects of the disability and provide the person with a disability an equal opportunity to use and enjoy a dwelling.

Accommodations That MIGHT BE Reasonable



- Waiving a rule against non-tenants using the laundry room to allow a family member to do a tenant's laundry
- Allowing a tenant with a disability to have a live-in aide
- Waiving late charges and penalties when a disability requires early termination of a lease
- Waiving a requirement for prior rental history



Recent Disability Cases

- August, 2018: Salt Lake City, UT
 - a woman with disabilities filed a complaint alleging that Jefferson School Apartments II, LLC, refused her request to be assigned a designated parking space close to her unit. Jefferson School Apartments and Housing Assistance Management Enterprise, a Salt Lake City-based non-profit corporation, receive federal financial assistance.
- Conciliated for \$18,000 paid to Complainant, a transfer to a ground floor unit, moving expenses up to \$2,500, and an assigned spot.



https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_098

Requesting an Accommodation



- A reasonable accommodation must be requested.
- A request can be made at any time, by the person with a disability, a family member, or by someone else who is acting on behalf of the person with a disability.
- Request does not have to be in writing. It can be oral or by any other effective method.
- Housing provider should always place the request in writing and document the outcome.

Verifying Reasonable Accommodations



- Apparent vs. non-apparent disabilities.
- May request documentation of the need – only to the extent necessary to verify the disability and if an accommodation is needed.
- *Verification of disability and need for accommodation can be from:* medical provider; licensed health provider; professional representing social service agency, disability agency or clinic, a peer support group, a non-medical service agency; or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.



Verifying Reasonable Accommodations

- May not acquire confidential medical records or inquire into the nature or severity of a person's disability.
- May not require health care provider to testify in court or sign a statement under penalty of perjury.

Reasonable Accommodations Denial



When can a housing provider deny a reasonable accommodation request?

- The request was not made on or on the behalf of a person with a disability.
- There is no disability related need for the accommodation.
- The accommodation is not reasonable:
 - Imposes an undue financial and administrative burden
 - Causes a fundamental alteration to the nature of the program
 - Tenancy of the resident poses a direct threat to the health or safety of other individuals, unless that threat can be eliminated or reduced significantly by a reasonable accommodation

Assistance Animals

*Fair Housing



- Assistance animals are not pets.
- Assistance animals are often referred to as service animals, emotional support animals, therapy and comfort animals.
- Are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more symptoms or effects of a person's disability.
- Are not just dogs and may include cats, birds, guinea pigs, miniature horses, capuchin monkeys, snakes, etc.



Assistance Animal Conditions



- Must be permitted for individuals with disabilities, as defined by the Fair Housing Act and Section 504 when **there is a relationship between a person's disability and the assistance provided by the animal.**
- Pet policies must clearly state that the policy does not apply to assistance animals.

HOUSING PROVIDERS...

- May encourage licensing in accordance with any local laws.
- May apply reasonable health and safety concerns, including ensuring that INDIVIDUAL animals are not a threat or nuisance.
- May require owners to clean-up after animals and maintain control of animals.

Assistance Animal Conditions (continued)



HOUSING PROVIDERS MAY NOT...

- charge a pet deposit, security deposit, fee.
- require verification of licensure or inoculations as a condition of approval.
- deny access to housing or indoor and outdoor public and common use areas associated with housing.
- impose breed, weight, or size limitations

A HOUSING PROVIDER MAY DENY A REQUEST FOR AN ASSISTANCE ANIMAL IF...



- A specific animal poses a direct threat to the health or safety of others or would result in substantial physical damage to the property. (An individualized assessment must be based on recent credible, objective evidence related to the specific animals actual conduct, not speculation about the type or breed of the animal.)
- The housing provider can demonstrate there is an undue financial and administrative burden. (This is a very high standard to meet and generally is not applicable.)
- It would create a fundamental alteration. (This is also a very high standard and typically is not applicable.)



Recent ESA case examples

- Nebraska (2015) – University of Nebraska at Kearney refused 2 student emotional support animals in University run apartments.
 - \$140,000 settlement
 - University policy changes
- Minnesota (2017) – Veteran with war-related PTSD and major depression denied emotional support dog based on animal type and weight restriction.
 - \$19,787 civil penalty against each Respondent (4 Respondents)
- Montana (2017) – Landlord required pet deposit for service/emotional support animal.
 - \$11,043 in compensatory damages for plaintiff
 - \$20,000 in punitive damages for plaintiff
 - \$6300 for Montana Fair Housing, Inc.

Sexual Harassment in Housing



- It can take the form of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- It also can take the form of offensive remarks or other hostile behavior because of a person's sex.
- It can consist of oral, written, or other conduct and does not require physical contact between the harasser and victim.

Hostile Environment Harassment:



- **Unwelcome conduct** because of sex that is **sufficiently severe or pervasive** as to **interfere with** a person's ability to obtain, maintain, or use and enjoy housing or housing-related services.
- Can be created by a **single incident, if severe.**
- Violates the ***Fair Housing Act***, even if there is no termination of assistance, increase in rent, withholding of repairs, or similar act.

Hostile Environment Harassment Examples:



- A landlord subjects a tenant to severe or pervasive unwelcome touching, kissing, or groping.
- A property manager makes severe or pervasive unwelcome, lewd comments about a tenant's body.
- A maintenance man sends a tenant severe or pervasive unwelcome, sexually suggestive texts and enters her apartment without invitation or permission.
- A housing provider, real estate agent, insurance or loan officer, or their employee touching your body or asking for you to remove your clothing.

Quid Pro Quo Harassment:



- A landlord tells an applicant he won't rent her an apartment unless she has sex with him.
- A property manager evicts a tenant after she refuses to perform sexual acts.
- A maintenance man refuses to make repairs unless a tenant gives him nude photos of herself.
- Requesting rent to be paid in sexual favors instead of money.



- **BOTH** hostile environment and quid pro quo harassment violate the Fair Housing Act.
- **EITHER** type can lead to liability under the Fair Housing Act.

Who is liable?



A property owner or property manager has a duty not to engage in sexual harassment. Additionally, a property owner or manager has the duty to ensure that his or her employees or agents do not engage in sexual harassment.

- a property owner, manager, or other employee who engages in sexual harassment is directly liable.
- A property owner or manager who directs his or her employees, agents or contractors to engage in sexual harassment, or who knows or should have known about sexual harassment perpetuated by such persons but fails to take action to stop it, is directly liable for any resulting harm.
- a property owner or manager may be vicariously liable for the acts of his or her employees or agents regardless of whether he or she knew of or intended the wrongful conduct, or was negligent in failing to prevent it from occurring.

Other Types of Illegal Harassment Include:



Severe or pervasive offensive remarks or hostile behavior because of a person's race, color, religion, sex, disability, familial status, or national origin.

Examples:

- Repeatedly yelling anti-Muslim slurs at a Muslim tenant.
- Taunting and threatening a person with a mental disability.
- Subjecting a person to pervasive racial epithets or defacing a person's home with racially derogatory or threatening words or images.

N.D. Code §§ 47-16-17.1

Domestic Violence Survivors Rights



A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.

- **Tenant must provide written notice of termination date and court ordered documentation of threat.**
- **Landlord may not disclose information provided by tenant**
- **Tenant is responsible for current month plus 1 month rent.**
- **Tenant still responsible for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated under this section.**

N.D. Code §§ 47-16-17.1



Housing discrimination protection:

- A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

What is Testing?



- Testing is evidence.
 - Objective gathering of data(not a conclusion looking for a set of facts)
- Testers investigate to see whether people experience different treatment based on protected characteristics.
- Testers who experience discrimination have standing to pursue a complaint.

Types of Testing by HPFHC



- **Complaint-based Testing**

- Designed with a specific scenario in mind.
- Corroborate claims against a specific housing provider

- **Systemic Testing**

- Designed to test for a specific kind of discrimination.
- Uncover systemic patterns of discrimination by providing data on the housing market as a whole.

Testing is Necessary



- The Supreme Court has approved testing in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)
- “It is frequently difficult to develop proof in discrimination cases and the evidence provided by testers is frequently valuable, if not indispensable.” *Richardson v. Howard*, 712 F.2d 319, 321 (7th Cir. 1983).
- HUD and the Justice Dept. do it.
- Dr. King did it in Chicago in 1966.

What to Consider during a Design and Construction Test



- Age of building: March 13, 1991
- Elevator or no elevator
- Accessible routes into/through each unit
- Accessible common areas
- Doors and hallways wide enough
- Reinforced bathroom walls
- Kitchens and bathrooms that can be used by people in wheelchairs
- Accessible light switches

High Plains FHC

Tests and Cases: Disability



- Fargo - Reasonable modification delay/denial
- Fargo – Reinforced walls
- Grand Forks – Reasonable Modification denial/barriers, advocacy
- Dickinson – Harassment
- Emotional Support Animals Barriers:
 - Extra forms
 - Extra steps
 - Waiving of HIPAA rights
 - Harassment



If something does not seem right
contact us. We are here to help!

High Plains Fair Housing Center

(701) 203-1077



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