



**HOUSING
EQUALITY
CENTER**
of Pennsylvania

2017 PHFA Housing Forum: Fair Housing Update

May 11, 2017



Recent HUD Fair Housing Guidance and New Program Rules

- Land Use
- Criminal Records
- Harassment
- Nuisance Ordinances
- Limited English Proficiency
- Gender Identity



Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

Race

Color

Religion

National Origin

Sex

Disability

Familial Status*

** Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.*



Federal Fair Housing Act

Covered Transactions

- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use

Covered Properties

- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Mobile home parks
- Homeless shelters
- Nursing homes
- Group Homes



Zoning and Land Use

On November 10, 2016 DOJ and HUD released updated guidance on **Local Land Use Laws and Practices and the Application of the Fair Housing Act**

- Designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities
- Clearer Q&A format outlining what could constitute housing discrimination by municipalities under the Fair Housing Act



Zoning and Land Use

- The Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on membership in a protected class.
- Prohibited practices as defined in the FHA include making unavailable or denying housing because of a protected characteristic.
- Under the FHA, housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.



Zoning and Land Use

Examples of land use and zoning laws or practices that may violate the FHA include:

- Utilizing land use policies or making decisions that treat housing that may be occupied by protected classes less favorably than housing occupied by other residents
- Blocking group homes or multifamily or affordable housing in response to neighbors' fears or prejudices about persons with disabilities or racial and ethnic minorities
- Requiring additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the protected classes
- Refusing to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures



Zoning and Land Use

- A land use or zoning practice may be found to be intentionally discriminatory even if there is no personal bias on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias or fears about members of protected classes may be intentionally discriminatory, even if the officials themselves do not personally hold such views.
- Decisions motivated by a purported desire to benefit a particular group can also violate the FHA if they result in differential treatment because of a protected characteristic.



Zoning and Land Use

- Even absent a discriminatory intent, local governments may be liable for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic.
- A land use or zoning practice results in a discriminatory effect if it causes or predictably will cause a disparate impact on a group of persons or if it creates or perpetuates segregated housing patterns because of a protected characteristic.



Zoning and Land Use Families with Children

Municipalities may designate a zoning district as age restricted, but the district must comply with the HOPA definition—either 80% of households with a resident age 55+ or 100% of residents age 62+

A local government that zones an area to exclude families with children must continually ensure that housing in that zone meets the requirements of the exemption. If the zoning district fails to meet HOPA requirements, the government violates the FHA.

Local examples of violations:

- Language expressing an explicit intent to limit impact on the number of children in the school district
- Different use and/or dimensional regulations for age restricted and family housing in the same district



Zoning and Land Use Group Homes

A group home refers to a dwelling that is or will be occupied by unrelated persons with disabilities.

- Group homes may or may not provide support services.
- Group homes may be operated by individuals or organizations, either for profit or nonprofit.
- Group homes may or may not include supervision of residents and may or may not be licensed under a particular program.
- Group homes may include persons who are in recovery from alcohol or drug abuse.

Zoning ordinances may not contain provisions that treat uses for people with disabilities differently than other similar uses. Generally, group homes for small numbers of residents housed in single family homes should be treated as single family residences.



Zoning and Land Use Group Homes

Local examples of violations:

- Requiring group homes be spaced a certain distance from each other
- Rules that place greater procedural or other burdens on group homes than other residential uses (conditional use permits, sprinklers, inspections, etc.)
- Enforcing ordinance provisions more strictly against group homes
- Definitions of family can affect group home situations by restricting the number of unrelated individuals that can occupy a single family home—group homes for persons with disabilities are entitled to exceptions to definitions of family as a reasonable accommodation
- Licensing requirements and registration requirements
- Exclusion of addiction recovery homes



Whitehall Township Settlement

Agreement settled allegations that Whitehall discriminated because of race, national origin, family status, and disability when it denied a proposal to construct 49 units of affordable multifamily housing in the Township

- Residents opposed the project complaining that an apartment building would crowd and change the makeup of the neighborhood
- Whitehall Zoning Hearing Board denied the project on the basis that there was inadequate parking
- Township paid \$375,000 in developer's legal fees, must actively promote project, and must revise zoning ordinance, removing barriers to affordable housing



Criminal Records

In April 2016 HUD released Guidance on Application of Fair Housing Act Standards to the **Use of Criminal Records by Providers of Housing and Real Estate Related Transactions**

- Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history based restrictions on access to housing are likely to disproportionately burden African Americans and Hispanics.
- The Fair Housing Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, however arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification.
- A discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the FHA.



Criminal Records

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics always violates the FHA.

While having a criminal record is not a protected class, blanket bans no matter when conviction occurred, with no consideration of what underlying conduct entailed or what the convicted person has done since then will be unable to meet the burden of proving a substantial, legitimate, nondiscriminatory interest.

- Decisions must be made on a cases by case basis.
- Providers must consider nature and severity of conviction.
- Providers must consider amount of time that has passed since the criminal conduct occurred.



Criminal Records

Exemption from Fair Housing Act Liability:

- Section 8097 (b) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted...of the illegal manufacture or distribution of a controlled substance...”
- Housing providers will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.
- Limitation: Conviction for drug manufacturing and distribution only. Does not include arrest for such offenses or conviction for possession.



Harassment

In September 2016 HUD released published a new final rule entitled **Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act**. This rule formalized standards for evaluating claims of hostile environment and quid pro quo harassment in the fair housing context. The rule also clarified housing providers' liability for harassment or discrimination by agents and third parties.

- **Quid Pro Quo Harassment** involves subjecting a person to an unwelcome request or demand and making submission to the request or demand a condition related to the person's housing.
- **Hostile Environment Harassment** involves subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person of the right to use and enjoy the housing.



Harassment

- An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces to the request or demand.
- Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the housing related services transaction.
- Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.
- Harassment can be written, verbal, or other conduct, and does not require physical contact.
- A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment or evidences a quid pro quo.



Harassment

Not only does the housing provider or other covered entity have liability for its own conduct, it is also liable for:

- Failing to take prompt action to correct and end discriminatory housing practice by its employee or agent, where it knew or should have known of the discriminatory conduct;
- Failing to take prompt action to correct and end a discriminatory housing practice by a third party, where it knew or should have known of the conduct and had the power to correct it; and
- Vicarious liability for a discriminatory housing practice by its agent or employee, regardless of whether the housing provider knew or should have known of the discriminatory housing practice.



Nuisance Ordinances

In September 2016 HUD released Guidance on Application of Fair Housing Act Standards to the **Enforcement of Local Nuisance and Crime-free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services.**

- This guidance addresses ordinances that penalize residents for 911 calls, even when a person is in need of protection from domestic violence or another crime.
- These types of ordinances violate the Fair Housing Act when they have an unjustified discriminatory effect or are enacted or enforced to intentionally discriminate because of a protected characteristic.



Norristown Borough Settlement

Agreement settled allegations that Norristown discriminated because of sex when passed an ordinance penalizing landlords and effectively requiring them to evict tenants when police are called to a property three times for “disorderly behavior”

- Resident was threatened with eviction after calling the police several times for protection from abusive ex-boyfriend
- Neighbors called the police after a final severe attack that necessitated the resident be airlifted to the hospital
- Landlord had to either evict her or face a fine of \$1,000/day
- Borough paid \$495,000 in compensation and legal fees, must repeal ordinance, and must not pass laws punishing residents or landlords for requests for emergency assistance



Limited English Proficiency

In September 2016 HUD released Guidance on Application of Fair Housing Act Protections for **Persons with Limited English Proficiency**.

- LEP, race, and national origin are so intrinsically linked as to be almost indiscernible from each other, therefore discrimination based on LEP will be treated as national origin discrimination.
- Lack of English proficiency is often used as a proxy for national origin discrimination.
- Some courts have recognized as legitimate the needs of employers to require that employees speak English, however the new HUD guidance states that these reasons are inapplicable with regards to housing, lending, or other real estate related transactions covered by the Act.



Gender Identity

In September 2016 HUD published a new final rule entitled **Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs.**

- Equal access is to be provided in all HUD assisted programs.
- Individuals are to be placed in accordance with their gender identity.
- No requirement for individuals to “prove” gender identity (no invasive questions or medical verification are permitted).
- Providers must update their policies and procedures to reflect requirements.
- Non-discriminatory steps must be taken to address safety/privacy concerns of transgender participants, however participants must not be required to accept accommodations.



Report Discrimination

(267) 419-8918

Consumers, providers and advocates should contact the **Housing Equality Center of Pennsylvania** to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.



Formerly, Fair Housing Council of Suburban Philadelphia
equalhousing.org

Established in 1956, we are the oldest fair housing agency in the country. We are leading the effort to eliminate housing discrimination in Pennsylvania through education, advocacy and enforcement of fair housing laws.

Enforcement

- Fair housing counseling
- Investigation and enforcement

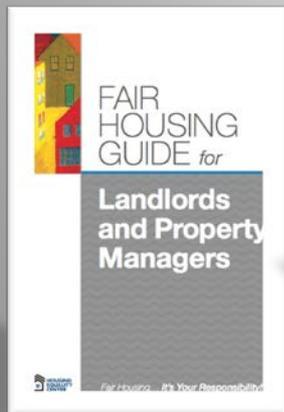
Education

- Compliance training
- Technical assistance

equalhousing.org



- ✓ Sign up for fair housing news
- ✓ Register for an upcoming fair housing event or meeting
- ✓ Learn about fair housing laws
- ✓ Download guides, resources, fact sheets and fair housing guidance
- ✓ Request fair housing training or publications for your clients, colleagues or offices
- ✓ Report discrimination online





Fair Housing Questions? Technical Assistance?

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