



Fair Housing

**Presented by: Legal Assistance of Western New York,
Inc.**

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Advocacy. Equality. Access.

Celebrating 50 years of advocacy in Monroe County.



What Is Fair Housing?

Fair Housing is the protected right to obtain and maintain housing free from discrimination.

The Fair Housing Act states that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

- 42 U.S.C.A. § 3601.



Federal and State Law

- ◆ **Fair Housing protections are extended under both Federal and State law.**
- ◆ **The Fair Housing Act governs Federal Law. 42 U.S.C.A. §§ 3601- 3619.**
- ◆ **New York Human Rights law governs New York State law. NY Exec §§ 291-301.**
- ◆ **Additionally, some cities and municipalities offer additional protections under local ordinances. See Ordinance No. 2017-163 passed on June 20, 2017 by the Council of the City of Rochester which prohibits housing discrimination on the basis of source of income.**



The Fair Housing Act – 1968 & 1988

- ◆ The Fair Housing Act (FHA) is a federal law. 42 U.S.C.A. §§ 3601-3619
- ◆ The 1968 Act prohibits discrimination based on several protected classes: race, color, religion, national origin and sex.
- ◆ The Act was amended in 1988 to also prohibit discrimination based on familial status and disability.
- ◆ The Act applies to virtually all type of housing and all types of housing-related transactions.
- ◆ The FHA is administered at the federal level primarily by the Department of Housing and Urban Development. The Department of Justice also has jurisdiction to enforce the Fair Housing Act.



New York Human Rights Law

- ◆ New York State has its own state law prohibiting housing discrimination. NY EXEC § § 291-301
- ◆ It includes the seven protected classes covered by the Fair Housing Act.
- ◆ It also includes three additional protected classes not covered by the Fair Housing Act - age, marital status, sexual orientation and military status.



Protected Classes

- ◆ **A protected class is a group of individuals, who based upon their membership in that class, qualify for protection under the law.**
- ◆ **Discrimination on the basis of an individuals membership in a protected class is prohibited.**
- ◆ **An individual who faces discrimination may belong to more than one class.**
- ◆ **A discriminatory act may be based upon more than one protected class.**
- ◆ **State and local legislation may expand upon the classes protected under Federal Law.**



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Protected Classes- Fair Housing Act

- ◆ Race - African American, Latinx, etc.
- ◆ Color - Skin Tone
- ◆ Religion- Religious beliefs or membership in a religious group
- ◆ National Origin- Country of origin of a person or their ancestors
- ◆ Sex – Gender and gender identity. Includes domestic violence victims and sexual harassment.
- ◆ Handicap – Disability status.
- ◆ Familial Status – Protects individuals with children aged 18 or younger.



Protected Classes under NY Human Rights Law

- ◆ Age - Those age 18 and over are protected.
- ◆ Marital Status- regarding being married, divorced, not married, widowed, etc.
- ◆ Sexual Orientation – heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived. N.Y. Exec. Law § 292. 27
- ◆ Military Status - a person's participation in the military service of the United States or the military service of the state, including but not limited to, the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law. N.Y. Exec. Law § 292. 28



Source of Income Discrimination & New York State

- ◆ The 2020 Final Fiscal Year Budget from the Governor's office includes legislation to include Source of Income Discrimination be added to the New York State Human Rights Law.



Sex Discrimination- Protections for victims of Domestic Violence

- ◇ While Domestic Violence can occur in any type of relationship, statistics show that 90-95% of reported Domestic Violence victims identify as female.
- ◇ Because of these statistics, discrimination against DV victims is generally enforced under the protected class of “sex.”
- ◇ For instance; A cis-heterosexual couple, Jan and John have an altercation. John assaults Jan, and he is arrested and Jan is able to obtain an Order of Protection against him. When the Landlord finds out, they proceed to evict Jan.
- ◇ A landlord’s policy of evicting the domestic violence victim in this situation has an adverse impact based on sex, due to the disproportionate number of female victims of domestic violence.



Sex Discrimination- Sexual Harassment

- ◆ **Harassment can be written, verbal, or other conduct, and does not require physical contact.**
- ◆ **It can be by the landlord, employees or other residents.**
- ◆ **Quid Pro Quo**
- ◆ **Hostile Environment**
- ◆ **Totality of the circumstances test**
- ◆ **Direct and Vicarious liability apply in these claims.**
- ◆ **HUD has promulgated regulatory guidance on Sexual Harassment claims under the Fair Housing Act. 81 FR 63054**



Familial Status

- ◆ Having one or more individuals who are under 18 years of age living with
- ◆ A parent or other legal custodian
- ◆ Pregnant women
- ◆ People securing custody of an infant under 18 years of age.
- ◆ 42 U.S.C.A. §§ 3604(a) to (e), 3605, 3606, 3617, and 3631
- ◆ Practically, what this means is that housing providers cannot refuse to rent to individuals because there are children in the household. This covers prohibitions on evictions because someone has a baby, or brings a child into the housing.
- ◆ Children of certain ages cannot be banned, and a limitation based upon the number of children in a family are illegal. (Housing providers are however allowed to follow reasonable occupancy standards.)



Familial Status Exemption: Housing for Older Persons

- ◆ The Fair Housing Act exempts “Housing for Older Persons” from the limitations on Familial Status.
- ◆ The Fair Housing Act provides three types of allowable housing:
 - ◆ (1) Housing provided under any state or federal program that HUD determines is “specifically designed and operated to assist elderly persons”; - 42 U.S.C.A. § 3607(b)(2)(A)
 - ◆ (2) Housing “intended for, and solely occupied by, persons 62 years of age or older”; - 42 U.S.C.A. § 3607(b)(2)(B)and,
 - ◆ (3) Housing “intended and operated for occupancy by persons 55 years of age or older,” which is defined as housing that has at least 80% of its units occupied by at least one person 55 or older, that complies with HUD rules for verification of such occupancy by reliable surveys and affidavits, and that publishes and adheres to policies and procedures that demonstrate an intent to provide housing for persons 55 or older. - 42 U.S.C.A. § 3607(b)(2)(C).



Disability - Handicap

- ◆ **The Fair Housing Act defines Disability/Handicap as**
 - (1) Physical or mental impairment (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS related complex and mental retardation) which substantially limits one or more major life activities.**

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
 - (2) Having a record of having such an impairment or**
 - (3) Being regarded as having such an impairment.**



Disability - Handicap

- ◆ This definition does not include:
- ◆ Persons currently engaging in the illegal use of controlled substances or
- ◆ Persons who objectively pose direct threat to health or safety unless threat can be eliminated or reduced by reasonable accommodation.
- ◆ However, a housing provider cannot exclude persons based upon fear or stereotype about a particular disability or persons with disabilities in general.

A direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, a recent history of overt acts).

A housing provider's good faith belief or speculation that an individual poses a direct threat is not sufficient.



Who is Required to Comply with Fair Housing Laws?

- ◆ The Fair Housing Act (FHA) prohibits discrimination by direct providers of housing, such as:
 - Landlords & their agents
 - Sellers & their agents
- ◆ Indirect Providers of Housing, who are required to comply include:
 - Real Estate Companies
 - Realtors
 - Banks and other lending Institutions
 - Homeowners/ Renters Insurance companies whose discriminatory practices makes housing unavailable to persons of a protected class
 - Municipalities & Employees of Municipalities
 - Advertisers of Housing Opportunities, such as newspapers
- ◆ Additionally, given the broad language of the Fair Housing Act, any individual who commits a violation of the Fair Housing Act may be liable to suit, unless they fall under certain exemptions.



Exemptions to Compliance

- ◆ **Section 3603(b)(1) of the Fair Housing Act provides that the Fair Housing Act does NOT apply to “[A]ny single-family house sold or rented by an owner:**

Provided that

- No broker was used in the sale of the home;**
- There were NO discriminatory ads or statements;**
- The Seller owns three or fewer single family homes;**
- There was no similar sale in a 24 month period; and**
- The Seller is not in the business of selling or renting.**

Units in buildings that are occupied or intended to be occupied by no more than four families if the owner maintains a residence in that building (the so-called “Mrs. Murphy” exemption)

- ◆ **Discrimination based on race is ALWAYS illegal.**
- ◆ **Liability always exists under the Civil Rights Act of 1866 (42 U.S.C.A. §§ 1981 to 1982)**



Examples of Prohibited Practices

- ◆ Providers cannot impose more stringent standards or less favorable terms because of a tenant/ purchaser's membership in a protected class. For example, a provider cannot charge different security deposits due to an individual's race.
- ◆ Providers cannot give false information about the availability of housing, such as saying no rentals are available to a prospective tenant who is a person of color, but then showing that rental to a white applicant.
- ◆ Providers are prohibited from “steering” apartment/home seekers to certain areas based upon race or another protected class.
For example, a provider can't have a “kids only” building, or steer African Americans to the back of the apartment complex.



Examples of Prohibited Practices

- ◇ It is unlawful to “coerce, intimidate, threaten, or interfere with any person” with respect to a person's “exercise or enjoyment of any right granted or protected by section 3603, 3604, 3605, or 3606” of the Fair Housing Act.

Three Specific instances discussed in the Fair Housing Act are :

“[I]n the exercise or enjoyment of” any §§ 3603 to 3606 right; “on account of his having exercised or enjoyed” any such right; and “on account of his having aided or encouraged any other person in the exercise or enjoyment of” any such right.



What is not Discrimination if Done Uniformly:

- ◆ A housing provider, such as a landlord, can ask a prospective tenant for information about credit history, source of income, criminal record & past landlord references.
- ◆ A housing provider can deny a prospective tenant a housing opportunity due to bad credit history, source of income* , criminal background and/or bad references.
- ◆ However, landlord must use even-handed screening practices for all tenants. A landlord cannot only do credit checks for African-American tenants or only take section 8 from single persons not families with children.



Lending Discrimination

- ◆ The Fair Housing Act's § 3605 makes it unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.
- ◆ The term “residential real estate-related transaction” is defined to mean any of the following:
 - (1) The making or purchasing of loans or providing other financial assistance—
 - (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (B) secured by residential real estate.
 - (2) The selling, brokering, or appraising of residential real property.
- ◆ The statute, itself, protects appraisers from liability for taking into consideration factors other than those specifically condemned by the Fair Housing Act.



Predatory Lending

- ◇ In addition to violating a number of consumer laws, predatory lenders may also be violating the Fair Housing Act if they prey on a protected class in the marketing/making of loans.
- ◇ Warning signs of predatory loans: high interest rate (APR), multiple refinancing (flipping), unnecessary debt consolidation, negative amortization, balloon payments, door to door solicitation (and who they pick to solicit door to door - elderly, disabled, minority), large loan broker fees, kickbacks between lender and broker, credit insurance, large pre-payment penalties, and yield spread premiums.



Insurance Discrimination

- ◆ An insurance company can't refuse to provide property or hazard insurance or to provide such insurance differently based on one of the protected classes.



Advertisements

- ◇ It is unlawful under the Fair Housing Act to:
- ◇ “To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C.A. § 3604



Most Common Types of Fair Housing Requests

- ◇ Generally, the most frequent type of requests individuals bring to their housing providers are:
- ◇ Reasonable Accommodations
- ◇ Reasonable Modifications



Reasonable Accommodation

- ◆ An individual must meet the Fair Housing Act's definition of Disabled in order to request a Reasonable Accommodation:
 - Please note that this is NOT the same standard employed by the Social Security Administration.
- ◆ What is a Reasonable Accommodation -
 - It is a :
 - Change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- ◆ To show that the RA may be necessary, there should be an identifiable relationship or nexus between the requested accommodation and the individual's disability.



Examples of Reasonable Accommodation Requests

- ◆ A landlord has a no pet policy (legal). A disabled tenant asks the landlord to allow her to have a assistance animal (visually or hearing impaired tenant) or an emotional support animal.
- ◆ Rent is due on the first of the month. If its late, there is a late fee. A disabled low income tenant gets their Social Security Disability check on 10th of the month. They ask for a Reasonable Accommodation to pay rent on the 10th with no late fee penalty.
- ◆ The parking lot at a complex has no assigned parking. A mobility impaired tenant asks for a Reasonable Accommodation of an assigned space close to their apartment.
- ◆ A tenant has an apartment on the third floor in a brownstone with no elevator. The tenant has a lease for a term of one year, and the tenant was able to cope with stairs when moved in. Their disability has deteriorated rapidly and they can no longer manage the stairs. A Reasonable Accommodation is to ask to be let out of lease prior to end of lease term due to inability to enjoy apartment.
- ◆ Section 8 program has policy of denying applicants with criminal history a section 8 voucher. Recovering substance abuse applicants (disabled within meaning of FHA) ask section 8 office for a RA - exception to this policy as they have non-violent criminal record all related to substance abuse issues, now in remission. (Williams case against Rochester Housing Authority).



The Standard for Granting a Reasonable Accommodation

◆ **A housing provider should grant a request for an Reasonable Accommodation unless**

The tenant not disabled and, thus, not entitled to a Reasonable Accommodation.

There is no disability related need for the Reasonable Accommodation (nexus test).

The request not reasonable:

(a) would impose an undue financial or administrative burden or

(b) would alter the fundamental nature of the provider's operations.



Interactive Process On Reasonable Accommodation Requests

- ◆ When a housing provider refuses a requested accommodation because it is not reasonable, the provider and the tenant should discuss alternate accommodations that would effectively address the requester's disability-related needs without imposing an undue financial/administrative burden on the housing provider or fundamentally change provider's operations.
- ◆ If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant the alternative accommodation.\
- ◆ A Joint Statement of The Department of Housing and Urban Development and the Department of Justice : Reasonable Modifications Under the Fair Housing Act discusses the Interactive Process.



Fees or Costs Associated with a Reasonable Accommodation is Prohibited:

- ◆ A Housing Provider cannot charge an extra fee or require an additional deposit from applicants or residents with a disability as a condition of granting a Reasonable Accommodation.
- ◆ For example, no fee or pet security deposit can be asked if there is an assistance animal. If the animal causes damage to the unit or common areas, tenant can be charged if landlord's practice is to assess tenants for damages they cause.



Denial of a Reasonable Accommodation

- ◆ **Anyone denied an Reasonable Accommodation by a housing provider, has the right to file a Fair Housing Act complaint.**
- ◆ **A Reasonable Accommodation not acted upon “timely” by the housing provider, is deemed denied and applicant has right to file a FHA complaint.**



How To Request a Reasonable Accommodation

- ◆ The Fair Housing Act does not require that the tenant/applicant make the Reasonable Accommodation request in a particular manner or at a particular time.
- ◆ The request does not need to be made by the disabled tenant/applicant. It can be made by a family member or someone acting on his or her behalf.
- ◆ The requester does not have to use the words reasonable accommodation.
- ◆ However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change or adjustment to a rule, policy, practice or service because of a disability.



Reasonable Modification

- ◆ An individual requesting a Reasonable Modification, must be determined disabled under the Fair Housing Act.
- ◆ A Reasonable Modification is a change in a tenant's unit that is necessary to afford a disabled tenant full enjoyment of the premises.
- ◆ Examples- installation of grab bars in the bathroom, lowering kitchen cabinets, or installing a visual door bell.
- ◆ Who pays for RM
- ◆ General Rule - tenant pays or finds an organization, such as VESID, to pay
- ◆ Exception- HUD money is in the project (not section 8 voucher). If HUD money is involved then the project should pay for RM.



Reasonable Modification

- ◆ Standard for granting a Reasonable Modification is similar to that of a Reasonable Accommodation:
 - The requester must be disabled;
 - There must be a nexus between the disability and the Reasonable Modification requested;
 - The request must be reasonable
 - (a) not impose an undue financial or administrative burden or
 - (b) alter the fundamental nature of the provider's operations.
- ◆ If reasonable, a tenant can be required to restore the unit to its original condition when the tenants vacates
 - Removing grab bars : reasonable.
 - Restoring widened door frame (for wheelchair accessibility) to narrow condition ; not reasonable.



Reasonable Modification

◆ Escrow account:

Landlord may require a tenant, if Reasonable Modification's are extensive, to place an amount sufficient to cover the cost of returning the dwelling unit to its original condition in an escrow account.

Escrow accounts should not be used to discourage a disabled person from renting or modifying a unit.

◆ Anyone denied an RM by a housing provider, has the right to file a fair housing act complaint.

◆ A Reasonable Modification not acted upon “timely” by the housing provider, is deemed denied and applicant/tenant has right to file a Fair Housing Act complaint



Inquiries About Disability

- ◆ Under the Fair Housing Act, it is unlawful for a housing provider to:
 - Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability
 - Ask about the nature or severity of such persons' disabilities.
- ◆ If asked of all applicants (disabled and non-disabled), housing provider can inquire
 - into an applicant's ability to meet the requirements of tenancy to determine if an applicant is a current illegal abuser or addict of a controlled substance
 - To determine if an applicant qualifies for a dwelling Legally available only to person with a disability or to persons with a particular type of disability



Inquiries About Disability For a Reasonable Accommodation and/or Reasonable Modification

- ◆ In response to a request for a RA/RM, a housing provider may request reliable disability-related information that is necessary to verify that a persons meets the FHA's definition of disability (proof of SSI/SSD or statement from a health provider);
Describes the needed Reasonable Accommodation/Reasonable Modification;
Shows the relationship between the Reasonable Accommodation /Reasonable Modification and the disability.



Fair Housing Act as a Defense

- ◆ The Fair Housing Act/ Human Rights Law can be used as a defense in an eviction.
- ◆ Example, landlord terminates month to month tenancy as client is pregnant and landlord does not want children in apartment.
- ◆ Defense to the holdover eviction is that landlord is violating Fair Housing Act - familial status.



Fair Housing Act Affirmatively

- ◆ **An individual who has been discriminated against under the Fair Housing Act has the right to file an affirmative action in Federal Court seeking, among other things, injunctive relief, money damages and costs. 42 U.S.C.A. § 3613**
- ◆ **Damage awards in Federal Court can be significant.**
- ◆ **Ability to obtain injunctive relief, including preliminary injunctive relief.**
- ◆ **Availability of punitive damages.**



Administrative Recourse

- ❖ As an alternative to Federal Court, you can file a complaint with HUD (or the Division of Human Rights if State claim only).
- ❖ HUD as a general rule now refers everything to the Division.
- ❖ The Division should investigate and, if they make a finding of probable cause, the case can be heard by an Administrative Law Judge



Statute of Limitations

- ◇ 2 years to file in Federal Court- 42 U.S.C.A. § 3613(a)(1)(A)
- ◇ 1 year to file an administrative complaint.



Emotional Support Animals

- ◇ **An emotional support animal (ESA), assistance animal, or support animal, is a companion animal that a medical professional says provides some benefit for a person with disabilities.**
- ◇ **Emotional support animals are typically dogs, but are sometimes cats or other animals.**



Emotional Support Animals v. Service Animals

- ◆ An emotional support animal differs from a service animal. Service animals are trained to perform specific tasks (such as helping a blind person walk), while emotional support animals receive no specific training.
- ◆ Any animal that provides support, well-being, comfort, or aid, to an individual through companionship, non-judgmental positive regard, and affection may be regarded as an emotional support animal.



Emotional Support Animals and the FHA/NYHRL

- ❖ Emotional Support Animals are specifically covered under both the Fair Housing Act and New York State Human Rights Law.
- ❖ Both HUD, the DOJ and New York Division of Human Rights have publications that discuss approval of Emotional Support Animals as a Reasonable Accommodation



Tips & Tricks to Obtaining a Reasonable Accommodation for an Emotional Support Animal

- ◆ Speak with your medical provider!
Obtain a note from your medical provider that speaks specifically to your disability, and that states that an emotional support animal is prescribed to assist in alleviating symptoms related to your disability.
The best letters state that the emotional support animal will ensure the full use and enjoyment of the housing.



Does a denial of an emotional support animal allow someone to file a complaint?

◆ **Yes!**

The denial of a reasonable accommodation for a prescribed emotional support animal may be a violation of the Fair Housing Act, and New York State Human Rights Law.



Testers

- ◆ Legal Assistance of Western New York, Inc utilizes “testers”.
- ◆ Testers are trained volunteers, who are utilized by the testing coordinator to determine if a housing provider is discriminating against people in their effort to obtain housing.



Testers

- ◆ For example: An African American tenant sees a sign on a lawn, that states “Apartment for Rent”. They apply and are qualified. The landlord states that the apartment is already rented. However, the applicant drives by several days later and sees that the “Apartment for Rent” sign is still up. This individual then contacts LawNY.
- ◆ After obtaining the necessary information, the tester coordinator sends out testers (in this instance, Cacaasian and African American) to pose as applicants for the apartment.



Testers

- ◇ Depending on the landlord's response to the tester's inquiries, it can provide further information about whether discrimination did indeed occur.
- ◇ The United States Supreme Court has approved the use of testers in the fair housing context, and testers are used nationally to assist in enforcing Fair Housing laws.



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How To Contact the Fair Housing Enforcement Project:

Toll Free: 1-888-671-3247

Local: (585) 325-2520

Find us Online at: www.LawNY.org



Questions

