

Conference on Ending Homelessness
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Session: Fair Housing Laws in Transitional Housing & Shelters

Fair Housing Center of Washington

Katy Sheehan, Investigator/Educator

1517 South Fawcett, Suite 250

Tacoma, WA 98402

Phone/TTY: (253) 274-9523 or Toll Free: 1-888-766-8800

Fax: (253) 274-8220

Email: info@fhcwwashington.org

Website: www.fhcwwashington.org



What is Fair Housing?

Fair housing protects all people from discrimination in housing!



Fair Housing Laws

- **Fair Housing Act (FHA)**
 - Federal law covering all dwellings except:
 - Owner-Occupied building of 4 or fewer units
 - Sale of a single-family home without agents
- **Washington Law Against Discrimination (RCW 49.60)**
 - State law covering all dwellings except shared unit with the owner
- **Local and “Substantially Equivalent” Fair Housing Enforcement**
 - King County, City of Seattle, City of Tacoma

Other Laws of Note:

Section 504 of Rehabilitation Act & Age Discrim. Act

- Federal laws covering any program or activity that receives federal funds
- Includes government & housing providers that receive federal funds

Americans with Disabilities Act (ADA), Title III

- Federal law covering privately owned public accommodations if operation affects interstate commerce
- Includes homeless shelters, social service agencies



Other Laws of Note (cont.)

Title VI of the Civil Rights Act of 1964

- Prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

Executive Order 13166

- Requires federally-funded programs to identify the need for their services among those with limited English proficiency (LEP) and to develop and implement strategies to provide “meaningful access” to their services among these population groups. (For details on how to undertake this process, visit the LEP website at www.lep.gov.)

What is **not** federal funding?

- Low Income Housing Tax Credits (LIHTC) are not federal financial assistance if the property receives ***no other federal financial assistance***.
- Section 8 vouchers are not a federal subsidy if the property receives ***no other federal financial assistance***.



Federal Protected Classes:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability



WA State Protected Classes

- **Marital Status**
- **Sexual Orientation**
- **Gender Identity**
- **Veteran/Military Status**

Local Protected Classes

- **Age** (Seattle, Tacoma, and Unincorp. King Co.)
- **Section 8** (tax credit properties, Bellevue, Seattle and Unincorp. King Co.)
- **Use of an Assistive Animal** (Unincorp. King Co.)
- **Political Ideology** (Seattle)

What is a “dwelling”?

- Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.
- Scope:
 - Rentals - apartments, houses, condos
 - Real estate sales transactions – houses, condos, coops
 - Homeowner Associations
 - Mobile Home Parks
 - Housing Authorities

Non-Traditional Housing Covered under Fair Housing Laws

(with some exceptions)

- Group homes
- SROs
- Residential motels/hotels
- Transitional housing
- Homeless shelters
- Clean and sober housing
- Social service providers who deal with housing (like housing authority “special programs”)

Exception: Dwellings that are not “Intended for Occupancy”

Case-by-case determination using a number of factors:

- Length of stay
- Intent and right to return each night to a particular abode/bed
- Amenities included (phone, mailing address, etc.)
- How property is marketed
- Written terms of the occupancy agreement between the provider and resident
- Rent payment, including program fees, and in-kind exchange such as performing chores, or requirements such as attending meetings or support groups
- Whether the primary purpose of a program is treatment or housing; for example a drug treatment facility, and the housing provided is incidental to the program



Common Types of Discrimination

- Discriminatory refusal/denial of services: “We don’t take people like you.”
 - Examples : LGBTQ and Disability issues
- Misrepresentation of Availability:
 - Examples: LGBTQ and Disability issues
- Failure to make a Reasonable Accommodation
 - Examples: Disability
- Disparate Impact/Unintended Consequences

Disparate Impact/Unintended Consequences

- Rules can seem non-discriminatory on their face but have a “disparate impact” or have a greater effect on people in protected classes
- Such rules are discriminatory unless there is no other feasible way (least restrictive alternative) to address legitimate business purpose.

Common Policies with a Disparate Impact (cont.)

- For People who are Transgender:
 - Requirements to take public showers before entering the general population
 - Giving urine samples in front of shelter staff
 - ID Requirements
 - This could also affect people because of their national origin.
 - Having to stay with “gender of origin”

Common Policies with a Disparate Impact (cont.)

- For Same Sex Couples (Sexual Orientation)
 - No partners in same sex general population

Common Policies with a Disparate Impact

- For people with Disabilities:
 - No medical equipment – for a person with a disability this may preclude them from housing opportunities (oxygen tanks, wheel chairs, etc.)
 - Requiring that all program participants work may impact someone who cannot work.
 - Note: for Disability Issues remember that Reasonable Accommodations are always available and encouraged!

Definition Family/Parental Status

- Familial status = presence of one or more children under the age of 18 in a household
- Includes:
 - Parent, step-parent, adoptive parent, guardian, foster parent or custodian with a minor child
 - Pregnant woman or someone in the process of acquiring legal custody of a child



Families with Children are Protected

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 SRO apartment or a cot in a dormitory.
- The housing is designated only for older individuals.
- Housing targeted at individuals being released from correctional institutions. Housing designated for sexual offenders may be able to discriminate against families with children. Providers wishing to exclude families with children should check with their legal counsel.

Rules and Enforcement

- Resident conduct rules should apply to everyone
- Damage is damage
- Allow common area use for all
- No kid-only curfews
- Follow CPS guidelines when setting rules for parental supervision
- Follow existing health and safety laws or existing industry standards when setting age limits for use of amenities (e.g., pools, fitness equipment)

Supervision

- There may be times when a parent needs to go to a medical, legal or other important appointment and cannot take their children along. There are no laws that specify age groups who cannot be left alone, but Child Protective Services has guidelines for child neglect that state that children aged 5 and under should never be left alone, and that children 6 - 11 years old should be left alone no longer than three hours, if they have a safety plan.



Sex Discrimination

- Sex discrimination in housing is illegal. Providers may not segregate residents by sex unless they have shared sleeping areas, bathing areas and/or bathrooms, which would negatively influence the residents' right to privacy.
- DO NOT mandate sleeping arrangements within individual units. For example, restricting a boy and girl from sharing a bed or bedroom is not allowed.
- Fair housing laws do not allow a provider to dictate sleeping arrangements because of fears of abuse. If a provider has concerns about possible child abuse in a specific situation, contact CPS.



Domestic Violence Programs

- Providers who house DV victims and their children should not refuse to house women with sons under 18.
 - If there are not shared sleeping or bathing areas or shared bathrooms, such policies are probably illegal. Where there are shared sleeping or bathing areas, providers should consider if there is any way to modify floor plans to provide privacy.
- If a family is turned away because of teenaged sons and they are not provided with alternative lodging/necessary services, that family would be considered a victim of discrimination.

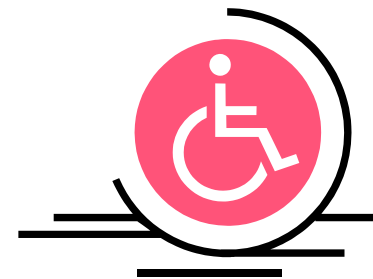
Domestic Violence, cont.

- There may be compelling reasons due to privacy program requirements for excluding adult men from domestic violence shelters.
- Communities should have a mechanism in place for serving male domestic violence victims in an alternative fashion -- for example, providing motel vouchers with counseling services.

Disability Rights

- General Rule: It is unlawful to limit housing or program opportunities to persons with disabilities, including diagnosis-specific disabilities, absent statutory or regulatory authority, or an executive order.

24 CFR 8.5(c)(1)



Disability Preferences

- At this time the only programs explicitly authorizing disability preferences under federal statute or executive order are:
 - Housing Opportunities for People with AIDS (HOPWA)
 - Section 811
 - McKinney Act Shelter Plus Care
 - Emergency Shelter Grant (must be in the language of grant)
 - Supportive Housing Program (must be in the language of the grant)
- Other funding programs like Low Income Housing Tax Credit, public housing, Section 202, Section 236, Section 8, CDBG and HOME Investment Partnership programs do not permit recipients to favor specific kinds of disabilities.

Definition: Disability

- Federal Fair Housing Act:
 - Individuals with a physical or mental impairment that substantially limits one or more major life activities
 - Individuals regarded as having such an impairment
 - Individuals with a record of such impairment
- Washington Law Against Discrimination:
 - Person with a sensory, mental or physical condition that is medically cognizable or diagnosable
 - Exists as a record or history or,
 - Is perceived to exist whether or not it exists in fact
 - Includes:
 - Temporary or permanent, common or uncommon, mitigated or unmitigated



Disability Discrimination

- New Construction (after March, 1991) must meet accessibility standards (ADA)
- Housing providers must make Reasonable Accommodations in their policies and practices
- Housing providers must make Reasonable Modifications to the property/physical space

Physical Accessibility

For Information on access design visit:

www.fairhousingfirst.org

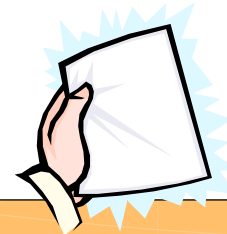
- Accessible new construction (Owner's expense)
 - For covered multi-family dwellings constructed after March 1991.
 - Accessible building entrance on an accessible route
 - Accessible route into and through dwelling
 - Public and common areas readily accessible to and useable by persons with disabilities
 - Doors wide enough for wheelchair passage
 - Accessible light switches and thermostats
 - Reinforcement in bathrooms for grab bars
 - Useable kitchens and bathrooms for wheelchair users

Reasonable Accommodations

- A change in standard policies, procedures or practices that is necessary because of a tenant's disability.

Information a housing provider request to support an RA?

- If the disability is obvious no verification is necessary.
- Verification that the person meets the legal definition of “disability”
 - Examples: A doctor or other medical professional, a peer support group, a non-medical agency, or a reliable third party who is in a position to know about the individual’s disability.
- Relationship between the disability and accommodation

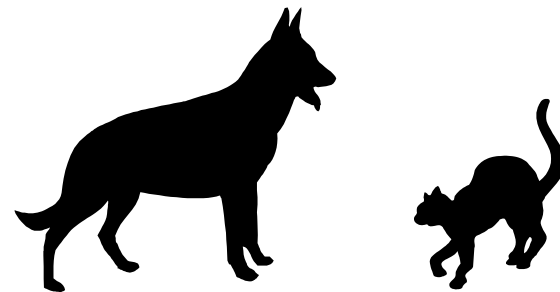


Examples of Reasonable Accommodations

- Individual who cannot stand in line for a “first-come, first-served” admission policy can take a number and sit during waiting period.
- Disabled resident who must leave by 9:00 am can request additional time in the morning because it takes longer to eat, shower, and dress.
- Person with disability requests assigned parking space adjacent to the unit.
- Permission for a part-time or live-in caregiver to help with bathing, eating, etc.
- If the disability prevents an individual from performing chores an alternative or reduced chore schedule could be appropriate.

Examples of Reasonable Accommodations (cont.)

- An individual receives disability income can request an accommodation to waive required job search support groups.
- Person with disability requests permission to have a **service animal** in housing that prohibits pets.
 - Certification not necessary
 - Resident can provide training
 - No “pet” fees, deposit or rent



Reasonable Modifications

- Changes to the physical structure of a dwelling for a person with a disability.
- Federal Funding: Housing providers receiving federal funding have a duty to pay for reasonable modifications unless it would cause a financial hardship
- No Federal Funding:
 - Tenant must pay unless housing provider did not comply with accessibility features required by law.
 - Tenant must restore the dwelling to the condition it was in prior to modification unless it does not interfere with or would benefit future tenant.

Fair Housing Complaints

- Has to have jurisdictional merit (complainant has to be in a protected class)
 - Anyone in a protected class or associated with a protected class has standing to file a complaint.
 - Including employees of an organization with discriminatory policies.
- Person must file w/in 1 year (except in Seattle – 6 mo.)
- The Investigators are a neutral party and do not represent the complainant
- Complainant has the burden to show that discrimination occurred.
- Investigation/conciliation in a structured time frame

Best Practices!

- Review all policies, procedures, rules and application criteria for unintended discrimination and make sure that they are not discriminatory on their face.
- Base admission to your program on very clear requirements that do not discriminate against a protected class.
- Establish a consistent referral protocol. Don't assume you know what people need or what would be 'best for them'.
- Make sure employees know how to document any issues related to fair housing problems.
- Ensure employees obtain regular fair housing training.
- Seek technical advice as issues arise.

Best Practices!

- Disability:
 - Develop a Reasonable Accommodation policy and be sure all staff, particularly intake staff, are aware of it.
 - Example: Just because a participant does not say “reasonable accommodation” does not mean that they are not protected by FHA.
 - Assess your facility’s accessibility, make whatever improvements you can afford to make.



Fair Housing Resources

Fair Housing Guide for Supportive Shelters and Housing Program Providers

- Will be released in 2012 by the Fair Housing Partnership!
- To receive information about when it is released please sign up!
- To volunteer to give comments as a shelter/housing program provider please see me after the presentation!



For more resources contact a Fair Housing Partner:

- U.S Department of HUD
- Washington State Human Rights Commission
- King County Office of Civil Rights
- Tacoma Human Rights & Human Services
- Seattle Office for Civil Rights
- Fair Housing Center of Washington (Advocate)
- Northwest Fair Housing Alliance (Advocate)