
FAIR HOUSING AND ACCESSIBILITY INFORMATION

What is Covered?

Title VIII of the Civil Rights Act of 1968 and the amendments of September 13, 1988 state that no person shall be subjected to discrimination because of **race, color, religion, sex, handicap, familial status, or national origin** in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

What is Exempt?

Fair Housing Act exempts certain types of housing from the coverage of the law.

The act does not:

1. Prohibit a religious organization from limiting the sale, rental or occupancy of dwellings, which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or origin.
2. Prohibit a private club, not open to the public, which it owned or operated for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members.
3. Prohibit conduct against a person because such person has been convicted of the illegal manufacture or distribution of a controlled substance as defined in 102 of the Controlled Substances Act.
5. Apply to federal programs, which give preference to the elderly and handicapped and those listed with a federal preference category.
6. Apply to housing, which consists of four units or less.

Protected Classes

There are civil rights statutes on the state and federal level. There are also additional classifications under local ordinances. The civil rights statutes prohibit discrimination in housing on the basis of what is called "protected classes". These are groups of people who have the protections of the civil rights statutes:

Federally covered protected classifications are:

1. **Race**
2. **Color**
3. **Religion**
4. **Sex**
5. **National origin**
6. **Handicapped, physical and mental including alcohol and drug**
7. **Familial Status (families with children)**

Further Protections

The Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin.

The act, pattern, or intent of discrimination also extends to classes or groups. Example, most single parents with children have a lesser income level and cannot have additional screening policies or rules and regulations applied to them. It has been stated that this is designed to prompt greater opportunities for persons to participate in housing programs.

Familial Status

DEFINITION

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with

1. A parent or another person having legal custody of such individual or individuals; or
2. The designee of such parent or other persons having such custody with the written permission of such parent or other person.
3. "Familial status" includes any individual, regardless of age or domicile who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

An adult is any person age 18 and over.

FAMILY EXEMPTIONS - TO BE KNOWN AS "HOUSING FOR OLDER PERSONS"

The act provides an exemption for housing for the elderly or near elderly. This election:

1. Intended for, and solely (100%) occupied by persons 62 years of age or older; or
2. Intended and operated for occupancy where at least 80% are occupied by at least one person 55 years of age or older where there is the existence of "significant facilities and services specially designed to meet the physical or social needs of older persons".

The Administrative Rules define eight items, which must be addressed. Although there is no indication in the regulations regarding how to meet these requirements, suggestions have been given to assist your thought process. The categories of services listed in the regulations are:

1. Social and recreational programs
Suggestion: May be accomplished by coordinating or conducting a variety of activities.
2. Continuing education
Suggestion: May be accomplished by making space available, coordinating and conducting classes in a variety of areas of interest geared to the senior market.
3. Information and counseling, recreational, homemaker, outside maintenance and referral services
Suggestion: May be accomplished by providing a data bank or display of brochures of programs and services available.
4. An accessible physical environment
Suggestion: May be accomplished by ramps to entranceways and railings in long hallways of common areas and buildings.

In a 75 page decision (HUD v. Murphy No. 02-89-0202-1) a judge ruled against a facility in part because there was "very limited provisions made for the handicapped or infirm". He noted that the mobile home park's clubhouse could not be reached by an unassisted handicapped or infirm person. An adjoining swimming pool had no physical characteristics demonstrating "any design or adaptation to the living situations of the senior population."

The judge also noted that the residents were responsible for removing snow on their own premises and must provide for maintenance on their own dwellings and areas outside the common grounds.

5. Emergency and preventive health care or programs
Suggestion: May be accomplished by scheduling on-site blood pressure screening clinics, cholesterol and other services available through local preventive health care programs. Also utilizing visiting nursing programs.

6. Congregate dining facilities

Suggestion: Could be provided by "Meals on Wheels".

In the HUD v. Murphy decision, the judge ruled that the owner had to take an active part in the formation or service of the Meals on Wheels program and ruled that simply making tenants aware of the program without involvement was not compliance.

7. Transportation to facilitate access to social services

Suggestion: Could be accomplished by publishing access to public transportation, rental community van, or established car pool.

8. Services designed to encourage and assist residents to use the services and facilities available to them.

Suggestion: Could be accomplished by holding get acquainted sessions, central area with published materials, newsletters.

The Housing facility need not have all of these features to qualify for the exemption if it can demonstrate through independent and objective evidence that the cost of providing significant facilities and services would result in depriving older persons in the relevant geographic area of needed and desired housing.

The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements:

1. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons. The owner or manager must demonstrate that reasonable efforts have been made to provide such services unless they can demonstrate that such efforts would clearly have failed had they been made.
2. The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility
3. The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.
4. The income range of the residents of the housing facility
5. The demand for housing for older persons in the relevant geographic area
6. The demand for housing for families with children in the relevant geographic area
7. The availability of other similarly priced housing for older persons in the relevant geographic area
8. The vacancy rate of the housing facility

The administrative rules indicate that the owner or manager of such a facility must publish the policies and procedures, which demonstrate intent to provide housing for persons 55 years of age or older.

The following factors, among others, are relevant in determining whether the owner or manager has complied:

1. The manner in which the housing facility is described to prospective residents.
2. The nature of the advertising designed to attract prospective residents.
3. Age verification procedures
4. Lease provisions.
5. Written rules and regulations.
6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

COURT RULINGS REGARDING EXEMPTION OF FAMILIES WITH CHILDREN

In Park Place Home Brokers v. P-K Mobile Home Park the court ruled that a mobile home park's proximity to off-site facilities and services for older persons does not exempt the park from the familial status

provisions. The facilities and services offered at the mobile home parks included laundry facilities, grass cutting and snow removal in the common areas, utility hookups and bulletin boards posting information about meal delivery and transportation services and the schedule of events for a nearby senior center. After they were sued, the mobile home park established a van service to transport residents to social services and programs in the area.

The judge found that most of the services were "those which any landlord expecting to please his or her tenants would provide", and not specific to the needs of older persons. The van service and the bulletin board "are not enough standing alone, though they would be evidence of 'significant facilities and services' if presented as part of a greater package."

The defendants asserted that nearby off-site facilities and services for older persons should be considered in determining whether the park provided "significant facilities and services". The judge rejected this argument noting that "location" is not mentioned in the statute, its legislative history or the regulations concerning the over-55 exemption. For location to be a factor, a defendant would have to present more evidence of "genuine commitment to serving the special needs of older persons" than was shown in this case.

In this case, the owners offered no independent evidence regarding the cost of providing more substantial facilities or services so the judge ruled that they had failed to meet their burden of proving impracticability.

The owners also challenged the constitutionality of the Fair Housing Act. The judge held that the statute does not violate either the due process or equal protection arguments and that the statute was not so vague that persons of common intelligence cannot ascertain what it requires.

USING AGE AS THE POLICY

A Florida residential development was barred from using age as the restriction to families with children without providing the significant facilities and services for older persons.

COUPLE AWARDED \$8,032 AGAINST MOBILE HOME PARK

The owner of a mobile home park in Washington was enjoined from discriminating against families with children and ordered to pay damages of \$8,032 to a couple forced to vacate the mobile home they owned. At the time of the case, the property was operated as an adults-only park, with newborn children permitted to remain for one year. Soon after the birth of a child, the tenants received a notice to vacate because of the violation of the regulation. The property argued they were "housing for older persons". The judge ruled that the property did not meet the special needs of older persons, and fewer than 80% of its units were occupied by at least one person over the age of 55.

WHAT TO DO TO DECLARE THE PROPERTY "HOUSING FOR OLDER PERSONS"

1. An intent to be housing for older persons must be dated prior to September 13, 1988.
*The Seattle HUD regional office has indicated they will allow a declaration after that date.
2. Determine the occupancy as of September 13, 1988. Maintain a list of those occupants - these occupants are "grand fathered".
3. Determine the number of available units as of September 13, 1988.
4. FOR 55 and older determine 20% of the available units as of September 13, 1988.
5. No more than 20% of those taking occupancy since September 13 can be under 55.
6. FOR 62 and over no occupancy since September 13, 1988 can be under 62.

HOUSING FOR OLDER PERSONS FOR NEW CONSTRUCTION

New construction need not reach the requirement of 80% occupied by one member 55 years of age or older until 25% of the units in the facility are occupied.

Example from the regulations:

Waterfront Gardens is a 200 unit housing facility constructed after March 12, 1989.

The owner and manager intends to operate the new facility in accordance with the requirement that at least 80% of the occupied units will be at least one person 55 years of age or older.

The requirement will not apply until 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

HANDICAPPED DEFINITION & OTHER ISSUES

"Handicapped" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; and includes having a record of having such an impairment and being regarded as having such an impairment.

This does not include "current" illegal use of or addiction to a controlled substance. This provision does not exclude from protection individuals who have recovered from an addiction or are participating in a self-help group such as Narcotics Anonymous.

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

If a landlord can show that the individual is a direct threat to the health, safety or property of others by current or previous actions, then the landlord is not obligated to rent or be retained as a renter.

In three separate lawsuits, the Department of Justice sued Sigal/Zuckerman Management, Inc., and two of the rental firms on January 18, 1990 in U.S. District Court. The lawsuits accused the firms of refusing to rent apartments because of the handicap of the proposed tenants - recovering alcoholics and drug addicts who have successfully completed a treatment program.

On August 6, 1990, a U.S. District Judge rules it discriminatory to have a screening policy requiring handicapped individuals to be able "to live independently or . . . with minimal aid." The same decision found it unlawful to make an inquiry to determine whether an applicant for a dwelling has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.

AIDS RULED A HANDICAP

Congress includes persons with the virus AIDS within the definition of handicapped.

CHEMICALLY SENSITIVE TENANT HANDICAPPED

A ruling on an unusual claim of handicapped discrimination ruled that an apartment complex violated statute when it refused to make reasonable accommodations for a "chemically sensitive" tenant.

According to the report, the tenant suffered a critical illness in 1984 as a result of exposure to a pesticide. Her immune system was impaired and she became acutely sensitive to a wide variety of chemicals.

Before moving into the apartment, the tenant informed the property manager that she could not tolerate pesticides in her environment. She subsequently wrote two letters reiterating her sensitivity to chemicals and requesting "cooperation" with respect to any contemplated use of pesticides or herbicides. She also suggested that the property manager consider a "natural" method of lawn care, and she provided information on suppliers of non-toxic lawn care products.

In response, the property manager president stated that the apartment complex was not a "medically sensitive care facility" equipped to handle her condition. He stated that it was unreasonable to eliminate from the entire 12 building complex all generally accepted maintenance and landscape procedures. He informed her they would not renew her lease.

Following court actions, an injunction was issued which barred the management company from using any method of pest control not approved by the tenant on her building. The injunction also required the company to give her 48 hours notice of any pesticide spray of "bomb" application within 100 feet of her building. The order required the property manager to adopt an "integrated pest management" program and to bear all costs of that plan and organic lawn care program.

ADVERTISEMENTS AND FAIR HOUSING

It is unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

All written or oral notices or statements by a person engaged in the sale or rental of a dwelling are subject to this prohibition.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising and convey either overt or tacit discriminatory intent.

1. Words descriptive of dwelling, landlord, and tenants: Such as, white private home, colored home, Jewish home, Hispanic residence, ADULT building.
2. Words indicative of race, color, religion, sex, handicapped, familial status, or national origin.
3. Directions to real estate for sale or rent. Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development.
4. Area (location) description.
Names of facilities, which cater to a particular racial, national origin or religious group. Such as "Close to the Jewish Community Center."
5. Use of "Human Models" in advertising:
Advertising should not involve the use of human models of only one sex, of adults only, or only one ethnic group. Models should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

The Second Circuit Court of Appeals held newspapers can be held liable for publishing advertisements that violate the Fair Housing Act. The case, filed in January 1989 against the New York Times, alleged that the newspaper had run housing ads "featuring thousands of human models of whom virtually none were black". The decision stated that the agency identified human models as a means by which advertisements may indicate discriminatory preference.

6. Also prohibited is advertising exclusively in a newspaper of limited circulation, which targets a specific market. Advertising in publications such as Senior News, Senior Times, and the MAC Club publication should be reviewed carefully against the regulations.

If advertising in these publications, a defense in a discriminatory case would be:

- Advertising in more than the targeted market publication
- Keeping a log of your advertising,
- using the "Equal Housing Opportunity" logo in the ad

ADVERTISING GUIDELINES FOR THE MEDIA

Newspapers and other media can be held liable for publishing advertisements that violate the Fair Housing Act. In the case *Raging v. The New York Times Company*, the court ruled that the plaintiffs did not need to show that the Times intended to discriminate to prove the newspaper violated the HUD regulations. (The U.S. Supreme Court in October 1991 refused to hear this case on appeal).

It is in the best interest of a newspaper to develop a policy regarding advertising that will lessen their liabilities and assist those placing ads.

It is recommended that each newspaper or publication identify a person or persons responsible for reviewing each housing advertisement for possible violations and closely monitor not only classified ads placed but display ads as well.

GUIDELINES FOR NEWSPAPER PUBLISHERS

It is recommended that each newspaper should adopt a clear written policy of advertising and the Fair Housing Regulations. The policy should include (but is not limited to) the following:

- Describing the property, not the occupants for the property which would therefore eliminate ads that list the number of occupants per unit
- Developing a classification for "housing for older persons" or a requirement of a label "exempt housing for older persons"
- Requiring the filing of a written statement to certify a claim for exemption from the prohibition against discrimination based on familial status before accepting advertisements limiting children in housing identified as "housing for older persons"
- Placing the newspaper publishers Fair Housing Equal Housing Opportunity Slogan clearly in the column heading for housing ads
- HUD regulations state, "all advertising of real estate for sale, rent, or financing should contain an equal housing opportunity logotype". The newspaper should have a policy clarifying how it will handle and who is responsible for paying for the placement of the logo.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

1/2 page or larger	2" x 2" logo
1/8 page up to 1/2 page	1" x 1" logo
4 column inches to 1/8 page	1/2" x 1/2" logo
Less than 4 column inches not required	

WORDS IN THE ADVERTISEMENTS

In an attempt to provide guidance to those working with written advertisements, the following list of words has been developed which may be ruled in question or a violation of the Fair Housing Act:

Troublesome Words

Adult, adults, adult building, adult park
Bachelor pad
Capable of living alone, independent living required
Christian
Couple, couples only
Empty nesters
Executive, exclusive: may imply lack of minorities or families with children, handicap limitations (not suitable for blind, crippled, deaf)
Integrated
Mature
Membership approval
Mentally handicapped, mentally ill
Religion - name of (Mormon, Jewish, Catholic, etc.)
"close to Mormon temple, Catholic school", etc.
No children
Older persons - senior citizens
One person
Physically fit persons (ideal for, limited to)
Private
Race - black, white, Hispanic neighborhood
Restricted
Sex - female, male, gentlemen, woman - roommate
if the occupancy is for roommates sharing a bedroom or a bath
occupancy limiting sex is acceptable
Single, single person, singles paradise
Two people

Acceptable to Indicate

Handicapped accessible
Housing for older persons (if qualified)
Private drive
Exciting area (rather than exclusive, executive)
Starter home
Listing of any amenities which describe the property
No smoking (limits the activity)
No pets

A general principle to keep in mind is to **DESCRIBE THE PROPERTY -- NOT THE PEOPLE.**

Questionable Words and Phrases

As the newspaper industry has worked with the amendment, words have been found that have caused confusion and a mixture of opinion of whether they are acceptable or not.

“Senior Discounts Given”

While there is an opinion from HUD that states it is acceptable to advertise senior discounts, tenant advocates believe that this is clearly an attempt to indicate the non-acceptance of children and have filed cases regarding the issue.

“Great house for family, good family home, etc.”

When the handicapped and family status provisions were added to the law, HUD said the same standards used in race discrimination cases would be applied. As a general rule, agents were told if they were uncertain about specific situations, they should mentally substitute race as the criteria. If the answer was illegal when race was inserted, then it was likely to be illegal when any other protected class was inserted.

Logic could lead a court to decide that if an advertisement reading "GREAT HOUSE FOR BLACKS" is discriminatory, then an ad that says "GREAT HOUSE FOR FAMILIES" could also be discriminatory.

It is agreed that banning words such as "family" from advertisements is absurd, but it is possible to conceive a claim based on it. It is difficult to anticipate how a HUD administrative law judge would apply a ruling.

(The National Association of Realtors has issued a bulletin that the use of the term "Families" may stimulate advocates to file suite. "Rather than be the first to test the viability of such a claim, the conservative, risk-reduction advice has to be to find some other way to promote the property. Instead of using the word "family", a good description of a house could imply who should look at it. If it says," four bedrooms close to schools and a playground" it gets the message across.

“See the view, smell the roses, walk to work”

Questionable words when you consider that handicapped persons would not be able to fulfill the description. More acceptable would be, great view, beautiful roses, close to centers of employment. The issue here is sensitivity.

“Senior Housing”

A variety of opinions has been received from all levels of HUD as to whether this is acceptable terminology for "housing for older persons". One Seattle HUD investigator has indicated it is acceptable, another said it was not.

A substantial number of cases were filed against newspaper publishers during 1991 for ads containing the words listed here. These cases were mediated with HUD and agreements reached which cost time and money. Obviously newspapers are now being much more cautious.

Ads That Caused Trouble

The following is a review of advertisements, which were placed that, resulted in the filing of discrimination complaints with HUD.

1. "Nice SA. trailer, 1 person only..."
2. "Country 2 bedrooms...2 persons maximum..."
3. "Mobile home...1 1/2 bedroom...good for 1 or 2 persons"
4. "1 bedroom Westside...1 person..."
5. "2 bedroom...ideal for couple/senior citizen..."
6. "\$345, SW Portland, perfect for single couple..."
7. "Two bedrooms, new carpet...\$405, less for single/senior..."
8. "Cheerful studio...for non-smoking adult..."
9. "Lake Grove, townhouse master bedroom & den, 1 1/2 bath, perfect for 1 non-smoker..."
10. "Couple to live in...no children"
11. "Two person apartment...absolutely 2 person limit"
12. "Ocean view 2 bedroom duplex, not suitable for children"

13. "Manufactured home...in quiet adult complex..."
14. "Deluxe 2 bedroom apt. in adult complex..."
15. "Mobiles for rent. Suitable for 1 or 2 adults"
16. "..., furnished, 1 bedroom, suitable for single senior..."
17. "executive 2 bedroom duplex...adults only..."
18. "2 bedroom condo, ocean view...not suitable for small children..."
19. "...2 bedroom, available to responsible couple"
20. "Large studio...perfect for retired..."
21. Human models reflecting no children, no minorities.

Other ads reviewed in newspapers that contained obvious violations:

- "Christian roommate wanted"
- "Married couples only"
- "Unsafe for children"
- "per person rent"
- "adult and family sections"
- "married, Christian couple, no children"
- "great for empty nesters"

ENFORCEMENT

The Department of Housing and Urban Development (HUD) will continue its role of investigating complaints and promoting conciliation between parties.

By regulations HUD has 100 days from the filing of a complaint of housing discrimination to conduct and complete an investigation. If conciliation fails, and if HUD determines there is "reasonable cause" that discrimination has or is about to occur, HUD must file a charge against the party accused of discrimination. Once a charge is filed, either party may choose, within 20 days, a trial by jury in federal district court. If neither party requests a jury trial, then HUD will pursue the case before an Administrative Law Judge (ALJ).

PENALTIES

Administrative Law Judges (ALJ's) may award any appropriate relief, including compensatory damages, injunctive relief, and the assessment of civil penalties.

In the fiscal year 1989 HUD appropriations provided \$10 million to fair housing activities. They will have the increased staff necessary to carry out enforcement. They have currently provided and will continue to operate and advertise a national 800 number for registering complaints so that "no complaint will fall through the cracks".

Civil penalties by an ALJ are limited and do not include punitive damages. The penalties under HUD are:

- \$10,000 for a first offense,
- \$25,000 for a second offense during a five-year period,
- \$50,000 for a third offense during a seven-year period.

Federal District Court Judges would be limited by current law -- compensatory damages, injunctive relief and punitive damages. Federal judges cannot award civil penalties.

An order by an ALJ may be appealed directly to a federal court of appeals within 30 days to the appeals court for the circuit in which the discrimination is alleged to have occurred. Orders of federal district courts are subject to appeal in the federal court of appeals.

The owners of two Appleton, Wisconsin, apartment complexes have agreed to pay \$42,000 in damages to settle claims that they used an occupancy limit as a pretext for discrimination against families with children. The case found the defendants engaged in a pattern or practice of discrimination based on family status, in part by refusing to rent two-bedroom apartments to more than two persons.

A federal district judge awarded \$18,040 to a family denied the opportunity to rent the home of its choice because it had two children. It was noted on a fact sheet that the owners "prefer adults only" but "will consider other options on individual basis."

STATUTE OF LIMITATIONS

Expanded to be 2 years from date of discovery rather than current one year.

TENANT SCREENING OR SELECTION PROCESSES

Selective in screening practices for applicants for rental units are still appropriate, however, you must use the same standards and requirements for **EVERY APPLICANT and APPLICATION**.

Discrimination, as per the regulations is not only the act, but the intent and the pattern, as well as the affect. If what you have as a standard or a policy has a negative affect on a "protected class", then the standard or policy is discriminatory.

Example - if the criteria for tenant screening causes the pattern of denial of housing, additional fees or rent structures for single adults with children (minorities or other protected groups) - the effect of the criteria is discriminatory.

It is recommended by HUD that a WRITTEN, POSTED or available criteria be established that clearly defines the criteria by which each application will be judged.

By having the screening policy posted the applicant is responsible for reading it, instead of placing the responsibility on property managers to verbally quote policy and running the risk of quoting policy to one applicant and not to another. This especially applies to telephone conversations. **DO NOT QUOTE POLICY** - offer the ability to come get an application.

There is a prohibition against "using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin".

Remember, if the affect is a pattern of rejection of families with children, etc., the policy is discriminatory.

Note: Using an outside contractor for tenant screening will not relieve the liability from the owner or manager.

Screening Policies

First requirement is to identify that the person making application is in fact who he says he is. This can be accomplished by requiring picture I.D. with birth dates before processing applications. Copies may be made of this documentation and retained in the file.

The following is an outline of written policy inclusions and is provided as guidance:

1. Income shall be ___(2,3, or 4x) the rent, including or excluding utilities.
2. All current and previous landlord references will be verified. Failure to provide correct, verifiable references shall result in:
 - a. Denial of application
 - b. An additional deposit of ___% of the stated Monthly rent
 - c. Requirement of co-signer
 - d. Other

Inability to verify other information shall result in:

 - a. Denial of application
 - b. An additional deposit of ___% of the stated monthly rent.
 - c. Requirement of co-signer
 - d. Other

_____ attempts to contact and verify references will be made.
3. A credit check will be run and a factor shall be applied against the number of accounts and outstanding balances.
4. Any recorded or unrecorded FED, collections, or judgments shall result in:
 - a. Denial of application
 - b. An additional deposit of ___% of stated monthly rent
 - c. Requirement of a co-signer
 - d. Other
5. Verification of income and employment shall be made by:
 - a. Employment verification
 - b. Proof of self-employment shall be made by _____
 - c. Non-employment income shall require verification of its source, its stability, and the amount.
6. Employment of less than _____(length of time) shall result in:
 - a. Denial of application
 - b. An additional deposit of ___% of the stated monthly rent
 - c. Requirement of a co-signer
 - d. Other
7. Any information provided that is incomplete, inaccurate, or falsified, shall be grounds for denial of the application or subsequent termination of tenancy upon determination of such falsified information.

Information that Should NOT Be Used in Tenant Screening

1. Arrest records of any kind. (HUD case proved that a higher number of arrests are of minorities, causing a "disparaging" effect on minorities.)
2. Conviction records unless the conviction is for such offenses that could directly affect the safety of other residents of the rental community.

Examples given by HUD: rape, arson, child molestation, manufacturing and delivery of drugs.

Examples of unusable information: conviction for vehicular manslaughter.

3. Information from other sources that may reflect a protected class.
4. Cannot require additional deposits, rent, etc., for non-married or unrelated persons different from married persons.
5. Cannot permit inquiries into "antisocial" behavior or "tendencies".

Recommended Application Processes

STEPS TO BECOME A RESIDENT OF THIS RENTAL SHALL BE

1. Select your rental unit.
2. Make your deposit as per the published policy (determine policy for waiting list, open available unit)
3. Complete the application on the designated form.
4. Be prepared to wait ____ days as credit checks and approvals often take that long.
5. If approved and you decide not to rent the unit, you must forfeit all monies deposited.
6. If approved and you accept the available unit, you will be required to sign a rental agreement or lease in which you will agree to abide by all rules and regulations of the rental unit or complex.
7. If not approved, all monies you have deposited will be gladly refunded to you within ____days less the declared non-refundable application fees.

If the type of rental unit you desire is not available and you wish to be placed on our waiting list, you must:

1. Make an application deposit or fee of _____
2. Complete a rental application
3. Be prepared to wait ____ days
4. If approved, you will be notified by (phone, mail, other) and required to:
 - a. Notify management within ____days of your desire to be placed on the waiting list
 - b. Submit an additional deposit of _____
5. When the unit becomes available, you must sign a rental agreement or lease within 3 days of notification and rent will begin within 7 days from notification otherwise you will forfeit all monies you have deposited.
6. If not approved, all monies you have deposited will be gladly refunded less the declared non-refundable application fee.

Rejections

If your application was rejected due to information received on the credit check, you should:

1. Contact the supplier of the information whose name and address will be given to you.
2. Correct the incorrect information through the credit company.
3. Request the credit company to submit a corrected credit check to this office.
4. Upon receipt of the corrected information, your application will be reevaluated for application to the next available unit.

Other Non-Credit Rejections

If you have been rejected as an applicant and if you feel that you qualify as a resident, you should document your concerns in writing to the property management and parent company, if applicable.

Within 7 working days of receipt of your letter, your application and other material will be reviewed and you will be notified of the outcome of the review.

Conclusions

The recommendation is that the above policies be reproduced in a professional appearing manner (similar to the Fair Housing Poster), matted and framed and hung on the wall or be printed and made available with applications. A Fair Housing Poster can be obtained by contacting the IHFA Grant Programs Department.

CAUTIONS:

1. An owner, management firm, or manager can be held liable for the actions of those involved in the tenant screening process.
2. How questions are asked may cause a discriminatory answer.
3. Retain records of verification questions and answers for a minimum of 2 years - 6 for realtors. Document name and capacity of verification personnel.

HUD recommends that ALL records be retained by the owner or management including notes of conversations and "hard copies" of credit checks.

IT IS LAWFUL TO....

1. Set reasonable eligibility criteria as long as they are consistent for all applicants:
2. Require sufficient income to meet rent and utility payments:
3. Require certain terms and conditions such as a security deposits or fees, provided that the conditions are the same for all applicants:
4. Inquire whether an applicant for a dwelling is a current illegal abuser of or addict to a controlled substance.
5. Inquire whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
6. Restrict the number of occupants according to policy standards.
7. A housing provider may choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority.

Occupancy Standards

The federal statute does not preempt local, state, or federal occupancy levels. However, as cases are ruled upon, administrative rulings are defining what is and are not acceptable.

Definition of Reasonable:

Factors to be considered in determining reasonableness include but are not limited to:

- (a) The size of the bedroom;
- (b) The overall size of the dwelling unit;
- (c) Any discriminatory impact on a protected class.

Bedroom Definition:

Bedroom means a habitable* room that:

- (a) Is intended to be used primarily for sleeping purposes; (landlord needs to identify intent)
- (b) Contains at least 70 square feet;
- (c) Is configured so as to take the need for a fire exit into account (refer to building code for requirements)

- * Definition of Habitable Room (as in building code)
Habitable room means a space in a structure for living, sleeping, eating or cooking.

Bathrooms, toilet compartments, closets, halls, storage or utility space and similar area are not included.

Dwelling Unit:

Any building or portion thereof, which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as, required by this code, for not more than one family.

Family:

An individual or two or more persons related by blood or marriage or a group of not more than 5 persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

Habitable Space: (Room)

A space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

Floor Area:

Every dwelling unit shall have at least one room, which shall have not less than 120 square feet of floor area. Other habitable rooms except kitchens shall have an area of not less than 70 square feet.

Efficiency Dwelling Units:

The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.

Exits and Emergency Escapes:

Basements in dwelling units and every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue which shall open directly into a public street, public alley, yard or exit court.

The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

All escape or rescue windows shall have a minimum net clear openable area of 5.7 square feet. The minimum net clear openable height dimension shall be 24 inches. The minimum net clear openable width dimension shall be 20 inches.

When windows are provided as a means of escape or rescue they shall have a finished sill height not more than 44 inches above the floor.

More on Occupancy Standards

The federal regulations state "in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine [occupancy limits] to determine whether they operate unreasonably to limit or exclude families with children".

HUD issued a memorandum to all Regional Counsels in March 1991 that gives insight into its thinking.

Size of Bedrooms and Units:

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to two people.

Age of Children:

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrates this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

Configuration of Unit:

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

Other Physical Limitations of Housing:

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

Other Relevant Factors:

Other relevant factors that HUD will use in determining a case would include evidence that the housing provider has:

1. Made discriminatory statements;
2. Adopted discriminatory rules governing the use of common facilities;
3. Taken other steps to discourage families with children from living in its housing;
4. Enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" ...would suggest that the occupancy policies are a pretext for excluding families with children."

Other Factors in Establishing Occupancy Policies

1. Your occupancy standards should refer to "occupancy", not "adult" or "children". Any attempt to unreasonably restrict the number of children, or to prohibit young children of opposite sexes from sharing a bedroom is per se unreasonable.
2. Research also indicates that you cannot charge additional rent on the basis that children create more maintenance or noise.
3. HUD officials have indicated that **YOU MAY LIMIT THE NUMBER OF ADULTS** in a unit.

Example - two people per bedroom not exceeding two adults.

Policies and Regulations

1. You may have the requirement that the name of the provider of supervision of any children under 10 be on file with management.
2. An owner or manager may adopt rules and regulations to prevent the abusive use of a property as long as it applies to all equally. This would allow policies regarding "occupants" use of recreational equipment in the parking lots, stairs, etc.
3. May have policies regarding the storage of "occupancy" possessions on exterior premises, which is covered in the fire code, many insurance policies.
4. Pool rules - Owners may require that all non-swimmers and children under 14 years of age shall be accompanied by a responsible adult observer.

Define who has pool privileges - whether limited to residents and specified number of guests.

Define "responsible adult observer" as a resident of the rental community over 18, limiting the number that can be "observed" by one person.

Spell out penalties such as

- Issuance of written warning
- After one warning, loss of privileges for ___ weeks or days
- Second warning in a two-month period results in loss of pool privileges for the season.

4. HUD provides that differences in the treatment of persons in connection with the provision of services and facilities or in the terms or conditions relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin **CONSTITUTE DISCRIMINATORY HOUSING PRACTICES.**

HUD will define **LIMITATIONS ON THE USE OF PRIVILEGES, SERVICES OR FACILITIES AS DISCRIMINATORY HOUSING PRACTICES.**

6. Recent rulings indicate that you **SHOULD NOT** charge rent based upon the number of occupants. HUD regulations indicate they will review this on a case-by-case basis. Rent can be scheduled based on rent reasonableness by the numbers of bedrooms.
7. Rent reduction for age - as long as such a policy is based solely on age, is available to persons if there are children in the family, and is not otherwise operated in a manner that results in the exclusion of families with children, such a practice would not be unlawful.

Consistency

It is important that a routine be established to disseminate information about the property to all possible applicants. Showing a unit to one applicant and a different unit to another may be construed as discriminatory intent. Volunteering information to one person and having to have the applicant ask in another circumstance may be viewed as discriminatory. Uniformly provide information such as:

1. Units available
2. Deposits and fees required
3. General information regarding the unit
4. Rent
5. Marital status
6. Number of children
7. Income of occupants
8. Credit information

Do not repeat policies to applicants. **Post or print policies.** It is apparent as filed cases are reviewed that this is the one area that gets on-site managers into trouble.

OBTAINING ADDITIONAL INFORMATION

The following documents contain the full regulations:

- The Federal Register of January 23, 1989 (24 CFR Chapter 1, Parts 100, 103 & 104) contains the applicable regulations.
- The Federal Register of March 6, 1991 (Appendix II to 24 CFR Chapter 1, Subchapter A) contains the construction standards for new construction.
- The Federal Register of June 28, 1994 (Appendix IV to 24 CFR Chapter 1, Subchapter A) contains a supplement to the Fair Housing Guidelines, which provides answers to commonly asked questions about the guidelines.

Either document may be obtained from HUD at:

Office of Fair Housing
Department of Housing and Urban Development
Seattle, Region X
1321 2nd Avenue
Seattle, WA 98104

Or by contacting the HOME Department of Idaho Housing and Finance Association.

Information provided in this Exhibit should NOT be construed as legal advice. Additional information should be sought as necessary from HUD or from the attorney of your choice versed in Civil Rights and Fair Housing law.

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