Fair Housing for Maintenance-Service Personnel

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FAIR HOUSING LAWS

History of Fair Housing

On April 11, 1968, President Lyndon Johnson signed the Civil Rights Act of 1968, which was meant as a follow-up to the Civil Rights Act of 1964. The 1968 act expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, sex, (and as amended) handicap and family status. Title VIII of the Act is also known as the Fair Housing Act (of 1968).

Protected Classes

The Fair Housing Amendments Act of 1988 and many state and local laws describe specific prohibited acts of discrimination in the rental or sale of real property based on protected classes. Some prohibitions exist in regards to all protected classes. Others were designed to protect specific classes. Currently, federal fair housing laws protect seven classes of persons. State and municipal laws may protect other classes. Examples of additional classes protected by state and local governments include age, source of income, occupation, marital status, sexual orientation, and unfavorable discharge from the military. It is important to look at the definitions and clearly understand the Federal, State and Local Protected Classes.

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Which Law Prevails?

What if, for example, the local law does not prohibit discrimination based on handicap, but the federal law does? The federal law prevails. Federal statutes should be considered as the minimum laws. However, you must comply with local, state, and federal laws at all times. An overall rule of thumb is to comply with the law that places the greatest burden or provides the greatest protection against discrimination.

Prohibitions for all classes

- refusal to sell or rent
- limiting use of common or community facilities
- making housing unavailable
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- applying more burdensome criteria to a particular prospective tenant than that applied to others

- discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling or provision of services or facilities of the property

- making, printing, or publishing any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discriminatory intent

- representing that a dwelling is not available for inspection, sale, or rental when in fact the dwelling is available

- steering prospective tenants to, or away from, a particular dwelling, building, unit or community; making choices and assumptions for the prospective tenant

- inducing, or attempting to induce, any person to sell or rent a dwelling by representations regarding the entry, or prospective entry, in the neighborhood of particular persons (block busting)

Prohibitions based on protected class

Handicap/Disability

- discrimination in the rental or sale of a dwelling, or in the provision of services or facilities in connection with the dwelling, against a renter or buyer because of a handicap, that of a person residing in the dwelling, or that of anyone associated with that renter or buyer

- refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises necessary to afford full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the premises to the condition that existed before the modification

- refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford equal opportunity to use and enjoy the dwelling

- failure to design and construct covered multifamily dwellings for first occupancy in such a manner that the dwelling’s public and common use portions are readily accessible to and usable by handicapped persons
Familial Status

The 1988 Fair Housing Act Amendments prohibit housing discrimination against families with children under the age of 18 (households with any person under the age of 18). Protection is extended to pregnant women and persons in the process of securing legal custody of children through adoption, divorce, or written permission of parents or legal guardians.

Familial Status & Building Safety

If building amenities are not safe for children, the agent still cannot reasonably refuse to rent to families with children. The parents choose whether they want to live there. The management company or property owner cannot refuse access by children to areas such as swimming pools, weight rooms, and saunas. The management company or property owners may impose reasonable health and safety rules that limit access by unaccompanied children to such areas. A key word is “reasonable.” The building’s rules should not make use of building amenities by families difficult. In addition, property owners might be required to take steps that minimize the risk of injury to children who were previously excluded from a particular building or development.

Fair housing and sexual harassment

Fair housing and sexual harassment? Do they really have anything to do with one another? Unfortunately, yes, and this is an issue that has perhaps not had the press it deserves.

Housing law recognizes two types of sexual harassment claims:

- a “conditioned tenancy” or “quid pro quo” claim which in non-legalese means making a sexual demand on a resident in order for that resident to get needed maintenance on the apartment, to get a rent concession, or to avoid an eviction; and

- a “hostile environment” claim, which can give rise to claims concerning the psychological well-being of a resident who can demonstrate such a situation.

Additionally, fair housing law has been broadly applied to define sexual harassment as a violation of the Fair Housing Act prohibition against sex discrimination.

Housing for Older Persons

Discrimination based on familial status is illegal unless the property qualifies as “Housing for Older Persons” under the Fair Housing Act. Housing for older persons may lawfully exclude families with children. Real estate professionals who market housing to older persons should make sure that the facility or community has stated, in writing that it
complies with the requirements for the exemption. In order to qualify for the exemptions the following the conditions must be met.

- At least 80% of the occupied units for housing to gain this exemption, the following 55 years of age or older
- The housing facility or community publishes and adheres to policies and procedures that demonstrate its intent to be housing for older persons
- The housing facility or community complies with rules issued by HUD for verification of occupancy.

**Occupancy standards:**

- protect tenants from unsafe and unhealthy conditions
- avoid overcrowding
- protect government subsidies
- protect physical assets

Local laws may define occupancy standards for rental properties in your local areas. This information can be obtained by contacting the local governmental jurisdiction.

In the absence of local laws, building owners and managers may wish to develop occupancy standards in order to limit the number of people who can live in rental properties for the reasons noted above. Although no national standards for setting these limits exists, the following aspects of the dwelling should be considered in developing standards:

- size of the unit
- number of bedrooms and their dimensions
- configuration of the unit, e.g., a bedroom is not considered a bedroom if you have to walk through another sleeping room to access it
- physical limitations of the dwelling, e.g., number of bathrooms
- state and local laws
- capacities of the building, such as septic, sewage, or other building systems
- amenities
Owners and managers may set occupancy standards as long as they do not unreasonably exclude families with children under the age of 18.

**HUD Guidelines**

A 1991 memo by HUD General Counsel Frank Keating provides guidance for determining whether neutral occupancy limits are reasonable under the Fair Housing Act. The Keating Memo states that, as a general rule, HUD believes that an occupancy policy of “one person per bedroom plus one” (i.e., two persons per bedroom) is reasonable under the Fair Housing Act. Owners and managers may develop and implement reasonable occupancy requirements based on such factors as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.

When reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. Following are some examples:

- **configuration of the unit**
  
  Example: In the case of a family of five wishing to rent a unit of two bedrooms plus den, a strict two person per bedroom occupancy standard could be regarded as over-restrictive if the rooms are spacious and the den is a separate room.

- **size of bedrooms and unit**
  
  Example: If a mobile home is advertised as a “two bedroom” home, but one bedroom is extremely small, it could be reasonable for the property manager to limit occupancy to two people.

- **age of children**
  
  Example: It may be an acceptable standard to allow two adult parents to rent a one-bedroom apartment with their infant child, but not if the child is a teenager.

- **other physical limitations of the housing**
  
  Example: In setting an occupancy standard, the capacity of septic, sewer, and other building systems can be considered.

- **state and local laws** (each state may be different. In Delaware, for example, four unrelated persons in a unit is the maximum limit)

- **other relevant factors**, such as discriminatory statements, discriminatory rules governing use of common facilities, actions taken to discourage families with children, enforcement of standards only against families with children
If HUD reviews a case, it will interpret the guidelines and consider this information on a case-by-case basis. Occupancy standards that represent a subterfuge for excluding a substantial number of families with children are a violation of the Fair Housing Act.

**Montgomery County, Ohio - Combined Health District Occupancy Standards - From: Housing Regulations 200.0 to 216.0 as amended to May 7, 1975**

208.01 Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area*.

208.02 In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of additional floor space for each additional occupant thereof.

* Computing total habitable room area for determining maximum permissible occupancy thereof: (208.04) floor area of room(s) with ceiling(s) less than 5 ft. must be subtracted from square footage; then, of square footage left, 50% of floor space must have ceiling height of 7’6”.

**Other items of interest:**

1. Under definitions section 201.11 - **Family** shall mean one adult occupant plus one or more persons who are legally related to said occupant, or one or more non-paying guests.

2. Under definitions section 201.18 - **Occupant** shall mean any person, over one (1) year of age, living, sleeping, cooking, eating in, or having actual possession of, a dwelling unit or rooming unit.

3. Under definitions section 201.27 - **Rooming House** shall mean any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not family or owner for living and sleeping, but not for cooking or eating purposes.

**Handling Maintenance and Repair Requests**

- Follow regular procedure for responding to a work order
- Follow procedure for work orders, addressing health and safety issues in all cases regardless of the health condition of the resident
- If a delay in service is expected, inform the resident of the reason for the delay
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- Respond in order of request except in emergencies
- Refer requests for changes to units to the resident service staff
- Inform service staff of any apparent violations of resident rules
- Treat all residents the same
- Document your work

FAIR HOUSING FOR PEOPLE WITH DISABILITIES

Notes on the term Handicap

The Fair Housing Act uses the term “handicap” with respect to a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment and is regarded as having such impairment.

Examples of people who are considered handicapped are individuals with

1. Impairments in walking, seeing, or hearing

2. A history of mental illness, heart disease, cancer, cerebral palsy, multiple sclerosis, diabetes, AIDS, HIV

3. Individuals who have successfully completed or are participating in a drug treatment program

Disability and Asking Questions

Housing providers may not ask unlawful questions with respect to the existence, nature, or severity of a handicap, unless it is necessary to qualify that person for a special government housing unit. Although property managers and owners are not allowed to ask these types of questions, they must be prepared to accommodate requests for modifications of the structure and accommodations in rules, policies and procedures when those requests are reasonable and do not burden the housing provider. (See below) In most cases, if a tenant requires special accommodations or modification, he or she will ask for it. The Fair Housing Act does not require a housing provider to accept all handicapped applicants without regard to their abilities to meet standard, nondiscriminatory tenant selection and screening criteria. Housing providers are required to use the same objective criteria to evaluate the applications of all tenants. You must ask every prospective tenant the same questions in the same manner. Permissible inquiries are limited to whether a tenant can meet the obligations of tenancy, the status of previous
rental history, and whether the prospective tenant is a current user and/or distributor of illegal drugs. If such questions are to be asked, they must be asked of all prospective tenants, not just a few, or those who “look suspicious.”

"Access" requirement under Fair Housing

The idea of fair housing is to equalize housing opportunity. Only in the case of disability does the law require the provider to take affirmative steps to increase access. These three fair housing requirements do not apply in the case of other protected classes. The three requirements are:

1. Accessible common areas and "readily adaptable" ground floor dwelling units in most newly constructed multi-family apartment buildings. The act also requires accessible exterior routes into the building and ground floor units.

2. Structural modification to increase accessibility. Housing providers must allow the tenant to make reasonable structural changes, at the tenant's expense, so the tenant has full use and enjoyment of the dwelling unit. The use of any public funding in development or financing of the housing being offered, may obligate the landlord to pay for these modifications. If you need guidance on a specific housing development, you should contact the Fair Housing Center. In market rate units the financial obligation rests with the client or prospective client. The accommodations also must be “readily achievable”. Ramping a seven inch step is usually achievable while adding an elevator to a two story 4 unit building is usually not easily achievable.

3. Reasonable accommodations in rules, policies, procedures, and practices. This legal obligation applies most often in the rental arena. The housing provider must make reasonable adjustments in rules when necessary both because of a disability and to acquire or maintain the tenancy. One of the most common accommodations is to pet policies. If someone needs a service or companion animal, managers, tenants, and complex staff should regard this tool in the same light one views a wheelchair or walker. As a result, in all situations, extra charges for service or companion animals are forbidden.

Fair Housing Accessibility Guidelines – for new multi-family buildings with 4 or more units – in elevator buildings, all units must comply; in multi-story units without an elevator, all ground floor units must comply.

- Requirement 1: Accessible building entrance on an accessible route

Covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site.

- Requirement 2: Accessible and useable public and common use areas
Covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons.

- Requirement 3: Usable doors

Covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs.

- Requirement 4: Accessible route into and through the covered dwelling unit

Covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit.

- Requirement 5: Light switches, electrical outlets, thermostats and other environmental controls in accessible locations

Covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

- Requirement 6: Reinforcement for grab bars

Covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain grab bar reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub shower stall and shower seat, where such facilities are provided.

- Requirement 7: Usable kitchens and bathrooms

Covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Maintenance of accessible features:

Maintenance of accessible features is a big issue in both housing and public accommodations. Many organizations think that installing a feature ends their
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FHA or ADA responsibility. Installation is the opposite; it is the beginning of the responsibility by law.

Maintenance personnel are the staff that ensures continued access.

Examples:

1. Eliminating obstructions to accessible parking and access aisles.
2. Ensuring that accessible parking is used only by those with proper tags.
3. Making sure accessible routes (sidewalks, ramps, curb ramps) are unobstructed and in good shape (no gaps or faults in concrete that could impede a wheelchair).
4. Making sure there are no protruding objects that will be trip hazards for people with visual impairments.
5. Snow and ice removal.

SERVICE ANIMAL GUIDELINES FOR STAFF from:
SAMPLE SERVICE ANIMAL POLICY located at: www.mvfairhousing.com

Service Animal Accommodations

Property management will review a tenant’s written request for a service animal accommodation. Upon written verification from the tenant’s healthcare or mental health provider, the property manager will provide a written response to the tenant. The manager’s response will take into consideration the reasonableness of the request. The request may be denied and deemed unreasonable only if it causes an undue financial or administrative burden to the community.

Fees

A service animal is not a pet. Regardless of whether your property allows pets or not, the tenant is not required to make a pet deposit or pay a pet-related move-in cleaning fee. The tenant may be charged a general cleaning or damage deposit charged to all tenants. The tenant is liable for any damage the animal actually causes.

Staff Awareness

Property management may want to incorporate the following suggestions into policy:

- Allow a service animal to accompany the tenant at all times and everywhere on the property except where animals are specifically prohibited.
Do not pet or touch a service animal. Petting a service animal when the animal is working distracts the animal from the task at hand.

Do not feed a service animal. The service animal may have specific dietary requirements. Unusual food or food at an unexpected time may cause the animal to become ill.

Do not deliberately startle a service animal. Do not separate or attempt to separate a tenant/handler from her or his service animal. Avoid making noises at the animal (barking, whistling, etc.)

Avoid initiating conversation about the service animal, the tenant’s disabilities or other service animals one has known. If you are curious you may ask if the tenant/handler would like to discuss it, but be aware that many persons with disabilities do not care to share personal details.

Remember, not all disabilities are visible. The nature of the person’s disability is a private matter, and you are not entitled to inquire for details.

If other tenants complain about the fact that they are not allowed to have a pet and want to know why you have made an exception, simply state that your company complies with the fair housing laws. You can also refer your tenants to the fair housing laws or your local fair housing agency for further details.

Service animals do not need to wear any special identifying gear such as tags, harnesses or capes.

A tenant may train his or her own service animal and is not required to provide any information about training or the specific tasks the animal performs.

Removal of Service Animal

When a service animal is unruly or disruptive (jumping on people, biting, or other harmful behavior), the property manager may ask a tenant to remove the animal from the area. If the improper behavior happens repeatedly, the manager may tell the tenant not to bring the animal into any area of the property except the tenant’s rental unit, until significant steps have been taken to mitigate the behavior. Mitigation can include refresher training for both the animal and the tenant.

Areas off limits to Service Animals

Management may designate certain areas off limits to service animals, such as in the swimming pool or any other area where a significant health or safety hazard may exist. Such designations should not infringe upon the right of a person with disabilities to fully enjoy the amenities of the community.