



Fair Housing for All

A guide to
understanding,
implementing, and
protecting Fair
Housing rights

Presented by Marlene Zarfes,
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To LIHP- LIBOR Fair Housing
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What is Fair Housing? What's the goal?

- **Fair Housing is a Civil Right**
- **History**
- **Why is the right to fair housing SO important?**
- **Goal - Everyone should have the opportunity to safe, accessible housing.**

Testing

- **What is testing?**
- **Why do we test?**
- **Can you tell you're being tested?**

What is WRO seeing?

- **Disability**
- **Familial Status**
- **Race**
- **National Origin**
- **Source of Income**

Protected Classes – Federal and State

- race
- color
- national origin
- religion/creed
- familial status (families with children under 18 years of age or pregnant woman)
- handicap/disability (mental and physical)
- marital status
- age
- military status
- sexual orientation

Why do we have protected classes?

- **Demonstrated need in the past and today**
 - (restrictive covenants in leases – no Blacks, no Jews)
 - (STEERING, deny availability, impose different terms or conditions)
- **Discrimination is often less blatant but it continues to exist**

How do you avoid discriminating on basis of protected classes?

Treat everyone the same

e.g. If you require credit check for some, require it for all

All agents in agency must treat everyone the same – consistency within the agency

If a client specifies certain requirements be sure to document the request

If an owner/landlord/property manager requires something that violates FH laws, turn down the listing, report to your broker and call Fair Housing Agency

Familial Status Protection

- **Protection on the basis of familial status was added by federal regulation in 1988.**
- **It is illegal to discriminate in housing against children under 18 and their families; protection extends to pregnant women and those awaiting to adopt a child**
- **Housing provider may not refuse to rent or sell to families with children, restrict the number of children, limit children to a particular floor, restrict children from common areas, require additional payment for a child, etc.**

WRO Sues Village and Developer

- **Proposed development is targeted at “empty nesters”**
- **Village includes age-targeted special permits in its zoning code, allowing developers to build more units than would normally be allowed, *if* the housing is designed to appeal to individuals and couples without children.**
- **Design and marketing of the units is intended to deter families with children from moving in**

WRO Sues Village and Developer

- **Units are designed with few bedrooms; den is far from bathroom and has no closets**
- **There are no child-friendly amenities**
- **Study showed that “worst case scenario” would add 6 (or maybe 8) children to the village schools.**

When/Why is “age targeting” a problem?

- **What about senior housing?**
- **The federal (and state) government have provided an exemption from familial status (and age) discrimination if:**
 - **The dwelling is occupied solely by people age 62 and over;**
 - **At least 80% of the occupied units house at least one person age 55 and over; or**
 - **HUD has determined that the dwelling is specifically designed for and occupied by “elderly persons” under a federal, state or local program**

What is disability?

- **Disability is defined (FHA) as:**
 - **Physical or mental impairment that substantially limits one or more major life activities**
 - **Having a history of such impairment**
 - **Being regarded as having such an impairment**

ACCESSIBILITY UNDER THE FAIR HOUSING ACT: **7 requirements for all buildings built for first occupancy on or after *March 13, 1991***

- **Requirement 1. An accessible building entrance on an accessible route**
- **Requirement 2. Accessible public and common use areas**
- **Requirement 3. Usable doors (usable by a person in a wheelchair).**
- **Requirement 4. Accessible route into and through the dwelling unit.**

Accessibility Requirements (cont'd.)

- **Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.**
- **Requirement 6. Reinforced walls in bathrooms for later installation of grab bars.**
Reinforcements in bathroom walls must be installed, so that grab bars can be added when needed. The law does not require installation of grab bars in bathrooms.
- **Requirement 7. Usable kitchens and bathrooms.**
Kitchens and bathrooms must be usable - that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

Reasonable Accommodations/Modifications: WHO IS PROTECTED?

- **People with disabilities are entitled to reasonable accommodations and reasonable modifications when necessary to have an equal opportunity to use and enjoy housing**
- **Buyers, renters, someone with a disability who will live in the unit, a person associated with a person with a disability**

WHY ACCOMMODATE/MODIFY?

Fair housing laws require **REASONABLE** accommodation and **REASONABLE** modification when needed to allow a person with a disability to have an equal opportunity to use and enjoy housing

Elements:

Request (verbal is ok), need, equal opportunity, nexus between accommodation/modification and the disability

Reasonable Accommodations/Modifications

1. **What is a reasonable accommodation?**
Change in policy, procedure, practice or service

2. **What is a reasonable modification?**
Structural change

Examples – lower kitchen cabinets, install grab bars in bathroom, install ramp to individual's unit or within unit.

Reasonable

Accommodations/Modifications (cont'd.)

- 3. Can a landlord refuse to grant a tenant with a disability a reasonable accommodation? Yes - if:**
 - **Impose undue financial AND administrative hardship; OR**
 - **Constitute a fundamental alteration of the program; OR**
 - **Would result in a direct threat**
- 4. Accommodation or modification must be related to the disability**

How should housing provider respond to a request?

- **Don't require a particular format**
- **Respond with reasonable speed- undue delay may constitute denial**
- **Be willing to interact in response to the request**
- **Don't impose a particular accommodation**
- **Don't charge or put unreasonable conditions on accommodations**

What kinds of info, if any, may a housing provider request?

- A housing provider is entitled to obtain info necessary to evaluate whether a requested reasonable accommodation/modification may be necessary because of a disability.
- If disability is obvious or otherwise known to provider, and the need is readily apparent or known, provider cannot ask for any further info.
- If disability is apparent or known to provider, *but need is not readily apparent or known*, provider may request only enough info to evaluate the disability-related need for the accommodation/modification.

Reasonable Accommodations/Modifications

1. What is the difference between a reasonable accommodation and a reasonable modification? (change in policy, procedure, practice or service vs. structural changes)
2. May the landlord charge the tenant the expense to make the *modification*? YES (except in federally subsidized housing)
3. May the landlord charge the tenant the expense to make the *accommodation*? NO
4. Must the accommodation or modification be related to the disability? YES

Examples of **Reasonable** Accommodations/Modifications

- **Modifications – lower kitchen cabinets/countertops, install grab bars, ramp, install stair-chair, widen doorways, install flashing doorbell light**
- **Accommodations – numerous – tailored to the situation – parking spot, waive no pet policy, ask super to pick up garbage from outside unit, etc.**
- **See – Joint Statements on Reasonable Accommodation and Modification**
 - <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>
 - http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

Service Animals/Emotional Assistance Animals as Reasonable Accommodation

- **Multiple laws apply – FHA, Sec 504 of Rehab Act, ADA**
- **FHA and Section 504 allow service animals (hearing guide dogs and seeing eye guide dogs) AND emotional assistance animals – not necessarily dogs and no need for special training or certification**
- **ADA only allows dogs and only those trained to do work or perform tasks. Does not allow emotional assistance animals as a reasonable accommodation**

Source of Income Protection in Nassau and Suffolk (new) Counties

- **Generally prohibits discrimination on the basis of lawful, verifiable source of income, including SSI, SSD, Section 8, etc. Discrimination includes advertising**
- **Nassau exemptions-owner occupied 2 family and rental of rooms by the owner of the housing accommodation if he or she or members of his or her family reside in the accommodation.**
- **Suffolk exemptions– Housing accommodations with 2 or fewer units unless the owner has the right to rent, sell or lease at least 3 housing accommodations**

Source of Income (cont'd.)

- **Westchester (new law) exempts units with more than 6 units and coops and condos**
- ***Note:* Sometimes treatment that supposedly relies on an exemption from source of income law hides discrimination on another basis; e.g. race, national origin, disability of familial status**

QUESTIONS??????

- Feel free to contact me with questions after the conference

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Fair Housing for All!

Thank you!