



FAIR HOUSING WEBINAR

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What is the Fair Housing Act and Why it Matters

- Prohibits housing discrimination “because of” race, color, religion, national origin, sex, familial status, or disability status.
- NFHA conservatively estimates that there are over 4 million instances of housing discrimination each year. Every day, there are over 450 acts of housing discrimination across the country.
- State and local laws may provide further protection to consumers based on additional factors, some of which are summarized below:
 - Citizenship
 - Age
 - Veteran status
 - Genetic information
 - Sexual orientation/gender identity
 - Source of income
- It’s critical to work with local legal professionals to understand how both federal law and state/local rules may impact your business.

What We Will Cover Today

- Disparate Impact
- Criminal Records Screening
- Limited English Proficiency
- Source of Income
- Advertising and Steering
- Resources

DISPARATE IMPACT

What you need to know

Disparate Treatment vs. Disparate Impact

Disparate Treatment

- Intentional adverse and differing treatment of protected classes
 - “No [PROTECTED CLASS] Need Apply”
- Inconsistent treatment

Disparate Impact

- Application of facially-neutral policies that cause an unintended adverse impact on protected classes
 - No need to show intent for disparate impact claims
- Consider whether there is a legitimate business justification for the policy or practice
 - The policy or practice seems to be arbitrary or unnecessary

More on Disparate Impact

- Due to segregation of American society and racial/gender/other disparities, many policies or practices could have an unintentional disparate impact on a protected class
- Some policies adopted by owners/managers may have an unintended adverse impact on protected classes, and may trigger liability
- As a result, disparate impact may expose housing providers to liability for what some might believe are “normal” operations, policies or procedures
- U.S. Supreme Court ruled in a majority opinion that disparate impact is viable under the federal Fair Housing Act
- HUD codified Disparate Impact rules under the Fair Housing Act in 2013

Proving Disparate Impact: HUD's Three-Step Approach

Tenant

- The tenant or applicant must show that on its face, the 'action in question' has either a disparate impact or a segregative effect on a protected class.

Landlord

- If the discriminatory impact is shown ...
- The burden shifts to the housing provider/property manager to show a "legally sufficient justification."
- Means "substantial, legitimate, nondiscriminatory" purpose

Tenant

- If the landlord satisfies this burden...
- The tenant or applicant may still establish liability by proving that the legitimate justification could be achieved by another practice that has a less discriminatory effect.

Best Practices for Landlords and Property Managers

- Be alert! DI issues arise when benefit is withheld, penalty is imposed
- Identify legitimate, nondiscriminatory reasons for changes; consider less discriminatory alternatives
- Examine the true intent behind the implementation of the policy or practice
- U.S. Supreme Court: “Artificial, arbitrary and unnecessary barriers” raise DI concerns

CRIMINAL RECORDS SCREENING

What you need to know

HUD Criminal Records Guidance

HUD announced guidance explaining how criminal background checks may have disparate impacts on people of color (April 2016).

HUD/
Tenant

Does criminal records screening have a discriminatory effect?

- Research reveals that African Americans, Latinos and other groups face disproportionately higher rates of incarceration
- Non-governmental studies have shown an impact on housing opportunities

Landlord

Is criminal records screening necessary to achieve a legally sufficient justification?

- Must be able to show the challenged policy protects tenants/property
- Assertions about benefits of screening without factual proof are not sufficient

HUD/
Tenant

Is there a less discriminatory alternative?

- Individualized assessment may have a less discriminatory effect than categorical exclusions
- HUD suggestion: Do criminal records checks after other tenant/financial screening

Criminal Records Screening: Best Practices for Landlords and Property Managers

- Avoid using arrest records, one-strike prohibitions
- Consider “nature, severity and recency” of conviction
- Focus on crimes that pose real danger to health and safety of other tenants and staff
- Develop objective criteria for individual assessments
- Be consistent: avoid different outcomes for persons with similar criminal backgrounds
- How does HUD’s criminal records screening guidance apply to HUD-assisted properties (e.g., public housing authorities or Section 8 landlords)?

OTHER RECENT ISSUE UPDATES

Limited English Proficiency | Source of Income

HUD Limited English Proficiency Guidance

- Limited English Proficiency (LEP) persons are often from non-English speaking countries and so language discrimination may also result in race or national origin discrimination (protected classes)
- Sept. 2016: HUD warns that discrimination against LEP persons may violate Fair Housing Act
- **Intentional**
 - Refusing to rent to or imposing different terms due to LEP status or primary language
- **Unintentional/Disparate Impact Violation**
 - Refusing to allow time to translate documents
- **Implications**
 - Does this impose duty to provide translated documents, interpretation services?
 - Consistency in the application of policies and practices is key

Source of Income

- Many states and cities are adopting rules that prohibit discrimination based on source of income
- Cannot refuse to rent because rent paid with rental assistance or alimony (e.g., landlord/property owner could not refuse to accept Section 8 voucher)

Disparate Impact

- Conceivably, even where there is no state or local law, source of income could be a disparate impact violation too
- Argument: Persons with disabilities disproportionately receive rental assistance, so failure to accept Section 8 has a disparate impact on this demographic

ADVERTISING, STEERING AND TENANT POLICIES

What you need to know

Advertising



- Make sure your advertising is compliant with fair housing laws by focusing on the property and the amenities in your rental listing description — NOT on who you think an ideal renter would be.
- Always use the fair housing logo and/or slogan in your advertising.
- Include diverse representations in your ads, and don't shy away from using people in them!
- Always give truthful information about the availability, price, amenities and features of the housing unit.
- Goal in advertising: to gain important, critical exposure to consumers. Maximize positive outcomes! Broaden — don't restrict — your market. Inclusion, not exclusion, is key!

Steering Renters

- **Steering:** when a landlord tries to attract or deter a potential tenant to or from a particular neighborhood or property based on the tenant's inclusion in one of the protected classes.
 - It's not an outright refusal to rent, but consists of efforts to deprive a person of housing opportunities in certain locations.
 - Example: Suggesting to a family with children to choose a ground floor unit rather than a unit with a balcony.
 - Example: Steering a black family away from a building with a majority white population and towards a building with a large minority background.
- All renters need to have equal access to your listings.
- Show the vacancies you have, and allow renters to indicate what units they want to see.
- When describing the property and community, focus on facts, not assumptions, about the residents or neighborhood.

Tenant Policies

As a landlord, you have every right to create policies and rules for your properties to create a safe and comfortable living environment. Rules need to be standard across all groups of people and cannot single out any one group or type of resident.

- Rules should be fair and aimed at all residents and guests, not just the demographic you think might cause a problem.
- Never make rules just for families with children, such as forbidding children from swimming in the pool or riding bikes on the premises.
 - You can, however, make rules that protect their safety, such as “Children under 12 must be supervised in the pool by a parent or guardian.”
- You can set a maximum occupancy for your rental. There are no federal laws outlining occupancy standards, only guidelines based on a variety of factors.
 - Keep occupancy language to “persons” and never specifically limit the number of children.
 - Be familiar with your state’s laws about maximum occupancy
 - State laws generally consider the square footage, bedroom size and configuration of your unit.

RESOURCES

RESOURCES

- U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity (FHEO)
 - portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp
- Check out NFHA's Fair Housing Resources page on our website for useful public service announcements, fair housing brochures, and other fair housing materials
 - www.nationalfairhousing.org
- Local fair housing organizations: <http://nationalfairhousing.org/get-local-help/>
- Get fair housing reports and recent developments on NFHA's website; click on the News & Media tab
- Support fair housing by joining NFHA; click the "JOIN" button on the home page.
- Follow NFHA on Twitter @natfairhouse; Instagram @nationalfairhousingalliance; Facebook at NATIONAL FAIR HOUSING ALLIANCE

QUESTIONS

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