

# 2026 Fair Housing Training

Presented By:

William L. Willis

Willis Law Firm

1160 Goodale Boulevard

Columbus, Ohio 43212

P. 614.324.0442

F. 614.324.0460

[wwillis@willislawohio.com](mailto:wwillis@willislawohio.com)

# Fair Housing Laws

\*Made of various State & Federal:

- Statutes
- Constitutions
- Executive orders
- Agency Regulations – Rules for Government Agencies (24 CFR 247)
- Policy and Directives – HUD Handbook – Notices
- Court Decisions – Case Law

# Civil Rights Act of 1866

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 and 1988

In addition to the Act, the following legislation & executive orders may apply & provide a basis for federal fair housing enforcement:

- Title VI of the Civil Rights Act of 1964 ([www.justice.gov](http://www.justice.gov))
- The Architectural Barriers Act of 1968 ([www.access-board.gov](http://www.access-board.gov))
- Title IX of the Education Amendments Act of 1972 ([www.justice.gov](http://www.justice.gov))
- Section 504 of the Rehabilitation Act of 1973 ([www.hud.gov](http://www.hud.gov))
- Section 109 of Title I of the Housing Act of 1974 ([hud.gov](http://hud.gov))
- The Age Discrimination Act of 1975 ([www.dol.gov](http://www.dol.gov))
- Title II of the Americans with Disabilities Act of 1990 ([www.ada.gov](http://www.ada.gov))
- The Violence Against Women Reauthorization Act of 2013
- Executive Orders ([hud.gov](http://hud.gov))
  - 11063, 11246, 12892, 12898, 13166, 13217

# Federal Protected Classes

- Race
- Color
- Religion
- National Origin
- Sex (Sexual harassment)
- Familial Status
- Handicap

State and/or Local (City Codes) Law maybe more encompassing than others. It is extremely important to appreciate where your property is located and what kind of a property you are (Market Rate / Subsidized)

# OHIO

## Ohio Revised Code 4112

- Ancestry
- Military Status

# Columbus City Code

- Sexual Orientation
- Gender Identity or Expression
- Age
- Ancestry
- Military Status

# WHAT NEW COLUMBUS CITY CODE LAWS HAVE BEEN PASSED?

1. Rental Receipts: *Columbus City Code 4551.05*
2. Renters Choice/Security Deposit: *CCC 4551.04*
3. Source of Income: *CCC 4501.778 and 4551.03*
4. Retaliation: *CCC 4509.07*
5. Columbus just added Pay To Stay Third Party Payment

*\*\*City of Columbus v Walter Thieman  
Case No. 2020 ERB 72192*

# MORE COLUMBUS CITY COUNSEL FUN

## NOVEMBER 2024

- **Rent Increase Notification: CCC 4551.07**
  - In the event Landlord elects to increase Tenant's rent 10% or more at the time of renewal, the rent increase will not take effect until 60 days after Landlord provides notice of the rent increase
- **Access to Legal Services: CCC 4551.08**
  - "covered individuals are eligible to receive legal services from a Designated Organization"
- **Local Rule. Franklin Contd.**
  - Judge D'Varga issued an order stating a set out is cancelled for the day if it is not 10 degrees by 8am

# Source of Income Also Protected In:

- Bexley
- Reynoldsburg
- Worthington
- Westerville

# Dayton City Code

- Section 32.01 et seq.
- Sexual Orientation
- Gender Identity
- Age
- Marital Status

# Dayton – New Laws 93.70

- Late fees applied at 5% monthly rent up to \$25 (no interest & late fees)
- Rent Receipts – cash or money order

# Section 93.71

- Pay to Stay – all rent plus reasonable late fees
- Affirmative defense – non payment
- Prior to judgment
- After judgment (Escrow)
  - All past due rent
  - Reasonable late fees
  - Court cost
    - Not responsible for landlords attorney fees

# CINCINNATI

- Race
- Natural hair types & hair styles commonly associated with race
- Gender
- Age
- Color
- Religion
- Disability status
- Marital status
- Sexual orientation or Transgender Status
- Ethnic
- National or Appalachian regional origin

# CINCINNATI 2020 ORDINANCES

- 871-9 – Late fee \$50 or 5%, whichever is greater. No interest on late fee, no multiple late fees on a single late payment, no late fees on 3<sup>rd</sup> party payer late pay
- 871-8 – 24 Hour Notice unless emergency 5321.04. Actual Damages, fines attorney fees, injunctive relief
- 874 – Residential Rental Registration – Non Compliance is Criminal
- 1127-07 – Avondale, East Price Hill, and Clifton – University Heights (Property Inspection)

# Section 871-9 – Cincinnati Municipal Code

- Sections 871-9 of the Cincinnati Municipal Code have been amended to require that all landlords provide a receipt to the tenant when the security deposit is paid (unless such payment is by the tenant's personal check)

## Section 871-9 – Cincinnati (Cont'd)

- 871-9 also now requires that landlords “who own and control more than 25 rental units” who require security deposits must offer to accept at least one of the following options in lieu of the required security deposit:
  1. Rental Security Insurance;
  2. Payment of the security deposit over at least 6 monthly installment payments due on the same day as rent;
  3. Payment of a reduced security deposit no greater than 50% of the monthly rent charged for that unit

Additionally, prior to entering into a rental agreement, the landlord must provide the tenant with a written notice of the available security deposit alternatives. The law also prohibits landlords from requiring any additional security should a tenant select an alternative security deposit arrangement.

# AKRON

- Age
- Creed
- Ancestry
- Marital status
- Gender
- Sexual orientation
- Military status
- Pay to Stay
- Source of Income

# TOLEDO

- Ancestry
- Age
- Military status
- Sexual orientation
- Gender identity
- Natural hair types & hair styles or head wraps commonly associated with race, culture, or religion
- Source of income
- Pay to stay

## Also Code Language Change:

- From sole reason for discrimination to “a factor leading to disparate treatment”

# Cleveland City Code

- Sexual Orientation
- Gender Identity & Expression
- Age
- Ethnic Group
- Vietnam Era or Disabled Veteran Status
- Marital Status
- Ancestry
- Coming Soon - Source of Income

# Have already adopted source of Income...

- Linndale
- South Euclid
- University Heights
- Warrensville Heights
- Cleveland Heights
- Wickliffe

# Disparate Impact

- 90% of Cuyahoga voucher participants are black.
- HUD Proposing removal of discriminatory effects regulations
  - January 14, 2026

# 5321.19 (Effective September 23, 2022)

- Specifies that the existing law prohibition preventing a municipal corporation or township from adopting any regulation that is in conflict or that regulates the rights and obligations of parties to a rental agreement regulated by the Landlord and Tenant Law applies to all political subdivisions
- Prohibits rent control and rent stabilization regulations adopted by political subdivisions, specifying that these are considered rental agreement regulations covered by the state Landlord and Tenant Law
- Allows political subdivisions to adopt and enforce rent control and rent stabilization regulations in specified circumstances
- Makes legislative findings relating to rent control and rent stabilization regulations

# SUBSIDIZED OR NOT SUBSIDIZED

That is the question...

A property that receives “Federal Financial Assistance” has more protections/obligations than a market rate/conventional property

(Section 504 and VAWA)

# RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

- HOME
- Project based Section 8
- HUD Section 236 and Section 202 properties
- Rural Development properties
- CDBG
- Rent or Sup or RAP

## **HUD 30-day Notification Requirement Prior to Termination of Lease for Non Payment of Rent: Effective January 2025**

1. PHA
2. RD
3. Project Based Voucher
4. Tax Credit Home Funds

\* No Housing Choice HUD Model Lease – you need a 30 day

Section 504 of the rehabilitation Act and HUD's implementing regulations at 24 CFR part 8 are triggered by the receipt of Federal financial assistance. Landlords who participate in Sec 811 PRA Program and/or Home Funds are subject to section 504 for the entire development.

**A few subsidized units makes the entire property Section 504**

HUD/FHEO operates two grant programs:

- Fair Housing Assistance Program (FHAP)
  - 24 CFR Part 115
- Fair Housing Initiatives Program (FHIP)
  - 24 CFR Part 125

FHAP agencies are primarily concerned with investigating and enforcing discrimination complaints

Ohio Civil Rights Commission (OCRC)

Approximately 74% of all Fair Housing Complaints  
processed by FHIP's

- Who can file a FHA complaint?
- Statute of Limitations of a FHA violation?
- Who is responsible for a violation?

# WHAT ARE TYPES OF DISCRIMINATION

- INTENTIONAL DISCRIMINATION – acts based on the persons protected class
- DISPARATE IMPACT OR DISCRIMINATORY EFFECT – when a neutral policy or procedure has a disproportionately negative impact on a protected class

# ADVERTISING PROHIBITED BY FAIR HOUSING

- Making, printing or publishing a notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class (Section 804(c) of the Act)
- Discriminatory in the terms & conditions of rental because of a resident's protected class (Examples: selective enforcement, increased deposit for wheelchair users/families)
- Refusing to rent to someone or telling someone that a rental is not available even though it is, because of his or her protected class
- Threaten, coerce, intimidate, or retaliate against anyone exercising a Fair Housing Right or assisting others in exercising these rights
- Treat everyone equally – discrimination

# DISABILITY

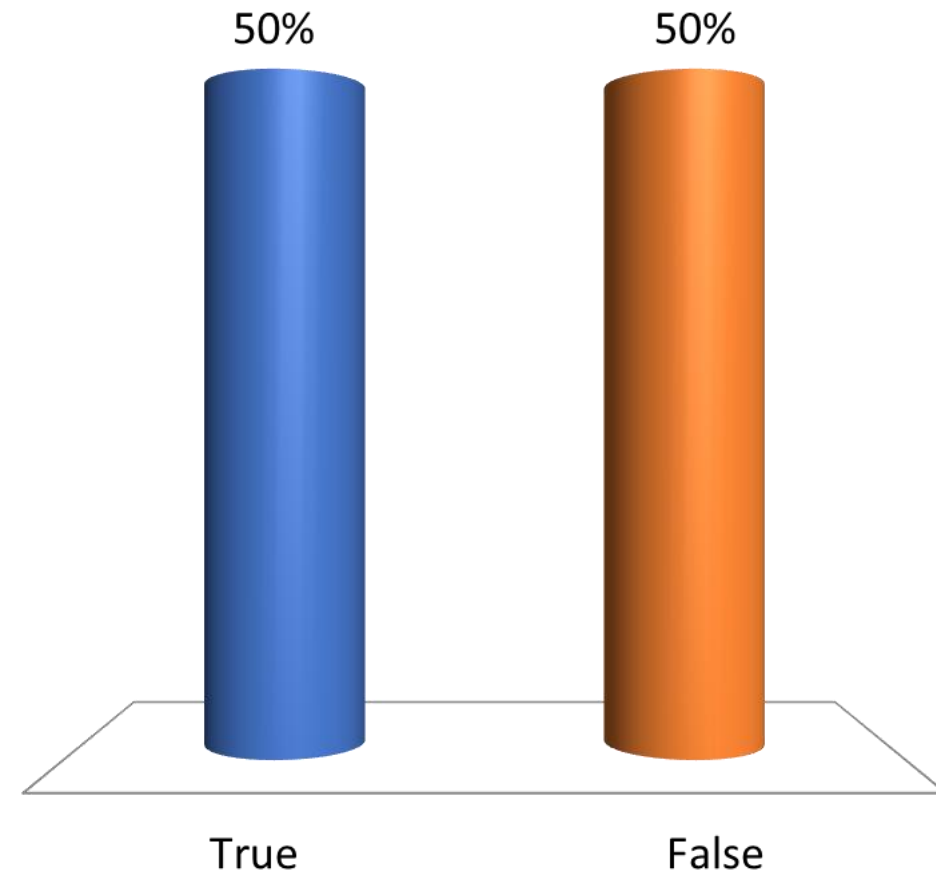
- Failing to provide reasonable accommodations to a person with a disability, refusing to allow a disabled resident to make reasonable modifications, or failing to meet facility access requirements
- Reasonable accommodations, reasonable modifications, design & construction issues, ADA Title III issues
- Not about treating everyone equally. All of these disabilities- fair housing issues require an affirmative obligation

Needless to say, you are not going to become a Fair Housing expert in a couple of hours, but you may appreciate that you are standing on “thin ice”

THE AMERICANS WITH DISABILITIES ACT (ADA) APPLIES TO ALL APARTMENT AND CONDO DWELLING UNITS

A. True

✓ B. False



THE AMERICANS WITH DISABILITIES ACT (ADA) APPLIES TO ALL APARTMENT AND CONDO DWELLING UNITS.

- The correct answer is: FALSE

- Why?

# ADA

- Title I- Employment
- Title II- Public Services
- Title III- Public Accommodation & Services Operated by Private Entities
- Title IV- Telecommunications
- Title V- Miscellaneous Provisions

# AMERICANS WITH DISABILITIES ACT (ADA)

- Covers places of public accommodation
- Those areas of a housing development which are open to the public
- Rental/Sales offices
- Other areas of the property which are rented to non-tenants
- No Grandfathering- Readily Achievable

# REQUIRED FOR PLACE OF PUBLIC ACCOMMODATION

Businesses and non-profit organizations that serve the public must remove architectural barriers when it is “readily achievable” to do so; in other words, when barrier removal is “easily accomplishable and able to be carried out without much difficulty or expense”

- Conduct a Survey
- [www.ADAchecklist.org](http://www.ADAchecklist.org)
- ADA Title III Regulation (28 CFR Part 36.304)

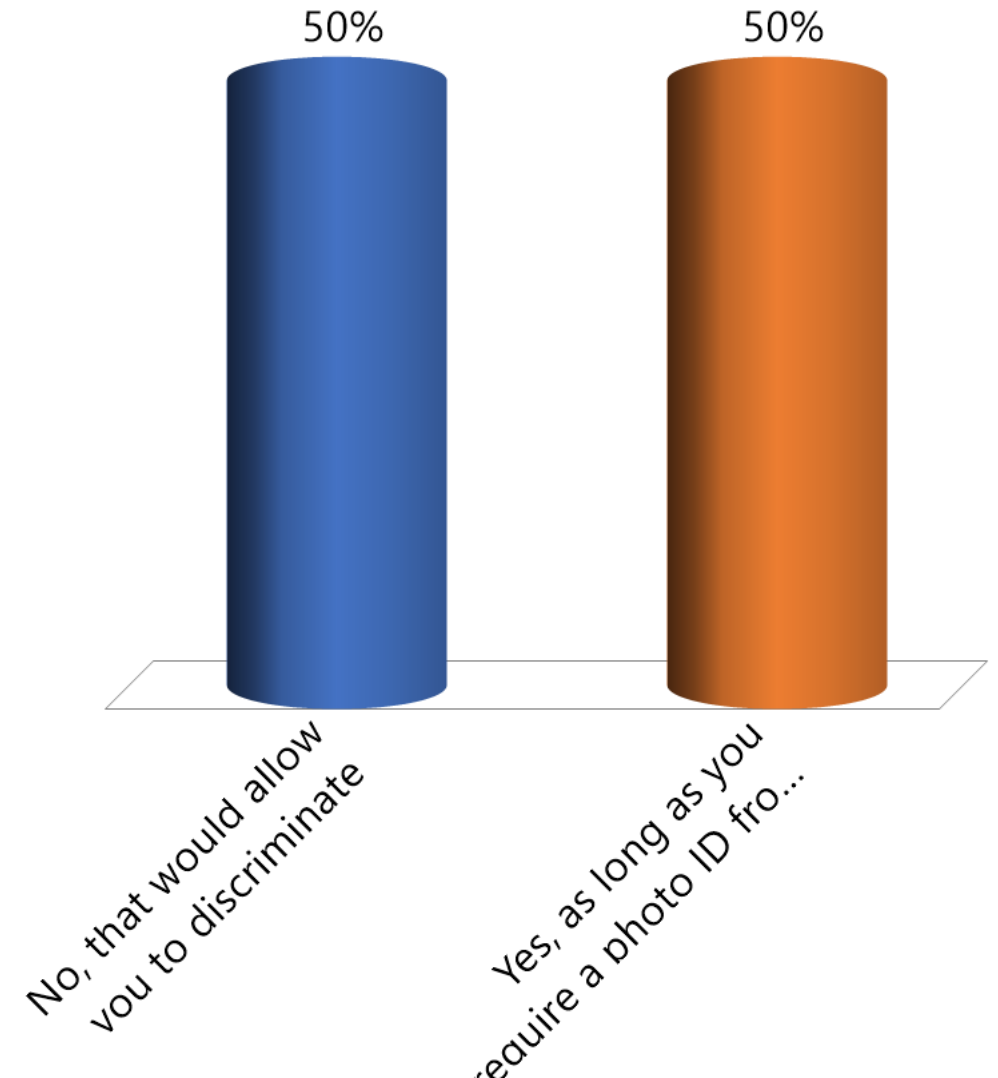
# Standardize Your MOJO

Written Policy and Operations Manual

- Standard Procedures: it is the what, where, when, and why we do it

# Is it legal to request to see photo ID from applicants?

- A. No, that would allow you to discriminate
- ✓ B. Yes, as long as you require a photo ID from everyone



Answer is YES:

- As long as request is not based on an applicant's protected class
- Drivers licenses vs other government-issued photo IDs

- You should memorialize and codify your company's methods and policies
  - Policies
  - Procedures
  - Forms
  - Marketing

- At a minimum, you should have a written policy for reasonable modifications and reasonable accommodations
- 504 Properties are required to have a policy

- Does the person answering the phone know what to say?
- Availability-things change
- Screening criteria, deposits, security deposit amount
- Demographics of the community
- Concessions

# DON'T ANSWER DISCRIMINATORY QUESTIONS

Q: What kinds of people live here?

A: Anyone who fills out an application, meets our rental criteria, and wants to live here.

Q: Do a lot of families with children live here?

A: I'm sorry, but our company policy and Fair Housing law don't permit me to answer that question.

Q: Who will be living next door to me?

A: People who have answered the same questions and filled out the same forms as we'll ask you to fill out today. In other words, qualified people.

# STEERING

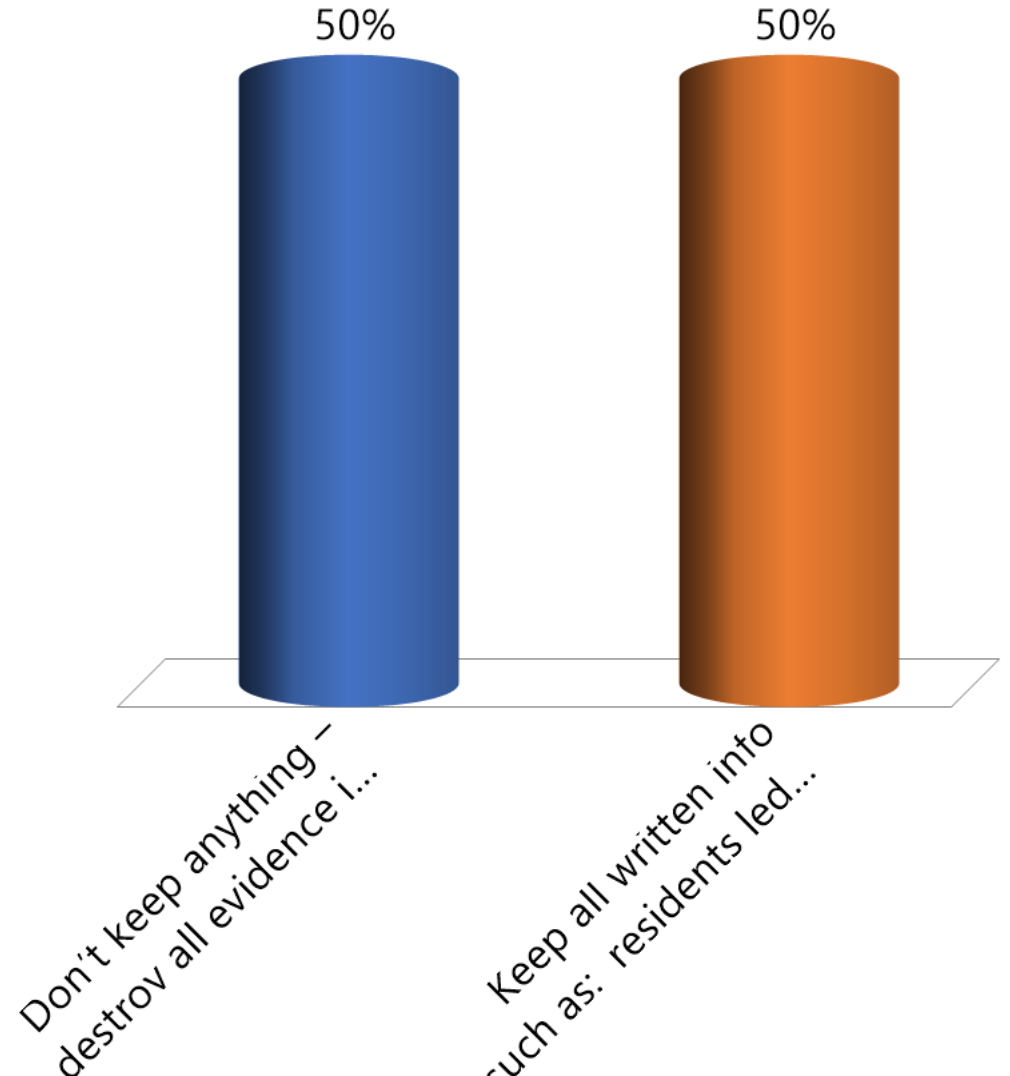
- Handicapped prospect
- Families with children
- Older folks
- Race
- Restricting families with children to certain buildings or to certain units within a building

## STEERING (CONTINUED)

- Don't refuse to show families with children apartments on higher floors or near the swimming pool
- Don't refuse to show people with disabilities, such as mobility impairment, apartments on higher floors or near the swimming pool
- Don't show people apartments only in areas of the community where people of the same race or ethnicity live

# What records should we keep to document a management's actions?

- A. Don't keep anything – destroy all evidence immediately
- ✓ B. Keep all written info such as: residents ledger/payment history; eviction documents; neighbor resident-complaints; notices & warnings (both written & verbal)



Answer: B

**\*\*Remember SOL 1 year/2 years**

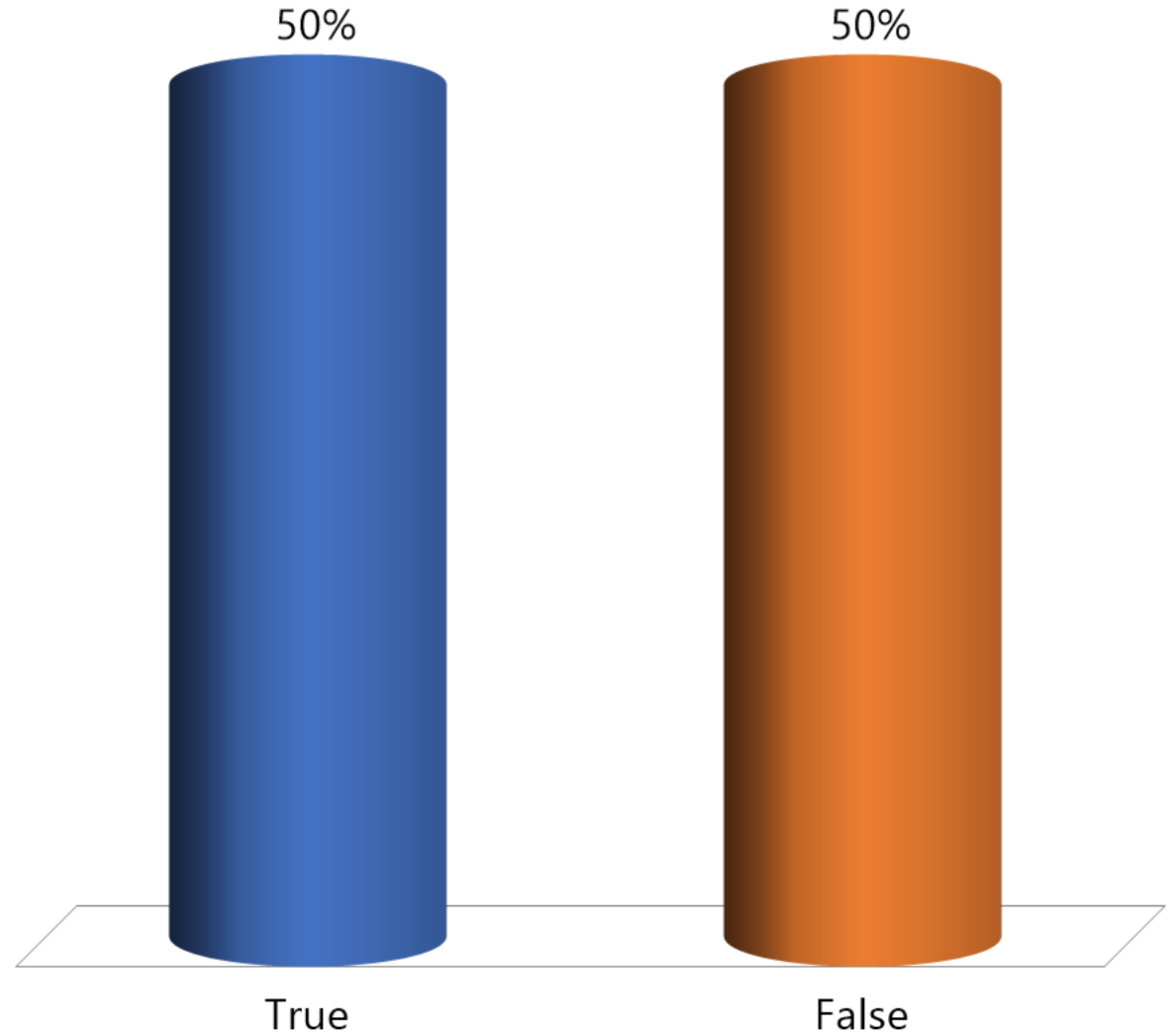
# DOCUMENT EVERYTHING!

- Make sure your acceptance policies are in writing
- If you make any changes to your criteria, document the date those changes were made and why
- When verifying information on the application, write down everything you are told and the name of the person who gave you the reference

Maintain all records for a minimum of three years, including written policies, applicant and resident contact forms, completed applications, phone logs and all other documentation in the files, as all records are subject to review if a fair housing complaint is filed. The documentation will also be necessary defense evidence

In Ohio, a management employee's phone call could be recorded and used against them

- ✓ A. True
- B. False



# FAIR HOUSING LAWS AFFECT ALL MULTIFAMILY EMPLOYEES

- People who answer the phone
- Maintenance staff
- Leasing consultants/administrators
- Owners

- Maintenance has the most interaction with residents
- In someone's home every 15 minutes
- Often not adequately trained to deal with harassment & discrimination
- You are an Agent of the Company

# Maintenance Staff

You are the eyes and ears of the company

# Document Everything!

- Maintenance software systems are not very effective if not properly used or documented
- Delays on routine work orders can happen for many reasons
- Write them down
- Lack of staff
- Outside vendor delays
- Weather
- Materials/parts on back order

- Do you have a policy that routine work orders are handled on first come, first serve basis?
- Are work orders dated – time of request?
- Completion date and time?
- Comments for delay?
- Does our policy define routine, priority, and emergency work orders?
- Do we have a system that would, if a previous request for accommodation elevates routine work order to emergency status? (AC)

You can not refuse to respond to a work order request because the manager informed you that the resident has AIDS

- Be consistent – always follow bio-hazardous policy
- Any tenant may have communicable disease
- Protocol should be the same

How you conduct & deliver maintenance services may be the grounds  
for a Fair Housing Complaint

\*Mrs. Smith vs Mrs. Jones Syndrome\*

You can not retaliate against, threaten or act in any manner to intimidate someone because they filed an OCRC claim

- Ignoring or delayed response to work order request
- Be consistent – “Miss Congeniality”
- Be professional

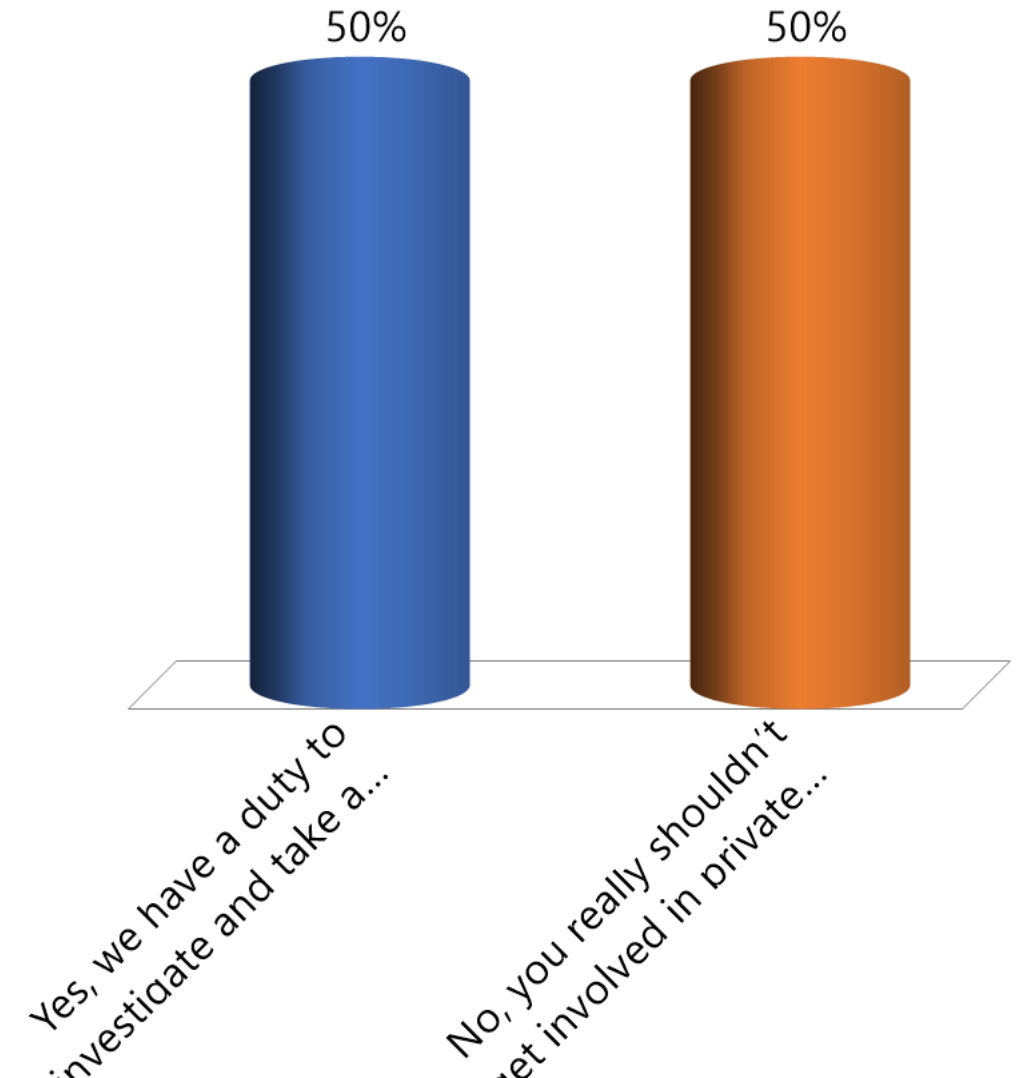
# Retaliation Is Illegal

It is illegal to retaliate against any person for making a complaint, testifying, assisting, or participating in any manner in a proceeding under HUD's or OCRC's (RC 4112) complaint process at any time, even after the investigation has been completed. The Fair Housing Act also makes it illegal to retaliate against any person because that person reported a discriminatory practice to a housing provider or other authority.

- Non-renewal 5321.17
- 5321.02 – Retaliatory action by landlord prohibited
- 5321.03 – Action for possession by landlord
  - Behind in rent
  - Holdover

A current resident alleges that her neighbor is calling her & her kids racial slurs. Does a management company have any obligation to do anything?

- ✓ A. Yes, we have a duty to investigate and take affirmative steps to remedy the harassment
- B. No, you really shouldn't get involved in private resident disputes



Answer is YES, you need to investigate.

How should we deal with a harassment complaint?

If a resident reports threats of violence or actual physical violence or criminal activity, call the police or urge the resident to do so. For non-emergency situations, tell the complaining resident that complaints are taken seriously and an investigation will be conducted.

## HUD HARRASSMENT RULE

### SEPTEMBER 2016

- HUD's final Harassment Rule is titled *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*

# Why Do I Care?

- Direct Liability
  - Own conduct
  - Failing to take action on employee or agent
  - Failing to take action on third party
- Vicarious Liability
  - A person is vicariously liable for a discriminatory housing practice by the persons agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law

# Harassment & Maintenance Staff

1. As between coworkers
  2. As between residents
- Hostile work environment
  - Quid pro quo

## Hostile Work Environment – Living Environment

Verbal – derogatory remarks, slurs, jokes, intimidation, threats of violence, innuendos, using profanity

Non Verbal – inappropriate sexually-oriented materials or pictures, inappropriate touching, body gestures, whistling

Discrimination by one resident against another should be reported to manager

ORC 2927.03 – interference with Fair Housing Rights

24 CFR 100.400 - Federal

Quid Pro Quo = this for that

“You know that new set of window blinds could be installed a little quicker if...”

- Consensual relationships with residents should be avoided; make sure they live on someone else's property
- Policy on entering unit – children under 18, inappropriately dressed
- Policy to allow maintenance to immediately leave unit when threatening or inappropriate behavior
- Document situation with onsite manager

**YOU HAVE A DUTY TO INVESTIGATE**

# Start an investigation right away....

- Interview the complaining resident and any witnesses who might have observed the incident
- Interview the alleged harasser. Let the person know that harassment based on protected class will not be tolerated
- Document the complaint and the investigation results in both tenants' files

# If harassment cannot be verified...

- Remind everyone involved that management has made a serious commitment to a housing environment free of harassment
- Promptly inform the complaining resident of the investigation results and the actions taken
- Remind everyone that retaliation against the complaining resident or witnesses will not be tolerated. Monitor for retaliation.
- For ongoing resident conflict that appears not to be associated with protected class, refer residents to the local Dispute Resolution Center or other mediation services, or consider hiring an outside consultant/mediator

# If the investigation verifies the alleged harassment....

- Proceed with progressive disciplinary action against the harasser, up to and including eviction if necessary for ongoing or serious violations
- Promptly inform the complaining resident of the investigation results and the actions taken
- Remind everyone that retaliation against the complaining resident or witnesses will not be tolerated. Monitor for retaliation.

# MASS HOUSING

Maintenance Providers and Safety Personnel's Rights and  
Responsibilities under Federal and Massachusetts State Fair Housing  
Law

EXCELLENT RESOURCE

We suggest adding a clause to your P.O. and Vender Agreements:

“Our residents are our most important asset. You agree to treat them with dignity and respect while working on the Property. You also agree to provide work and service free from discrimination and shall adhere to all applicable local, state, and federal Fair Housing and anti-discrimination statutes and regulations. You agree to indemnify and harmless from and against all liability, loss and expense (including but not limited to reasonable attorney’s fees resulting from you or your employees actions or inactions in violation of this paragraph.”

Disability is the most common FHA complaint.

Failing to grant reasonable accommodation/modifications.

# FAIR HOUSING AMENDMENTS ACT

Requires housing providers to make Reasonable Accommodations

- 42 U.S.C. § 3604(f)(3)(B)
- 24 C.F.R. § 100.204

Requires housing providers to allow Reasonable Modifications

- 42 U.S.C. § 3604(f)(3)(A)
- 24 C.F.R. § 100.203

A **reasonable accommodation** is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

# EXAMPLES

- Adjustment of the rent due date to accommodate receipt of public benefits.
- Allowing someone to transfer to a quieter unit because noise aggravates their disability.
- Waiver of “no pet” policy to accommodate service dogs or comfort animals.

A reasonable modification is a physical change to a dwelling or common area.

Note: who pays depends on type of housing

Note: restoration not always required

# EXAMPLES

- RAMPS
- FLASHING DOORBELLS
- GRAB BARS
- SOUNDPROOFING

# Protected Class Disability

## Disability Means:

- A mental or physical impairment that substantially limits at least one major life activity
- A record of an impairment
- Being regarded as having an impairment or reside/associate with person with disabilities

Must be NECESSARY and REASONABLE.

Requires a “NEXUS”.

# WHAT IS REASONABLE?

- Burden Shifting Approach
- Party requesting accommodation/modification bears the initial burden of showing that the request is “reasonable”
- Once this showing is made, the burden shifts to the housing provider to disprove reasonableness
- Housing provider is required to grant the requested accommodation/modification unless they can prove that the request is not reasonable.

# ESTABLISHING REASONABLENESS

Is the requested accommodation/modification:

- Reasonable on its face?
- Ordinarily or in the run of cases?
- Plausible?

# Disputing Reasonableness

## **Undue financial or administrative burden:**

- *Factors:* cost, benefit to tenant, financial resources of the provider, availability of equally effective less expensive alternative.
- *Note:* some cost or financial burden on provider is to be expected

## **Fundamental Alteration:**

- i.e., does the request alter the essential nature of the operations?

# WHAT IS “NECESSARY”?

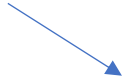
- Does the provision of the accommodation/modification promote equal opportunity for the individual to use/enjoy his or her housing?
- Will the accommodation/modification enhance the individual's quality of life by ameliorating the effects of his or her disability?

# A “NEXUS” IS REQUIRED

- There must be a connection between the tenant’s disability, the requested accommodation and the ability of the tenant to use and/or enjoy their housing
- If the tenant’s disability is not obvious or readily apparent, a housing provider may ask for documentation to support the person’s request for a reasonable accommodation
- A tenant or resident is not required to disclose their specific disability; they need only disclose enough information to document their disability-related need for the requested accommodation
- Reliable documentation of an individual’s disability and/or their need of a reasonable accommodation can include an individual’s own credible statement or documentation of receipt of disability benefits

## NEXUS

Tenant's disability is exacerbated by loud noises



Tenant requests transfer to a quieter unit and the ability to install soundproofing

## NO NEXUS

Tenant's disability is exacerbated by loud noises



Tenant requests accessible parking space

# Who is NOT protected?

- Persons *currently* engaged in illegal drug use
- Persons whose tenancy would constitute a “direct threat” to the health and safety of others (if the threat could not be mitigated with accommodation)

# MAJOR LIFE ACTIVITIES

- Functions such as caring for one's self performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working
- “Record of” means person has a history of a covered impairment, even if not currently impaired

# WHAT IS REASONABLE?

- Applicant / Tenant must have a disability as defined by the Fair Housing Act
- Accommodation must be related to the disability and necessary to allow tenant/applicant an equal opportunity to use and enjoy the unit
- Owner has the right to verify the existence of the disability (although not to the type or severity) and the need for the accommodation

Whether a requested accommodation is required by law is “highly fact-specific, requiring a case-by-case determination”

# Admissions & Screening

Generally housing providers may not ask questions about disability, unless an individual is:

1. Requesting an accommodation/modification;
2. Applying for a housing program designated for persons with disabilities;
3. Applying for a preference or priority for persons with disabilities, or
4. Trying to qualify for an allowance that reduces rent because of a disability

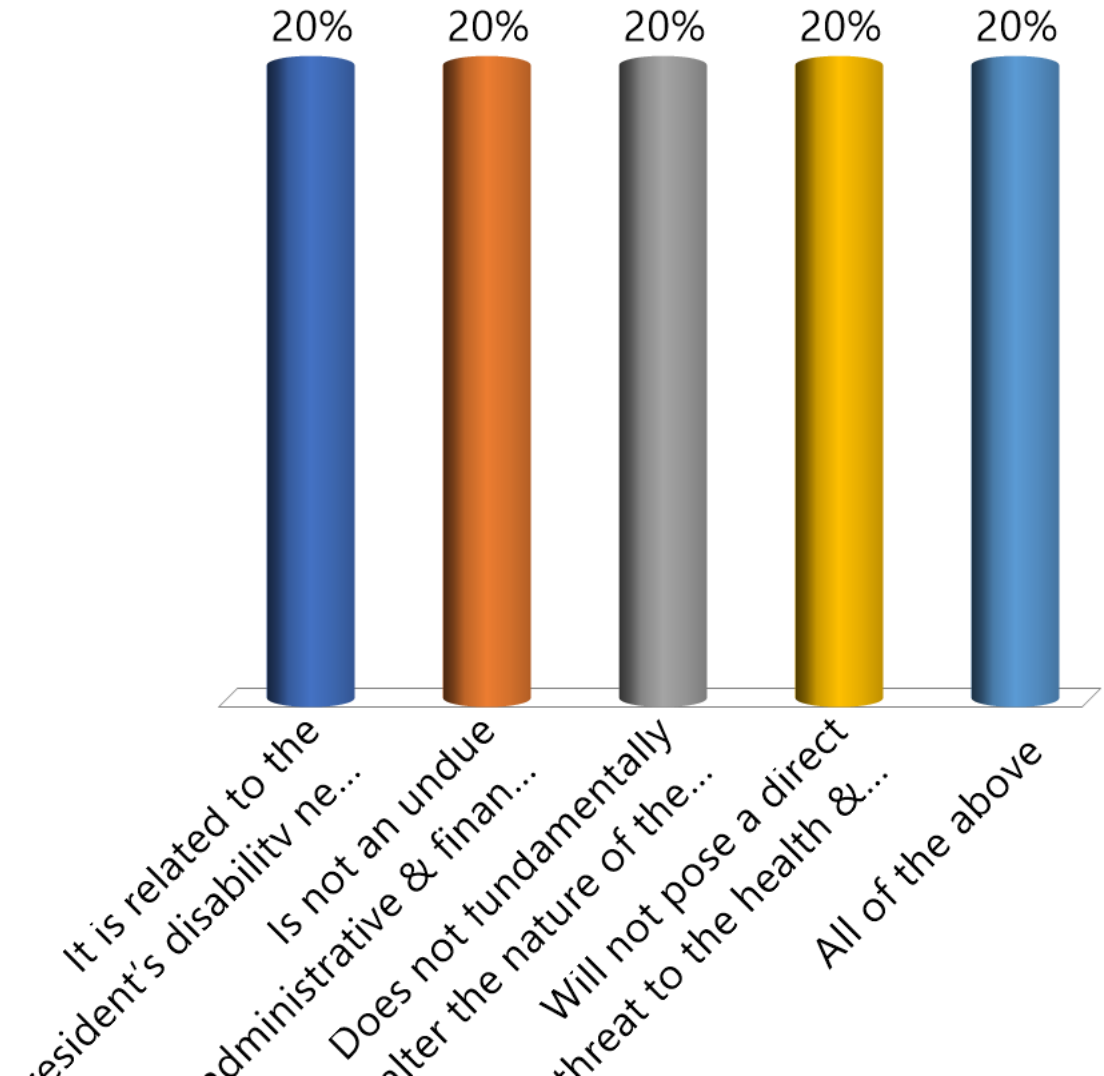
# When can a person with a disability request an accommodation or modification?

The need for an accommodation/modification may arise at any time:

- When applying for housing or purchasing housing
- During the tenancy/residency
- To avoid an eviction, foreclosure, or other action that affects their housing

# A resident's request for accommodation is reasonable if:

- A. It is related to the resident's disability needs
- B. Is not an undue administrative & financial burden for the housing provider
- C. Does not fundamentally alter the nature of the provider's operations
- D. Will not pose a direct threat to the health & safety of others or will not result in physical damage to property
- ✓ E. All of the above



# When must an accommodation be provided?

- When requested, a housing provider must provide a reasonable accommodation, unless the provider can show it will:
  - Impose an undue financial or administrative burden, or
  - Result in a “fundamental alteration” in the service provided

- Overlook Mutual Homes, Inc. v. Spencer et al, No. 3:2007cv00398 – United States District Court for the Southern District of Ohio
- United States Court of Appeals for the Sixth Circuit
  - File Name 11a0061N.06-09-4036

Sixth Circuit

Seventh Circuit

Kentucky

Wisconsin

Michigan

Illinois

Ohio

Indiana

Tennessee

Plaintiff must prove all of the following elements: (1) that the plaintiff or his associate is handicapped within the meaning of 42 USC § 3602(h);

- (2) that the defendant knew or should reasonably be expected to know of the handicap
- (3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling;
- (4) that the accommodation is reasonable;
- (5) that defendant refused to make requested accommodation

The Sixth Circuit, however, has held that an accommodation must be **necessary**. See Howard v. City of Beavercreek, 276 F. 3d 802, 806 (6<sup>th</sup> Cir. 2002) (noting that “the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects the disability”) (quoting Bronk v. Ineichen, 54 F 3d. 425, 429 [7<sup>th</sup> Cir.]). Thus, the third above quoted element has been effectively modified by the Sixth Circuit to replace the “may be” with “is”

# BRONK CASE

- The accommodation must facilitate the disabled persons' ability to function

Vs

- The accommodation must survive a cost-benefit balancing that takes both parties' needs into account

- Bronk v. Ineichen – 42 USC § 3604 (f)(2)
- Two adjectives, “reasonable”, “necessary” figure prominently in this definition, modifying both the term “accommodations” and [Landlord’s] obligations under the law.  
(Balancing-Test)

Does your company/organization utilize a verification that asks the medical nexus question?

Since reviewing accommodations is very fact-specific, “no one size fits all” verification is possible

# Sample Verification

- False Claims
- Qui Tam Actions
- Perjury
- Testify in Court of Law
- “I acknowledge my answers to these questions to be my professional opinion made in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards”

We can not make a resident use our verification forms.

- Obviously disabled
- SSI disabled under 65

# SERVICE ANIMAL vs ASSISTANCE ANIMAL

# Under the Americans with Disabilities Act (ADA)

Service animal must be:

“Individually trained” to do work or perform tasks for the benefit of an individual with a disability”

# UNDER THE ADA

- Limited to dogs and miniature horses
- Generally, most permit “service animals” to accompany people with disabilities (PWD) in all areas where members of the public are allowed to go
- Generally, service animals must be harnessed/leashed. Must be under PWD’s control

## UNDER THE ADA (continued)

- PWD cannot be asked to remove animal unless: (1) animal is out of control and PWD does not take effective action to control, or (2) animal is not housebroken. If legitimate reason to ask for removal, staff must offer the PWD the opportunity to obtain good/services without the animal's presence

# UNDER THE ADA

- Staff may only ask two questions:
  - (1) is the animal a service animal because of a disability, and
  - (2) what work or service has the animal been trained to perform

# UNDER THE ADA

- Staff cannot ask about the person's disability
- Require medial documentation
- Require special identification
- Require PWD to demonstrate the work or task

# UNDER FHA or 504

HUD Regulations do not use or define terms such as:

- Service Animal
- Support Animal
- Therapy Animal
- Companion Animal
- Emotional Support Animal

UNDER FHA and 504

Use the term “Assistance Animal”

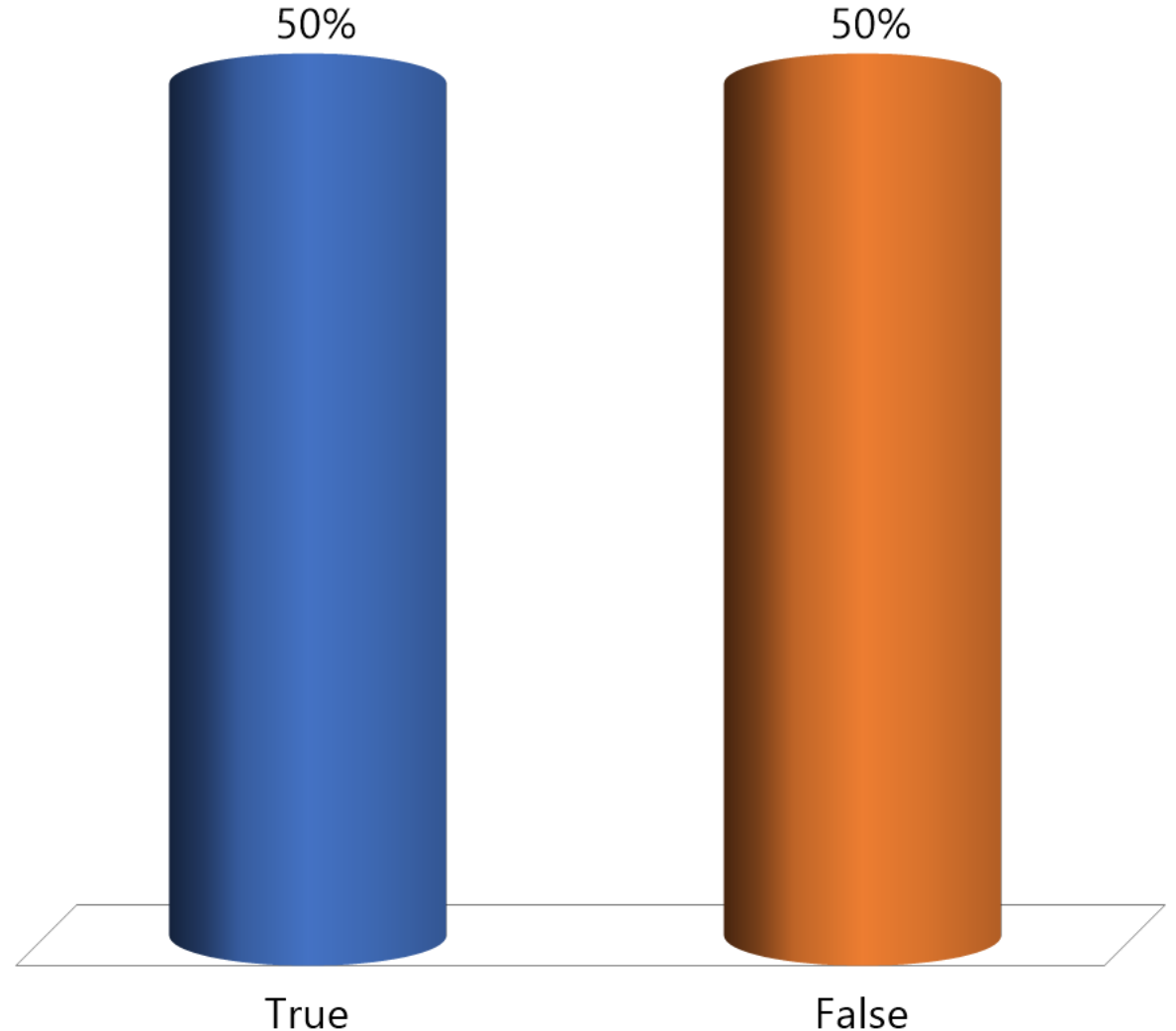
# UNDER FHA and 504

FEDERAL STATUTES AND REGULATIONS DO NOT ATTEMPT TO DEFINE THE ANIMALS THAT CAN BE USED AS ASSISTANCE ANIMALS

- Monkeys, horses, birds, goats, chickens and pot bellied pigs
- “Animal works for the benefit of the disabled person by aiding him to cope with his disability”
- New HUD FHEO 2020-1 Unique Animals

It is ok to impose a weight restriction on assistance & service animals as long as it is consistent with your pet rules for all residents

- A. True
- ✓ B. False



The correct answer is : B

- NOT A PET
- No weight or breed restrictions
- Case by case

- There are no Federal or State “credentials” for assistance animals
- Federal and Ohio laws do not define the animals that can be used as an assistance animal
- Assistance animals do not necessarily need to be trained: animal may relieve depression and anxiety
- Pet deposit must be waived
- Breed, size, and weight limitations may not be applied

Assistance Animal in dwelling unit vs entire community

# THE OHIO ATTORNEY GENERAL AND THE OCRC REVISED T-31 IN AUGUST 2019

Some Interesting Points:

1. \*If an assistance animal becomes threatening, hostile or aggressive, or if the animal is unusually disruptive, and the animals owner does not take effective action to control the animal; or if the animal is not housebroken. In these situations, although the animal may be removed, the disabled tenant may be asked to leave or be evicted because of the animal assistant

\*\*\*So do we issue a 30 Day under 5321.11?

2. No pet fees; no deposits
3. Policy definition where the verification can come from:
  - i. Physician, including Medical Doctor, Podiatrist, Doctor of Osteopathic Medicine
  - ii. Ophthalmologist and Optometrist
  - iii. Chiropractor
  - iv. Physicians Assistant
  - v. Psychiatrist and Psychologist
  - vi. Registered Nurse, Advanced Practice Nurse, Nurse Practitioner & Nurse Anesthetist
  - vii. Physical Therapist and Occupational Therapist
  - viii. Audiologist
  - ix. Speech Pathologist
  - x. Licensed Counselor, Social Worker or Therapist

\*\*This is not an exhaustive list

- Tenant supplied verification
- Veteran's Services Commission
- Obviously disabled
- Check to see if on SSI Disability

# What about out of State Providers?

Ohio law defines telemedicine as, “the practice of medicine in this state through the use of any communication, including oral, written, or electronic communication, by a physician located outside this state.”

ORC 4731.296. (The conduct, responsibilities and obligations of telemed providers are outlined in various provisions of the Ohio Revised and Administrative Codes. Health care providers are encouraged to read and follow these regulations. See ORC § 4731.22(B)(20); 5164.95; 4715.43; 4732.33; O.A.C.§ 5160-1-18.)

Telehealth service means “a health care service delivered to a patient through the use of interactive audio, video, or other telecommunications or electronic technology from a site other than the site where the patient is located. (ORC § 5164.95)

The Commission takes the position that a health services provider does not have to hold an Ohio License to verify the need for the animal.

First, a provider, who holds a valid Ohio telemedicine certificate, may so attest. Additionally, if the patient has seen a health care professional licensed in another state, the provider may verify the disability or need for an ESA as long as the last contact with the patient occurred within the past twelve months from the date of the accommodation request.

**IS THE PROSPECT FROM CALIFORNIA?**

- Is the provider licensed in the state of Ohio? Telemedicine Certificate?
- When was the prospect tenant last seen?
- As a result, if a provider is not licensed in Ohio, does not hold an Ohio telemedicine certificate; or has not seen the patient within the past twelve months, then it is reasonable for a housing provider to require the tenant to obtain medical verification from an Ohio licensed or telemedicine-certified provider

OCRC recommends allowing applicants and residents a “reasonable” time and opportunity to secure appropriate documentation

# Remember the Sample Verification Slide?

- Don't ask for more than you need
- Don't ask an applicant or tenant to sign a release allowing open access to medical records or medical providers or to provide detailed or extensive information or answer extensive questions about the disability
- Observable Disability
- SSDI or SSI Under 65

# HUD FHEO-2020-01

Issued January 28, 2020

- The First Section – best practices for Reasonable Accommodations requests involving animals
- The Second Section – Guidance on documenting an individual's need for Assistance Animals in housing

**(SEE HANDOUT)**

# IMPORTANT POINTS CONCERNING FHEO 2020-01

1. A landlord may also use its discretion to accept a tenant/prospects information and grant the animal
2. Requests do not need to be in writing and do not need to contain the “magic” words “reasonable accommodation”. Cannot mandate certain forms. Must review on case-by-case basis
3. Keep list/information concerning reasonable accommodation requests.
4. A resident may request a reasonable accommodation either before or after acquiring the assistance animal

# IMPORTANT POINTS CONCERNING FHEO 2020-01

5. A person with a disability may make a reasonable accommodation request ANYTIME: even after eviction
6. The request doesn't need to be made by the prospect/tenant can be made by others
7. If tenant has an observable disability (blindness, hearing, mobility limitations, stroke, parkinsons, cerebral palsy...)
8. SSDI or SSI for a person under 65, veterans disability benefits
9. Website Certifications by themselves generally not sufficient
10. Telehealth from a licensed healthcare professional "when the provider has personal knowledge of the individual" (compare to OCRC T-31)

# IMPORTANT POINTS CONCERNING FHEO 2020-01

11. Unique animals – requestor has burden of demonstrating a disability related need
12. Reasonable accommodation determination should be prompt – generally within 10 days of receiving documentation
13. Direct Threat recognized
14. Before denying a reasonable accommodation for lack of information (disability or disability need) housing provider is encouraged to engage in a good-faith dialogue (discussing alternative accommodation that can satisfy the tenant's needs without imposing an undue burden or fundamentally altering the provider's program.
15. HUD recommends best practice guidance

# Can a person have more than one service or emotional support animal?

While there do not seem to be any cases dealing with the issue of multiple emotional support animals, the basic requirements for this reasonable accommodation would still be the same. In other words, if a person were claiming the need from his or her physical or medical professional. The practitioner would need to provide documentation that each support animal alleviated some symptom of the disability.

# OCRC Policy T-31

Generally, one ESA is sufficient. However, the number may vary depending upon the number of residents and the type(s) of qualifying medical conditions necessitating the ESA. In all cases, an appropriate health services provider must verify the need for each animal for independent purposes (i.e. one animal alerts a child of impending epileptic seizures, while a second animal ameliorates the effects of a mother's high blood pressure). Reasonableness is factored into this standard. For example, the Commission acknowledges it would likely be an undue hardship for a landlord to waive a no pet policy to allow 15 cats in a one-bedroom apartment. Again, the number of animals allowed is best determined on a case-by-case basis.

# What about the assistance animals of my guests?

HUD does not cover this issue specifically in its notice to housing providers. However, the underlying purpose of the FHA is to provide an equal opportunity to use and enjoy housing regardless of disability. If a tenant cannot have a particular guest over who uses a service or assistance animal, then the tenant may be deprived of the ability to use and enjoy his or her dwelling based on the presence of a disability. There do not yet appear to be any published legal causes that have reviewed this issue.

In 2011, the United States District Court for the District of Nevada entered a consent decree (a settlement of a lawsuit where a party agrees to take an action without admitting liability) on this issue. The complaint in the underlying case alleged that the defendants declined to allow a friend of their tenants who uses a service animal to visit the tenants apartment. The defendants then evicted the tenants based on the service animal's presence in the apartment. As plaintiff, the United States alleged that this denied the tenants the "full enjoyment of their apartment at Defendant's apartment building." See U.S. vs DeAngeli, Case No. 3:11-CV-00796-RCJ-WGC (July 8, 2013), available at <http://www.justice.gov/sites/default/files/crl/legacy/2013/10/30/deangelisettle.pdf>. As part of the agreement, the defendants had to agree to comply with the Fair Housing Act, create a policy for assistance animals in their apartment building, undergo education and training on the issue, and abide other requirements of the consent decree

# FAMILIAL STATUS ISSUES

Includes persons who are

- Pregnant
- Parent/legal custodian of child living with them who is under 18
- Securing custody of a child

# Occupancy Standards

- No National Occupancy Policy
- Keating Memo – HUD Guidelines
- 2 persons per bedroom BUT:
  - Number and size of sleeping area
  - Overall size of unit
  - Dens, studys, or other areas that could be used as bedroom

Ohio Civil Rights Commission Guidance  
Manual T-27

Occupancy Standards

2 Persons per Bedroom is presumed reasonable

BUT.....

# Review Your Local Code

- Columbus City Code 4541.01
- Columbus City Code 4541.04 Basements
- Columbus City Code 4541.04 Closets

\*International Property Maintenance Code

# Be Careful; Be Reasonable

- Per-Capita Charges – legitimate nondiscriminatory – objective
- Children and parents cannot share rooms
- Children over age of 5 of the opposite sex must have separate bedrooms

Ohio Civil Rights Commission  
Guidance Manual T-30  
Rules & Regulations relating to Children

RC 4112.02(H)(4) prohibits any person from discriminating in the terms or conditions of renting housing because of familial status

## Familial Status and Rules and Regulations

### Act Not Actor

- Do not have rules that specifically target children, such as:
- Parents are responsible for child's damage; curfews; bikes; walkways
- Pool rules – use health and safety laws for setting age restrictions
- Fitness Room, saunas & such – use local health & safety codes; industry standards – equipment manufacture's health/weight recommendations
  - Equipment use vs who can enter the room

**\*\*Senior Housing is exempted from familial status laws\*\***

OCRC T-30 also echo RC 4112.02(H)(7) prohibits any person from printing, publishing, or making any statement relating to the rental of housing accommodations that indicates any preference, limitation, specification, or discrimination based upon familial status

The inclusion of familial status as a protected class under these sections, however, was never meant to limit the ability of landlords or other property managers to develop and implement reasonable rules and regulations relating to the use of facilities associated with dwellings for the health and safety of persons.

(54 Fed. Reg. 3232 (Jan 23, 1989))

Therefore, as a general rule, landlords and property managers are permitted to issue reasonable rules and regulations relating to children, so long as those rules and regulations are motivated by legitimate concerns for health and safety of all tenants, and not by discriminatory animus against families with children.

-Examples of “No No’s”

-Discouraging kids on second floor apartments

-Steering families away from lakes, ponds, and/or other hazardous/unsafe living conditions

# Lead-Based Paint (Pre 1978)

Q: May a housing provider affirmatively market units where lead-based paint hazards have been controlled to families with children?

A: Yes, HUD also allows holding controlled unit for families

# Lead Based Paint

Q: May a housing provider exclude families with children from units where lead-based paint hazards have not been controlled?

A: Must advise family that unit has not undergone LHC treatments, but you cannot decline family

- can seek to terminate tenancy
- can require temporary relocation

\*HUD November 27, 2000 Memo Subject The Fair Housing Act & Lead Based Paint

# Age of Occupant

RC 4112.02(H)(8) states except as otherwise provided in division (H)(8) or (17) of this section, [it is a violation], make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions of entries concerning race, color, religion, sex, military status, familial status, ancestry, or national origin in connection with the sale or lease of any housing accommodation

“The Commission finds problem cause with respect to respondents’ rental application making inquiries of applicants that would reveal an applicants protected class status” ...

**\*\*Do not ask for the age and/or birthdate of occupants on your application**

**\*\*Do not alter HUD Forms**

# Other Common Reasonable Accommodation Requests

# VAWA

- HUD is doing more VAWA violation charges
- Know your VAWA Policy
- Reach out to your upper management/counsel for unique situations and compliance

# Housing Choice Voucher Shopping

- Waitlist Big City vs Small Rural
- 12 month jurisdiction requirement
- Immediate request for R/A to port HCV
- Never intended to live in small rural PHA
- Hinneberg vs Big Stone County Housing and Redevelopment Authority – Supreme Court Minnesota
- Fundamental alteration
- Ohio Civil Rights Commission NPC (12-2023)

# Early Termination of Lease due to Crime

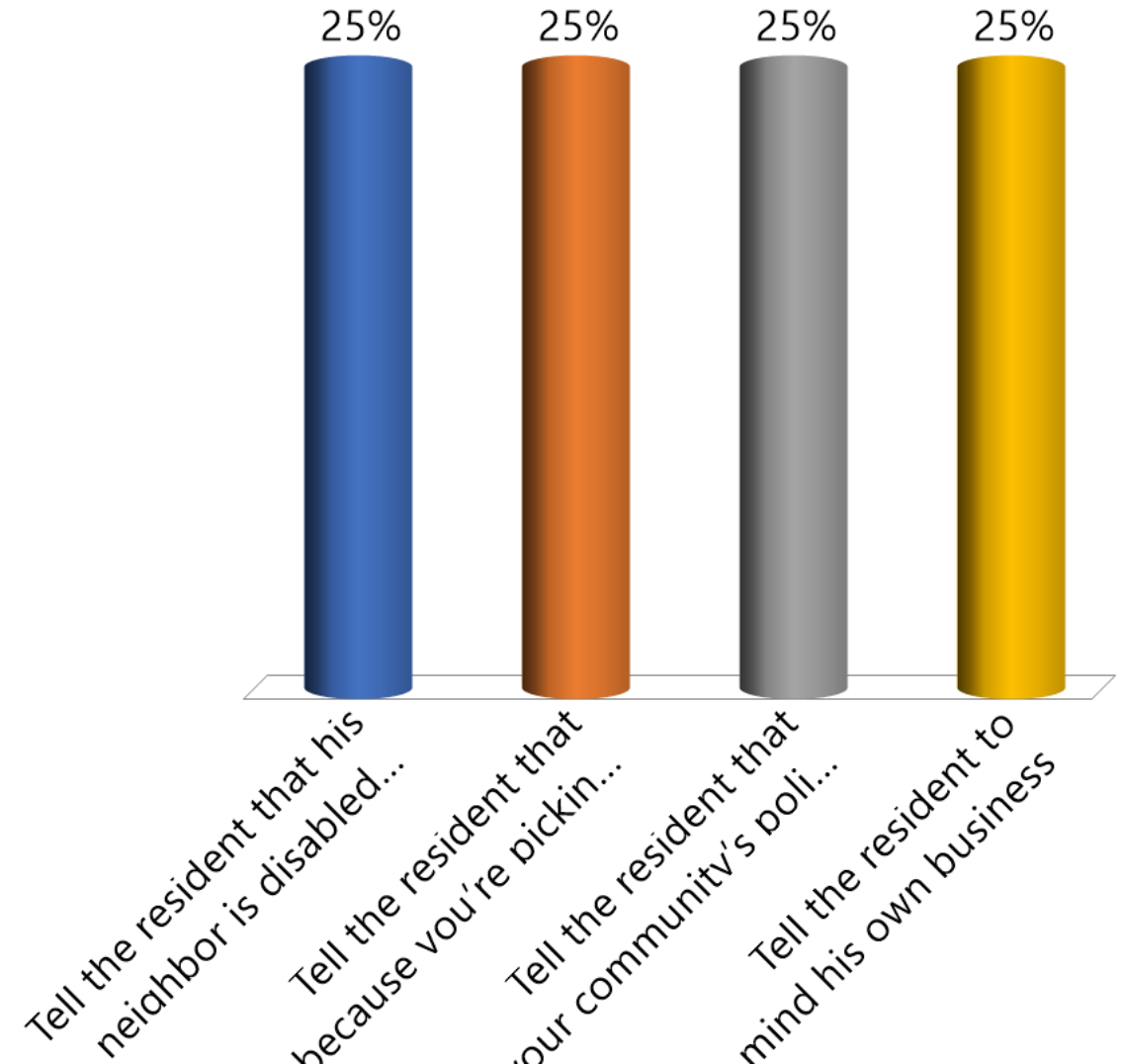
- Charging party alleged disability
- Requested early termination of lease because crime rate in area was triggering anxiety/PTSD
- Interactive Process
- Offered other units
- Supply an analysis of potential area charging Party wished to located (crime doesn't have a zip code)
- Ohio Civil Rights Commission NPC (2-2024)

# QUESTION...

A resident notices that maintenance staff comes twice a week to pick up his neighbor's garbage. The resident doesn't know that the staff is doing this as a reasonable accommodation because his neighbor has AIDS. The resident comes to your office and asks why his neighbor is getting special treatment. What do you tell him?

# Please make your selection...

- A. Tell the resident that his neighbor is disabled with a respiratory illness & is getting his garbage picked up as a reasonable accommodation. You don't think that it would be nice to say that his neighbor has AIDS.
- B. Tell the resident that because you're picking up his neighbor's garbage, you'll pick up his as well.
- ✓ C. Tell the resident that your community's policy & fair housing law prohibit you from discussing other residents with him
- D. Tell the resident to mind his own business



The correct answer is: C

We comply with all state & federal laws, and are not permitted to discuss other residents with you

# Unit Transfers

Tenants with disabilities can request to be transferred to another available unit of equal value, if the transfer is medically necessary. For instance, a tenant with a worsening physical disability should be allowed to transfer from their third-floor unit to a similar ground floor unit due to difficulties climbing the stairs.

Examples: SAD, noise, smoke/other smells

# Parking

A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis.

What should the housing provider do?

The housing provider should make an exception to its policy of not providing assigned parking spaces to accommodate this resident

# Caregivers

Tenants with disabilities may find it medically necessary to have 24-hour caregiver live in their unit. A request to have a live-in caregiver must be granted unless it poses an undue financial or administrative burden, or fundamentally alters the housing providers business. Housing providers cannot require that a caregiver be added to the lease, and in most cases, a rent increase is not permissible

## **LIVE-IN-AIDES**

The definition of a live-in aide is recorded in 24 CFR § 5.403 which states that a live-in aide is a person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who is: (1) determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3) would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition, a live-in aide is not a member of the assisted family and is not entitled to the HCV as the remaining member of the tenant family.

## **LIVE-IN-AIDES (continued)**

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability. The PHA may disapprove a particular person as a live-in aide if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

## **LIVE-IN-AIDES (continued)**

Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom must not be approved for a live-in aide under these circumstances.

## **LIVE-IN-AIDES (continued)**

A PHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have PHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of a live-in aide. The PHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

**What about an extra bedroom for exercise equipment?**

# Early Termination of a Lease

- Tenant with a disability can no longer use the dwelling because it has become inaccessible
- “Accommodation” = “an equal opportunity to use & enjoy the dwelling unit”
- Transfer as alternative
- Undue burden
  - Difficulty of re-letting
  - Time removing on lease
  - Ability to re-let
  - Vacancy rates

# INTERACTIVE PROCESS:

Even if the landlord can demonstrate that termination or substitution would not be reasonable, a lesser accommodation may be reasonable—for example, permitting termination or substitution in exchange for a reasonable fee that is less than the rent remaining on the lease term.

# RENT

Many tenants with disabilities receive social security income as their primary money source, and social security checks often arrive on the third day of the month or later. Monthly rent is usually due on the first day of the month. Disabled tenants may request that their housing provider accommodate their disability by moving their rent due date to coincide with their social security check. This would allow them to avoid paying costly late fees every month and/or be in constant risk of eviction.

Fair Housing Rights Center in S.E. Pennsylvania v. Morgan Properties  
Mgt Co LLC 2018 WL 4489653 (E.D. Pa Sept 2018)

\*Every disabled tenant requesting a change in rent due date must at least have reasonable accommodation analyzed

# HOARDING

Hoarding officially recognized as Mental Disorder in May 2013

Hoarding that violates health and safety codes is a lease violation

In Ohio, any violation of ORC 5321.05 (Tenant Obligations under Landlord-Tenant Act) requires a 30-Day Notice with Rights to Cure pursuant to RC 5321.11

# 5321.05 Tenant Obligations

- A tenant who is a party to a rental agreement shall do all of the following:
  - Keep that part of the premises that he occupies & uses safe & sanitary
  - Dispose of all rubbish, garbage, & other waste in a clean, safe, & sanitary manner
  - Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits
  - Use & operate all electrical & plumbing fixtures properly
  - Comply with the requirements imposed on tenants by all applicable state & local housing, health, & safety codes

## 5321.11 Failure of tenant to fulfill obligations – remedies of landlord

If the tenant fails to fulfill any obligation imposed upon him by section 5321.05 of the Revised Code that materially affects health & safety, other than the obligation described in division (A)(9) of that section, the landlord may deliver a written notice of this fact to the tenant specifying the act or omission that constitutes noncompliance with the pertinent obligations & specifying that the rental agreement will terminate upon a date specified in the notice, not less than 30 days after receipt of the notice. If the tenant fails to remedy the condition specified in the notice, the rental agreement shall terminate as provided in the notice.

# Examples of Lease Violations

- Odor
- Infestation or failing to prepare
- Blocking Exits
- Fire Hazards
  - Blocked Exits
  - Papers near stove, heating vents
  - Storing combustible items
  - Resident a smoker?

# Examples of Lease Violations (Continued)

- Animals
  - Multiple
  - Feces,untended litter
  - Damage to carpet, other property
  - Garbage
  - Health/fire department citations
  - Unusable bathroom facilities

# Evidence (document, document, document)

- Photos/videos – legal if obtain proper entry
- Health or Fire Department Citations
  - Make friends w/ inspectors, ask them to talk at residents' meeting
  - Make joint approach to specific cases
  - Your court action is defense against their citation
  - Neighbor complaints

# Standard Lease Enforcement

Major (serious threats to health & safety of others) or repeated violations

- Eviction notice with reasons stated
- Meet with Resident to discuss
  - Plan to return to lease compliance
  - Right to Reasonable Accommodations
- Minor Violations
  - Lease violation notice
  - Meet as above

# Initiate & Accommodate

Hoarders usually don't ask for accommodation. In fact, many are secretive & their disorders may go unnoticed for years until a neighbor complains or maintenance has to enter the apartment to make repairs. While hoarders should ask for accommodation, Fair Housing law trends suggest that if a landlord knows or should have known about the disability then there is a duty by the property to accommodate

Remember a reasonable accommodation must be made after the notice and/or eviction has started.

# Hoarding

- Means Time & Assistance to clean out enough to achieve lease compliance
- Does not mean health and safety violations can continue indefinitely
- Does mean an imminent threat (usually fire, structural or contamination) must be addressed immediately

Resident has the right to refuse accommodation

## Meeting with the Resident

- Inform resident
- Give list of specific lease violations
  - In person & in writing
  - Go over each specific violation, in states if necessary
- Show resident the evidence
- Cite lease or health & fire codes
- Offer to make reasonable accommodation
- Offer to help w/ removal/cleaning plan
- Give RC 5321.11 3-Day Notice and go to court earlier rather than later

# Developing a Plan

- Involve a service provider in plan, if possible
  - They have time
  - They have expertise
- Make agreement through the Court
  - So resident understands seriousness
  - So it is enforceable
  - So it can include lease addendum
- The greater the danger, the more certain the plan must be including the resident's cooperation

# Accommodation Plan Includes

- Specific standards in specific areas
- The timeline for each step and the deadline
- Who will do removal
- Who will check and how often
- Services resident will accept
- Relevant releases
- Method to ensure permanent resolution of problem

Ohio Issue 2  
November 2023

Prohibition of Marijuana Cultivation/Growing: Pursuant to Ohio law,  
tenant agrees and understands that Landlord prohibits the  
cultivation/growing of marijuana and any other derivation of the same  
on the property or in the apartment unit

# OHIO'S MEDICAL MARIJUANA LAW

- September 8, 2016 HB 523
- Qualifying medical conditions, AIDS, Alzheimers, Cancer
- Registration for patient or “caregiver”
- Different regulations for cultivator, processors
- 90 day supply limit
- Smoking prohibited
- Vaporization permitted

# **OHIO'S MEDICAL MARIJUANA LAW**

## **LANDLORD-TENANT**

“Notwithstanding any conflicting provision of the Revised Code, a person’s status as a registered patient or caregiver shall not be used as the sole or primary basis for rejecting the person as a tenant unless the rejection is required by federal law.”

## **EMPLOYMENT**

Section 3796.28. (A) Nothing in this chapter does any of the following:

(1) Requires an employer to permit or accommodate an employee’s use, possession, or distribution of medical marijuana;

# FEDERAL LAW

Under Federal law, marijuana remains a Schedule I substance under the Controlled Substance Act

HUD has released several memos that require Public Housing Authorities and owners of subsidized properties to deny admission to assisted housing for any household with a member determined to be illegally using a controlled substance, e.g., marijuana. Further, owners and/or PHA's may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana and/or permit or provide reasonable accommodation for the same.

PHA's & Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. HUD affords owners & PHA's the discretion to evict or not evict current tenants for their use of marijuana (case by case).

In addition to the HUD guidance, a federal district court in Michigan faced with a resident's request for medical marijuana as a reasonable accommodation because of a disability, concluded that as marijuana is still classified as a controlled substance under federal law, the resident was not entitled to a reasonable accommodation for medical marijuana use under the FHA.

In so ruling, the judge reasoned that residents seeking accommodations for medical marijuana are categorically disqualified from relief pursuant to the FHA, Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act as the requested accommodation is not reasonable and would constitute a fundamental alteration in the nature of the housing operation.

# Good Resources

Tobacco Control Legal Consortium:

Smoking marijuana in multi-unit residential settings

IREM Medical Marijuana in property management: updated June 2016

# Accessible Design Issues

- Affected projects are developments with buildings containing 4 or more units that were designed or constructed for first occupancy on or after March 13, 1991
- If it is an elevator building, all ground floor units are “covered units”. All units in buildings without elevators must have features required by the Act

# Accessible Design Issues

- NOTE: there is a narrow exception that provides that a non-elevator building in a development need not meet all of the Act's requirements if it is impractical to have an accessible entrance to the non-elevator building because of hilly terrain or other characteristics of the site

# Features Required by the Fair Housing Act Include:

- Accessible building entrance on an accessible route
- Common and public use areas
- Useable doors
- Accessible route into & through the covered unit
- Accessible environmental controls
- Reinforced bathroom walls for grab bars
- Useable kitchens and bathrooms

April 30, 2013

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT AND THE DEPARTMENT  
OF JUSTICE

ACCESSIBILITY (DESIGN & CONSTRUCTION)  
REQUIREMENTS FOR COVERED MULTIFAMILY  
DWELLINGS UNDER THE FAIR HOUSING ACT

\*6<sup>th</sup> Cir 2006 – Village of Olde St Andrews Pattern or  
Practice

Even if your property is compliant, you must still allow reasonable modifications.

# REASONABLE MODIFICATIONS

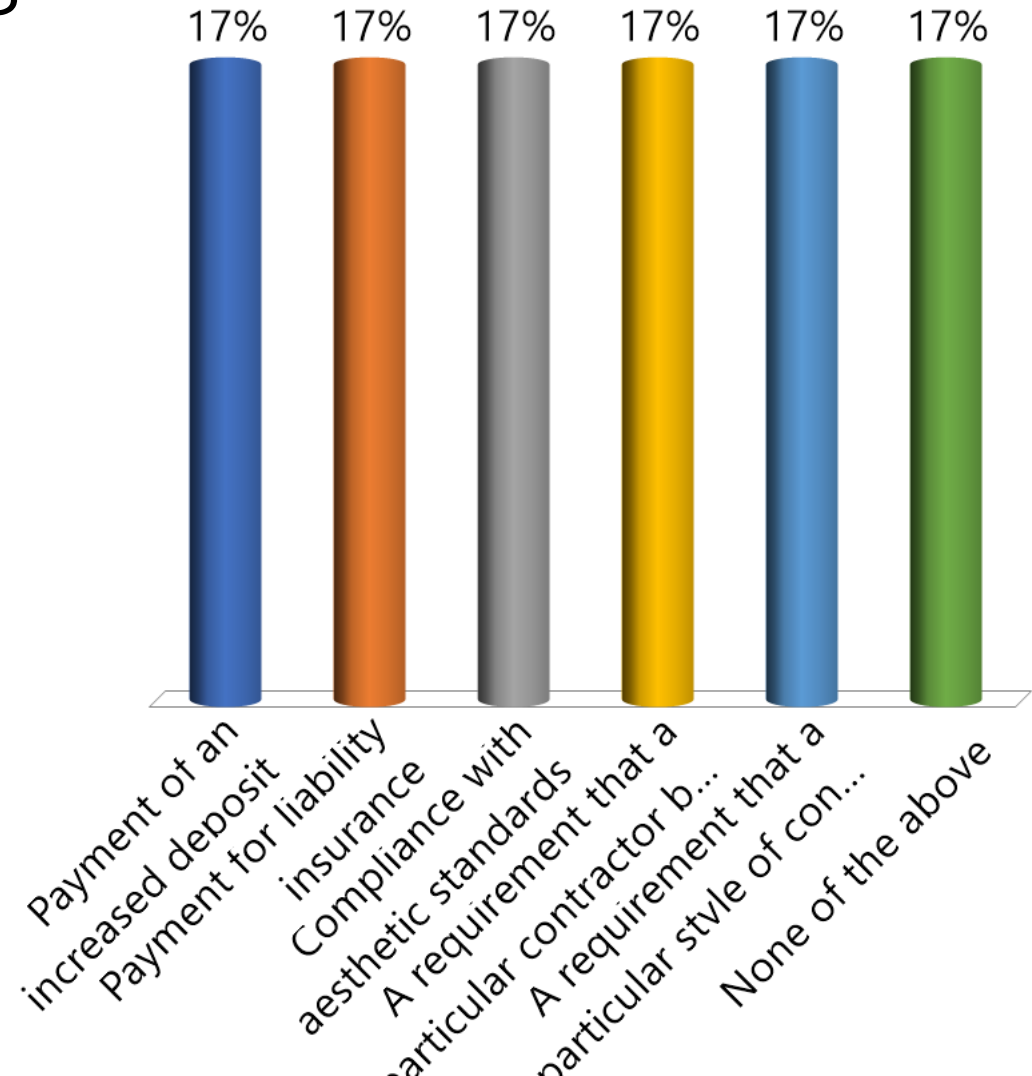
- An alteration to the physical characteristics of a dwelling unit or to the common areas of a building requested by an applicant or resident to allow accessibility by a member of the household
- Under Fair Housing Act, tenant must pay for alterations needed
- Note that properties that receive federal funds are subject to Section 504 regulations which require the Owner to pay for reasonable modifications

# REASONABLE MODIFICATIONS

- Reasonable modifications and accommodations should be requested by tenant, instead of offered by owner
- Reasonable modifications should comply with the American National Standards Institute (ANSI) unless the ANSI requirements would not be effective for the particular resident

A prospective resident wants to make several reasonable modifications. We can condition the modifications on the following:

- A. Payment of an increased deposit
- B. Payment for liability insurance
- C. Compliance with aesthetic standards
- D. A requirement that a particular contractor be used
- E. A requirement that a particular style of construction be used
- ✓ F. None of the above



Answer: F

\*\*Escrow account – cost of restoration

# Reasonable Modification

If a person is disabled, a landlord cannot refuse to let that person make reasonable modifications to the persons dwelling or common use areas, at that persons own expense, if necessary for that person to use the housing

**\*\*504**

# MANDATORY READING

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT

# MODIFICATIONS

- Landlord must allow reasonable modifications to structure of the unit if necessary to allow enjoyment of dwelling:
- Widening doorway
- Installing ramps
- Installing grab bars
- Lowering countertops
- Removing carpet

# LANDLORD HAS THE RIGHT TO:

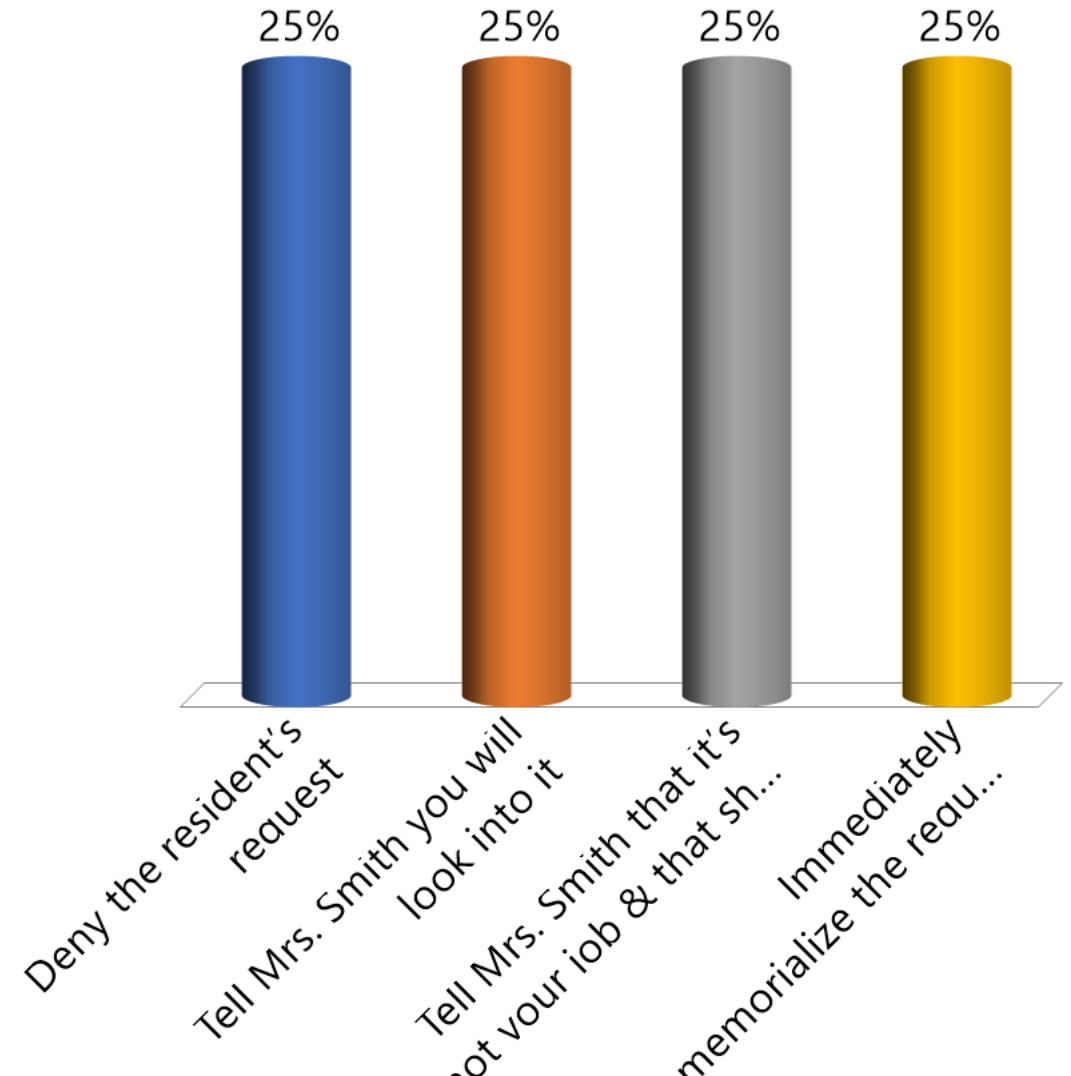
- Review all plans for modification
- In some instances, require that the unit be returned to previous condition
- Require the person doing work to be licensed, insured and/or bonded
- Escrow

# QUESTION...

You are in Mrs. Smith's unit doing an annual replacement of back up batteries in smoke detectors. You are overwhelmed because your coworker called off sick, and you have 300 other units to get to by end of the day. Mrs. Smith asks you about installing a grab bar in the shower. How should you respond?

# Please make your selection....

- A. Deny the resident's request
- B. Tell Mrs. Smith you will look into it
- C. Tell Mrs. Smith that it's not your job & that she will need to make a written request to the manager in the office
- ✓ D. Immediately memorialize the request & discuss with the manager, & have manager follow-up with Mrs. Smith following company procedure



Correct Answer: D

- Maintenance staff should never deny requests on their own
- A residents request doesn't have to be in writing or follow your company policy
- Saying you will look into it may not happen
- Maintenance staff should report verbal request to the onsite manager after you have memorialized the resident's request

# DENYING ACCOMMODATIONS & MODIFICATIONS

- Cannot deny based on “damaging precedent”
- Cannot deny based on “potential undue burden”

## ACCOMMODATIONS/MODIFICATIONS

- Landlord may request verification of necessity for requested accommodations or modifications, but don't ask for more than you need
- Landlord may not request information on tenant's medical condition
- Need not be made if causes undue burden or fundamental alteration

# Undue Financial and Administrative Burden

- Financial resources of Landlord
- Cost of the accommodation
- Benefits to the Resident
- Alternative accommodation that would effectively meet resident's disability related needs

# Fundamental Alteration

- Modification that alters the nature of a provider's operation

# MUST READS

**\*\*Mass Housing – Undue Financial and Administrative Burdens and Fundamental Alterations.**

Bazelon Center for Mental Health Law Info Sheet #2 – structural modifications in public & section 8 housing

# “DIRECT THREAT”

- Exception to the general rule that landlord provide tenants with necessary and reasonable accommodation for disabilities

# WHAT IS A DIRECT THREAT?

- “Tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others”. 42 U.S.C. § 3604 (f)(9)

- Courts will not accept generalized assumption, subjective fears or speculation

- Direct threat must be based on objective evidence - particularized proof of dangerous behavior.

# TOWNSHIP OF WEST ORANGE V. WHITMAN

- Claim to prevent two group homes for individuals with mental illness from locating in residential area
- Claim that these individuals posed heightened risk.  
The Court stated that even if plaintiff proved correlation they could not prove individualized dangerousness

- Courts will examine the failure of previous reasonable accommodations
- Document, document, document
- Have the doctor verify that “tenants medication will alleviate tenant’s threatening behavior.

- Subjective fears of residents does not satisfy requirement for objective evidence.
- Courts also look at “tempus proximity”

- A landlord need not wait until a tenant has caused actual harm.
- Tenants behavior escalates in intensity
- Must be more than just inappropriate behavior
- Potential harm must be direct
- No reasonable accommodation will eliminate or minimize the risk

**HOW CAN A REASONABLE ACCOMMODATION BE USED TO PREVENT  
EVICTION?**

Suppose a tenant is being evicted for:

- Damage caused by wheelchair
- Aggressive / disturbing behavior

If a tenant identifies a disability-related behavior or characteristic that is causing him or her to be noncompliant with a lease, and proposes a change in the tenant's behavior or the landlord's policies that would eliminate or reduce the impact of the lease violation, then a reasonable accommodation may protect the tenant against eviction.

A landlord may not violate the Fair Housing Act (FHA) by initiating an eviction in such circumstances, a landlord might violate the FHA by refusing to cease eviction proceedings in response to a reasonable accommodation request from the tenant.

Cease and/or stay eviction proceedings until the reasonable accommodation is considered. The tenant is responsible for showing that the accommodation would eliminate or substantially reduce the breach.

People who are engaged in the current use of illegal drugs are not protected under the Fair Housing Act 42 U.S.C. 3602(h)

# MANDATORY READING

\*\* Bazelon Center Info Sheet #4 – Using Reasonable Accommodations to Prevent Evictions

# Disparate Impact

Disparate Impact is a legal doctrine under the Fair Housing Act which means that a facially neutral policy or practice could be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability. Additional information can be found at:

<http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx>

# **The Day Criminal Screening Changed**

U.S. Department of Housing & Urban Development  
Washington, DC 20410-0500

April 4, 2016

Office of General Counsel Guidance on Application of  
Fair Housing Act Standards to the Use of Criminal  
Records by Providers of Housing and Real Estate-  
Related Transactions

- 100 Million U.S. Adults (1/3) have a criminal record of some sort
- Since 2004 over 650,000 released annually from prison
- 95 of current inmates will be released
- African Americans & Hispanics incarcerated at disproportionate rate of population
- Significant barriers to housing

## Excluding Individuals with Prior Convictions

A housing provider that imposes a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden

Must be based on a case by case basis

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest

Currently, HUD regulations specify only two explicit bans on occupancy based on criminal activity. This includes a lifetime ban on admission to the Public Housing and Housing Choice Voucher programs for:

1. Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR § 960.204, 24 CFR § 982.553), and
2. Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR § 960.204, 24 CFR § 982.553)

# FAIR HOUSING “TO DO” LIST

- Develop clear written conditions of tenancy & tenancy conduct
- Develop written operations manual
- Customer service operations
- Maintenance procedures
- Resident complaint process procedure

# FAIR HOUSING “TO DO” LIST

- Ask all prospective tenants the same questions
- Policy is ineffective unless employees read and understand it
- Distribute to:
  - Management
  - Marketing agents
  - Maintenance staff
- All employees who have contact with applicants and tenants

# FAIR HOUSING “TO DO” LIST

- Acknowledge of receipt and understanding of Fair Housing Training/Policy
- Develop method of recording ALL activity
- Develop record retention schedule

# FAIR HOUSING “TO DO” LIST

- Display fair housing posters
- Distribute a fair housing policy or statement to your tenant
- Back it up with your rules and regulations
- Court decisions and new laws

# FAIR HOUSING “TO DO” LIST

- Develop reasonable accommodation and modification policy
- Exceptions to forms
- Fair housing liaison in company

# FAIR HOUSING “TO DO” LIST

- Continue fair housing education
- Train new employees
- Collect fair housing materials for employees to read and discuss
- Document what you have done